



# NORTH DAKOTA OFFICE OF THE STATE AUDITOR

State Auditor Joshua C. Gallion

## State Water Commission

Audit Report for the Biennium Ended June 30, 2019

Client Code 770





## WHAT WE LOOKED AT

Our team audited the State Water Commission which included reviewing financial transactions, expenditures, blanket bond coverage, and reviewed their Dam Safety Program procedures and regulations.

## WHY WE LOOKED AT THIS

State law (N.D.C.C. 54-10-01) requires our team to perform a post-audit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts. We also looked at the Dam Safety Program due to the possible risk to life and property associated with a potential dam failure.

## WHAT WE FOUND

### Lack of Emergency Plan



The State Water Commission is not receiving and approving Emergency Action Plans as required by state law.

*Read more on page 5*

### Not Tracking Operating Plans



The State Water Commission is not tracking dam operating plans as required by state law.

*Read more on page 6*

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## HAVE QUESTIONS? ASK US.

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# Introduction

## State Water Commission

March 19, 2020

We are pleased to submit this audit of the State Water Commission for the biennium ended June 30, 2019. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

The primary consideration in determining the contents of these audits is to produce informative audits to improve government. Statutory audit requirements are an important part of these audits and are addressed by our standard audit objective. Whenever possible, additional audit objectives are included to increase responsiveness and effectiveness of state government.

Robyn Hoffmann, CPA, was the audit manager. Inquiries or comments relating to this audit may be directed to the audit manager by calling (701) 239-7291. We wish to express our appreciation to John Paczkowski, Interim State Engineer, and his staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

/S/

**JOSHUA C. GALLION**  
**NORTH DAKOTA STATE AUDITOR**

## TERMS USED IN REPORT

**Appropriation:** An amount authorized by the North Dakota Legislative Assembly to be spent for a specific purpose.

**Blanket Bond Coverage:** Insurance to state agencies for any default or wrongful act on the part of any public employee or public official.

**ConnectND:** The accounting system for North Dakota.

**Default:** Failures to do something required by duty or law.

**Emergency Action Plans:** N.D.C.C. 61-03-25 requires plans for all high hazard and medium hazard dams. It is a formal document that identifies potential emergency situations that could occur at a dam and the course of action to take if an emergency arises. The purpose is to minimize loss of life and property damage.

**Emergency Commission:** Group of elected officials that have the authority to transfer or expend money appropriated by the North Dakota Legislative Assembly. Additional information can be found in N.D.C.C. Chapter 54-16.

**Internal Control:** Policies and procedures that ensure reliable financial reporting, safeguard assets, promote accountability and efficiency, and prevent fraud.

**Noncompliance:** Failure to act in accordance with a wish or command.

**North Dakota Administrative Code (N.D.A.C.):** Codification of all rules of state administrative agencies.

**North Dakota Century Code (N.D.C.C.):** Collection of all the statutes passed by the North Dakota Legislative Assembly.

**Performance Audit:** Engagements that provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight to improve program performance and operations, reduce costs, facilitate decision making, and contribute to public accountability.

**Session Laws:** Published after each regular and special legislative session and contain the laws enacted during that session.

# Audit Results

## Dam Safety Program

### OBJECTIVE

Is the State Water Commission following Dam Safety Program procedures and regulations?

### CONCLUSIONS

Our team discovered that the State Water Commission does not have procedures established to comply with certain dam safety regulations.

### BACKGROUND

During the 2017-19 biennium, the State Water Commission maintained a database of 3,349 dams within the state. Of these dams, 48 were classified as high hazard, and 75 were classified as medium hazard. The hazard classification levels attached to each dam represent the potential for destruction, in the event the dam fails. Classification is determined by assessing the development surrounding the dam and estimating both the risk of loss of life and damage to property if a dam failure were to occur.



