

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1020

Introduced by

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, 61-29-06, 61-40-05, and 61-40-11 of the North Dakota
 5 Century Code, relating to the allocation of moneys in the oil extraction tax development fund,
 6 ~~definitions~~, the infrastructure revolving loan fund, a Bank of North Dakota line of credit,
 7 management of the Little Missouri scenic river, the authority of the western area water supply
 8 authority, and water rates of the western area water supply authority; to provide for a legislative
 9 management study; ~~to provide for a state engineer study;~~ to provide for an industrial commission
 10 study; to provide for a ~~to the~~ legislative management study and reports; to provide legislative
 11 intent; to designate funding; to provide an appropriation for defraying the expenses of the state
 12 water commission and the industrial commission; ~~and to provide for a transfer~~; to provide
 13 exemptions; to provide a contingent effective date; to provide an effective date; to provide an
 14 expiration date; and to declare an emergency.

15 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
23 Administrative and support services	\$5,535,618	\$100,154	\$5,635,772
24 Water and atmospheric resources	863,400,218	(127,322,401)	736,077,817

1	Total all funds	\$868,935,836	(\$127,222,247)	\$741,713,589
2	Administrative and support services	\$5,535,618	\$97,568	\$5,633,186
3	Water and atmospheric resources	863,400,218	(146,889,929)	716,510,289
4	Total all funds	\$868,935,836	(\$146,792,361)	\$722,143,475
5	Full-time equivalent positions	97.00	(4.00)	93.00

6 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
7 includes the sum of ~~\$277,612~~\$257,498 of other funds, for increases in employee health
8 insurance premiums from \$1,130 to ~~\$1,249~~\$1,241 per month.

9 ~~**SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and~~
10 ~~support services line item in section 1 of this Act includes \$135,000 from the resources trust~~
11 ~~fund which the state water commission shall provide as a grant to the game and fish~~
12 ~~department for law enforcement activities on sovereign lands in the state for the biennium~~
13 ~~beginning July 1, 2017, and ending June 30, 2019.~~

14 **SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION**

15 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional
16 amounts in the resources trust fund and water development trust fund which become available
17 are appropriated, subject to budget section approval, to the state water commission for the
18 purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and
19 ending June 30, 2019.

20 ~~**SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME --**~~

21 ~~**APPROPRIATION -- REPORT.** In addition to the amounts appropriated in section 1 of this Act,~~
22 ~~there is appropriated from oil and gas industry fresh water royalty income deposited in the~~
23 ~~resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to~~
24 ~~the state water commission for the purpose of repaying state guaranteed loans, which were~~
25 ~~made to entities that sell fresh water to oil and gas industry users, for the biennium beginning~~
26 ~~July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative~~
27 ~~management's water topics overview committee of any funding made available and payments~~
28 ~~made pursuant to this section.~~

29 **SECTION 4. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.**

30 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the
31 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is

1 only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the
2 resources trust fund after that period has expired must be transferred to the resources trust fund
3 and any unexpended funds appropriated from the water development trust fund after that period
4 has expired must be transferred to the water development trust fund.

5 **SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS -**
6 **TRANSFERS - BUDGET SECTION APPROVAL.**

7 1. Of the funds appropriated in the water and atmospheric resources line item in section
8 1 of this Act from funds available in the resources trust fund and water development
9 trust fund, ~~\$299,875,000~~\$298,875,000 is designated as follows:

- 10 ~~a. \$30,000,000 for rural water supply projects;~~
11 ~~b. \$44,125,000 for municipal water supply projects;~~
12 ~~c. \$58,000,000 for regional water supply projects;~~
13 ~~d. \$1,000,000 for water conveyance projects;~~
14 ~~e. \$150,000,000 for flood control or protection projects;~~
15 ~~f. \$750,000 for irrigation projects; and~~
16 ~~g. \$16,000,000 for general water management.~~
17 a. \$147,125,000 for water supply;
18 b. \$136,000,000 for flood control; and
19 c. \$15,750,000 for general water.

