

**North Dakota State Water Commission Testimony  
Relative To Engrossed House Bill 1020**

**Presented To The Senate Appropriations Committee**

**March 22, 2021**

Good afternoon Chairman Holmberg, and members of the Senate Appropriations Committee, I am John Paczkowski, North Dakota's Interim State Engineer and Chief Engineer-Secretary to the North Dakota State Water Commission.

In response to the specific requests included in the *Outline for Agency Budget Presentations To The Appropriations Committees*, I offer the following testimony:

1. *Cite the North Dakota Century Code chapter(s) associated with the agency and list its major statutory responsibilities.*

The statutory authorities of the Water Commission and Office of the State Engineer are provided for in North Dakota Century Code Title 61 – with the responsibilities of the Water Commission in 61-02, and the Office of the State Engineer in 61-03.

Generally speaking, we have three primary functions: regulation, development, and education.

Regulatory functions fall under the responsibility of the Office of the State Engineer. Specifically, they include water rights, drainage, floodplain management, sovereign land management, and dam safety.

Water development and associated project funding are a function of the Water Commission and include state projects such as the Southwest Pipeline Project, the Northwest Area Water Supply, and Devils Lake flood control. The Water Commission

also promotes water development by providing cost-share assistance for many local projects such as flood control, water conveyance, water supply systems, and other general water management efforts.

The third function of the agency, which pertains to both the Office of the State Engineer and the Water Commission, involves public information and education regarding the nature and occurrence of the state's water resources. This also includes public outreach and education related to agency functions.

*2. Explain the purpose of the agency's various divisions/programs – attach organizational chart.*

As illustrated by our organizational chart (See Attached), the State Water Commission and Office of the State Engineer are comprised of 90 Full Time Employees (FTE). This is a reduction of 3 FTE from the previous biennium. As indicated in my introduction, I serve as both North Dakota's State Engineer, and as Chief Engineer-Secretary to the State Water Commission.

The Administrative Services Division, directed by Heide Delorme, provides agency operational support including accounting, human resources, records management, and legal support coordination for all agency projects and programs.

The Water Appropriations Division, directed in the interim by Andrew Nygren, is responsible for the processing of water permit applications, water rights evaluations, hydrologic data collection, water supply investigations, and economic development support activities.

The Atmospheric Resources Division, directed by Darin Langerud, is responsible for the administration of cloud seeding activities in the state, conducts atmospheric research, provides student intern training opportunities, and performs weather-related data collection and analyses.

The Water Development Division, directed by Jon Kelsch, is responsible for project engineering, construction, and maintenance; flood response and recovery; Southwest Pipeline and Northwest Area Water Supply projects management; and operation of the Devils Lake outlets.

The Data and Technology Services Section, managed by Chris Bader, is responsible for providing the technology infrastructure required to support the scientific and regulatory functions for the agency; the office and back-office automation functions to address workflow and integration requirements; and the development and maintenance of the data management infrastructure used to support agency water resource management initiatives.

The Planning and Education Division, directed by Patrick Fridgen, maintains and updates a Water Development Plan for the State of North Dakota, and administers a cost-share program in support of that plan. Division staff also participate in numerous regional, state, local, and inter-office planning activities; manage the agency's water education programs; coordinate environmental reviews; manage the Drought Disaster Livestock Water Supply Assistance Program (when activated); and oversee public outreach and media relations efforts.

And finally, the Regulatory Division, directed by Aaron Carranza, is responsible for the review and permitting of drain, dike, dam, and sovereign land applications;

administration of North Dakota's Dam Safety Program; assisting communities with floodplain management through the National Flood Insurance Program; administration of FEMA's Map Modernization program; sovereign land management, including ordinary high water mark delineations; and the Silver Jackets program.

