

MINUTES

North Dakota State Water Commission Bismarck, North Dakota October 10, 2024

The ND State Water Commission (Commission or SWC) held a meeting at the Bank of North Dakota, 1200 Memorial Highway, Bismarck, ND, and via phone conference on October 10, 2024. 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 Agriculture Commissioner (online)
Michael Anderson, Lower Red River Basin
Jeff Frith, Devils Lake Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Connie Ova, James River Basin (online)
Jay Volk, Lower Missouri River Basin
April Walker, Upper Red River Basin
Jason Zimmerman, Mouse River Basin

State Water Commission Members Absent:

Gene Veeder, Upper Missouri River Basin

Others Present:

Dr. Andrea Travnicek, Director, ND Dept. of Water Resources (DWR or Department) and Commission Secretary
John Paczkowski, DWR State Engineer
DWR Staff
Matthew Sagsveen, General Counsel, Attorney General's Office
Approximately 83 people present online and in person.

Consideration of Agenda

Commissioner Anderson moved to approve the October 10, 2024, meeting agenda as presented. The motion was seconded by Commissioner Volk and passed by unanimous vote.

Consideration of Meeting Minutes

Commissioner Frith moved to approve the August 8, 2024, State Water Commission meeting minutes as written. The motion was seconded by Commissioner Zimmerman and passed by unanimous vote.

Commissioner Volk moved to approve the September 12, 2024, Pre-Commission meeting minutes as written. The motion was seconded by Commissioner Anderson and passed by unanimous vote.

Disclosure of Potential Conflicts of Interest

Commissioner Odermann disclosed a conflict of interest with the Southwest Pipeline Project. Commissioner Zimmerman disclosed a conflict of interest with the Ward County Water Resource District.

Commission Secretary Update

Andrea Travnicek, Ph.D., Secretary, reported the agency is having ongoing discussions on the budget with the Governor's office and Office of Management and Budget (OMB), and will continue to answer questions as they come up. DWR will stay engaged with them until the budget rolls out in December. Lt. Governor Miller and Travnicek congratulated Sindhuja S.Pillai-Grinolds for receiving the Governor's Harvest Award and presented S.Pillai-Grinolds a plaque.

Financial Report

The Glossary of Terms, allocated program expenditures, and financial reports were presented by Sarah Felchle, DWR Account/Budget Specialist (**APPENDIX A**).

The oil extraction tax deposits total \$296,209,129 estimated through September 2024 for the 2023-25 biennium, which is \$22,334,692 over the projected biennium revenue of \$273,874,437 through September 2024. Transfers in the amount of \$22,334,692 from the Resources Trust Fund to the Water Projects Stabilization Fund have occurred through September 2024.

The 68th Legislative Assembly estimates oil extraction tax deposits for the 2023-2025 biennium to total \$449,859,211 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.

Cost-Share Policy & WebGrants Certification

Pat Fridgen, Division Director of Planning and Education, presented options to include modifications to WebGrants Certifications, and updates within the Commission's Cost-Share Policy, Procedure, and General Requirements—including new SOPs.
(APPENDIX B)

WebGrants Certification Language

New WebGrants certification language is proposed with reference to NDCC 12.1-11-02, which outlines criteria for what can be considered false statements, and related legal consequences.

Cost-Share Policy, Procedure, and General Requirements Language

Within the Commission's Cost-Share Policy, Procedure, and General Requirements, a new "Violations" section is proposed, as well as pre-construction and construction application requirements that include a signed letter from the sponsoring entity acknowledging the cost-share request along with a copy of the draft meeting minutes of the sponsoring entity verifying the sponsor's intention to apply. Applicants that have already received Cost-Share Program funding for the project in question and have been determined by the Commission to have intentionally provided false statements or information to acquire cost-share funding, or used the funding improperly, will have

remaining approved funding revoked and previous related payments must be reimbursed back to the state within 60 days.

Standard Operating Procedures (SOP) Program Violations

New language is being proposed to be added to the SOP section of the policy for program violations, to include: If the project sponsors or their representative consultants have engaged in a perceived professional ethics violation, DWR staff and Commission members will evaluate reporting requirements to professional boards for which they are responsible, and then notify those boards if required following incidents, and if project sponsors or their representative consultants have engaged in a perceived criminal act, the Commission in consultation with legal counsel will determine if the facts of the incident should be referred to the State's Attorney for review and if necessary, file a complaint.

After a brief discussion, the following motion was made:

Moved by Commissioner Walker and seconded by Commissioner Anderson the Commission approve the proposed WebGrants Certification language; Cost-Share Policy, Procedure, and General Requirements language; and the Standard Operating Procedures as provided in the memorandum presented to the Commission.

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

Four-Year Progress Reports

Abigail Franklund, DWR Cost-Share Program Manager, reported to the Commission the following four (4) project sponsors have opted to give progress reports and have requested an extension:

McHenry Laterals A and B

The cost-share for the project was approved on October 8, 2020, in the amount of \$362,492. The remaining cost-share balance is \$125,347.75. The Bottineau County Water Resource District expects to complete the final construction tasks this fall, therefore they request an extension of their cost-share agreement and retention of the balance through the end of the year.

Lower Red Basin Regional Detention Study

The cost-share for the project was approved on July 13, 2015, in the amount of \$45,000. On November 3, 2020, additional cost-share was granted in the amount of \$32,902, for a sum of \$77,905. The remaining cost-share balance is \$31,327.44. The Red River Joint Water Resource District request a two-year extension of their cost-share agreement and retention of the balance to provide additional time to complete the modeling and finalize the study.

Shortfoot Creek Watershed Planning Program

The cost-share for the project was approved on July 7, 2016, in the amount of \$154,000. A first extension was approved by the Commission on February 11, 2021. The remaining balance is \$6,209.06. Because the existing agreement's four-year term will expire on

February 11, 2025, the Sargent County Water Resource District requests a one-year extension of their cost-share agreement and retention of the balance to finalize the watershed plan and have it approved by NRCS.

Killdeer HWBL Water Expansion

The cost-share for the project was approved on February 11, 2021, in the amount of \$75,000. The remaining balance is \$58,800. The City of Killdeer requests an extension of their cost-share agreement through the end of 2026, and retention of the balance to complete the final design.

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

Moved by Commission Zimmerman and seconded by Commissioner Anderson the Commission to extend the terms of cost-share agreements for the requested timeframes, based on the project sponsors making progress toward completion of their projects in 2024-2025.

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

Southwest Pipeline Project (SWPP)

Historical Cost and Capital Repayment Information

Justin Froseth, SWPP Project Manager, presented the overview memo that laid out the history of the SWPP noting SWPP remains a critical regional water supply project to the southwest region of the state. It was noted as the project reaches substantial completion, consideration should be given to identifying appropriate Capital Repayment for SWPP, defining “perpetuity”, identifying if a cost share is appropriate, determining appropriate cost per equivalent service unit (ESU) with rationale for changes, and if the change in project’s ownership is appropriate. Travnicsek suggested a working group that consists of various stakeholders may need to be set up in the near future to identify recommendations for the different aspects of the project.

Feasibility Criteria-Capital Repayment Adjustment for Maximum Cost per ESU Increase

Froseth stated the feasibility criteria for SWPP includes two parameters: sign up percentage and the maximum cost per ESU. Construction inflation has been significantly outpacing general inflation. At the February 2024 SWC meeting, the Commission approved increasing the maximum cost/ESU to \$75,980 based on Southwest Water Authority’s (SWA) request calculated using the December 2023 Consumer Price Index. At the February commission meeting it was noted the DWR staff would determine the appropriate capital repayment adjustment for the increase in maximum cost/ESU, along with the SWA board and staff, and the SWA Feasibility Criteria Subcommittee.

Motions that were made and approved at the September 2024 SWA Board meeting was recommended for approval by DWR staff. There were no questions and the SWC moved to also approve the following:

Moved by Commission Walker and seconded by Commissioner Volk the Commission:

- 1. Increase the maximum cost/ESU to \$61,742 based on the 2024 capital repayment rate and the maximum cost/ESU in the future will be calculated by allocating the capital repayment rate towards 35 percent of the maximum cost/ESU with zero percent interest and 40 years repayment.**
- 2. Approve \$75,980 as the maximum cost/ESU for the Burt-Hebron Rural Service Area, including Lake Tschida, with the capital repayment adjustment. The capital repayment adjustment needed for increasing from \$61,742 to \$75,980 is \$10.38/ESU/month.**
- 3. Approve spreading the capital repayment adjustment needed for the increase in maximum cost/ESU among all SWPP rural customers and allow for the adjustment to be determined annually in the budget process for the budget year following the substantial completion date of the rural distribution contract.**

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

Feasibility Criteria-Exclusions

Froseth discussed the exclusions in the SWPP's Feasibility Criteria. He stated the guideline states that transmission and storage facilities will not be included in the determination of cost for a single ESU. Facilities built to serve towns were considered transmission facilities and based on the specific reference to storage facilities and booster pump stations in the guidelines, the storage and booster pump stations located within rural distribution have been considered exclusions and have not been included in the maximum cost/ESU calculation. DWR staff feels transmission facilities need a definition at this time as questions have arisen if the pipeline that is needed to serve signups around Lake Tschida could be an exclusion. DWR staff determined defining transmission facilities as facilities upstream of a reservoir or town is appropriate.

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

Moved by Commission Frith and seconded by Commissioner Walker the Commission define pipelines that are upstream of a reservoir as a Transmission facility and consider them as an exclusion to the maximum cost/ESU determination.

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

West Zone Expansion

Froseth stated the West Zone of the SWPP is described as the area of SWPP that is served by the main transmission line that leaves the Ray Christianson Pump Station (RCPS) and heads west, generally along Old Highway 10 corridor, to the city of Beach. At the August SWC meeting, Commission had authorized BW/AECOM to proceed with preliminary designs.

