

RED RIVER JOINT WATER RESOURCE DISTRICT COST-SHARE POLICIES AND PROCEDURES

The Red River Joint Water Resource District (the “Joint Board”) supports retention efforts in the Red River Basin. The Joint Board operates to represent the North Dakota portions of the Red River Basin regarding planning and implementation of water management, with particular attention devoted to water retention. The Joint Board collects membership fees from its member water resource districts up to an amount equal to a 2 mill levy on all real property located within each member’s jurisdictional boundaries that lie within the Red River Basin watershed. The Joint Board seeks to utilize its budget to provide cost-share for member districts for purposes of constructing retention projects in North Dakota.

I. Cost-Share Policy

The Joint Board will provide cost-share to member districts to finance up to 65 percent of non-federal, non-state costs of eligible items for eligible projects in North Dakota. If member districts do not apply for, or do not make reasonable attempts to secure, available federal or state cost-share, the Joint Board may, in its discretion, limit its cost-share to 65 percent of project costs that would remain after reducing those costs that would qualify for federal and/or state funding. Cost-share is contingent upon availability of funds and the member district’s performance of any and all obligations under the Joint Board’s cost-share policies and any COST-SHARE AGREEMENT between the member district and the Joint Board. A requesting member district must be current with regard to its membership fees and otherwise in good standing under the Joint Board’s By-Laws.

II. Legal Considerations

North Dakota law specifically limits the Joint Board’s cost-share policies and procedures. The statute that governs joint water resource districts, N.D. Cent. Code § 61-16.1-11, provides the following requirements and limitations regarding Joint Board expenditures:

2. . . . The boards of the member districts then shall levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.
3. *The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.*

The Joint Board’s policies and procedures must comply with Section 61-16.1-11 and all other applicable North Dakota law.

III. Policy Considerations

The Joint Board generates its budget from the 2 mill levies contributed by our member districts as each member's "membership fee." See By-Laws, Art. III. The Joint Board may only provide cost-share for eligible projects in North Dakota proposed by our member districts, and the projects must benefit all of our member districts or at least two of our member districts. We can utilize half of our budget for projects that benefit *all* of our member districts, and the other half for projects that benefit at least two of our member districts. Member districts applying for cost-share from the Joint Board must demonstrate how their proposed projects will benefit either all of the Joint Board's member districts or at least two of the Joint Board's member districts.

The Joint Board annually updates its "Comprehensive Plan" regarding retention projects proposed in North Dakota in the Red River watershed. Certain projects may not qualify for cost-share as stand-alone projects if they will not benefit either all of our member districts or at least two of our member districts; however, if the Joint Board identifies projects in its "Comprehensive Plan," those projects, in the aggregate, may provide sufficient benefits for the watershed to justify cost-share.

IV. Project Criteria

Eligible Projects: The Joint Board will provide cost-share for retention projects and retention activities in North Dakota that provide common benefit to all of the Joint Board's member districts, or to at least two of the Joint Board's member districts, subject to the Joint Board's cost-share policies. Eligible projects will include dams and other projects that feature retention as a significant purpose; construction or reconstruction of existing retention projects; flood damage repairs; upgrades of existing dams or other retention structures; dam safety studies; retention studies, modeling, and surveys related to retention; and other retention-related activities. The Joint Board will give priority to projects that provide temporary flood control storage.

Ineligible Projects: Member district projects that do not feature retention as a significant function are not eligible for cost-share from the Joint Board. For example, drains, snagging and clearing, diversions, bank stabilization projects, and recreational projects are not eligible for cost-share. Maintenance of any project, including retention projects, is not eligible for cost-share, including maintenance of vegetation, inspections, rodent control, fencing, post-project permitting reports, post-project permit mitigation maintenance requirements, and other post-project permitting requirements. Ring dikes are not typically eligible for cost-share, unless the member district requesting cost-share can demonstrate common benefits to all of the Joint Board's member districts or to at least two of the Joint Board's member districts, in accordance with the Joint Board's cost-share policies.

