

UPDATE ON WATER PERMITS AND POLICY

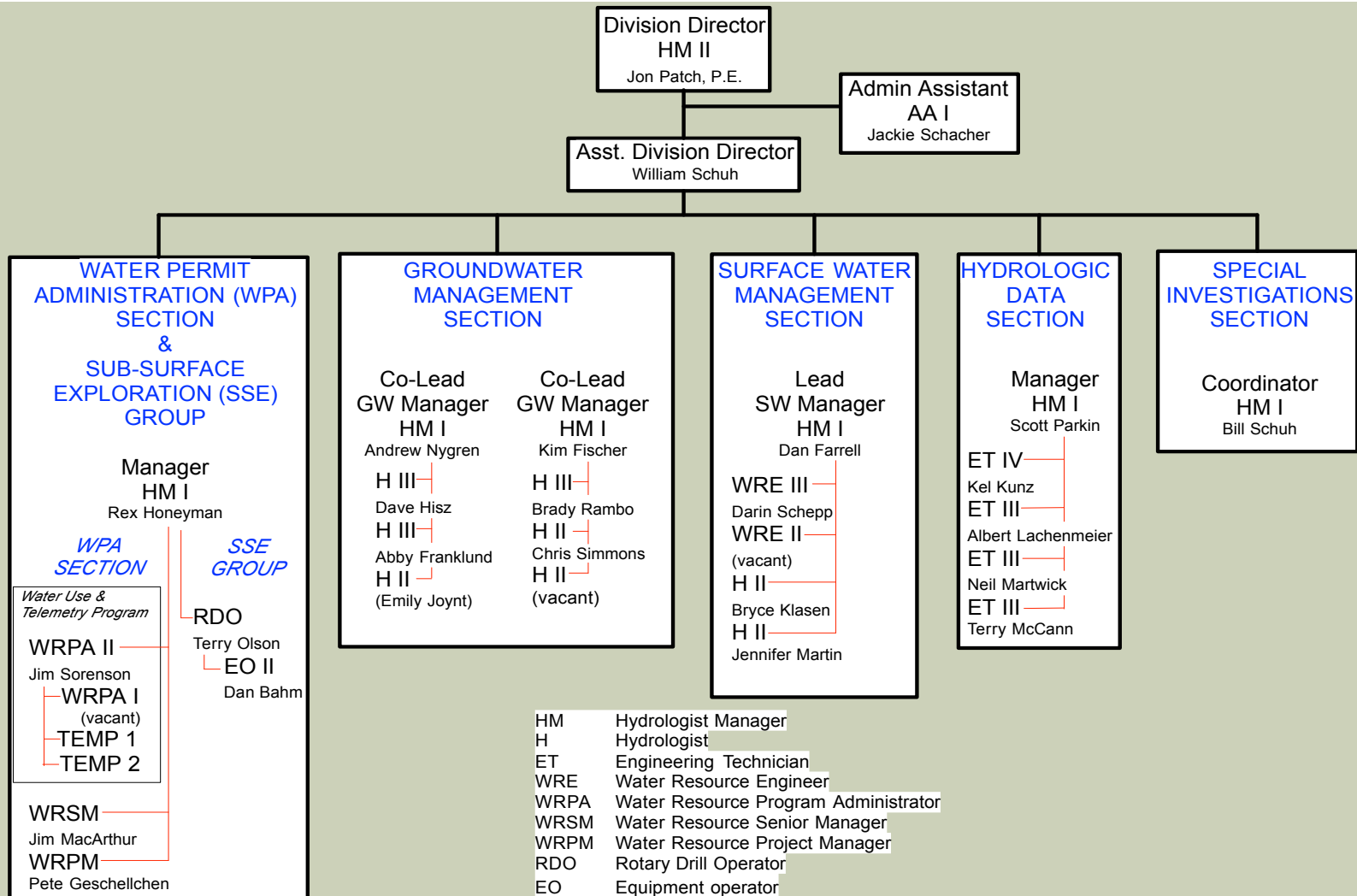


December 7, 2017
ND IRRIGATION WORKSHOP
RAMKOTA HOTEL, BISMARCK

Jon Patch, P.E.
Water
Appropriation
Director

North Dakota
State Water
Commission

WATER APPROPRIATIONS DIVISION

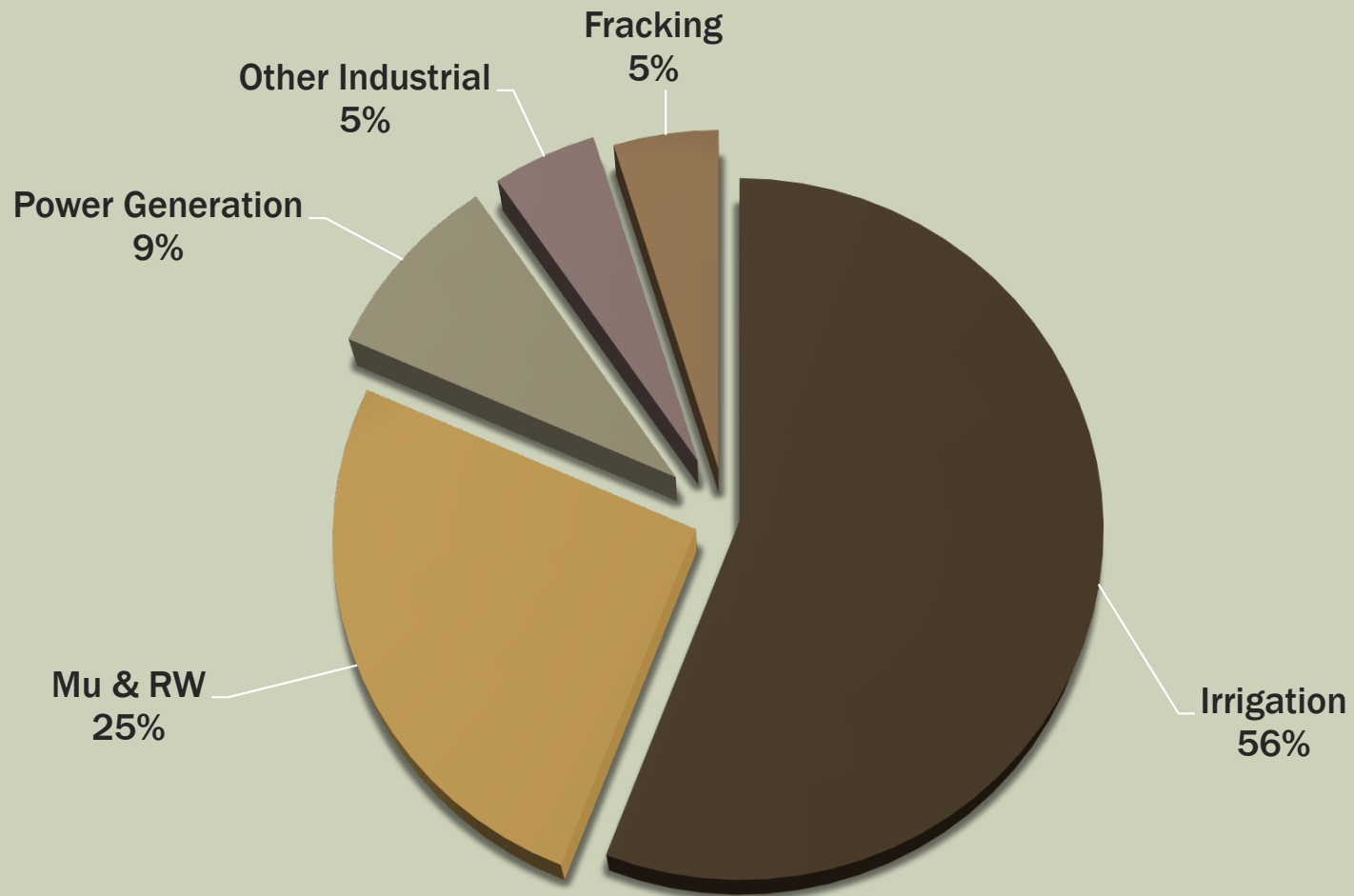


PRIMARY RESPONSIBILITIES

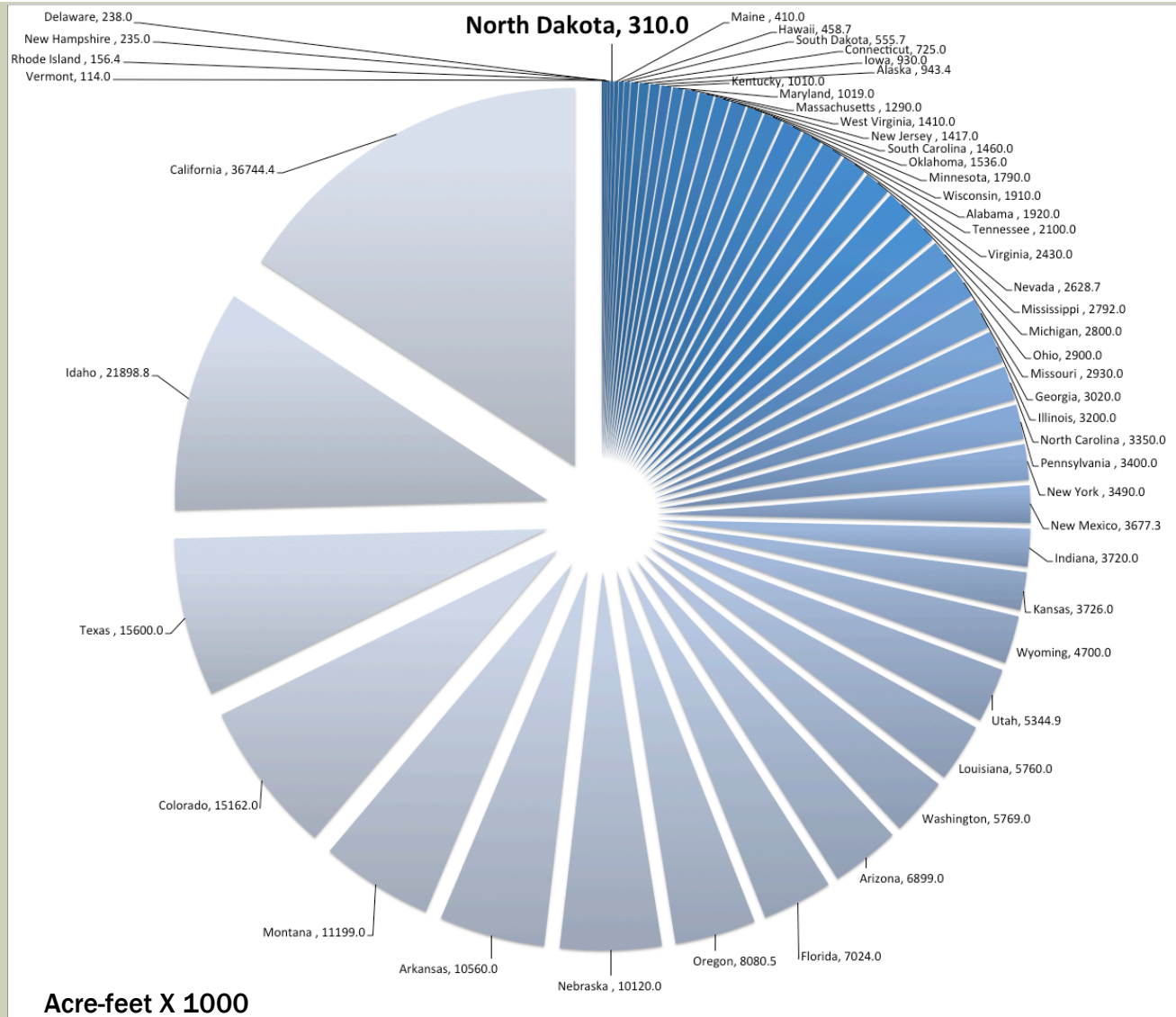
Manage
Investigate
Appropriate

“Waters of the State”

CONSUMPTIVE WATER USE IN ND

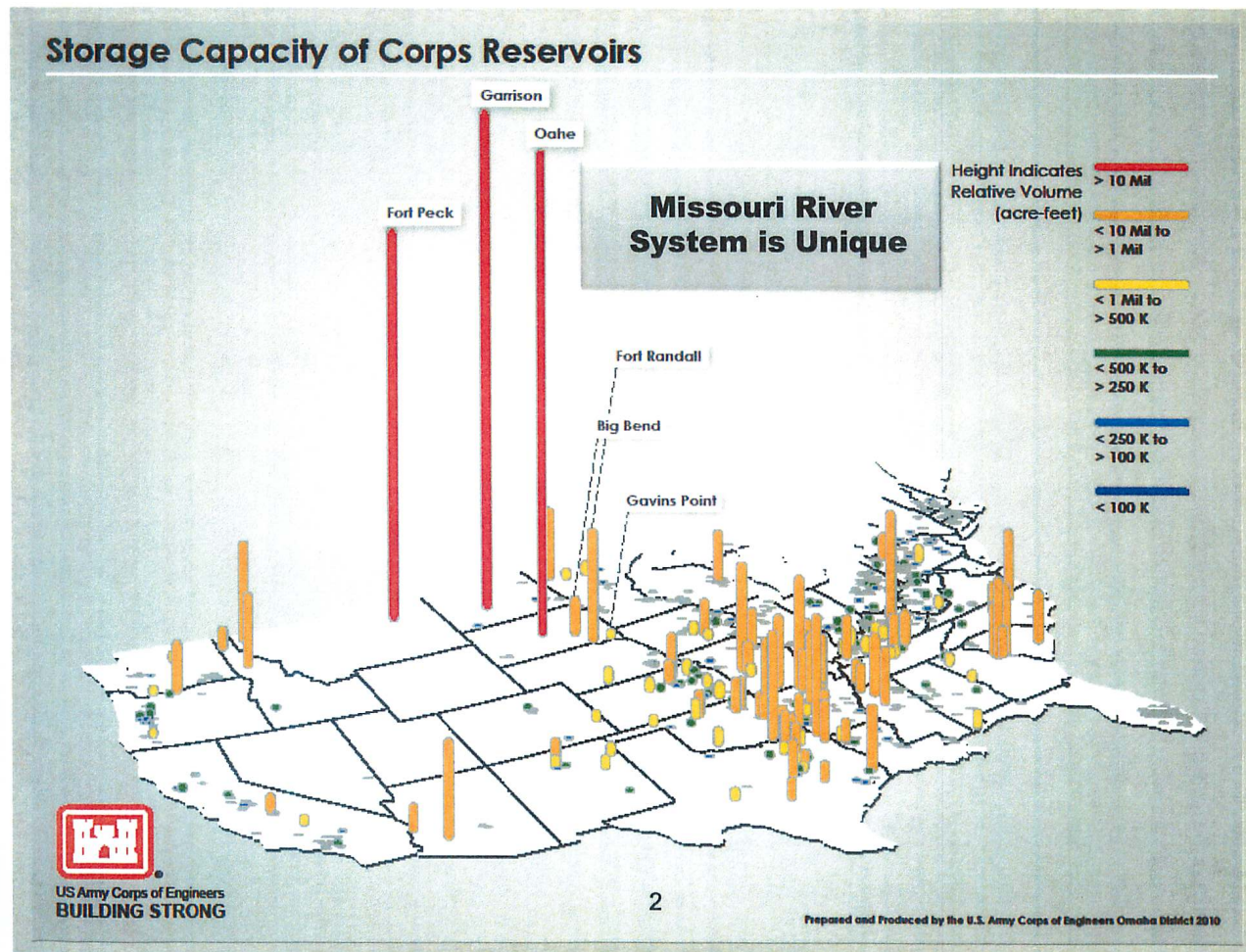


COMPARED TO OTHER STATES



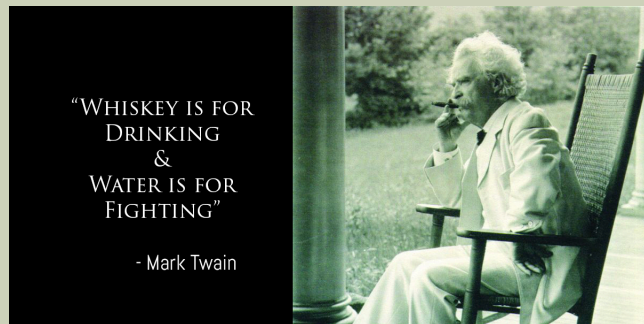
WATER'S USE OF ND

#1



PRIOR APPROPRIATION DOCTRINE

- **Western Water Law** – Prior Appropriation Doctrine
- Water rights and water usage is competitive and often contentious



- **ND Constitution** “All flowing streams and natural watercourses shall forever remain the property of the state ...”
- **NDCC** “All waters ... belong to the public and are subject to appropriation for beneficial use “

STATE ENGINEER – STATUTORY ROLE

- Regulatory authority for the appropriation of water
- Limited involvement of the State Water Commission in the day to day functions and duties of the division

- ☐ Statutes

- ☐ Rules

- ☐ SOPs

HOW DO WE APPROPRIATE WATER?

- System of Water Permits
- Two types: **Conditional or Temporary**
 - **Conditional water permit** = water right
 - Requires the water to be applied to a beneficial use – no paper rights
 - Become Perfected permits upon beneficial use and inspection
 - ≈4000 active water permits, 200 pending review, 300 deferred
 - **Temporary permits** = permission to use water
 - Last up to a maximum of 1 year
 - No water right accrues
 - Permanent installations and long term use require Conditional Water Permit application
 - Due to the complexity of evaluation, temporary permits are not typically issued from groundwater sources.

PRIORITY (RANKING) OF USE

NDCC 61-04-06.1

- 1. Domestic