20 2. The funding designated in this section is for the specific purposes identified; however,
21 the state water commission may transfer funding among these items, subject to
22 budget section approval and upon notification to the legislative management's water
23 topics overview committee.

24 ~~**SECTION 8. NORTHWEST AREA WATER SUPPLY PROJECT FUNDING.** Any funding~~
25 ~~provided by the state water commission for the northwest area water supply project must be~~
26 ~~from funds made available through the line of credit authorized in section 18 of this Act before~~
27 ~~any other funds may be provided by the state water commission for the project during the~~
28 ~~biennium beginning July 1, 2017, and ending June 30, 2019.~~

29 ~~**SECTION 9. LOAN AUTHORIZATION - APPROPRIATION - MINOT FLOOD CONTROL**~~
30 ~~**PROJECT FUNDING.** The state water commission may obtain a loan from the Bank of North~~
31 ~~Dakota in an amount not to exceed \$110,000,000, the sum of which is appropriated to the state~~

1 ~~water commission for the purpose of defraying the expenses of the construction of phase one~~
2 ~~through phase four of the Minot flood control project, for the biennium beginning July 1, 2017,~~
3 ~~and ending June 30, 2019. The terms and conditions of the loan must be negotiated by the~~
4 ~~state water commission and the Bank of North Dakota, and the repayment of principal and~~
5 ~~interest on the loan must be from revenues deposited in the resources trust fund.~~

6 ~~— **SECTION 10. LEGISLATIVE INTENT - MINOT FLOOD CONTROL PROJECT FUNDING.**~~

7 ~~Except for the funding appropriated in section 9 of this Act, it is the intent of the sixty-fifth~~
8 ~~legislative assembly that the state water commission not provide any additional funding for flood~~
9 ~~control projects within the city limits of Minot during the 2019-21, 2021-23, and 2023-25~~
10 ~~bienniums.~~

11 **SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT**

12 **FUNDING.** Except for funding provided during bienniums prior to the 2017-19 biennium, it is the
13 intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of
14 state funding for Mouse River flood control projects within the city limits of Minot. It is the intent
15 of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the
16 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

17 **SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT -**

18 **REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-fifth legislative
19 assembly that the state water commission provide up to \$30,000,000, for a ninety percent state
20 cost share to the Garrison diversion conservancy district to be used for the design, permitting,
21 property and easement acquisition related to the project, construction, and other related activity
22 for the Red River valley water supply project, for the biennium beginning July 1, 2017, and
23 ending June 30, 2019. The Garrison diversion conservancy district shall report on a regular
24 basis to the legislative management's water topics overview committee during the 2017-18
25 interim regarding the progress of the Red River valley water supply project.

26 **SECTION 8. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH**

27 **DAKOTA LOAN - REPORTS.** ~~The~~Notwithstanding section 5 of chapter 500 of the 2011 Session
28 Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area
29 water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the
30 \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter
31 500 of the 2011 Session Laws, and the ~~\$19,500,000~~\$25,000,000 loan ~~from funds appropriated~~

1 ~~to the state water commission from the resources trust fund in section 1 of chapter 20 of the~~
2 ~~2013 Session Laws~~ from the general fund to the western area water supply authority authorized
3 in section 3 of chapter 500 of the 2011 Session Laws. The terms and conditions of the
4 consolidation loan must be negotiated by the western area water supply authority and the Bank
5 of North Dakota. ~~If the authority defaults on its payment of principal or interest on the~~
6 ~~consolidation loan from the Bank of North Dakota authorized by this section, the authority is~~
7 ~~subject to the default provisions under section 61-40-09.~~ The western area water supply
8 authority is not obligated to repay principal on loans from the resources trust fund for the period
9 beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to
10 the western area water supply authority authorized in section 4 of chapter 500 of the 2011
11 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective
12 date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon
13 its completion to the legislative management's water topics overview committee during the
14 2017-18 interim. The western area water supply authority shall provide its ~~quarterly~~ monthly
15 financial statements and industrial sales to the legislative council for the legislative
16 management's water topics overview committee's review during the 2017-18 interim.