I would also like to bring to your attention that since the 2019 session, we now have eight Governor-appointed members on the State Water Commission, representing the state's major river basins. This is one more member than in previous biennia. North Dakota's current Water Commission members who represent the eight basins are Michael Anderson (Lower Red River), Katie Hemmer (James River), Richard Johnson (Devils Lake), Mark Owan (Upper Missouri River), Matthew Pedersen (Upper Red River), Steven Schneider (Little Missouri, Upper Heart, and Upper Cannonball Rivers), Jay Volk (Lower Missouri River), and Jason Zimmerman (Mouse River). Other members of the Water Commission include Governor Doug Burgum as Chairman, and Agriculture Commissioner, Doug Goehring.

*3. Report any financial audit findings included in the most recent audit of your department or institution and action taken to address each finding.*

The State Water Commission had no financial audit findings in our most recent audit.

*4. Discuss current biennium accomplishments and challenges and next biennium goals and plans.*

Like almost all other agencies, the Water Commission and Office of the State Engineer were faced with maintaining operations and providing services to those who depend on us during a global pandemic. I am proud to report that in the face of the COVID-19 crisis, we were able to adjust quickly and effectively, and transitioned to a largely remote staff with very few gaps in our ability to perform duties. This in large

part was due to our forward-thinking staff in all divisions, and particularly because of our outstanding Technology team. The electronic routing systems that were built in-house and were already in place for most of our programs, were instrumental in our efficient response to COVID-impacted operations.

Beyond the challenges related to COVID-19, the following are some examples of other agency accomplishments during the current biennium.

- Began design and construction of elements related to the long-awaited Northwest Area Water Supply project.
- Continued to operate two Devils Lake outlets that combined have removed about 1.3 million acre-feet of floodwater since 2005.
- Began implementation of processes to conduct Life Cycle Cost Analyses (LCCA) of water supply projects, and Economic Analyses (EA) of flood control and water conveyance projects. Both promote and support more efficient allocation of state funds.
- Conducted extensive ground and surface water evaluations in several areas throughout the state and continued to maintain a strong water right permitting process that provides for the orderly development of water resources.
- Conducted research and deployment of advanced technologies such as Airborne Electromagnetic (AEM) surveys, Pushing REmote SENSors (PRESENS), and drones for data collection efforts.
- Conducted a low head dam inventory to identify the location of low head dams throughout the state, with the long-term goal of mitigating drowning risks associated with roller effects.

- Continued to deploy/manage state-of-the-art remote telemetry water metering systems to track industrial water use in oil producing areas.
- Worked with water project sponsors to complete a 2021 Water Development Plan that outlines short- and long-term financial needs of projects statewide.
- Published an electronic Water Development Plan Dashboard to update project information – making the 2021 Water Development Plan a living document.
- Provided support for water education opportunities involving thousands of grade school students from various grade levels.
- Utilized state-of-the-art technologies to provide hail suppression and rainfall enhancement cloud seeding services to participating counties.
- Deployed a publicly accessible, state-of-the-art flood hazard risk assessment platform called NDRAM.

In terms of the agency's plans and goals for the next biennium, I have attached our new agency 2021-2023 Strategic Plan Update, which succinctly provides that information.

*5. Compare the agency's request/recommendation totals, including full-time equivalent (FTE) positions, for the next biennium compared to the current biennium.*

Our agency had 90 FTE in the 2019-2021 biennium, and we have requested 90 FTE in the 2021-2023 biennium.

*6. Explain the funding included in each program/line item either in total or by division depending on the size of the agency.*

*a. Amounts included in the base budget and their purpose and use.*

The major components of the State Water Commission and Office of the State Engineer's base budget recommendation consist of the following (Also see attached - "Budget Overview").

**Salaries and Wages** totaling \$19,831,986 includes salaries and fringe benefits for all employees, including employees that provide service for Northwest Area Water Supply (NAWS), Southwest Pipeline Project (SWPP), and Devils Lake.

