

NORTH DAKOTA STATE WATER COMMISSION

COST-SHARE POLICY, PROCEDURE, AND GENERAL REQUIREMENTS

The State Water Commission has adopted this policy to support local sponsors in development of sustainable water related projects in North Dakota. This policy reflects the State Water Commission's cost-share priorities and provides basic requirements for all projects considered for prioritization during the agency's budgeting process. Projects and studies that receive cost-share funding from the agency's appropriated funds are consistent with the public interest. The State Water Commission values and relies on local sponsors and their participation to assure on-the-ground support for projects and prudent expenditure of funding for evaluations and project construction. It is the policy of the State Water Commission that only the items described in this document shall be eligible for cost-share upon approval by the State Water Commission, unless specifically authorized by State Water Commission action.

I. DEFINITIONS AND ELIGIBILITY

- A. CONSTRUCTION COSTS** include but are not limited to, earthwork, concrete, mobilization and demobilization, dewatering, materials, seeding, rip-rap, re-routing electrical transmission lines, moving storm and sanitary sewer system and other underground utilities and conveyance systems affected by construction, irrigation supply works, and other items and services provided by the contractor. Construction costs are only eligible for cost-share if incurred after State Water Commission approval and if the local sponsor has complied with North Dakota Century Code in soliciting and awarding bids and contracts, and complied with all applicable federal, state, and local laws.
- B. ENGINEERING SERVICES** include preliminary and final engineering design including associated cultural and archeological studies, project inspections, construction contract management, material testing, flood insurance studies, hydraulic models, and geotechnical investigations. Administrative services and support services performed and charged by engineer companies are not engineering services. Engineering services are eligible costs if incurred after State Water Commission approval. 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.
- C. IMPROVEMENTS** are construction related projects that upgrade a facility to provide increased efficiency or other benefits. Improvements do not include any activities that are maintenance, replacement, or reconstruction.
- D. INELIGIBLE ITEMS** will be excluded from cost-share and include but are not limited to:

- 1 Administrative, easement, and permit related costs;
 - 2 Property acquisitions, property surveys, and legal expenses are ineligible items except under the Flood Recovery Grant Program or the Flood Protection Grant Program;
 - 3 Projects that commence prior to a cost-share approval date, and project costs that have been incurred prior to a cost-share approval date, except for emergencies as determined by the Chief Engineer;
 - 4 Project related operation, maintenance, replacement costs, and reconstruction costs;
 - 5 Funding contributions provided by federal, other states, or other North Dakota state entities that supplant the project cost of the local sponsor; and
 - 6 Work incurred outside the scope of the approved study or project;
- E. **EXPANSIONS** are construction related projects that increase the project area served. Expansions do not include any activities that are maintenance, replacement, or reconstruction.
- F. **LOCAL SPONSOR** must be a federal or state entity, a political subdivision, or a commission legislatively granted North Dakota recognition that applies necessary local funding to match State Water Commission cost-share. They provide direction for studies and projects, public point of contact for communication on public benefits and local concerns, and acquire necessary permits and rights of way.
- G. **MAINTENANCE COSTS** include, but are not limited to, repairs and general upkeep of facilities, including deferred repairs, to allow facilities to continue proper operation and function.
- H. **PROJECT** is the water-related construction activity.
- I. **REPLACEMENT AND RECONSTRUCTION COSTS** include, but are not limited to, the removal of portions of facilities or components that have completed their useful life and substitution with different components to obtain the same or similar function of the original facilities or components.
- J. **SUSTAINABLE OPERATION, MAINTENANCE, AND REPLACEMENT PLAN** is a description of the anticipated operation, maintenance, and capital replacement costs with a statement of the operation, maintenance, and replacement of the project will be sustainable by the local sponsor.

II. COST-SHARE APPLICATION AND APPROVAL PROCEDURES. The State Water Commission will not consider any request for cost-share of water related projects or studies unless an application is first made to the Chief Engineer by the local sponsor. No funds shall be used in violation of the Anti-Gift Clause of the North Dakota Constitution.