 - 2. Municipal
 - 3. Livestock
 - 4. Irrigation
 - 5. Industrial
 - 6. Fish, wildlife, and other outdoor recreational uses.
-
- This order of priority applies in preference in granting competing permit applications that are filed within 90 days of one another NDAC 89-03-01-11
- Or
- In the event of a change in PURPOSE OF USE of the permit, may only move to a superior use

Irrigation → Municipal ✓

Irrigation → Industrial ❌

North Dakota's Water Permitting Process

Amount impounded diverted or withdrawn is greater than 12.5 acre-feet, is being used to irrigate 5 or more acres of land, or is being utilized for industrial use.

NO

No permit required, but State Engineer must be notified of location and volume before facilities are constructed.

YES

YOU NEED A PERMIT So What's Next?

Obtain and complete the application. Priority date is established when the application is received by the State Engineer.

1

Applicant is then required to send a "Notice of Application."

Sent to real property and water permit holders within one mile of the point of diversion, and public water facilities within 12 miles.

2

State Engineer publishes notice for two weeks, and any person has 30 days from date of first notice to comment.

4

Applicant provides the State Engineer with an affidavit of notice - listing names and addresses of those sent the "Notice of Application."

3

Once a recommended decision is made by the State Engineer, there is a 30-day comment period for parties of record (those who provided initial comments).

5

If an adjudicative proceeding is requested and granted, the State Engineer will designate a time and place.

6

When water is put to beneficial use and after inspection, a perfected permit can be issued.

8

If permit is granted, the permittee is generally given one to three years to put water to beneficial use.

7

Record at county records office. A water right is a property right.

