

March 2024



INTERIM LEGISLATIVE

NORTH DAKOTA WATER APPROPRIATION

WATER TOPICS OVERVIEW COMMITTEE

Andrew Nygren - Director, Water Appropriation

NORTH
Dakota | Water Resources
Be Legendary.

WATER APPROPRIATION DIVISION



Water Appropriation Division Overview

History Of Water Right Statutes In North Dakota

Division Processes

Water Permit Application & Permits
Water Use Reporting

Data Collection Activities

Subsurface Exploration
Water Level Monitoring

WATER APPROPRIATION DIVISION

To Administer & Enforce Water Laws,
Rules & Policies That Assure Sustainable
Water Resource Management & Protect
Established Water Rights Of Applicants.

Division Is Charged With
Managing The Use Of The
State's Waters As Directed
Under N.D.C.C. Ch. 61-04
& N.D.A.C. Art. 89-03.

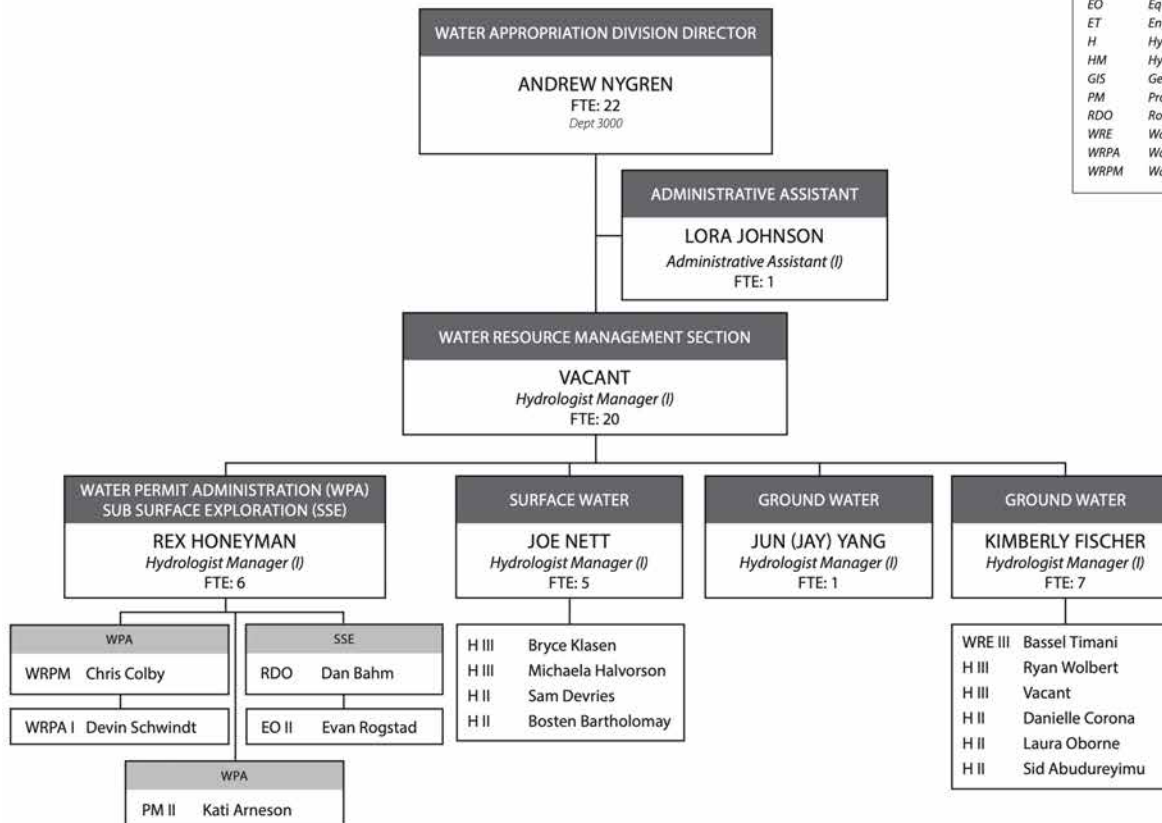


DWR ORGANIZATIONAL CHART

NORTH DAKOTA DEPARTMENT OF WATER RESOURCES WATER APPROPRIATION DIVISION

FEBRUARY 2024

AA	Administrative Assistant
DPC	Data Processing Coordinator
EO	Equipment Operator
ET	Engineering Tech
H	Hydrologist
HM	Hydrologist Manager
GIS	Geographic Information System
PM	Program Manager
RDO	Rotary Drill Operator
WRE	Water Resource Engineer
WRPA	Water Resource Program Administrator
WRPM	Water Resource Program Manager



DIVISION RESPONSIBILITIES



Identify Availability & Quality Of
State's Water Resources

Administration Of Water Permits
& Applications

Provide Recommendations To
Department On Water Permit
Applications & Permits

DIVISION RESPONSIBILITIES

Maintain Water Permit Records

Monitor Beneficial Use Of
Permits Through Annual Water
Use Reporting

Assist Municipalities & Other
Public Entities In Developing
Solutions To Water Supply Issues





HISTORY OF ND WATER RIGHT STATUTES

HISTORY OF ND WATER RIGHT STATUTES

1866 DAKOTA TERRITORY LAWS



State Historical Society Of ND

The Owner Of Land Owns Water Standing Thereon, Or Flowing Over Or Under Its Surface, But Not Forming A Definite Stream. Water Running In A Definite Stream Formed By Nature Over Or Under The Surface May Be Used By Him As Long As It Remains There; But He May Not Prevent The Natural Flow Of The Stream Or Of The Natural Spring From Which It Commences Its Definite Course, Nor Pursue Nor Pollute The Same.

HISTORY OF ND WATER RIGHT STATUTES

1889 SECTION 3 OF ARTICLE XI OF THE ND CONSTITUTION STATES

All Flowing Streams & Natural Watercourses Shall Forever Remain The Property Of The State For Mining, Irrigating & Manufacturing Purposes.

Sec. 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

CHAPTER 34. [S. B. No. 1—Little.] IRRIGATION CODE.

