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Minutes of the
Board of Water and Natural Resources
In-Person or On-Line
Matthew Training Center
523 East Capitol
Pierre, SD

January 6, 2022
1:00 p.m. Central Time

CALL MEETING TO ORDER: Chairman Jerry Soholt called the meeting to order. The roll was called, and a quorum was present.

Chairman Soholt announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Jerry Soholt, Gene Jones, Jr., Todd Bernhard, Paul Gnirk, Jackie Lanning, Karl Adam, and Vance Newman.

BOARD MEMBERS ABSENT: None.

OTHERS: See attached attendance sheet.

APPROVE AGENDA: Mike Perkovich noted that Item 6 a. was removed from the agenda because North Sioux City withdrew its funding application, and Item 13. was moved ahead of Item 12.

Motion by Bernhard, seconded by Jones, to approve the amended agenda. A roll call vote was taken, and the motion carried unanimously.

APPROVE MINUTES FROM NOVEMBER 4, 2021, MEETING: Motion by Gnirk, seconded by Lanning, to approve the minutes from the November 4, 2021, Board of Water and Natural Resources meeting. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD: There were no public comments.

SECTION 319 APPLICATIONS: Kris Dozark, Section 319 Implementation Coordinator, DANR Watershed Protection Program, reported that the Board of Water and Natural Resources is the designated entity that provides the state's Section 319 nonpoint source project funding recommendations to EPA. The board considers recommendations from the Nonpoint Source (NPS) Task Force as part of its selection process. Three applications requesting \$2,638,000 in Section 319 funding were received by DANR and reviewed by the NPS Task Force.

The 2022 Clean Water SRF Intended Use Plan authorized the use of \$200,000 in administrative surcharge fees for Water Quality grants to supplement the Section 319 programs for TMDL implementation projects. Staff anticipates receiving \$2,755,000 in Section 319 funds, which is at

the same level as last year's allocation. The DANR and NPS Task Force recommendations reflect both the anticipated FFY 2022 Section 319 federal funding allocation and \$200,000 in Clean Water SRF Water Quality grant awards. The department proposed to use \$842,000 for administration of the NPS program, which leaves \$2,113,000 for pass through grants.

With final FFY 2022 appropriation levels being delayed until the new budget is in place, DANR recommends that up to \$200,000 in Water Quality grant funding be allocated for these projects. If a decrease in Section 319 funding occurs, all pass-through grants will be reduced proportionately.

Mr. Dozark presented the three applications and the DANR and NPS Task Force recommended funding levels.

Belle Fourche River Watershed Implementation Project - Segment 10

Sponsor: Belle Fourche River Watershed Partnership

Total Cost: \$3,254,000

319 Grant Request: \$1,364,000

The Belle Fourche River Watershed Partnership is the project sponsor for this three-year project. This is the tenth segment that addresses seven total maximum daily loads (TMDLs). Activities planned for this segment would continue implementing best management practices (BMPs) that reduce *E. coli* and TSS pollutants. These BMPs include: (1) installing irrigation sprinkler systems, (2) implementing riparian and range grazing management systems, (3) installing riparian/bank stability improvements, (4) implementing improved cropping systems, (5) improving and/or relocating livestock feeding areas.

DANR and the NPS Task Force recommended \$1,287,000 in Section 319 funds and a \$77,000 Clean Water SRF Water Quality grant.

The recommendation is based on the sponsor's ability to successfully leverage funds from other partners and based on work that has been completed in previous project segments to address water quality impairments in the project area.

Soil Health Improvement and Planning Project – Segment 2 (Amendment)

Sponsor: South Dakota Soil Health Coalition

Total Cost: \$657,500

319 Grant Request: \$123,000

The goal of this two-year project is to improve water quality through planning and implementation of soil health agricultural BMPs and outreach to producers in selected 303(d) listed waterbodies in South Dakota. The project will be implementing BMPs in the watershed that reduce sediment loading and prevent bacterial contamination working to attain TMDLs developed for the rivers, tributaries, and lakes and meet the designated beneficial uses. This Segment 2 Amendment proposes additional funds to increase BMP installment for the project and extends the project through 2023.

DANR and the NPS Task Force recommended a \$123,000 Clean Water SRF Water Quality grant.

The recommendation is based on the project increasing implementation of on-the-ground practices throughout the state as recommended in previous applications. Staff continues to recommend working with other projects to help implement soil health practices that improve water quality as well as working in waterbodies that are non-supporting of their beneficial uses.