A. APPLICATION REQUIRED. An application for cost-share must be submitted by the local sponsor on the State Water Commission Cost-Share Request form. The application form is maintained and updated by the Chief Engineer and must include the following:

- 1 Category of cost-share activity
- 2 Location of the proposed project or study area
- 3 Description, purpose, goal, objective, narrative of the proposed activities
- 4 Delineation of costs
- 5 Potential federal or other state entity cost-share participation
- 6 Preliminary designs, if applicable
- 7 Status of required permitting
- 8 Potential territorial service area conflicts, if applicable
- 9 Sustainable operation, maintenance, and replacement plan for the project
- 10 Additional information as deemed appropriate by the Chief Engineer

Applications for cost-share are separate and distinct from the State Water Commission biennial project information collection effort that is part of the budgeting process. An application for cost-share is required in all cases. All local sponsors are encouraged to submit projects and studies needs during the budgeting process. Unless determined to be an emergency that directly impacts human health and safety, or that is a direct result of a natural disaster, requests submitted after the budgeting process may be held until action can be taken on applications that were included during budgeting.

Applications for cost-share are accepted at any time. Applications received 30 days or less before a State Water Commission meeting will not be considered at that meeting, and will be held for consideration at a future meeting.

DRAFT

- B. PRE-APPLICATION.** A pre-application process is allowed when cost-share assistance is being requested for an assessment project. This process will require the applicant to submit a brief narrative of the project, preliminary designs, and a delineation of costs. The Chief Engineer will then review the material presented, make a determination of project eligibility, and estimate the cost-share funding the project might anticipate receiving. A determination-of-eligibility letter will then be sent to the applicant noting the percentage of cost-share assistance that may be expected on eligible items as well as listing those items that are not considered to be eligible costs. In addition, the letter will state that the Chief Engineer will recommend approval when all cost-share requirements are addressed. The applicant may use the determination of eligibility letter to develop a project budget for use in the assessment voting process. Upon completion of the assessment vote and all other requirements an application for cost-share can be submitted.
- C. REVIEW.** Upon receiving an application for cost-share, the Chief Engineer shall review the application and accompanying information. If the Chief Engineer is satisfied that the proposal meets all requirements, the Chief Engineer shall present the application along with a recommendation to the State Water Commission for their action. The Chief Engineer's review of the application will include the

following items, and any other considerations that the Chief Engineer deems necessary and appropriate.

- 1 Applicable engineering plans and specifications;
- 2 Field inspection, if deemed necessary by the Chief Engineer;
- 3 The percentage and limit of proposed cost-share determined by category of cost-share activity and eligible expenses;
- 4 Assurance of sustainable operation, maintenance, and replacement of project facilities by the local sponsor;
- 5 Status of permitting and service area agreements;
- 6 Available funding in the State Water Commission budget, and budget priorities.

The Chief Engineer is authorized to cost-share up to \$50,000 and also approve cost overruns up to \$50,000 without State Water Commission action.

D. NOTICE. The Chief Engineer shall give notice to local sponsors when their application for cost-share is placed on the tentative agenda of the State Water Commission's next meeting.

E. AGREEMENT AND DISTRIBUTION OF FUNDS. No funds will be disbursed until the State Water Commission and local sponsor have entered into an agreement for state cost-share participation. No agreement will be entered until all required State Engineer permits have been acquired.

For construction projects, the agreement will specify that the local sponsor shall require all project contractors and service providers to agree to defend, indemnify and hold harmless the local sponsor and the state from any and all vicarious and other derivative claims that arise out of the contractor's performance under the agreement, except for claims based upon the local sponsor or state's own direct active acts of negligence, sole negligence or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The local sponsor shall require that the local sponsor and the state be made an additional insured on the contractor's commercial general liability policy including any excess policies, to the extent applicable. The levels and types of insurance required in any contract shall be reviewed and concurred by the Chief Engineer. The local sponsor may not agree to any provision which limits or purports to limit the liability of a contractor or in which the local sponsor agrees to indemnify a contractor.