1905 OFFICE OF THE STATE ENGINEER ESTABLISHED

Public Waters Included All Waters Within The State Are Subject To Appropriation For Beneficial Use

Established "Priority In Time Shall Give The Better Right" (§ 2)

Appropriation Of Water Outlined §§ 19 Through 36



HISTORY OF ND WATER RIGHT STATUTES

1955

All Surface Water In Defined Channels & Groundwater Are Subject To Chapter 61-04

Riparian Owners Retain Ordinary Use For Domestic & Livestock Purposes



State Historical Society Of ND

HISTORY OF ND WATER RIGHT STATUTES

1963 TRANSITION TO APPROPRIATIVE RIGHTS



Repealed All Statutes Related To
Riparian Rights (§§ 61-04-18, 19, 20 And
§ 47-01-13 Ownership Of Land Includes
Water)

Enacted § 61-04-22 For Prescriptive
Water Rights For Demonstrated Use For
Previous 20 Years

Enacted §§ 61-04-23 Through 25
Related To Cancellation Of Water Rights

HISTORY OF ND WATER RIGHT STATUTES

1977 APPROPRIATION CLARIFIED

Temporary Authorization

Priority Clarified

Permit Issuance Criteria

Attached Conditions To Permits

Canceling Undeveloped Permits





WATER APPROPRIATION PROCESSES

WATER APPROPRIATION PROCESSES



Conditional Water Permit
Application Process

Conditional Water Permit
Application Review Process

Beneficial Use Process

Inspection & Perfection Process

Cancellation Process

DO I NEED A WATER PERMIT?

Is the volume of water impounded, diverted, or withdrawn less than 12.5 acre-feet (4,073,137 gallons)?

Is water being used to irrigate less than 5 acres?

Is the contemplated use of water domestic, livestock, or fish, wildlife, or other recreational uses?

NO

Is the use of water temporary and the period of use will not exceed twelve months?

YES

**APPLY FOR A
TEMPORARY
WATER PERMIT**

NO

**APPLY FOR A
CONDITIONAL
WATER PERMIT**

YES

No permit required, but the Department of Water Resources must be notified of the location and the acre-foot capacity of constructed works, dams, or dugouts.

WATER PERMIT APPLICATION PROCESSES

1

Application
Submission

2

Public
Notification

3

Public
Comment
Period

APPLICATION SUBMISSION

Complete Application Requires

Completed
Conditional Water
Permit Application Form

A Project Map Prepared By Licensed Surveyor

Withdrawal Point(s)
Irrigated Acreage
Location Of
Impoundment

APPLICATION SUBMISSION

APPLICATION FEE

\$1000 For Industrial Use > 1 Acre-foot

\$250 For Industrial Use ≤ 1 Acre-Foot

\$500 For Public Use

\$500 For Irrigation Use

\$100 For Recreation, Fish & Wildlife, Or Livestock Use

APPLICATION SUBMISSION

Application Received Date Is The **Priority Date**

Incomplete Applications Have **60 Days**
To Correct & Retain Original Priority Date

After 60 Days Priority Is Date
When Application Is Completed

After 120 Days The Application Is Returned



PUBLIC NOTICE

APPLICANT SENT NOTIFICATION INSTRUCTIONS

Send Provided Notice Of Application To

- All Landowners & Permit Holders Within 1-Mile Radius
- All Public Water Use Facilities Within 12-Mile Radius

Submit Provided Affidavit Of Notice & Form 3877 With List Of Recipients

- Must Receive Within 60 Days To Retain Priority Date
- Receipt From 60 To Within 120 Days Becomes New Priority Date
- At 120 Days The Application Is Considered Withdrawn

PUBLIC COMMENT

Notice Of Application **Sent To Applicant**
& County Newspaper To Publish

Published For **Two Consecutive Weeks**

30-Day Comment On Application
Starts With First Date Of Publication

Individuals Commenting Within
30-Day Become Parties Of Record

CONDITIONAL WATER PERMIT APPLICATION REVIEW PROCESS

- Applications Are Reviewed In Order Of Priority From System
- Hydrologist Drafts Recommended Decision (Rd) To
 - **Approve** All Or Portion, With Remaining Held In Abeyance Or Denied
 - **Deny**
 - **Defer**
- Rd Based On N.D.C.C. § 61-04-06 Criteria

CONDITIONAL WATER PERMIT APPLICATION REVIEW PROCESS

N.D.C.C. § 61-04-06 CRITERIA

The Rights Of A Prior Appropriator
Will Not Be Unduly Affected

The Proposed Means Of Diversion
Or Construction Are Adequate

The Proposed Use Of Water
Is Beneficial

CONDITIONAL WATER PERMIT APPLICATION REVIEW PROCESS

Statutory Criteria § 61-04-06

The Proposed Appropriation Is In The Public Interest. In Determining The Public Interest, The Department Shall Consider All The Following

- 1) The Benefit To The Applicant Resulting From The Proposed Appropriation.
- 2) The Effect Of The Economic Activity Resulting From The Proposed Appropriation.
- 3) The Effect On Fish & Game Resources & Public Recreational Opportunities.
- 4) The Effect Of Loss Of Alternate Uses Of Water That Might Be Made Within A Reasonable Time If Not Precluded Or Hindered By The Proposed Appropriation.
- 5) Harm To Other Persons Resulting From The Proposed Appropriation.
- 6) The Intent & Ability Of The Applicant To Complete The Appropriation.

CONDITIONAL WATER PERMIT APPLICATION REVIEW PROCESS

Comment Period on Rd

Rd is sent to Applicant and Parties of Record

30 Days to Submit Comments or Request Adjudicative Proceeding

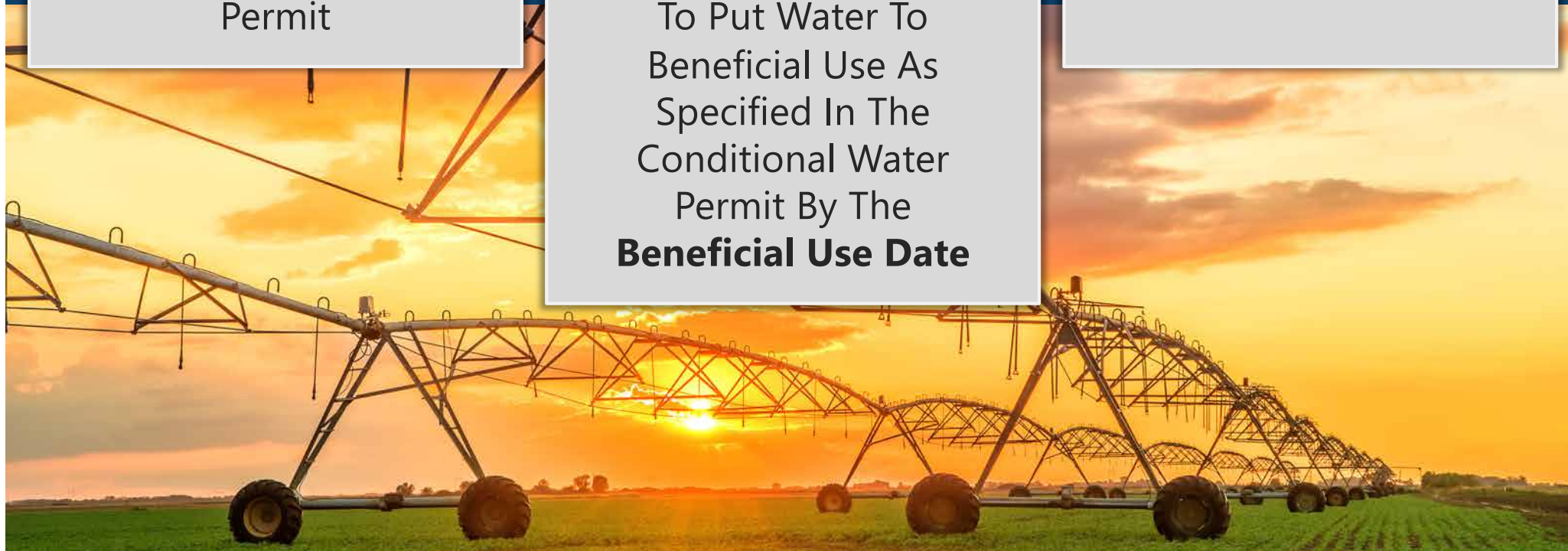
Department Considers Comments and Issues Final Decision