Our team discovered that the State Water Commission **does not have** procedures established to comply with certain dam **safety regulations.**

inspections, determining hazard classifications, and assisting with emergency preparedness activities. Additional responsibilities of the State Water Commission on dams are stated in North Dakota law. These legal responsibilities include receiving and approving construction permit applications, annual operating plans, and current Emergency Action Plans for dams within specified hazard classifications. The State Engineer authorizes approval for these preparedness activities.

Our team determined the State Water Commission was properly performing and documenting dam inspections, and the procedures surrounding new dams' construction permit approval and hazard classification were in place. However, our team discovered that the State Water Commission does not have procedures established to comply with certain dam safety regulations.

The Dam Safety Program aims to limit these risks. The program's primary functions include conducting dam



## Improper Emergency Action Plan Process for Dams

### CONCLUSION

The State Engineer at the State Water Commission isn't receiving and approving Emergency Action Plans as required by state law.

### BACKGROUND

Of the non-federally owned dams tested in our audit, a current Emergency Action Plan was not available for 62.5% of these dams. For the remaining 37.5%, an Emergency Action Plan was available but had no evidence of approval by the State Engineer.

### EMERGENCY PLAN



Of the non-federally owned dams tested in our audit, a **current** Emergency Action Plan **was not available** for **62.5%** of these dams.

State law (N.D.C.C. 61-03-25) states that for high and medium hazard classification dams, Emergency Action Plans must be submitted to the State Engineer for approval.

When Emergency Action Plans are not in place or not approved, there is a significant risk to life and property associated with the potential failure of dams.

### RECOMMENDATION

We recommend the State Engineer at the State Water Commission receive and approve Emergency Action Plans required by N.D.C.C.

### STATE WATER COMMISSION RESPONSE

The State Water Commission agrees that Emergency Action Plan compliance is not 100% and there is currently no formal approval process. However, EAPs are currently available for 77.7% of the non-federally owned high and medium hazard dams. The State Water Commission plans to develop an intuitive and transparent approval process to ensure state law compliance, and will review what enforcement tools are available through existing rules and statutes. One option is linking State Water Commission cost-share eligibility with full compliance of relevant state law. Existing EAP guidelines will be reviewed to determine if requirements can be streamlined to increase compliance.

behind the existence of the law and evaluate its overall benefit. If the law is found to not provide a meaningful regulatory or public safety benefit, the State Water Commission will consider legislative action to ensure relevance.

FINDING  
2019-02

## Dam Operating Plans Not Tracked or Reviewed

### CONCLUSION

The State Water Commission does not track the annual receipt and review of required dam operating plans.

### BACKGROUND

Out of the eight non-federally owned dams tested, none of them had an operating plan. State law (N.D.C.C. 61-03-21) states that every operator of a water storage reservoir (with a capacity of over 1,000 acre-feet) needs to file an operating plan with the state engineer.



Out of the eight non-federally owned dams tested, **none of them** had an **operating plan.**

Deficiencies or discrepancies in dams could potentially exist if operating plans are not being received and reviewed by the State Engineer each year.

### RECOMMENDATION

We recommend the State Water Commission track the receipt and review of required dam operating plans.

### STATE WATER COMMISSION RESPONSE

The State Water Commission agrees that Operating Plans are currently not tracked or reviewed contrary to existing state law. The State Water Commission plans to immediately begin requesting and reviewing operating plans as required. However, it is not clear that this law was ever intended to be a function of the dam safety program. The State Water Commission plans to review the reasoning





# Other Results

## ▼ OBJECTIVE

Are there any exceptions to report relating to statutorily required audit testing?

Statutorily required audit testing includes: performing the post-audit of financial transactions, detecting and reporting any defaults, determining that expenditures have been made in accordance with law, appropriation acts, and emergency commission action, and evaluating blanket bond coverage.

## CONCLUSION

No exceptions to our statutorily required audit testing were identified.