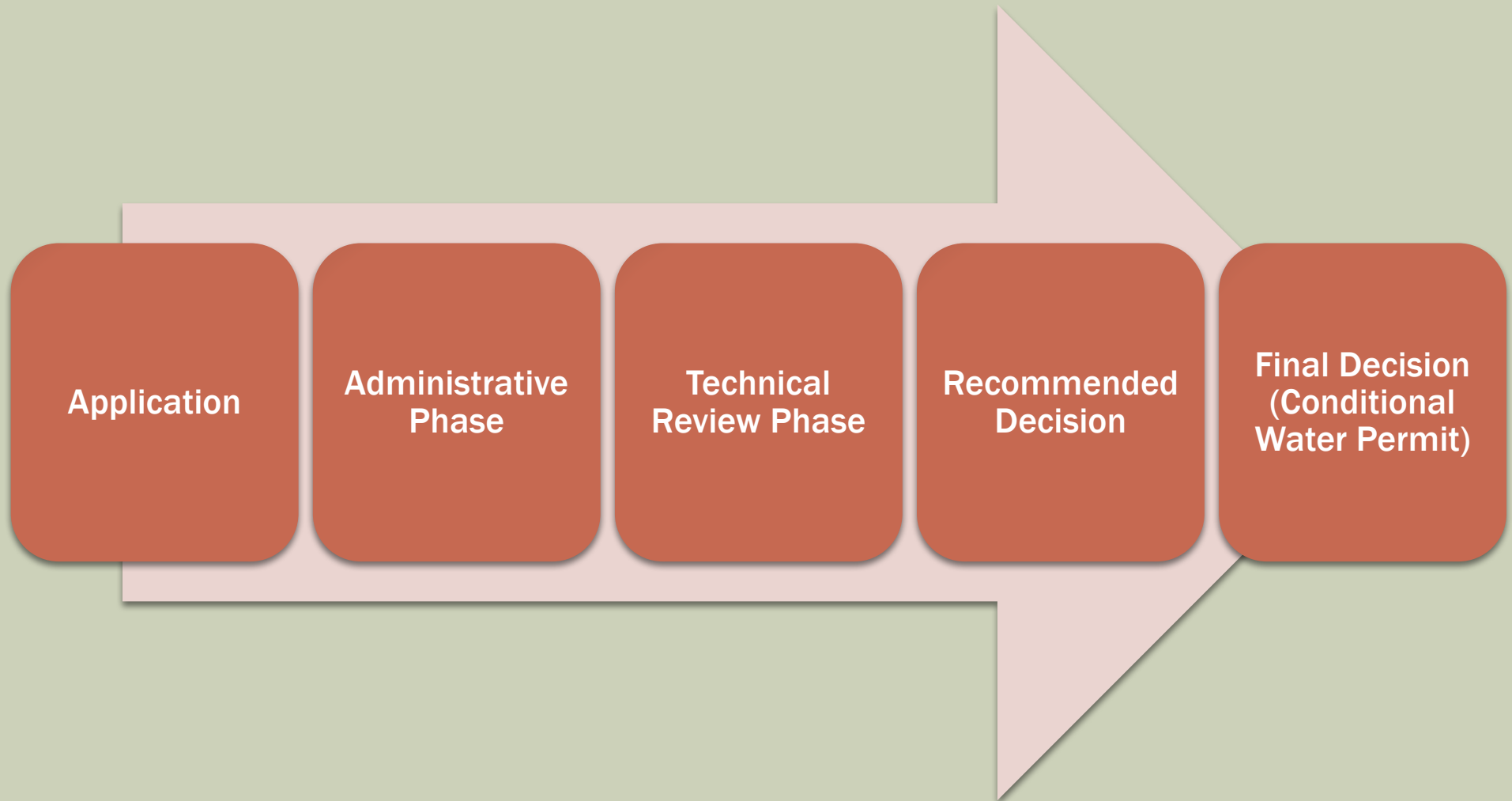
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For Additional Information



ND STATE WATER COMMISSION
900 E. BOULEVARD AVE., DEPT 770
BISMARCK, ND 58505
(701) 328-2754 · www.swc.nd.gov
Email swc@nd.gov

STEPS TO A WATER RIGHT



APPLICATION PHASE

- ☐ Obtain application forms and instructions
- call 701-328-2754 or www.swc.nd.gov.
- ☐ Complete an application **form**.
- ☐ Include a **map** made by a registered land surveyor.
- ☐ Pay an application **fee**

Once completed a Priority date is established

ADMINISTRATIVE PHASE

- **Give notice** of application:
Includes information from application: type of use, acre-feet, acres, pumping rate, location.
- **Send** by certified letter to:
Landowners within one mile
Water permit holders within one mile
Public water use facilities within 12 miles
- **Publish** notice in official county paper once a week for two consecutive weeks.
- **Comment period:**
30 days Once notices have been sent out and published, interested parties have 30 days to comment in writing their concerns.

TECHNICAL REVIEW PHASE

- Three primary questions must be answered:
- Will rights of a *Prior Appropriator* be unduly affected?
- Is the proposed use *Sustainable*?
- Is the proposed use in the *Public Interest*?

PUBLIC INTEREST CONSIDERATIONS

- Benefit to the applicant
- Effect on economic activity
- Effect on game & fish and public recreation
- Alternate uses within a reasonable time
- Harm to other persons
- Intent and ability to develop proposed project

RECOMMENDED DECISION:

Hydrologist or engineer prepares a recommended decision for the State Engineer.

- Review the physical setting
- Review the effects of ongoing water use
- Consider the expected effect of proposed project
- Address letters of concern
- Make recommendation to SE

FINAL DECISION:

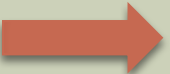

The recommended decision will become the **final decision** after:

- 2nd - 30 day review and comment period for the parties of record (if any) only

And if:

- There are no challenges to the recommended decision in the form of a call for an adjudicative proceeding
- A call for an adjudicative proceeding must state with particularity how the party is aggrieved

CONDITIONAL PERMIT

- Conditions include :
 - Beneficial Use Date
 - Volume, Rate, Location
 - Water meter
 - Check valve
 - Efficient capture system
 - Spacing requirement
 - Other application specific conditions
- Conditional Water Permit  Perfected Water Permit
- Perfected Water Permit  Water Right
 - Conditional water permits have the ability to become Perfected permits upon beneficial use and inspection.

BENEFICIAL USE:

- Water must be put to beneficial use by a prescribed date.
- A beneficial use date will be included on the permit.
 - If no other applications are pending: three years to develop
 - If other applications are pending: one or two years to develop
- Beneficial use date can be extended for good cause, if no applications are pending.

CONDITIONAL (PERFECTED) WATER PERMITS

- \approx 3,900 conditional and perfected water permits
- \approx 650 pending* conditional water permit applications.
- Prior to the early stages of the oil boom in 2009, the Division received about 75 conditional water permit applications per year. Of this total, about 30% were for industrial use.
- Present day the Division receives up to 150 conditional water permit applications per year of which about 50% are for industrial use, mostly for hydraulic fracking.

*more on this later 😊

WATER PERMIT STATUSES AS OF 12-4-2017

Application In Processing	13
Pending Review	175
Under Review	31
Deferred	282
Held In Abeyance	142
Conditionally Approved	735
Denied	322
Perfected	3026
Cancelled	1521
Void	775
Undefined (Pre-1990 Forfeited, Canceled, Void, Abandoned, or Denied)	600
Grand Total	7622

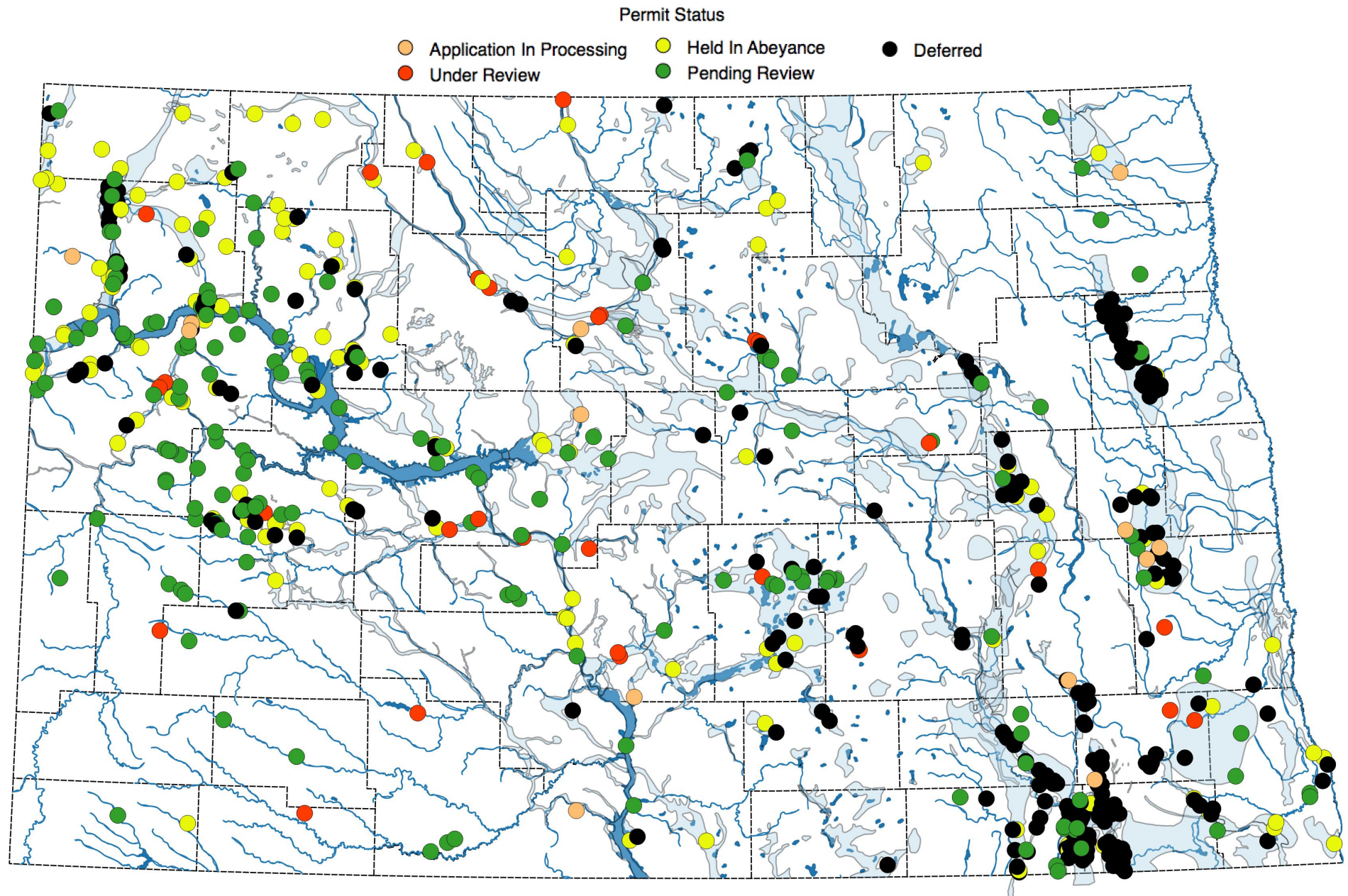
APPROVED ACTIVE WATER PERMITS AS OF 12-4-2017

	Perfected	Conditionally Approved	Held in Abeyance	Total
Domestic	7	1		8
Fish and Wildlife	266	69		335
Flood Control	49	3		52
Industrial	257	155	80	492
Irrigation	1841	441	52	2334
Multiple Use	19	8		27
Municipal	249	32	6	287
Power Generation	9			9
Recreation	165	7		172
Rural Water	90	11	4	105
Stock	74	8		82
Total	3026	735	142	3903

