MINUTES

North Dakota State Water Commission
Cost-Share Policy Meeting
Bismarck, North Dakota

January 11, 2018

The North Dakota State Water Commission (State Water Commission or Commission) held a meeting at the Pioneer Room, State Capitol, Bismarck, North Dakota, on January 11, 2018. Governor Doug Burgum, Chairman, called the meeting to order at 9:00 a.m.

STATE WATER COMMISSION MEMBERS PRESENT:
Governor Doug Burgum, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Katie Andersen, Jamestown
Michael Anderson, Hillsboro
Richard Johnson, Devils Lake
Leander McDonald, Bismarck
Mark Owan, Williston
Matthew Pedersen, Valley City
Jason Zimmerman, Minot

OTHERS PRESENT:
Lieutenant Governor Brent Sanford
Leslie Bakken-Oliver, General Counsel, Governor's Office
Garland Erbele, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 50 people interested in agenda items and several entities were able to listen to the meeting via conference call.

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA:

The agenda for the January 11, 2018, State Water Commission meeting was presented. Staff from the Bank of North Dakota were asked to present state water funding information as Agenda A, and Governance topics were moved to B.

NORTH DAKOTA WATER PROJECTS:

Governor Burgum requested information from Bank of North Dakota regarding aggregate spending on water projects over the last decade and how the projects have been funded throughout this timeframe. Governor Burgum would like to work on a more uniform way of funding and prioritization of water projects and better align our policy to the funding.

Kelvin Hullet, Economic Development and Government Program Manager, Bank of North Dakota, presented information relating to funds committed or spent on North Dakota water projects from 2008 through 2017. The full presentation is attached as **APPENDIX A.**

GOVERNANCE:

Reimbursement for Non-State Water Commission Meeting Attendance

North Dakota Century Code 61-02-12 was reviewed to outline the guidelines the State Water Commission uses to reimburse commissioners for their attendance at meetings, non-State Water Commission meetings, and travel expenses. An estimate of 20 meetings per biennium were used in developing the State Water Commission budget. Historically, commissioners are not reimbursed for meetings other than State Water Commission meetings. If commissioner attendance is needed for future subcommittee meetings, this issue will need to be revisited.

Commissioner Goehring suggested asking for Legislative clarification and guidance during the 2019-2021 session as it relates to NDCC 61-02-12 and its current restraints.

Frequency of Meetings

State Water Commission is required to meet every two months. There was discussion on whether or not Commission should meet more often. Meeting frequency will be reviewed further upon establishment of Commission subcommittees.

Commissioner-hosted Meetings/State Water Development Plan

General discussion took place regarding meeting format, timing, and content.

Project Presentation by Sponsor/Staff Recommendation

Discussion took place regarding whether to have staff or project sponsors present cost-share requests. No final decision was reached.

Subcommittees

State Water Commission will revisit the issue of subcommittees after recommendations have been developed by State Water Commission staff.

Other

House Bill No. 1374 requires State Water Commission appointed members select an appointed member to serve as vice chairman of the Commission. This will be brought forward and voted on at the February 8 meeting.

PROJECT PRIORITIZATION PROCESS:

Overview

In 2013, the ND Legislature passed HB 1206, requiring Legislative Management to "evaluate current water project prioritization processes for effectiveness in determining high-priority water projects for State Water Commission funding." At that time, there was no formal process for prioritizing water projects. In response, Water Commission staff developed the SWC Project Prioritization Guidance Policy, in cooperation with the Interim Legislative Water Topics Overview Committee.

During the 2013-2015 interim period, Water Commission staff presented the draft prioritization guidance policy at two separate rounds of basin meetings around the state, and presented drafts to the Interim Legislative Water Topics Overview Committee on multiple occasions. In the fall of 2014, the SWC Project Prioritization Guidance Policy was approved by the State Water Commission and endorsed by the Interim Legislative Water Topics Overview Committee. Since that time, the policy has remained largely the same, with only minor amendments.

The 2017 Legislative Assembly amended NDCC Section 61-02-01.4 - requiring the State Water Commission to "review, gather stakeholder input on, and rewrite as necessary the Commission's Cost-Share Policy, Procedure and General Requirements, and Project Prioritization Guidance documents.

Staff Recommendations

- 2017 amendments to NDCC Section 61-02-01.4 prohibit the Water Commission from providing cost-share for removal of vegetative materials and sediment for water conveyance projects. As such, it is recommended that snagging and clearing projects be removed from the prioritization criteria.
- Strike the following language: "Projects that do not meet local cost-share match requirements, (per SWC cost-share policies), will be dropped to the next lowest priority."
- Language similar to the following should be added to address the timing of funding for various priorities: "In the interest of strategically investing in the state's highest water development priorities, the Water Commission will give

funding preference to projects designated as “High Priorities” for the first 12 months of each budget cycle.”

Governor requested State Water Commission staff and HDR present information on the economic analysis and life cycle cost analysis process being developed at the February 8 Commission meeting.

COST-SHARE POLICY:

1. Definition of Cost-Share

Our policy currently defines “Cost-Share” as:

> *Cost-Share is grant or loan funds provided through the State Water Commission.*

However, HB 1374 provided separate definitions for cost-share, grant, and loan as follows:

> *Cost-share means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.*
>
> *Grant means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project*
>
> *Loan means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.*

Staff Recommendation
Eliminate the current definition of “Cost-Share” and incorporate the new statutory definitions within our policy.

Commissioners agreed to have State Water Commission staff eliminate the current definition of “Cost-Share” and incorporate the new statutory definitions within our policy.

2. Water Conveyance

HB 1374 (NDCC 61-02-02 provides a definition of a new category, Water Conveyance:

"'Water Conveyance Project' means any surface or subsurface drainage works, bank stabilization, or snagging and clearing of water bodies."

Staff Recommendation
Add this definition to policy and to also add water conveyance as a category of cost-share.

Commissioners agreed to have State Water Commission staff add the definition to policy and to also add water conveyance as a category of cost-share.

3. Engineering Selection Process

Current policy states:

…If cost-share is expected to be greater than $25,000, the local sponsor must follow the engineering selection process in NDCC 54-44.7 and provide a copy of the selection committee report to the Chief Engineer. The local sponsor will be considered to have complied with this requirement if they have completed this selection process for a general engineering services agreement at least once every three years and have formally assigned work to a firm or firms under an agreement. The local sponsor must inform the Chief Engineer of any change in the provider of general engineering services.

From its inception, this has been a fairly unpopular requirement with the local sponsors who typically have no statutory requirement to complete an engineering selection process. Many have long standing relationships with a particular consulting firm. They have completed the process to satisfy our policy, but most selection processes have resulted in the same firms being selected, and they view it as an unnecessary and unproductive mandate.

If it is the wish of the Commission to keep this requirement in place, there are other clarifications that would be beneficial to staff. In the initial implementation of this policy, we, as a matter of interpretation, waived the requirement if they had an engineer already hired for a specific project. Now, as we near the three-year expiration of those first selection processes, the question exists as to whether or not a new selection process is required for a project for which a selection process was originally completed but the project is not yet complete after three years. It should also be noted that the basis of the $25,000 limit was the statutory limit for when a state agency must complete a selection process. That limit has now been raised to $35,000.

Staff Recommendation
Remove the requirement for an engineering selection process. However, if the Commission retains this requirement, staff recommendation on the latter issue is that the local sponsor should not have to go through a new selection process for specific

projects that outlive the three-year selection period, and the threshold should be increased to $35,000.

After discussion, it was agreed to modify the threshold for engineering selection.

4. Ineligible Items

On Page 2, policy specifically identifies ineligible items. One of those ineligible items is:

> *Work and costs incurred prior to a cost-share approval date, except for emergencies as determined by the Chief Engineer.*

Members of this Commission have questioned why we do not pay for work completed prior to cost-share approval. Obviously, a line needs to be drawn somewhere; it would be inappropriate for funding requests to be considered for projects completed years ago. Given the need to establish a line somewhere, the cost-share approval date was believed to be the most appropriate and documentable line. It has varied somewhat through the years; at one time, pre-construction engineering costs incurred up to two years prior to the cost-share approval date were allowed. That was phased out as we began to provide cost-share for pre-construction engineering ahead of approving construction funding.

It was suggested by members of this Commission during prior discussions that this policy penalizes local sponsors for being proactive and being ahead of the process. However, with our willingness to provide cost-share for pre-construction engineering for project development, and now that we are required to meet every two months, local sponsors have adequate ability to have funding obligated prior to beginning work on a project.

Staff Recommendation
Leave costs incurred prior to cost-share approval as an ineligible item.

After discussion, Commissioners requested that engineering costs associated with easement acquisitions be considered eligible items.

5. Pre-Application Process

Our cost-share policy includes a “Pre-Application Process” for assessment projects. This allows a project sponsor to provide the Chief Engineer with a project narrative, preliminary design, and cost estimates. The Chief Engineer then reviews that material and estimates the cost-share funding the project may anticipate receiving in a letter to the sponsor. The local sponsor may then use that information in their assessment voting process.