17 **SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE**

18 **SHORTFALL - BUDGET SECTION APPROVAL.** If the western area water supply authority
19 defaults on its payment of the principal or interest on the consolidation loan provided for in
20 section ~~418~~ of this Act, the Bank of North Dakota shall notify the legislative council, and the
21 state water commission shall provide a payment, subject to budget section approval, to the
22 Bank of North Dakota in an amount of the default as certified to the budget section by the Bank
23 of North Dakota.

24 **SECTION 10. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN**
25 **AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT.** There is
26 appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of
27 \$150,000, or so much of the sum as may be necessary, to the industrial commission for the
28 purpose of conducting an independent study of the feasibility and desirability of the sale or
29 lease of the industrial water supply assets of the western area water supply authority, for the
30 period beginning with the effective date of this Act, and ending June 30, 2019. The study must
31 provide information regarding the financial impact to the western area water supply authority, its

1 members and customers, the financial viability of the authority, and options available to the
2 authority for debt servicing. The industrial commission may form a nonvoting advisory
3 committee chaired by the state engineer to provide input regarding the scope of the study and
4 to receive reports on the status of the study. The industrial commission shall report to the
5 legislative management's interim water topics overview committee on the results of the study by
6 June 1, 2018.

7 **SECTION 11. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY**
8 **AUTHORITY STUDY.**

- 9 1. If the industrial commission determines, based on the study directed in section 10 of
10 this Act, that it is feasible and desirable to lease or sell the industrial water supply
11 assets of the western area water supply authority, the industrial commission shall
12 develop a timeline to complete the lease or the sale of the industrial water assets of
13 the western area water supply authority and report to the legislative management's
14 interim water topics overview committee.
- 15 2. If the industrial commission determines, based on the study directed in section 10 of
16 this Act, that it is not feasible and desirable to lease or sell the industrial water supply
17 assets of the western area water supply authority, notwithstanding section 5 of chapter
18 500 of the 2011 Session Laws, the western area water supply authority shall, with the
19 assistance of the industrial commission and the Bank of North Dakota, repay its
20 obligations to the Bank of North Dakota and the state water commission through the
21 issuance of revenue bonds or other financing options acceptable to the industrial
22 commission and Bank of North Dakota.

23 ~~SECTION 11. STATE ENGINEER – FLOOD HAZARD RISK MANAGEMENT STUDY –~~
24 ~~ADDITIONAL INCOME – APPROPRIATION.~~ The water and atmospheric resources line item in
25 section 1 of this Act includes \$50,000, for the purpose of conducting a flood hazard risk-
26 management framework study and demonstration in section 14 of this Act, for the biennium
27 beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from
28 federal, local, and private sector co-funding partnerships. Any fees collected from data users
29 and partners and any other funds from public or private sources, including federal grants and
30 county revenue contributions, are appropriated to the state engineer for the study and for

1 expanding the project to additional counties for the biennium beginning July 1, 2017, and
2 ending June 30, 2019.

3 ~~SECTION 15. LEGISLATIVE MANAGEMENT STUDY – FLOOD HAZARD RISK~~

4 ~~MANAGEMENT.~~ During the 2017-18 interim, the legislative management shall study issues
5 related to the state's development of a statewide flood hazard risk management framework by
6 granting authority to the state engineer to perform a study and proof of concept demonstration
7 to implement statewide flood risk management capabilities for assessing, managing, and
8 reducing property-specific flood risk.

9 ~~1.~~ In performing the study and proof of concept demonstration, the state engineer may
10 leverage, coordinate, and partner with the North Carolina floodplain mapping program
11 and with Cass, Ward, Richland, and Burleigh Counties and other counties to conduct
12 the study and proof of concept demonstration. The state engineer shall acquire and
13 leverage data necessary to support the study and proof of concept demonstration
14 including:

15 ~~a.~~ Footprints and elevations from current and future light detection and ranging data
16 collections that meet federal emergency management agency risk mapping,
17 assessment, and planning standards;

18 ~~b.~~ First floor elevations and elevation certificates from local planning and zoning
19 offices or light detection and ranging data;

20 ~~c.~~ Parcel, address, and imagery data necessary for individual property flood hazard
21 identification, assessment, and reduction; and

22 ~~d.~~ Any other data the state engineer deems necessary to meet the objectives in
23 creating the database.