**Operating Expenses** totaling \$43,855,753 includes operations for NAWS, SWPP and the Devils Lake pumps. This includes \$13,916,185 for professional services, which are primarily consultant engineering dollars, and \$8,611,200 for utility costs, primarily to operate the Devils Lake and Northwest Area Water Supply projects. This also includes \$7,236,750 for our debt service payment from the 2019-2021 biennium. In addition, about \$6.4 million of this is federal funding for our regulatory programs, and the remaining balance is for agency operations.

**Capital Assets** totaling \$105,938,758 consist mostly of projects for NAWS and SWPP, which are both state owned. Specifically, \$30 million was for SWPP, \$43 million was for NAWS, and \$33 million was added in the House to provide additional funding for state-owned projects.

**Project Carryover** totaling \$308,333,818 includes funding approved for projects that would not be completed by the end of the 2017-2019 biennium.

The remaining dollars are in the four purpose funding buckets. They include \$128,000,000 for Water Supply; \$37,200,000 for Rural Water Supply; \$197,000,000 for Flood Control, which includes \$66,500,000 for the Fargo Metro Area Flood Control

Project, \$82,500,000 for the Mouse River Enhanced Flood Control Project, and \$48,000,000 for Other Flood Control; and \$27,093,776 for General Water projects. General Water includes funding for dam repairs and rehabilitations, feasibility studies, irrigation projects, as well as other general water management efforts.

*b. Amounts included in the request/recommendation and justification for the change from the base budget. Discuss changes relating to:*

- (1) **Salaries and Wages** increased from the base budget \$851,158 due to the performance-based salary adjustments of 2% for each year of the biennium as recommended in the Executive budget. Engrossed House Bill 1020 decreased this by \$168,397 based on a 1.5% increase for each year of the biennium, with a minimum monthly increase of \$100, and maximum monthly increase of \$250 for both years. They also included a very slight increase in health insurance. The net affect was an increase from the base budget of \$682,761.
  
- (2) **Operating Expenses** show a very slight decrease from the base level to the Executive Budget. We did not have the \$7.2 million debt payment that was mentioned earlier, as it was included in the 2019-2021 budget. In 2021-2023, we have included \$4.4 million of the \$75 million line of credit in this line item, which is for construction management. In 2019-2021, the entire \$75 million was appropriated in Capital Assets, but in 2021-2023 we have budgeted \$70.6 million in Capital Assets, and \$4.4 million in Operating Expenses. Also included in this line item for 2021-2023 is an additional \$742,000 for utilities for a new pump station for NAWS and an additional \$545,000 for additional contracts for SWPP. The remaining increase was

due to additional federal funding that may be available in our Regulatory Division. There were no additional changes with Engrossed House Bill 1020.

- (3) **Capital Assets** show an increase of \$59,346,019 from the base level to the Executive Budget. This is due to the inclusion of a portion of the \$75 million line of credit. As mentioned previously, \$70.6 million is included in the 2021-2023 amount, which is less the \$4.4 million included in Operating Expenses. Carryover of \$22 million was removed from our 2021-2023 appropriation in section 1 and moved to section 4 in Engrossed House Bill 1020. The appropriation amounts were also increased for NAWS and SWPP due to their revised needs.
- (4) **Grants** included in the Executive Budget recommendation decreased the base level amounts by \$204,944,199 due to the decreased revenue forecast for the Resource Trust Fund. The original forecast was \$433 million for the 2019-2021 biennium and was reduced to \$288 million. The forecasted revenue for 2021-2023 at the time of the recommendation was \$255 million. Engrossed House Bill 1020 includes a reduction of \$199,366,501 from the base level and is an increase of \$5,577,698 from the Executive recommendation. Allocations for project grant funding are based on matching available revenues with the financial needs of project sponsors identified through the water development planning process. We expect that revised revenue forecasts will result in the need for further adjustments.

