

MINUTES

North Dakota State Water Commission Bismarck, North Dakota August 10, 2023

The ND State Water Commission (Commission or SWC) held a meeting in the Lewis and Clark Room, Bank of North Dakota, 1200 Memorial Highway, Bismarck, ND, and via phone conference on August 10, 2023. Lt. Governor Miller called the meeting to order at 1:00 PM. A quorum was present. The board opened the meeting by reciting the Pledge of Allegiance.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Doug Goehring, Commissioner, ND Dept. of Agriculture
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Connie Ova, James River Basin
Gene Veeder, Upper Missouri River Basin
Jay Volk, Lower Missouri River Basin
Jason Zimmerman, Mouse River Basin
April Walker, Upper Red River Basin

OTHERS PRESENT:

John Paczkowski, State Engineer, ND Dept. of Water Resources (DWR) and Acting Commission Secretary
DWR Staff
Jennifer Verleger, General Counsel, Attorney General's Office
Approximately 72 people present online and in person.

CONSIDERATION OF AGENDA

It was moved by Commissioner Anderson, seconded by Commissioner Veeder, and carried unanimously the agenda for the August 10, 2023, Commission meeting was approved as presented.

CONSIDERATION OF DRAFT MEETING MINUTES

It was moved by Commissioner Veeder, seconded by Commissioner Anderson, and carried unanimously the minutes of the June 8, 2023, Commission meeting be approved as written.

It was moved by Commissioner Odermann, seconded by Commissioner Ova, and carried unanimously the minutes of the July 13, 2023, Pre-Commission meeting be approved as written.

COMMISSION SECRETARY UPDATE

John Paczkowski, Acting Secretary, introduced the newest State Water Commissioner representing the Devils Lake basin, Jeff Frith. Frith stated he was honored and humbled to be a part of the Commission and looks forward to representing the Devils Lake basin. Frith added he is currently the Chairman of the Ramsey County Commission, manager of the Devils Lake

Basin Joint Water Resource board, and serves on several other state, regional, and local boards. Lt. Governor Miller congratulated Frith on his appointment and welcomed him to the Commission.

Paczkowski introduced Abigail Franklund as the new Cost-Share Program Manager. Franklund stated she has been with DWR for nine (9) years as a Hydrologist and the last four (4) of them she has worked as a Hydrologist Manager. She is looking forward to her new adventure.

Paczkowski noted the public comment period for the Dam Safety Standards ends August 14, additional meetings will be set up between DWR, BND, and the Department of Agriculture to discuss potential changes to irrigation as it relates to cost-share, comments are due from the working group on the asset inventory work by August 18, and the October 12 SWC meeting is scheduled to be held in Grand Forks at the City Hall with a ribbon cutting and tour of the water treatment plant in the morning.

FINANCIAL REPORT

The Glossary of Terms, allocated program expenditures, and financial reports were presented by Chris Kadrmaz, DWR Administration Division Director (**APPENDIX A**).

The oil extraction tax deposits into the Resources Trust Fund (RTF) total \$501,022,761 estimated through July 2023 for the 2021-23 biennium, which is \$179,911,342 over projected biennium revenue of \$321,111,419. Funds available above projection will be transferred to the Water Project Stabilization Fund (WPSF). \$151,784,727 was transferred to the WPSF and all transfers were complete by March 2023. All transfers to the WPSF sunset February 28, 2023. Excess revenues deposited after February 28, 2023, remain in the RTF.

The 68th Legislative Assembly estimates oil extraction tax deposits for the 2023-2025 biennium to total \$449,860,000 through June 2025. It also provided for the transfer of oil extraction tax deposits in excess of the legislative forecast for the 2023-2025 biennium to be transferred quarterly to the water projects stabilization fund.

CONFLICTS OF INTEREST POLICY/GUIDELINES

Jennifer Verleger, General Counsel, Attorney General's Office, discussed the Conflicts of Interest Guidelines with the Commission (**APPENDIX B**). The policy addresses disclosure procedures, the Natural Reviewer, some common occurrences, and key definitions. Verleger stated the guidelines developed for the reporting of potential conflicts of interest by Water Commissioners align with the Ethics Commission guidance presented to the SWC in November 2022.

There was no discussion, and the following motion was made:

It was moved by Commissioner Walker and seconded by Commissioner Veeder the Commission adopt the Conflicts of Interest Policy (SWC_02.2023) with an effective date of the next Commission meeting, October 12, 2023.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

NORTHWEST AREA WATER SUPPLY (NAWS)

Appointment of NAWS Authority Board Members

Tim Freije, NAWS Project Manager, stated during the most recent legislative session, House Bill 1218 was passed. The House Bill elevates the NAWS Advisory Committee to an Authority and puts it in line with the other regional systems in the state as the delivery of Lake Sakakawea water to the project area is expected soon and the NAWS project progresses towards completion.

The City of Minot provided a letter with recommendations of Mayor Thomas Ross, Utilities Director Jason Sorenson, Finance Director Dave Lakefield, and former City Manager Bob Schempp as their representatives. North Prairie Regional Water recommended their General Manager, Teresa Sundsbak. All Seasons Water Users District recommended their General Manager, Daniel Schaefer. Upper Souris Water District recommended their Board President, Shawn Raap. The Garrison Diversion Conservancy District recommended Kenny Rogers as their representative. The State Water Commission's representative is Commissioner Jason Zimmerman, who resides in the Souris River basin. A recommendation has not been received by the Turtle Mountain Band of Chippewa. The representative for the cities receiving direct service from the project, other than Minot, is to be elected at the League of Cities annual meeting in September.

It was moved by Commissioner Odermann and seconded by Commissioner Volk the Commission appoint Thomas Ross, Jason Sorenson, David Lakefield, and Bob Schempp to represent the City of Minot, Teresa Sundsbak to represent North Prairie Regional Water, Shawn Raap to represent Upper Souris Water District, Daniel Schaefer to represent All Seasons Water Users District, Kenny Rogers to represent the Garrison Diversion Conservancy District, and Commissioner Jason Zimmerman to represent the State Water Commission on the NAWS Authority.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Memorandum of Agreement—Biota Water Treatment Plant Operations, Maintenance, and Replacement

Freije explained the costs associated with the operations, maintenance, and replacement of the Biota Water Treatment Plant (WTP) is a federal responsibility as the Biota WTP is required for the Boundary Water Treaty compliance. Freije presented a draft Memorandum of Agreement (**APPENDIX C**) between Bureau of Reclamation, the State Water Commission, and the City of Minot defining roles and responsibilities for the operation, maintenance, and replacement of the NAWS Biota Water Treatment Plant.

It was moved by Commissioner Anderson and seconded by Commissioner Zimmerman the Commission authorize the Secretary to approve and execute the final version of the Memorandum of Agreement.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

BURLEIGH COUNTY WRD: HOGUE ISLAND BANK STABILIZATION

John Paczkowski, State Engineer, stated the Burleigh County Water Resource District (BCWRD) was notified of significant erosion and bank failure along the Missouri River on Hogue Island north of Bismarck in late January 2023. The erosion occurred between four (4) hardpoints that were installed between 1977 and 1981 as part of the United States Army Corps of Engineers (USACE) Section 32 – Demonstration Projects. BCWRD is recommending a project that will stabilize the four (4) hardpoint revetments and to install rip-rap between the hardpoints. Per Water Commission policy, bank stabilization projects that are intended to protect private property are not eligible for cost-share. However, the Water Commission did sign an agreement in 1976 with the BCWRD that establishes costs would be split 50 percent for maintenance related to the hardpoint revetments. Therefore, project costs related to the hardpoint revetments would fall under the 1976 agreement, and bank protection efforts between the hardpoints would be a local responsibility.

It was moved by Commissioner Walker and seconded by Commissioner Zimmerman the Commission authorize the Secretary to participate with the Burleigh County Water Resource District for 50% of the costs related to Section 32 hardpoint revetments, with the total state share not to exceed the Secretary's authorized approval threshold of \$100,000.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

CONSENT AGENDA

The Consent Agenda included the following cost-share projects with requested funding amounts for approval:

Flood Control

- I1. Valley City: Permanent Flood Protection - \$0

Water Supply (Municipal/Regional)

- J1. Drayton: Improvement District 2023 - \$168,000
- J2. Mandan: Water Treatment Plant Phase III - \$347,400

Water Supply (Rural)

- K1. Dakota RWD: WTP and Service to Hannaford - \$415,280

There were no questions, and the following motion was made:

It was moved by Commissioner Ova and seconded by Commissioner Veeder the Commission approve the Consent Agenda items as presented.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

STATE COST-SHARE REQUESTS

FLOOD CONTROL

Julie Prescott, DWR Engineer Manager, presented the following requests for flood control projects.

Jamestown: Emergency 96-inch CMP Replacement - \$1,490,222 (SWC Project No. 1309)

The City of Jamestown is requesting cost-share for their Emergency 96-inch CMP Replacement – Construction project. The construction costs include the replacement of 400 feet of collapsed underground pipe within the city that has resulted in a sinkhole in the area of failure. The collapsed pipe is a portion of an underground system that serves to route runoff from predominantly rural sources through Jamestown, under US Highway 281, and ultimately discharging to a natural drainage on the north side of Interstate 94. Approximately 93.4% of the contributing watershed originates from rural sources, resulting in a modified cost-share of 56 percent. The city is addressing the failed portion only at this time for reasons of public safety and plans to replace the remainder of the system at a later date. Under current cost-share policy, the Commission can consider projects submitted in the first six (6) months of a biennium that were not identified in the Water Development Plan if an emergency directly impacting human health and safety exists.

This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Ova the Commission approve the request from the City of Jamestown for state cost-share participation in the Emergency 96-inch CMP Replacement— Construction project at 56 percent of eligible costs not to exceed \$1,490,222. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

WATER SUPPLY (MUNICIPAL/REGIONAL)

Prescott presented the following requests for municipal and regional water supply projects.