BENEFICIAL USE PROCESS

Approval Results In
Issuance Of A
Conditional Water
Permit

Conditional Water
Permit Authorizes The
Construction Of Works
To Put Water To
Beneficial Use As
Specified In The
Conditional Water
Permit By The
Beneficial Use Date

Subject To Conditions
To The Permit





BENEFICIAL USE PROCESS

Department Sends Questionnaire To Permitholder

- Are Works Authorized Under Conditional Water Permit Fully Developed
- If Not, Is An Extension Of Time Requested & Reason Provided

If Developed, Initiates Perfection Process

If Extension Is Requested, Beneficial Use Process Continues

A photograph of a large center pivot irrigation system in a field. The system consists of a long metal arm with multiple wheels, supported by a series of smaller metal structures. The arm is extended over a green field of crops. The sky is a mix of orange, yellow, and blue, indicating a sunset or sunrise. The clouds are dark and dramatic.

BENEFICIAL USE PROCESS

If Extension Of Time Is Requested

- Extension Request Evaluated Under N.D.C.C. § 61-04-14, Specified As Good Cause Shown
- Non-Competitive Areas Extension Generally Granted
- Competitive Areas Extension Generally Denied & Permit Canceled

PERFECTION PROCESS

If Developed

- Works Are Inspected To Verify Compliance
- Verify Developed Works Match Authorized Works

From Inspection Results

- Rd Drafted To Rectify Compliance & Other Issues
- Issue Perfected Water Permit For Developed Works

Perfected Water Permit Is Water Right Appurtenant To Property



CANCELLATION PROCESS

N.D.C.C. § 61-04-23 Through 25

- Three Or More Years Of Successive Non-use - Works Abandoned

Division Procedure Is To

- Draft Rd For Cancellation
- Send Rd & Stipulation/Waiver To Permitholder
- If Stipulation/Waiver Signed & Returned
 - Issue Order Canceling Permit

CANCELLATION PROCESS

N.D.C.C. § 61-04-23 Through 25

- **Notice Sent** To Permitholder On Cancellation
- **Notice Published** In Newspaper For Two Consecutive Weeks With Date Comments Must Be Received
- Comments **Must Be Provided** By Date In Published Notice
- Comments **Reviewed** & Final Decision Issued To Cancel Or Not Cancel Permit
- **No Comments Received; Permit Must Be Canceled**

CHANGES TO PERMITS

Add Point of
Diversion or
Change
Purpose of Use

Transfer of
Approved
Acreage

Increase in
Approved
Acreage

Increase in
Pumping Rate

Processed &
Evaluated In
Same Manner
As Water Permit
Application



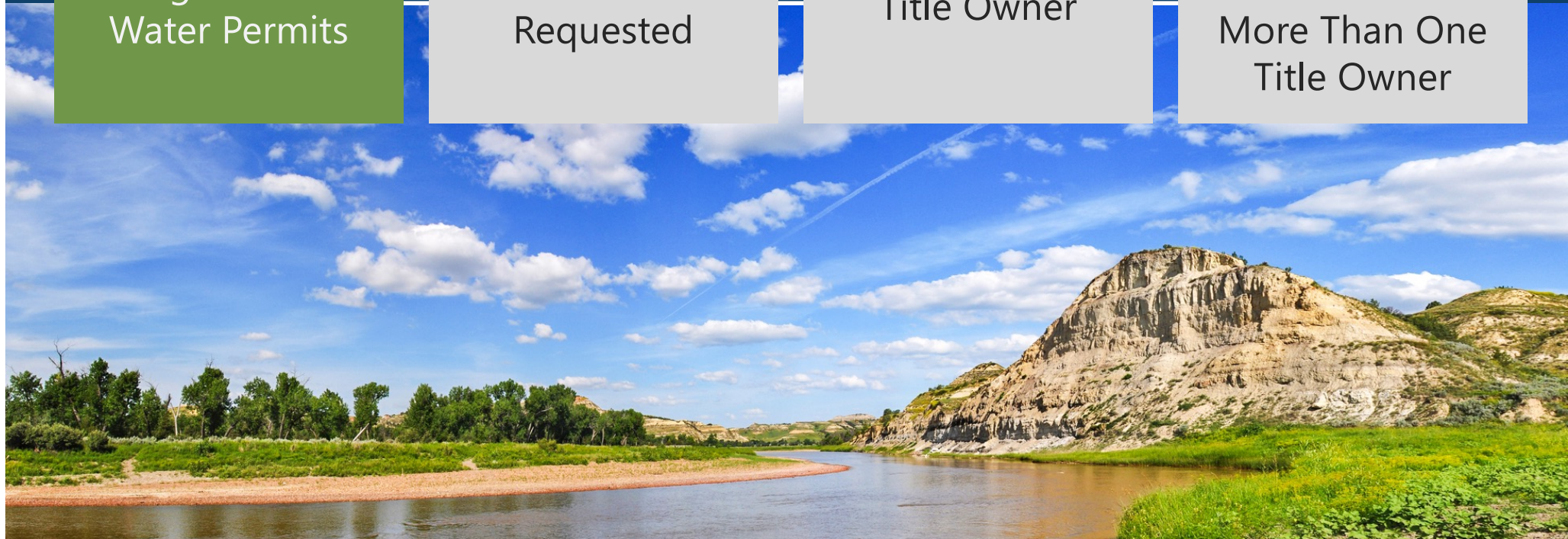
CHANGES TO PERMITS

Assignment Of
Water Permits

Transfers As
Requested

Title Owner

Split When
Transfer To
More Than One
Title Owner





WATER USE REPORTING

N.D.C.C. § 61-04-27 Requires
Permitholder To Submit Annual Water
Use Reports

- **1st Mailing** Early November To All
Irrigation Permits
- **2nd Mailing** Early January To All
Irrigation Permits
- **1st Mailing** Early January To All
Industrial & Public Use Permits
- **Early March** Is Final Mailing To All
Permitholders
- **Forms Due By March 31**