PENDING WATER PERMITS APPLICATIONS AS OF 12-4-2017

	Application In Processing	Under Review	Held In Abeyance	Pending Review	Deferred	Total
Fish and Wildlife		5		5	4	14
Industrial	3	8	80	95	49	235
Irrigation	10	16	52	68	215	361
Municipal			6	4	5	15
Recreation		2			1	3
Rural Water			4	2	8	14
Stock				1		1
Total	13	31	142	175	282	643

PENDING WATER PERMIT APPLICATIONS AS OF 12-4-2017

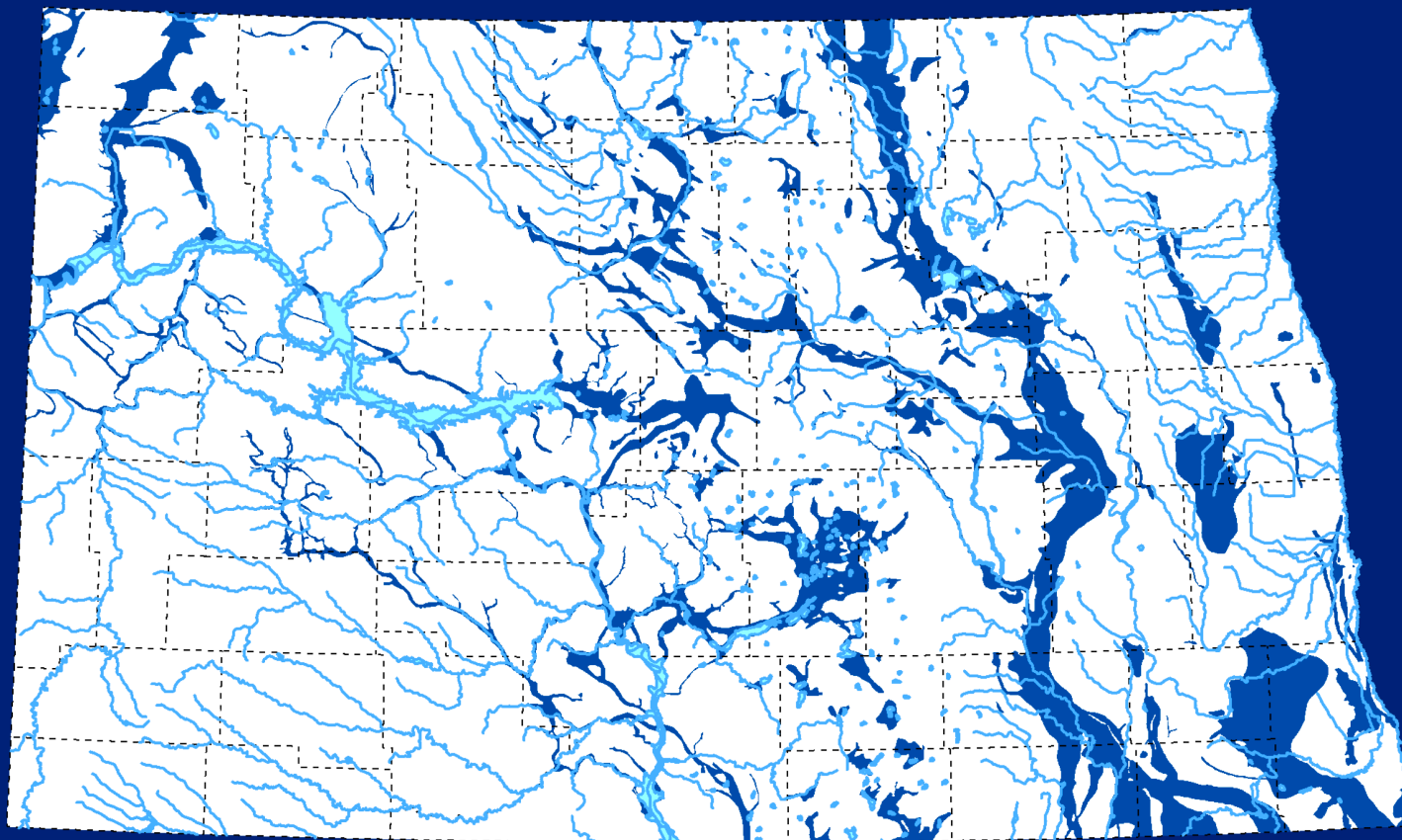


IRRIGATION IN NORTH DAKOTA

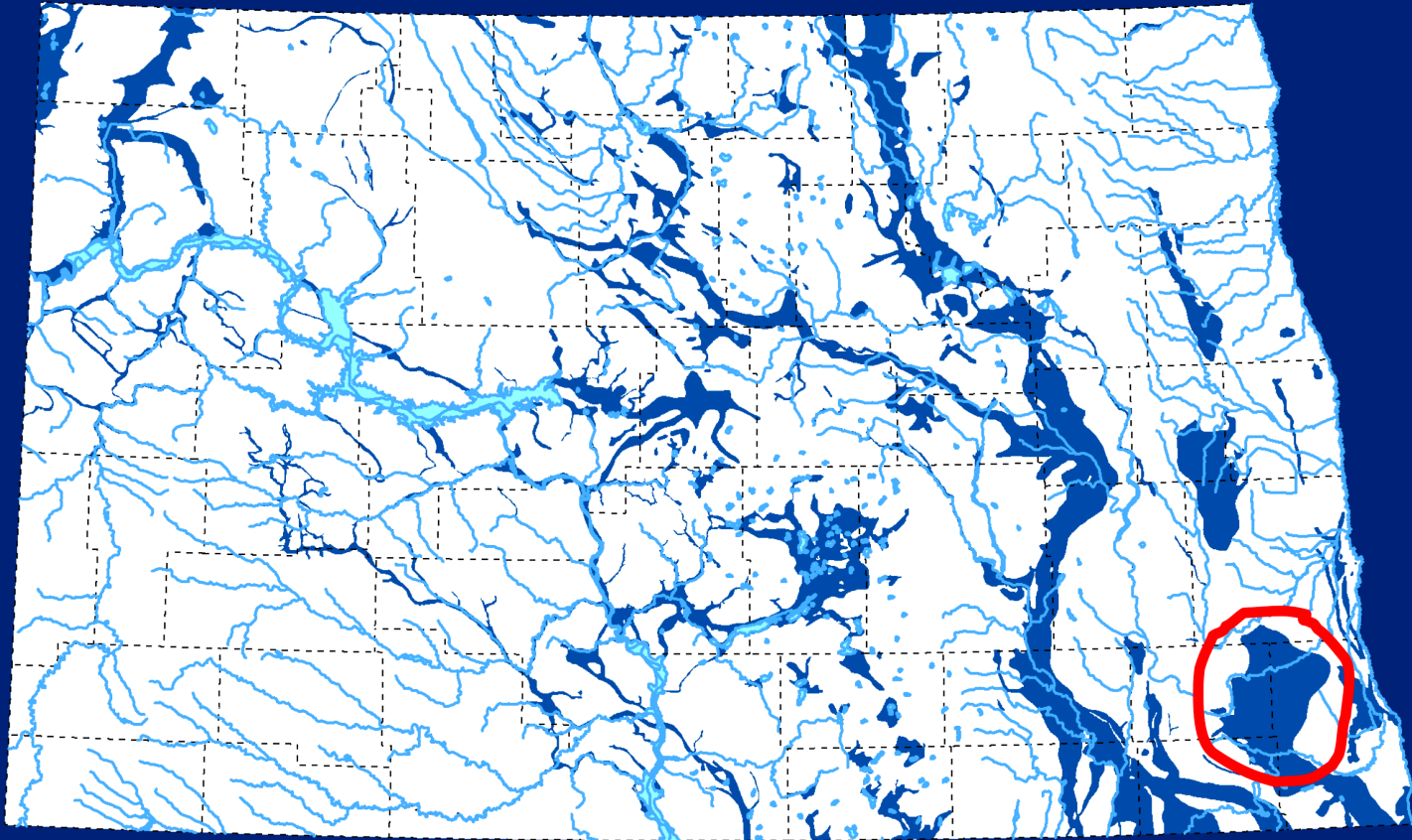
<u>Source</u>		ACRES	
		<u>Approved</u>	<u>Actual (2016)</u>
Groundwater		248,906	195,835
Surface Water			
Mainstem		145,446*	103,762*
Small lakes & tribs		44,177	21,161
Total		438,529	320,758

*Includes approved acres in Yellowstone Irrigation pumping district (Montana point-of-diversion), McClusky Canal irrigation, Oakes Test Area irrigation project.

TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)