Napoleon: System Improvements - \$1,488,988 (SWC Project No. 2050NAP)

The City of Napoleon is requesting cost-share for construction costs to replace seven (7) blocks of aging cast iron water main and associated gate valves, water services, and curb stops. The project also includes road construction costs associated with trenching the water main. Napoleon will be applying for USDA Rural Development loan and grant funding.

This project meets requirements of the Water Commission's cost-share policy for municipal water supply projects. There were no questions, and the following motion was made:

It was moved by Commissioner Veeder and seconded by Commissioner Walker the Commission approve the request from the City of Napoleon for state cost-share participation in the Water Systems Improvement 2023 project in the amount of \$1,488,988 or 60 percent of eligible costs, for a total cost-share not to exceed \$1,652,388. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

**St. John: Water Tower Replacement - \$1,668,899
(SWC Project No. 2050STJ)**

The City of St. John is requesting construction cost-share for replacing their existing 50,000-gallon water tower with a 100,000-gallon water tower. The existing water tower has experienced problems with freezing and is not capable of meeting the peak daily demand of 109,000 gallons per day. St. John is experiencing an increased water demand due to increased middle and high school student enrollment.

This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Zimmerman and seconded by Commissioner Walker the Commission approve the request from the City of St. John for state cost participation in the St. John Water Tower Replacement project in the amount of \$1,668,899 or 60 percent of eligible costs, for a total cost-share not to exceed \$1,743,899. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

**Underwood: Water Tower and Water Main Replacement - \$2,285,534
(SWC Project No. 2050UND)**

The City of Underwood is requesting construction cost-share for replacement of their 65,000-gallon water tower with a 100,000-gallon water tower, replacement and upgrade of the high service pumps from 350 GPM (gallons per minute) to 550 GPM, and replacement of 2,200-feet of distribution water main from the existing 4-inch and 8-inch asbestos cement and cast-iron pipe to 10-inch polyvinyl chloride (PVC) pipe.

Underwood's records indicate in August 2016 there was a peak daily demand of 173,000 gallons. Their highest usage over the past five (5) years in June averages a peak daily demand of 132,000 gallons. Since the city has existing storage of 400,000 gallons, exceeding their peak daily demand, any costs for additional water storage would be considered ineligible for cost-share under current policy.

Discussion took place during the July 13, 2023, Pre-Commission meeting that an alternative involving pump upgrades and a new pump house using the existing 400,000 gallons of in-ground storage would be eligible for cost-share per Commission policy. The Commission also requested that the sponsor provide cost estimates associated with a pumping alternative. Detailed costs for the pump station option indicate that it is a lower cost alternative than the elevated storage project. However, the pump station alternative has not been fully designed and is not bid-ready, and the sponsor's preference is for the elevated storage option. The sponsor's representative indicated that if cost-share is approved for the pump-station alternative, they plan to request a change of scope to the 100,000-gallon elevated storage alternative, which would fall outside the current policy guidelines. The water main portion of the cost-share request is eligible for cost-share under current policy. The project was bid August 3rd for the water tower alternative only. The recommendation for the pump station is based on detailed costs provided by the sponsor. The pump station and water main improvement components meet the requirements of the Water Commission's cost-share policy.

Commissioner Odermann expressed his concerns of Underwood changing the scope of the project, therefore being in violation of the cost-share policy and asked what the recourse would be. Commissioner Goehring noted the cost-share program does not provide the funds up front, so if something is ineligible it will not be reimbursed. Commissioner Walker asked if the SWC could cap their dollars at the least cost alternative and let the city allocate it towards something they prefer. Paczkowski stated the decision is not being made on the least cost alternative but based upon SWC policy of sufficient storage capacity and only paying up to peak demand.

Tom Klabunde, Moore Engineering, stated without the water tower the city's water system would be inoperable due to pressure issues. Klabunde added the 400,000 gallons of storage is useless without the tower or pumping station, and the city prefers the tower alternative; therefore, justifying the city's request to use the cost-share dollars from the pump station for the water tower.

Commissioner Volk asked what part of the policy commission considers the operations of the system to meet the needs of the stakeholders and if the stakeholder is getting the best return. Commissioner Walker questioned why the commission could not deviate from policy and allow the city to move forward with the tower if they are willing to pay the costs above and beyond the pumping station. Paczkowski noted caveats were given at the pre-commission meeting in March stating the sponsor was aware the policy was changing, and the water tower may not be eligible for cost-share moving forward. Commissioner Ova added the Underwood community needs to be fully aware they are most likely not going to get the cost-share amount if they go with the tower. Klabunde stated the city did not ask for the pump station but asked for the tower. Commissioner Zimmerman noted it comes down to policy and it is clear within the policy what is eligible and what is non-eligible; adding, the policy was put in place to make these discussions a little more efficient.

After discussion, the following motion was made:

It was moved by Commissioner Zimmerman and seconded by Commissioner Odermann the Commission approve the request from the City of Underwood for state cost participation at 60 percent of eligible costs for the pump station and water main improvement alternative in the amount of \$2,285,534, for a

total cost-share not to exceed \$2,430,734. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioners Volk and Walker voted nay. The motion carried.

Garrison Diversion Conservancy District: Red River Valley Water Supply Project 2023-2025 - \$180,000,000 (SWC Project No. 325)

The Garrison Diversion Conservancy District is requesting \$180,000,000 in cost-share for the Red River Valley Water Supply project. This request is for construction costs of the 5C, 5D, 6A transmission pipelines; final design costs for transmission pipelines 4A, 4B, 7; and preliminary design costs for the McClusky Intake and Pump Station, the Biota Water Treatment Plant, and storage tanks. The local share of \$60,000,000 through two (2) separate loans will be considered from the Water Infrastructure Revolving Loan Fund through BND in a subsequent request.

Section 13 of Senate Bill 2020, the Department of Water Resources appropriation bill, specifies funding for the project, and states \$180,000,000 is provided from the resources trust fund for the period beginning with the effective date of the Act and ending June 30, 2025. This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Odermann the Commission approve the request by the Garrison Diversion Conservancy District for state cost participation in the Red River Valley Water Supply Project at 75 percent of eligible costs, not to exceed \$180,000,000. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Garrison Diversion Conservancy District: Red River Valley Supply Project—Water Infrastructure Revolving Loan - \$60,000,000 (SWC Project No. 325)

Garrison Diversion Conservancy District is requesting two (2) separate loans totaling \$60,000,000 from the Water Infrastructure Revolving Loan Fund (WIRLF) through the Bank of North Dakota (BND) to be used towards their 25 percent local share of the Red River Valley Supply Project.

BND performed an initial review of the district's loan request, and based on that review it appears the project will have the demonstrated debt service capacity to service both existing debts and the current amount being requested. As required by House Bill 1431, passed by the 2021 Legislature, the Water Commission is responsible for reviewing WIRLF loan requests.

It was moved by Commissioner Goehring and seconded by Commissioner Anderson the Commission approve the request from Garrison Diversion Conservancy District to pursue two (2) loans totaling \$60,000,000 from the Water Infrastructure Revolving Loan Fund through the Bank of North Dakota

at an interest rate of two (2) percent and a modified repayment term of 40 years, to be used toward the Red River Valley Water Supply Project.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Tim Mahoney, Mayor of Fargo, thanked the SWC, BND, and Legislators for supporting the Red River Valley Water Supply Project.

WATER SUPPLY (RURAL)

Prescott presented the requests for the rural water supply projects.

Stutsman Rural Water District: Wellfield Expansion - \$2,953,000 (SWC Project No. 2050STU)

The Stutsman Rural Water District is requesting construction cost-share to install four (4) miles of pipeline from a previously installed groundwater well to their water treatment plant, which is located approximately 11 miles southeast of Jamestown. The project also includes completion of the well, control system improvements, and modifications at the water treatment plant. The Stutsman Rural Water District is experiencing increased demand during peak usage periods from agricultural spraying, livestock, and the addition of 1,225 users since 2011.

This project meets requirements of the Water Commission's cost-share policy for rural water supply projects. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Odermann the Commission approve the request by the Stutsman Rural Water District for state cost participation in the Wellfield Expansion project in the amount of \$2,953,000, or 75 percent of eligible costs, for a total cost-share not to exceed \$3,203,000. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

PROJECT UPDATES

DWR staff provided brief updates on the following projects:

- Tim Freije, NAWS Project Manager: NAWS.
- Sindhuja S. Pillai-Grinolds, DWR Water Development Division Director: Devils Lake and SWPP.
- Laura Ackerman, Water Resource Engineer: Mouse River.
- Clay Carufel, Missouri River Engineer: Missouri River.
- Steve Best, Water Resource Planner: Drought Disaster Livestock Water Supply Program.

LEGAL UPDATE

Jennifer Verleger, General Counsel, Attorney General's Office, provided a brief update on current legal matters involving the SWC and DWR.

**EXECUTIVE SESSION UNDER AUTHORITY OF NDCC § 44-04-19.1(9) FOR ATTORNEY
CLIENT CONSULTATION REGARDING SWPP - INTAKE, CONTRACT 1-2A**

It was the recommendation of Lt. Governor Miller that the discussion relating to the SWPP/Fowler Intake to be held in Executive Session, under the provisions of NDCC § 44-04-19.1(9), for the purpose of attorney consultation. The Commission invited the following to participate in the Executive Session:

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Connie Ova, James River Basin
Gene Veeder, Upper Missouri River Basin
Jay Volk, Lower Missouri River Basin
April Walker, Upper Red River Basin
Jason Zimmerman, Mouse River Basin

OTHERS PRESENT:

John Paczkowski, State Engineer, ND Dept. of Water Resources (DWR) and Acting Commission Secretary
Jennifer Verleger, General Counsel, Attorney General's Office
Sindhuja S.Pillai-Grinolds, DWR Water Development Division Director
Abby Ebach, DWR Policy Advisor
Chris Kadrmas, DWR Administrative Services Director
Shana Brost, DWR Executive Assistant
Ben Gehrig, DWR Data & Technology Services
John Reiten, Policy Advisor, Governor's Office
Ryan Norrell, General Counsel, Governor's Office

It was moved by Commissioner Goehring and seconded by Commissioner Walker that under the provision of NDCC § 44-04-19.1(9), the Commission proceed into Executive Session on August 10, 2023, at 3:01 PM for the purpose of attorney consultation relating to the Southwest Pipeline Project/Fowler Intake—Contract 1-2A.