In the past, the Commission allowed project sponsors to come before them and obtain conditional approval, conditioned on a positive assessment vote, and that was typically done to allow the local assessment votes to be cast using the cost-share amounts. The current Pre-Application process was developed as an alternative approach, and the advantage over the prior approach is that the Commission is not bogged down with requests that may fail the local vote, monies are not obligated to projects that ultimately fail a vote, and the sponsor is still provided with a mechanism that allows the landowners to vote the true cost shared commitment.

Staff Recommendation
Leave this policy intact.

There were no recommendations from Commissioners. Policy will remain intact.

6. Chief Engineer will present "with a recommendation"

Current policy states:

> *If the Chief Engineer is satisfied that the proposal meets all requirements, the Chief Engineer will present the application along with a recommendation to the State Water Commission for its action.*

State Water Commission staff inquired whether the Commission would like the Chief Engineer to continue presenting requests along with a recommendation.

Staff Recommendation
No recommendation on this issue.

After discussion, it was determined that the local sponsors will present the project and the State Engineer would provide recommendations, and that a checklist be created to ensure the project has met all requirements.

7. Chief Engineer Authorization for Projects up to $75,000

Current policy states:

> *The Chief Engineer is authorized to approve cost-share up to $75,000 in state funds and also approve cost overruns up to $75,000 in state funds without State Water Commission action.*

This has been a long-standing provision within policy. The limit has been adjusted upward periodically. The last adjustment, from $50,000 to $75,000 was adopted by a prior Commission on October 1, 2014. The process does provide a mechanism for

smaller projects to be approved while eliminating the need for the Commission to consider such small requests.

Staff Recommendation
Leave the policy in place. Staff makes no recommendation as to the appropriateness of the limit.

There is a current summary on the monthly reporting that shows whether the projects are approved by the State Engineer or Commission. The report will be modified to show additional information.

After discussion, it was decided to maintain the current policy.

8. Pre-Construction Expenses (Engineering) at 35%

Current policy provides cost-share of 35% for pre-construction engineering with construction engineering cost-shared at whatever percentage is applicable for the particular project category. This was included in today's agenda because members of the past Commission had expressed the desire to revisit this issue.

This policy has varied dramatically and frequently through the years. At various times engineering was not an eligible cost at all. At other times engineering has been fully eligible. During the most recent iteration, when engineering costs became fully ineligible, the cost-share percentages under each category were raised, and an analysis was completed to show that the ineligibility of engineering costs coupled with the increased cost-share percentages resulted in no net loss of funding assistance in almost all cases. Then when the policy was again amended to the current version, the cost-share percentages were not accordingly revised downward.

The current policy, with pre-construction engineering funded at 35%, constitutes a compromise or middle-ground relative to the two extremes between which our policy has fluctuated.

Staff Recommendation
Retain the current policy.

After discussion, it was requested by Commission that the 35% limitation for pre-construction engineering expenses be eliminated. Therefore, pre-construction expenses will be cost-shared at the same percentage as the construction costs.

9. Water Supply Percentages Categories and 80% Combined Cap

Current policy includes cost-share percentages for water supply based on four categories.

Category	Description	Percentage
1	Addresses improvements to meet drinking water standards or expansion into new rural water service areas	75%
2	Supports improvements or connection of new customers within the existing service area of a municipal water system	60%
3	Water treatment improvements addressing impacts from other State Water Commission projects.	Case by Case
4	Addresses extraordinary repairs or replacement needs of a water supply system due to damages from a recent natural disaster.	Loan Only

NDCC 61-02-01.4 provides that the Commission's policy must provide that a water supply project is eligible for a cost -share up to 75% and that all project costs shall be considered eligible except the Commission may exclude operations expense and regular maintenance.

Based on that language, the policy provides guidance as to which projects are eligible for the full 75%. Category 1 which includes improvements to meet drinking water standards or expansions into new service areas meets those criteria. By practice regionalization projects have also been funded at 75% because regionalizations do typically result in new rural water service areas.

Most municipal improvements fall into Category 2 and have been accordingly funded at 60%.

Another consideration is the 80% cap. Current policy provides:

> *…The combination of grant and loan funding will not exceed 80 percent from the State Water Commission.*

This has been an unpopular limitation with local project sponsors, especially when they receive a 75% cost-share (formerly referred to as a grant) and need to cover the remaining share with a loan, they can only get another 5% from this agency in the form of a loan and then need to secure a second loan, typically from SRF, for the other 20%. The view from local sponsors is that it's hardly worth the effort to take our loan when it's only for 5% and they have to go through all the effort to secure another loan for the remaining 20%. This is maybe less of an issue today, given the current scarcity of loan

funds available from the SWC, but it is an issue we have heard about and will again should more loan funds become available.

Staff Recommendation
Leave the cost-share percentages the same and to remove the 80% limitation.

After discussion, it was requested by Commission that the 80% combined limitation be removed, and Category 4 under Water Supply be removed.

10. Flood Control Percentages and Current Exceptions

The percentages for the various sub-categories of flood control provided in the current policy are summarized as follows.

Category	Percentage
Flood Recovery Acquisition Program	75% if damaged and needed for construction 60% if damaged and removal increases conveyance
Flood Protection Program	60% if non-federal project 50% of non-federal share if federal project
Levee Accreditation	60% of eligible costs
Dam Safety	75%
Emergency Action Plans	80%
Water Retention	60% if non-federal 50% of non-federal if federal project
Snagging and Clearing	50% (No longer eligible)

Prior Commissions have made various exceptions to this policy, mostly for the larger flood control projects. Those projects currently under construction for which exceptions have been made are summarized below:

Project	Percentage
Fargo	Earmarks and legislative intent of providing $570 M
Minot	65% of non-federal (includes engineering)
Grafton	75%
Valley City	85% engineering; 80% construction
Lisbon	90% engineering; 80% construction

Some of those exceptions were made with consideration of the statement in our current policy that:

The State Water Commission may consider a greater level of cost participation for projects involving a total cost greater than $100 million and having a basin wide or regional benefit.

The Fargo Flood Control Project funding was largely determined by legislative action both in the form of earmarks and expressed legislative intent. A specific exception was made for the Mouse River flood control project due to its large cost, the regional benefits, and to some degree in recognition of the contributions Minot has already made both for the regional flood control project as well as the Northwest Area Water Supply Project. The exception for the Grafton project was made based on the community's ability to afford the project and the SWC's ability to complete this project and provide some finality to the flooding problems in Grafton. The exception in terms of the engineering cost-share for Valley City and Lisbon were made largely upon consideration of their ability to pay, especially coming off multiple significant flood fight efforts. The exceptions for construction for Valley City and Lisbon were based on providing the standard 60% and then another 20% to mitigate potential impacts from operation of the Devils Lake outlets.

The one exception that continues to come up in discussion with both the prior and current Commissions is the Valley City and Lisbon exceptions. Members of the prior Commission expressed the thought that the period of time during which the outlets will be operated is finite and possibly drawing to a close, and therefore the extra 20% for construction should be re-examined. At least one member of this Commission has indicated that the financial planning for these projects has all been completed under the assumption that the current level of cost-share support would continue to project completion. Also, it appears likely that we will be operating the Devils Lake outlets again next season.

Staff Recommendation
The basic percentages in our policy remain the same. Staff offers no recommendation regarding the current exceptions.

After discussion, there were no recommendations from the Commission.

11. Flood Control Design Events

Current policy does not include language relative to any particular limitation regarding the design event for flood control projects. Prior Commissioners have questioned whether or not we should cap financial support at the 100-year recurrence interval event (1% annual chance). Typically, funding has been provided for whatever design has been chosen by the local sponsor. Some projects are being designed and constructed for the 1% chance event with sufficient freeboard to ensure FEMA accreditation. Others are being and have been designed to protect to the flood of record, in those cases where the flood of record exceeds the 1% chance event.

Legislation approved last session and codified in NDCC 61-02-80 states:

> *Except for flood control projects authorized by the legislative assembly or the commission before July 1, 2017, the commission shall calculate the amount of its financial assistance, including loans, grants, cost-share, and issuance of bonds, based on the needs for protection of health, property, and enterprise against:*
>
> 1. *One hundred year flood events as determined by a federal agency.*
>
> 2. *The national economic development alternative; or*
>
> 3. *The local sponsor's preferred alternative if the commission first determines the historical flood prevention costs and flood damages, and the risk of future flood prevention costs and flood damages, warrant protection to the level of the local sponsor's preferred alternative.*

This language provides the Commission with significant latitude in making a funding determination while providing some side boards for making funding obligations to a project with a design providing protection to something greater than either the 100-year event or the NED alternative.

Because there is no language in our policy that is in conflict with the new statutory language, no changes are required, but it may be appropriate to incorporate this statutory language directly in our policy.

