AGENDA

A. Roll Call (no attachment)

B. Consideration of Agenda (no attachment)

C. Cost-Share Policy and Prioritization Guidance (Pat)

D. Adjourn
## SWC Project Funding Policy, Procedure, & General Requirements

<table>
<thead>
<tr>
<th>Modification Ok</th>
<th>More Discussion</th>
<th>Issue, Comment, Changes</th>
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<tr>
<td></td>
<td></td>
<td>Definitions were moved to the end as an Appendix.</td>
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</table>
|                 |                 | Clarify that applications are through WebGrants.  
|                 |                 | Language added to policy per comments received. (Pg. 2) |
|                 |                 | Loan application information.  
|                 |                 | Language added to policy per comments received. (Pg. 2) |
|                 |                 | Use of the WIRLF and LILF should be limited to projects that are not eligible for DWSRF or CWSRF.  
|                 |                 | Language added to policy from Century Code that specifies projects that are not eligible for DWSRF should be given preference from WIRLF. (Pg. 2) |
|                 |                 | Incomplete applications.  
|                 |                 | Language added that the expectation is that applications submitted by the 45-day deadline must be complete. (Pg. 3) |
|                 |                 | Clarify what is required to apply for pre-construction and construction (Two Tier Process).  
|                 |                 | Language added to policy per comments received. (Pg. 3) |
|                 |                 | Construction contingency cap of 10%.  
|                 |                 | Remains in policy as suggested in draft. (Pg. 3) |
|                 |                 | Engineering plans and specifications, DWR permits, and status of local funding.  
|                 |                 | Required as part of Tier II construction cost-share requests to reduce carryover. (Pg. 3) |
|                 |                 | Completed Capital Improvement Plan and demonstration of sustainable Capital Improvement Fund for water supply projects.  
|                 |                 | Language added to policy under Tier II requirements. (Pg. 3) |
|                 |                 | $1M threshold for EAs.  
|                 |                 | No modification made to policy. (Pg. 4) |
|                 |                 | Removal of language related to $100M+ projects.  
|                 |                 | Remains the same as suggested in draft. (Pg. 5) |
|                 |                 | Signage indicating cooperation with DWR.  
|                 |                 | Language added to policy to promote cooperative efforts. (Pg. 5) |
|                 |                 | Project progress reports.  
<p>|                 |                 | Required at four years per statutory requirement. (Pg. 5) |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>Details</th>
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<tbody>
<tr>
<td>Projects in litigation.</td>
<td>Language added that it is the sponsor’s responsibility to notify the Commission and DWR of litigation related to their project(s). (Pg. 6)</td>
</tr>
<tr>
<td>Community flood protection projects resulting in FEMA accreditation</td>
<td>May be exempt from B/C ratio requirements. Remains in policy as suggested in draft. Added an additional option for consideration. (Pg. 6)</td>
</tr>
<tr>
<td>Prohibition of project fracturing.</td>
<td>Remains the same as suggested in draft. (Pg. 7)</td>
</tr>
<tr>
<td>Purchase of property and easements should be extended to water supply</td>
<td>No modification made to policy. Remains only for flood protection and retention. (Pg. 7)</td>
</tr>
<tr>
<td>Fire protection.</td>
<td>Increased from average daily to peak daily from previous 10 years reported. (Pg. 7)</td>
</tr>
<tr>
<td>Stormwater management.</td>
<td>Added clarity related to ineligibility within corporate limits of cities. (Pg. 7)</td>
</tr>
<tr>
<td>Invoices one year or older.</td>
<td>Language added to policy instead of operating procedures. (Pg. 7)</td>
</tr>
<tr>
<td>AIA CIP concept.</td>
<td>Added to policy to promote financial sustainability of projects. (Pg. 8)</td>
</tr>
<tr>
<td>Preconstruction cost-share percentages.</td>
<td>Two options provided – same as construction or up to 50%. (Pg. 8)</td>
</tr>
<tr>
<td>Cost overrun approvals – construction costs only.</td>
<td>Remains the same as suggested in draft with the addition of “construction-related engineering” also eligible per comments received. (Pg. 8)</td>
</tr>
<tr>
<td>MSI program.</td>
<td>Remains in policy as suggested in draft. (Pg. 8)</td>
</tr>
<tr>
<td>Water supply cost-share for regional systems and transmission of</td>
<td>Both types of projects added to language as eligible projects per current practice. (Pg. 9)</td>
</tr>
<tr>
<td>Water supply cost-share at 75%.</td>
<td>Changed back to original cost-share percentages of 75% rural and 60% municipal, with up to 75% for regionalization projects – economies of scale per comments received. (Pg. 9)</td>
</tr>
<tr>
<td>Replacement projects.</td>
<td>Language added suggesting a lesser amount of cost-share could be provided as determined by the Commission per comments received. (Pg. 9)</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
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<tr>
<td>Drought Disaster Livestock Program</td>
<td>Cost-share at 65% and a range of cap values from $4,500-$10,000 per comments received. (Pg. 9)</td>
</tr>
<tr>
<td>Combined flood recovery and flood acquisition programs.</td>
<td>Remains the same as suggested in draft. Added language to account for extreme events that could require modified cost-share. (Pg. 10)</td>
</tr>
<tr>
<td>Reduced cost-share percentage for retention projects receiving federal funds.</td>
<td>Remains the same as suggested in draft with reduction in cost-share percentage language removed. (Pg. 11)</td>
</tr>
<tr>
<td>Limitation of low head approvals for roller mitigation, rip-rap, not both.</td>
<td>Remains the same as suggested in draft. (Pg. 12)</td>
</tr>
<tr>
<td>EAP cost-share at 75%.</td>
<td>Changed back to 80% per comments received. (Pg. 12)</td>
</tr>
<tr>
<td>Provide definition of Capital Improvement Plan, Capital Improvement Fund, and Capital.</td>
<td>Language added to policy to provide additional clarity. (Pg. 13)</td>
</tr>
<tr>
<td>Consider referencing “Work” in construction definition and define Work.</td>
<td>Language added to policy per comments received. (Pgs. 13 &amp; 15)</td>
</tr>
<tr>
<td>Construction and Preconstruction definitions should be added or modified.</td>
<td>New language and definitions added to policy per comments received. (Pgs. 13, 14, &amp; 15)</td>
</tr>
<tr>
<td>Economic Impact definition needed to address loan requirements.</td>
<td>Language added to policy to address statutory requirements. (Pg. 13)</td>
</tr>
<tr>
<td>Engineering Services - proof of selection process.</td>
<td>Removed language related to that requirement per comments and previous draft. (Pg. 2 previous draft)</td>
</tr>
<tr>
<td>Expansion definition to include additional capacity.</td>
<td>No change made to existing policy. Capacity improvements remains a part of improvements definition. (Pgs. 13 &amp; 14)</td>
</tr>
<tr>
<td>Provide a definition for Reclaimed Water.</td>
<td>Language added to policy per comments received. (Pg. 14)</td>
</tr>
<tr>
<td>Provide a definition for Replacement.</td>
<td>Language added to policy per comments received. (Pg. 14)</td>
</tr>
<tr>
<td>Replacements should be defined and under improvements instead of extraordinary maintenance.</td>
<td>Replacement definition provided per comments received, but remains under extraordinary maintenance. (Pgs. 13 &amp; 14)</td>
</tr>
<tr>
<td>Provide a definition for “Shovel Ready.”</td>
<td>Shovel Ready is not a term used in policy so no definition was added. (Pg. 14)</td>
</tr>
</tbody>
</table>
| Define types of stormwater infrastructure.  
<table>
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<tbody>
<tr>
<td>Not necessary. No changes made to policy definition.</td>
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| Define Wastewater and Wastewater Effluent.  
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<tbody>
<tr>
<td>Definitions added to policy per comments received. (Pg. 15)</td>
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| Add lead line replacements to eligibility.  
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<tbody>
<tr>
<td>No changes to policy. Lead lines to homes from curb stops are owned by individual property owners. Funding options are available through DEQ.</td>
</tr>
</tbody>
</table>
| Expansions to those hauling water should be high priority.  
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<tr>
<td>This would be nearly impossible to implement and identify.</td>
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| Don’t require EA for federally approved retention projects.  
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<tbody>
<tr>
<td>No change made to policy per statutory requirements.</td>
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### Prioritization Guidance