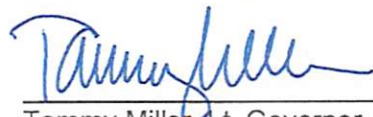
Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Following attorney consultation regarding the Southwest Pipeline Project/Fowler Intake, Contract 1-2A, Lt. Governor Miller reconvened the open session of the Commission meeting at 3:10 PM.

It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission approve \$180,000 in additional funds be allocated and approved from the SWPP's professional services account for mediation expenses.

Commissioners Anderson, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioner Odermann abstained. There were no nay votes. The motion carried.

There being no further business to come before the Commission, Lt. Governor Miller adjourned the August 10, 2023 meeting at 3:12 PM.



Tammy Miller, Lt. Governor
Acting Chairman, State Water Commission



John Paczkowski
State Engineer, DWR, and Acting Secretary
to the State Water Commission

Glossary of Terms

Allocated-To apportion for a specific purpose. To set apart or earmark.

Anticipated Construction Request-Potential construction requests for prior approved and current projects.

Appropriation-Specifies the amount of funds to be used for a particular purpose during a period of time, normally one biennium.

Original-Legislative authorization to expend.

Current-Requesting authorization to allocate funds.

Unobligated- Funding available to be obligated to a project.

Appropriation Authority-Legislative authority in an Appropriation Act for an agency to expend funds.

Appropriation Bill-A bill which appropriations are given legal effect.

Approved-Funds approved and allocated by the State Water Commission.

Beginning Balance-Resource Trust Fund cash balance that carries over from the previous biennium. This information is provided by Legislative Council and includes carryover and funds not approved or allocate by the State Water Commission.

Carryover Funds-Approved funds unpaid during the current biennium which are transferred to the appropriation for the following biennium.

Carryover Projects-Projects approved but not finished by the end of the current biennium. The time is limited to 2 years after the end of the current biennium, 6/30/21, unless approved by the State Water Commission to continue past that date.

Cash-Resource Trust Fund money received and not allocated to a specific appropriation purpose.

Cost Increase-Funding needed above original cost estimate.

De-Obligation-Funds released from project allocation made from the current biennium appropriation.

Expenditure-Payment or funds spent.

Obligation-Funds allocated from current biennium appropriation to pay based on a contract.

Unexpended-Not yet spent or paid.

Turnback-Carryover funds released from prior biennium from a project allocation.

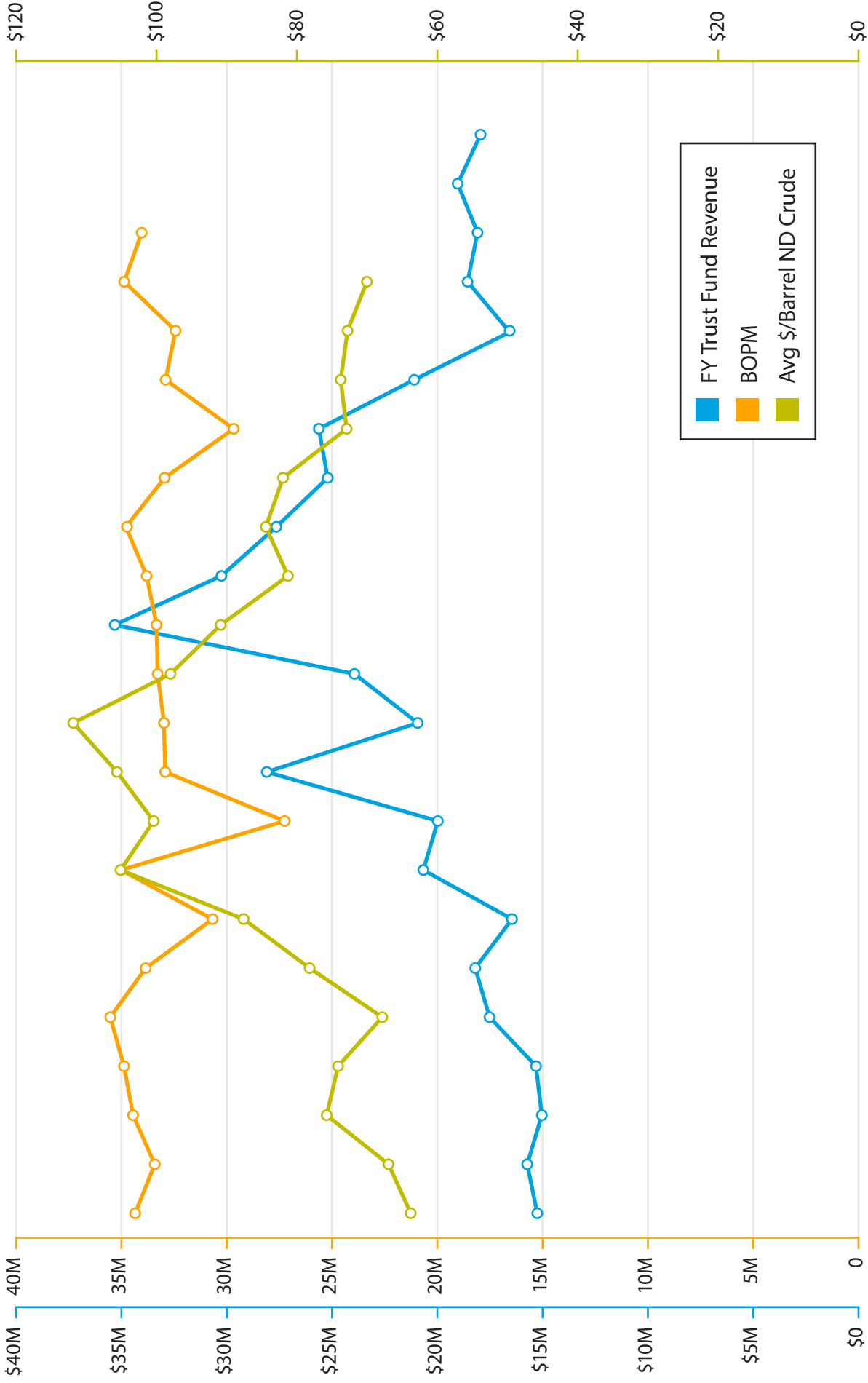
Unobligated Carryover-Previous biennium funding, not associated with a project released to the Resource Trust Fund.

Unpaid Approval-A commitment to an expense at a future date.

Water Infrastructure Revolving Loan Fund (WIRLF) Eligibility-Approval by the State Water Commission of the eligibility of projects to apply for a Water Infrastructure Revolving Loan in compliance with cost share and statutory authority. Final loan approval is by the Bank of North Dakota.

RESOURCES TRUST FUND REVENUE

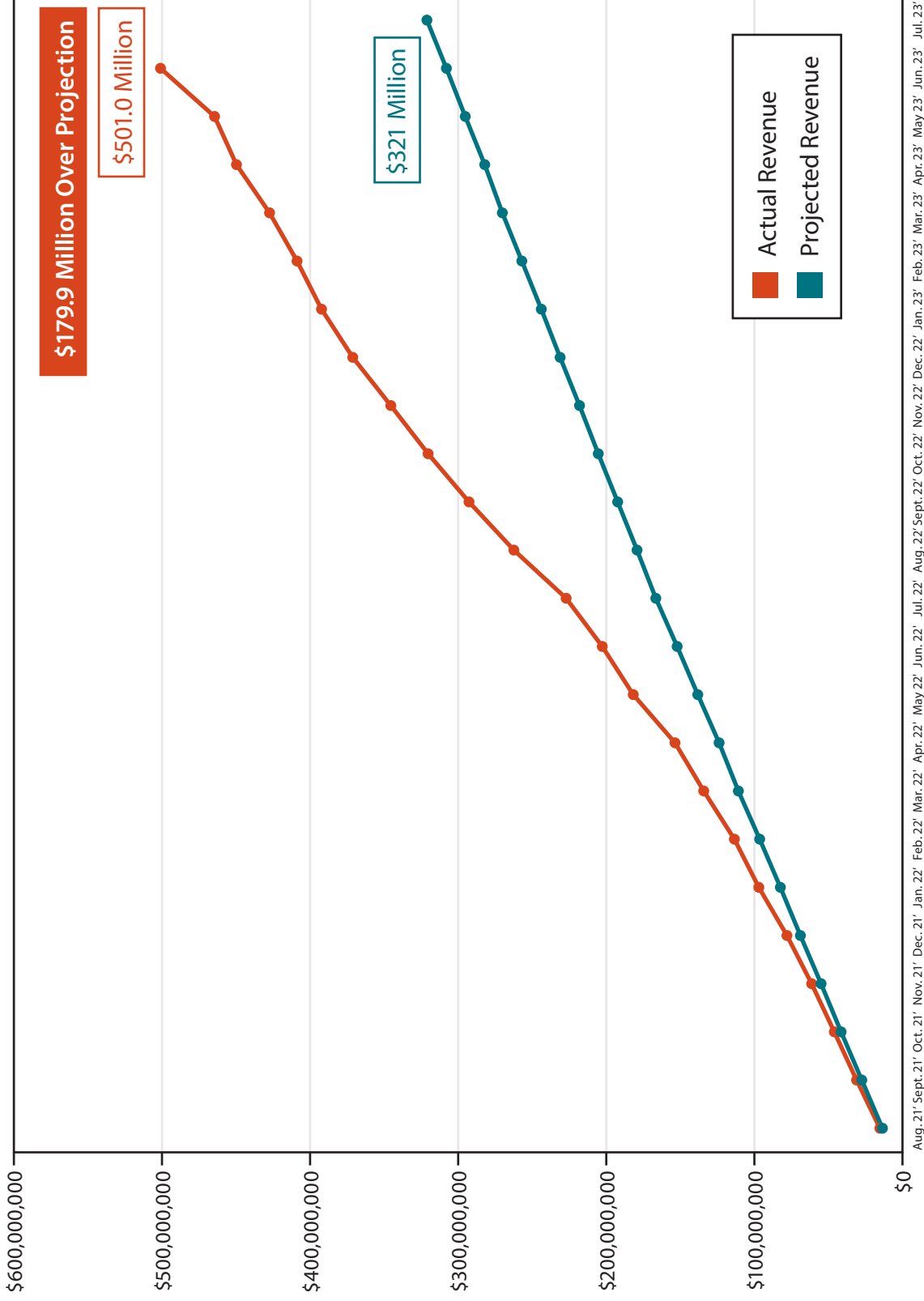
2021-2023 (Month by Month) | June 2023



Aug. 21' Sept. 21' Oct. 21' Nov. 21' Dec. 21' Jan. 22' Feb. 22' Mar. 22' Apr. 22' May 22' Jun. 22' Jul. 22' Aug. 22' Sept. 22' Oct. 22' Nov. 22' Dec. 22' Jan. 23' Feb. 23' Mar. 23' Apr. 23' May 23' Jun. 23' Jul. 23'