Staff Recommendation
Include the statutory language in policy.

It was agreed that the statutory language should be added to policy.

12. Flood Control and City Infrastructure Relocation

A prior Commissioner expressed concern with the amount of municipal infrastructure that is at times incorporated in design and construction of large municipal flood control projects. While it is often necessary to make significant improvements in storm water utilities located behind a levee system, those improvements occasionally involve tearing up streets and sometimes other utilities as well. The concern that has been expressed in the past is that the Commission should be paying only for the flood control itself, and not for those utilities and subsequent street reconstructions.

We do not have any language in our policy that attempts to define a limit or boundary for utility improvements associated with flood control projects. Some language could be

proposed, or the Commission can continue looking to staff to assess the appropriateness of utility improvements submitted as part of flood control projects.

Staff Recommendation
Staff recommended this remain left to judgement of State Water Commission staff.

It was suggested that State Water Commission staff bring examples to the Commission when this occurs, but no overall changes were recommended.

13. Snagging and Clearing Language

Snagging and Clearing is identified in our current policy as a cost-share category, eligible for 50% cost-share assistance. However, language in HB 1374 last session and now codified in NDCC 61-02-01.4 stipulates that the Commission shall exclude the removal of vegetative materials as eligible items.

State Recommendation
Remove the paragraph addressing snagging and clearing from the policy.

It was recommended that the language be removed from policy. There was further discussion that this issue should be revisited during the next legislative session.

14. Rural Flood Control

Permit Requirements

Policy currently states that *"cost-share applications for rural assessment drains will only be processed after the assessment vote has passed, the final design is complete, and a drain permit has been obtained. "*

Current practice has been to bring the requests before the Commission once the assessment vote has been approved and a drain permit application has at least been received. If the Commission approves the request, then the agreement is held until the drain permit is approved and filed with the State Engineer. The reason we don't bring the requests before the Commission before the assessment vote has been approved is the frequency with which assessment votes fail, leaving monies obligated to projects that won't move forward. The permit is less often the limiting consideration.

Staff Recommendation
State Water Commission staff requested feedback as to the acceptability of continuing the current process.

It was determined that the current policy is acceptable.

Sediment Removal

Language adopted in HB 1374 (NDCC 61-02-01.4) stipulates that the removal of sediment as part of a water conveyance project is not eligible for cost-share. This is not typically an issue when funding the construction of a new drain, but will become an issue when considering funding requests for reconstructions. What we typically see is a drain being reconstructed with a wider bottom and flatter side slopes than the original geometry.

In years past the Commission would require a sediment analysis and the percentage of the soil removed for the reconstruction that was determined to consist of sediment deposited into the original geometry was declared ineligible. At the time, only 30% cost-share was provided for construction if no sediment analysis was completed, and 35% was provided for the non-sediment percentage of the project if an analysis was completed. It would appear that a policy requiring a sediment analysis for any reconstruction will need to be required to ensure compliance with the legislation.

Staff Recommendation
The following language is proposed to be added to the Rural Flood Control Section:

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

It was determined that the sediment analysis language should be added to policy as recommended.

15. Storm Water vs Flood Control/Rural Flood Control

Flood Control and Rural Flood Control have long been eligible categories for cost-share assistance from the Commission. The Commission has never recognized municipal storm water management as an eligible category. At times, differentiating between the two has been an issue. While it is not expressed anywhere in policy, the precedent that has been established and followed in several examples is to make a determination of eligibility based on the percentage of the watershed contributing to the project that lies within city limits and the percentage that lies outside the city limits and remains rural in nature.

The most recent example of this precedent being applied was last year when a request from the City of Williston was considered. The cost-share approved was discounted by the percentage of the watershed lying within the Williston city limits. The overlying

assumption is that managing the runoff from those acres is a storm water management issue and not eligible for cost-share.

A prior Commissioner expressed the idea that the percentage split should be based on a modelled discharge rather than an acreage basis. While we understand the intention of this suggestion, approaching the problem in this fashion would greatly increase the complexity and the subjectivity of the solution. Hydrologic modelling is as much an art as a science, and no two modelers are going to come up with the exact same solution.

Staff Recommendation
Staff recommended continuance of the acreage basis approach and solicited guidance from the Commission as to whether or not this precedent should be formally incorporated into the policy document.

It was determined that language be added for an acreage-based differentiation between flood control and storm water. It was also discussed that a ratio be looked at in the future as this issue is monitored throughout the next year.

16. Four-Year Updates

The Commission typically carries a significant amount of funding over from one biennium to the next. This is largely a function of the fact that water projects tend to take time to complete, spanning more than one biennium, especially the larger and more costly projects. In an effort to de-obligate any funding that is not needed, and hopefully reduce that carryover, we have made it an internal process to inquire with the local sponsor as to a project's status and timeline for completion whenever funding remains unspent three years after approval. This is currently undertaken on a rolling monthly basis.

HB 1374 (NDCC 61-02-14.3) stipulates:

> *An agreement for funding which is approved by the commission to fund a water project under this chapter must require a progress report to the commission at least every four years if the term of the project exceeds four years. If a progress report is not timely received or, if after a review of a progress report the commission determines the project has not made sufficient progress, the commission may terminate the agreement for project funding. The project sponsor may submit a new application to the commission for funding for a project for which the commission previously terminated funding.*

Any agreements provided to project sponsors since the effective date of HB1374 have included language explicitly requiring a progress report in four years. The question staff had for the Commission pertains to how the Commission would like to handle the review of the four-year progress report.

Staff Recommendation
State Water Commission requested direction on how the Commission would like to handle the new requirement.

After discussion, it was determined that the project sponsor must present their progress report to the Commission.

17. Irrigation

Policy currently states the following:

> *The State Water Commission may provide cost-share for up to 50 percent of the eligible items for irrigation projects. The items eligible for cost-share are those associated with new central supply works, including water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, and electrical transmission and control facilities.*

Practice has been to only approve funding to irrigation districts for their central supply works and not to any individual producers, yet our policy is silent on that issue. This should be explicitly stated in policy.

Another question for consideration by the Commission is where to appropriately draw the line between central supply works and 'on field' facilities. Requests brought before the Commission in recent years for irrigation development by the Garrison Diversion Conservancy District have typically involved one, two or three producers, and everything but the pipe from the field edge to the pivot has been presented as part of the central supply works.

There are also potential constitutional considerations, specifically the need to comply with the anti-gift clause. This has been the basis for only cost-sharing with a district and not with individual producers.

Staff Recommendation
Staff provided no recommendation, but requested guidance from the Commission in order to draft suggested language to address these issues.

It was agreed that the Commission will only enter into cost share agreements with political subdivisions, including irrigation districts, and not with individual producers, and that this language would be placed into policy.

There was further discussion that the recommended changes be made to policy and sent to Commissioners for review. After Commissioner review, the material would be sent out for public comment and discussed at the February 8 State Water Commission meeting.

Governor Burgum announced the following meetings:

- State of the State Address – 10:00 a.m. January 23, Minot State University.
- "Understanding Tribal, State and Federal Regulations" - January 30-31, Ramada Inn, Bismarck.
- State Water Commission Meeting – 1:00 p.m. February 8, Brynhild Haugland Room, State Capitol, Bismarck.
- Main Street Initiative Summit – February 12-13, Bismarck Event Center, Bismarck.

Governor Burgum thanked the State Water Commission staff for their work and preparation of the material presented, and Commissioners and visitors that traveled from across the state for their attendance.

There being no further business to come before the State Water Commission, Governor Burgum adjourned the January 11, 2018, meeting at approximately 2:40 p.m.