South Central Watershed Implementation Project - Segment 2 (Amendment)

Sponsor: James River Water Development District

Total Cost: \$19,255,340

319 Grant Request: \$1,151,000

This proposal is the second segment of a locally planned multi-year (10-15 year) effort to implement BMPs in the Lewis and Clark Lake watershed, impaired stretches of the Lower James River tributaries, and impaired reaches in the Vermillion watershed. This effort is aimed at restoring water quality to meet designated beneficial uses and address TMDLs established, and to be established, for waterbodies in these watersheds. This Segment 2 Amendment proposes additional funds to increase BMP installation throughout the project. The amendment would also extend the project through 2025.

DANR and the NPS Task Force recommended \$626,000 in Section 319 funds.

The recommendation is based on the history of practices implemented in the project area. The sponsor should submit future applications for Section 319 funds and continue to work with other potential funding partners to help leverage the Section 319 funds awarded.

Mr. Dozark requested separate board actions to provide for the awards from the Clean Water SRF Water Quality grant funding source and to provide the state Section 319 funding recommendations to EPA.

Chairman Soholt lost his remote connection to the meeting, so Vice Chairman Jones chaired the meeting until Chairman Soholt was able to rejoin.

Mr. Dozark answered questions from the board regarding the projects and DANR staff support costs.

Jay Gilbertson, Chairman of the NPS Task Force, stated that the task force met and received presentations from the three applicants. The NPS Task Force voted to concur with the DANR funding recommendations. Mr. Gilbertson requested board support of the staff and NPS Task Force recommendations for funding.

Motion by Bernhard, seconded by Lanning, to authorize the department to enter into grant agreements with the Belle Fourche River Watershed Partnership in the amount of \$77,000 and the South Dakota Soil Health Coalition in the amount of \$123,000 from Clean Water SRF administrative surcharge fees pursuant to the 2022 Clean Water SRF Intended Use Plan contingent upon the 2022 Legislature authorizing the required budget authority for the awards. A roll call vote was taken, and the motion carried unanimously.

Motion by Gnirk, seconded by Newman, to concur with the funding recommendations of DANR and the Nonpoint Source Task Force and authorize the department to forward the FFY 2022 Section 319 funding recommendations to EPA with adjustments to final federal funding levels. A roll call vote was taken, and the motion carried unanimously.

Chairman Soholt rejoined the meeting.

DRINKING WATER FACILITIES FUNDING APPLICATION: Andy Bruels reviewed available funds. He presented the Drinking Water Facilities application and staff recommendation.

Mitchell requested funding to construct a 2.5 million-gallon ground storage tank and associated pump station and chemical fee facility, make modifications to the distribution system, and demolish the Burr Street water tank.

The project is anticipated to be bid in April 2022 with project completion in December 2023.

The estimated project amount is \$11,020,000, and the amount requested is \$11,000,000. The city will provide \$20,000 in local cash.

Rates in Mitchell are \$36.88 per 5,000 gallons usage.

Staff recommended awarding an \$11,000,000 Drinking Water SRF loan at 1.875 percent interest for 30 years.

The city pledged a project surcharge for repayment of the loan. Staff analysis indicates the city will need to establish a surcharge of \$7.60 to repay the loan, resulting in monthly rates of \$44.48 per residential user for 5,000 gallons usage.

Staff recommended the loan being contingent upon the borrower adopting a bond resolution and the resolution becoming effective and contingent upon the borrower establishing a surcharge at a level sufficient to provide the required debt coverage.

Representatives of the city of Mitchell were available to answer questions. There were no questions from the board.

Motion by Gnirk, seconded by Lanning, to adopt **Resolution No. 2022-92** approving a Drinking Water State Revolving Fund loan up to a maximum committed amount of \$11,000,000 at 1.875 percent interest for 30 years to the **city of Mitchell** for water system improvements; and authorizing the execution of the loan agreement, the acceptance of the Local Obligation, the assignment of the Local Obligation to the Trustee, and the execution and delivery of such other documents and the performance of all acts necessary to effectuate the loan approved in accordance with all terms as set forth in the Indenture of Trust, contingent upon the borrower adopting a bond resolution and the resolution becoming effective and contingent upon the borrower establishing a surcharge at a level sufficient to provide the required debt coverage. A roll call vote was taken, and the motion carried with Adam, Bernhard, Gnirk, Lanning, Newman and Soholt voting aye. Jones abstained.

SANITARY/STORM SEWER FUNDING APPLICATION: Mike Perkovich presented the application and staff recommendation for funding.