RESOURCES TRUST FUND REVENUE

2021-2023 (Cumulative) | June 2023



Aug. 21' Sept. 21' Oct. 21' Nov. 21' Dec. 21' Jan. 22' Feb. 22' Mar. 22' Apr. 22' May 22' Jun. 22' Jul. 22' Aug. 22' Sept. 22' Oct. 22' Nov. 22' Dec. 22' Jan. 23' Feb. 23' Mar. 23' Apr. 23' May 23' Jun. 23' Jul. 23'

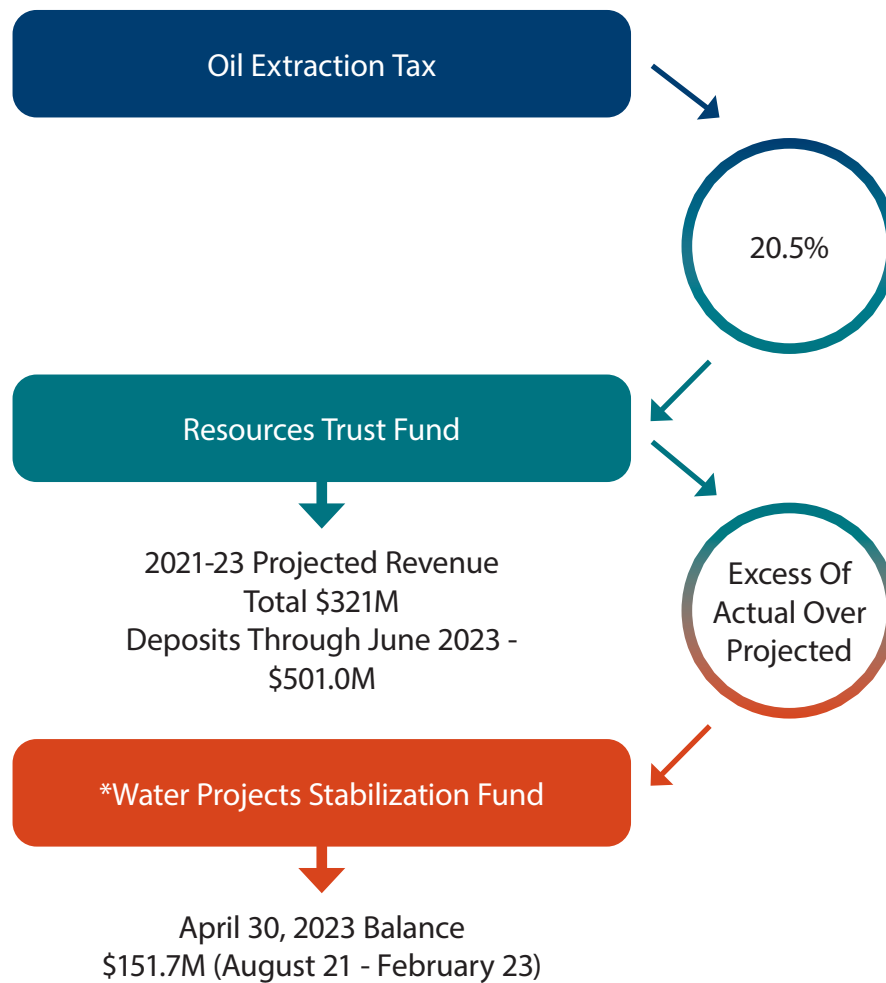
NORTH DAKOTA DEPARTMENT OF WATER RESOURCES
OIL EXTRACTION REVENUE
FOR THE 2021 - 2023 BIENNIUM

MONTH / YEAR	PROJECTED ¹ REVENUE	ACTUAL ¹ REVENUE	TRANSFERS TO ² WATER PROJECTS STABILIZATION FUND
AUGUST, 2021	13,515,385	15,253,686	1,801,349
SEPTEMBER, 2021	13,965,897	15,731,071	1,829,196
OCTOBER, 2021	13,965,897	15,037,222	1,110,181
NOVEMBER, 2021	13,515,385	15,313,493	1,863,324
DECEMBER, 2021	13,965,897	17,521,266	3,684,320
JANUARY, 2022	13,515,385	18,199,333	4,836,458
FEBRUARY, 2022	13,965,897	16,454,479	2,064,733
MARCH, 2022	14,397,263	20,665,252	6,296,666
APRIL, 2022	13,006,515	19,975,435	7,003,940
MAY, 2022	14,400,070	28,099,982	13,768,756
JUNE, 2022	13,935,552	20,932,464	7,032,072
JULY, 2022	14,400,070	23,935,091	9,582,936
AUGUST, 2022	12,668,683	35,321,250	22,632,530
SEPTEMBER, 2022	13,090,973	30,252,021	17,095,264
OCTOBER, 2022	13,090,973	27,646,687	14,489,930
NOVEMBER, 2022	12,668,683	25,208,112	12,475,767
DECEMBER, 2022	13,090,973	25,626,575	12,469,810
JANUARY, 2023	12,709,026	21,098,288	8,365,943
FEBRUARY, 2023	13,156,757	16,538,309	3,381,552
MARCH, 2023	13,156,757	18,553,016	
APRIL, 2023	11,883,522	18,112,285	
MAY, 2023	13,156,757	19,073,520	
JUNE, 2023	12,732,345	17,910,326	
JULY 2023-JUNE REVENUE	13,156,757	18,563,599	
TOTALS	321,111,419	501,022,761	151,784,727
Excess revenue not transferred		28,126,607	

¹ Projected revenue and actual revenue exclude transfers to the renewable energy development fund and the energy conservation grant fund

² Transfers to the water project stabilization fund are calculated before transfers to the renewable energy development fund and energy conservation grant fund occur

RESOURCES TRUST FUND REVENUE



*Authorized in Sections 5-7 of Senate Bill 2345 during the November special session.

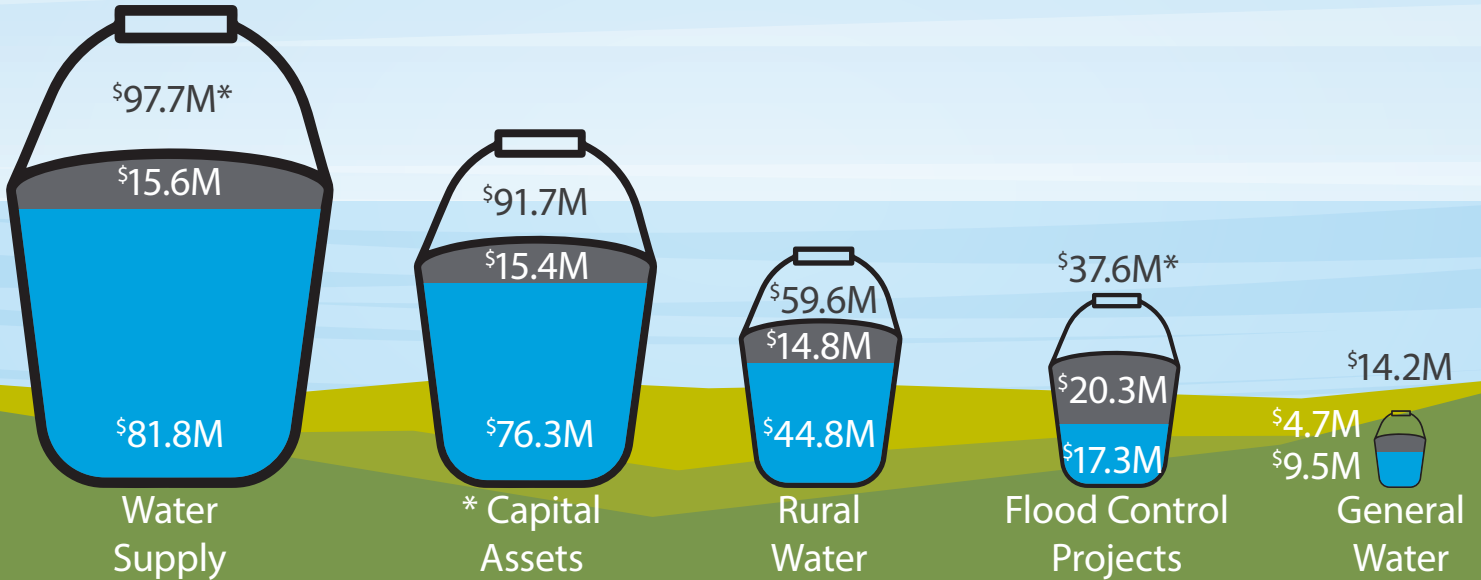
*Budget Section approval is needed to transfer from the Water Projects Stabilization Fund to the Resources Trust Fund.

