

**State Water Commission  
Budget No. 770  
House Bill No. 1020**

	<b>FTE Positions</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
2017-19 legislative appropriation	93.00	\$0	\$722,173,475	\$722,173,475
2015-17 legislative appropriation	<u>97.00</u>	<u>0</u>	<u>1,158,935,836</u>	<u>1,158,935,836</u>
2017-19 appropriation increase (decrease) to 2015-17 appropriation	(4.00)	\$0	(\$436,762,361)	(\$436,762,361)

**Item Description**

**FTE changes** - The 2017-19 biennium appropriation includes funding for 93 FTE positions, a decrease of 4 FTE positions from the 2015-17 biennium authorized level of 97 FTE positions.

**Resources trust fund and water development trust fund** - In Section 3 of 2017 House Bill No. 1020, the Legislative Assembly provides that, in addition to the amounts appropriated to the State Water Commission from the resources trust fund and the water development trust fund, any additional amounts that become available in those funds are appropriated, subject to Budget Section approval, to the State Water Commission for the purpose of defraying the expenses of the commission for the 2017-19 biennium.

**State Water Commission project funding designations** - The Legislative Assembly, in Section 5 of House Bill No. 1020, designated \$298,875,000 of the amount appropriated in the water and atmospheric resources line item to be used as follows:

- \$120,125,000 for water supply;
- \$27,000,000 for rural water supply;
- \$136,000,000 for flood control; and
- \$15,750,000 for general water.

**Mouse River flood control project** - The Legislative Assembly, in Section 6 of House Bill No. 1020, provided legislative intent that the state provide no more than \$193 million of state funding for Mouse River flood control projects within the city limits of Minot. It provides further intent that the \$193 million be made available during the 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

**Red River Valley Water Supply Project** - The Legislative Assembly, in Section 7 of House Bill No. 1020, provided legislative intent the State Water Commission provide a \$30 million grant to the Garrison Diversion Conservancy District for the Red River Valley Water Supply Project during the 2017-19 biennium. Of this amount, \$17 million is for the completion of the planning and

**Status/Result**

The agency removed 1 FTE water resource program administrator position, 1 FTE engineer technician position, 1 FTE hydrologist position, and 1 FTE water resource engineer manager position. All positions were vacant prior to removal.

Through March 2018 funding available in the resources trust fund was approximately \$6.56 million more than estimated during the 2017 legislative session. Through April 2018 funding available in the water development trust fund was approximately \$14.8 million more than estimated during the 2017 legislative session. The increase in funds available in the water development trust fund is primarily due to funding released from an escrow account related to the settlement of an ongoing dispute between the state and major tobacco companies over enforcement of the 1998 Tobacco Master Settlement Agreement. The agency does not anticipate requesting Budget Section approval to expend the additional funds available during the 2017-19 biennium.

Through April 2018 the State Water Commission has obligated \$173,177,235 in funding, designated as follows:

- \$95,184,350 for water supply;
- \$7,854,520 for rural water supply;
- \$66,364,016 for flood control; and
- \$3,774,349 for general water.

As of April 2018 the State Water Commission has obligated \$63,781,034 for Mouse River flood control projects for the 2017-19 biennium.

Through April 2018 the State Water Commission has obligated \$17 million for the Red River Valley Water Supply Project for the 2017-19 biennium. As of May 23, 2018, the Garrison Diversion Conservancy District had not met the criteria identified in Section 7 of House Bill No. 1020 for approval of the \$13 million for construction of Phase 1 prioritized project features.

permitting process and \$13 million is to initiate construction of Phase 1 prioritized project features. The section also requires the Garrison Diversion Conservancy District to obtain Budget Section approval prior to changing funding designation amounts. Section 8 identifies accomplishments the Garrison Diversion Conservancy District must meet regarding the planning and permitting process and requires the district to obtain certification from the State Water Commission and the State Engineer that those items are complete. The section also requires Budget Section approval of the certification before construction may begin and before funding can be provided to the Garrison Conservancy District for the Red River Valley Water Supply Project.

**Western Area Water Supply Authority debt refinancing** - The Legislative Assembly, in Section 9 of House Bill No. 1020, directed the refinancing of Western Area Water Supply Authority (WAWSA) debt, and provides for the repayment of a \$25 million loan from the general fund. The section also requires WAWSA to provide monthly financial reporting, authorizes WAWSA to pay only interest on loans from the resources trust fund during the period of July 1, 2017, through June 30, 2018, and changes the interest rate on the \$10 million loan to WAWSA from 5 to 2.5 percent.

**Industrial Commission study** - The Legislative Assembly in Section 11 of House Bill No. 1020, appropriated \$150,000 from the resources trust fund to the Industrial Commission for conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of WAWSA. The section requires the Industrial Commission to report the findings to the Water Topics Overview Committee by June 1, 2018. Section 12 directs the Industrial Commission, based on the results of the study, to either develop a timeline to complete the lease or the sale of WAWSA's assets or assist WAWSA in refinancing its outstanding debt through bonding.