<table>
<thead>
<tr>
<th>Modification Ok</th>
<th>More Discussion</th>
<th>Issue, Comment, Changes</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Funding preference is currently given to high priority projects for the first 12 months of the budget cycle. Moderate projects were added to expand projects that could move forward.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address economies of scale and systems that have the ability to take reduced cost-share. Draft language available for review in Prioritization Guidance. Sponsors who can accept a 10% reduction in cost-share or more can have projects move up one priority level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Federally authorized water supply or flood control projects. Same as previous draft.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mitigation of low head dam roller effects as a high priority. Same as previous draft.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Water supply regionalization projects. Revised language provided under high priority - referencing economies of scale.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Update the phrase “corrects a violation of a primary water quality condition in a water supply system” to “corrects a violation of a primary drinking water standard under the Safe Drinking Water Act”. Prioritization Guidance modified to reflect suggested change.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Consider adding “corrects an exceedance of a secondary drinking water standard under the Safe Drinking Water Act” to Prioritization Guidance. No changes made to Prioritization Guidance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Language related to severe or anticipated water supply shortages in areas experiencing rapid population growth. Reverted back to original language to support rapidly growing communities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MSI projects. Same as previous draft.</td>
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<td></td>
<td>Flood recovery acquisitions. Broadened to flood-related per policy modifications.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Industrial water supply projects need to be addressed. Added as a moderate priority to account for industry in guidance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Replacements need to be addressed as a low priority. Added to Prioritization Guidance as a low priority per comments received. Emergency replacements could be addressed as “Essential.”</td>
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</tbody>
</table>
DRAFT
PROJECT FUNDING POLICY, PROCEDURE, AND GENERAL REQUIREMENTS

TABLE OF CONTENTS (To Be Added)

POLICY PURPOSE & STATEMENT

The Water Commission has adopted this policy to support local sponsors in development of sustainable water related projects in North Dakota. This policy reflects the Water Commission’s cost-share priorities and provides basic requirements for all projects considered for prioritization during the agency’s budgeting process. Projects and studies that receive funding from the agency’s appropriated funds are consistent with the public interest. The Water Commission values and relies on local sponsors and their participation to assure on-the-ground support for projects and prudent expenditure of funding for project or program development.

It is the policy of the Water Commission that only the items described in this document will be eligible for cost-share or loans upon approval by the Water Commission, unless specifically authorized by Water Commission action. No funds will be used in violation of Article X, § 18 of the North Dakota Constitution (Anti-Gift Clause).
APPLICATION PROCESS, REQUIREMENTS, AND REVIEW PROCEDURES

APPLYING FOR COST-SHARE ASSISTANCE
An application for cost-share is required in all cases and must be submitted by the local sponsor through North Dakota's WebGrants portal. Sponsors seeking funding for water development projects through the Department of Water Resources' (Department) Cost-Share Program should choose the “Funding for Infrastructure in North Dakota” (FIND) option/opportunity. To apply for funding through FIND, applicants must first establish a North Dakota login and account. Specific information related to WebGrants and the application process are available at www.dwr.nd.gov under “Project Development” and then “Cost-Share Program.” The application form is maintained and updated by the Secretary.

APPLYING FOR LOAN ASSISTANCE
In addition to cost-share and grants, the Water Commission may lend a portion of the local share based on demonstrated financial need. Project sponsors who are seeking loans for water infrastructure through the Bank of North Dakota Administered (BND) Water Infrastructure Revolving Loan Fund (WIRLF) or Legacy Infrastructure Loan Fund (LILF), must first receive Water Commission approval. For WIRLF or LILF requests, sponsors must provide a letter of verification from BND indicating the sponsor’s debt service capacity, and an explanation of the overall economic impact of the project as part of their request to the Water Commission. Projects not eligible for state revolving funds under chapters 61-28.1 and 61-28.2 must be given priority for loans from the WIRLF.