The Chief Engineer may make partial payment of cost-sharing funds as deemed appropriate. Upon notice by the local sponsor that all work or construction has been completed, the Chief Engineer may conduct a final field inspection. If the Chief Engineer is satisfied that the work has been completed in accordance with the agreement, the final payment will be disbursed to the project sponsor, less any partial payment previously made.

F. LITIGATION. If a project submitted for cost-share is the subject of litigation, the application may be deferred until the litigation is resolved. If a project approved for cost-share becomes the subject of litigation before all funds have been disbursed, the Chief Engineer may withhold such funds until the litigation is resolved.

III. COST-SHARE CATEGORIES. The State Water Commission will support the following cost-share categories based on percentages described in this section. Engineering services for all categories may be eligible for cost-share up to 35 percent.

A. PRE-CONSTRUCTION EXPENSES. The State Water Commission supports local sponsor development of feasibility studies, mapping, and engineering designs as part of pre-construction activities to develop support for projects within this cost-share policy. The State Water Commission may provide cost-share up to 35 percent of the eligible items of any cost-share application for the activities listed below. Copies of the deliverables must be provided to the Chief Engineer upon completion. The Chief Engineer will determine the payment schedule and interim progress report requirements.

- 1 Feasibility studies to identify water related problems and options to solve or alleviate the problem, and evaluate the options for technical and financial feasibility to provide a recommendation and cost estimate of the best option to pursue.
- 2 Mapping and surveying to gather data for a specific task such as flood insurance studies and flood plain mapping, LiDAR acquisition, and flood imagery attainment, which are valuable to managing water resources.

B. WATER SUPPLY PROJECTS

1 WATER SUPPLY GRANT AND LOAN PROGRAM

a) The State Water Commission supports water supply efforts and will use a grant and loan program. The local sponsor may apply for water supply funding, and the application will be reviewed to determine project category. Projects within categories (1) thru (5) below may be considered for loan funding up to 50 percent of project costs, and projects within categories (1) and (2) below may be considered for grant funding of up to 60 percent cost-share in lieu of a loan.

- (1) Addresses a lack of water supply for domestic use or upgrades a water supply to primary safe drinking water act standards;
- (2) Supports expansion of a water supply system serving an area that has a 3-year average population growth in excess of 3% per year, as determined by the Chief Engineer;
- (3) Water treatment improvements to address impacts from other State Water Commission projects; grant funding to be determined based on level of impact by State Water Commission project;
- (4) Assists with improvements in service areas where the anticipated cost per user each year (based on 5,000 gallons per month), divided by the average annual median income

- per user, is in the top quartile of all similar water systems in the state, as determined by the Chief Engineer;
- (5) Addresses extraordinary repairs or replacement needs of a water supply system due to damages from a recent natural disaster.

The State Water Commission will periodically set the interest rate on the loan program, taking into consideration other loan programs. If ability to pay for local cost-share is a concern, the Chief Engineer can provide a recommendation for public finance options.

Water Depots for industrial use receiving water from facilities constructed using State Water Commission funding or loans have the following additional requirements:

- (1) Domestic water supply has priority over industrial water supply in times of shortage. This must be explicit in the water service contracts with industrial users.
- (2) If water service will be contracted, public notice of availability of the water service contracts is required.
- (3) A portion of the water supply at any depot must be available on a non- contracted basis for public access.

DRAFT

2 MUNICIPAL, RURAL AND INDUSTRIAL WATER SUPPLY PROGRAM. The federal Municipal, Rural, and Industrial Water Supply Program (MR&I) is administered according to the policies, procedures, and general requirements set forth in North Dakota Administrative Code Article 89-12.

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

- 1 FLOOD RECOVERY PROPERTY ACQUISITION GRANT PROGRAM.** This program is used to assist local sponsors with flood recovery expenses that provide long term flood damage reduction benefits through purchase and removal of structures. All contracted costs directly associated with the acquisition will be considered eligible for cost-share. Contracted costs may include: appraisals, legal fees (title and abstract search/update, property survey, closing costs, etc.), hazardous materials abatement needs (asbestos, lead paint, etc.), and site restoration.