TEMPORARY WATER PERMITS

Issued For
Up To One
Year For
Excess Water
From A
System

Does Not
Establish
Water Right

Subject To
Conditions
To Ensure
Only Excess
Water Used

Application
Fee

\$75
< 1 Acre-Foot

\$125
1-10 Acre-Feet

\$200
> 10 Acre-Feet



TEMPORARY WATER PERMITS

Accommodates Temporary Works

Road Construction & Other Temporary Projects

Bulk Water Supply For Oil Field Use

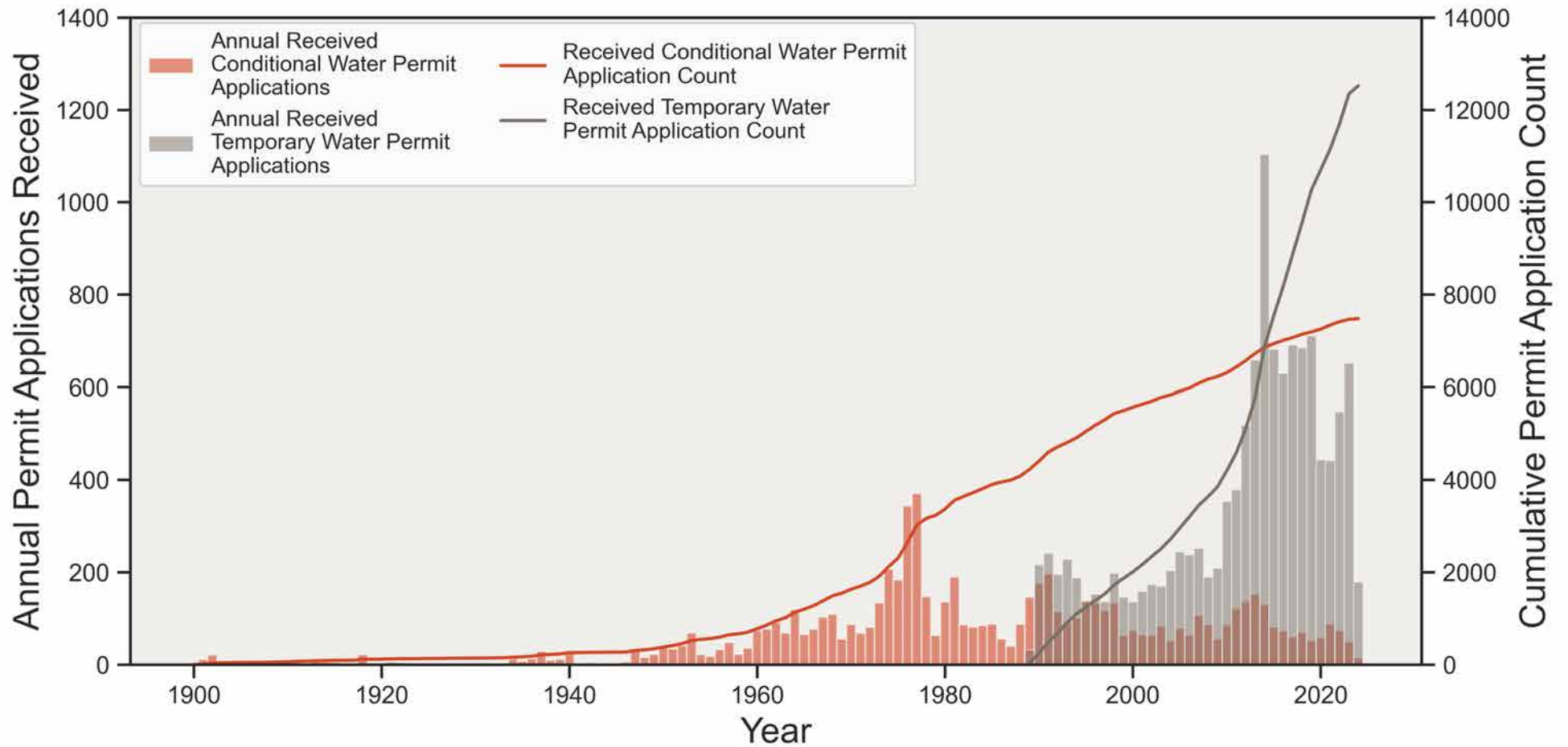
Average Submitted Permits Up To 2009 Was 191

Since 2010 The Average Submitted Permits Has Been 607

Over 170 Have Been Submitted In Two Months Of 2024



WATER PERMIT SUMMARY



PERMITS RECEIVED

	APPLICATION IN PROCESSING	CANCELLED	CONDITIONALLY APPROVED	DEFERRED	DENIED	HELD IN ABEYANCE	PENDING REVIEW	PERFECTED	UNDER REVIEW	VOID	TOTAL	PERCENT TOTAL
Domestic		8	1					7			16	0.2
Fish & Wildlife	1	24	21	2	36	1	9	319	1	27	441	5.9
Flood Control		2	1		4			42		2	51	0.7
Industrial	10	523	145	37	95	69	82	286	5	119	1371	18.3
Irrigation	9	1511	229	186	222	31	217	1989	6	235	4635	62.0
Multiple Use		6	8					27			41	0.5
Municipal		123	26	4	15	3		232		16	419	5.6
Power Generation		12			1			8			21	0.3
Recreation	1	22	6		6	1	2	167		10	215	2.9
Rural Water		39	8	8	4	3	7	91	1	5	166	2.2
Stock		2	2		4		2	80		11	101	1.4
Total	21	2272	447	237	387	108	319	3248	13	425	7477	100.0
Percent Total	0.3	30.4	6.0	3.2	5.2	1.4	4.3	43.4	0.2	5.7	100.0	