Other Projects: This policy does not apply to projects that are not member district cost-share projects. For example, the Joint Board typically provides cost-share to USGS for various stream gages, and the Joint Board provided substantial cost-share for the Red River Basin LiDAR Mapping Initiative. The Joint Board retains the right to consider cost-share requests from other government entities regarding projects that will benefit the Red River Basin, or will at least benefit more than one of the Joint Board's member districts.

V. **Eligible Items**

Eligible Items: The Joint Board will provide cost-share for the following items for purposes of eligible projects: construction costs, including earth work, concrete, mobilization and demobilization; all materials, including culverts and other structures; seeding; riprap; utility relocations, including electrical transmission, telephone transmission, fiber optic, rural water, sewer systems, and other utility relocations necessary to accommodate a project; costs associated with applying for, seeking, and obtaining all requisite permits and approvals; all costs associated with complying with applicable law and regulations; all engineering, including project development, preliminary and final engineering, design, inspections, contract administration, hydraulic and hydrologic modeling, and surveying; costs associated with cultural and archaeological studies, analysis, and reviews; soils analysis and investigations; costs incurred applying for or otherwise seeking federal or state cost-share as eligible; project-related legal costs; monumenting; fiscal and bond issuance costs; publication costs; assessment district development and creation costs; right-of-way acquisition costs, including acquisition of requisite fee interests and easements; condemnation costs, including appraisals and reasonable attorneys' fees; and other costs incurred incident to the construction of the project.

Ineligible Items: Administrative expenses; water manager per diem; office staff salary, benefits, and other overhead; office supplies; non-condemnation litigation expenses; and other costs unrelated to project construction or otherwise outside the reasonable scope of the project.

VI. **Cost-Share Conditions**

Member districts applying for cost-share must follow the Joint Board's cost-share procedures, more specifically described below, and member districts must accept certain conditions regarding the availability of any cost-share.

- **Application Required:** All member districts who wish to request cost-share from the Joint Board must complete and submit the Joint Board's COST-SHARE REQUEST FORM.
- **Cost-Share Agreements:** Following approval of any cost-share by the Joint Board, the applying member district must enter into a satisfactory COST-SHARE AGREEMENT with the Joint Board.

- **Maintenance:** As a condition to any cost-share by the Joint Board, all applying member districts must agree to perform ongoing operation and maintenance of their respective projects, and must possess or demonstrate a capacity for ensuring proper maintenance of the project; for example, all applying member districts must demonstrate existence of assessment districts or other mechanisms for financing ongoing operation and maintenance.
- **Permits and Legal Compliance:** As a condition to any cost-share by the Joint Board, all applying member districts will be solely responsible for obtaining their own permits, consents, and approvals, and otherwise complying with all applicable present and future laws, ordinances, rules, and regulations of all federal, state, county, and municipal governments, and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, including all applicable public bidding requirements.
- **Technical Compliance:** As a condition to any cost-share by the Joint Board, all applying member districts must demonstrate compliance with applicable engineering and technical criteria, including requirements of the North Dakota State Water Commission. At the Joint Board's own discretion, the Joint Board may require copies of designs, plans, and specifications regarding a project before approving any cost-share; if the Joint Board concludes the proposed project is not technically adequate, the Joint Board may deny cost-share.
- **Availability of Funds:** Cost-share is contingent upon availability of funds.

VII. Cost-Share Timing

- **Pre-Construction Approval Required:** The Joint Board will not provide cost-share to member districts who do not request and obtain cost-share approval prior to commencement of construction of a project. The Joint Board will not approve or provide cost-share for projects previously constructed; the Joint Board will not approve cost-share after-the-fact.
- **Partial and Final Payments:** The Joint Board may make partial or interim cost-share payments to requesting member districts in the Joint Board's own discretion. Otherwise, following completion of construction of a previously approved project, a member district may request final cost-share from the Joint Board, along with a detailed statement of costs actually incurred, as well as amounts received (or expected) from other sources. If the Joint Board concludes the member district has constructed the project in accordance with the member district's cost-share request, the Joint Board will disburse cost-share funds to the member district, less any partial or interim payments previously issued, all subject to the Joint Board's cost-share policies and procedures.