# Audit Procedures

## DAM SAFETY PROGRAM OBJECTIVE

### INTERNAL CONTROL

As we determined internal control was significant to this audit objective, we assessed internal control by gaining an understanding of internal control and concluded as to the adequacy of the design of internal control and whether the applicable internal controls were implemented. We also tested the operating effectiveness of those controls we considered necessary to address our audit objective. The controls assessed were generally the key controls identified during the planning phase of the engagement, which may include controls at both the entity and transaction levels. We identified key controls significant to this audit objective related to the control activities component of internal control, specifically the principles related to the design of control activities. We also identified controls relating to the risk assessment component of internal control, specifically the principle of identifying, analyzing, and responding to risks.

### SCOPE

The State Water Commission has operations in the following locations. Each location was included in the audit scope:

- The Bismarck office located in the southeast corner of the Capitol grounds.
- The warehouse located on East Main Street in Bismarck.
- Field offices located in Fargo, Devils Lake, and Minot.

The scope of this objective included non-federally owned, intact dams within the state during the biennium ended June 30, 2019. We reviewed construction permit requests, Emergency Action Plans, inspection records, and other

correspondence pertaining to dams selected for audit testing.

### METHODOLOGY

To meet this objective, we:

- Obtained the State Water Commission's inventory list of dams within the State.
- Interviewed appropriate agency personnel.
- Observed the State Water Commission's policies and procedures.
- Inspected documentary evidence.
- Tested internal controls, including the use of inspection checklists and hazard classification determination.
- Tested compliance with N.D.C.C. and N.D.A.C. over new construction of dams, dam Emergency Action Plans, and dam operating plans.
- Used non-statistical sampling and projected the results to the population.

## STATUTORY OBJECTIVE

### INTERNAL CONTROL

As we determined internal control was significant to this audit objective, we assessed internal control by gaining an understanding of internal control and concluded as to the adequacy of the design of internal control and whether the applicable internal controls were implemented. We also tested the operating effectiveness of those controls we considered necessary to address our audit objective. The controls assessed were generally the key controls identified during the planning phase of the engagement, which may include controls at both the entity and transaction levels. We identified key controls significant to this audit objective related to the control activities component of internal control, specifically the principle related to the design of control activities.

### SCOPE

This audit of the State Water Commission is for the biennium ended June 30, 2019.

The State Water Commission has operations in the following locations. Each location was included in the audit scope:

- The Bismarck office located in the southeast corner of the Capitol grounds.
- The warehouse located on East Main Street in Bismarck.
- Field offices located in Fargo, Devils Lake, and Minot.

### METHODOLOGY

To meet this objective, we:

- Performed detailed analytical procedures including computer-assisted auditing techniques. These procedures were used to identify high-risk transactions and potential problem areas for additional testing.
- Non-statistical sampling was used and the results were projected to the population.

- Interviewed appropriate agency personnel.
- Queried the ConnectND (PeopleSoft) system for data analysis. Significant evidence was obtained from ConnectND.
- Observed the State Water Commission's processes and procedures.
- Inspected documentary evidence.
- Tested compliance with appropriation laws and regulations including expenditures, 2017 Session Laws, and related transfers. Where necessary, internal control was tested which included selecting representative samples to determine if controls were operating effectively and if laws were being followed consistently.
- Reviewed adequacy of blanket bond coverage by comparing coverage to state bonding guidelines.
- Performed detailed analytical procedures to identify high-risk transactions in the areas of accounts payable correcting entries, procurement, and expenditures, and selected samples for further testing.
- Internal controls were tested including proper procurement training for individuals making the final determination of procurement and if purchase card transactions were properly approved.

## STATUTORY CRITERIA

Agency management must establish and maintain effective internal control in accordance with policy of the Office of Management and Budget (OMB Policy 216).