Mitchell requested funding to make improvements to the North Plant of its wastewater treatment facility. The project involves construction of a new headworks facility and equalization basin, improvements to the septage receiving structure, electrical system and the existing equalization basin, and other miscellaneous site improvements.

The application also includes a nonpoint source component to install nonpoint source BMPs in the Firesteel Creek Watershed.

The estimated total project amount is \$11,087,000, and the amount requested is \$11,087,000. Of that amount, \$10,000,000 is for the improvements to the wastewater treatment facility and \$1,087,000 is for the nonpoint source component of the project.

Rates in Mitchell are \$40.74 based on 5,000 gallons usage.

Staff recommended awarding an \$11,087,000 Clean Water SRF loan at the nonpoint source incentive rate of 1.375 percent interest for 30 years.

The city pledged a project surcharge for repayment of the loan. Staff analysis indicates Mitchell would have to establish a surcharge of approximately \$7.30, resulting in overall rates of \$48.04 for 5,000-gallon usage.

Staff recommended the loan being contingent upon the borrower adopting two bond resolutions and the resolutions becoming effective and contingent upon the borrower establishing a surcharge at a level sufficient to provide the required debt coverage. A special condition to the loan will be that the borrower may not draw funds from the proceeds of the Series NPS Borrower Bond until EPA approves the revised budget for the Project Implementation Plan.

Representatives of Mitchell were available to answer questions. The board had no questions.

Motion by Adam, seconded by Bernhard, to adopt **Resolution No. 2022-93** approving a Clean Water State Revolving Fund loan up to a maximum committed amount of \$11,087,000 at 1.375 percent interest for 30 years to the **city of Mitchell** for wastewater treatment facility improvements, and authorizing the execution of the loan agreement, the acceptance of the Local Obligation, the assignment of the Local Obligation to the Trustee, and the execution and delivery of such other documents and the performance of all acts necessary to effectuate the loan approved in accordance with all terms as set forth in the Indenture of Trust, contingent upon the borrower adopting two bond resolutions and the resolutions becoming effective and contingent upon the borrower establishing a surcharge at a level sufficient to provide the required debt coverage, with the special condition that the borrower may not draw funds from the proceeds of the Series NPS Borrower Bond until EPA approves the revised budget for the Project Implementation Plan. A roll call vote was taken, and the motion carried unanimously.

SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATIONS: Drew Huisken provided an overview of available funds for the Solid Waste Management Program.

Mr. Huisken presented the Solid Waste Management Program applications and the staff recommendations for funding.

Canistota requested funding to improve its solid waste efforts in three areas. The first project will improve operations at the restricted use site via installation of an access control system at the restricted use site. The second project involves the purchase of equipment to assist with freon recovery from appliances that are disposed at the city's restricted use site. The city has personnel who are certified to perform freon recovery with the proper equipment. The final project is to purchase a screening bucket for the wheel loader. This equipment will allow the city to screen finished compost for a better product that will have additional uses.

The estimated total project amount is \$22,450, and the amount requested is \$11,225.

Canistota plans to purchase, install, and begin use of all the equipment within six months of a potential funding award.

Staff recommended awarding a Solid Waste Management Program grant up to 30.0 percent of the eligible project costs not to exceed \$6,735.

Mr. Huisken stated that for recycling projects, grant awards have historically been 35 to 50 percent of total project costs. Because this project has both municipal solid waste and recycling components, the grant percentage recommendation is slightly lower. The city of Canistota is not interested in a Solid Waste Management loan and has committed to funding the remaining project costs with local cash.

Darin Nugteren, maintenance supervisor for the city of Canistota, thanked the board for consideration of funding. He answered questions from the board regarding the freon recovery system.

Motion by Adam, seconded by Jones, to approve **Resolution No. 2022-94** approving a South Dakota Solid Waste Management Program grant agreement for the **city of Canistota** for up to 30.0 percent of eligible costs not to exceed \$6,735 for the restricted use site improvements project. A roll call vote was taken, and the motion carried unanimously.

SD Solid Waste Management Association requested funding to assist with costs of the MOLO training.

Every three years the SD Solid Waste Management Association hosts a Manager of Landfill Operations (MOLO) training course to certify new landfill managers and operators, maintain existing certifications, and train other staff and contractors in the solid waste industry statewide. Funding for this project helps to offset the registration costs for South Dakota solid waste operators and ensure qualified personnel are available to operate the state's solid waste facilities. The current MOLO course is scheduled for April of 2022.

The estimated total project amount is \$49,000, and the amount requested is \$34,000.