- (5) **Special Line Items** in the 2019-2021 biennium were \$66,500,000 for Fargo Flood Control and \$82,500,000 for Mouse River Flood Control. The Executive Budget did not include a specific allocation for these projects, but rather, included all flood control dollars in the Other Flood Control line item of \$94,630,512. Engrossed House Bill 1020 does not include funding for these two projects because specific allocations are currently identified in Engrossed House Bill 1431 – totaling \$435.5 million for Fargo Flood Control and \$74.5 million for Mouse River Flood Control.
- (6) **Estimated Income** for special funds based on the revenue forecast in December was \$274 million, which included Resource Trust Fund deposits of \$255 million. The balance is made up of capital repayments from SWPP, NAWS payments from the City of Minot, payments from counties for cloud seeding, and CD interest. The forecast for the Resource Trust Fund deposits was recently revised to \$355 million for the 2021-2023 biennium.
- (7) **Estimated Income** from federal funds included in the Executive Budget totaled \$41,066,031. This was a slight increase from 2019-2021, which totaled \$39,123,284. Of the \$41 million included in the Executive Budget, \$30 million, or two fiscal year (FY) allocations of \$15 million, was anticipated through the Bureau of Reclamation’s Municipal, Rural, and Industrial (MR&I) Water Supply Program. Please note that the FY allocation to North Dakota through the MR&I program was \$18.5 million, or an increase of \$3.5 million. If this trend continues, availability of federal funds may accelerate at an increasing rate over the coming years - though North Dakota’s remaining cap of approximately \$82 million would remain the same.

(8) **General Fund** dollars are not included in this budget.

(9) **FTE** remain the same as last biennium at 90.

In total, the Executive recommendation included a reduction of \$158,206,860 from the base level budget. Engrossed House Bill 1020 reduces the Executive recommendation by \$291,771,222 and is a decrease of \$449,978,082 from the base level. This substantial decrease is due in large part to reductions in expected Resources Trust Fund revenues, the funding of Fargo and Mouse River Flood Control projects through Engrossed House Bill 1431, and removal of funding identified in the Project Carryover line.

*7. Discuss the purpose and use of any one-time funding items for the current biennium.*

We had two one-time funding items in our 2019-2021 appropriation bill.

- The \$75 million line of credit has not been utilized to date. The intent was for this to be used if needed for NAWS. We have been approved by the Bank of North Dakota for \$20 million, which would cover NAWS development needs for this biennium if necessary. We have requested authorization for this line of credit to continue into the 2021-2023 biennium. As mentioned previously, \$70.6 million is included in our Capital Assets request of \$165,284,777, and \$4.4 million is included in our Operating Expense request of \$43,366,550. The line of credit is still included in Engrossed House Bill 1020.
- We also had \$25.9 million to pay off our outstanding debt as a one-time funding item in 2019-2021. This was paid off using our emergency clause in May 2019. We do not need this in the 2021-2023 budget.

*8. Identify and justify the need for any one-time funding being requested/recommended.*

We have requested the \$75 million line of credit to continue for NAWS to ensure that project can continue with their progress. NAWS had been in litigation for 16 years, but all litigation ended, and they can finally move forward with construction.

*9. Discuss agency collections that are deposited in the general fund or special fund, and any anticipated changes from 2019 legislative session estimates during the 2019-2021 biennium and estimated changes for the 2021-2023 biennium.*

We have very minimal deposits going into the General Fund. They include open records requests, land lease revenue, water report late fees, and illegal water usage fees. The main Special Fund deposits are from the Resource Trust Fund. This makes up 93% of our revenue. Other Special Fund deposits include SWPP capital repayments, NAWS payments from the City of Minot, payments from counties for cloud seeding, and CD interest.

*10. Discuss the need for any other sections that are included or are requested/recommended to be included in the agency appropriation bill.*

Adjustments have been made from the base level budget included in Engrossed House Bill 1020 to account for the potential passage of Engrossed House Bill 1431. Those adjustments should remain – pending the Legislative outcome of that bill. Engrossed House Bill 1431 is addressed in greater detail in the following section.