WATER PERMIT SUMMARY

2022 CONSUMPTIVE WATER USE

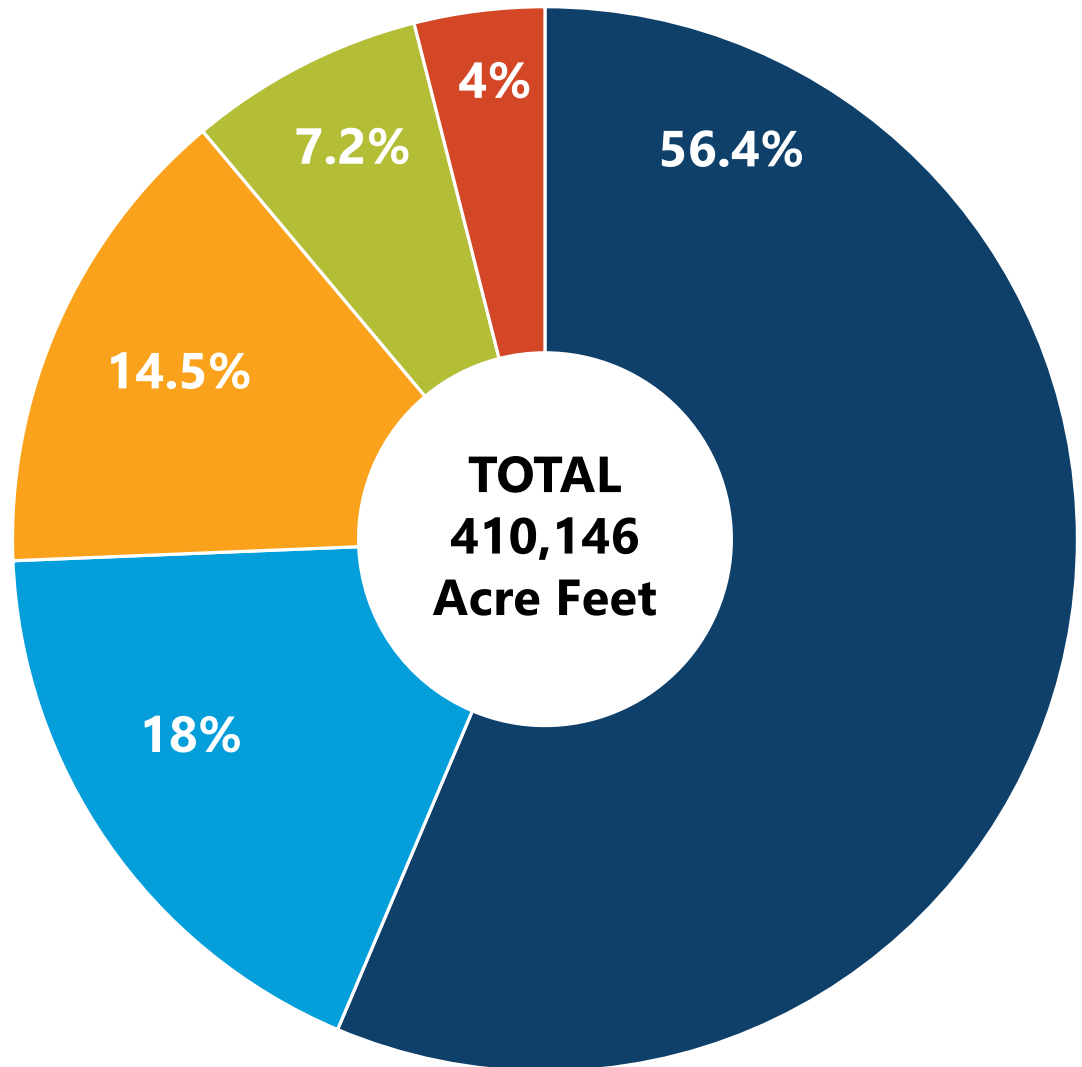
Irrigation

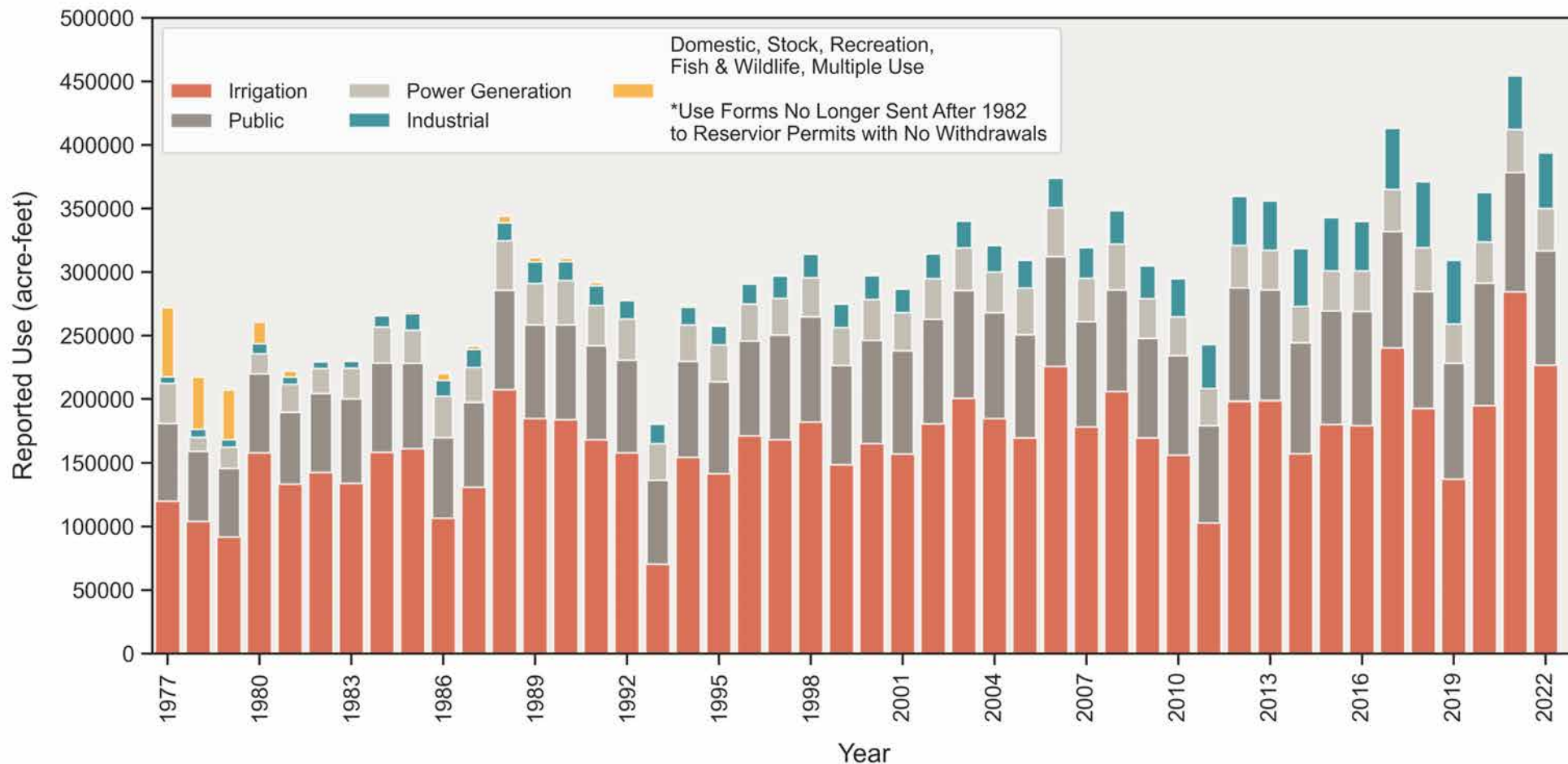