Based on preliminary design information, DWR staff recommended completing bid ready documents for Design 3, the design with nominal pipe size above identified needs with over 25 percent additional capacity, because of the following reasons:

1. Staff acknowledged that the water needs projections in the West Zone are the best information based on what is currently known. Outcomes from the different economic development discussions are ongoing with quantities still unknown, but there is a general understanding that water needs continue to a major theme to business and industry decisions.
2. Typical to the SWPP, many miles of pipe installation are needed to accomplish a capacity upgrade. In particular, for this West Zone project, many of those miles include routing through US Forest Service government lands. Therefore, any upgrades that may be needed later will come at additional cost and time and it would be beneficial to construct the larger capacity needed now.
3. Construction costs continue to see a significant rise and there is no sign of it slowing down. There may be significant cost savings to the state by completing a higher capacity project at this time to stay ahead of inflationary construction price increases.

After a brief discussion, the following motion was made:

Moved by Commission Goehring and seconded by Commissioner Frith the Commission proceed with developing bid ready documents for the West Zone Expansion based on Design 3, the design with the next nominal pipe size above identified needs with 25 percent additional capacity design.

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

Amendment to Water Supply Agreement with Basin Electric Power Cooperative

Froseth stated the existing intake for the SWPP is a shared intake with the Basin Electric Power Cooperative (BEPC). A 1986 water supply agreement between the State and BEPC provides for 10,600 gallons per minute (gpm) capacity from the BEPC's intake to the SWPP. DWR staff requested additional capacity for the SWPP from the BEPC intake and have reached an agreement on the commercial terms for BEPC to provide an additional 3,000 gpm capacity to SWPP. This involves upgrading the existing 100 HP pump inside the BEPC intake building with a 200 HP pump and upgrading the existing 300 HP pump inside the SWPP intake building with a 600 HP pump.

This increased capacity from BEPC will allow SWPP to realize the additional capacity within 2 – 3 years while SWC continues to engage in the mediation process

for the SWPP's Supplementary Raw Water Intake construction failure. After the amendment to the water supply agreement is fully executed, DWR staff will authorize Bartlett & West/AECOM to proceed with developing bid ready documents for construction.

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

Moved by Commission Zimmerman and seconded by Commissioner Walker the Commission authorize the Secretary to execute the amendment to the 1986 water supply agreement between the State Water Commission and Basin Electric Power Cooperative and to proceed with developing bid ready documents for construction.

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

Northwest Area Water Supply (NAWS)

Contract SA 98 – Pressure Reducing Station and Isolation Vault Improvements

Travis Johnson, NAWS Project Manager, stated the SA 98 Pressure Reducing Vault and Isolation Vault Improvements project consists of new electrical duct bank and equipment pads, construction of new instrumentation, control, and electrical work at the pressure reducing station, and three (3) isolation valve vaults, including valve actuators, unit heaters, dehumidifiers, sump pumps, and other miscellaneous and incidental items. Two (2) bids were received, from Main Electric, Inc. and Burlington Electric. At 12 percent below the Engineer's Estimate, the bid from Burlington Electric was the low bid in the amount of \$555,990.

Funding for the state share of this contract will be from the 2023-2025 Capital Assets allocation for the NAWS project. The estimated funding needs for the state share of this projects is \$380,000 which is 65 percent of the total bid cost for the contract with five (5) percent contingency. There were no questions, and the following motion was made:

Moved by Commissioner Frith and seconded by Commissioner Zimmerman the Commission award the NAWS SA 98 Pressure Reducing Vault and Isolation Vault Improvements project to Burlington Election pending legal review of the bid documents, and; the SWC allocate \$380,000 in Capital Assets funding for this project from the 2023-2025 allocation to the NAWS project.

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

Contract SA 97 – Pressurization of Main Transmission Line

Johnson stated after reviewing the bid that was received for Contract SA 97, it was rejected due to excessive cost and lack of competitive bids. DWR staff discussed a simplified scope of pressure testing with the NAWS 2-1E Discharge Pipeline contractor to conduct additional pressure testing in conjunction with the pressure testing they are

required to perform on the pipeline segment they are constructing utilizing the same testing protocols. Due to the unknowns associated with the potential for leak detection and repair if any leaks occur, the work would be conducted on a time and materials basis. The contractor has provided a rate sheet for equipment and labor, and an approximate estimate for the cost to conduct the pressure testing work. That estimated cost is still significantly higher than anticipated, so pressure testing of the main transmission line will not be pursued this fall. A close-interval survey of cathodic protection system of the main transmission pipeline is planned this fall. With the potential to identify areas of concern on the main transmission line using the close interval survey, DWR staff anticipates refining the scope of pressure testing needed on the main transmission line and rebidding the project this winter/spring.

NAWS Water Rate 2025

Johnson stated the NAWS water service agreements require an annual review and adjustment of water rates which will go into effect January 1 of the following year. The NAWS water rates comprised of capital costs, supply and treatment (S&T) costs, operation and maintenance (O&M) costs, and reserve for replacements and extraordinary maintenance (REM). The water rate for City of Minot is comprised of an O&M rate and the REM rate. The water rate for the NAWS contract customers includes O&M rate, REM rate, and S&T rate. The S&T rate from City of Minot and the NAWS O&M rate took a significant jump from 2023 to 2024. The recent actual costs are not reflecting the historical trends and that requires detailed research into projected expenses. The analysis needed for determining the 2025 NAWS rate is expected to be completed in the next couple of months and the recommendation for approval will be presented at the December State Water Commission meeting.

Consent Agenda

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

General Water

| | | |
|--------------------|------------------------------------|-----------|
| Maple River WRD | Maple River Low Head Dam (Dam 227) | \$178,875 |
| Southeast Cass WRD | Wild Rice River Low Head Dam | \$209,625 |
| McLean County WRD | Katz Dam Improvement Construction | \$136,466 |

Water Supply (Municipal/Regional)

| | | |
|-------------------|--|-----------|
| City of Jamestown | 2025 Water Main Replacement | \$168,000 |
| City of Colfax | Supply Treated Water Transmission Line | \$368,813 |

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

Moved by Commissioner Walker and seconded by Commissioner Zimmerman the Commission approve the Consent Agenda items as presented.

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

State Cost-Share Requests

General Water

Franklund presented the following request for general water projects.

**Ward County WRD: Ward County Low Head Dams Construction \$1,102,814
(SWC Project No. 1313)**

The Water County WRD requests construction cost-share for their Ward County Low Head Dams construction project. The purpose of the project is to mitigate the public dangers associated with low head dam roller effects at Ward County Dam 1, and Eastside Estates Dams 1, 2, and 3. At each dam, construction will include modifying the existing sheet pile, placing riprap on the upstream and downstream portion of the structure, and pouring a concrete cap over the sloped riprap. All four (4) dams are on the Mouse River and are listed on DWR's Low-Head Dam Prioritization Inventory.

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

Moved by Commissioner Odermann and seconded by Commissioner Anderson the Commission approve the request from the Ward County Water Resource District for state cost participation in the Ward County Low Head Dams construction project at 75 percent of eligible costs, not to exceed \$1,102,814. This approval is contingent on available funding.

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

Water Supply (Municipal/Regional)

Julie Prescott, DWR Engineer Manager, presented the following municipal/regional water supply projects.

**City of Minot: University Avenue Water Main Replacement \$1,827,757
(SWC Project No. 2050MIN)**

The City of Minot is requesting construction cost-share for their University Avenue Water Main Replacement project. The project is replacement of 5,620 feet of aging cast iron water main along University Avenue, 9th Street NW, 10th Street NW, 11th Street NW, and 10th Avenue NW in Minot. Construction has started on the project; however, costs already incurred prior to any approval will not be considered eligible for cost-share reimbursement.

This project meets requirements of the Water Commission's cost-share policy for municipal water supply projects. After discussion, the following motion was made:

Moved by Commissioner Zimmerman and seconded by Commissioner Volk the Commission approve the request from the City of Minot for state cost-share participation in the University Avenue project in the amount of \$1,827,757, or 60 percent of eligible costs, with the total cost-share not to exceed \$1,936,237. This approval is contingent on available funding.

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

City of Minot: Westfield Water Main Replacement **\$2,341,417**
(SWC Project No. 2050MIN)

The City of Minot is requesting construction cost-share for their Westfield Water Main Replacement project. The project is replacement of 6,400 feet of aging cast iron water main along 18th Street SW, 22nd Street SW, 25th Street SW, 1st Avenue SW, Westfield Avenue, and Westfield Circle in the Westfield Addition area of Minot. Construction has started on the project, however; costs already incurred prior to any approval will not be considered eligible for cost-share reimbursement.

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:

Moved by Commissioner Frith and seconded by Commissioner Volk the Commission approve the request from the City of Minot for state cost-share participation in the Westfield Water Main Replacement project in the amount of \$2,341,417, or 60 percent of eligible costs, with total cost-share not to exceed \$2,449,897. This approval is contingent on available funding.

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

Water Supply (Rural)

Prescott presented the following rural water supply project.

Southeast Water Users District: West WTP Improvements **\$2,442,987**
(SWC Project No. 2050SOU)

Southeast Water Users District is requesting cost-share for their West Water Treatment Plant Improvement project. The project will include the construction of three (3) new wells in the existing wellfield and a 500,000-gallon ground storage reservoir at the water treatment plant.

This project meets requirements of the Water Commission's cost-share policy for rural water supply projects. After discussion, the following motion was made:

Moved by Commissioner Zimmerman and seconded by Commissioner Frith the Commission approve the request from the Southeast Water Users District for state cost-share participation in the West Water Treatment Plant Improvement project in the amount of \$2,442,987, or 75 percent of eligible costs, with total cost-share not to exceed \$3,520,257. This approval is contingent on available funding.