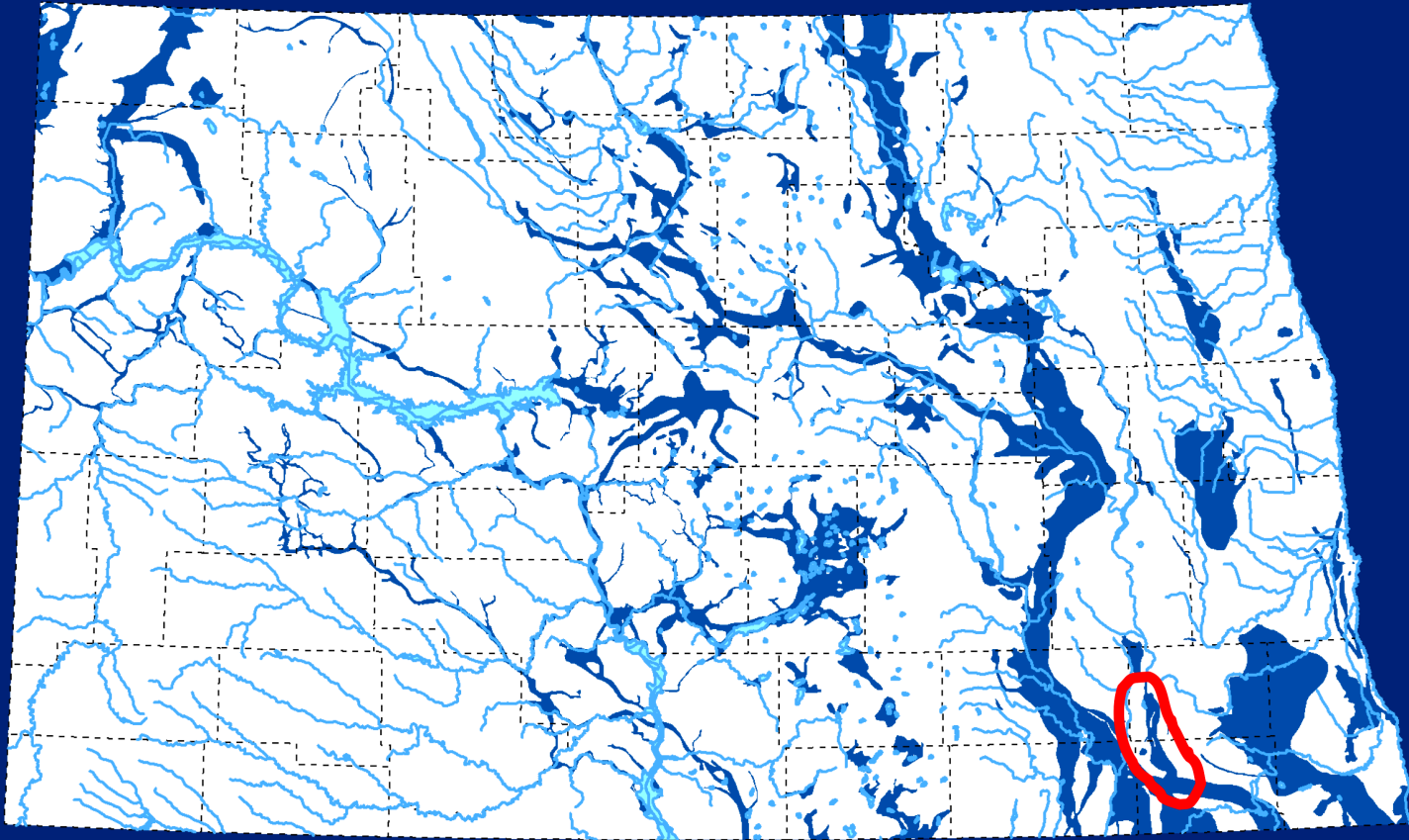


TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#10 - The Sheyenne Delta aquifer 13,000

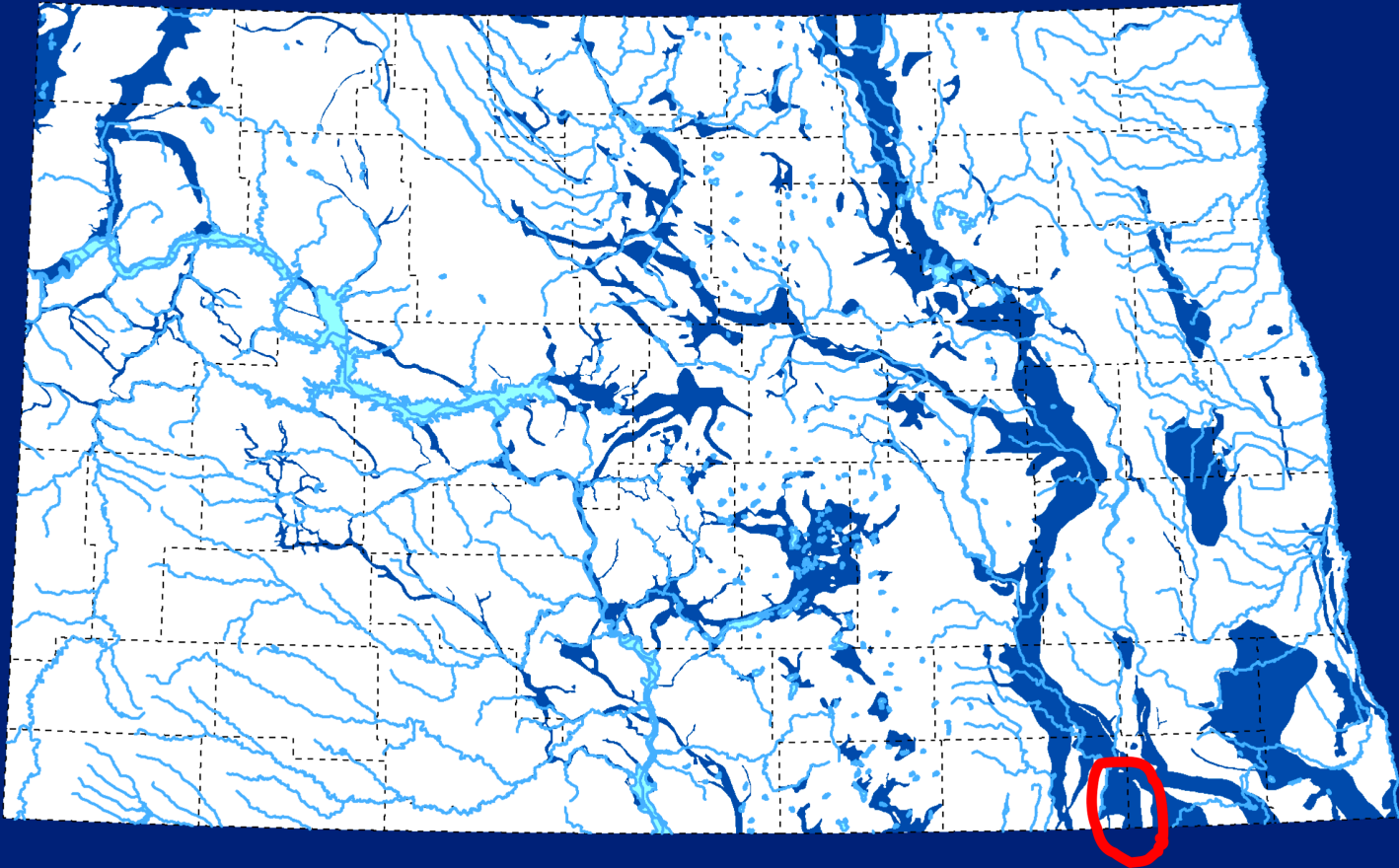
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#9 – The Englevale aquifer

15,000

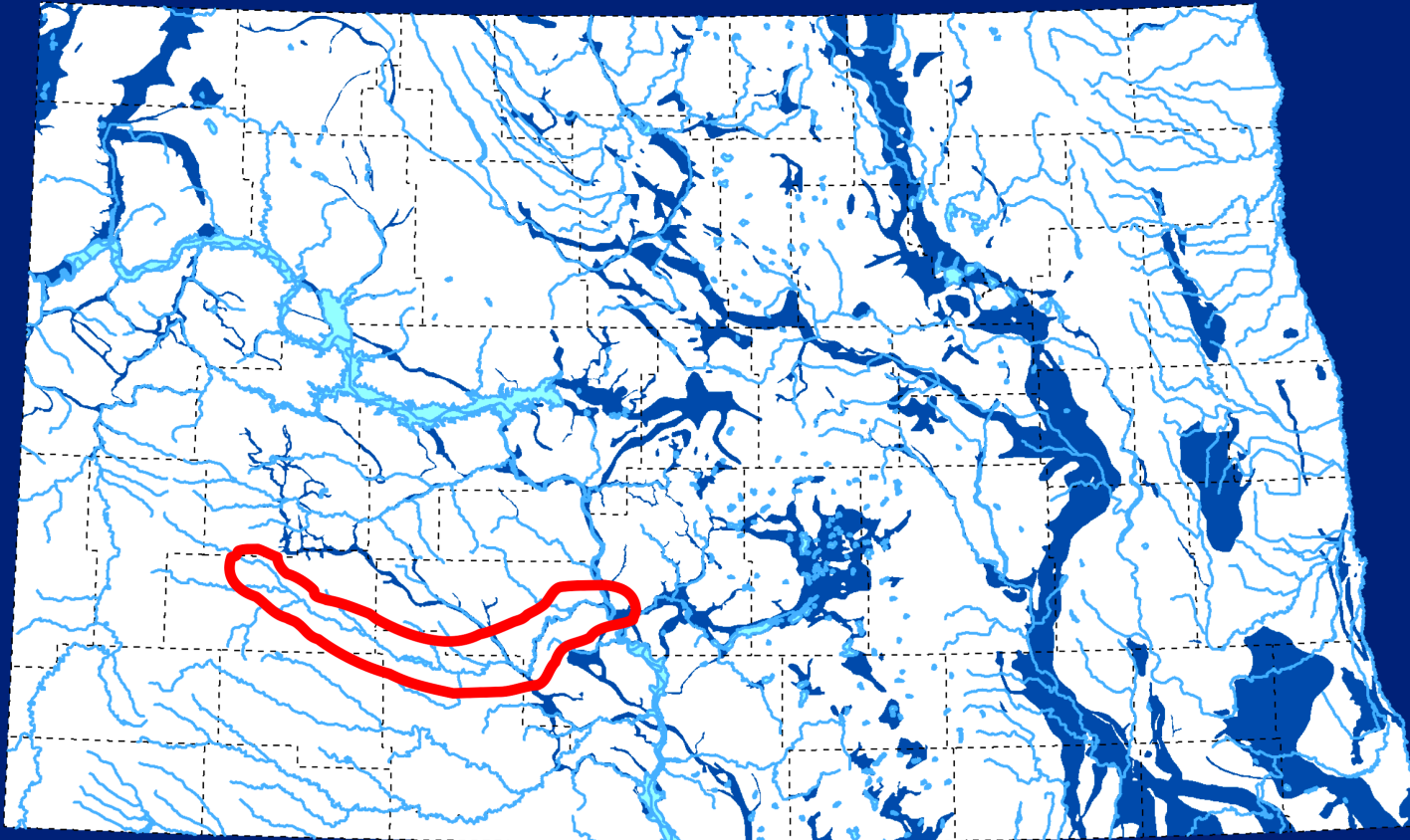
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#8 – The Oakes aquifer