Doug Burgum, Governor
Chairman, State Water Commission

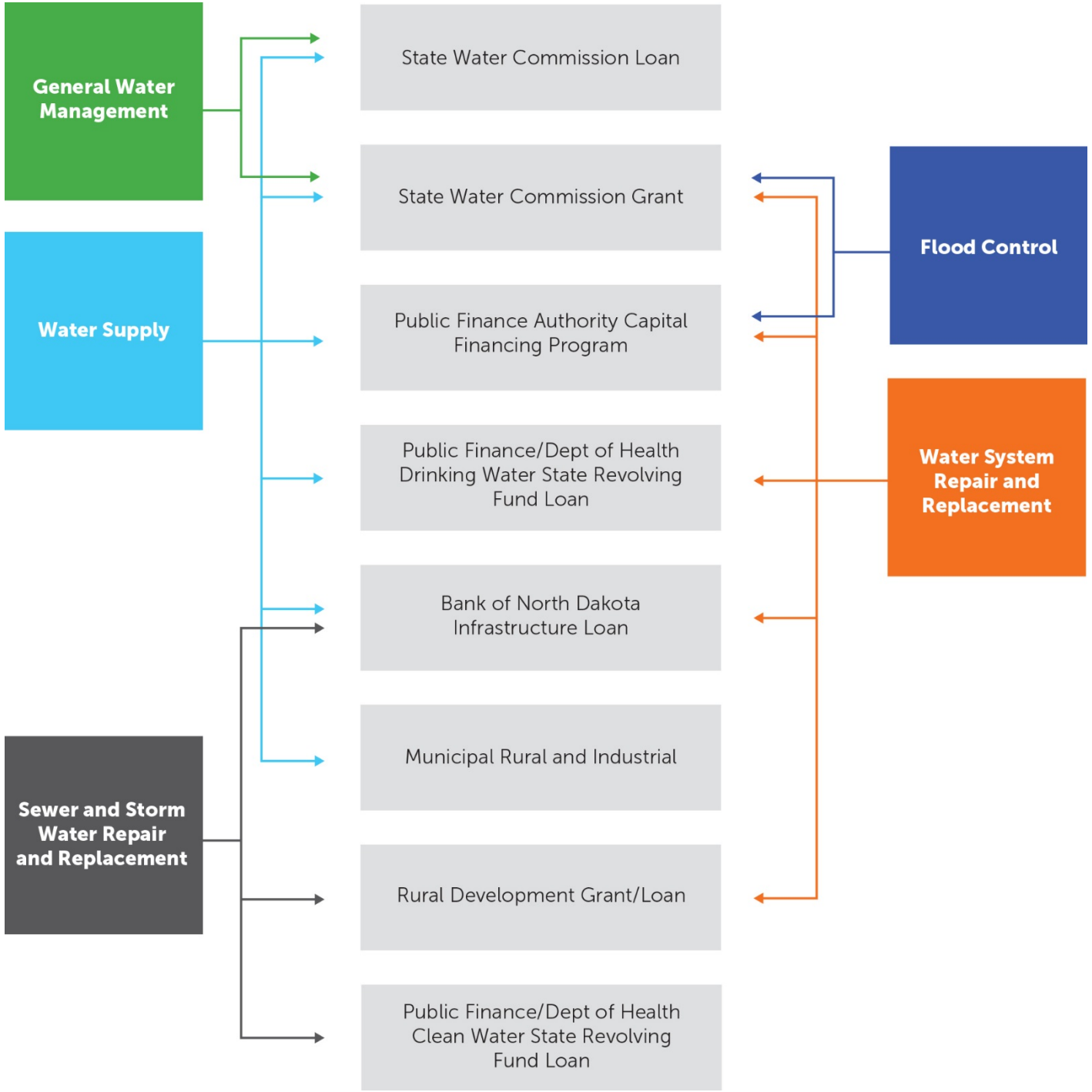
Garland Erbele, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission

APPENDIX A

North Dakota Water Projects

Funds Committed or Spent 2008-2017

January 11, 2018


General Water Management
Water Supply
Sewer and Storm Water Repair and Replacement
State Water Commission Loan
State Water Commission Grant
Public Finance Authority Capital Financing Program
Public Finance/Dept of Health Drinking Water State Revolving Fund Loan
Bank of North Dakota Infrastructure Loan
Municipal Rural and Industrial
Rural Development Grant/Loan
Public Finance/Dept of Health Clean Water State Revolving Fund Loan
Flood Control
Water System Repair and Replacement

State Funds Spent or Committed for Water Projects 2008-2017

State Funds Spent or Committed for Water Projects 2008-2017										
	Western Area Water Supply Direct Loans	Bank of North Dakota Infrastructure Revolving Loan Fund	Bank of North Dakota USDA - Community Water Loan	Public Finance Authority/Dept of Health Clean Water State Revolving Fund	Public Finance Authority/Dept of Health Drinking Water State Revolving Fund	Public Finance Authority Capital Financing Program	Public Finance Authority Disaster Loan Program	State Water Commission Resources Trust Fund and Water Development Trust Fund (Grant)	State Water Commission Revolving Loan Fund	Total
Committed								$387,198,086	$5,870,900	
2017	$0	$20,798,280	$1,575,000	$8,313,000	$92,182,270	$0	$0	$126,804,776	$4,917,550	$254,590,876
2016	$0	$17,558,885	$3,131,900	$3,721,373	$9,038,720	$0	$0	$253,609,552	$9,835,100	$296,895,529
2015	$0	$0	$4,888,000	$32,347,766	$1,448,545	$2,580,000	$0	$193,536,431	$4,917,550	$239,718,292
2014	$0	$0	$522,000	$183,155,012	$19,315,422	$42,530,500	$0	$133,463,311	$0	$378,986,245
2013	$40,000,000	$0	$600,000	$39,795,166	$95,745,790	$52,080,290	$3,547,379	$128,151,304	$0	$359,919,929
2012	$75,000,000	$0	$1,818,400	$4,234,649	$8,981,054	$8,302,413	$9,331,796	$122,839,297	$0	$230,507,609
2011	$0	$0	$0	$3,030,062	$6,442,651	$755,000	$25,383,742	$84,826,435	$0	$120,437,890
2010	$0	$0	$738,000	$4,702,972	$19,116,193	$405,000	$0	$46,813,574	$0	$71,775,739
2009	$0	$0	$1,924,000	$2,044,265	$9,125,489	$2,160,000	$0	$30,826,343	$0	$46,080,097
2008	$0	$0	$345,000	$65,946,843	$57,159,348	$1,420,000	$0	$14,839,112	$0	$139,710,303
Total	$115,000,000	$38,357,165	$15,542,300	$347,291,108	$318,555,482	$110,233,203	$38,262,917	$1,522,908,219	$25,541,099	$2,531,691,493

Federal Funds Spent or Committed for Water Projects 2008-2017

Federal Funds Spent or Committed for Water Projects 2008-2017						
	*USDA - Rural Development	Community Development Block Grant	**Public Finance Authority/Dept of Health Clean Water State Revolving Fund	***Public Finance Authority/Dept of Health Drinking Water State Revolving Fund	Municipal Rural and Industrial Grant	Total
Committed					$23,231,801	
2017	$1,575,000	$1,018,151	$6,474,000	$7,176,180	$6,489,790	$22,733,121
2016	$3,401,500	$1,572,036	$6,525,000	$7,313,280	$5,928,274	$24,740,090
2015	$8,007,249	$3,357,705	$6,817,000	$7,770,520	$1,875,506	$27,827,980
2014	$1,348,000	$1,320,555	$6,624,567	$7,897,200	$9,425,644	$26,615,966
2013	$6,038,650	$2,568,732	$6,302,667	$7,771,272	$11,615,037	$34,296,358
2012	$5,052,600	$12,813,304	$6,677,734	$8,016,000	$19,139,959	$51,699,597
2011	$0	$1,866,889	$6,981,267	$8,592,920	$49,207,108	$66,648,184
2010	$3,836,000	$3,266,480	$9,668,600	$12,508,620	$19,651,278	$48,930,978
2009	$3,252,000	$2,266,064	$19,034,693	$28,817,240	$24,614,547	$77,984,544
2008	$2,932,700	$2,193,362	$3,165,157	$7,557,240	$17,328,838	$33,177,297
Total	$35,443,699	$32,243,278	$78,270,685	$103,420,472	$188,507,782	$437,885,916

* $7,638,600 was a grant.
** $13,505,894 was loan forgiveness.
*** $26,893,692 was loan forgiveness.

Total State and Federal Funds Spent or Committed for Water Projects 2008-2017

Water Funding by Source													
	Western Area Water Supply Direct Loans	Bank of North Dakota Infrastructure Revolving Loan Fund	Bank of North Dakota USDA - Community Water Loan	*USDA - Rural Development (Federal Funds)	Community Development Block Grant (Federal Funds)	**Public Finance Authority/Dept of Health Clean Water State Revolving Fund	***Public Finance Authority/Dept of Health Drinking Water State Revolving Fund	Public Finance Authority Capital Financing Program	Public Finance Authority Disaster Loan Program	State Water Commission Resources Trust Fund and Water Development Trust Fund (Grant)	State Water Commission Revolving Loan Fund	Municipal Rural and Industrial Grant (Federal Funds)	Total
Committed										$387,198,086	$5,870,900	$23,231,801	$416,300,787
2017	$0	$20,798,280	$1,575,000	$1,575,000	$1,018,151	$14,787,000	$99,358,450	$0	$0	$126,804,776	$4,917,550	$6,489,790	$277,323,997
2016	$0	$17,558,885	$3,131,900	$3,401,500	$1,572,036	$3,721,373	$16,352,000	$0	$0	$253,609,552	$9,835,100	$5,928,274	$315,110,619
2015	$0	$0	$4,888,000	$8,007,249	$3,357,705	$45,689,766	$9,219,065	$2,580,000	$0	$193,536,431	$4,917,550	$1,875,506	$274,071,272
2014	$0	$0	$522,000	$1,348,000	$1,320,555	$189,779,579	$27,212,622	$42,530,500	$0	$133,463,311	$0	$9,425,644	$405,602,211
2013	$40,000,000	$0	$600,000	$6,038,650	$2,568,732	$52,775,567	$103,517,062	$52,080,290	$3,547,379	$128,151,304	$0	$11,615,037	$400,894,021
2012	$75,000,000	$0	$1,818,400	$5,052,600	$12,813,304	$4,234,649	$16,997,054	$8,302,413	$9,331,796	$122,839,297	$0	$19,139,959	$275,529,472
2011	$0	$0	$0	$0	$1,866,889	$10,011,329	$15,035,571	$755,000	$25,383,742	$84,826,435	$0	$49,207,108	$187,086,074
2010	$0	$0	$738,000	$3,836,000	$3,266,480	$14,371,572	$31,624,813	$405,000	$0	$46,813,574	$0	$19,651,278	$120,706,717
2009	$0	$0	$1,924,000	$3,252,000	$2,266,064	$21,078,958	$37,942,729	$2,160,000	$0	$30,826,343	$0	$24,614,547	$124,064,641
2008	$0	$0	$345,000	$2,932,700	$2,193,362	$69,112,000	$64,716,588	$1,420,000	$0	$14,839,112	$0	$17,328,838	$172,887,600
Total	$115,000,000	$38,357,165	$15,542,300	$35,443,699	$32,243,278	$425,561,793	$421,975,954	$110,233,203	$38,262,917	$1,522,908,219	$25,541,099	$188,507,782	$2,969,577,409