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

Project Updates

DWR staff provided updates on the following projects:

- Devils Lake: Yaping Chi, Water Resources Engineer
- Mouse River: Laura Ackerman, Water Resource Engineer
- Missouri River: Clay Carufel, Missouri River Engineer
- NAWS: Travis Johnson, NAWS Project Manager
- SWPP: Justin Froseth, SWPP Manager
- 2025 Water Development Plan: Cory Drevecky

Legal Update

Matthew Sagsveen, General Counsel, Attorney General's Office, provided an update on current legal matters involving the SWC and DWR.

SWPP Intake – Contract 1-2A Summary

Froseth provided a brief project history, summary of claim related expenses, projections through September 2024, and overall expenditures towards the SWPP Supplementary Intake project. Recommendation to approve an additional \$40,000 towards mediation expenses was also presented. There were no questions, and the following motion was made:

Moved by Commissioner Frith and seconded by Commissioner Walker the Commission approve an additional \$40,000 for the total authorized to date amount to \$2.71 million towards claim related expenses for the SWPP Contract 1-2A.

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

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 further discussion relating to the SWPP/Fowler Intake 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

Doug Goehring, Commissioner, ND Agriculture Commissioner

Michael Anderson, Lower Red River Basin

Jeff Frith, Devils Lake Basin

James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins

Jay Volk, Lower Missouri River Basin

April Walker, Upper Red River Basin

Jason Zimmerman, Mouse River Basin

Others Present:

Dr. Andrea Travnicek, DWR Director and Commission Secretary
John Paczkowski, DWR State Engineer
Matthew Sagsveen, General Counsel, Attorney General's Office
Anine Merkens, Attorney General's Office
Sindhuja S.Pillai-Grinolds, DWR Water Development Division Director
Justin Froseth, Southwest Pipeline Project Manager
Sarah Felchle, DWR Account/Budget Specialist
Abby Ebach, DWR Director of Public Policy
Kelli Schroeder, DWR Program Manager
Shana Brost, Administrative Officer
Ben Gehrig, DWR Data & Technology Services
John Reiten, Policy Advisor, Governor's Office
Mark Becker, Fabyanske, Westra, Hart & Thomson, P.A. (online)
Elise Radaj, Fabyanske, Westra, Hart & Thomson, P.A. (online)

Moved by Commissioner Anderson and seconded by Commissioner Frith that under the provision of NDCC § 44-04-19.1(9), the Commission proceed into Executive Session on October 10, 2024, at 3:27 PM for the purpose of attorney consultation relating to the Southwest Pipeline Project/Fowler Intake—Contract 1-2A.

Commissioners Anderson, Frith, Odermann, 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 4:33 PM.

Executive Session

Under Authority of NDCC § 44-04-19.1(2) and 44-04-19.1(5) for Attorney Client Consultation regarding Cost-Share Program—Violations

It was the recommendation of Lt. Governor Miller that further discussion relating to the Cost-Share Program—Violations be held in Executive Session, under the provisions of NDCC § 44-04-19.1(2) 44-04-19.1(5), 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
Jeff Frith, Devils Lake Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Jay Volk, Lower Missouri River Basin
April Walker, Upper Red River Basin
Jason Zimmerman, Mouse River Basin

Others Present:

Dr. Andrea Travnicek, DWR Director and Commission Secretary
John Paczkowski, DWR State Engineer

Matthew Sagsveen, General Counsel, Attorney General's Office
Anine Merkens, Attorney General's Office
Pat Fridgen, DWR Planning & Education Division Director
Duane Pool, Resource Economist
Abigail Franklund, DWR Cost-Share Program Manager
Kelli Schroeder, DWR Program Manager
Shana Brost, Administrative Officer
Ben Gehrig, DWR Data & Technology Services
John Reiten, Policy Advisor, Governor's Office

Moved by Commissioner Volk and seconded by Commissioner Anderson that under the provision of NDCC § 44-04-19.1(2) and 44-04-19.1(5), the Commission proceed into Executive Session on October 10, 2024, at 4:36 PM for the purpose of attorney consultation relating to the Cost-Share Program—Violations.

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

Following attorney consultation regarding the Cost-Share Program—Violations, Lt. Governor Miller reconvened the open session of the Commission meeting at 4:43 PM.

There being no further business to come before the Commission, Lt. Governor Miller adjourned the October 10, 2024, meeting at 4:44 PM. The next State Water Commission meeting will be held on December 13, 2024, at 9:00 AM CT at the Bismarck Hotel and Conference Center, Grand Pacific Room, 800 S 3rd Street, Bismarck, North Dakota.



Tammy Miller, Lieutenant Governor
Acting Chairman, State Water Commission



Andrea Travnicek, Ph.D.
Director, DWR, and 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.

OIL EXTRACTION REVENUE
FOR THE 2023 - 2025 BIENNIUM

| MONTH / YEAR | PROJECTED | | | | ACTUAL | | | | | |
|------------------------|----------------------|---|--------------------------------------|---------------------------------------|----------------------|-------------|---|--|--|---|
| | REVENUE | ENERGY CONS. ¹ ALLOCATION | RENEWABLE ¹ ALLOCATION | RESOURCES TRUST FUND ALLOCATION | REVENUE | CUMULATIVE | TRANSFERS TO ¹ ENERGY CONS. | TRANSFERS TO ¹ RENEWABLE | RESOURCES TRUST FUND NET DEPOSIT | TRANSFERS TO ² WATER PROJECTS STABILIZATION FUND |
| AUGUST, 2023 | \$19,607,811 | \$98,039 | \$588,234 | \$18,921,538 | \$17,438,367 | 17,438,367 | \$87,192 | \$523,151 | \$16,828,025 | \$0 |
| SEPTEMBER, 2023 | 20,261,405 | 101,307 | 607,842 | 19,552,256 | 19,897,352 | 37,335,720 | 99,487 | 596,921 | 19,200,945 | 0 |
| OCTOBER, 2023 | 20,261,405 | 101,307 | 607,842 | 19,552,256 | 22,030,025 | 59,365,744 | 110,150 | 660,901 | 21,258,974 | 0 |
| NOVEMBER, 2023 | 19,607,811 | 98,039 | 588,234 | 18,921,538 | 25,681,608 | 85,047,352 | 128,408 | 770,448 | 24,782,752 | 5,308,920 |
| DECEMBER, 2023 | 20,261,405 | 101,307 | 607,842 | 19,552,256 | 24,757,068 | 109,804,421 | 123,785 | 448,579 | 24,184,704 | 4,495,663 |
| JANUARY, 2024 | 19,607,811 | 98,039 | 6 | 19,509,766 | 24,074,426 | 133,878,847 | 120,372 | | 23,954,054 | 4,466,615 |
| FEBRUARY, 2024 | 20,261,405 | 101,307 | | 20,160,098 | 19,707,741 | 153,586,588 | 98,539 | | 19,609,202 | (553,664) |
| MARCH, 2024 | 20,261,405 | 101,307 | | 20,160,098 | 17,937,246 | 17,937,246 | 89,686 | | 17,847,560 | (2,324,159) |
| APRIL, 2024 | 18,300,624 | 91,503 | | 18,209,121 | 19,221,776 | 19,221,776 | 96,109 | | 19,125,667 | 921,152 |
| MAY, 2024 | 20,261,405 | 101,307 | | 20,160,098 | 22,520,865 | 22,520,865 | 112,604 | | 22,408,260 | 2,259,460 |
| JUNE, 2024 | 19,607,811 | 98,039 | | 19,509,772 | 22,609,462 | 22,609,462 | 113,047 | | 22,496,414 | 3,001,651 |
| JULY, 2024 | 20,261,405 | 101,307 | | 20,160,098 | 20,403,558 | 20,403,558 | 20,620 | | 20,382,938 | 142,153 |
| AUGUST, 2024 | 17,366,918 | 7,192 | | 17,359,726 | 19,772,137 | 19,772,137 | | | 19,772,137 | 2,405,219 |
| SEPTEMBER, 2024 | 17,945,816 | | | 17,945,816 | 20,157,498 | 20,157,498 | | | 20,157,498 | 2,211,682 |
| OCTOBER, 2024 | 17,945,816 | | | 17,945,816 | | | | | | |
| NOVEMBER, 2024 | 17,366,918 | | | 17,366,918 | | | | | | |
| DECEMBER, 2024 | 17,945,816 | | | 17,945,816 | | | | | | |
| JANUARY, 2025 | 17,366,918 | | | 17,366,918 | | | | | | |
| FEBRUARY, 2025 | 17,945,816 | | | 17,945,816 | | | | | | |
| MARCH, 2025 | 17,945,816 | | | 17,945,816 | | | | | | |
| APRIL, 2025 | 16,209,124 | | | 16,209,124 | | | | | | |
| MAY, 2025 | 17,945,816 | | | 17,945,816 | | | | | | |
| JUNE, 2025 | 17,366,918 | | | 17,366,918 | | | | | | |
| JULY 2025-JUNE REVENUE | 17,945,816 | | | 17,945,816 | | | | | | |
| TOTALS | \$449,859,211 | \$1,200,000 | \$3,000,000 | \$445,659,211 | \$296,209,129 | | \$1,200,000 | \$3,000,000 | \$292,009,129 | \$22,334,692 |