- **Four-Year Review:** Member districts must proceed with projects in a timely manner and without unreasonable or undue delay. The Joint Board's Executive Committee will review projects not completed within four years of the date of the Joint Board's decision approving cost-share. If the Executive Committee concludes the member district has not proceeded expeditiously or that project delay is not justified, the Executive Committee may recommend reconsideration of the cost-share approval by the full Joint Board. The Executive Committee will notify the member district of the full Joint Board's pending reconsideration of the cost-share approval and the member district may appear before the full Joint Board to offer any rationale, evidence, or good cause for its delay. If the Joint Board concludes there is not good cause for the delay, that the delay is not justified, or that the member district is no longer entitled to cost-share, the full Joint Board may, by a two-thirds' vote, revoke its cost-share approval. In the event of any revocation, the Joint Board will provide written notice to the member district of its decision within 15 days. The member district will not be entitled to any cost-share for costs incurred from the date of the Joint Board's decision of revocation or thereafter, but a member district need not reimburse the Joint Board for cost-share dollars received prior to the date of the Joint Board's revocation.

VIII. Minor Project Approvals

Notwithstanding the cost-share procedures described below, the Joint Board's Executive Committee may issue final approval regarding cost-share requests for projects of \$20,000 or less without submitting the project for consideration and approval by the full Joint Board.

IX. Cost-Share Procedures

All cost-share requests must comply with the following procedures:

1. The member district applicant must complete a cost-share application form.
2. In the application, the applicant must demonstrate the following:
 - a. That the project is primarily for retention purposes or that retention is a primary function;
 - b. That the project will provide common benefit to all of the Joint Board's member districts, or to at least two of the Joint Board's member districts;
or
 - c. Inclusion of the project in the Joint Board's "Comprehensive Plan."
3. At the next Executive Committee meeting following the submission of the application, the Executive Committee will consider the application.
4. A representative of the member district applicant (either a water manager or the member district's engineer) must attend the Executive Committee

- meeting to present the project or answer questions for the Executive Committee.
5. The Executive Committee will either recommend approval to the full Joint Board, or the Executive Committee will deny the application.
 - a. For requests above \$20,000, the Executive Committee will either recommend approval to the full Joint Board, or the Executive Committee will deny the application.
 - b. For cost-share requests below \$20,000, the Executive Committee will either approve or deny the applicant's cost-share request.
 6. "Approval" will mean recommendation of cost-share to a member district for up to 65 percent of non-federal, non-state costs of eligible items for eligible projects in North Dakota.
 7. A representative of the member district applicant (either a water manager or the member district's engineer) must attend the next full Joint Board meeting to present the project to the full Joint Board or to answer questions.
 8. The full Joint Board will either approve or deny the applicant's cost-share request.
 9. If the Joint Board approves cost-share, the member district applicant must enter into the Joint Board's COST-SHARE AGREEMENT.
 10. Following execution of a COST-SHARE AGREEMENT, the applicant member district must complete construction of the project and must submit a final cost-share request to the Joint Board within four years from the date of the Joint Board's approval of the cost-share, or the applicant member district must submit a timely request for an extension.
 11. All final cost-share requests must clearly identify costs incurred (item by item), and amounts received (or expected) from other sources, before the Joint Board will provide cost-share payments.

X. Exigent or Extraordinary Circumstances

In the event of exigent or extraordinary circumstances, the Joint Board may vary from its cost-share policies and procedures, and the Joint Board may otherwise vary from its policies and procedures on an individual or case-by-case basis if deemed necessary by the Joint Board.

XI. Policy and Procedure Amendments

The Joint Board's Executive Committee may alter, revise, or amend these cost-share policies and procedures, the Cost-Share Application, or the form Cost-Share Agreement at any time. The Executive Committee will provide written notice of any amendment to these Cost-Share Policies and Procedures to the full Joint Board and to all member districts.

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