*11. Discuss any other bills being considered by the Legislative Assembly and their potential budgetary impact on the agency.*

Engrossed House Bill 1431 could ultimately have a profound impact on Engrossed House Bill 1020. HB 1431 creates a Water Infrastructure Revolving Loan Fund, and enables bond proceeds issued by the Public Finance Authority to support various water development projects. As mentioned previously, specific allocations to water infrastructure projects would include \$435.5 million for the Fargo-Moorhead Area Diversion project, \$74.5 million to the Resources Trust Fund to repay loans issued to the Western Area Water Supply Authority (WAWSA), and \$74.5 million available from repaid WAWSA loans to the Mouse River Flood Control project.

The Water Commission has gone on record encouraging the use of bonding to support water projects. This type of strategy provides greater certainty for sponsors of large-scale projects that are trying to financially plan for construction efforts that are multi-biennial in nature. This also frees up Resources Trust Fund dollars for other smaller-scale projects that depend on the Water Commission as a cost-share partner.

*12. Discuss the impact of any budget changes made to meet the Governor's budget guidelines.*

Because we receive no General Fund dollars in our appropriation, the agency was not subject to the General Fund reductions which required General Fund agencies to submit budget requests for the next biennium that are 5% to 15% below current levels. We did however decrease our budget due to a projected decrease in Resource Trust Fund deposits.

As a Special Fund agency, we were required to reprioritize 5% of our budget to shift dollars from low performing, low return programs to areas that move us toward our strategic goals. We reprioritized expenses related to our Pushing REmote SENSors

(PRESENS) program, which utilizes technology to improve management of the state's water resources. This is one of our strategic goals.

*13. Provide a one-page itemized listing of the changes your agency is requesting the committee to make to the House of Representatives recommendation.*

See attached.

*14. Provide a comparison of your agency's optional adjustment requests to those recommended in the executive budget.*

We proposed one optional adjustment to add an FTE within our Regulatory Division for a Water Resource Program Administrator who would be responsible for preliminary permit, complaint, and determination tasks to aid division engineers' workload distribution decisions. This would be funded 100% with Special Funds. We had eliminated an FTE in Regulatory, which would have been funded 100% with Federal Funds. Our FTE count would remain the same at 90 FTE. This was included in the Executive budget and is currently included in Engrossed House Bill 1020.

*15. Identify the amount of federal funding available to your agency relating to the Corona Virus (COVID-19) pandemic, the actual amount spent, and for what purpose.*

None.

*16. Provide additional information as necessary.*

Each biennium, the Water Commission completes a Water Development Plan to provide a comprehensive overview of North Dakota's ongoing and anticipated water projects across the state. We have provided a copy of the 2021 Water Development Plan for your information.

For quick reference, large-scale project updates begin on page 10. A comprehensive project inventory covering the next two-year (2021-2023 biennium) timeframe begins on page 33, with a summary of those needs by project purpose on page 57. Longer-term financial needs are estimated and summarized for the next ten years on page 60. And finally, I would like to bring your attention to the water development recommendations section beginning on Page 72. I will not cover all of the recommendations at this time, but as mentioned previously, we do support more reliable and cost-effective sources of revenue, such as bonding – which is the first recommendation.

I would also like to note that the agency has created a Water Development Dashboard that is available via our website at [swc.nd.gov](http://swc.nd.gov). The Water Development Dashboard is an interactive platform developed for the water community to make the 2021 Water Development Plan a living document, and to provide updated information regarding North Dakota's water development efforts. We have made some updates to various charts included in the 2021 Water Development Plan within the Dashboard to reflect Legislative changes, recent Water Commission actions, and other updates from project sponsors.

Mr. Chairman, this concludes our agency overview and testimony relative to Engrossed House Bill 1020. If there are any questions from you or other committee members, I will try to answer them at this time.

## ATTACHMENTS

1. Water Commission and Office of the State Engineer Organizational Chart
2. 2021-2023 Water Commission and Office of the State Engineer Strategic Plan
3. Budget Overview
4. Itemized Changes Requested By The Water Commission To House  
Recommendations Included In Engrossed House Bill 1020
5. 2021 Water Development Plan