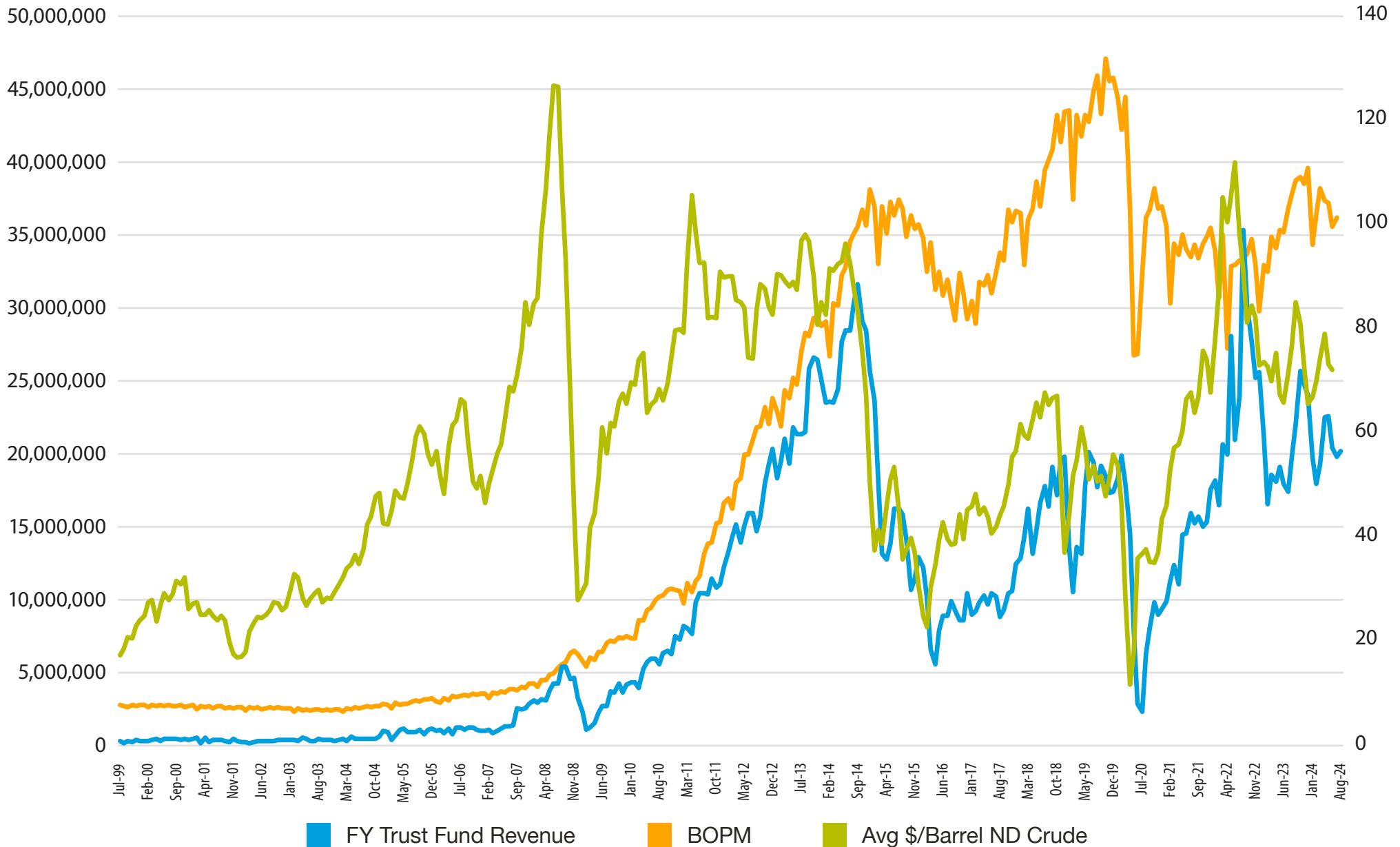
¹ Transfers to the renewable energy development fund and the energy conservation grant fund are established in North Dakota Century Code Section 57-51.1-07.