Municipal

Industrial (Non-Water Depot),
Power Generation, Multi-Use

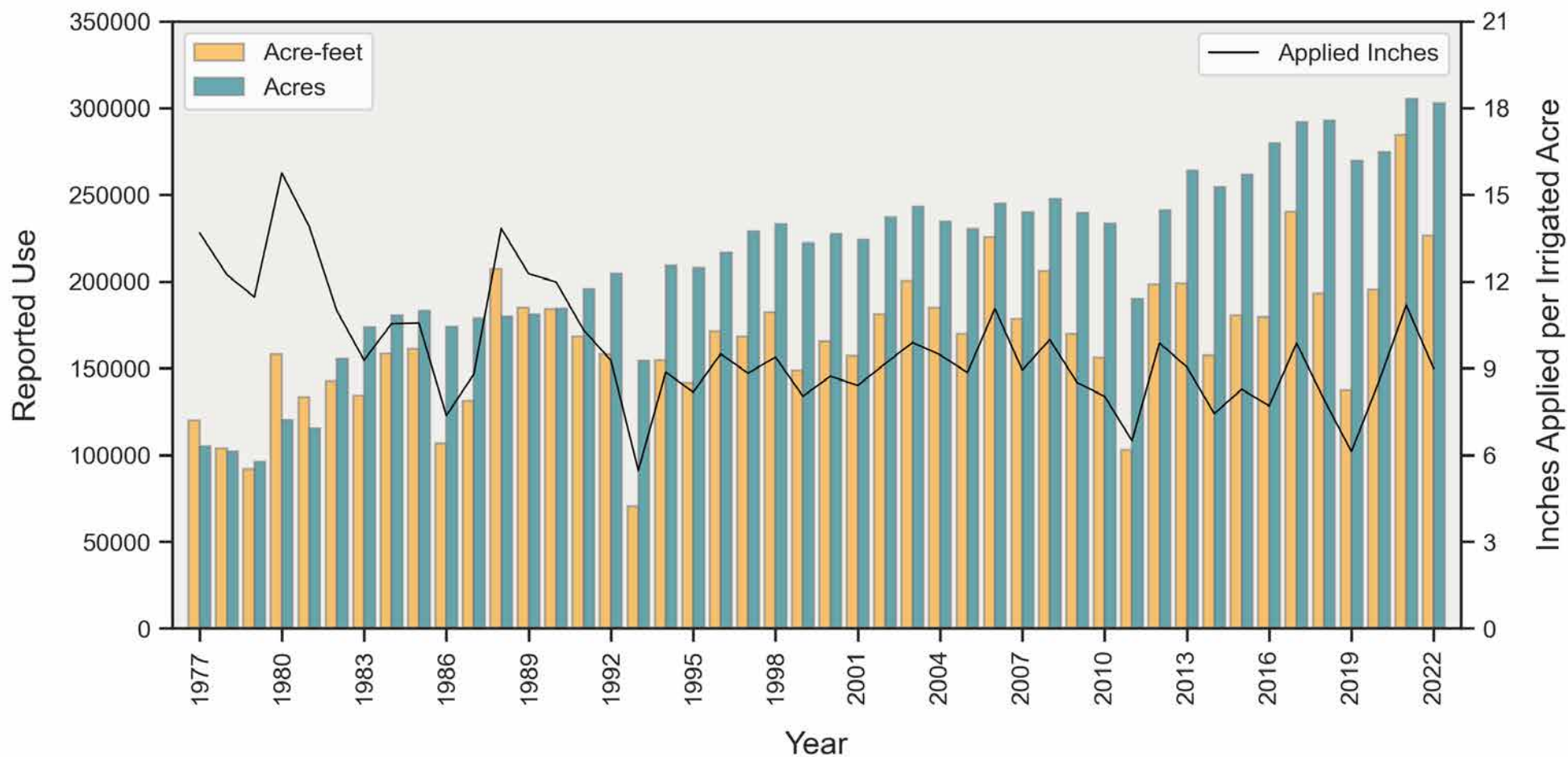
Industrial (Water Depot)