The Board of Water and Natural has been awarding grants for MOLO training to SD Solid Waste Management Association on a three-year cycle since 2000.

Staff recommended awarding a Solid Waste Management Program grant up to 69.4 percent of eligible project costs not to exceed \$34,000.

Mr. Huisken noted that this grant award would be consistent with previous iterations of the MOLO training course. The remainder of the project cost will be financed by registration fees and in-kind donations from other sources.

Melissa Fahy, SD Solid Waste Management Association, thanked the board for its continued support, and she answered questions from the board regarding attendance at the training course.

Motion by Lanning, seconded by Bernhard, to approve **Resolution No. 2022-95** approving a South Dakota Solid Waste Management Program grant agreement for the **South Dakota Solid Waste Management Association** for up to 69.4 percent of eligible costs not to exceed \$34,000 for the 2022 Manager of Landfill Operations Training Course. A roll call vote was taken, and the motion carried unanimously.

Watertown requested funding to construct new landfill waste Cell #7, refurbish its composting pad, and construct storm water improvements at its landfill facility. The proposed project involves excavation, berm construction, rip rapping, installation of a leachate system, compost pad paving, road construction, and various storm water improvements. This project is necessary for continued operation of the landfill facility.

Landfill Cell #6 is currently in operation and nearing capacity, so a new cell is needed. The current compost pad is in poor condition and in need of replacement. Several efforts at the landfill have been made to divert storm water away from mixing with the waste stream, and this project is continuation of those efforts.

The estimated total project amount is \$2,147,076, and the amount requested is \$1,073,500,

Watertown plans to begin construction in early Spring 2022 with completion in November 2022.

Staff recommended awarding a Solid Waste Management Program grant up to 18.7 percent of eligible project costs not to exceed \$400,000.

For solid waste landfill projects, grant awards have historically been 10 to 20 percent of total project costs. The city of Watertown is not interested in a Solid Waste Management loan and has committed to funding the remaining project costs with local cash.

Mike Boerger, superintendent of wastewater and solid waste for the city of Watertown, thanked the board for considering funding for the project.

Motion by Gnirk, seconded by Adam, to approve **Resolution No. 2022-96** approving a South Dakota Solid Waste Management Program grant agreement for the **city of Watertown** for up to

18.7 percent of eligible costs not to exceed \$400,000 for landfill improvements and the Cell #7 construction project. A roll call vote was taken, and the motion carried unanimously.

Mr. Huisken provided an overview of remaining Solid Waste Management Program funds.

FFY 2021 CLEAN WATER SRF ANNUAL REPORT: Stephanie Riggle presented the FFY 2021 Clean Water SRF annual report.

The South Dakota Conservancy District is required to submit an annual report to the Environmental Protection Agency for the Clean Water State Revolving Fund. The FFY 2021 report discusses activities from October 1, 2020, to September 30, 2021. The report is in the same format as in previous years.

Highlights for FFY 2021 Clean Water SRF funding include the board awarding 21 Clean Water SRF loans and approving one amendment for total funding of over \$41,357,000. Of these 21 loans, four received principal forgiveness in the aggregate amount of \$6,083,000. Loan repayments for the year totaled more than \$53,000,000 with \$45,700,000 in principal, \$5,600,000 in interest, and \$1,800,000 in administrative surcharge.

Staff recommended that the board approve the draft annual report for the Clean Water SRF program and authorize staff to finalize and distribute the report.

Motion by Gnirk, seconded by Jones, to approve the FFY 2021 Clean Water SRF program annual report and to authorize staff to finalize and distribute the report. A roll call vote was taken, and the motion carried unanimously.

FFY 2021 DRINKING WATER SRF ANNUAL REPORT: Ms. Riggle presented the FFY 2021 Drinking Water SRF annual report.

The South Dakota Conservancy District is required to submit an annual report to the Environmental Protection Agency for the Drinking Water State Revolving Fund. The FFY 2021 report discusses activities from October 1, 2020, to September 30, 2021. The report is in the same format as in previous years.

In FFY 2021, the board awarded 18 Drinking Water SRF loans and approved one loan amendment for a total amount of \$34,088,000. Of those loans, six received principal forgiveness in the aggregate total of \$7,423,000. Loan repayments totaled nearly \$16,700,000 with \$12,000,000 in principal, \$3,700,000 in interest, and \$1,000,000 in administrative surcharge.

Staff recommended that the board approve the draft annual report for the Drinking Water SRF program and authorize staff to finalize and distribute the report.