The criteria used to evaluate legislative intent are the laws as published in the North Dakota Century Code and the North Dakota Session Laws. The following areas were identified to be of higher risk of noncompliance:

- Compliance with appropriations, adjustments, and related transfers in accordance with limits and purpose.
  - 2017 North Dakota Session Laws House Bill 1020 Sections 5, 6, 7, 18, 19, 20, and 21
  - 2017 North Dakota Session Laws House Bill 1374 Sections 2, 6, 7, 8, 10, and 12
- Blanket bond coverage maintained in accordance with state law and state guidelines. (N.D.C.C. 26.1-21-08, N.D.C.C. 26.1-21-10)
- Proper use of funds (State Constitution article 10 section 12, N.D.C.C. 44-08-05.1, N.D.C.C. 54-44.1-09, N.D.C.C. 54-44.1-10)
- Travel reimbursement in accordance with limits of state law and OMB policies. (N.D.C.C. 54-06-09, N.D.C.C. 44-08-03, N.D.C.C. 44-08-04)
- Goods, services, and public improvements procured in accordance with state law. (N.D.C.C. 54-44.4, N.D.C.C. 54-44.7, N.D.C.C. 48-01.2, N.D.A.C. Article 4-12)
- Proper use of the Northwest Area Water Supply Operation and Maintenance Fund (N.D.C.C. 61-24.6-07).

## AUTHORITY AND STANDARDS

This biennial audit of the State Water Commission has been conducted by the Office of the State Auditor pursuant to authority within North Dakota Century Code Chapter 54-10.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The criteria used to evaluate internal control is published in the publication Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States (Green Book, GAO-14-704G).



# Responses to LAFRC Audit Questions

## **1. WHAT TYPE OF OPINION WAS ISSUED ON THE FINANCIAL STATEMENTS?**

Financial statements were not prepared by the State Water Commission in accordance with generally accepted accounting principles so an opinion is not applicable. The agency's transactions were tested and included in the state's basic financial statements on which an unmodified opinion was issued.

## **2. WAS THERE COMPLIANCE WITH STATUTES, LAWS, RULES, AND REGULATIONS UNDER WHICH THE AGENCY WAS CREATED AND IS FUNCTIONING?**

Other than our findings addressing "Improper Emergency Action Plan Process for Dams" and "Dam Operating Plans Not Tracked or Reviewed" the State Water Commission was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

## **3. WAS INTERNAL CONTROL ADEQUATE AND FUNCTIONING EFFECTIVELY?**

Yes. We did not identify any deficiencies in internal control that were significant within the context of our audit objectives.

## **4. WERE THERE ANY INDICATIONS OF LACK OF EFFICIENCY IN FINANCIAL OPERATIONS AND MANAGEMENT OF THE AGENCY?**

No.

## **5. HAS ACTION BEEN TAKEN ON FINDINGS AND RECOMMENDATIONS INCLUDED IN PRIOR AUDIT REPORTS?**

There were no recommendations included in the prior audit report.

## **6. WAS A MANAGEMENT LETTER ISSUED? IF SO, PROVIDE A SUMMARY BELOW, INCLUDING ANY RECOMMENDATIONS AND THE MANAGEMENT RESPONSES.**

No, a management letter was not issued.



# LAFRC Audit Communications

## **7. IDENTIFY ANY SIGNIFICANT CHANGES IN ACCOUNTING POLICIES, ANY MANAGEMENT CONFLICTS OF INTEREST, ANY CONTINGENT LIABILITIES, OR ANY SIGNIFICANT UNUSUAL TRANSACTIONS.**

There were no significant changes in accounting policies, management conflicts of interest, contingent liabilities, or significant unusual transactions identified.

## **8. IDENTIFY ANY SIGNIFICANT ACCOUNTING ESTIMATES, THE PROCESS USED BY MANAGEMENT TO FORMULATE THE ACCOUNTING ESTIMATES, AND THE BASIS FOR THE AUDITOR'S CONCLUSIONS REGARDING THE REASONABLENESS OF THOSE ESTIMATES.**

The State Water Commission's financial statements do not include any significant accounting estimates.

## **9. IDENTIFY ANY SIGNIFICANT AUDIT ADJUSTMENTS.**

Significant audit adjustments were not necessary.

## **10. IDENTIFY ANY DISAGREEMENTS WITH MANAGEMENT, WHETHER OR NOT RESOLVED TO THE AUDITOR'S SATISFACTION RELATING TO A FINANCIAL ACCOUNTING, REPORTING, OR AUDITING MATTER THAT COULD BE SIGNIFICANT TO THE FINANCIAL STATEMENTS.**

None.