* $7,638,600 was a grant.
** $13,505,894 was loan forgiveness. $78,270,685 was provided by federal capitalization grants.
*** $26,893,692 was loan forgiveness. $103,420,472 was provided by federal capitalization grants.

Note. Totals in the presentation do not include local funds utilized to match state or federal grants or loans.

Programs and Eligible Uses

Program	10 year Amount	Maximum Term	Use	Program Uses
Bank of North Dakota Infrastructure Revolving Loan Fund	$38,357,165	30 years	New Repair & Replace	May be accessed if other state and federal programs are not available to fully fund or provide funding for eligible projects. Eligible projects include water or wastewater treatment plants; sewer, storm sewer and water lines; and transportation infrastructure, including curb and gutter.
Bank of North Dakota USDA - Community Water Loan	$15,542,300	40 years	New Repair & Replace	Supplemental financing in conjunction with the USDA Rural Development for community water projects. To be used when the project is above the maximum limit set by Rural Development. Also provides supplemental financing for federal loan programs associated with community water projects.
USDA - Rural Development (Federal Funds)	$35,443,699	40 years	New Repair & Replace	Provides direct loans, loan guarantees and grants to develop or improve essential public services and facilities in communities across rural America.
Public Finance Authority/ Dept of Health Clean Water State Revolving Fund	$425,561,793	30 years	Repair & Replace	Wastewater treatment plants, infiltration and inflow correction ,interceptor sewers, combined sewer overflow abatement, storm sewer control, recycling and reuse of wastewater and nonpoint source activities.
Public Finance Authority/ Dept of Health Drinking Water State Revolving Fund	$421,975,954	30 years	Repair & Replace	Address current or future Safe Drinking Water Act exceedances, replace aging infrastructure, restructure and consolidate water supplies an purchase of a portion of another systems capacity.
Public Finance Authority Capital Financing Program	$110,233,203	30 years	New Repair & Replace	Finance projects or improvements for which political subdivisions are legally authorized to borrow money through the issuance of municipal securities.
Public Finance Authority Disaster Loan Program	$38,262,917	5 years	Repair & Replace	Provides disaster assistance to political subdivisions affected by weather related events. Until federal and state money is available or to assist in cash flowing local match requirements.
State Water Commission Resources Trust Fund and Water Development Trust Fund (Grant)	$1,522,908,219	Grant	New	Flood control, floodway property acquisitions, irrigation, state water supply, and general water management.
State Water Commission Revolving Loan Fund	$25,541,099	30 years	New	Water supply, flood protection, and other water development and management projects.
Community Development Block Grant (Federal Funds)	$32,243,278	Grant	New Repair & Replace	Housing, public facilities and economic development to very low and low income areas.
Municipal Rural and Industrial Grant (Federal Funds)	$188,507,782	Grant	New Repair & Replace	Assists ND communities with bringing a clean, reliable water supply to their residents, farms, schools, hospitals and industries.

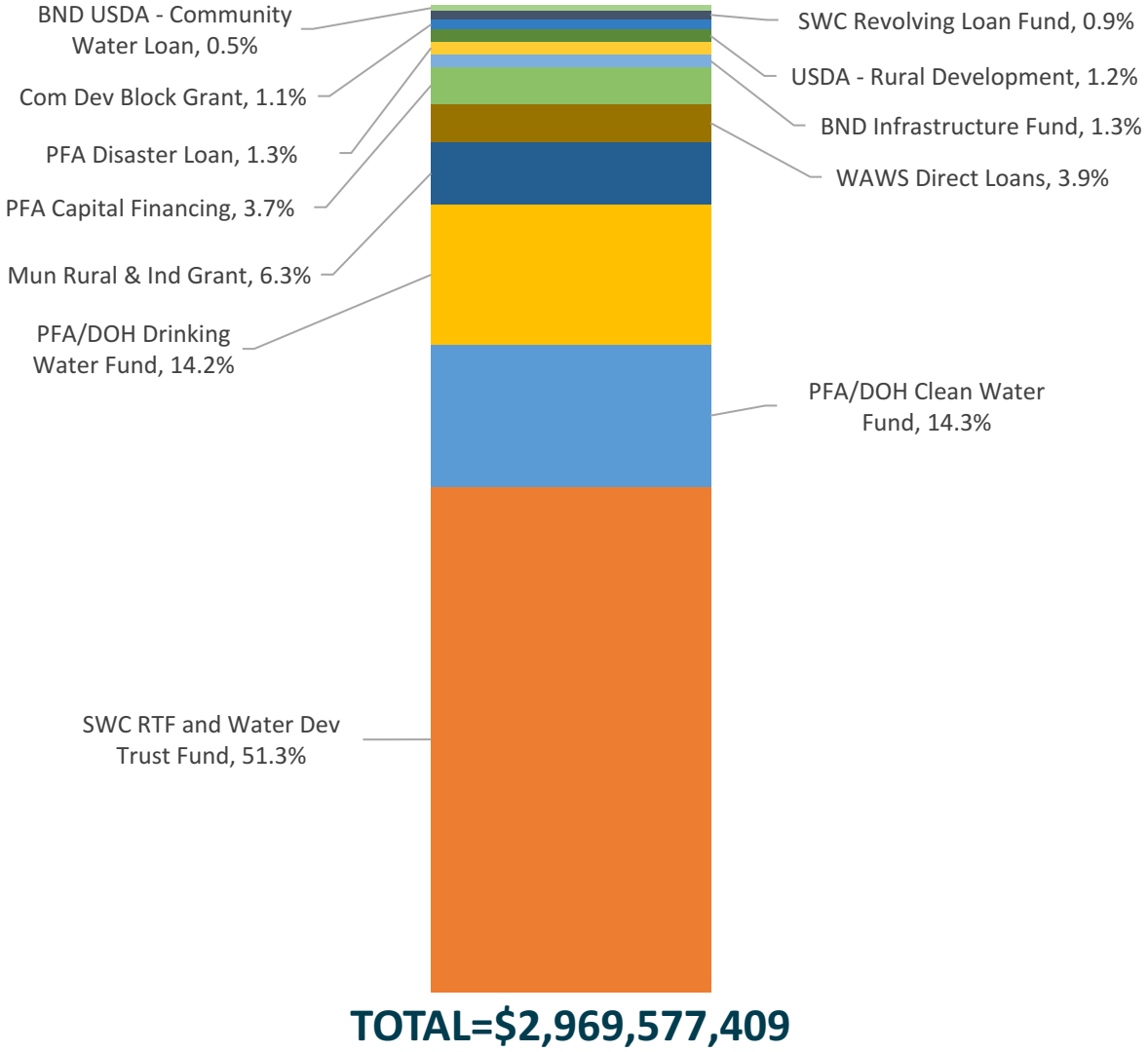
Definitions of Project Types

Water System Repair & Replacement	Repair and/or replacement of aging infrastructure Examples: water mains, water meters, gate valves, etc.
Water Supply	Big water supply projects; regional water systems or municipal water treatment plants. Examples: Western Area Water Supply or City of Fargo water treatment plant.
General Water Management	Rural flood control, small-scale flood control, snagging and clearing, channel improvements, dam repairs, planning efforts and studies.
Flood Control	Flood protection and property acquisition. Examples: Red River and Mouse River Flood Control
Sewer & Storm Water	Repair and/or replacement of aging infrastructure. Examples: sewer mains, storm sewer collection, curb and gutter, etc.