16,000

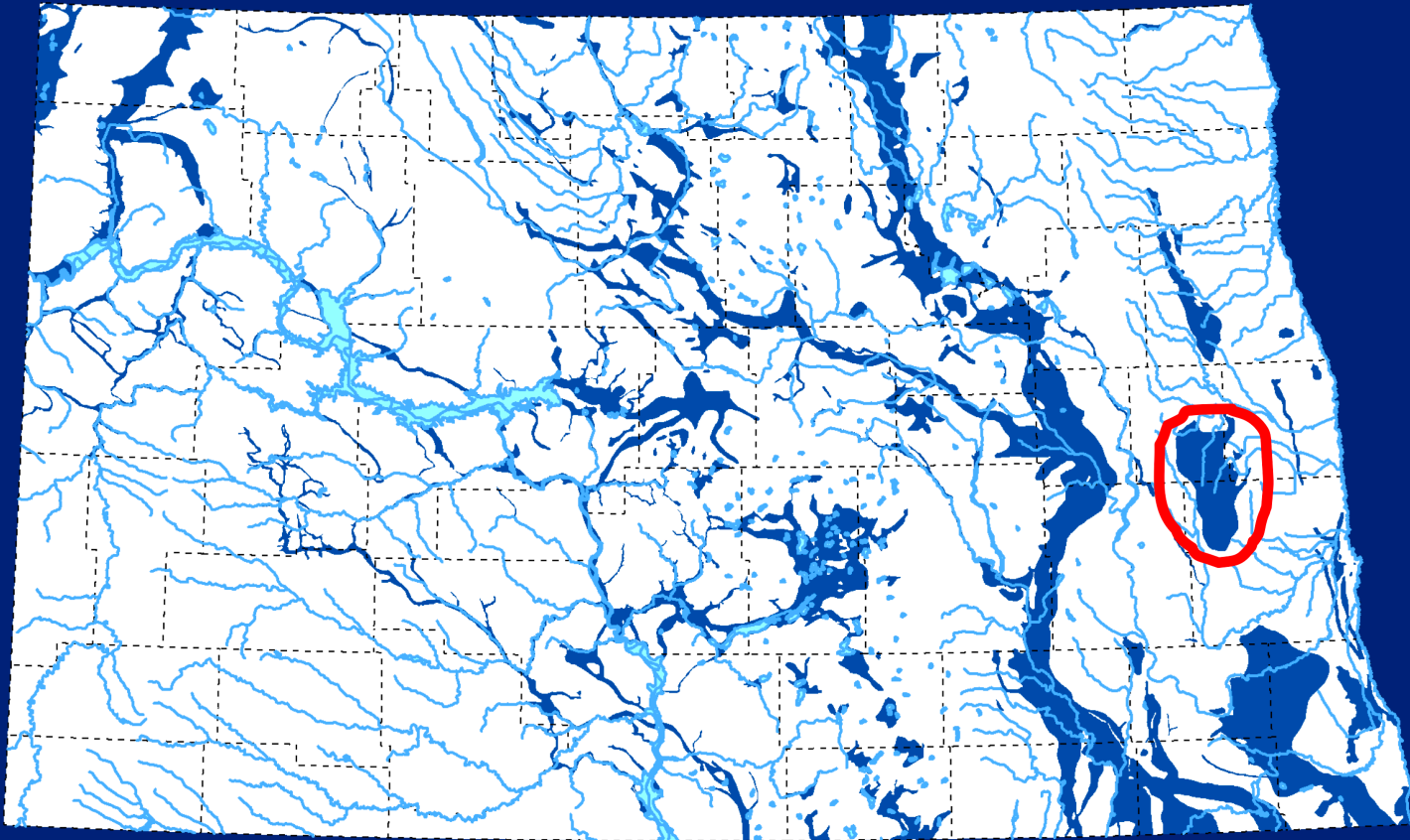
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#7 – The Heart River

16,500

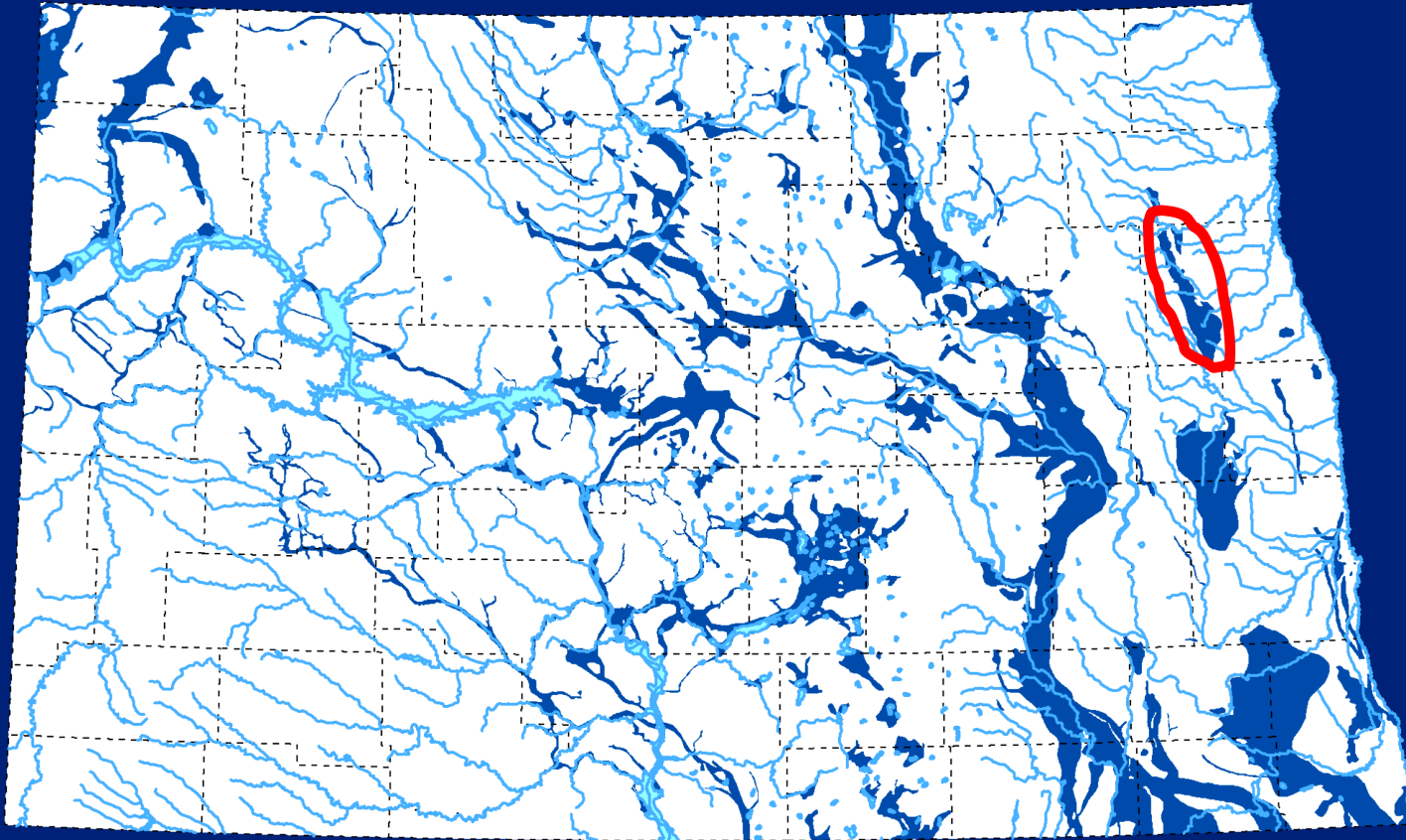
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#5 – The Page aquifer

19,500

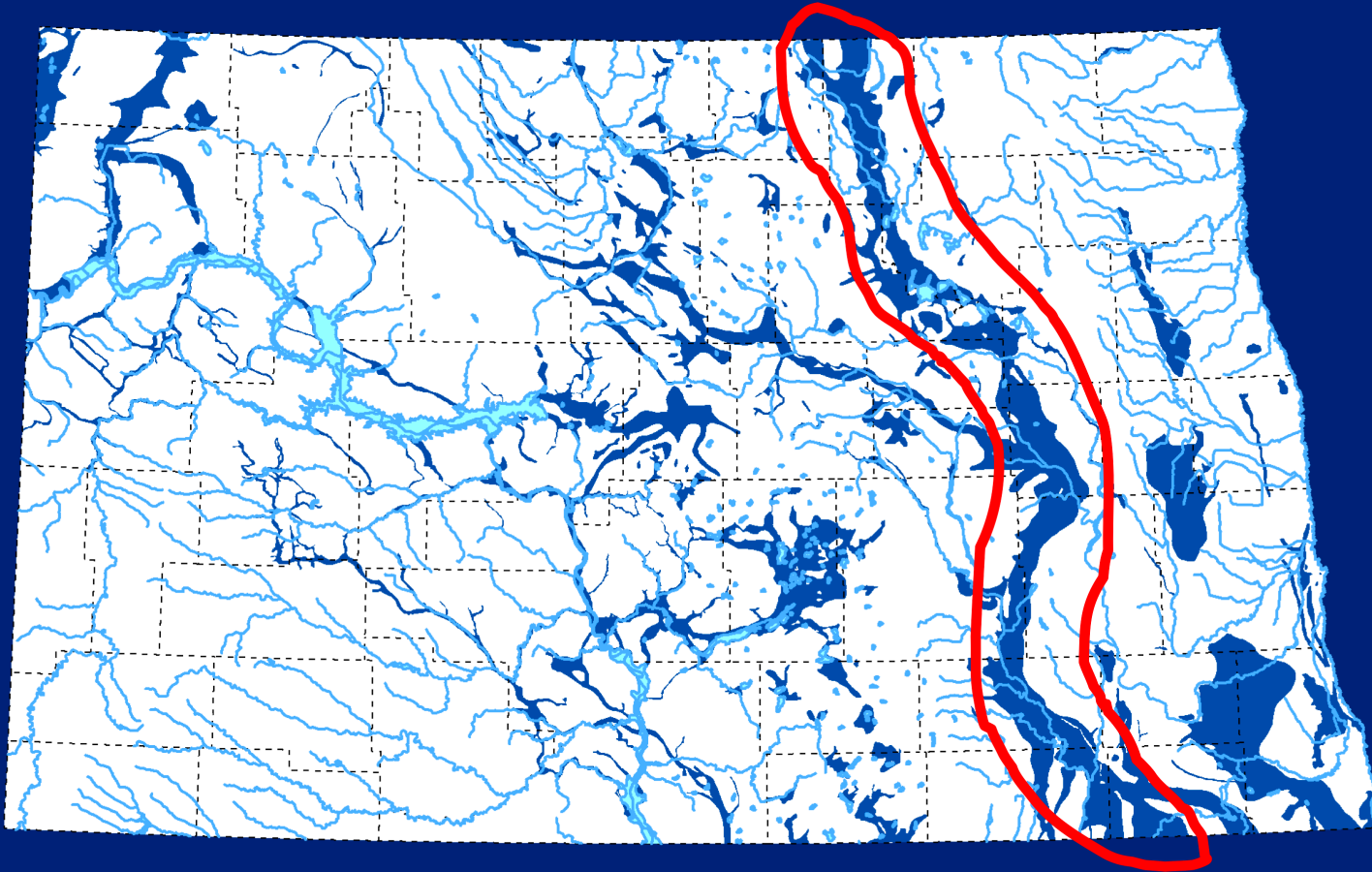
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#5 – The Elk Valley aquifer