2021-23 PURPOSE FUNDING

June 30, 2023

APPROVED

UNOBLIGATED



*Capital Assets bucket includes \$45.6M line of credit. | *SB 2020 reduced 2021-23 Biennium bucket funding by \$38 Million.



Mouse River Flood

\$6M



Discretionary Funds

\$1.1M



Basin Wide Plan

\$75M



Federal Funds-State Fiscal Recovery Funds - SB 2345

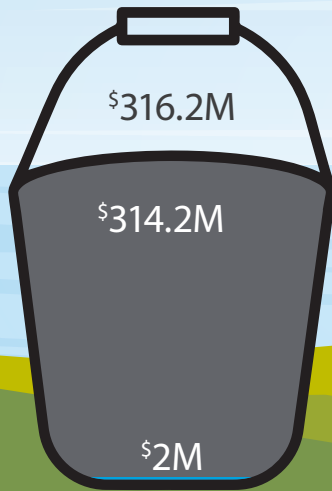
Spent

2023 - 25 PURPOSE FUNDING

July 31, 2023

APPROVED

UNOBLIGATED



Water Supply



* Capital Assets



Flood Control Projects

*Capital Assets bucket includes \$100M line of credit.



Rural Water



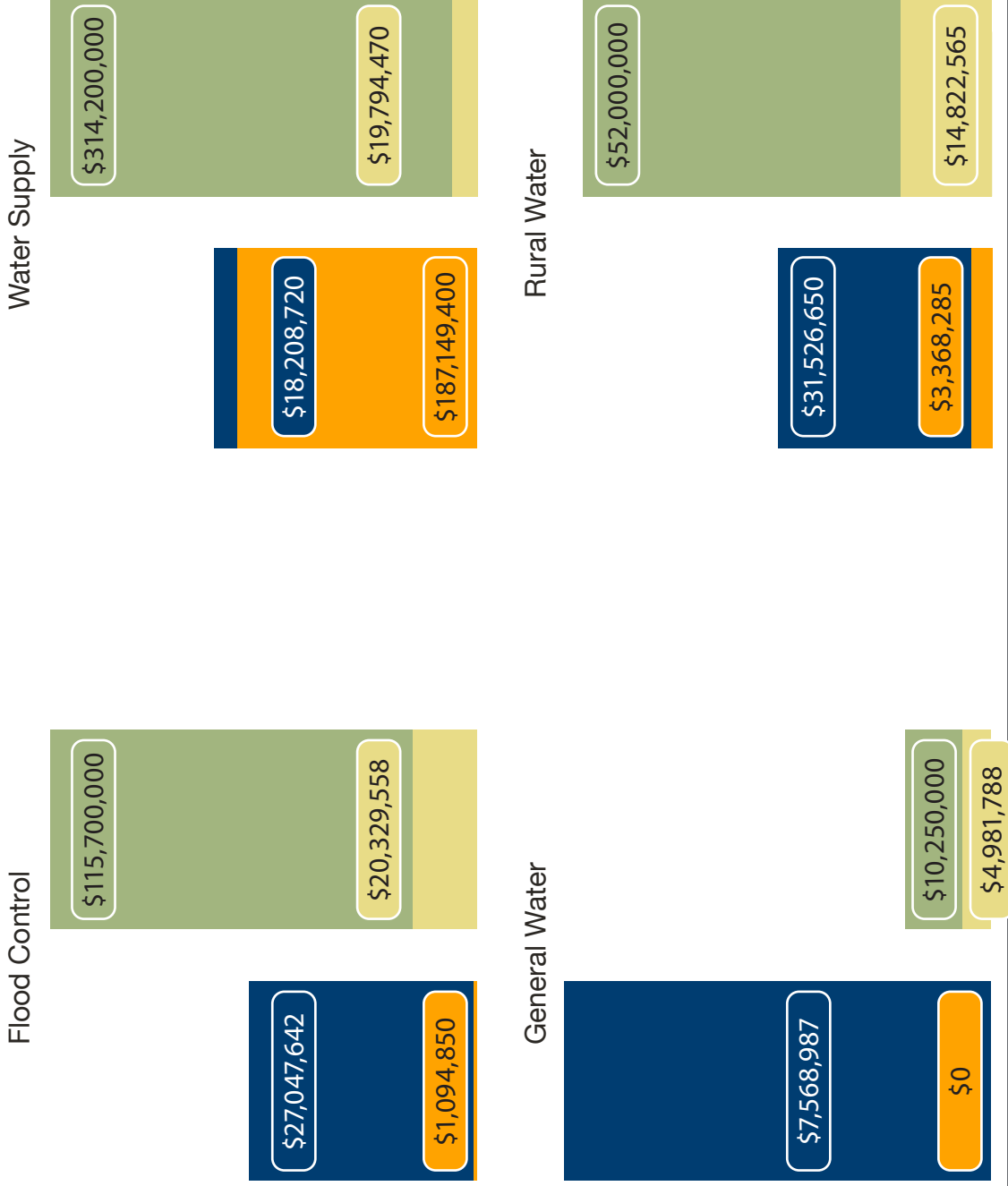
General Water



Discretionary Funds

2023-25 PURPOSE FUNDING

Project Funds | July 2023



- 23-25 Unobligated Appropriation
- Carry Over Turnback
- Anticipated Construction
- Current Requests
- Potential Shortfall

PURPOSE FUNDING SUMMARY
State Water Commission Cost-Share
for August 10, 2023
July 31, 2023

2023-2025 Unobligated Appropriation 07-01-23	Carryover Turnback 06-30-23
---	--

		Unobligated Appropriation	\$ 115,700,000	\$ 19,353,746
		Flood Control		
		Cost-Share		
Construction	1	Jamestown: Emergency 96-inch CMP Replacement	\$ 1,094,850	
Preconstruction	2	Valley City: Permanent Flood Protection (Reallocation of existing approval)		\$ -
		Current Requests	\$ 1,094,850	\$ -
		Estimated Unobligated Appropriation =	\$ 114,605,150	\$ 19,353,746

		Unobligated Appropriation	\$ 10,250,000	\$ 4,011,916
		General Water		
		Cost-Share		
	1			
	2			
	3			
		Current Requests	\$ -	\$ -
		Estimated Unobligated Appropriation =	\$ 10,250,000	\$ 4,011,916

		Unobligated Appropriation	\$ 314,200,000	\$ 13,220,270
		Water Supply		
		Cost-Share		
Preconstruction	1	Drayton: Improvement District 2023	\$ 168,000	
Preconstruction	2	Mandan: Collins Reservoir Replacement		\$ 207,600
Preconstruction	3	Mandan: Water Treatment Plant Phase III		\$ 347,400
Construction	4	Jamestown: 2023 Water Main Improvements (Not in water plan)	\$ 1,763,000	
Construction	5	Napoleon: System Improvements		\$ 1,321,000
Construction	6	St. John: Water Tower Replacement		\$ 1,378,400
Construction	7	Underwood: Water Tower and Water Main Replacement	\$ 1,964,000	
Legislative	8	GDCD: Red River Valley Water Supply	\$ 180,000,000	
Other	9	GDCD: Red River Valley Water Supply WIRLF Loan (\$60,000,000)		
		Current Requests	\$ 183,895,000	\$ 3,254,400
		Estimated Unobligated Appropriation =	\$ 130,305,000	\$ 9,965,870

		Unobligated Appropriation	\$ 52,000,000	\$ 8,586,415
		Rural Water		
		Cost-Share		
Construction	1	Stutsman RWD: Wellfield Expansion		\$ 2,953,000
Cost Increase	2	Dakota RWD: WTP and Service to Hannaford		\$ 415,280
		Current Requests	\$ -	\$ 3,368,280
		Estimated Unobligated Appropriation =	\$ 52,000,000	\$ 5,218,135

		Unobligated Appropriation	\$ 9,000,000	\$ 3,569,441
		Discretionary		
		Cost-Share		
	1			
		Current Requests	\$ -	\$ -
		Estimated Unobligated Appropriation =	\$ 9,000,000	\$ 3,569,441

PURPOSE FUNDING SUMMARY
State Water Commission Cost-Share
for August 10, 2023
July 31, 2023

