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FIRST ENGROSSMENT

Sixty-fifth Legislative Assembly of North Dakota

ENGROSSED HOUSE BILL NO. 1020

Introduced by

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Appropriations Committee

1 A BILL for an Act to create and enact two new sections to chapter 61-02 of the North Dakota 2 Century Code, relating to industrial use of fresh water dispensed for oil and gas industry users; 3 to amend and reenact subsection 1 of section 57-51.1-07, section 61-02-02, subsection 1 of 4 section 61-02-78, and sections 61-02-79 and 61-40-11 of the North Dakota Century Code, 5 relating to the allocation of moneys in the oil extraction tax development fund, definitions, the 6 infrastructure revolving loan fund, a Bank of North Dakota line of credit, and water rates of the 7 western area water supply authority; to provide for a legislative management study; to provide 8 for a state engineer study; to provide for a report to the legislative management; to provide

legislative intent; to designate funding; to provide an appropriation for defraying the expenses of

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

the state water commission; and to provide exemptions.

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of the state water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

17			Adjustments or	
18		Base Level	Enhancements	<u>Appropriation</u>
19	Administrative and support services	\$5,535,618	\$100,154	\$5,635,772
20	Water and atmospheric resources	863,400,218	(127,322,401)	736,077,817
21	Total all funds	\$868,935,836	(\$127,222,247)	\$741,713,589
22	Full-time equivalent positions	97.00	(4.00)	93.00

1 SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act 2 includes the sum of \$277,612 of other funds, for increases in employee health insurance 3 premiums from \$1,130 to \$1,249 per month. 4 SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT. The administrative and 5 support services line item in section 1 of this Act includes \$135,000 from the resources trust 6 fund which the state water commission shall provide as a grant to the game and fish 7 department for law enforcement activities on sovereign lands in the state for the biennium 8 beginning July 1, 2017, and ending June 30, 2019. 9 **SECTION 4. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION** 10 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional 11 amounts in the resources trust fund and water development trust fund which become available 12 are appropriated, subject to budget section approval, to the state water commission for the 13 purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and 14 ending June 30, 2019. 15 SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME -16 **APPROPRIATION - REPORT.** In addition to the amounts appropriated in section 1 of this Act, 17 there is appropriated from oil and gas industry fresh water royalty income deposited in the 18 resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to 19 the state water commission for the purpose of repaying state-guaranteed loans, which were 20 made to entities that sell fresh water to oil and gas industry users, for the biennium beginning 21 July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative 22 management's water topics overview committee of any funding made available and payments 23 made pursuant to this section. 24 SECTION 6. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY. 25 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the 26 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is 27 only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the 28 resources trust fund after that period has expired must be transferred to the resources trust fund 29 and any unexpended funds appropriated from the water development trust fund after that period 30 has expired must be transferred to the water development trust fund.

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SECTION 7. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS TRANSFERS - BUDGET SECTION APPROVAL. 1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$299,875,000 is designated as follows:

- a. \$30,000,000 for rural water supply projects;
- 7 b. \$44,125,000 for municipal water supply projects;
- 8 c. \$58,000,000 for regional water supply projects;
- d. \$1,000,000 for water conveyance projects;
- e. \$150,000,000 for flood control or protection projects;
 - f. \$750,000 for irrigation projects; and
 - g. \$16,000,000 for general water management.
 - The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management's water topics overview committee.
 - SECTION 8. NORTHWEST AREA WATER SUPPLY PROJECT FUNDING. Any funding provided by the state water commission for the northwest area water supply project must be from funds made available through the line of credit authorized in section 18 of this Act before any other funds may be provided by the state water commission for the project during the biennium beginning July 1, 2017, and ending June 30, 2019.
 - **SECTION 9. LOAN AUTHORIZATION APPROPRIATION MINOT FLOOD CONTROL PROJECT FUNDING.** The state water commission may obtain a loan from the Bank of North Dakota in an amount not to exceed \$110,000,000, the sum of which is appropriated to the state water commission for the purpose of defraying the expenses of the construction of phase one through phase four of the Minot flood control project, for the biennium beginning July 1, 2017, and ending June 30, 2019. The terms and conditions of the loan must be negotiated by the state water commission and the Bank of North Dakota, and the repayment of principal and interest on the loan must be from revenues deposited in the resources trust fund.
 - **SECTION 10. LEGISLATIVE INTENT MINOT FLOOD CONTROL PROJECT FUNDING.**Except for the funding appropriated in section 9 of this Act, it is the intent of the sixty-fifth