24 ~~2.~~ To complete the pilot project, the state engineer shall:

25 ~~a.~~ Construct and maintain flood hazard and risk data in a spatial, relational
26 database;

27 ~~b.~~ Disseminate flood hazard and risk data through a digital display environment
28 prompted through dynamic querying;

29 ~~c.~~ Coordinate, incentivize, and partner with a least one county to obtain the
30 necessary parcel data and other data needed for this study and serve as the
31 repository for the property flood risk dataset;

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

1 funding mechanisms and alternatives for data dissemination, which may include
2 a one-state online repository or the provision of data by local planning and zoning
3 offices.

4 ~~SECTION 12. AMENDMENT.~~ Subsection 1 of section 57-51.1-07 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 ~~1.~~ Twenty percent must be allocated and credited to the sinking fund established for
7 payment of the state of North Dakota water development bonds, southwest pipeline
8 series, and any moneys in excess of the sum necessary to maintain the accounts
9 within the sinking fund and for the payment of principal and interest on the bonds must
10 be credited to a special trust fund, to be known as the resources trust fund. The
11 resources trust fund must be established in the state treasury and the funds therein
12 must be deposited and invested as are other state funds to earn the maximum amount
13 permitted by law which income must be deposited in the resources trust fund.
14 ~~Five~~Three percent of the amount credited to the resources trust fund must be
15 transferred no less than quarterly into the renewable energy development fund, not to
16 exceed three million dollars per biennium. One-half of one percent of the amount
17 credited to the resources trust fund must be transferred no less than quarterly into the
18 energy conservation grant fund not to exceed one million two hundred thousand
19 dollars per biennium. The principal and income of the resources trust fund may be
20 expended only pursuant to legislative appropriation and are available to:

21 ~~a.~~ The state water commission for planning for and construction of water-related
22 projects, including rural water systems. These water-related projects must be
23 those which the state water commission has the authority to undertake and
24 construct pursuant to chapter 61-02; and;

25 ~~b.~~ The industrial commission for the funding of programs for development of
26 renewable energy sources; for studies for development of cogeneration systems
27 that increase the capacity of a system to produce more than one kind of energy
28 from the same fuel; for studies for development of waste products utilization; and
29 for the making of grants and loans in connection therewith.

1 ~~_____ c. The department of commerce for the funding of programs for development~~
2 ~~of energy conservation and for the making of grants and loans relating to energy~~
3 ~~conservation.~~

4 **SECTION 12. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**

7 Moneys deposited in the oil extraction tax development fund must be transferred monthly by
8 the state treasurer as follows:

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

17 ~~Five~~Three percent of the amount credited to the resources trust fund must be
18 transferred no less than quarterly into the renewable energy development fund, not to
19 exceed three million dollars per biennium. One-half of one percent of the amount
20 credited to the resources trust fund must be transferred no less than quarterly into the
21 energy conservation grant fund not to exceed ~~one million~~ two hundred thousand
22 dollars per biennium. The principal and income of the resources trust fund may be
23 expended only pursuant to legislative appropriation and are available to:

- 24 a. The state water commission for planning for and construction of water-related
25 projects, including rural water systems. These water-related projects must be
26 those which the state water commission has the authority to undertake and
27 construct pursuant to chapter 61-02; and
28 b. The industrial commission for the funding of programs for development of
29 renewable energy sources; for studies for development of cogeneration systems
30 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 2. Twenty percent must be allocated to the common schools trust fund and foundation
7 aid stabilization fund as provided in section 24 of article X of the Constitution of North
8 Dakota.

9 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
10 article X of the Constitution of North Dakota.

11 4. Thirty percent must be allocated and credited to the state's general fund.