2023-2025 Unobligated Appropriation 07-01-23	Carryover Turnback 06-30-23
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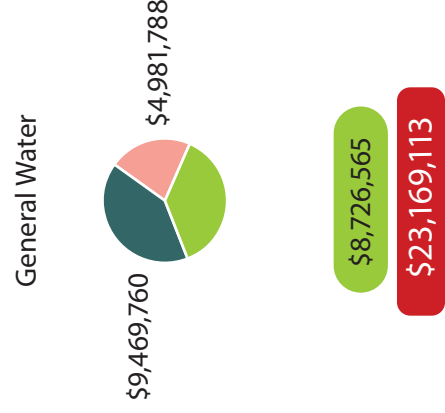
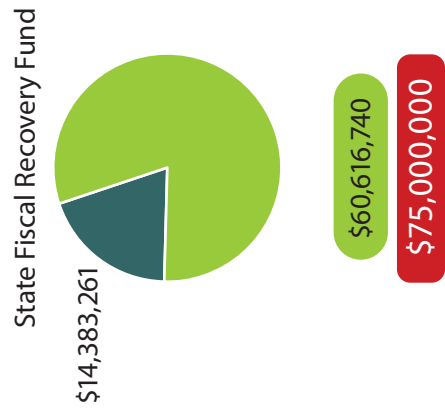
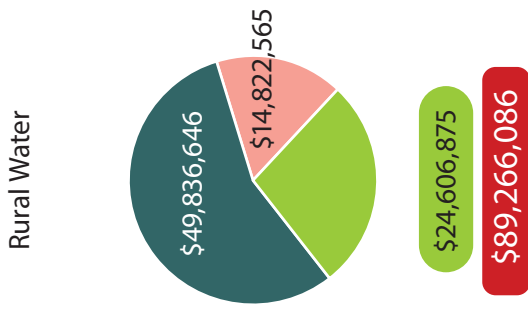
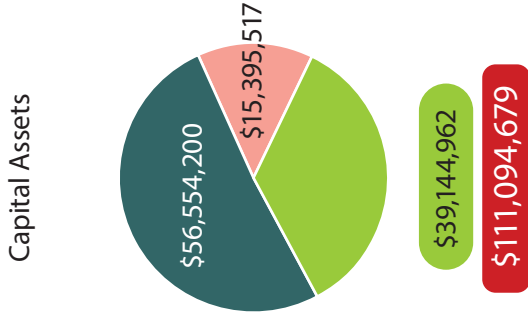
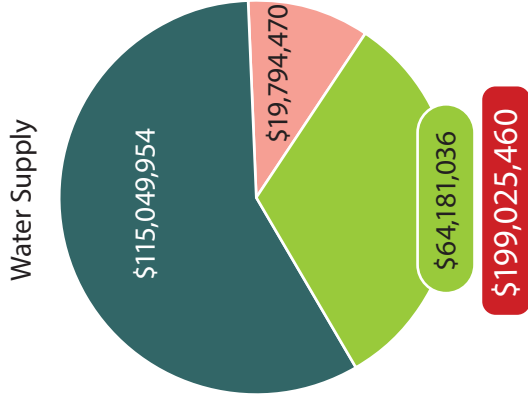
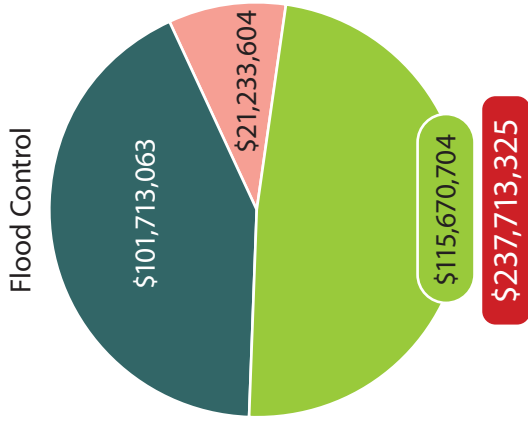
Capital Assets		Unobligated Appropriation	\$ 205,300,000	\$ 6,395,517
SWPP		Cost-Share		
1				
2				
		Current Requests	\$ -	\$ -
NAWS				
1				
2				
		Current Requests	\$ -	\$ -
		Capital Assets Current Requests	\$ -	\$ -
		Less line of credit	\$ 100,000,000	
		Estimated Unobligated Appropriation Capital Assets =	\$ 105,300,000	\$ 6,395,517

State Fiscal Recovery Funds (SFRF)		Unobligated Appropriation	\$ -	\$ -
1				
		Current Requests	\$ -	\$ -
		Payments	\$ 75,000,000	
		Estimated Unobligated Appropriation =	\$ -	\$ -

2021-2023 Unobligated Appropriation for Purpose and Capital Assets	\$ 706,450,000	\$ 55,137,305
Current Requests	\$ 184,989,850	\$ 6,622,680
2021-2023 Anticipated Unobligated Appropriation =	\$ 521,460,150	

2021-2023 BIENNIUM TO DATE

Project Funds | June 2023



■ Expenditures
 ■ Unpaid Approvals
 ■ Unobligated Appropriation
 ■ 21-23 Total Appropriation (Carryover and New Money)

**DEPARTMENT OF WATER RESOURCES
PROJECT SUMMARY
2021-2023 BIENNIUM**

June 30, 2023

	2019-2021 CARRYOVER	2021-2023 APPROPRIATION	2021-2023 TOTAL	SWC/Secretary APPROVED	UNOBLIGATED APPROPRIATION
MUNICIPAL & REGIONAL WATER SUPPLY:					
MUNICIPAL WATER SUPPLY	52,304,544	26,918,473	79,223,017	79,223,017	(0)
RED RIVER VALLEY	18,006,482	37,604,667	55,611,149	55,611,149	(0)
OTHER REGIONAL WATER SUPPLY	27,164,237	17,232,587	44,396,824	44,396,824	0
UNOBLIGATED MUNICIPAL/REG WATER SUPPLY	4,150,198	15,644,272	19,794,470		19,794,470
Total	101,625,460	97,400,000	199,025,460	179,230,990	\$ 19,794,470
% OBLIGATED		83.94%			
RURAL WATER SUPPLY:					
RURAL WATER SUPPLY	29,637,156	44,806,365	74,443,521	74,443,521	0
UNOBLIGATED RURAL WATER SUPPLY	28,929	14,793,636	14,822,565		14,822,565
Total	29,666,086	59,600,000	89,266,086	74,443,521	14,822,565
% OBLIGATED		75.18%			
FLOOD CONTROL:					
FARGO	50,966,383	(0)	50,966,383	50,966,383	(0)
MOUSE RIVER	38,275,083	10,000,000	48,275,083	48,275,083	(0)
MOUSE RIVER HB1431 BOND PROCEEDS	0	74,500,000	74,500,000	74,500,000	0
VALLEY CITY	11,120,628	(0)	11,120,628	11,120,628	(0)
LISBON	174,579	(0)	174,579	174,579	(0)
OTHER FLOOD CONTROL	5,382,821	1,043,809	6,426,630	6,426,630	(0)
PROPERTY ACQUISITIONS	7,056,475	308,935	7,365,410	7,365,410	0
WATER CONVEYANCE	12,637,354	5,917,700	18,555,054	18,555,054	0
UNOBLIGATED FLOOD CONTROL	(0)	20,329,558	20,329,558		20,329,558
Total	125,613,325	112,100,000	237,713,325	217,383,768	20,329,557
% OBLIGATED		84.95%			
GENERAL WATER:					
GENERAL WATER	8,629,612	9,557,712	18,187,325	18,187,325	(0)
UNOBLIGATED GENERAL WATER	307,222	4,674,566	4,981,788		4,981,788
Total	8,936,835	14,232,277	23,169,113	18,187,325	4,981,788
% OBLIGATED		67.16%			
SUBTOTAL	265,841,705	283,332,277	549,173,984	489,245,604	59,928,380
CAPITAL ASSETS:					
SWPP CAPITAL ASSETS	8,528,779	33,528,203	42,056,982	42,056,982	0
NAWS CAPITAL ASSETS	10,865,900	42,776,280	53,642,180	53,642,180	0
UNOBLIGATED CAPITAL ASSETS	0	15,395,517	15,395,517		15,395,517
Total	19,394,679	91,700,000	111,094,679	95,699,162	15,395,517
% OBLIGATED		83.21%			
DISCRETIONARY FUNDING:					
DISCRETIONARY FUNDING PROJECTS	0	2,430,559	2,430,559	2,430,559	0
UNOBLIGATED DISCRETIONARY FUNDS	0	3,569,441	3,569,441		3,569,441
Total	0	6,000,000	6,000,000	2,430,559	3,569,441
% OBLIGATED		40.51%			
BASINWIDE PLAN IMPLEMENTATION:					
BASINWIDE PLAN IMPLEMENTATION	0	1,100,000	1,100,000	1,100,000	0
UNOBLIGATED BASINWIDE PLAN IMPLEMENTATION FUNDS	0	0	0		0
Total	0	1,100,000	1,100,000	1,100,000	0
% OBLIGATED		100.00%			
STATE FISCAL RECOVERY FUND:					
STATE FISCAL RECOVERY FUNDS - SB 2345	0	75,000,000	75,000,000	75,000,000	0
UNOBLIGATED STATE FISCAL RECOVERY FUNDS	0	0	0		0
Total	0	75,000,000	75,000,000	75,000,000	0
% OBLIGATED		100.00%			
TOTAL	285,236,384	457,132,277	742,368,664	663,475,325	78,893,338

**DEPARTMENT OF WATER RESOURCES
PROJECT SUMMARY
2021-2023 BIENNIUM**

Jun-23

	SWC/Secretary APPROVED	EXPENDITURES	UNPAID APPROVALS
MUNICIPAL & REGIONAL WATER SUPPLY:			
MUNICIPAL WATER SUPPLY	79,223,017	34,173,592	45,049,425
RED RIVER VALLEY	55,611,149	16,360,296	39,250,853
OTHER REGIONAL WATER SUPPLY	44,396,824	13,647,148	30,749,676
TOTAL	179,230,990	64,181,036	115,049,954
RURAL WATER SUPPLY:			
RURAL WATER SUPPLY	74,443,521	24,606,875	49,836,646
FLOOD CONTROL:			
FARGO	50,966,383	50,966,383	0
MOUSE RIVER	48,275,083	38,277,902	9,997,182
MOUSE RIVER HB1431	74,500,000	6,459,141	68,040,859
VALLEY CITY	11,120,628	940,624	10,180,004
LISBON	174,579	94,090	80,489
OTHER FLOOD CONTROL	6,426,630	1,600,610	4,826,020
PROPERTY ACQUISITIONS	7,365,410	7,287,077	78,332
WATER CONVEYANCE	18,555,053	10,044,876	8,510,177
TOTAL	217,383,767	115,670,704	101,713,063
GENERAL WATER:			
GENERAL WATER	18,187,325	8,726,565	9,460,760
SUBTOTAL	489,245,604	213,185,180	276,060,423
CAPITAL ASSETS:			
SWPP CAPITAL ASSETS	42,056,982	22,126,390	19,930,592
NAWS CAPITAL ASSETS	53,642,180	17,018,571	36,623,609
TOTAL	95,699,162	39,144,962	56,554,200
DISCRETIONARY FUNDING:			
DISCRETIONARY FUNDING PROJECTS	2,430,559	391,396	2,039,163
BASINWIDE PLAN IMPLEMENTATION:			
BASINWIDE PLAN IMPLEMENTATION	1,100,000	307,810	792,190
STATE FISCAL RECOVERY FUNDS SB2345			
STATE FISCAL RECOVERY FUND PROJECTS	75,000,000	60,616,740	14,383,261
TOTALS	663,475,324	313,646,088	349,829,237



CONFLICTS OF INTEREST

POLICY | SWC_02.2023

NORTH
Dakota | Water Commission
Be Legendary.™

APPENDIX B

Effective Date XX/XX/XXXX

OUTLINE

1	SUMMARY	3
2	DISCLOSURE PROCEDURES	4
3	NEUTRAL REVIEWER	5
4	COMMON OCCURANCES	6
5	DEFINITIONS	7
	HISTORY	9
	APPENDIX A	10

1 SUMMARY

State Water Commissioners represent the eight drainage basins in North Dakota and are appointed by the Governor to represent the various interests of water resource constituents across the state.