Applications for WIRLF or LILF loans are also initiated through the WebGrants portal. After receiving Water Commission approval to apply to BND for WIRLF or LILF loans, sponsors must follow BND loan application requirements.

PRE-APPLICATIONS FOR ASSESSMENT PROJECTS
A pre-application process is allowed for cost-share of assessment projects. This process only requires the local sponsor to submit a brief narrative of the project, and a delineation of costs (using SFN 61801). The Secretary will then review the material presented, make a determination of project eligibility, and estimate the cost-share funding the project may anticipate receiving.

A project eligibility letter will then be sent to the local sponsor noting the percent of cost-share assistance that may be expected on eligible items as well as listing those items that are not considered to be eligible costs. In addition, the project eligibility letter will state that the Secretary will recommend approval when all cost-share requirements are addressed. The local sponsor may use the project eligibility letter to develop a project budget for use in the assessment voting process. Upon completion of the assessment vote and all other requirements an application for cost-share can be submitted.
APPLICATION REQUIREMENTS AND MATERIALS

Applications for cost-share are accepted at any time. Incomplete applications or applications received less than 45 days before a Water Commission meeting will not be considered at that meeting and will be held for consideration at a future meeting. Meeting dates are available on the DWR homepage.

The Commission will consider cost-share requests and issue agreements under a two-tier process for applicable projects. Cost-share for pre-construction-related (Tier I) expenses will be considered first; followed by construction-related (Tier II) expenses after completion of pre-construction activities, including plans and specifications for bidding project construction.

In order for an application to be considered complete for Water Commission consideration, it must include the following supplemental materials:

**Tier I (Pre-Construction) Applications**

- Category of cost-share activity.
- Location of the proposed project or study area shown on a map.
- Description, purpose, goal, objective, and narrative of the proposed activities.
- Delineation of costs (SFN 61801), with contingencies of no more than 10 percent of the total project construction costs.
- Anticipated timeline of project from preliminary study through final closeout.
- Potential federal, other state, or other North Dakota state entity participation.
- Completed life cycle cost analysis worksheet for water supply projects. The completed worksheet must include a no action alternative, and up to three additional plausible alternatives - including repair, replacement, and regionalization options. If repair, replacement, and regionalization alternatives are excluded from the life cycle cost analysis, justification must be provided by the project sponsor.

**Tier II (Construction) Applications**

- Updated Tier I pre-construction application materials (see above).
- Engineering plans and specifications for purposes of bidding the project.
- Status of required permitting, including submission of approved drain, sovereign land, or construction permits if required by state statute.
- Status and type of local funding sources.
- When applicable for flood control projects, a Conditional Letter of Map Revision (CLOMR) from the United State’s Federal Emergency Management Agency (FEMA).
- Potential territorial service area conflicts or service area agreements, if applicable.
A completed Capital Improvement Plan (CIP) for water supply projects, including demonstration of a sustainable Capital Improvement Fund (CIF), that at a minimum sets aside 2% percent of the cost of the asset(s) for which the Commission is cost-sharing over the expected life of the asset(s). (Required at the time applications include a request for construction cost-share.)

- Completed economic analysis worksheet for water conveyance and flood-related projects expected to cost two hundred thousand dollars or more.
- Results of a positive assessment vote (rural flood control projects only).
- A completed sediment analysis (drain reconstructions only).
- A property acquisition plan (flood property acquisition program only).
- Additional information as deemed appropriate by the Secretary or Commission.

Water Development Plan Submittals
Applications for cost-share are separate and distinct from the Department and Commission’s biennial project information collection effort that is part of the budgeting process and published as the State Water Development Plan (WDP). All local sponsors are encouraged to submit project financial needs for the WDP. Projects not submitted as part of the WDP process may be held until action can be taken on those that were included during budgeting, unless determined to be an emergency that directly impacts human health and safety or that are a direct result of a natural disaster.

APPLICATION REVIEWS
Upon receiving an application for cost-share, the Secretary will review the application and accompanying information. If the Secretary is satisfied that the proposal meets all requirements, the Secretary will give a 10-day notice to the local sponsor when their application for cost-share is placed on the tentative agenda of the Water Commission. The local sponsor will be asked to attend that meeting when their application is being considered.

The Secretary will provide a recommendation to the Water Commission for its action. The Secretary’s review of the application will include the following items and any other considerations that the Secretary deems necessary and appropriate.

- All required Tier I or Tier II application materials;
- Applicable engineering plans;
- Field inspection results, if deemed necessary by the Secretary;
- The percent and limit of proposed cost-share determined by category of cost-share activity and eligible expenses;
- Assurance of sustainable operation, maintenance, and replacement of project facilities by the local sponsor (including a Capital Improvement Plan and evidence of a Capital Improvement Fund for water supply projects);
- Status of permitting and service area agreements;

DRAFT FOR REVIEW – SEPTEMBER 15, 2022
Available funding in the Water Commission budget, if in the WDP, and a priority ranking when appropriate;

Results of economic analysis of water conveyance or flood-related projects, when applicable; and

Results of life cycle cost analysis for water supply projects, when applicable.

SECRETARY APPROVALS

The Secretary is authorized to approve cost-share up to $75,000 and also approve cost overruns up to $75,000 without Water Commission action. The Secretary will respond to such requests within 60 days of receipt of the request. A final decision may be deferred if warranted by funding or regulatory consideration.

AGREEMENT AND DISTRIBUTION OF FUNDS

No funds will be disbursed until the Water Commission and local sponsor have entered into an agreement for cost-share participation. No agreement for construction funding will be entered into until all required Department permits have been acquired.

For construction projects, the agreement will address indemnification and vicarious liability language. The local sponsor must require that the local sponsor and the state be made an additional insured on the contractor’s commercial general liability policy including any excess policies, to the extent applicable. The levels and types of insurance required in any contract must be reviewed and agreed to by the Secretary. The local sponsor may not agree to any provision that indemnifies or limits the liability of a contractor.

For any property acquisition, the agreement will specify that if the property is later sold, the local sponsor is required to reimburse the Commission the percent of sale price equal to the percent of original cost-share.