Acronyms

BND	Bank of North Dakota
USDA	United State Department of Agriculture
PFA	Public Finance Authority
SRF	State Revolving Fund
CFP	Capital Financing Program
SWC	State Water Commission
CDBG	Community Development Block Grant
WAWS	Western Area Water Supply
MR&I	Municipal Rural and Industrial
RTF	Resources Trust Fund

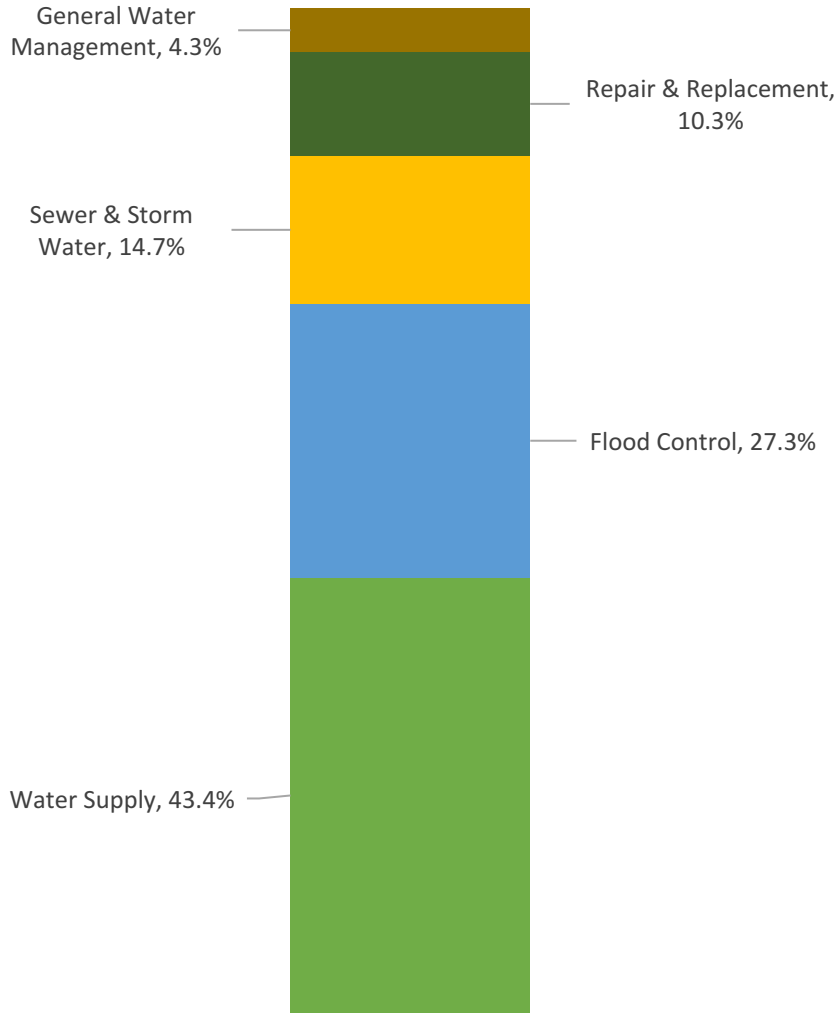
Since 2008, SWC Grants Provided Just Over 50% of the Funding for Water Projects
PFA Loans Provided 27% of the Total Source of Funds



TOTAL=$2,969,577,409

10 Year Water Funding History By Source of Funds

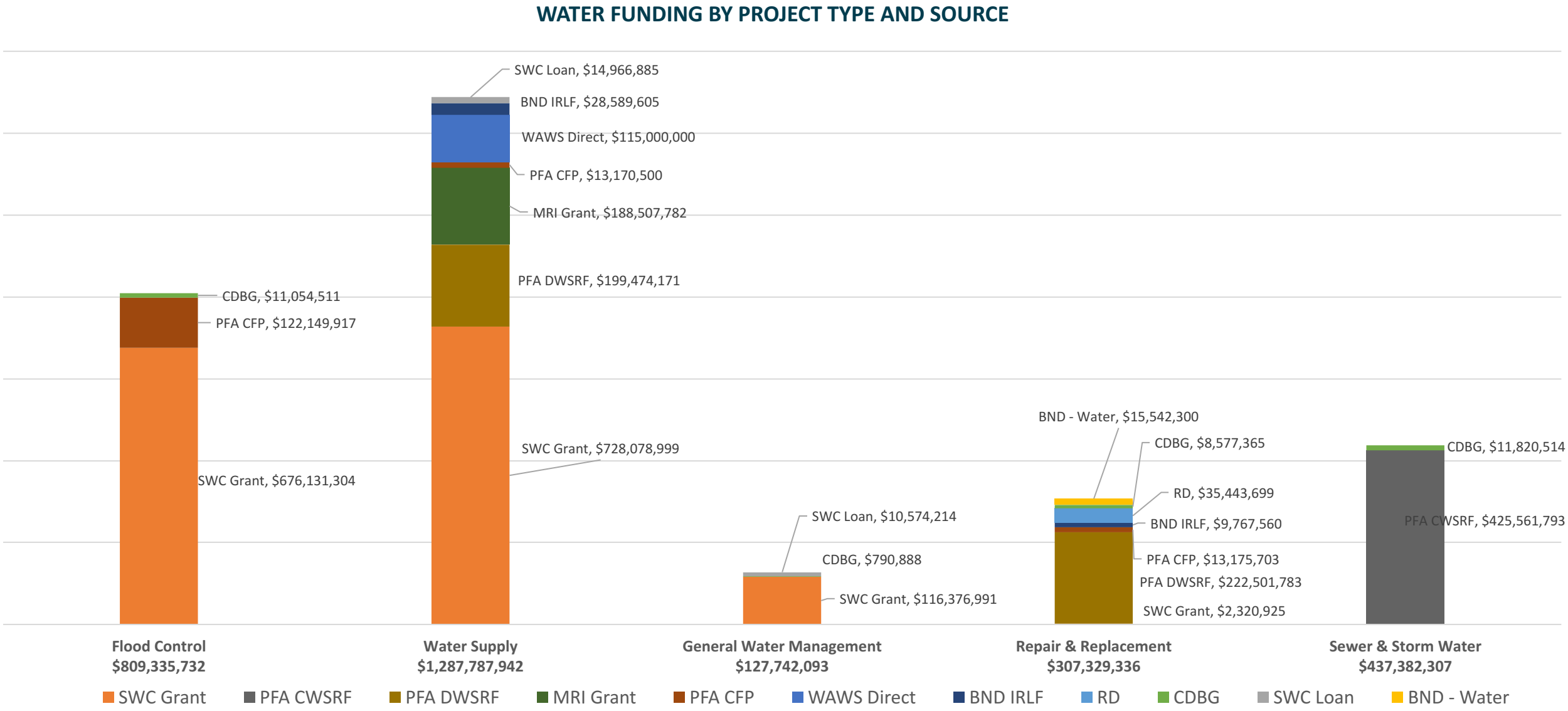
Two Thirds of Total Dollars Were Directed to Flood Control or Water Supply Projects