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1 legislative assembly that the state water commission not provide any additional funding for flood 2 control projects within the city limits of Minot during the 2019-21, 2021-23, and 2023-25 3 bienniums. 4 SECTION 11. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH 5 DAKOTA LOAN - REPORTS. The Bank of North Dakota shall consolidate the \$40,000,000 loan 6 to the western area water supply authority authorized in section 5 of chapter 20 of the 2013 7 Session Laws, the \$50,000,000 loan to the western area water supply authority authorized in 8 section 2 of chapter 500 of the 2011 Session Laws, and the \$19,500,000 loan from funds 9 appropriated to the state water commission from the resources trust fund in section 1 of 10 chapter 20 of the 2013 Session Laws. The terms and conditions of the consolidation loan must 11 be negotiated by the western area water supply authority and the Bank of North Dakota. If the 12 authority defaults on its payment of principal or interest on the consolidation loan from the Bank 13 of North Dakota authorized by this section, the authority is subject to the default provisions 14 under section 61-40-09. The Bank of North Dakota shall report the terms of the consolidation 15 loan upon its completion to the legislative management's water topics overview committee 16 during the 2017-18 interim. The western area water supply authority shall provide its quarterly 17 financial statements and industrial sales to the legislative council for the legislative 18 management's water topics overview committee's review during the 2017-18 interim. 19 SECTION 12. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE 20 SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority 21 defaults on its payment of the principal or interest on the consolidation loan provided for in 22 section 11 of this Act, the Bank of North Dakota shall notify the legislative council, and the state 23 water commission shall provide a payment, subject to budget section approval, to the Bank of 24 North Dakota in an amount of the default as certified to the budget section by the Bank of North 25 Dakota. 26 SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY -27 ADDITIONAL INCOME - APPROPRIATION. The water and atmospheric resources line item in 28 section 1 of this Act includes \$50,000, for the purpose of conducting a flood hazard risk 29 management framework study and demonstration in section 14 of this Act, for the biennium

beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from

federal, local, and private sector co-funding partnerships. Any fees collected from data users

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and partners and any other funds from public or private sources, including federal grants and county revenue contributions, are appropriated to the state engineer for the study and for expanding the project to additional counties for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK

- **MANAGEMENT.** During the 2017-18 interim, the legislative management shall 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 a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk.
 - 1. In performing the study and proof of concept demonstration, the state engineer may leverage, coordinate, and partner with the North Carolina floodplain mapping program and with Cass, Ward, Richland, and Burleigh Counties and other counties to conduct the study and proof of concept demonstration. The state engineer shall acquire and leverage data necessary to support the study and proof of concept demonstration including:
 - a. Footprints and elevations from current and future light detection and ranging data collections that meet federal emergency management agency risk mapping, assessment, and planning standards;
 - First floor elevations and elevation certificates from local planning and zoning offices or light detection and ranging data;
 - c. Parcel, address, and imagery data necessary for individual property flood hazard identification, assessment, and reduction; and
 - d. Any other data the state engineer deems necessary to meet the objectives in creating the database.
 - 2. To complete the pilot project, the state engineer shall:
 - a. Construct and maintain flood hazard and risk data in a spatial, relational database;
 - Disseminate flood hazard and risk data through a digital display environment prompted through dynamic querying;