Rural Water



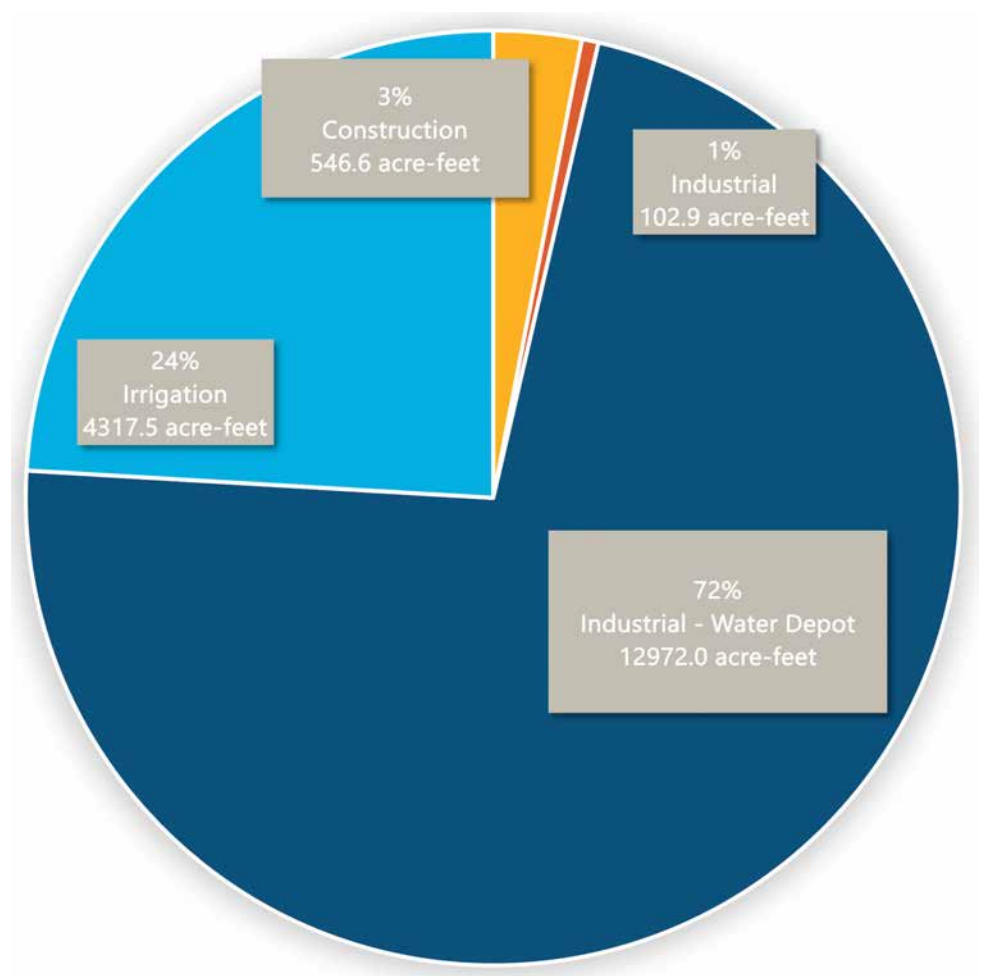


PERMITTED REPORTED USE IN NORTH DAKOTA

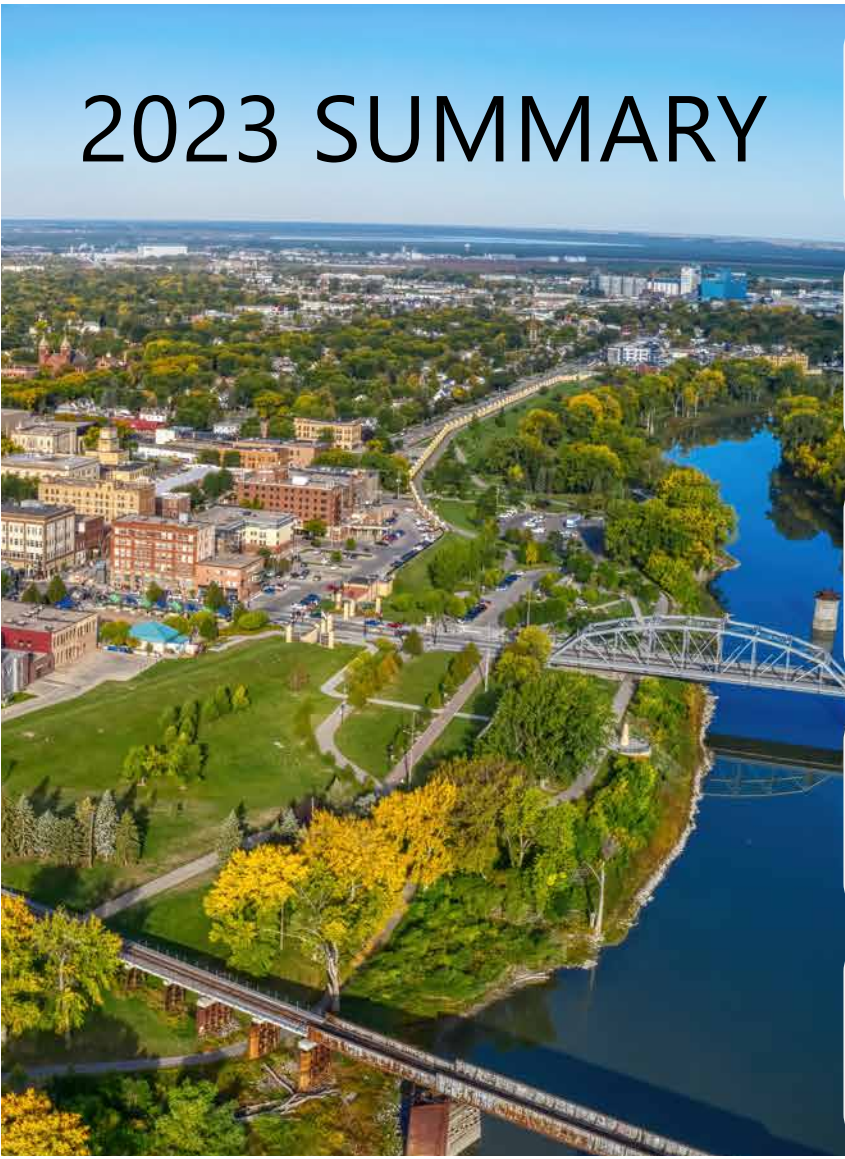


REPORTED IRRIGATION USE & IRRIGATED ACRES

Nature of Use	2023 Reported Use (acre-feet)
Construction	546.6
Industrial	102.9
Industrial - Water Depot	12972.0
Irrigation	4317.5
Total	17938.9



TEMPORARY WATER PERMIT SUMMARY

An aerial photograph of a city, likely Duluth, Minnesota, showing a river (Superior Bay) flowing through the urban landscape. A prominent bridge crosses the river, and the city's buildings and green spaces are visible. The sky is clear and blue.