19,500

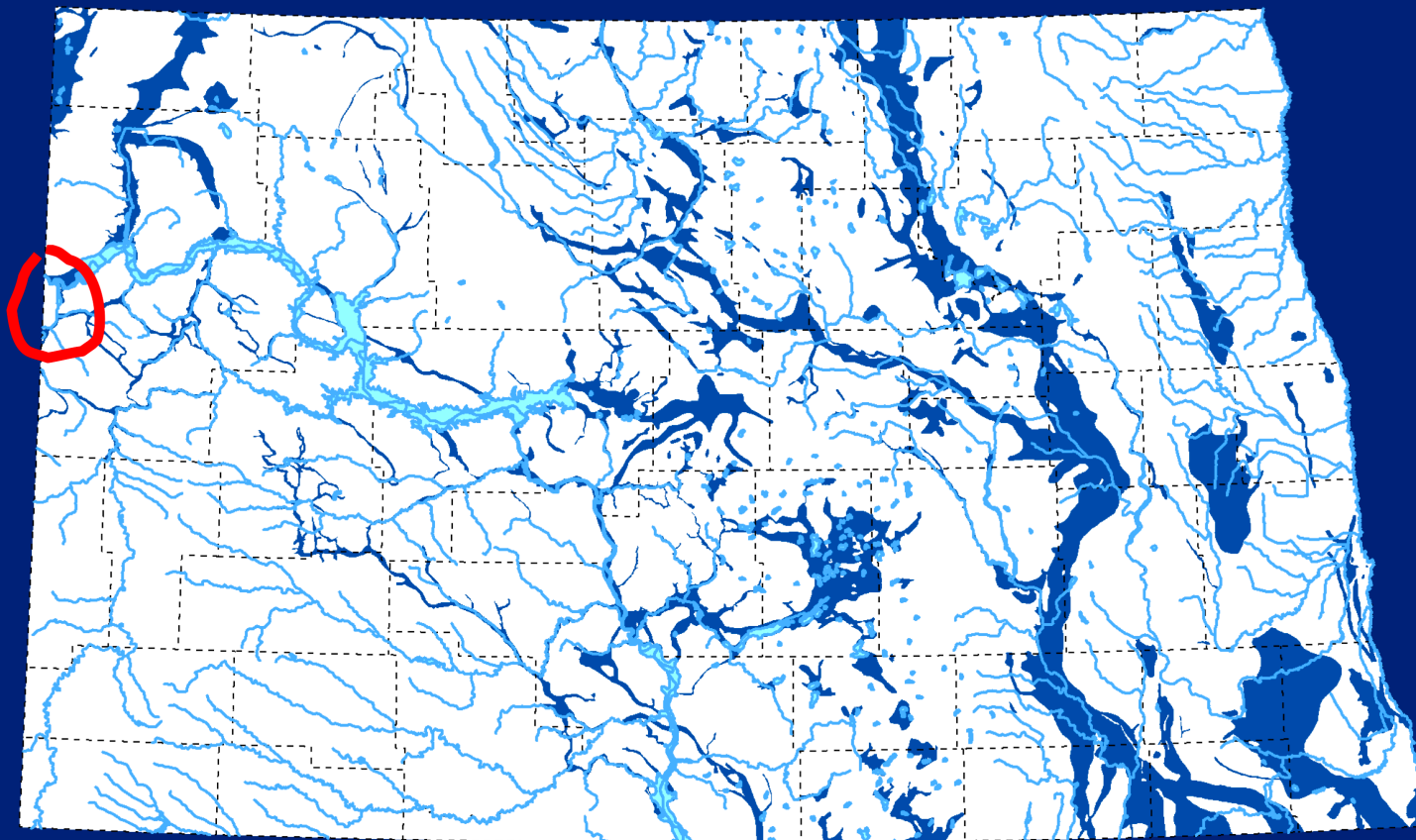
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#4 – The Spiritwood aquifer

22,000

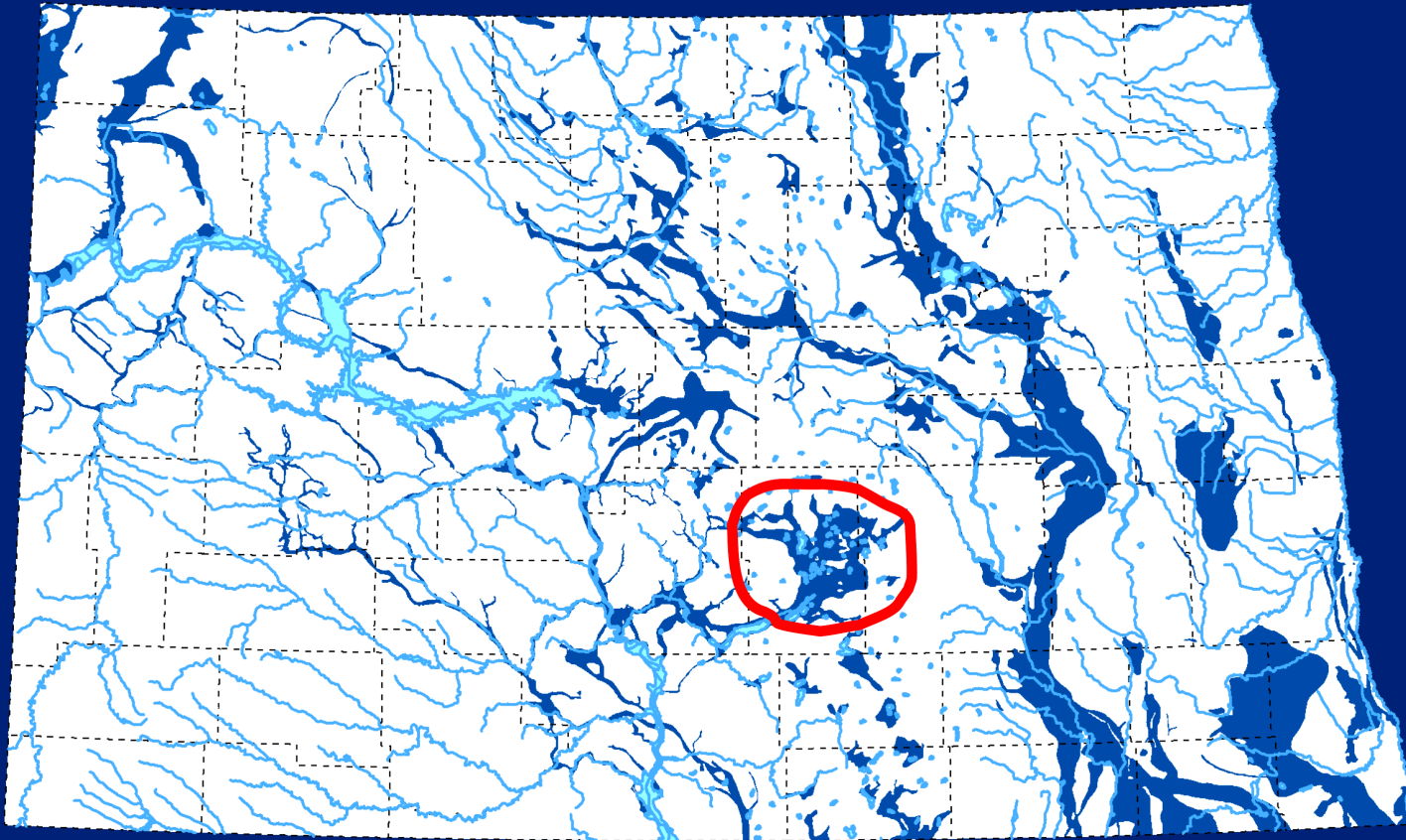
TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#3 – The Yellowstone River