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

RESOURCES TRUST FUND REVENUE

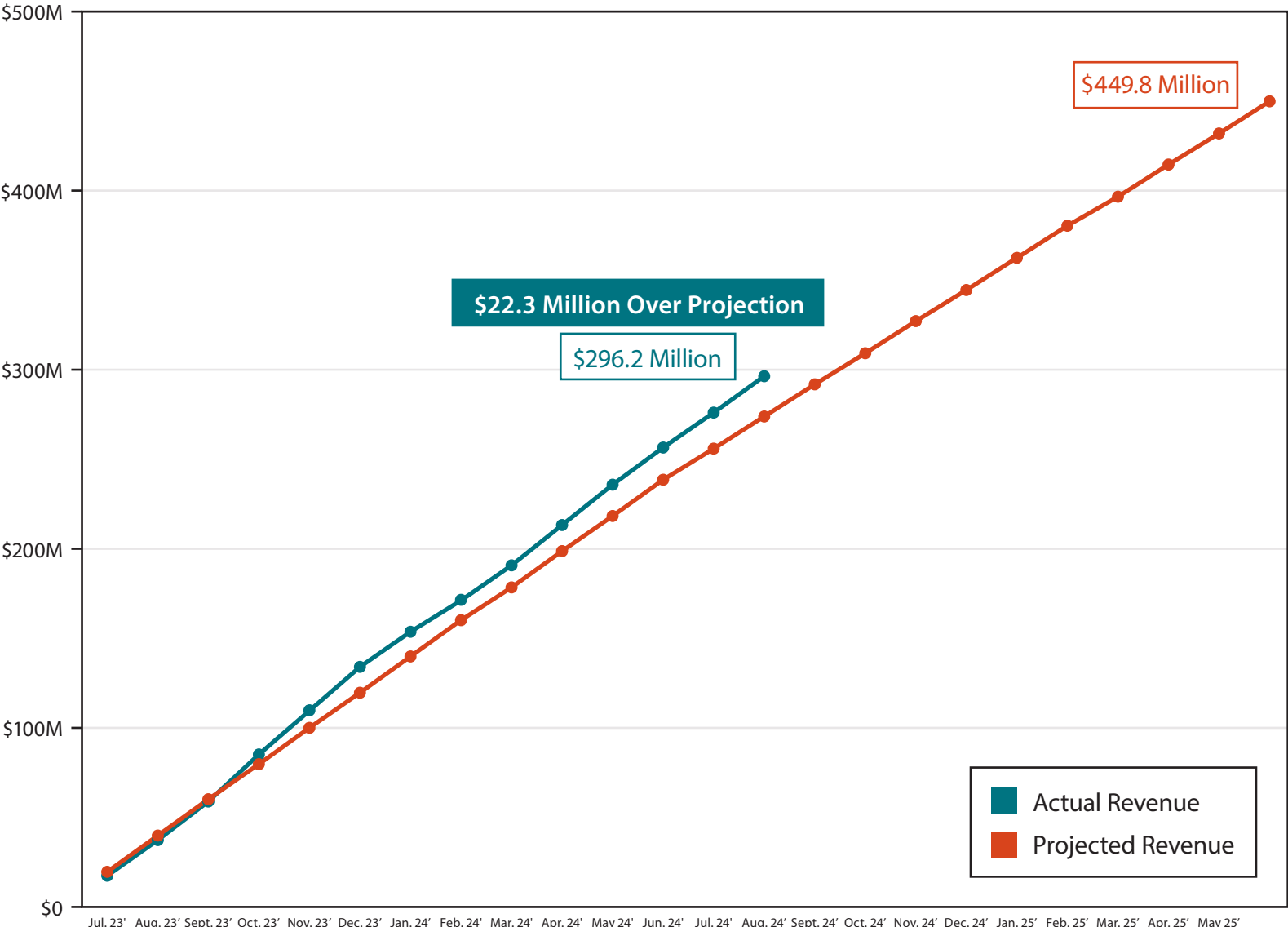
JULY 2004-AUGUST 2024

NORTH DAKOTA OIL PRODUCTION & RESOURCES TRUST FUND REVENUE

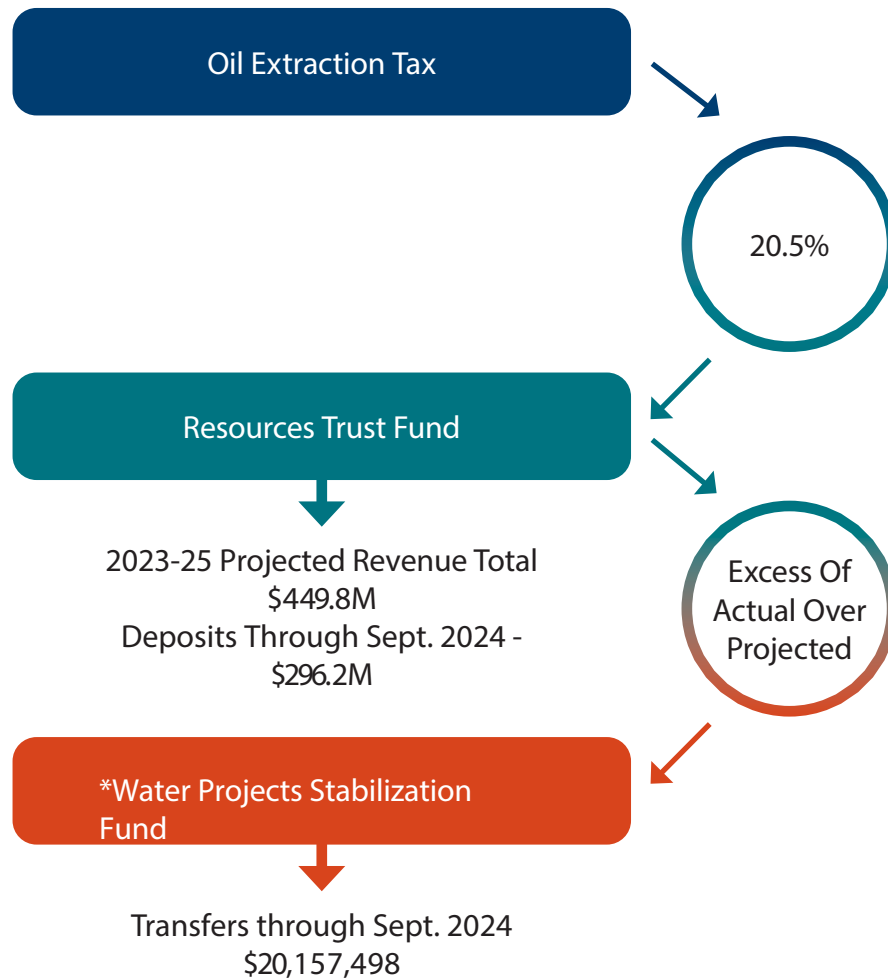


RESOURCES TRUST FUND REVENUE

2023-2025 (Cumulative) | September 2024



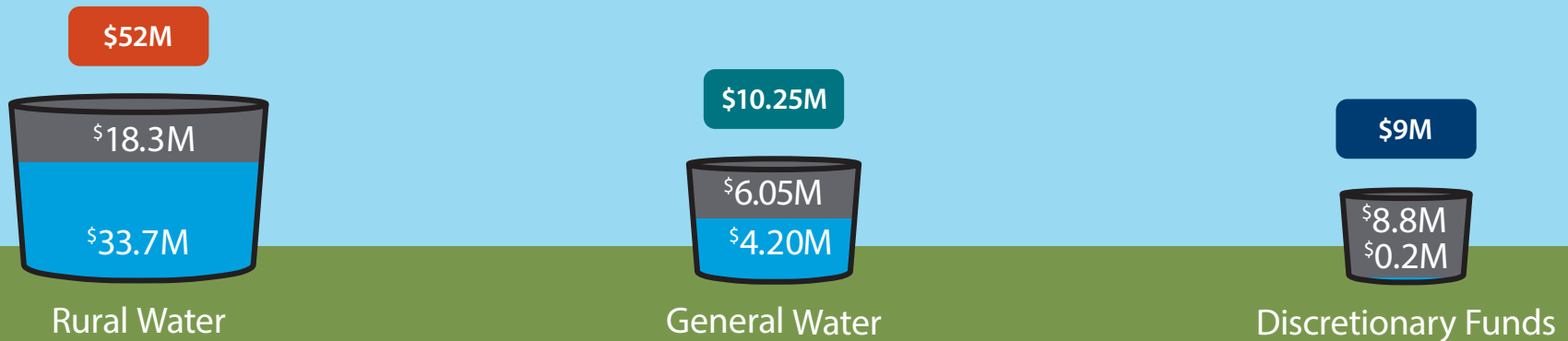
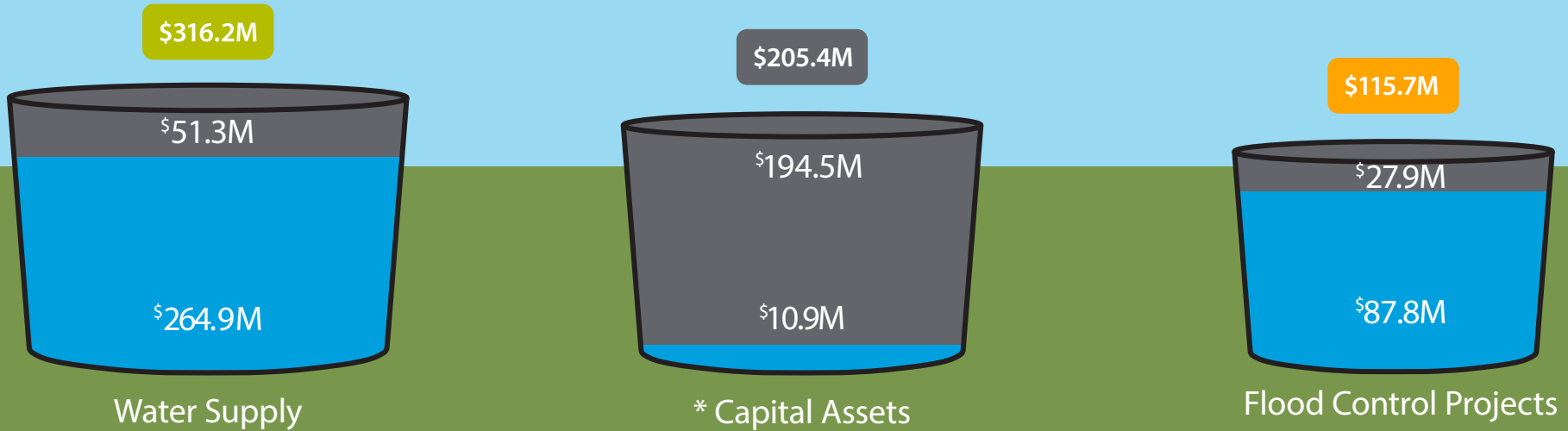
RESOURCES TRUST FUND REVENUE



*Authorized in Sections 5-7 of Senate Bill 2020 during the November special session.