The State Water Commission may provide cost-share of the eligible costs of approved flood recovery expenses that provide long term flood reduction benefits based on the following criteria and priority order:

- a) Local Sponsor has flood damage and property may be needed for construction of temporary or long-term flood control projects, may be cost-shared up to 75 percent.

- b) Local Sponsor has flood damage and property would increase conveyance or provide other flood control benefits, may be cost-shared up to 60 percent.

Prior to applying for assistance, the applicant shall adopt and provide to the Chief Engineer an acquisition plan (similar to plans required by Hazard Mitigation Grant Program (HMGP)) that includes the description and map of properties to be acquired, the estimated cost of property acquisition including contract costs, removal of structures, the benefit of acquiring the properties, and information regarding the ineligibility for HMGP funding. Property eligible for HMGP funding is not eligible for this program. The acquisition plan must also include a description of how the applicant will insure there is not a duplication of benefits.

Over the long-term development of a flood control project, following a voluntary acquisition program, the applicant's governing body must officially adopt a flood risk reduction plan or proposal including the flow to be mitigated. The flow used to develop the flood risk reduction plan must be included in zoning discussions to limit new development on other flood-prone property. An excerpt of the meeting minutes documenting the local sponsor's official action must be presented to the State Water Commission.

Eligible applicants must fund the local cost-share for acquisitions. Local cost-shares will not be waived. Federal funds are considered "local" for this program if they are entirely under the authority and control of the sponsoring entity.

The applicant shall include a perpetual restrictive covenant similar to the restrictions required by the federal HMGP funding with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds.

The applicant shall provide justification acceptable to the Chief Engineer describing the property's ineligibility to receive federal HMGP funding. This is not meant to require submission and rejection by the federal government, but rather an explanation of why the property would not be eligible for federal funding. Example explanations include: permanent flood control structures may be built on the property; project will not achieve required benefit/cost analysis to support HMGP eligibility; or lack of available HMGP funding. If inability to receive federal funding is not shown to the satisfaction of the Chief Engineer, following consultation with the North Dakota Department of Emergency Services, the request for costs-share will be returned to the applicant for submittal for federal funding prior to use of these funds.

- 2 FLOOD PROTECTION PROJECT GRANT PROGRAM.** This program supports local sponsor efforts to prevent future property damage due to flood events. The State Water Commission may provide cost-share grants for up to 50 percent of eligible costs. Property acquisition, not eligible for HMGP funding, within the footprint of a project may be an eligible cost under this program.

Engineering design must be completed before any grants are approved. Local cost-share must be provided on a timely basis. For projects with no federal participation, the cost-share may be up to 60 percent.

- 3 FEMA LEVEE SYSTEM CERTIFICATION ANALYSES AND REPORTS.** The State Water Commission may provide cost-share up to 60 percent for eligible services for FEMA 44 CFR 65.10 flood control/reduction levee system certification analysis. The analysis is required for FEMA to accredit the levee system for flood insurance mapping purposes. Typical eligible costs include site visits and field surveys to include travel expenses, hydraulic evaluations, closure evaluations, geotechnical evaluations, embankment protection, soils investigations, interior drainage evaluations, internal drainage hydrology and hydraulic reports, system modifications, break-out flows and all other engineering services required by FEMA. Ineligible costs include project administration; data and document gathering; maintenance and operations plans and updates; services to recreate required documents/plans that have not been developed; and emergency warning systems implementation. The analysis will result in a comprehensive report to be submitted to FEMA and the Chief Engineer.
- 4 DAM SAFETY AND EMERGENCY ACTION PLANS.** The State Water Commission supports dam safety including repairs and removals, as well as emergency action plans. The State Water Commission may provide cost-share for up to 65 percent of the eligible items for dam safety repair projects and dam breach or removal projects. Dam safety repair projects that are funded with federal or other agency funds may be cost-shared up to 50 percent of the eligible non-matched costs. The intent of these projects is to return the dam to a state of being safe from the condition of failure, damage, error, accidents, harm or other events that are considered non-desirable.