**State Engineer flood hazard risk management study** - The Legislative Assembly, in Section 13 of House Bill No. 1020, provided the water and atmospheric resources line item in Section 1 of the bill includes \$30,000, of which \$15,000 is from the resources trust fund and \$15,000 is from other funds received from Ward County, to conduct a flood hazard risk management framework study and demonstration to include only Ward County. Section 14 directs the Legislative Management to study issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the State Engineer to perform the study and provides guidance for the completion of the study.

The Bank of North Dakota restructured and consolidated two loans totaling \$63 million and the general fund loan for \$25 million into one Bank note totaling approximately \$88 million. The terms of the loan include an interest rate of 1.5 percent over the 30 day London International Bank Offered Rate, adjusted monthly, over 20 years. The general fund received the \$25 million loan repayment in July 2017.

The Industrial Commission, at its June 5, 2017, meeting, approved a motion to form a WAWSA Study Advisory Committee consisting of the State Engineer, the Lieutenant Governor, the Director of the Office of Management and Budget (OMB), the Director of the Department of Mineral Resources, and the Executive Director of the Industrial Commission. The commission, at its September 29, 2017, meeting, approved a motion to contract with Stantec to complete the independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of WAWSA. On June 13, 2018, Stantec reported to the Water Topics Overview Committee it is not feasible or desirable to sell the assets of WAWSA, and recommended WAWSA adopt a concession policy to sell its unused capacity to generate a revenue stream which could sustain repayment of its outstanding debt.

The State Engineer's office is working with the North Carolina Department of Emergency Services. It is unknown at this time when the study will be completed.

**Chairman and Vice Chairman of the State Water Commission** - The Legislative Assembly, in Section 18 of House Bill No. 1020, amended North Dakota Century Code Section 61-02-08, as amended by Section 6 of 2017 House Bill No. 1374, as approved by the 65<sup>th</sup> Legislative Assembly, to designate the Governor as Chairman of the State Water Commission and provide the commission select the Vice Chairman.

**Infrastructure revolving loan fund** - The Legislative Assembly, in Section 19 of House Bill No. 1020, amended Section 61-02-78(1) to limit the total allocation to the infrastructure revolving loan fund from the resources trust fund to \$26 million. Section 25 directed the State Treasurer to return any oil extraction funds exceeding \$26 million deposited in the infrastructure revolving loan fund to the resources trust fund.

**Bank of North Dakota line of credit** - The Legislative Assembly, in Section 20 of House Bill No. 1020, amended Section 61-02-79 to reduce the State Water Commission's authority for a Bank of North Dakota line of credit from \$200 million to \$75 million and change the interest rate from 1.75 to 1.5 percent over the 3-month London InterBank Offered Rate, up to 3 percent for water supply and flood control projects approved before June 30, 2019.

**Temporary use permits - Little Missouri River** - The Legislative Assembly, in Section 22 of House Bill No. 1020, amended Section 61-29-06 to authorize the State Water Commission to issue temporary use permits within the confines of the Little Missouri Scenic River and all Little Missouri River tributary streams.

**Western Area Water Supply Authority water rates** - The Legislative Assembly in Section 24 of House Bill No. 1020, amended Section 61-40-11 to authorize the Industrial Commission to allow WAWSA to contract at competitive, floating, market rates for industrial water depot and lateral retail sales.

**State Water Commission 2019-21 biennium budget** - The Legislative Assembly, in Section 27 of House Bill No. 1020, required the format of the State Water Commission's 2019-21 biennium agency budget to include a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, and new projects line item. The section provides the commission may include additional lines as it determines necessary. The section also required the commission to present funding for projects in a manner consistent with the funding designations identified in the bill. **The Governor vetoed this section.**

At the February 8, 2018, State Water Commission meeting, Commissioner Richard Johnson was unanimously elected Vice Chairman of the State Water Commission.

The State Treasurer has returned \$8,440,473 to the resources trust fund. As of April 2018 the balance of loans outstanding from the infrastructure revolving loan fund was \$20,753,223.

Through April 2018 the State Water Commission has not drawn on the line of credit available with the Bank of North Dakota. The State Water Commission does not anticipate drawing on the line of credit during the 2017-19 biennium.

The State Water Commission revised its interim policy for temporary use permits for using water from the Little Missouri River in June 2017 and sent the revised interim policy to the Little Missouri River Commission for approval. The Little Missouri River Commission has not taken action regarding the revised interim policy for temporary use permits.

On June 30, 2017, the Industrial Commission unanimously approved the authority for WAWSA to enter into contracts at competitive, floating, market rates for industrial water depot and lateral retail sales. The Western Area Water Supply Authority must report to the Industrial Commission on a monthly basis the average industrial water rate for the prior month. In April 2018 WAWSA reported the average industrial water rate for contracts for the prior month was \$0.01514 per gallon or \$0.64 per barrel.

On September 28, 2017, the Budget Section approved, pursuant to Section 54-44.1-07, a motion to provide the 2019-21 biennium budget request for the State Water Commission and the related draft appropriations act for the State Water Commission submitted by OMB for consideration by the 66<sup>th</sup> Legislative Assembly identify funding separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or OMB. In addition the Budget Section provided the State Water Commission present funding requests for projects for the 2019-21 biennium in a manner consistent with the funding designations identified in Section 5 of House Bill No. 1020.