The Secretary may make partial payment of cost-sharing funds as deemed appropriate. Upon notice by the local sponsor that all work or construction has been completed, the Secretary may conduct a final field inspection, and the local sponsor must identify with signage that the completed project was paid for through a cooperative effort with the Department. If the Secretary is satisfied that the work has been completed in accordance with the agreement, the final payment will be disbursed to the local sponsor, less any partial payment previously made.

PROJECT PROGRESS REPORTS

The project sponsor must provide a progress report to the Commission at least once every four years if the term of the project exceeds four years. If a progress report is not received in a timely fashion, or if after a review of the progress report the Commission determines the project has not made sufficient progress, the Commission may terminate the agreement for project funding. The project sponsor may submit a new application to the Commission for funding for a project for which the Commission previously terminated funding.
LITIGATION

If a project submitted for cost-share is the subject of litigation, the application may be deferred until the litigation is resolved. If a project approved for cost-share becomes the subject of litigation before all funds have been disbursed, the Secretary may withhold funds until the litigation is resolved. In either of the aforementioned cases, it is the local sponsor’s responsibility to notify the Department and Commission of litigation related to their project(s).

ECONOMIC ANALYSIS

Project sponsors seeking cost-share for construction of flood control or water conveyance projects with a total cost of two hundred thousand dollars or more must complete the Water Commission’s economic analysis worksheet. The results of the economic analysis must be provided with the sponsor’s application for cost-share assistance for agency review. When the results of the economic analysis are determined by the Department to be accurate, the results will then be presented to the Water Commission for their consideration as part of the cost-share request.

Projects that yield a benefit to cost (BC) ratio of one to one, or greater, are eligible for up to the maximum allowable cost-share per project type and policy. Projects that yield a BC ratio of less than one to one will have the BC ratio used as a percentage of the allowable cost-share (i.e., eligible costs, multiplied by the applicable cost-share percentage, multiplied by the BC ratio) – unless otherwise authorized by the Commission.

Projects that will result in FEMA accredited flood protection for communities may be exempt from the requirement of using the BC ratio as a percentage of the allowable cost-share.

[Alternative Option: In communities where flood protection currently exists, but it is not FEMA accredited – the Economic Analysis will be conducted with a baseline condition of no existing protection, if the completed project goal is FEMA accredited flood protection.]

LIFE CYCLE COST ANALYSIS

Project sponsors seeking cost-share for water supply projects must complete the Water Commission’s life cycle cost analysis worksheet. The completed worksheet must include a no action alternative, and up to three additional plausible alternatives - including repair, replacement, and regionalization options. If repair, replacement, and regionalization alternatives are excluded from the life cycle cost analysis, justification must be provided by the project sponsor.

The results of the life cycle cost analysis must be provided with the sponsor’s application for cost-share assistance for agency review. When the results of the life cycle cost analysis are determined by the agency to be accurate, the results will then be presented to the Water Commission for their consideration as part of the cost-share request.
PROJECT FRACTURING
The fracturing or separating of projects into smaller components to avoid policy requirements is prohibited. If the Commission determines a project has been fractured for this purpose, the entire project, or elements of the project, may be considered ineligible for cost-share assistance.

INELIGIBLE ITEMS
Ineligible items from cost-share include:

1. Administrative costs, including salaries for local sponsor members and employees as well as consultant services that are not project specific and other incidental costs incurred by the sponsor.

2. Property and easement acquisition costs paid to the landowner unless specifically identified as eligible within the Flood Recovery Property Acquisition Program, the Flood Protection Program, or for water retention projects.

3. Work and costs incurred prior to a cost-share approval date, except for emergencies as determined by the Secretary.

4. Project related operation and regular maintenance costs.

5. Funding contributions provided by federal, other state, or other North Dakota state entities that supplant costs.

6. Elements of finished water storage projects that are sized in excess of the capacity necessary for peak daily consumption. This excludes storage associated with water treatment plants. Peak daily consumption means the peak reported water usage identified during the previous ten year period.

7. Sediment removal as part of reconstruction of an existing drain.

8. Wastewater treatment processes and wastewater effluent transmission lines not for beneficial use.

9. Stormwater management studies and projects within the corporate limits of cities. To differentiate between a flood control project and stormwater management, the Commission may reduce the cost-share provided by the percentage of the contributing watershed that is located within the community’s corporate limits as calculated on an acreage basis.

10. Work incurred outside the scope of the approved study or project.

11. Invoices that are dated one year or more before the date they are received by the Department for reimbursement. Invoices submitted by agricultural producers who have been approved for cost-share through the Drought Disaster Livestock Water Assistance Program are exempt.

12. Local requirements imposed beyond State and Federal requirements for the project may be ineligible.

DEFINITIONS
CAPITAL IMPROVEMENT FUND is money set aside from a portion of user fees for replacement of capital assets and other improvements.
COST-SHARE ELIGIBLE PROJECTS AND PROGRAMS

COST-SHARE CATEGORIES
The Water Commission supports the following categories of projects and programs for cost-share assistance.

ASSET INVENTORY ASSESSMENT AND CAPITAL IMPROVEMENT PLANNING (AIACIP) PROGRAM
The Water Commission encourages planning efforts that support the long-term financial sustainability of water supply infrastructure projects and works. The primary purpose of the AIACIP is to help local project sponsors with the development and establishment of capital improvement funds necessary for proactive financial management of their water supply systems.

In support of the AIACIP, the Commission can provide 50 percent cost-share, with a maximum of $100,000, in matching funds per sponsor for developing an inventory of water supply infrastructure, to assess the condition of assets, to prioritize the most critical water supply infrastructure needs, and to develop a capital improvement plan for the sponsor’s water supply projects and infrastructure.

Sponsors seeking cost-share assistance through the AIACIP must follow Water Commission criteria as outlined in APPENDIX 2.

PRE-CONSTRUCTION
The State Water Commission supports local sponsor development of eligible projects, including pre-construction activities. Pre-construction expenses are cost-shared at 50 percent (Option 1) or the same percent as the construction costs when approved by the Water Commission (Option 2). Copies of the deliverables must be provided to the Secretary upon completion. The Secretary will determine the payment schedule and interim progress report requirements.