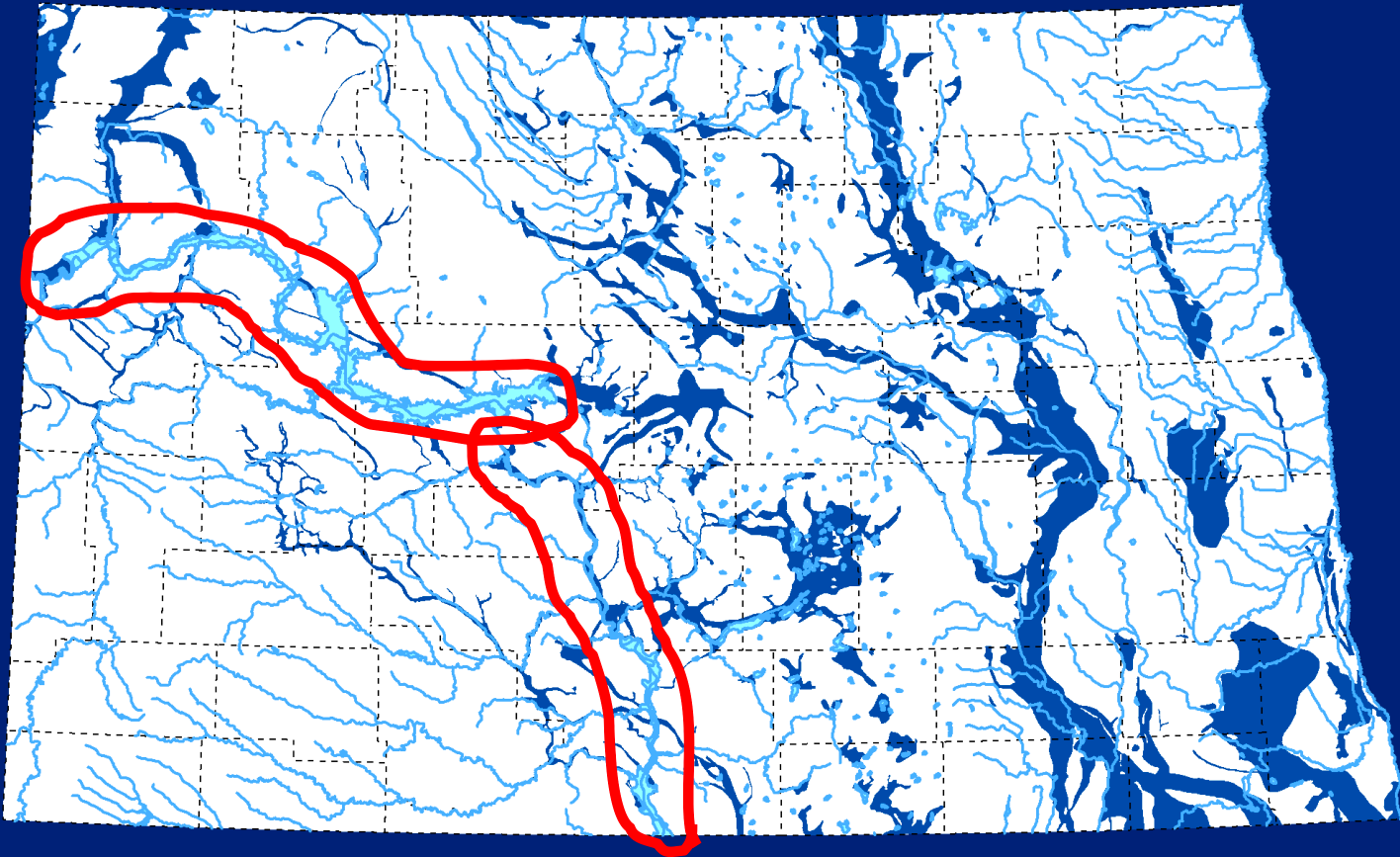
29,000

TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



#2 – The Central Dakota aquifer 35,500

TOP 10 IRRIGATION SOURCES IN NORTH DAKOTA (ACRES APPROVED)



**#1 - Lake Sakakawea and the
Missouri River (mainstem)**

39,000

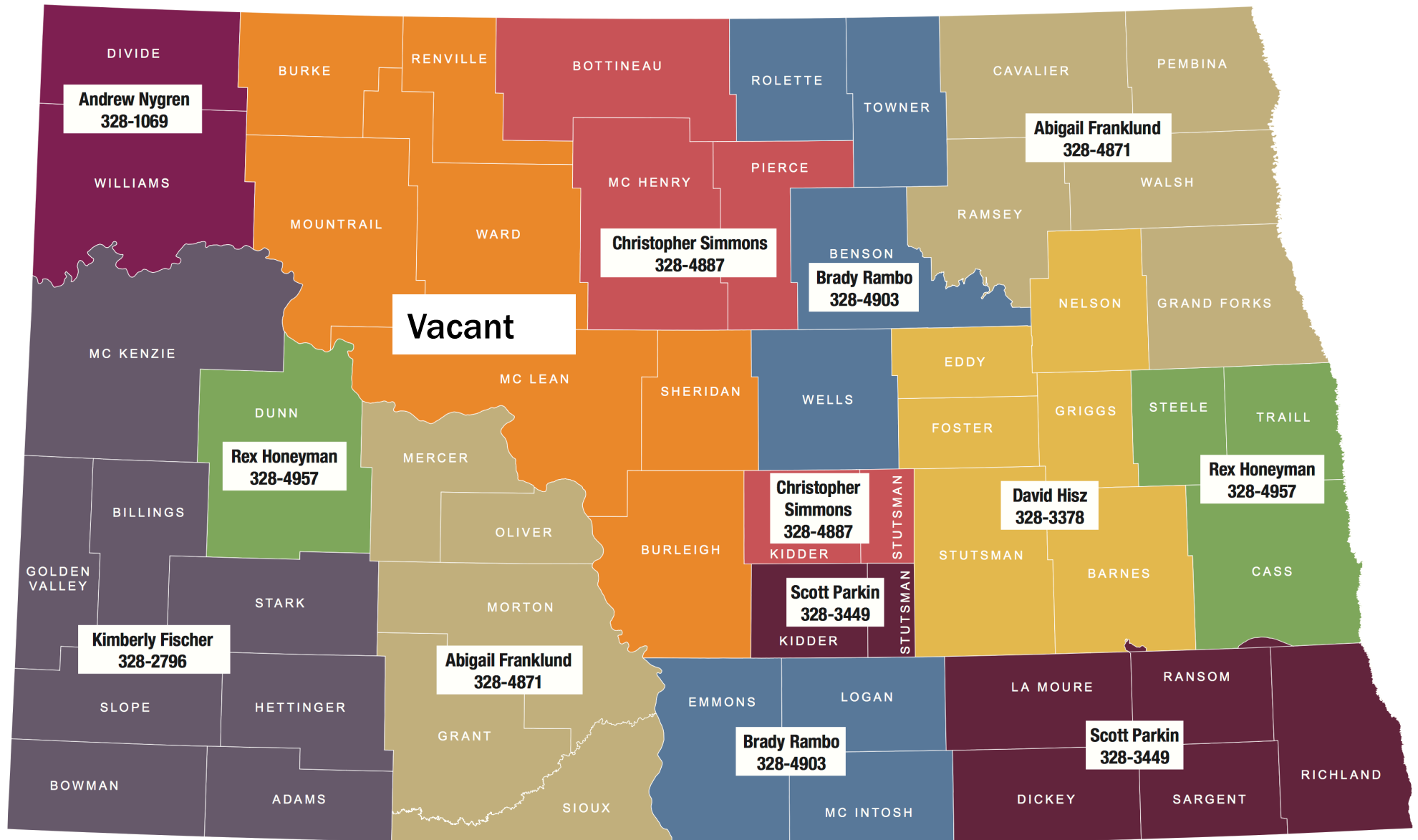
31,000

MAJOR SOURCES FOR IRRIGATION (APPROVED ACRES)

Lake Sakakawea	38,903*
Central Dakota aquifer	35,444
Missouri River	31,090
Yellowstone River	29,038
Spiritwood aquifer	21,799
Page aquifer	19,701
Elk Valley aquifer	19,514
Heart River	16,465
Oakes aquifer	16,158
Englevale aquifer	14,956
Sheyenne Delta aquifer	13,069

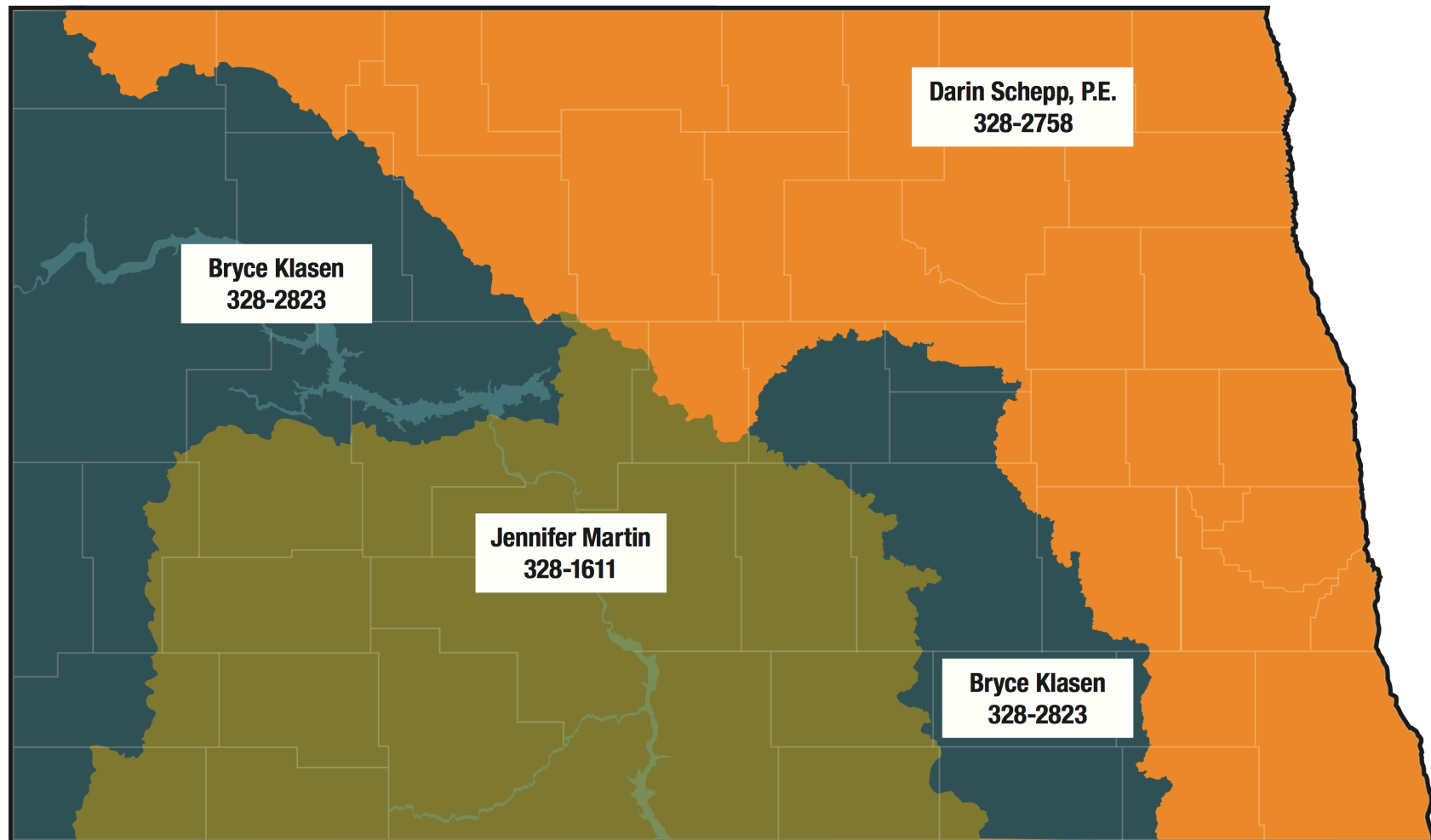
- Not including the 1.1M acres approved in the 1944 FCA

GROUND WATER HYDROLOGIST PROJECT AREAS



SURFACE WATER HYDROLOGIST PROJECT AREAS

Dan Farrell
Hydrologist Manager - Surface Water Section
328-3468



Questions?