The State Water Commission may provide cost-share up to 80 percent, limited to \$25,000, for emergency action plans (EAPs) of each dam classified as high or medium/significant hazard dam. The cost of a dam break model is only eligible for reimbursement for dams classified as a high hazard.
- 5 WATER RETENTION PROJECTS.** The goal of water retention projects is to reduce flood damages by storing floodwater upstream of areas prone to flood damage. The State Water Commission may provide cost-share up to 50 percent of eligible costs for flood retention projects. Water retention structures constructed with State Water Commission cost-share must meet state dam safety requirements, including the potential of cascade failure. A hydrologic analysis, including the operation plan, quantifying the flood reduction benefits for 25, 50, and 100-year events must be submitted with the cost-share application.
- 6 SNAGGING & CLEARING PROJECTS.** Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the primary channel as well as any sediment that has accumulated in the immediate vicinity and any trees in imminent danger of falling in the channel. Snagging and clearing projects are intended to prevent damage to structures such as bridges, and maintain the hydraulic capacity of the channel during flood flows. The State Water Commission may provide cost-share for up to 50 percent of the eligible items for snagging and clearing on watercourses as

defined in NDCC 61-01-06. Items that are not eligible include snagging and clearing of artificial/man-made channels; the dredging of watercourses for sediment/silt removal; the clearing and grubbing of cattails and other plant vegetation; or the removal of any other unwanted materials.

D. RURAL FLOOD CONTROL PROJECTS. The primary purpose of rural flood control projects is to manage runoff or drainage from agricultural sources or to provide flood control in a rural setting. Typically, rural flood control projects consist of drains, channels, diversion ditches, or ring dikes. Items that are not eligible include projects that are managing runoff or drainage from residential or urban sources.

1 DRAINS, CHANNELS, DIVERSION DITCHES. These projects are intended to improve the drainage and management of runoff from agricultural sources. The State Water Commission may provide cost-share up to 45 percent of the eligible items for the construction of drains, channels, and diversion ditches. Expansions may be cost-shared on the basis of increased drainage capacity achieved or increased area served. The cost-share of any one project is capped per biennium. County and township road crossing work that is an integral part of the drains, channels, and diversion ditches and the appropriate costs per the awarded contract bid are eligible for cost-share. A water resource district applying for cost-share for a rural assessment-based flood control project must comply with regulatory statutes per the North Dakota Century Code. If an assessment-based rural flood control project involves multiple districts, each district involved must join in the application for financial assistance.

Cost-share requests 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. If the local sponsor wishes to submit a cost-share request prior to completion of the aforementioned steps, a pre-application process will be followed.

Once the assessment vote has passed, the final design is complete, and the drain permit has been issued, a request for cost-share assistance may be submitted to the Chief Engineer who will then present the request to the State Water Commission for their consideration.

2 RING DIKES. This program is intended to protect individual rural homes and farmsteads. All ring dikes within the program are subject to the Commission's Individual Rural/Farmstead Ring Dike Criteria provided in Attachment A. Protection of a city, community or development area does not fall under this program, but may be eligible for the flood control program. The State Water Commission may provide up to 60 percent cost-share of eligible items for ring dikes, limited to a maximum cost-share of \$40,000. Landowners enrolled in the Natural Resource Conservation Service's (NRCS) Environmental Quality Incentive Program (EQIP) who intend to construct rural or farmstead ring dikes that meet the State Water Commission's elevation design criteria are eligible for a cost-share reimbursement of 20 percent of the NRCS construction payment,

limited to a combined NRCS and State Water Commission contribution of 80 percent of eligible project costs.