2023-25 PURPOSE FUNDING

JULY 2023-SEPTEMBER 2024



APPROVED

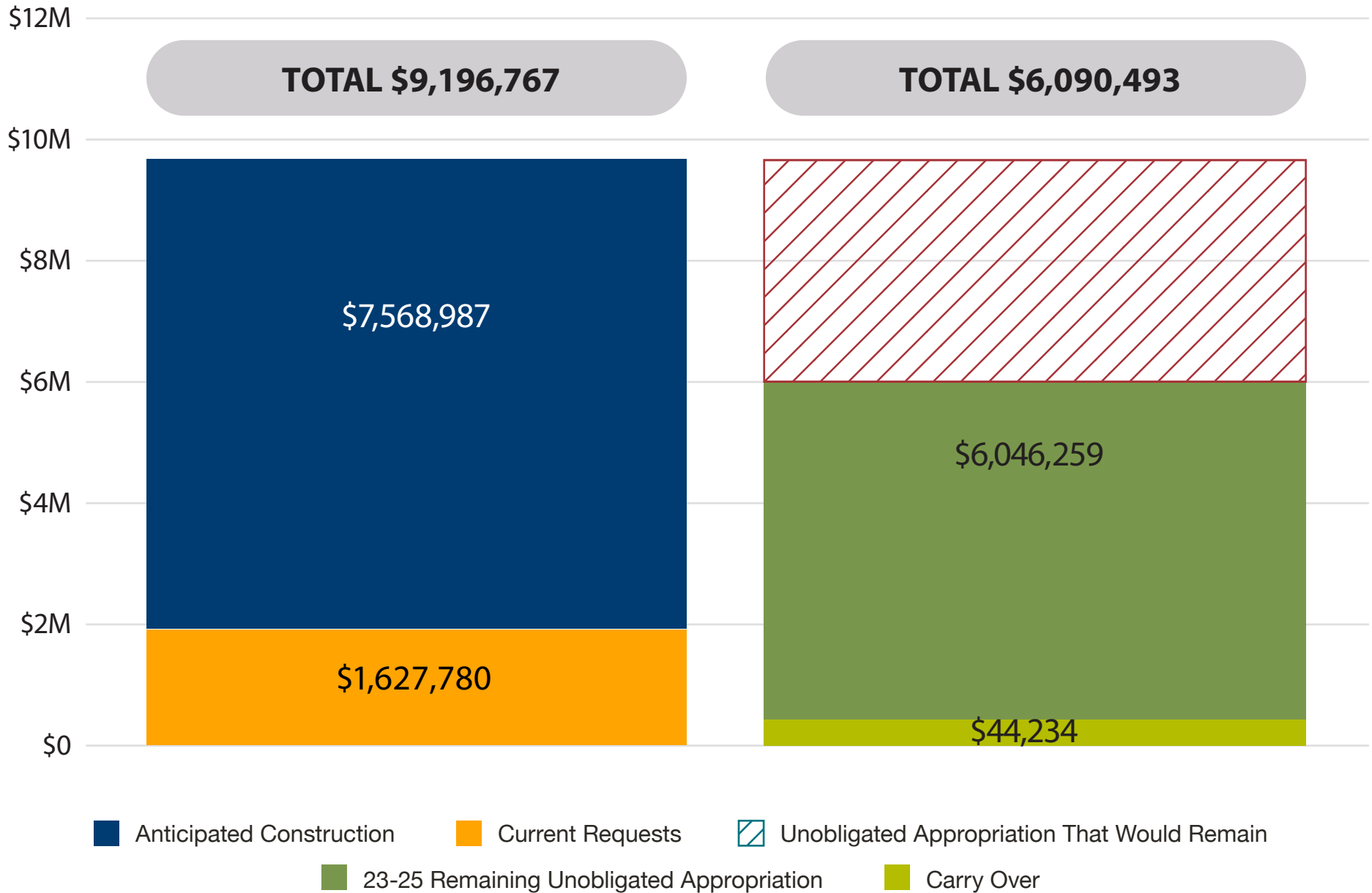
UNOBLIGATED

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

2023-25 PURPOSE FUNDING

JULY 2023-SEPTEMBER 2024

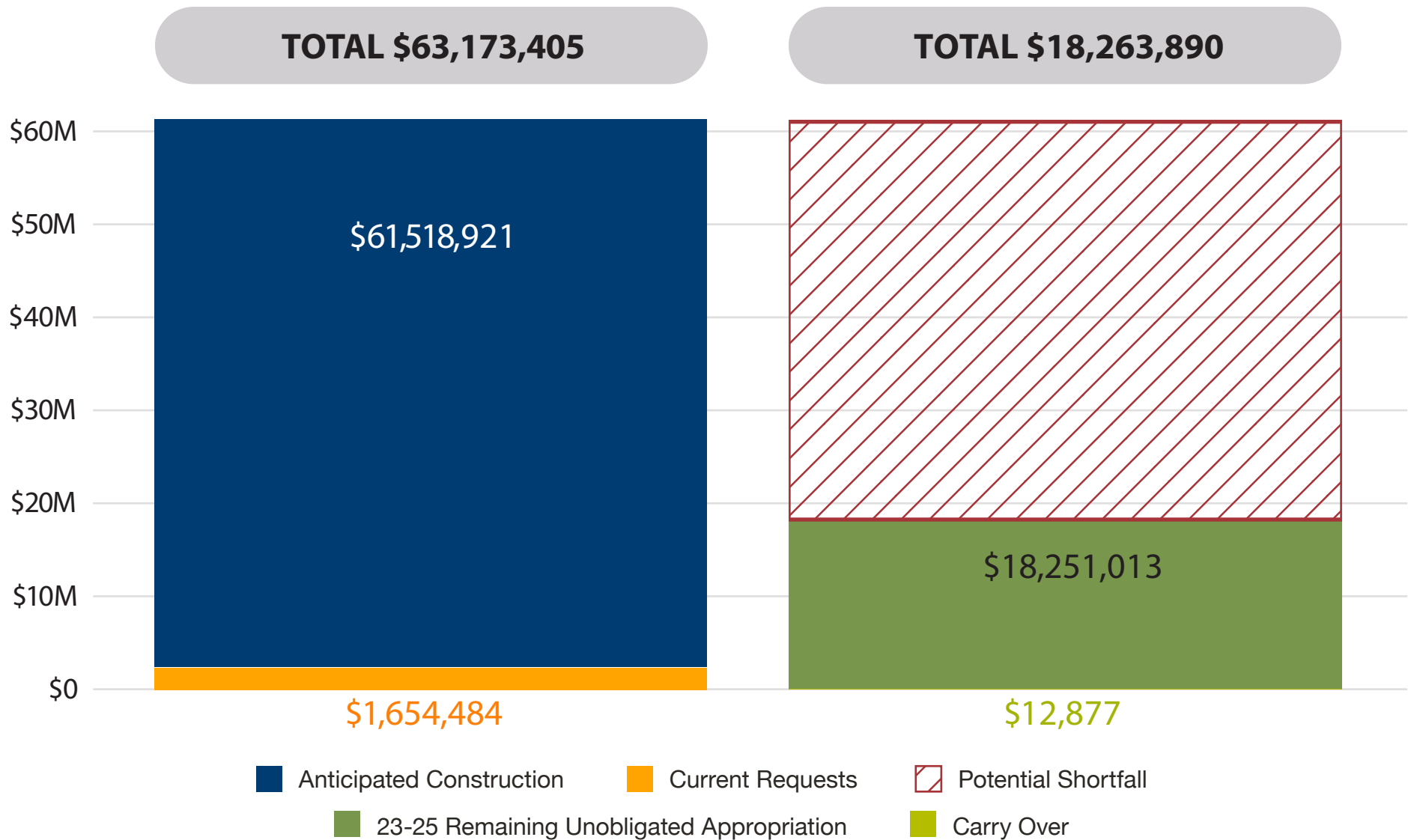
GENERAL WATER



2023-25 PURPOSE FUNDING

JULY 2023-SEPTEMBER 2024

RURAL WATER



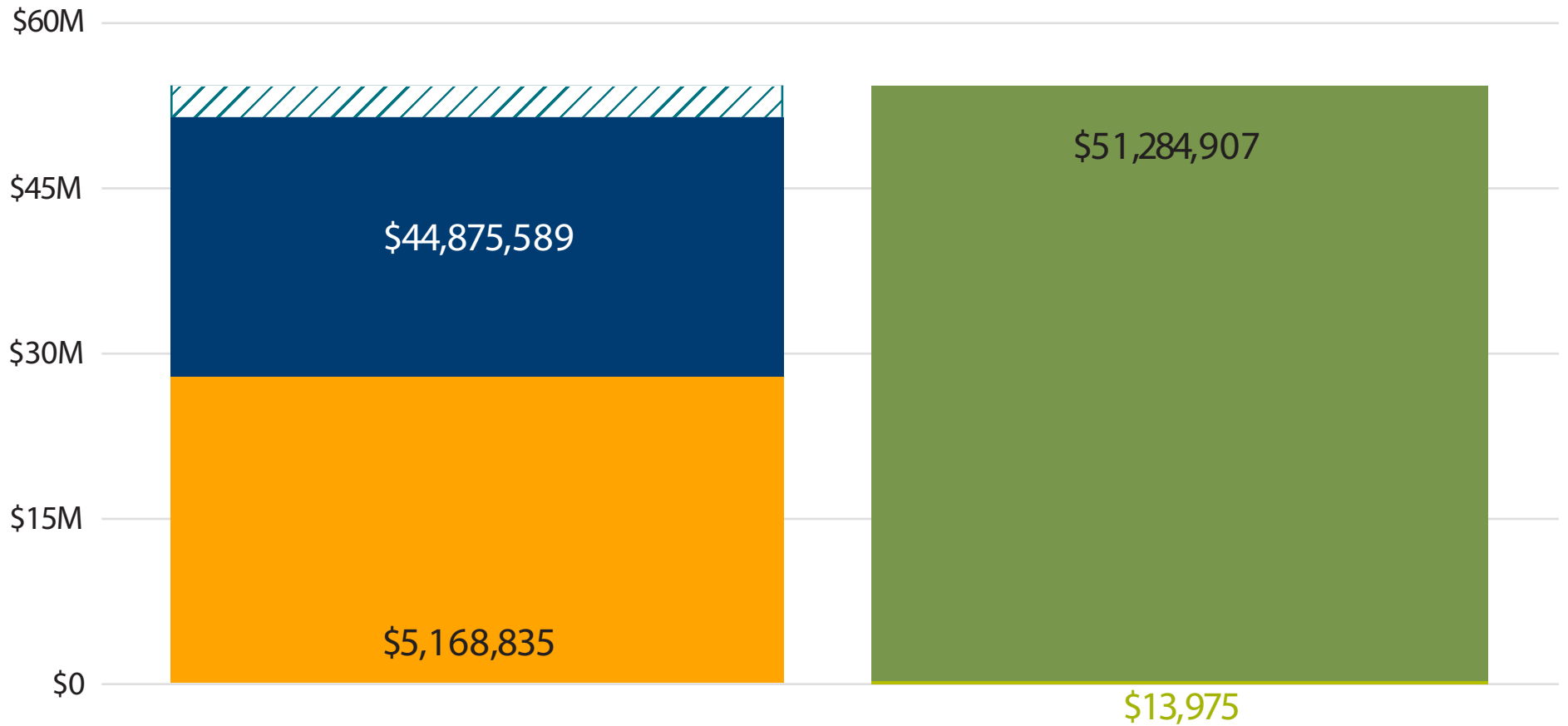
2023-25 PURPOSE FUNDING

JULY 2023-SEPTEMBER 2024

WATER SUPPLY

TOTAL \$50,044,424

TOTAL \$51,298,882



- Anticipated Construction
- Current Requests
- Unobligated Appropriation That Would Remain
- 23-25 Remaining Unobligated Appropriation
- Carry Over

**PURPOSE FUNDING SUMMARY
State Water Commission Cost-Share
for October 10, 2024**

| | |
|---|--|
| 2023-2025 Unobligated Appropriation 09-30-24 | Carryover Turnback 06-30-23 |
|---|--|

| | | | | |
|----------------------|--|---------------------------------------|---------------|--------------|
| Flood Control | | Unobligated Appropriation | \$ 27,949,081 | \$ 1,727,345 |
| | | Cost-Share | | |
| 1 | | | | |
| | | Current Requests | \$ - | \$ - |
| | | Estimated Unobligated Appropriation = | \$ 27,949,081 | \$ 1,727,345 |

| | | | | |
|----------------------|---|---|--------------|-----------|
| General Water | | Unobligated Appropriation | \$ 6,046,259 | \$ 44,234 |
| | | Cost-Share | | |
| Pre/Construction | 1 | Maple River WRD: Maple River Low Head Dam (Dam 227) | \$ 178,875 | |
| Pre/Construction | 2 | Southeast Cass WRD: Wild Rice River Low Head Dam | \$ 209,625 | |
| Construction | 3 | McLean County WRD: Katz Dam Improvement Construction | \$ 136,466 | |
| Construction | 4 | Ward County WRD: Ward County Low Head Dams Construction | \$ 1,102,814 | |
| | | Current Requests | \$ 1,627,780 | \$ - |
| | | Estimated Unobligated Appropriation = | \$ 4,418,479 | \$ 44,234 |

| | | | | |
|---------------------|---|---|---------------|-----------|
| Water Supply | | Unobligated Appropriation | \$ 51,284,907 | \$ 13,975 |
| | | Cost-Share | | |
| Pre/Construction | 1 | City of Jamestown: 2025 Water Main Replacement | \$ 168,000 | |
| Pre/Construction | 2 | City of Mandan: 2025 Street Rehabilitation | \$ 216,974 | |
| Construction | 3 | City of Colfax: Supply Treated Water Transmission Line | \$ 614,687 | |
| Construction | 4 | City of Minot: University Avenue Water Main Replacement | \$ 1,827,757 | |
| Construction | 5 | City of Minot: Westfield Water Main Replacement | \$ 2,341,417 | |
| | | Current Requests | \$ 5,168,835 | \$ - |
| | | Estimated Unobligated Appropriation = | \$ 46,116,072 | \$ 13,975 |

| | | | | |
|--------------------|---|---|---------------|-----------|
| Rural Water | | Unobligated Appropriation | \$ 18,251,013 | \$ 12,877 |
| | | Cost-Share | | |
| Construction | 1 | Southeast Water Users District: West WTP Improvements | \$ 1,654,484 | |
| | | Current Requests | \$ 1,654,484 | \$ - |
| | | Estimated Unobligated Appropriation = | \$ 16,596,529 | \$ 12,877 |

| | | | | |
|----------------------|--|---------------------------------------|--------------|--------------|
| Discretionary | | Unobligated Appropriation | \$ 8,768,861 | \$ 3,506,441 |
| | | Cost-Share | | |
| 1 | | | | |
| | | Current Requests | \$ - | \$ - |
| | | Estimated Unobligated Appropriation = | \$ 8,768,861 | \$ 3,506,441 |