1 Coordinate, incentivize, and partner with a least one county to obtain the 2 necessary parcel data and other data needed for this study and serve as the 3 repository for the property flood risk dataset; 4 d. Establish a technical committee consisting of federal, state, local, and private 5 sector stakeholders and providers to the greatest extent possible to allow data 6 sharing, coordination, synergy, and partnering; 7 Work with the North Carolina floodplain mapping program to incorporate the e. 8 property risk dataset into the multistate flood risk information system maintained 9 by North Carolina, augment the dataset with federal emergency management 10 agency digital flood insurance data, and assess any data or other gaps 11 preventing this state's full use of the system; 12 Make the data publicly available on the state water commission's website in an 13 easily accessible and useable format; 14 Provide technical assistance to data users, including reports and analysis as g. 15 needed; and 16 Work with the federal emergency management agency and study counties to 17 enable the communities and property owners to use the elevation, light detection 18 and ranging, and other data provided on the website to submit letters of map 19 amendment or revision to the federal emergency management agency. 20 3. The state engineer shall report to the legislative management as requested by the 21 legislative management. At the conclusion of the study, the state engineer shall 22 provide the following information to the legislative management: 23 A description of the engineer's current cooperative technical flood mapping a. 24 partnership with the federal emergency management agency and any additional 25 authority, staffing, and funding required to create a fully independent and 26 self-sustaining state flood mapping program in lieu of the federal emergency 27 management agency program, including the processing of letters of map change; 28 b. A detailed estimate of overall program costs and flood risk reductions of a 29 self-sustaining state flood mapping program; and 30 A county-by-county assessment of the private, county, state, and federal data and

resources that are currently available as compared to the resources that would

be required to fully use North Carolina's flood risk information system for flood risk management, including recommendations for improvement or the statewide expansion of the project established under this study and suggested funding mechanisms and alternatives for data dissemination, which may include a one-state online repository or the provision of data by local planning and zoning offices.

SECTION 15. AMENDMENT. Subsection 1 of section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

- Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund.

 FiveThree percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount-credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand-dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and.
 - The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy

1			from the same fuel; for studies for development of waste products utilization; and	
2			for the making of grants and loans in connection therewith.	
3		C.	The department of commerce for the funding of programs for development of	
4			energy conservation and for the making of grants and loans relating to energy	
5			conservation.	
6	SEC	CTIOI	N 16. AMENDMENT. Section 61-02-02 of the North Dakota Century Code is	
7	amende	d and	d reenacted as follows:	
8	61-02-02. Definitions.			
9	In this chapter, unless the context or subject matter otherwise requires:			
10	1.	"Co	mmission" means the state water commission.	
11	2.	"Co	st of works" includes:	
12		a.	The cost of construction, the cost of all lands, property rights, water rights,	
13			easements, and franchises acquired which are deemed necessary for such	
14			construction;	
15		b.	The cost of all water rights acquired or exercised by the commission in	
16			connection with such works;	
17		C.	The cost of all machinery and equipment, financing charges, interest prior to and	
18			during construction and for a period not exceeding three years after the	
19			completion of construction;	
20		d.	The cost of engineering and legal expenses, plans, specifications, surveys,	
21			estimates of cost, and other expenses necessary or incident to determining the	
22			feasibility or practicability of any project;	
23		e.	Administrative expenses;	
24		f.	The construction of the works and the placing of the same in operation; and	
25		g.	Such other expenses as may be necessary or incident to the financing authorized	
26			in this chapter, including funding of debt service, repair and replacement	
27			reserves, capitalized interest, and the payment of bond issuance costs.	
28	3.	<u>"Fre</u>	esh water" means fresh water of the state drawn from an underground or surface	
29		sou	rce in this state under an industrial use water permit, whether treated or untreated,	
30		<u>and</u>	dispensed to an oil and gas industry user.	