COST INCREASES
When a sponsor has been approved for cost-share assistance and additional cost-share is requested as a result of increased construction-related costs, only those eligible construction-related costs, and construction engineering costs that are directly related to, and are resulting from, the cost increase are eligible for additional cost-share. Pre-construction engineering costs are a non-eligible expense as part of cost increase cost-share requests.

MAIN STREET INITIATIVE
The Commission supports water development infrastructure that aligns with the Main Street Initiative, which is one of North Dakota’s five Strategic Initiatives. The four foundational pillars of the Main Street Initiative are Skilled Workforce, Smart, Efficient Infrastructure, Healthy, Vibrant Communities, and Economic Diversification. In support of the Main Street Initiative, the Commission can provide additional cost-share assistance of 10 percent beyond existing cost-share percentages, with a maximum of $250,000 in additional funding, if an eligible water infrastructure project:

1. Is located within a community that has received a “Main Street Champion” designation from North Dakota’s Department of Commerce (NDDC).
2. Has been identified as an integral part of a completed comprehensive planning effort or action plan that was developed through the NDDC “Partners in Planning” grant program, and
3. Meets all other Commission eligibility requirements for cost-share.

DRAFT FOR REVIEW – SEPTEMBER 15, 2022
WATER SUPPLY

The Water Commission supports water supply efforts associated with regional, rural, and municipal water supply systems. The transmission of reclaimed water for beneficial use is also an eligible cost. Debt per capita, water rates and financial need may be considered by the Commission when determining an appropriate cost-share percentage or priority.

Regional, Rural, And Municipal Water Supply Projects

The Commission reserves flexibility to adjust percentages on a case-by-case basis, but generally may provide:

- Up to 75 percent cost-share for: Regional and rural water system expansions and improvements
- Up to 60 percent cost-share for: Municipal water supply expansions and improvements
- New connections between communities and regional or rural systems that reduce costs through economies of scale
- Improvements required to meet primary drinking water standards
- A lesser amount of cost-share for replacement projects as determined by the Commission

Water supply efforts associated with regional, rural, and municipal water supply systems. The transmission of reclaimed water for beneficial use is also an eligible cost. The local sponsor may apply for funding, and the application will be reviewed to determine project priority.

Federal Municipal, Rural, And Industrial Water Supply Program

The Municipal, Rural, and Industrial Water Supply Program, which uses federal funds, is administered according to North Dakota Administrative Code Article 89-12.

Drought Disaster Livestock Water Assistance Program

This program provides assistance for water supply projects that support livestock impacted during drought declarations and is administered according to North Dakota Administrative Code Article 89-11. The Commission may provide up to 50 percent cost-share for Drought Disaster Livestock Water Assistance Program projects, but no more than $150,000 per project, and three projects per applicant.

FLOOD CONTROL

The Water Commission may provide cost-share for eligible items of flood control projects protecting communities from flooding and may include the repair of dams that provide a flood control benefit.

DRAFT FOR REVIEW – SEPTEMBER 15, 2022
Flood Protection Program

This program supports local sponsor efforts to mitigate impacts and prevent future property damage due to flood events. The Water Commission may provide cost-share up to 60 percent of eligible costs for flood protection projects and related property acquisitions. Flood recovery acquisition efforts in severely impacted communities may be considered for alternative cost-share percentages based on the severity of the event and at the Commission’s discretion.

All contracted costs directly associated with property acquisitions for project development or recovery under this program will be considered eligible for cost-share. This includes the acquisition of flood damaged properties or properties necessary for project development. Contracted costs may include: appraisals, legal fees (title and abstract search or update, etc.), property survey, closing costs, hazardous materials abatement needs (asbestos, lead paint, etc.), and site restoration.

Prior to applying for assistance related to acquisitions, the local sponsor must adopt and provide to the Secretary an acquisition plan that includes a description and map of properties to be acquired; the estimated cost of property acquisition, including contract costs and removal of structures; and the benefit of acquiring the properties.

The local sponsor must include a perpetual restrictive covenant on any properties purchased under this program. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds. Costs for property acquired, by easement or fee title, to preserve the existing conveyance of a breakout corridor recognized as essential to FEMA system accreditation may be eligible under this program.

The local sponsor must fund the local share for acquisitions. Federal funds are considered “local” for this program if they are entirely under the authority and control of the local sponsor. For any property acquisition, the agreement will specify that if the property is later sold, the local sponsor is required to reimburse the Commission the percent of sale price equal to the percent of original cost-share.

The cost-share application must include the return interval or design flow for which the project will provide protection. The Commission will calculate the amount of its financial assistance, based on the needs for protection against:

1. One-hundred year flood event as determined by a federal agency;
2. The national economic development alternative; or
3. The local sponsor’s preferred alternative if the Commission first determines the historical flood prevention costs and flood damages and the risk of future flood prevention costs and flood damages, warranty protection to the level of the local sponsor’s preferred alternative.

FEMA Levee System Accreditation Program

The Water Commission may provide cost-share up to 60 percent for eligible services for FEMA 44 CFR 65.10 flood control or reduction levee system certification analysis. The analysis is required for FEMA to accredit the levee system for flood insurance mapping purposes. Typical eligible costs include site visits and field surveys to include travel expenses, hydraulic evaluations, closure evaluations, geotechnical evaluations, embankment protection, soils investigations, interior drainage evaluations, internal drainage hydrology and hydraulic reports, system modifications, break-out flows, and all other engineering services related to determining levee system performance.

When applicable, project sponsors must first acquire a Conditional Letter of Map Revision (CLOMR) from FEMA prior to applying for construction-related cost-share assistance.
required by FEMA. The analysis will result in a comprehensive report to be submitted to FEMA and the Secretary.

Administrative costs to gather existing information or to recreate required documents, maintenance and operations plans and updates, and emergency warning systems implementation are not eligible.

**Water Retention Projects**

The goal of water retention projects is to reduce flood damages by storing floodwater upstream of areas prone to flood damage. The Water Commission may provide cost-share up to 60 percent of eligible costs for water retention projects including purchase price of the property. Water retention structures constructed with Water Commission cost-share must meet state dam safety requirements, including the potential of cascade failure. A hydrologic analysis including an operation plan and a quantification of the flood reduction benefits for 25, 50, and 100-year events must be submitted with the cost-share application.