2023 SUMMARY

46

Permit Applications Received

48

Permits Issued

63

Permits Cancelled

80

Permits Perfected

596

Temporary Permits Issued

DATA COLLECTION ACTIVITIES

4000+

Measured Sites In 2023

100

Average Sites Added Each Season With Drill Rig

500+

Real Time Groundwater Sites

50+

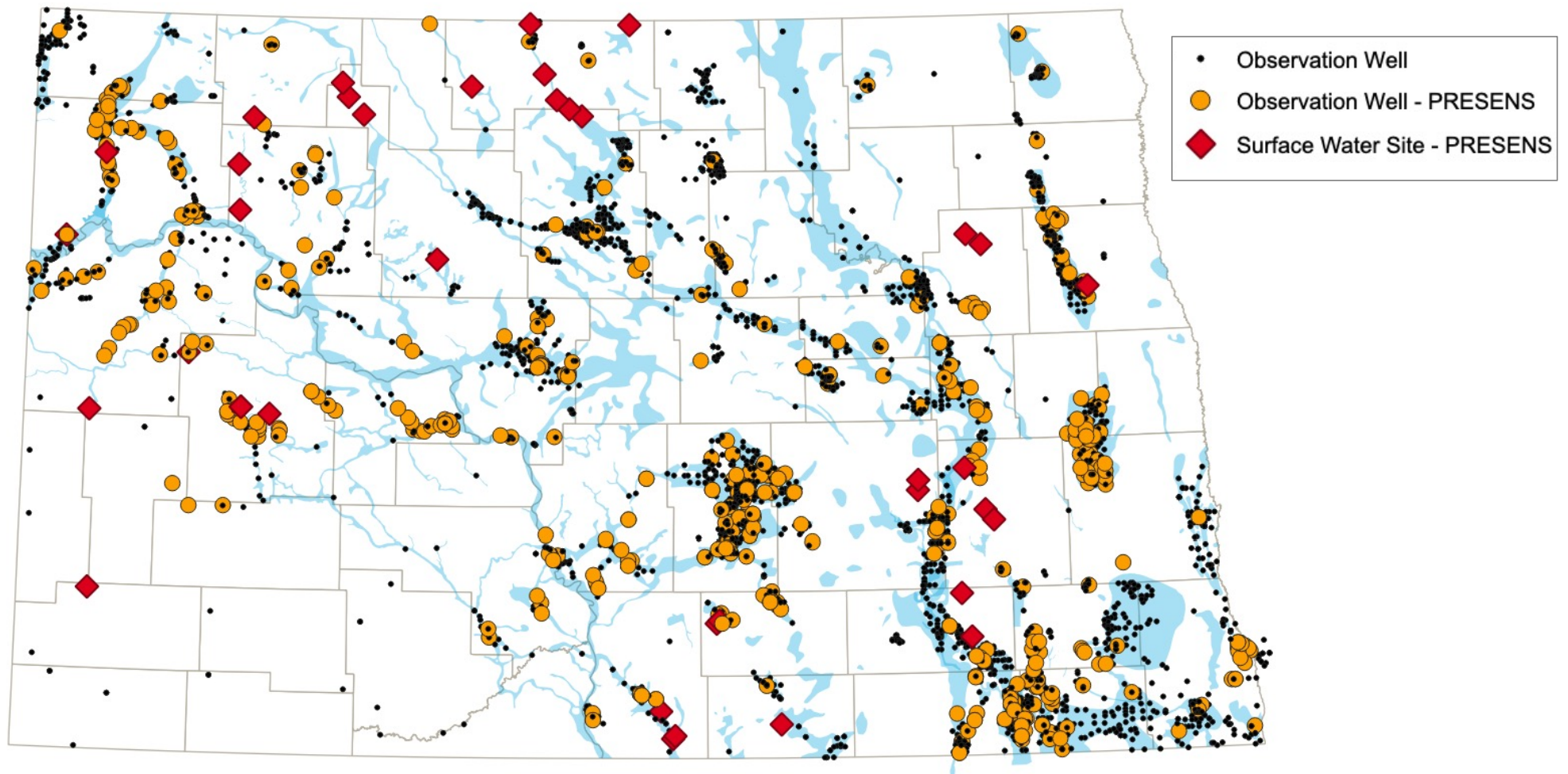
Real Time Surface Water Sites

USGS

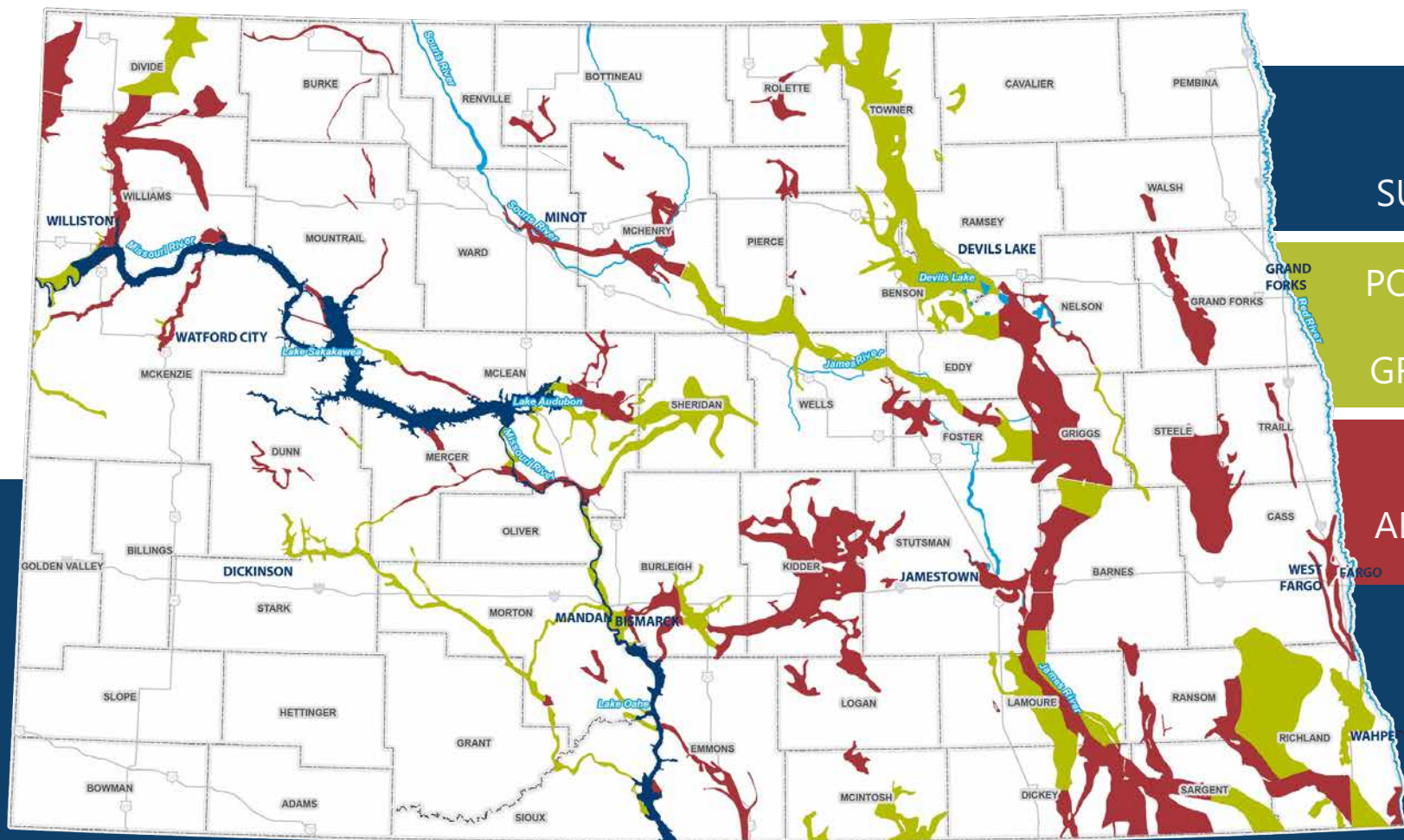
Gage Cooperative Agreement

Expand

Include Precipitation & Soil Moisture Real Time Sites



2024 MEASURED SITES



GOOD WITH
LIMITATIONS /
SURFACE WATER

POTENTIAL WITH
LIMITATIONS /
GROUND WATER

NEAR FULL
APPROPRIATION

WATER AVAILABILITY POTENTIAL FOR ECONOMIC DEVELOPMENT

PERMIT STATUS DASHBOARD

HOME

ABOUT
DWR

INFORMATION
& EDUCATION

REGULATION &
APPROPRIATION

ATMOSPHERIC
RESOURCES

PROJECT
DEVELOPMENT

DRAINAGE
BASINS



WATER PERMIT STATUS

Permit:

Name:

Search

CONSTRUCTION PERMIT STATUS

Name:

Search



THANK YOU



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