- E. **RECREATION PROJECTS.** The State Water Commission may provide cost-share up to 40 percent for projects intended to provide water-based recreation. Various types of projects may constitute a recreation project.
- F. **IRRIGATION.** 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, to include water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, and electrical transmission and control facilities.
- G. **BANK STABILIZATION.** The State Water Commission may provide cost-share up to 50 percent of eligible items for bank stabilization projects on public lands or those lands under easement by federal, state, or political subdivisions. Bank stabilization projects are intended to stabilize the banks of lakes or watercourses, as defined in 61-01-06 of the NDCC, with the purpose of protecting public facilities. Drop structures and outlets are not considered for funding as bank stabilization projects, but may be eligible under other cost-share program categories. Bank stabilization projects typically consist of a rock or vegetative design, and are intended to prevent damage to utilities, roads, buildings or other facilities adjacent to a lake or watercourse.

DRAFT

ATTACHMENT A
INDIVIDUAL RURAL/FARMSTEAD RING DIKE CRITERIA

MINIMUM DESIGN CRITERIA

- HEIGHT: The dike must be built to an elevation 2 ft above either the 100-year flood or the documented high water mark of a flood event of greater magnitude, whichever is greater.
- TOP WIDTH: If dike height is 5 ft or less: 4 ft top width
If dike height is between 5 ft and 14 ft: 6 ft top width
If dike height is greater than 14 ft: 8 ft top width
- SIDE SLOPES: 3 horizontal to 1 vertical
- STRIP TOPSOIL AND VEGETATION: 1 ft
- ADEQUATE EMBANKMENT COMPACTION: Fill in 6-8 inch layers, compact with passes of equipment
- SPREAD TOPSOIL AND SEED ON RING DIKE

LANDOWNER RESPONSIBILITY

Landowners are responsible to address internal drainage on ring dikes. If culverts and flap gates are installed, these costs are eligible for cost-share. The landowner has the option of completing the work himself or hiring a contractor to complete the work.

If contractor does the work, payment is for actual costs with documented receipts.

If landowner does the work, payment is based on the following unit prices:

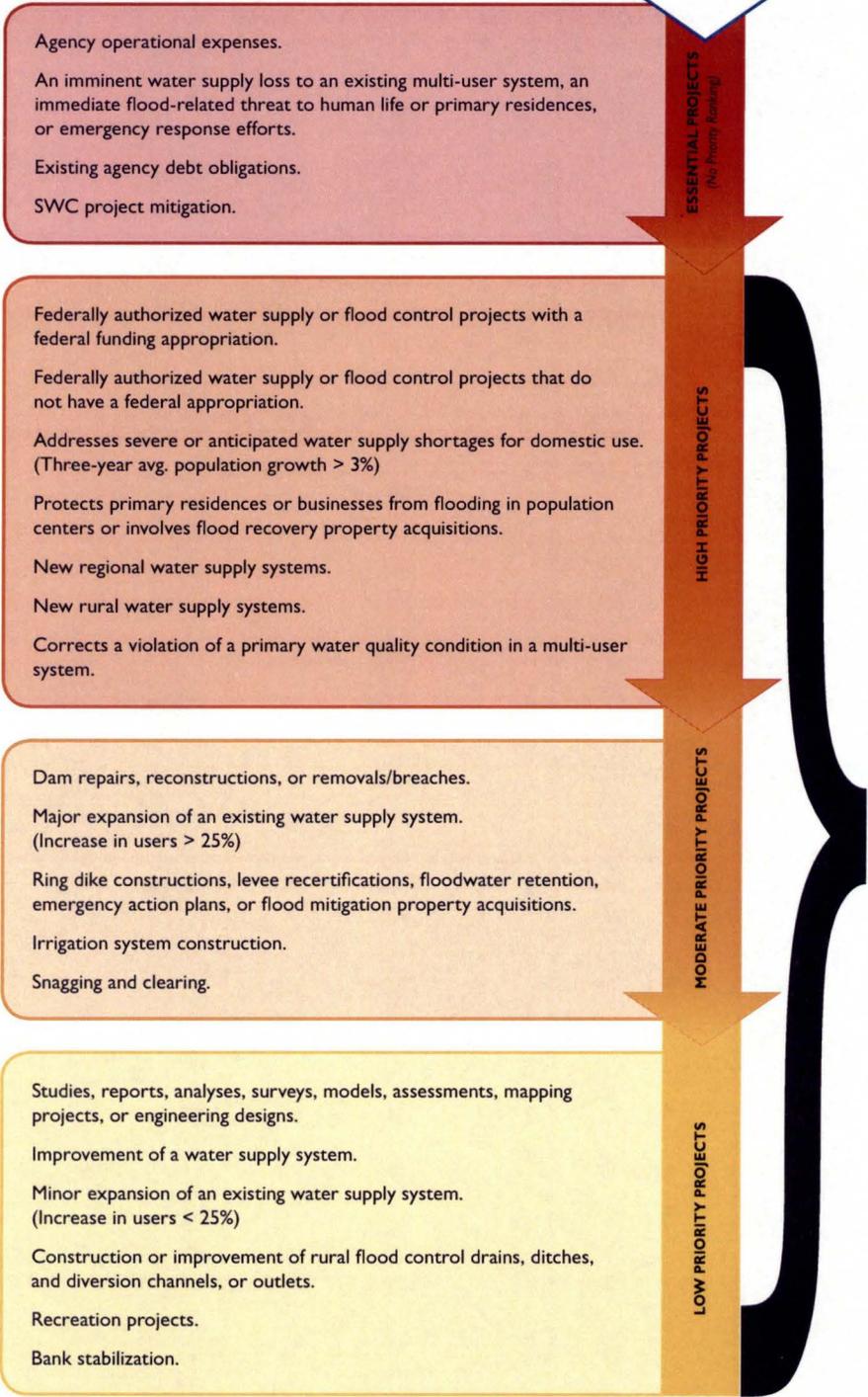
- STRIPPING, SPREADING TOPSOIL, AND EMBANKMENT FILL: Chief Engineer will determine rate schedule based on current local rates
- SEEDING: Cost of seed times 200%
- CULVERTS: Cost of culverts times 150%
- FLAP GATES: Cost of flap gates times 150%