**Individual Rural And Farmstead Ring Dike Program**

This program is intended to protect individual rural homes and farmsteads through ring dike programs established by water resource districts. All ring dikes within the program are subject to the Commission’s Individual Rural and Farmstead Ring Dike Criteria provided in Appendix B. Protection of a city, community or development area does not fall under this program but may be eligible for the flood control program. The State Water Commission may provide up to 60 percent cost-share of eligible items for ring dike up to a limit of $55,000 per ring dike.

Landowners enrolled in the Natural Resource Conservation Service’s (NRCS) Environmental Quality Incentive Program (EQIP) who intend to construct rural or farmstead ring dikes that meet the Department’s elevation design criteria are eligible for a cost-share reimbursement of 20 percent of the NRCS construction payment, limited to a combined NRCS and State Water Commission contribution of 80 percent of project costs.

**WATER CONVEYANCE**

The Water Commission may provide cost-share for eligible items of water conveyance projects. Water conveyance projects include rural flood control, bank stabilization, and snagging and clearing.

**Rural Flood Control**

These projects are intended to improve the drainage and management of runoff from agricultural sources. The State Water Commission may provide cost-share up to 45 percent of the eligible items for the construction of drains, channels, or diversion ditches. Construction costs for public road crossings that are integral to the project are eligible for cost-share as defined in N.D.C.C § 61-21-31 and 61-21-32. If an assessment-based rural flood control project involves multiple districts, each district involved must join in the cost-share application.

Cost-share applications for rural assessment drains will only be processed after the assessment vote has passed, and a drain permit has been obtained. If the local sponsor wishes to submit a cost-share application prior to completion of the aforementioned steps, a pre-application process will be followed.

A sediment analysis must be provided with any application for cost-share assistance for reconstruction of an existing drain. The analysis must be completed by a qualified professional engineer and must clearly indicate the percentage volume of sediment removal involved in the project. The cost of that removal must be deducted from the total for which cost-share assistance is being requested.

**Bank Stabilization**

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**DRAFT FOR REVIEW – SEPTEMBER 15, 2022**
The State Water Commission may provide cost-share up to 50 percent of eligible items 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 or watercourses, as defined in N.D.C.C § 61-01-06, 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 damage to public facilities including utilities, roads, or buildings adjacent to a lake or watercourse.

Snagging And Clearing

Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the channel of a natural watercourse. 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 Water Commission may provide cost-share for up to 50 percent of the eligible items for snagging and clearing as well as any sediment that has accumulated in the immediate vicinity of snags and any trees in imminent danger of falling in the channel or watercourses as defined in N.D.C.C § 61-01-06. Items that are not eligible include snagging and clearing of man-made channels; the dredging of watercourses for sediment removal; the clearing and grubbing of cattails and other plant vegetation; or the removal of any other unwanted materials.

RECREATION

The Water Commission may provide cost-share up to 40 percent for projects intended to provide water-based recreation. Typical projects provide or complement water-based recreation associated with dams.

IRRIGATION

The Water Commission may provide cost-share for up to 50 percent of the eligible items for irrigation projects. The items eligible for cost-share are those associated with the off-farm portion of new central supply works, including water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, and electrical transmission and control facilities. The Commission will only enter into cost-share agreements with political subdivisions, including irrigation districts, and not with individual producers.

DAMS AND EMERGENCY ACTION PLANS

The Water Commission supports projects that address dam safety, deficiencies, repairs, and removals, as well as emergency action plans. In addition to the following cost-share percentages, the State Water Commission may lend a portion of the local share based on demonstrated financial need. For dams and emergency action plans, the Water Commission may:

1. Provide cost-share for up to 60 percent of the eligible items for dam deficiency or repair projects and dam breach or removal projects.
2. Provide cost-share up to 75 percent to mitigate public dangers associated with low head dam roller effects. Cost-share funding will be considered under this category for dam removals, or the placement of rock rip rap, but not both. Modifications, repairs, or removals that go beyond what is required to mitigate roller effects may be cost-shared at lesser amounts depending on the purpose for which the supplemental modifications or repairs are being made (i.e. recreation, water supply, flood control, irrigation, etc).
3. Provide cost-share up to 80 percent to develop or update emergency action plans of each dam classified as high or medium/significant hazard.

The cost of a dam break model is only eligible for reimbursement for dams classified as a high hazard.

Effective December 10, 2021
MAY

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APPENDIX A

DEFINITIONS

CAPITAL IMPROVEMENT FUND is money set aside from a portion of user fees for replacement of capital projects. Documentation for a Capital Improvement Fund shall include information regarding the Capital Improvement Fund’s goal in meeting the Capital Improvement Plan, a rate structure to meet the goal, implementation of the rate structure, details about any restrictions on the fund, and mechanisms for releasing assets from the fund for projects.

CAPITAL IMPROVEMENT PLAN is a planning and management tool that contains a timeline and estimated costs for planned replacement of individual capital projects for a system over a specified period of time. A Capital Improvement Plan should include an inventory of all existing assets, a condition assessment of all assets, estimated replacement costs, and an estimated timeframe for replacements.

CAPITAL PROJECTS include reservoirs, pump stations, water treatment plants, and pipelines.

CONSTRUCTION COSTS are those efforts and services to be completed as work under construction contract documents. Items could include earthwork, concrete, mobilization and demobilization, dewatering, materials, seeding, rip-rap, crop damages, re-routing electrical transmission lines, moving storm and sanitary sewer system and other underground utilities and conveyance systems affected by construction, mitigation required by law related to the construction contract, water supply works, irrigation supply works, and other items and services provided by the contractor. Construction costs are only eligible for cost-share if incurred after State Water Commission approval and if the local sponsor has complied with North Dakota Century Code (N.D.C.C.) in soliciting and awarding bids and contracts, and complied with all applicable federal, state, and local laws.