The North Dakota Ethics Commission was established in 2018 by an initiated measure to create Article XIV of the North Dakota Constitution. The Ethics Commission has oversight over the Commission, and these guidelines were developed in response to the Ethics Commission's Conflict of Interest (COI) training provided to the Commission in 2022.

In some cases, Commissioners may have relationships to entities that come before the Commission, including requesting funding for infrastructure related projects. SWC_02 outlines the general guidelines and processes that Commissioners must follow when there is a Potential Conflict of Interest (Potential COI).

1.1 AUTHORITY OR IMPLEMENTATION

These guidelines garner authority from North Dakota Century Code (N.D.C.C.) § 54-66-04.2 and North Dakota Administrative Code (N.D.A.C) Article 115-04.

1.2 ACCEPTANCE OR ENFORCEMENT

These guidelines will be updated as necessary to ensure the Commission fulfills its statutory duties.

2 DISCLOSURE PROCEDURES

2.1 DISCLOSURE AT REGULAR COMMISSION MEETINGS

The disclosure of Potential COIs will be an agenda item at each Commission meeting. During this agenda item the following will occur:

- a. Each Commissioner will disclose their Potential COIs and indicate if those Potential COIs are relevant to any of the upcoming agenda items.
- b. The Neutral Reviewer will determine if the Potential COIs are Disqualifying COIs for any items on the agenda and fill out the Conflict of Interest Disclosure Form (Appendix A) for each Potential COI. Common occurrences are listed in Section 4. The Neutral Reviewer will give appropriate weight and deference to the Commissioner to perform their duties provided that the Commissioner has properly disclosed the Potential COIs as required in code.
 - If a Potential COI is determined to be a Disqualifying COI, the Commissioner will be required to abstain from voting on specified agenda items.
 - If a Potential COI is determined not to be a Disqualifying COI, the Commissioner will be able to vote on all agenda items.
- c. After each meeting, a copy of the Conflict of Interest Disclosure Forms will be retained by the Department of Water Resources (DWR) and submitted to the Ethics Commission by the Secretary.

2.2 DISCLOSURE OF ONGOING POTENTIAL CONFLICTS OF INTEREST

By virtue of their appointment to the Commission, Commissioners may have an ongoing Potential COI that will need to be disclosed. Commissioners may disclose their ongoing Potential COI on an annual basis by filling out the Conflict of Interest Disclosure Form and submitting it to the Neutral Reviewer at the first meeting of the year. The Neutral Reviewer will review the submission and make a determination on the status of the COI. The DWR will retain a copy of the form, and a copy will be submitted to the Ethics Commission by the Secretary.

Commissioners with ongoing Potential COIs are not exempt from Section 2.1 and are still required to verbally disclose their COIs during the meeting and abstain from voting as determined by the Neutral Reviewer.

3 NEUTRAL REVIEWER

For the purpose of these guidelines, the Commission has designated their General Counsel to be their Neutral Reviewer.

N.D.A.C. § 115-04-01-03(7) reads as follows:

The following standards shall guide the review and decision of either a public official or the neutral reviewer with respect to any public official's potential conflict of interest:

- a. Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.
- b. A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.
- c. The review of a potential conflict of interest and any decision that would require a public official to recuse themselves or abstain from further involvement in a matter shall consider any applicable North Dakota law which precludes the public official from recusal or abstention in the matter.
- d. It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.
- e. Any guidance issued by the ethics commission, including informal guidance, advisory opinions, rules, standards, and precedent.

4 COMMON OCCURANCES

The scenarios below indicate the Commission's current guidelines regarding specific Potential COIs. Other COIs may exist, and this list is not meant to be exhaustive. See Section 2.1 for procedures regarding COI's outside of this list.

4.1 COMMISSIONER AS A CUSTOMER

It is not a Potential COI when a Commissioner is a customer of an entity that directly provides water to the Commissioner at their business or residence.

Unless there are other circumstances, Commissioners are able to vote on the following:

- a. Project that would benefit the entire entity.
- b. Project that would directly benefit the Commissioner's business or residence such as a flood protection project or water line expansion.
- c. Project that would directly benefit the Commissioner that is funded through a special assessment that is assessed at the same level as the rest of the assessment district.

4.2 COMMISSIONER AS A REPRESENTATIVE OF A POLITICAL SUBDIVISION

It is a Potential COI when a Commissioner serves on a water board, water supply authority, or other similar political subdivision or oversight body.

In general, Commissioners will be required to abstain from voting on the following:

- a. Cost-share for a project from the board on which they sit.
- b. Policy or funding for a state-owned project from the Authority on which they sit.
- c. Project that would benefit the community for which they represent.

4.3 COMMISSIONER AS A CONSULTANT

It is a Potential COI when a Commissioner is an employee at a consulting firm that works on water resource projects.

In general, a Commissioner will be required to abstain from voting when the Commissioner's firm represents the entity requesting cost-share.

5 DEFINITIONS

Commission: State Water Commission as defined in N.D.A.C. §89-01-01-02

Commissioners: Members of the State Water Commission

Disqualifying Conflict of Interest (Disqualifying COI): Defined in N.D.A.C. § 115-04-01-01 as one of the following:

- a. “A potential conflict of interest disclosed pursuant to this rule which the public official has determined requires recusal and abstention from further action in the matter; or
- b. A potential conflict of Interest disclosed pursuant to this rule which the neutral reviewer has determined requires the public official to recuse and abstain from further action in the matter.”

Potential Conflict of Interest (Potential COI): Defined in N.D.A.C. § 115-04-01-01 as “a public official as part of the public official's duties must make a decision or take action in a matter in which the public official has:

- a. Received a gift from one of the parties;
- b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
- c. A relationship in private capacity with one of the parties.”

Immediate Family: Defined in N.D.A.C. § 115-04-01-01 as “a public official's parent, sibling, spouse, grandparent, grandchild, stepchild, or child by blood or adoption.”

Neutral Reviewer: Defined in N.D.A.C. § 115-04-01-01 as “the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:

- a. If a public official with a potential conflict of interest is a member of a legislative body, board, commission, or committee the remaining individuals who are members of the legislative body, board, commission, or committee shall be considered as the neutral reviewer;
- b. If a public official with a potential conflict of interest is an employee of the legislature, the public official's supervisor may be considered as the neutral reviewer;
- c. If a public official with a potential conflict of interest is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
- d. If the public official with a potential conflict of interest is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
- e. If none of the above apply, the public official shall make the determination but must report the disclosure and decision in the manner set forth in section 115-04-01-04 within seven calendar days.”

For the purpose of these guidelines, the Commission has designated their General Counsel to be their Neutral Reviewer.

Ongoing Potential Conflict of Interest: An Ongoing Potential Conflict of Interest is a Potential Conflict of Interest that lasts for longer than one year. For example, a water board or authority appointment or employment with an engineering, legal, environmental, or other private firm.

Public Official: Defined in N.D.A.C. § 115-04-01-01 as “any elected or appointed official of the North Dakota executive or legislative branches, including members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.”

Commissioners are public officials.

Relationship in a Private Capacity: Defined in N.D.A.C. § 115-04-01-01 as “a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.”

Secretary: As defined in N.D.C.C. § 61-02-05, “the director of the department of water resources is the secretary of the commission.”

Significant Financial Interest: Defined in N.D.A.C. § 115-04-01-01 as “a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.”

6 HISTORY

Policy Adopted: XX/XX/XXXX

Previous Revision(s): No Revisions Available

MEMORANDUM OF AGREEMENT
No.

BETWEEN THE

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

AND THE

STATE OF NORTH DAKOTA
STATE WATER COMMISSION

AND THE

CITY OF MINOT, NORTH DAKOTA

FOR THE

OPERATION, MAINTENANCE & REPLACEMENT OF THE

NORTHWEST AREA WATER SUPPLY BIOTA WATER TREATMENT PLANT

This Memorandum of Agreement (MOA) dated _____ is between the United States Department of the Interior, Bureau of Reclamation (Reclamation); the State of North Dakota, State Water Commission (SWC); and the City of Minot, North Dakota (City). The purpose of this MOA is to identify and define the roles, responsibilities, and deliverables of the Parties to this MOA for the Operation, Maintenance and Replacement (OM&R) of the Northwest Area Water Supply (NAWS) Biota Water Treatment Plant (WTP).

I. AUTHORITY

Reclamation's authority for the planning, construction, and OM&R of water supply facilities throughout North Dakota is provided through the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 89-108) and the Dakota Water Resources Act of 2000 (Public Law 106-554). These Acts authorize the Secretary of the Interior to construct municipal, rural and industrial (MR&I) water systems to serve areas throughout the State of North Dakota. This includes the planning, design, construction, and operation of such MR&I water systems. These Acts further require the construction of any water systems authorized to deliver Missouri River water into the Hudson Bay Basin to provide adequate treatment to meet the requirements of the Boundary Waters Treaty of 1909. This Treaty between the United States and Great Britain relates to boundary waters between the United States and Canada. The Act states that all costs of

construction and OM&R of water treatment and related facilities authorized by this Act and attributable to meeting the Treaty requirements will be reimbursable.

II. BACKGROUND

The NAWS project is a bulk water supply system being constructed to serve communities and rural water systems within northwestern North Dakota. The project will deliver water from the Missouri River Basin to communities and rural water systems within the Hudson Bay Basin. In compliance with the Boundary Waters Treaty, a Biota WTP is being constructed within the Missouri River Basin by the SWC as a means of reducing the project-related risk of aquatic invasive species (Biota) transfer. The Biota WTP will be operated by the City. The Biota WTP includes conventional water treatment, along with ultraviolet irradiation and chemical disinfection in the treatment process. This treatment occurs within the Missouri River Basin prior to the water being delivered via a buried pipeline to the City's WTP. The City will treat the water to meet Safe Drinking Water Act standards for the NAWS project. The NAWS project delivers the treated water to rural water systems and communities.