**PURPOSE FUNDING SUMMARY
State Water Commission Cost-Share
for October 10, 2024**

| | |
|---|--|
| 2023-2025 Unobligated Appropriation 09-30-24 | Carryover Turnback 06-30-23 |
|---|--|

| | | | | |
|-----------------------|--|--|----------------|--------------|
| Capital Assets | | Unobligated Appropriation | \$ 260,200,000 | \$ 4,171,797 |
| SWPP | | Cost-Share | | |
| 1 | | | | |
| 2 | | | | |
| | | Current Requests | \$ - | |
| NAWS | | | | |
| 1 | | | | |
| 2 | | | | |
| | | Current Requests | \$ - | |
| | | Capital Assets Current Requests | \$ - | |
| | | Less line of credit | \$ 100,000,000 | |
| | | Anticipated Unobligated Appropriation Capital Assets = | \$ 160,200,000 | |

| | | |
|--|----------------|--------------|
| 2023-2025 Unobligated Appropriation for Purpose and Capital Assets | \$ 372,500,121 | \$ 9,476,670 |
| Current Requests | \$ 8,451,099 | \$ - |
| 2023-2025 Anticipated Unobligated Appropriation = | \$ 364,049,022 | |

**DEPARTMENT OF WATER RESOURCES
PROJECT SUMMARY
2023-2025 BIENNIUM**

September 23, 2024


| | 2021-2023 CARRYOVER | 2023-2025 APPROPRIATION | TOTAL | SWC/Secretary APPROVED | UNOBLIGATED APPROPRIATION |
|---|------------------------|----------------------------|----------------------|---------------------------|------------------------------|
| MUNICIPAL & REGIONAL WATER SUPPLY: | | | | | |
| MUNICIPAL WATER SUPPLY | 53,007,838 | 76,351,388 | 129,359,226 | 129,359,226 | 0 |
| RED RIVER VALLEY | 38,269,022 | 180,000,000 | 218,269,022 | 218,269,022 | 0 |
| OTHER REGIONAL WATER SUPPLY | 27,300,734 | 8,563,705 | 35,864,439 | 35,864,439 | 0 |
| UNOBLIGATED MUNICIPAL/REG WATER SUPPLY | 13,975 | 51,284,907 | 51,298,882 | | 51,298,882 |
| Total | 118,591,570 | 316,200,000 | 434,791,570 | 383,492,687 | 51,298,882 |
| % OBLIGATED | | 84% | | | |
| RURAL WATER SUPPLY: | | | | | |
| RURAL WATER SUPPLY | 55,311,784 | 33,748,987 | 89,060,771 | 89,060,771 | 0 |
| UNOBLIGATED RURAL WATER SUPPLY | 12,877 | 18,251,013 | 18,263,890 | | 18,263,890 |
| Total | 55,324,661 | 52,000,000 | 107,324,661 | 89,060,771 | 18,263,890 |
| % OBLIGATED | | 1 | | | |
| FLOOD CONTROL: | | | | | |
| FARGO | 0 | 0 | 0 | 0 | 0 |
| MOUSE RIVER | 9,425,991 | 76,100,000 | 85,525,991 | 85,525,991 | 0 |
| MOUSE RIVER HB1431 BOND PROCEEDS | 64,354,625 | 0 | 64,354,625 | 64,354,625 | 0 |
| VALLEY CITY | 10,072,490 | 0 | 10,072,490 | 10,072,490 | 0 |
| LISBON | 259,160 | 0 | 259,160 | 259,160 | 0 |
| OTHER FLOOD CONTROL | 8,851,041 | 1,577,022 | 10,428,063 | 10,428,063 | 0 |
| PROPERTY ACQUISITIONS | 57,573 | 9,750,000 | 9,807,573 | 9,807,573 | 0 |
| WATER CONVEYANCE | 9,073,430 | 323,897 | 9,397,327 | 9,397,327 | 0 |
| UNOBLIGATED FLOOD CONTROL | 1,727,345 | 27,949,081 | 29,676,426 | | 29,676,426 |
| Total | 103,821,656 | 115,700,000 | 219,521,656 | 189,845,230 | 29,676,426 |
| % OBLIGATED | | 3 | | | |
| GENERAL WATER: | | | | | |
| GENERAL WATER | 11,586,611 | 4,203,741 | 15,790,352 | 15,790,352 | 0 |
| UNOBLIGATED GENERAL WATER | 44,234 | 6,046,259 | 6,090,493 | | 6,090,493 |
| Total | 11,630,845 | 10,250,000 | 21,880,845 | 15,790,352 | 6,090,493 |
| % OBLIGATED | | 0 | | | |
| SUBTOTAL | 289,368,732 | 494,150,000 | 783,518,732 | 678,189,040 | 105,329,692 |
| CAPITAL ASSETS: | | | | | |
| SWPP CAPITAL ASSETS | 19,928,592 | 0 | 19,928,592 | 19,928,592 | 0 |
| NAWS CAPITAL ASSETS | 36,181,771 | 10,700,000 | 46,881,771 | 46,881,771 | 0 |
| DEVILS LAKE OUTLET | | 200,000 | 200,000 | 200,000 | 0 |
| UNOBLIGATED CAPITAL ASSETS | 4,171,797 | 260,200,000 | 264,371,797 | | 264,371,797 |
| Total | 60,282,160 | 271,100,000 | 331,382,160 | 67,010,363 | 264,371,797 |
| % OBLIGATED | | 4% | | | |
| DISCRETIONARY FUNDING: | | | | | |
| DISCRETIONARY FUNDING PROJECTS | 2,096,564 | 231,139 | 2,327,703 | 2,327,703 | 0 |
| UNOBLIGATED DISCRETIONARY FUNDS | 3,506,441 | 8,768,861 | 12,275,302 | | 12,275,302 |
| Total | 5,603,005 | 9,000,000 | 14,603,005 | 2,327,703 | 12,275,302 |
| % OBLIGATED | | 3% | | | |
| BASINWIDE PLAN IMPLEMENTATION: | | | | | |
| BASINWIDE PLAN IMPLEMENTATION | 773,787 | 0 | 773,787 | 773,787 | 0 |
| UNOBLIGATED BASINWIDE PLAN IMPLEMENTATION FUNDS | 0 | 0 | 0 | | 0 |
| Total | 773,787 | 0 | 773,787 | 773,787 | 0 |
| % OBLIGATED | | 0% | | | |
| STATE FISCAL RECOVERY FUND: | | | | | |
| STATE FISCAL RECOVERY FUNDS - SB 2345 | 10,972,317 | 0 | 10,972,317 | 10,972,317 | 0 |
| UNOBLIGATED STATE FISCAL RECOVERY FUNDS | 0 | 0 | 0.00 | | 0 |
| Total | 10,972,317 | 0 | 10,972,317 | 10,972,317 | 0 |
| % OBLIGATED | | 0% | | | |
| TOTAL | 367,000,000 | 774,250,000 | 1,141,250,001 | 759,273,210 | 381,976,790 |

**DEPARTMENT OF WATER RESOURCES
PROJECT SUMMARY
2023-2025 BIENNIUM**

Sep-24

| | SWC/Secretary APPROVED | EXPENDITURES | UNPAID APPROVALS |
|---|---------------------------|--------------------|---------------------|
| MUNICIPAL & REGIONAL WATER SUPPLY: | | | |
| MUNICIPAL WATER SUPPLY | 129,359,226 | 35,874,143 | 93,485,083 |
| RED RIVER VALLEY | 218,269,022 | 42,237,133 | 176,031,889 |
| OTHER REGIONAL WATER SUPPLY | 35,864,439 | 12,853,419 | 23,011,020 |
| TOTAL | 383,492,687 | 90,964,694 | 292,527,993 |
| RURAL WATER SUPPLY: | | | |
| RURAL WATER SUPPLY | 89,060,771 | 38,557,561 | 50,503,210 |
| FLOOD CONTROL: | | | |
| FARGO | 0 | 0 | 0 |
| MOUSE RIVER | 85,525,991 | 3,059,145 | 82,466,846 |
| MOUSE RIVER HB1431 | 64,354,625 | 27,357,662 | 36,996,964 |
| VALLEY CITY | 10,072,490 | 157,005 | 9,915,485 |
| LISBON | 259,160 | 4,500 | 254,660 |
| OTHER FLOOD CONTROL | 10,428,063 | 2,124,948 | 8,303,115 |
| PROPERTY ACQUISITIONS | 9,807,573 | 57,573 | 9,750,000 |
| WATER CONVEYANCE | 9,397,327 | 4,287,866 | 5,109,461 |
| TOTAL | 189,845,230 | 37,048,699 | 152,796,531 |
| GENERAL WATER: | | | |
| GENERAL WATER | 15,790,352 | 3,627,871 | 12,162,481 |
| SUBTOTAL | 678,189,040 | 170,198,826 | 507,990,214 |
| CAPITAL ASSETS: | | | |
| SWPP CAPITAL ASSETS | 19,928,592 | 5,487,367 | 14,441,224 |
| NAWS CAPITAL ASSETS | 46,881,771 | 10,124,034 | 36,757,738 |
| DEVILS LAKE OUTLET | 200,000 | 27,963 | 172,037 |
| TOTAL | 67,010,363 | 15,639,364 | 51,370,999 |
| DISCRETIONARY FUNDING: | | | |
| DISCRETIONARY FUNDING PROJECTS | 2,327,703 | 55,300 | 2,272,403 |
| BASINWIDE PLAN IMPLEMENTATION: | | | |
| BASINWIDE PLAN IMPLEMENTATION | 773,787 | 223,710 | 550,077 |
| STATE FISCAL RECOVERY FUNDS SB2345 | | | |
| STATE FISCAL RECOVERY FUND PROJECTS | 10,972,317 | 7,049,196 | 3,923,121 |
| TOTALS | 759,273,210 | 193,166,396 | 566,106,814 |

MEMORANDUM

TO: Governor Doug Burgum
Members of the State Water Commission
FROM: Andrea Travnicek, Ph.D., Secretary 
SUBJECT: WebGrants Certifications & Cost-Share Program Policy Modifications
DATE: September 26, 2024

Background

The current State Water Commission Cost-Share Program policy does not address consequences or procedures for actions considered to be violations of either policy or law. An incident in recent months that could be considered a violation brought this policy and Standard Operating Procedure (SOP) shortcoming to light, and as a result, State Water Commission members asked Department of Water Resources (DWR) team members to draft Cost-Share Program protocol to address these types of situations in the future.