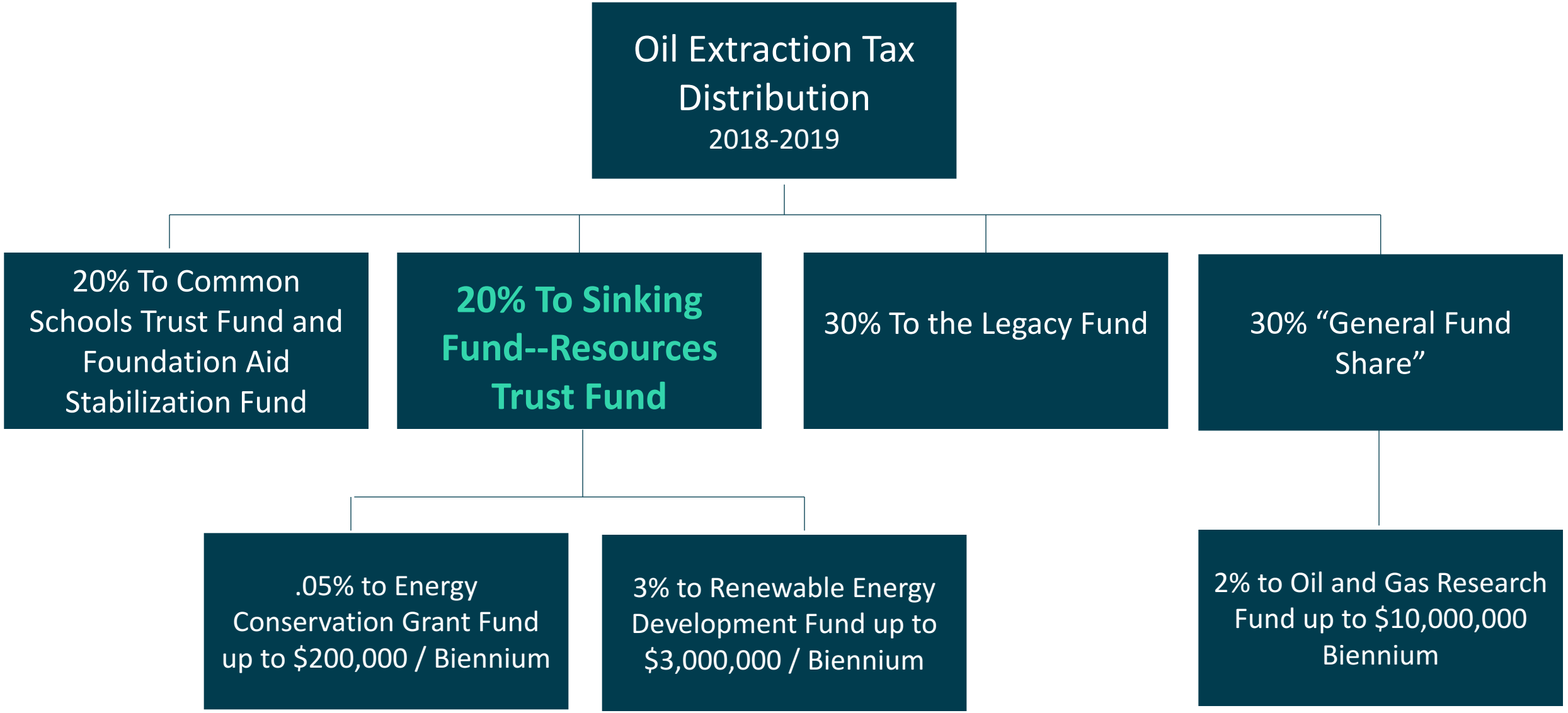
TOTAL=$2,969,577,409

10 Year Water Funding History By Project Category

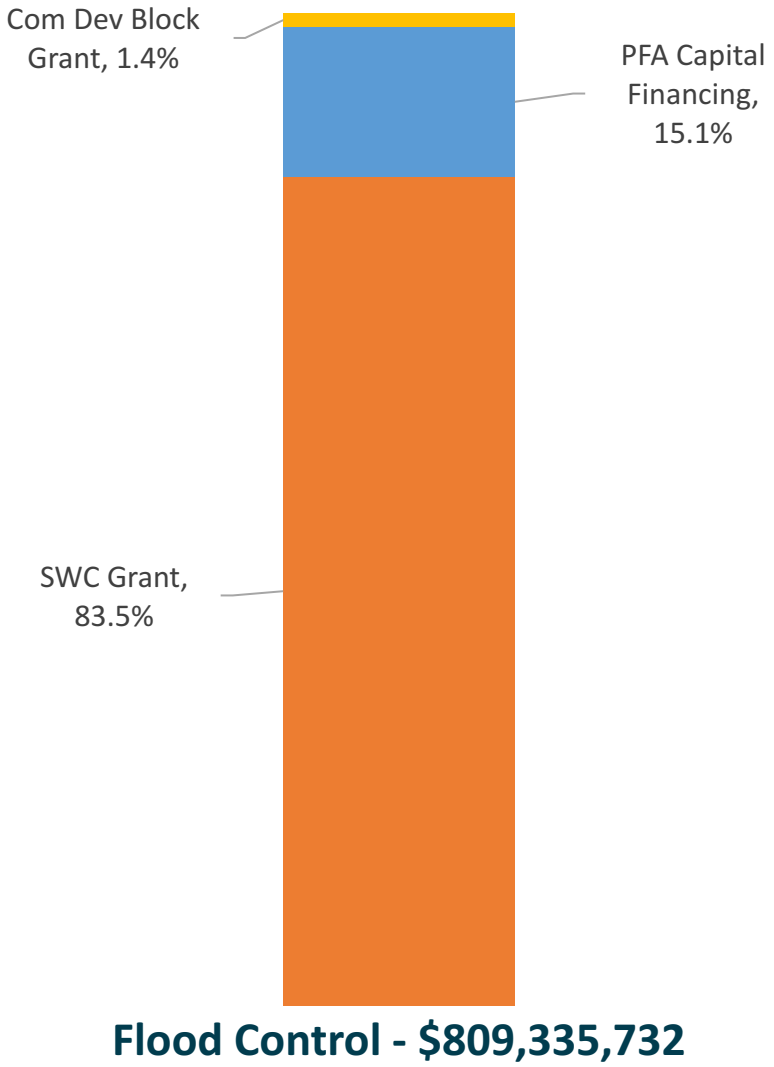
Drinking Water and Flood Control Were Priorities over the Last Decade



Breakdown of Specific Project Types and Funding Sources


Oil Extraction Tax Distribution
2018-2019
20% To Common Schools Trust Fund and Foundation Aid Stabilization Fund
20% To Sinking Fund--Resources Trust Fund
30% To the Legacy Fund
30% "General Fund Share"
.05% to Energy Conservation Grant Fund up to $200,000 / Biennium
3% to Renewable Energy Development Fund up to $3,000,000 / Biennium
2% to Oil and Gas Research Fund up to $10,000,000 Biennium

Since 2008, Oil Revenues Deposited Into the Resources Trust Fund Enabled Significant State Funding for Flood Control Projects.

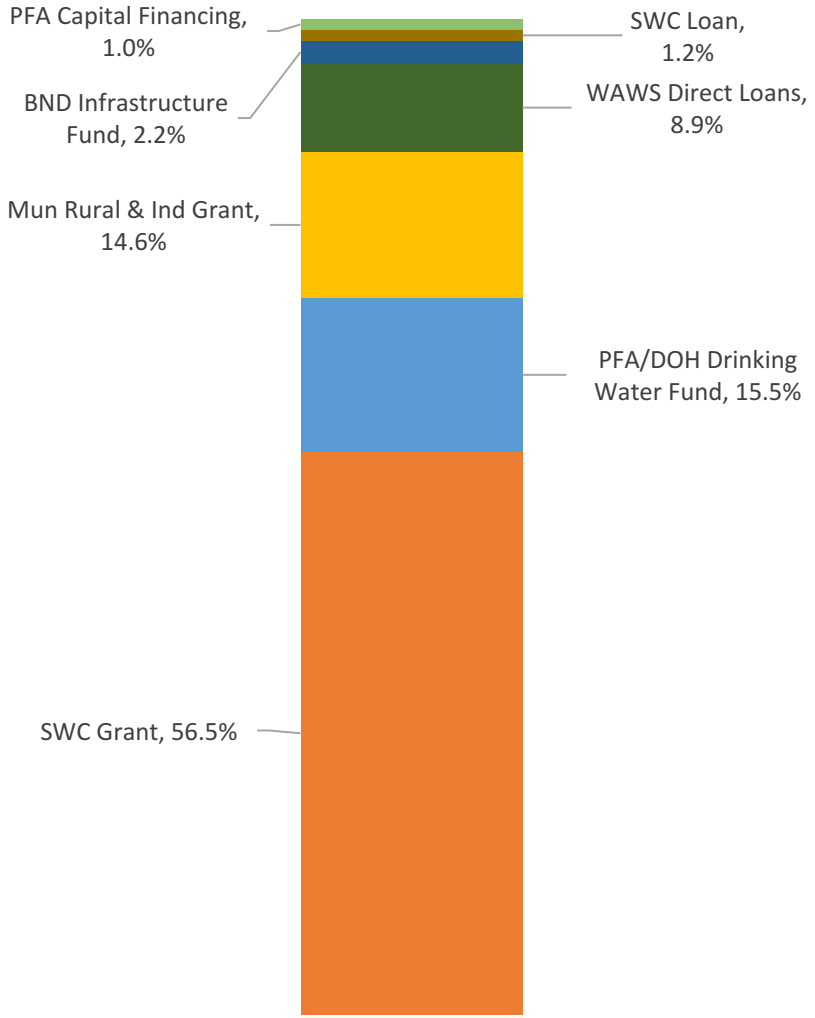


Flood Control Funding

Provides Funding for Flood Protection and Property Acquisition. Examples Include the Red River and Mouse River Flood Control Projects

2017-19 Flood Control Appropriation
$136,000,000 (HB1020)

Since 2008, Oil Revenues Deposited Into the Resources Trust Fund Enabled State Funding Expansion To Fund Regional And Municipal Projects.