OTHER FACTS AND CRITERIA

- The topsoil and embankment quantities will be estimated based on dike dimensions. Construction costs in excess of the 3:1 side slope standard will be the responsibility of the landowner. Invoices will be used for the cost of seed, culverts, and flap gates.
- Height can be determined by existing FIRM data or known elevations available at county floodplain management offices. Engineers/surveyors may also assist in establishing height elevations.
- The projects will not require extensive engineering design or extensive cross sections.
- A dike permit is required if the interior volume of the dike consists of 50 acre-feet, or more.

DRAFT SWC WATER PROJECT PRIORITIZATION GUIDANCE CONCEPT

Projects submitted during the project planning inventory process¹ that meet SWC cost-share eligibility requirements will be considered for prioritization. Projects that do not meet local cost-share match requirements, (per SWC cost-share policies), will be dropped to the next lowest priority category. Ineligible projects will be diverted toward alternative funding sources.



Footnotes

1. Unless determined to be an emergency, projects that are not submitted to the SWC during the project planning inventory process will be considered low priority, and will not be eligible for funding until the last quarter of the funding cycle.

2013 SWC-hosted Meeting Schedule

November 18 – Dickinson (Lower Missouri River Basin)

6:00-7:30 PM (Mountain), West River Community Center, Rooms 1 and 2

November 20 – Jamestown (James River Basin)

10:00-11:30 AM, Jamestown Civic Center, Club Room – Upper North

November 20 – Fargo (Red River Basin)

6:00-7:30 PM, Fargo Public Library

November 21 – Devils Lake (Devils Lake Basin)

1:00-2:30 PM, Ramsey County Courthouse, Basement Meeting Room

November 25 – Minot (Mouse River Basin)

1:00-2:30 PM, Ward County Courthouse, Ex-servicemen Room

December 3 – Williston (Upper Missouri River Basin)

1:00-2:30 PM, Williston Community Library