COST-SHARE means funds appropriated by the legislative assembly or otherwise transferred by the Commission to a local entity under Commission policy as reimbursement for a percentage of the total approved cost of a project approved by the Commission.

DEPARTMENT means the Department of Water Resources.

ECONOMIC ANALYSIS means an estimate of the economic benefits and direct costs that result from the development of a project.

ECONOMIC IMPACT describes the direct and indirect changes in a defined region’s economy due to a specific business, organization, policy, program, project, activity or other economic event.

ENGINEERING SERVICES include pre-construction and construction engineering. Pre-construction engineering is the engineering necessary to develop plans and specifications for permitting and construction of a project including preliminary and final design, material testing, flood insurance studies, hydraulic models, and geotechnical investigations. Construction engineering is the engineering necessary to build the project designed in the pre-construction phase including construction contract management, and construction observation. Administrative and support services not specific to the approved project are not engineering services. Engineering services are eligible costs if incurred after State Water Commission approval.

EXPANSIONS are construction related projects that increase the project area or users served. Expansions do not include maintenance, replacement, or reconstruction activities.
EXTRAORDINARY MAINTENANCE COSTS include the repair or replacement of portions of facilities or components that extend the overall life of the system or components that are above and beyond regular or normal maintenance. Extraordinary maintenance activities extend the asset’s useful life beyond its originally predicted useful life.

GRANT means a one-time sum of money appropriated by the legislative assembly and transferred by the Commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.

IMPROVEMENTS are construction related projects that upgrade a facility to provide increased efficiency, capacity, or redundancy. Improvements do not include any activities that are maintenance or replacement.

LIFE CYCLE COST ANALYSIS means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.

LITIGATION for this policy is defined as legal action that would materially affect the ability of the local sponsor to construct the project; that would delay construction such that the authorized funds could not be spent; or is between political subdivisions related to the project.

LOAN means an amount of money lent to a sponsor of a project approved by the Commission to assist with funding approved project components. A loan may be stand-alone financial assistance.

LOCAL SPONSOR is the entity submitting a cost-share application and must be a political subdivision, state entity, or commission legislatively granted North Dakota recognition that applies the necessary local share of funding to match State Water Commission cost-share. They provide direction for studies and projects, public point of contact for communication on public benefits and local concerns, and acquire necessary permits and rights-of-way.

PRE-CONSTRUCTION activities include study and report phase efforts, and preliminary and final design. Study and report phase efforts are meant to identify water related problems, evaluate options to solve or alleviate the problems based on technical and financial feasibility, and provide a recommendation and cost estimate of the best option to pursue. Engineering design is considered complete when final plans, drawings, and specifications for permitting and construction of a project, including associated cultural resource and archeological studies, are delivered to the local sponsor. Study and report phases, as well as design can also include mapping and surveying to gather data for a specific task such as flood insurance studies and floodplain mapping, LiDAR acquisition, and flood imagery attainment.

RECLAIMED WATER is municipal wastewater that has been treated to meet specific water quality criteria with the intent of being used for a range of purposes. The term recycled water is synonymous with reclaimed water.

REGULAR MAINTENANCE COSTS include normal repairs and general upkeep of facilities to allow facilities to continue proper operation and function. These maintenance items occur on a regular or annual basis. Regular maintenance activities simply help ensure the asset will remain serviceable throughout its originally predicted useful life.

REPLACEMENT means repairing or rehabilitating infrastructure or equipment by installing components similar to what currently exists with the intention of preserving existing service levels.

STORMWATER is rainwater or melted snow that runs off streets, lawns, and other sites.

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SUSTAINABLE OPERATION, MAINTENANCE, AND REPLACEMENT PLAN is a description of the anticipated operation, maintenance, and replacement costs with a statement that the operation, maintenance, and replacement of the project will be sustainable by the local sponsor.

WASTEWATER is used water discharged from homes, businesses, industry, and agricultural facilities.

WASTEWATER EFFLUENT is treated wastewater flowing out of a wastewater treatment plant.

WATER CONVEYANCE PROJECT means any surface or subsurface drainage works, bank stabilization, or snagging and clearing of water bodies.

WORK includes and is the result of performing or providing all labor, services, and documentation necessary for construction, furnishing, installing, and incorporating all materials and equipment into such construction, and may include related services such as testing, start-up, and commissioning, all as required by the construction contract documents.
APPENDIX B

INDIVIDUAL RURAL AND FARMSTEAD RING DIKE CRITERIA

MINIMUM DESIGN CRITERIA

- **Height**: The dike must be built to an elevation 2 ft above either the 100-year flood or the documented high water mark of a flood event of greater magnitude, whichever is greater.

- **Top Width**:
  - 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

- **Side Slopes**: 3 horizontal to 1 vertical

- **Strip topsoil and vegetation**: 1 ft

- **Adequate embankment compaction**: Fill in 6-8 inch layers, compact with passes of equipment

- **Spread topsoil and seed on ring dike**

LANDOWNER RESPONSIBILITY

Landowners are responsible to address internal drainage on ring dikes. If culverts and flap gates are installed, these costs are eligible for cost-share. The landowner has the option of completing the work or hiring a contractor to complete the work. **IF CONTRACTOR DOES THE WORK, payment is for actual costs with documented receipts. **IF LANDOWNER DOES THE WORK, payment is based on the following unit prices:

- **Stripping, spreading topsoil, and embankment fill**: Secretary will determine rate schedule based on current local rates.

- **Seeding**: Cost of seed times 200 percent

- **Culverts**: Cost of culverts times 150 percent

- **Flap gates**: Cost of flap gates times 150 percent

OTHER FACTS AND CRITERIA

- The topsoil and embankment quantities will be estimated based on dike dimensions. Construction costs in excess of the 3:1 side slope standard will be the responsibility of the landowner. Invoices will be used for the cost of seed, culverts, and flap gates.

- Height can be determined by existing FIRM data or known elevations available at county floodplain management offices. Engineers or surveyors may also assist in establishing height elevations.

- The projects will not require extensive engineering design or extensive cross sections.