12 **SECTION 13. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**

15 Moneys deposited in the oil extraction tax development fund must be transferred monthly by
16 the state treasurer as follows:

17 1. Twenty percent must be allocated and credited to the sinking fund established for
18 payment of the state of North Dakota water development bonds, southwest pipeline
19 series, and any moneys in excess of the sum necessary to maintain the accounts
20 within the sinking fund and for the payment of principal and interest on the bonds must
21 be credited to a special trust fund, to be known as the resources trust fund. The
22 resources trust fund must be established in the state treasury and the funds therein
23 must be deposited and invested as are other state funds to earn the maximum amount
24 permitted by law which income must be deposited in the resources trust fund. Three
25 percent of the amount credited to the resources trust fund must be transferred no less
26 than quarterly into the renewable energy development fund, not to exceed three
27 million dollars per biennium. One-half of one percent of the amount credited to the
28 resources trust fund must be transferred no less than quarterly into the energy
29 conservation grant fund not to exceed one million two hundred thousand dollars per
30 biennium. The principal and income of the resources trust fund may be expended only
31 pursuant to legislative appropriation and are available to:

- 1 a. The state water commission for planning for and construction of water-related
- 2 projects, including rural water systems. These water-related projects must be
- 3 those which the state water commission has the authority to undertake and
- 4 construct pursuant to chapter 61-02; and
- 5 b. The industrial commission for the funding of programs for development of
- 6 renewable energy sources; for studies for development of cogeneration systems
- 7 that increase the capacity of a system to produce more than one kind of energy
- 8 from the same fuel; for studies for development of waste products utilization; and
- 9 for the making of grants and loans in connection therewith.
- 10 c. The department of commerce for the funding of programs for development of
- 11 energy conservation and for the making of grants and loans relating to energy
- 12 conservation.
- 13 2. Twenty percent must be allocated to the common schools trust fund and foundation
- 14 aid stabilization fund as provided in section 24 of article X of the Constitution of North
- 15 Dakota.
- 16 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
- 17 article X of the Constitution of North Dakota.
- 18 4. Thirty percent must be allocated and credited to the state's general fund.

19 ~~SECTION 13. AMENDMENT. Section 61-02-02 of the North Dakota Century Code is~~
20 ~~amended and reenacted as follows:~~

21 ~~61-02-02. Definitions.~~

22 ~~In this chapter, unless the context or subject matter otherwise requires:~~

23 ~~1. "Commission" means the state water commission.~~

24 ~~2. "Cost of works" includes:~~

25 ~~a. The cost of construction, the cost of all lands, property rights, water rights,~~
26 ~~easements, and franchises acquired which are deemed necessary for such~~
27 ~~construction;~~

28 ~~b. The cost of all water rights acquired or exercised by the commission in~~
29 ~~connection with such works;~~

- 1 ~~_____ c. The cost of all machinery and equipment, financing charges, interest prior to and~~
2 ~~during construction and for a period not exceeding three years after the~~
3 ~~completion of construction;~~
- 4 ~~_____ d. The cost of engineering and legal expenses, plans, specifications, surveys,~~
5 ~~estimates of cost, and other expenses necessary or incident to determining the~~
6 ~~feasibility or practicability of any project;~~
- 7 ~~_____ e. Administrative expenses;~~
- 8 ~~_____ f. The construction of the works and the placing of the same in operation; and~~
- 9 ~~_____ g. Such other expenses as may be necessary or incident to the financing authorized~~
10 ~~in this chapter, including funding of debt service, repair and replacement~~
11 ~~reserves, capitalized interest, and the payment of bond issuance costs.~~
- 12 ~~_____ 3. "Fresh water" means fresh water of the state drawn from an underground or surface~~
13 ~~source in this state under an industrial use water permit, whether treated or untreated,~~
14 ~~and dispensed to an oil and gas industry user.~~
- 15 ~~_____ 4. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or~~
16 ~~production of oil and gas, and includes businesses that transport water for use in the~~
17 ~~enterprise.~~
- 18 ~~_____ 5. "Owner" includes all individuals, associations, corporations, limited liability companies,~~
19 ~~districts, municipalities, and other political subdivisions of this state having any title or~~
20 ~~interest in any properties, rights, water rights, easements, or franchises to be acquired.~~
- 21 ~~_____ 4.6. "Project" means any one of the works defined in subsection 5, or any combination of~~
22 ~~such works, which are physically connected or jointly managed and operated as a~~
23 ~~single unit.~~
- 24 ~~_____ 5.7. "Works" includes:~~
- 25 ~~_____ a. All property rights, easements, and franchises relating thereto and deemed~~
26 ~~necessary or convenient for their operation;~~
- 27 ~~_____ b. All water rights acquired and exercised by the commission in connection with~~
28 ~~such works;~~
- 29 ~~_____ c. All means of conserving and distributing water, including without limiting the~~
30 ~~generality of the foregoing two subdivisions, reservoirs, dams, diversion canals,~~