Reclamation signed a Record of Decision in 2015 to conclude the National Environmental Policy Act process. Environmental commitments in the Record of Decision include the development of an *Adaptive Management Plan* by Reclamation for the OM&R of the Biota WTP. The purpose of the *Adaptive Management Plan* is to monitor the effectiveness of the NAWS Biota WTP systems in reducing the risk of project-related transfer of aquatic invasive species from the Missouri River Basin to the Hudson Bay Basin. The *Adaptive Management Plan* could influence future Biota WTP operations, as referenced in this MOA.

III. PURPOSE

The purpose of this MOA is to memorialize the collaborative efforts of Reclamation, SWC, and the City in the OM&R actions for the NAWS Biota WTP. The State of North Dakota, through the SWC, is the NAWS project owner. The construction and operation of NAWS is performed by the Department of Water Resources (DWR) for the SWC. SWC will contract with the City to operate and maintain the Biota WTP. Reclamation, as directed by the authorizing legislation, is responsible for compliance with the Boundary Waters Treaty and will provide federal funds for the OM&R of the Biota WTP and related facilities. This MOA identifies the roles and responsibilities of the parties to this MOA; however, no federal funds will be transferred under this MOA as stated in Section V of this [agreement](#).

Commented [SGSA1]: DWR would like to discuss this

IV. ROLES AND RESPONSIBILITIES

OM&R responsibilities include all routine day-to-day work items and replacements associated with water treatment operations and facility maintenance as described below.

The SWC and the City have the following roles and responsibilities in operation and maintenance of the NAWS Biota WTP. Primary operation, maintenance, and administrative oversight of the facility will remain with the SWC (through DWR) and the City unless approved by Reclamation. These responsibilities include the following:

- Implement the requirements set forth in Reclamation’s Record of Decision and *Adaptive Management Plan* as it relates to the Biota WTP operations.
- Operate the Biota WTP day-to-day, which includes the water treatment processes as described in Reclamation’s Record of Decision.
- Ensure the structures associated with the operation and maintenance of the facility are insured.
- Ensure the equipment and vehicles associated with the operation and maintenance of the facility are insured.
- SWC will retain ownership of the property and facilities that comprise the Biota WTP. No changes to this ownership will occur without Reclamation’s concurrence.
- Conduct regular routine maintenance activities of the Biota WTP equipment.
- Schedule and conduct quarterly coordination meetings with Reclamation to discuss: (1) ongoing Biota WTP operations, (2) ongoing monitoring tasks, (3) reporting tasks, (4) changes as a result of modifications to the *Adaptive Management Plan*, and (5) extraordinary maintenance needs.
- Employ certified operators to staff the City’s WTP and the Biota WTP. Provide copies of any such certifications to Reclamation, consistent with federal privacy laws.
- Obtain any required permits from applicable regulating agencies (i.e., discharge permit) for the operation and maintenance of the Biota WTP.
- Ensure all equipment and vehicle operators have a valid and appropriate operator’s license for equipment and vehicle use.
- Provide Standard Operating Procedures (SOPs) for Reclamation review and approval. SOPs will document instructions detailing all steps and activities required to operate the plant, including frequency of tasks. The Biota WTP operators will review and use the SOPs for Biota WTP operation.
- Provide emergency operating plan and procedures for Reclamation review and approval. The Biota WTP operators will review and use the emergency operation procedures should an incident arise that calls for such procedures to be enacted. Should an incident arise, operators will notify the key personnel of all Parties to this agreement within 24 hours.
- Participate in an after-action review with personnel involved in the emergency operation procedures to identify response measures implemented, opportunities for improvement, etc. Parties will cooperatively work to modify the emergency operation procedures, if necessary, based on the outcome of the after-action review.
- Maintain Biota WTP site buildings and grounds.
- Provide janitorial services for the offices, conference room, restrooms, locker rooms, laboratory, electrical room, and other areas within the Biota WTP and facilities within the shop located on the Biota WTP site.

Commented [SS2]: who are these key personnel?

- Conduct annual on-site maintenance review and security review of the Biota WTP and invite Reclamation to participate in these reviews. Complete report on findings and provide the resulting report to Reclamation. Recommendations from these reviews will be addressed in an action plan cooperatively developed between the Parties to this agreement. These reviews will occur on an annual basis, or more frequently, as requested by any of the Parties.
- Collect and analyze influent and effluent water quality samples in accordance with the *Adaptive Management Plan* and share the data/results with Reclamation per the *Adaptive Management Plan*.
- Operate the Biota WTP to meet the log-inactivation and removal credits (greater than 3 log inactivation of *Giardia* and greater than 4 log inactivation of viruses) as identified in Reclamation's Record of Decision and as modified in the *Adaptive Management Plan*.
- Monitor the Nephelometric Turbidity Unit (NTU) of the coagulation, flocculation, sedimentation, and filtration processes. Desired outcome is less than or equal to 0.3 NTUs for the Combined Filter Effluent (CFE) in at least 95% of the 15-minute incremental measurements each month. Maximum level not to exceed 1.0 NTU at any time.
- Ensure proper operation of the UV Irradiation (lamp intensity/exposure in $\mu\text{watt-sec/cm}^2$.) Example: Minimum dosage of 40mJ/cm^2 at a design UV transmittance of 85% at 254 nm.
- Ensure proper operation of the chlorine/chloramine disinfection at a minimum dosage of 4 mg/L, with a contact time required 12.0 mg/L-min and minimum free chlorine residual of 2 mg/L.
- Record monthly pumping volumes leaving the Biota WTP and provide documentation to Reclamation.

Reclamation's responsibilities will include the following:

- Reclamation will monitor and provide federal technical assistance and oversight of activities performed under this MOA for the Biota WTP OM&R.
- Reclamation will provide technical assistance and monitoring activities that will include site visits, conference calls, and other on-site and off-site monitoring activities as identified in the *Adaptive Management Plan* for the Biota WTP.
- Reclamation will confirm that the operations and maintenance of the Biota WTP are conducted in accordance with the *Adaptive Management Plan* established for this facility.
- Based on documentation provided by the DWR, Reclamation will provide annual funding via a cooperative agreement, as agreed upon in negotiations with the DWR and the City, to ensure the Biota WTP is operated in accordance with the Record of Decision and *Adaptive Management Plan*.
- Reclamation will review and provide comment to the DWR on the proposed SOP and emergency operating procedures, or amendments to these documents, within 45 days of

receipt. The DWR will respond to Reclamation's comments in writing. Reclamation will provide written concurrence when the SOP and the emergency operating procedures and any amendments to these documents are approved.

- Reclamation will review the annual workplans, monitoring plans, etc. for technical adequacy and consistency and provide comments to the DWR within 30 days of receipt.
- Reclamation is the lead agency in overseeing the implementation of tasks identified within the *Adaptive Management Plan*.
- Reclamation will actively participate in quarterly meetings to discuss: (1) ongoing Biota WTP operations, (2) ongoing monitoring tasks, (3) reporting tasks, (4) changes as a result of modifications to the *Adaptive Management Plan*, and (5) extra-ordinary maintenance needs.
- The United States will not be a party to or obligated in any manner by contracts entered between the SWC, DWR, or City and their subcontractors, vendors, and other parties.
- Reclamation will attend after-action review with personnel involved in the emergency operating procedures to identify response measures implemented, opportunities for improvement, etc. Parties will cooperatively work to modify the emergency operating procedures, if necessary, based on the outcome of the after-action review.
- Reclamation will review maintenance report(s) and security report(s) for the Biota WTP within 30 days of receipt and cooperatively develop an action plan to address the recommendations from these reviews.

V. FUNDING

No funding will be transferred under this MOA. All federal funding for the OM&R of the Biota WTP will be transferred through a cooperative agreement between Reclamation and the SWC, as directed by the authorizing legislation. Reclamation's authority for the planning, construction, and OM&R of water supply facilities throughout North Dakota is provided through the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 89-108) and the Dakota Water Resources Act of 2000 (Public Law 106-554). These Acts authorize the Secretary of the Interior to construct municipal, rural and industrial (MR&I) water systems to serve areas throughout the State of North Dakota. This includes the planning, design, construction, and operation of such MR&I water systems. These Acts further require the construction of any water systems authorized to deliver Missouri River water into the Hudson Bay Basin to provide adequate treatment to meet the requirements of the Boundary Waters Treaty of 1909. This Treaty between the United States and Great Britain relates to boundary waters between the United States and Canada. The Act states that all costs of construction and OM&R of water treatment and related facilities authorized by this Act and attributable to meeting the Treaty requirements will be reimbursable. Reclamation will include in their budget the costs required for the OM&R of the Biota WTP. Federal funds will be provided as they are made available by the United States Congress.

Commented [SGSA3]: Relisting the authorizing legislation here

VI. EFFECTIVE DATE, AMENDMENT, MODIFICATION, AND TERMINATION

- A. This MOA will become effective when signed by designated representatives of Reclamation, SWC, and the City.
- B. This MOA may be modified or amended only by written mutual agreement of the Parties.
- C. This MOA will terminate 10 years from the effective date, barring an amendment to extend the period. Any party may terminate this MOA by written notice (to include email) to the other parties. Termination will be effective following 30 calendar days of notice receipt.

Preliminary DRAFT

VII. SIGNATURE PARTIES

IN WITNESS WHEREOF, the Parties have executed this MOA and agree to the terms and conditions on the date and year written below.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
MISSOURI BASIN REGION
DAKOTAS AREA OFFICE

By: _____
Joseph E. Hall
Area Manager

State of North Dakota
State Water Commission

By: _____
Dr. Andrea Travnicek, Ph.D.,
Secretary

City of Minot

By: _____
Thomas Ross
Mayor