Water Supply - $1,287,787,942

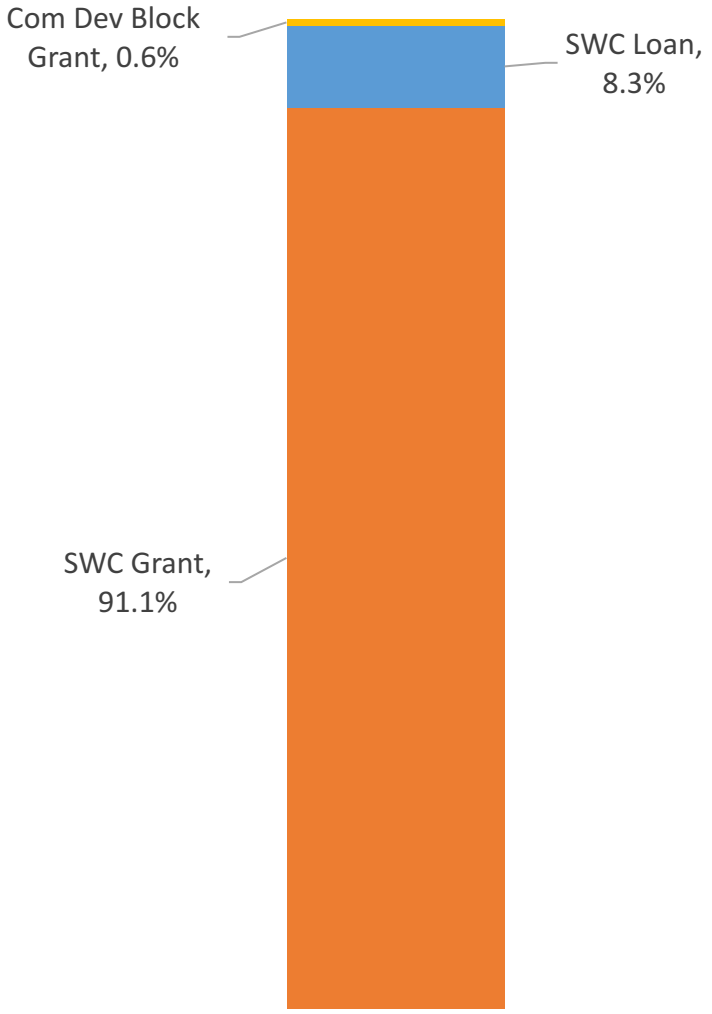
Water Supply Funding

Provides Funding for Big Water Supply Projects; Regional Water Systems or Municipal Water Treatment Plants

2017-19 Water Supply Appropriation
$120,125,000 (HB1020)

2017-19 Rural Water Supply Appropriation
$27,000,000 (HB1020)

Rearranging “Buckets” and Moving Spending Priorities to Other Categories Is Causing The General Water Management Appropriation to Decrease



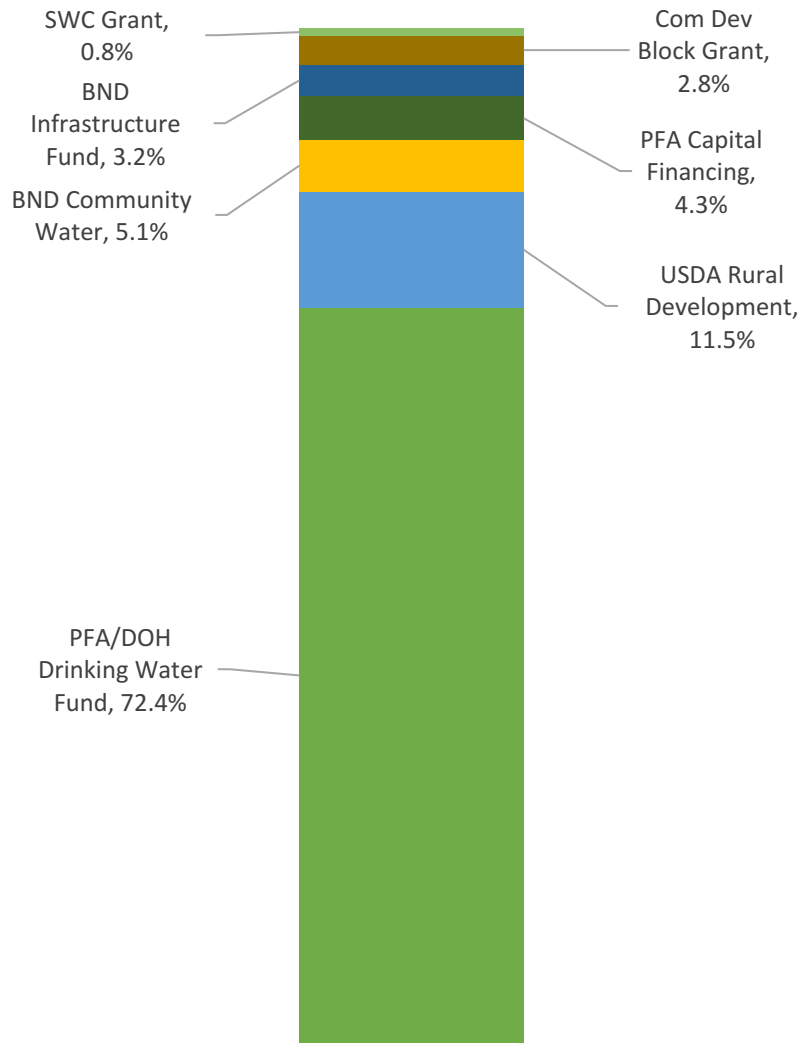
General Water Management - $127,742,093

General Water Management Funding

General Water Management includes: Rural and Small Scale Flood Control; Snagging and Clearing; Channel Improvements; Dam Repair and Planning Efforts and Studies

2017-19 General Water Appropriation
$15,750,000 (HB1020)

Local Borrowing Drives Repair and Replacement of Local Systems



Repair & Replacement - $307,329,335

North Dakota Public Finance Agency

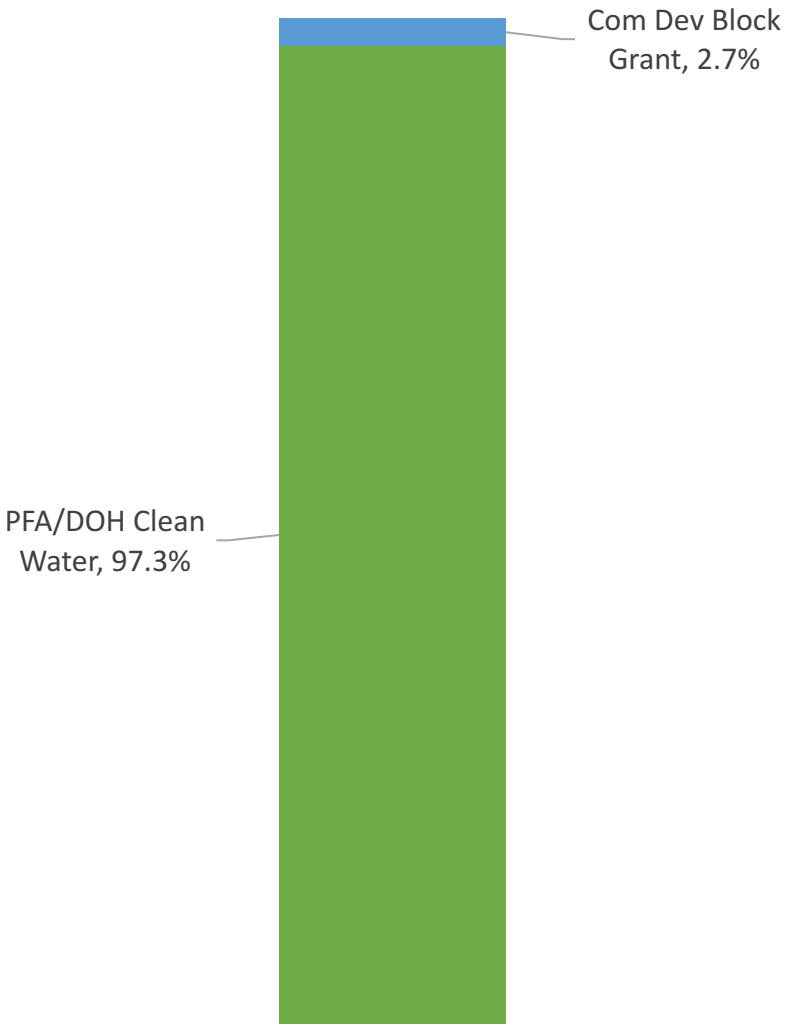
The PFA established in Century Code 6-09.4 operates under the control of the Industrial Commission. The State Revolving Fund (SRF) was established in 1990 enabling the State to receive capitalization grants authorized by the Clean Water Drinking Act. In 1998, it became eligible to receive grants under the Safe Drinking Water Act.

The SRF grants, received from the EPA are used to make below-market interest rate loans to political subdivisions for financing authorized projects and establishing reserve funds

Authorized projects under the SRF include wastewater treatment facilities, non-point source pollution control projects, and public water systems.

The North Dakota Department of Health and the Authority jointly administer the SRF.

Local Borrowing Drives Sewer and Storm Water System Funding



Sewer & Storm Water - $437,382,307

Sewer & Storm Water Funding

The PFA established in Century Code 6-09.4 operates under the control of the Industrial Commission. The State Revolving Fund (SRF) was established in 1990 enabling the State to receive capitalization grants authorized by the Clean Water Drinking Act. In 1998, it became eligible to receive grants under the Safe Drinking Water Act.

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Questions?