1 ~~distributing canals, channels, lateral ditches, pumping units, mains, pipelines,~~
2 ~~treatment plants, and waterworks systems; and~~

3 ~~_____ d. All works for the conservation, control, development, storage, treatment,~~
4 ~~distribution, and utilization of water, including without limiting the generality of the~~
5 ~~foregoing subdivisions, works for the purpose of irrigation, flood control, watering~~
6 ~~stock, supplying water for public, domestic, industrial, and recreational use, fire~~
7 ~~protection, and the draining of lands injured or in danger of injury as a result of~~
8 ~~such water utilization.~~

9 **SECTION 14. AMENDMENT.** Subsection 1 of section 61-02-78 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 1. An infrastructure revolving loan fund is established on January 1, 2015, within the
12 resources trust fund to provide loans for water supply, flood protection, or other water
13 development and water management projects. Ten percent of oil extraction moneys
14 deposited in the resources trust fund, not to exceed a total deposit from oil extraction
15 moneys of ~~twenty-five~~twenty-six million dollars, are made available on a continuing
16 basis for making loans in accordance with this section. Accounts may be established
17 in the resources trust fund as necessary for its management and administration.

18 **SECTION 15. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-02-79. Bank of North Dakota - Line of credit.**

21 The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred~~seventy-
22 five million dollars at a rate ~~that~~of one and one-half percent over the three month London
23 interbank offered rate, but may not exceed ~~one and three-quarters~~three percent to the state
24 water commission. The state water commission shall repay the line of credit from funds
25 available in the resources trust fund, water development trust fund, or other funds, as
26 appropriated by the legislative assembly. The state water commission may access the line of
27 credit, as necessary, to provide funding as authorized by the legislative assembly for ~~water-~~
28 ~~supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the~~
29 ~~2015 session laws, and water supply projects approved before June 30, 2017~~2019, and flood
30 control projects that have approval for funding before June 30, ~~2017~~2019.

1 — ~~**SECTION 15.** Two new sections to chapter 61-02 of the North Dakota Century Code are~~
2 ~~created and enacted as follows:~~

3 — ~~**Oil and gas industry fresh water royalty.**~~

4 — ~~A royalty of seventy five cents per one thousand gallons [3785.41 liters] is imposed on fresh~~
5 ~~water dispensed to an oil and gas industry user at a privately owned water depot or~~
6 ~~water dispensing point in the state. For each privately owned water depot or water dispensing~~
7 ~~point in this state which dispenses fresh water to an oil and gas industry user, the commission~~
8 ~~shall maintain water metering devices in compliance with rules adopted by the commission.~~

9 — ~~**Deposit of revenue.**~~

10 — ~~The state water commission shall collect and transfer royalty payments collected under this~~
11 ~~chapter to the resources trust fund for the sole purpose of repaying state-guaranteed loans~~
12 ~~made to entities that sell fresh water to oil and gas industry users.~~

13 **SECTION 16. AMENDMENT.** Section 61-29-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-29-06. Management.**

16 Channelization, reservoir construction, or diversion other than for agricultural ~~or~~
17 recreational, **or temporary use** purposes and the dredging of waters within the confines of the
18 Little Missouri scenic river and all Little Missouri River tributary streams are expressly
19 prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri
20 River. Diking and riprapping for bank erosion control shall be permitted within the confines of
21 the Little Missouri scenic river. The construction of impoundments for any purpose on the Little
22 Missouri mainstream shall be prohibited.