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- 4. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or
 production of oil and gas, and includes businesses that transport water for use in the
 enterprise.
 - <u>5.</u> "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
 - 4.6. "Project" means any one of the works defined in subsection 5, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
- 10 <u>5.7.</u> "Works" includes:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 17. AMENDMENT. Subsection 1 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

An infrastructure revolving loan fund is established on January 1, 2015, within the
resources trust fund to provide loans for water supply, flood protection, or other water
development and water management projects. Ten percent of oil extraction moneys
deposited in the resources trust fund, not to exceed a total deposit from oil extraction
moneys of twenty-five million dollars, are made available on a continuing basis for

1	making loans in accordance with this section. Accounts may be established in the
2	resources trust fund as necessary for its management and administration.
3	SECTION 18. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is
4	amended and reenacted as follows:
5	61-02-79. Bank of North Dakota - Line of credit.
6	The Bank of North Dakota shall extend a line of credit not to exceed two hundredseventy-
7	five million dollars at a rate that may not exceed one and three-quarters percent to the state
8	water commission. The state water commission shall repay the line of credit from funds
9	available in the resources trust fund, water development trust fund, or other funds, as
10	appropriated by the legislative assembly. The state water commission may access the line of
11	credit, as necessary, to provide funding as authorized by the legislative assembly for water-
12	supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the
13	2015 session laws, and water supply projects approved before June 30, 2017 2019, and flood
14	control projects that have approval for funding before June 30, 2017 2019.
15	SECTION 19. Two new sections to chapter 61-02 of the North Dakota Century Code are
16	created and enacted as follows:
17	Oil and gas industry fresh water royalty.
18	A royalty of seventy-five cents per one thousand gallons [3785.41 liters] is imposed on fresh
19	water dispensed to an oil and gas industry user at a privately owned water depot or
20	water-dispensing point in the state. For each privately owned water depot or water-dispensing
21	point in this state which dispenses fresh water to an oil and gas industry user, the commission
22	shall maintain water-metering devices in compliance with rules adopted by the commission.
23	Deposit of revenue.
24	The state water commission shall collect and transfer royalty payments collected under this
25	chapter to the resources trust fund for the sole purpose of repaying state-guaranteed loans
26	made to entities that sell fresh water to oil and gas industry users.
27	SECTION 20. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is
28	amended and reenacted as follows:
29	61-40-11. Water rates.
30	The authority shall developindustrial commission shall provide an industrial water depot and
31	lateral retail rate and present the rate to the industrial commission for approval. Any industrial

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1 water depot and lateral rate adjustment must have approval of the industrial commission before-2 going into effect for the authority which is a competitive, floating, market rate. The authority shall 3 develop domestic water rates that must include all costs for operation, maintenance, and 4 operating and capital reserves, and debt repayment of all infrastructure managed or constructed 5 by the authority, with the exception of the costs identified in section 61-40-10 which are paid for 6 by industrial water depot and lateral sales. 7 SECTION 21. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO 8 RESOURCES TRUST FUND. On July 1, 2017, the state treasurer shall transfer any oil 9 extraction moneys exceeding \$25,000,000 which have been deposited in the infrastructure 10 revolving loan fund from the infrastructure revolving loan fund to the resources trust fund. 11 SECTION 22. LEGISLATIVE MANAGEMENT STUDY - WESTERN AREA WATER 12 **SUPPLY AUTHORITY.** During the 2017-18 interim, the legislative management shall study 13 whether allowing private persons to lease the western area water supply industrial infrastructure 14 and privatizing industrial sales will maximize industrial sales or otherwise be commensurate 15 with repaying the western area water supply authority's debt to the state. The study must 16 include identification and consideration of the collateral for the debt, the authority's cashflow and 17 revenue, the current loan structure and financing stream, the equipment that may be privatized, 18 and any other factors that are relevant and necessary to accomplish the objective of the study.

The legislative management shall report its findings and recommendations, together with any

legislation required to implement the recommendations, to the sixty-sixth legislative assembly.