As requested, DWR Cost-Share Program team members presented options at the September 12, 2024, Pre-Commission meeting. Options included modifications to WebGrants Certifications, and updates within the Commission's Cost-Share Policy, Procedure, and General Requirements – including new SOPs. Proposed program modifications and language are outlined below and are also attached.

WebGrants Certification Language

New WebGrants certification language is proposed with reference to NDCC 12.1-11-02 (Attached), which outlines criteria for what can be considered false statements, and related legal consequences.

It is an offense to intentionally falsify statements as part of the cost-share application process per NDCC 12.1-11-02. Therefore, I certify that, to the best of my knowledge, the provided information is true and accurate, and in execution of this project, the sponsor will follow all applicable laws and permitting requirements.

I further certify assurance of sustainable operation, maintenance, and replacement of the assets for which we are requesting cost-share.

Cost-Share Policy, Procedure, and General Requirements Language

Within the Commission's Cost-Share Policy, Procedure, and General Requirements, a new "Violations" section is proposed, as well as pre-construction and construction application requirements that include a signed letter from the sponsoring entity acknowledging the cost-share request. In comments received following the September 12, 2024, Pre-Commission meeting, it was suggested to also require a copy of the meeting minutes of the sponsoring entity verifying the sponsor's intention to apply.

SOP language is also proposed for DWR team members and Water Commission members who have professional certifications and ethics violation reporting requirements. In addition, an SOP is proposed to allow for referrals to the State's Attorney when perceived violations warrant such action.

Section 1.2.1 Violations

Applicants, or their representative consultant(s) who have been determined by the Commission to have intentionally provided false statements or information to acquire cost-share funding as part of application or reimbursement processes, will result in the applicant, or their representative consultant(s), being disqualified from participating in the Commission's Cost-Share Program for a minimum of 24 months.

Applicants that have already received Cost-Share Program funding and have been determined by the Commission to have intentionally provided false statements or information to acquire cost-share funding, or used the funding improperly, will have remaining approved funding revoked and previous related payments reimbursed back to the state.

Section 3.4.1 (g) Tier I Pre-Construction Applications

Cover letter acknowledging the cost-share request that is signed by a representative of the sponsoring entity (mayor, board chair, city administrator, district manager, executive director, etc.); and

Section 3.4.2 (i) Tier II Construction Applications

Cover letter acknowledging the cost-share request that is signed by a representative of the sponsoring entity (mayor, board chair, city administrator, district manager, executive director, etc.); and

Standard Operating Procedures (SOP) Program Violations

1. Project sponsors or their representative consultants have engaged in a perceived professional ethics violation,

SOP

- Department staff and Commission members will evaluate reporting requirements to professional boards for which they are responsible, and then notify those boards if required following incidents.
2. Project sponsors or their representative consultants have engaged in a perceived criminal act.

SOP

- In consultation with legal counsel, the Commission will determine if the facts of the incident should be referred to the State's Attorney for review, and if necessary, file a criminal complaint.

I recommend approval of the proposed WebGrants Certification language; Cost-Share Policy, Procedure, and General Requirements language; and the Standard Operating Procedures as provided in this memorandum.

DRAFT WebGrants Certification Language

It is an offense to intentionally falsify statements as part of the cost-share application process per NDCC 12.1-11-02. Therefore, I certify that, to the best of my knowledge, the provided information is true and accurate, and in execution of this project, the sponsor will follow all applicable laws and permitting requirements.

I further certify assurance of sustainable operation, maintenance, and replacement of the assets for which we are requesting cost-share.

1 POLICY STATEMENT

The State Water Commission (Commission) has adopted this policy to support local sponsors in the development of sustainable water related projects in North Dakota. This policy reflects the Commission's cost-share priorities and provides basic requirements for all projects considered for prioritization during the Department of Water Resources' (Department) budgeting process. Projects and studies that receive funding from the Department's appropriated funds are consistent with the public interest. The 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 Commission that only the items described in this document will be eligible for cost-share or loans upon approval by the Commission, unless specifically authorized by Commission action.

1.1 POLICY AUTHORITY

This policy garners authority from North Dakota Century Code (N.D.C.C.) Chapter 61-02 and North Dakota Administrative Code (N.D.A.C.) Title 89. No funds will be used in violation of Article X, § 18 of the North Dakota Constitution (Anti-Gift Clause).

1.2 ACCEPTANCE OR ENFORCEMENT

The Commission reserves the right to change this policy as necessary to ensure the Commission fulfills its statutory duties.

The Commission reserves the right to return any application submitted under this policy to the applicant for correction if the application is not in compliance with the policy's intent or is insufficient for the Commission to make an informed decision.

1.2.1 VIOLATIONS

Applicants, or their representative consultant(s) who have been determined by the Commission to have intentionally provided false statements or information to acquire cost-share funding as part of application or reimbursement processes, will result in the applicant, or their representative consultant(s), being disqualified from participating in the Commission's Cost-Share Program for a minimum of 24 months.

Applicants that have already received Cost-Share Program funding and have been determined by the Commission to have intentionally provided false statements or information to acquire cost-share funding, or used the funding improperly, will have remaining approved funding revoked and previous related payments reimbursed back to the state.

1.3 APPEALS

Decisions may be appealed at the discretion of the Commission.

application for cost-share can be submitted. (The estimated cost-share funding may be reduced subject to application of all other policy eligibility criteria at the time the project is presented to the Commission and during review for reimbursement.)

3.4 APPLICATION REQUIREMENTS AND MATERIALS

Applications for cost-share are accepted at any time. Incomplete applications or applications received less than 45 days before a 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 Department homepage.

The Commission will consider cost-share requests submitted by sponsors and will 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 Commission consideration, it must include the following supplemental materials:

3.4.1 TIER I (PRE-CONSTRUCTION) APPLICATIONS

- a. Category of cost-share activity;
- b. Location of the proposed project or study area shown on a map;
- c. Description, purpose, goal, objective, and narrative of the proposed activities;
- d. Delineation of Costs (SFN 61801), with contingencies of no more than 10 percent of the total project construction costs;
- e. Anticipated timeline of project from preliminary study through final closeout;
- f. Potential federal, other state, or other North Dakota state entity participation;
- g. Cover letter acknowledging the cost-share request that is signed by a representative of the sponsoring entity (mayor, board chair, city administrator, district manager, executive director, etc.); and
- h. 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.

Under the two-tier process, approval of Tier I pre-construction cost-share does not guarantee future cost-share for construction activities.

3.4.2 TIER II (CONSTRUCTION) APPLICATIONS

- a. Updated Tier I pre-construction application materials (see above);
- b. Engineering plans and specifications for purposes of bidding the project;
- c. Status of required permitting, including submission of approved drain, sovereign land, or construction permits if required by state statute;
- d. Status and type of local funding sources;
- e. When applicable for flood control projects, a Conditional Letter of Map Revision (CLOMR) from the United States Federal Emergency Management Agency (FEMA);
- f. Potential territorial service area conflicts or service area agreements, if applicable;
- g. A completed Capital Improvement Plan (CIP) for water supply projects as outlined in the Commission's CIP Guidance. A completed CIP should include demonstration of a sustainable Capital Improvement Fund (CIF), that at a minimum sets aside a percentage 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);
- h. Completed economic analysis worksheet for water conveyance and flood-related projects expected to cost two hundred thousand dollars or more;
- i. Results of a positive assessment vote (rural flood control projects only);
- j. A completed sediment analysis (drain reconstructions only);
- k. A property acquisition plan (flood property acquisition program only);
- l. Cover letter acknowledging the cost-share request that is signed by a representative of the sponsoring entity (mayor, board chair, city administrator, district manager, executive director, etc.); and

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.)

CENTURY CODE OR ADMINISTRATIVE CODE REFERENCE UPDATES**SOP**

- Century Code or Administrative Code reference updates in this policy may be made at the Secretary's discretion, with notification to Commission members.

PROGRAM VIOLATIONS

1. Project sponsors or their representative consultants have engaged in a perceived professional ethics violation.

SOP

- Department staff and Commission members will evaluate reporting requirements to professional boards for which they are responsible, and then notify those boards if required following incidents.
2. Project sponsors or their representative consultants have engaged in a perceived criminal act.

SOP

- In consultation with legal counsel, the Commission will determine if the facts of the incident should be referred to the State's Attorney for review, and if necessary, file a criminal complaint.

CHAPTER 12.1-11
PERJURY - FALSIFICATION - BREACH OF DUTY

12.1-11-01. Perjury.

1. A person is guilty of perjury, a class C felony, if, in an official proceeding, the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and the person does not believe the statement to be true.
2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.
3. If in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by the defendant under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements constitutes a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.
4. For purposes of this section, "false statement under oath or equivalent affirmation" includes a writing made in accordance with chapters 31-14 and 31-15.

12.1-11-02. False statements.

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.
2. A person is guilty of a class A misdemeanor if, in a governmental matter, he:
 - a. Makes a false written statement, when the statement is material and he does not believe it to be true;
 - b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;
 - c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity;
 - d. Submits or invites reliance on any sample, specimen, map, boundarymark, or other object which he knows to be false in a material respect; or
 - e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.
3. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.
4. A matter is a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office, agency, or other establishment in the legislative or the judicial branch of government.

12.1-11-03. False information or report to law enforcement officers or security officials.

A person is guilty of a class A misdemeanor if that person:

1. Gives false information or a false report to a law enforcement officer which that person knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer; or