23 This chapter shall in no way affect or diminish the rights of owners of the land bordering the
24 river to use the waters for domestic purposes, including livestock watering, or any other rights of
25 riparian landowners.

26 **SECTION 17. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-40-05. Authority of the western area water supply authority.**

29 In addition to authority declared under section 61-40-01, the board of directors of the
30 western area water supply authority may:

- 31 1. Sue and be sued in the name of the authority.

- 1 2. Exercise the power of eminent domain in the manner provided by title 32 or as
2 described in this chapter for the purpose of acquiring and securing any right, title,
3 interest, estate, or easement necessary or proper to carry out the duties imposed by
4 this chapter, and particularly to acquire the necessary rights in land for the
5 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
6 installation, or other facility for the storage, transportation, or utilization of water and all
7 other appurtenant facilities used in connection with the authority. However, if the
8 interest sought to be acquired is a right of way for any project authorized in this
9 chapter, the authority, after making a written offer to purchase the right of way and
10 depositing the amount of the offer with the clerk of the district court of the county in
11 which the right of way is located, may take immediate possession of the right of way,
12 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
13 days after notice has been given in writing to the landowner by the clerk of the district
14 court that a deposit has been made for the taking of a right of way as authorized in this
15 subsection, the owner of the property taken may appeal to the district court by serving
16 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
17 regular or special term of court with a jury unless a jury be waived, in the manner
18 prescribed for trials under chapter 32-15.
- 19 3. Accept funds, property, services, pledges of security, or other assistance, financial or
20 otherwise, from federal, state, and other public or private sources for the purpose of
21 aiding and promoting the construction, maintenance, and operation of the authority.
22 The authority may cooperate and contract with the state or federal government, or any
23 department or agency of state or federal government, or any city, water district, or
24 water system within the authority, in furnishing assurances and meeting local
25 cooperation requirements of any project involving treatment, control, conservation,
26 distribution, and use of water.
- 27 4. Cooperate and contract with the agencies or political subdivisions of this state or other
28 states, in research and investigation or other activities promoting the establishment,
29 construction, development, or operation of the authority.
- 30 5. Appoint and fix the compensation and reimbursement of expenses of employees as
31 the board determines necessary to conduct the business and affairs of the authority

- 1 and to procure the services of engineers and other technical experts, and to retain
2 attorneys to assist, advise, and act for the authority in its proceedings.
- 3 6. Operate and manage the authority to distribute water to authority members and others
4 within or outside the territorial boundaries of the authority and this state.
- 5 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
6 authority. All money received from any sale or exchange of property must be deposited
7 to the credit of the authority and may be used to pay expenses of the authority.
- 8 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
9 bulk water sale or lease, which contracts may provide for payments to fund some or all
10 of the authority's costs of acquiring, constructing, or reconstructing one or more water
11 supply or infrastructure.
- 12 9. Acquire, construct, improve, and own water supply infrastructure, office and
13 maintenance space in phases, in any location, and at any time.
- 14 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
15 use to persons within or outside the authority. The contracts may provide for payments
16 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing
17 one or more water system projects, as well as the authority's costs of operating and
18 maintaining one or more projects, whether the acquisition, construction, or
19 reconstruction of any water supply project actually is completed and whether water
20 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
21 and other entities that are members of the western area water supply authority are
22 authorized to execute are without limitation on the term of years.
- 23 11. Borrow money as provided in this chapter.
- 24 12. Make all contracts, execute all instruments, and do all things necessary or convenient
25 in the exercise of its powers or in the performance of its covenants or duties or in order
26 to secure the payment of its obligations, but an encumbrance, mortgage, or other
27 pledge of property of the authority may not be created by any contract or instrument.
- 28 13. Accept from any authorized state or federal agency loans or grants for the planning,
29 construction, acquisition, lease, or other provision of a project, and enter agreements
30 with the agency respecting the loans or grants. Other than state-guaranteed loans,
31 additional debt that may form the basis of a claim for territorial or franchise protection