- **A dike permit is required if the interior volume of the dike consists of 50 acre-feet, or more.**
APPENDIX C
STANDARD OPERATING PROCEDURES

It has been determined by the Commission that there are Cost-Share Program operational procedures that are more appropriately clarified through Standard Operation Procedures (SOP). The following SOP have been approved by the Commission to assist Department staff with various administrative decisions related to the Cost-Share Program.

COST INCREASES
The following are various types of projects for which sponsors request cost increase assistance.

1. Projects approved for cost-share during the current biennium, and are requesting additional cost-share funding for cost increases.
   
   **SOP**
   
   - Requests in excess of $75,000 will be presented to the Commission for consideration.
   - Requests of $75,000 or less will be considered by the Director Secretary.

2. Projects approved for cost-share during past biennia, and are requesting current biennium cost-share funding or available carryover funds for cost increases.
   
   **SOP**
   
   - Requests in excess of $75,000 may be deferred for the first six months of the biennium before being presented to the Commission for consideration.
   - Requests of $75,000 or less may be deferred for the first six months of the biennium before being considered by the Director Secretary.

3. Projects that were denied or deferred for cost increase funding during the previous biennium.
   
   **SOP**
   
   - Requests in excess of $75,000 may be deferred for the first six months of the biennium before being presented to the Commission for consideration.
   - Requests of $75,000 or less may be deferred for the first six months of the biennium before being considered by the Director Secretary.

PROJECTS NOT SUBMITTED TO THE WATER DEVELOPMENT PLAN
Project sponsors will sometimes request cost-share funding for projects that are eligible under the agency’s cost-share policy, but were not submitted or included in the current Water Development Plan (WDP). The following are various types of projects that are not included in the current WDP, but are submitted for cost-share consideration.

1. Projects that were, or were not identified in the previous biennium WDP, and are not included in the current WDP.
**SOP**

- These projects will be deferred for the first six months of the biennium for Commission consideration. (Exceptions are those projects considered to be an emergency – directly impacting human health and safety.)

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**Invoices Eligibility**

Project sponsors are encouraged to submit invoices for reimbursement in a timely manner to, in part, help with reductions in agency budget carry-over amounts from previous budget cycles.

Invoices that are dated one year or more before the date they are received by the Department for reimbursement are considered ineligible for reimbursement. Invoices submitted by livestock producers who have been approved for cost-share through the Drought Disaster Livestock Water Assistance Program are exempt from this SOP.

**Low Head Dam Repairs – Roller Effect Mitigation**

Under the revised “Dam Safety and Emergency Action Plans” section of the Water Commission’s cost-share policy, the Commission will provide 75% cost-share to mitigate public dangers associated with low head dam roller effects. The following are various types of low head dam improvement projects that are submitted for cost-share consideration:

- Dam breaches, removal, or rock rip rap

The Water Commission may cost-share up to 75% to mitigate public dangers associated with low head dam roller effects. Cost-share funding will be considered under this category for dam removals, or the placement of rock rip rap, but not both.

Modifications, repairs, or removals that go beyond what is minimally required to mitigate roller effects may be cost-shared at lesser amounts – depending on the purpose for which the supplemental modifications or repairs are being made (e.g. recreation, water supply, flood control, irrigation, etc.).

**Life Cycle Cost Analysis for Preconstruction & Construction Requests**

Under the “Life Cycle Cost Analysis” section of the Water Commission’s cost-share policy, project sponsors are encouraged to submit invoices for reimbursement in a timely manner to, in part, help with reductions in agency budget carry-over amounts from previous budget cycles.

Invoices that are dated one year or more before the date they are received by the Department for reimbursement are considered ineligible for reimbursement. Invoices submitted by livestock producers who have been approved for cost-share through the Drought Disaster Livestock Water Assistance Program are exempt from this SOP.
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SWC PROJECT PRIORITIZATION GUIDANCE

Projects submitted during the project planning inventory process that meet SWC cost-share eligibility requirements will be considered for prioritization. In the interest of strategically investing in the state’s highest water development priorities, the Water Commission will give funding preference to projects designated as higher priorities for the first 12 months of each budget cycle.

Sponsors who are able to accept reduced SWC cost-share of 10% or more of the maximum allowable amount can be moved up one priority designation level.

ESSENTIAL PROJECTS (No Priority Ranking)

Agency operational expenses.
An imminent water supply loss to an existing multi-user system, an immediate flood or dam related threat to human life or primary residences, or emergency response efforts.
Existing agency debt obligations.
SWC project mitigation.

HIGH PRIORITY PROJECTS

Federally authorized water supply or flood control projects with a federal funding appropriation.
Federally authorized water supply or flood control projects that do not have a federal appropriation.
Corrects a lack of water supply for a group of water users or connects a city to a regional/rural system.
Corrects a violation of a primary water quality condition in a water supply system.
Addresses severe or anticipated water supply shortages for domestic use in a service area or city with rapid population growth.
Protects primary residences or businesses from flooding in population centers or involves flood recovery property acquisitions.

MODERATE PRIORITY PROJECTS

Dam safety repairs and emergency action plans.
Expansion of an existing water supply system (including to industrial water users).
Levee system accreditations, water retention, or flood protection property acquisitions.
Irrigation system construction.
New rural flood control projects.
Bank stabilization.
Snagging and clearing in population centers.

LOW PRIORITY PROJECTS

Studies, reports, analyses, surveys, models, evaluations, mapping projects, or engineering designs.11
Improvement or extraordinary maintenance of a water supply system.
Improvement or extraordinary maintenance of rural flood control projects.
Recreation projects.
Individual rural and farmstead ring dike constructions.
Replacement of existing infrastructure.
Snagging and clearing in sparsely populated areas.

Footnotes
1. All local sponsors are encouraged to submit project financial needs during the budgeting process. Projects not submitted as part of the project information collection effort may be held until action can be taken on those that were included during budgeting, unless determined to be an emergency that directly impacts human health and safety or that are a direct result of a natural disaster.

11. May be considered as a higher priority if the related project is of higher priority.

Disclaimer
This process is meant to provide guidance for prioritizing water projects during the budgeting process that may be eligible for cost-share assistance through the Department of Water Resources. Interpretation and deviations from the process are within the discretion of the state as authorized by the State Water Commission or Legislature.