## **11. IDENTIFY ANY SERIOUS DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT.**

None.

## **12. IDENTIFY ANY MAJOR ISSUES DISCUSSED WITH MANAGEMENT PRIOR TO RETENTION.**

This is not applicable for audits conducted by the Office of the State Auditor.

## **13. IDENTIFY ANY MANAGEMENT CONSULTATIONS WITH OTHER ACCOUNTANTS ABOUT AUDITING AND ACCOUNTING MATTERS.**

None.

## **14. IDENTIFY ANY HIGH-RISK INFORMATION TECHNOLOGY SYSTEMS CRITICAL TO OPERATIONS BASED ON THE AUDITOR'S OVERALL ASSESSMENT OF THE IMPORTANCE OF THE SYSTEM TO THE AGENCY AND ITS MISSION, OR WHETHER ANY EXCEPTIONS IDENTIFIED IN THE SIX AUDIT REPORT QUESTIONS TO BE ADDRESSED BY THE AUDITORS ARE DIRECTLY RELATED TO THE OPERATIONS OF AN INFORMATION TECHNOLOGY SYSTEM.**

ConnectND Finance and Human Resource Management System (HRMS) are high-risk information technology systems critical to the State Water Commission. No exceptions were noted for these high-risk systems.



# Financial Statements

## Statement of Revenues and Expenditures

REVENUES AND OTHER SOURCES	JUNE 30, 2019	JUNE 30, 2018
Federal Revenue	\$ 11,553,887	\$ 1,216,155
Intergovernmental Capital Repayment	9,899,054	8,360,036
Interest Income on Loans	1,267,420	280,582
Loan Principal Repayments	899,763	1,184,736
Water Rights Filing Fee	142,800	132,775
Miscellaneous Revenue	208,593	472,289
Transfers In	194,607,532	194,899,090
<b>Total Revenue and Other Sources</b>	<b>\$ 218,579,049</b>	<b>\$ 206,545,663</b>

Continued on following page

Source: ConnectND Financials

# Financial Statements

## Statement of Revenues and Expenditures

EXPENDITURES AND OTHER USES		
Grants	\$ 163,435,834	\$ 140,556,325
BND Loan Principal and Interest Repayment	37,889,358	4,251,202
Contractor Payments	23,431,398	20,573,144
Professional Fees and Services	11,237,987	7,003,115
Salaries and Benefits	9,283,066	9,252,335
Utilities	3,015,118	3,622,447
Buildings and Right of Way Land Purchases	2,389,586	104,787
Repairs	647,806	406,386
Travel	531,071	557,162
Supplies	364,844	183,247
Rentals and Leases	288,731	294,501
Information Technology Services	284,670	279,451
Operating Fees and Services	236,907	227,303
Equipment	194,230	48,220
Miscellaneous Operating Expenditures	545,202	376,363
Transfers Out	3,311,900	11,584,973
<b>Total Expenditures and Other Uses</b>	<b>\$ 257,087,708</b>	<b>\$ 199,320,961</b>

Source: ConnectND Financials

# Statement of Appropriations

For the Biennium Ended June 30, 2019

EXPENDITURES BY LINE ITEM	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATIONS
Construction Carryover	\$ 63,158,619	\$ 63,158,619	\$ -
Admin & Support Services	5,633,186	5,432,897	200,289
Water & Atmospheric Resources	749,677,039	373,012,687	376,664,352
<b>Totals</b>	<b>\$ 818,468,844</b>	<b>\$ 441,604,203</b>	<b>\$ 376,864,641</b>

EXPENDITURES BY SOURCE	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATIONS
Other Funds	\$ 818,468,844	\$ 441,604,203	\$ 376,864,641
<b>Totals</b>	<b>\$ 818,468,844</b>	<b>\$ 441,604,203</b>	<b>\$ 376,864,641</b>

Source: ConnectND Financials



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