- 1 for industrial water sales for oil and gas exploration and production may be acquired
2 by the authority or member entities only upon approval by the industrial commission
3 and the emergency commission.
- 4 14. Contract debts and borrow money, pledge property of the authority for repayment of
5 indebtedness, and provide for payment of debts and expenses of the authority.
- 6 15. Operate and manage the authority to distribute water to any out-of-state cities or water
7 systems that contract with the authority.
- 8 16. Accept, apply for, and hold water allocation permits.
- 9 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and
10 ratesetting regarding water sold by the authority. The authority may adopt a rate
11 structure with elevated rates set for project industrial water depot and lateral supplies
12 in recognition that a large component of the project expense is being incurred to meet
13 the demands of industrial users. The industrial water depot and lateral rate structure
14 must be approved in accordance with section 61-40-11.
- 15 18. Develop water supply systems; store and transport water; and provide, contract for,
16 and furnish water service for domestic, municipal, and rural water purposes; milling,
17 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;
18 and fix the terms and rates therefore. The authority may acquire, construct, operate,
19 and maintain dams, reservoirs, ground water storage areas, canals, conduits,
20 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,
21 and property necessary the same without any required public vote before taking
22 action.
- 23 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water
24 supplies without requiring any vote of the public on the projects or contracts. In relation
25 to the initial construction of the system and for the purposes of entering a contract with
26 the authority, municipalities are exempt from the public voting requirements or water
27 contract duration limitations otherwise imposed by section 40-33-16.
- 28 20. Accept assignment by member entities of contracts that obligate member entities to
29 provide a water supply, contracts that relate to construction of water system
30 infrastructure, or other member entity contracts that relate to authorities transferred to
31 the authority under this chapter.

21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota and the state water commission.

SECTION 18. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect for the authority which is a competitive, floating, market rate.~~ The industrial commission shall provide an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.

SECTION 19. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO

RESOURCES TRUST FUND. On July 1, 2017, the state treasurer shall transfer any oil extraction moneys exceeding ~~\$25,000,000~~ \$26,000,000 which have been deposited in the infrastructure revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

~~**SECTION 19. LEGISLATIVE MANAGEMENT STUDY - WESTERN AREA WATER**~~

~~**SUPPLY AUTHORITY.** During the 2017-18 interim, the legislative management shall study whether allowing private persons to lease the western area water supply industrial infrastructure and privatizing industrial sales will maximize industrial sales or otherwise be commensurate with repaying the western area water supply authority's debt to the state. The study must include identification and consideration of the collateral for the debt, the authority's cashflow and revenue, the current loan structure and financing stream, the equipment that may be privatized, 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.~~

1 | **SECTION 20. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL**

2 **WATER USE.** During the 2017-18 interim, the legislative management shall consider studying
3 industrial water use of the oil and gas industry. The study is to include the recapture of water
4 used in fracking, the recycling of water used in fracking, and other oil and gas activities, fracking
5 methods which do not require the use of water, and taxes or fees other states charge for water
6 used in the oil and gas industry.

7 **SECTION 21. EFFECTIVE DATE - EXPIRATION DATE.** Section 12 of this Act becomes
8 effective on July 1, 2017, is effective through June 30, 2019, and after that date is ineffective.
9 Section 13 of this Act becomes effective on July 1, 2019.

10 **SECTION 22. CONTINGENT EFFECTIVE DATE.** Section 17 of this Act is contingent on
11 certification by the industrial commission to the legislative council that the industrial commission
12 has determined the western area water supply authority shall, with the assistance of the
13 industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North
14 Dakota and the state water commission through the issuance of revenue bonds, as provided
15 under subsection 2 of section 11 of this Act.

16 **SECTION 23. EMERGENCY.** Sections 8, 9, 10, 11, 16, 17, and 22 of this Act are declared
17 to be an emergency measure.