Motion by Gnirk, seconded by Adam, to approve the FFY 2021 Drinking Water SRF program annual report and to authorize staff to finalize and distribute the report. A roll call vote was taken, and the motion carried unanimously.

Dr. Gnirk commended the staff for all of the work they put into preparing these reports.

SIoux RURAL WATER SYSTEM GRANT 2019G-DW-100 REQUEST FOR TIME

EXTENSION: Mr. Bruels reported that on March 27, 2018, Sioux Rural Water System was awarded a \$9,821,000 Drinking Water SRF loan and a \$1,100,000 Drinking Water Construction grant to build improvements to its well field, water treatment, and water distribution systems. The original expiration date for the grant is March 27, 2022.

DANR received a letter from Sioux Rural Water System requesting an extension of the grant expiration date. The Sioux Rural Water System service area experienced flooding in 2019 that caused delays in the design and construction of the project, and Covid-19 further delayed construction and delivery of materials. Since this is not a Consolidated grant, the expiration date can be amended to allow more time to complete the original scope of work.

Staff recommended amending the expiration date of Drinking Water Construction grant 2019G-DW-100 to March 27, 2023.

Heath Thompson, manager of the rural water system was available to answer questions. The board had no questions.

Motion by Newman, seconded by Lanning, to adopt **Resolution No. 2022-97** approving the first amendment to **Sioux Rural Water System's** SRF Program Drinking Water grant agreement 2019G-DW-100 to extend the termination date of the grant to March 27, 2023. A roll call vote was taken, and the motion carried unanimously.

BOND COUNSEL CONTRACT FOR THE SOUTH DAKOTA CONSERVANCY DISTRICT'S

STATE REVOLVING FUND LOAN PROGRAMS: Dave Ruhnke reported that Bruce Bonjour of Perkins Coie, LLP has served as bond counsel for the Clean Water State Revolving Fund Program since 1993 and the Drinking Water State Revolving Fund Program since 1997.

The current contract with Mr. Bonjour expired December 31, 2021. Staff has worked with Mr. Bonjour and David McVey with the Attorney General's Office to draft a new contract to provide continued service for 2022 through 2024. The proposed contract will provide legal services on the eligibility of loans and the flow of funds with the Master Trust Indenture of both State Revolving Fund programs; the filing of secondary market disclosure information on existing bonds within both programs; and preparing or cause the preparation of arbitrage rebate reports on existing bonds.

Mr. Ruhnke stated that this contract basically mirrors the previous contracts with Mr. Bonjour. It has a total amount not to exceed \$282,000, which is the same amount as the previous contract. The contract contains an option for the Board of Water and Natural Resources to extend the contract for another three years if the board and Mr. Bonjour agree to do so.

The contract will begin upon execution by all parties and expire on December 31, 2024.

Staff recommended that the board authorize the chairman to execute the contract for bond counsel services for the period of 2022 through 2024. A roll call vote was taken, and the motion carried unanimously.

Motion by Jones, seconded by Bernhard, to authorize the chairman of the Board of Water and Natural Resources to execute the contract with Mr. Bonjour for bond counsel services for the period of 2022 through 2024. A roll call vote was taken, and the motion carried with Adam, Bernhard, Gnirk, Jones, Lanning and Soholt voting aye. Newman abstained.

PERKINS COIE LLP CONFLICT WAIVER REQUEST FOR SIMULTANEOUS REPRESENTATION OF SOUTH DAKOTA CONSERVANCY DISTRICT AND US BANK:

Mr. Perkovich reported that Bruce Bonjour, Perkins Coie, has asked the board to approve a waiver request for simultaneous representation of the South Dakota Conservancy District and US Bank.

US Bank is the successor Trustee for the Fifth Amended and Restated Master Indenture. Because there is a theoretical conflict here, the district needs to waive the conflict in order to proceed. Mr. Bonjour submitted a letter requesting the state and the Conservancy District to sign a waiver of a conflict of interest that will allow him to continue to represent the district even though his firm has represented, and is currently representing, US Bank with respect to a variety of unrelated work, including financing and lending transaction matters. Mr. Bonjour concludes in his letter that he does not believe the work his firm does for US Bank will adversely affect the work he does for the Conservancy District. The district's legal counsel, Mr. David McVey, agrees with there would be no adverse effect. The district's legal services contract requires consent of the Attorney General, so the waiver will need to be approved by the Office of the Attorney on behalf of the State of South Dakota.

Staff recommended that the board authorize the chairman to execute the Perkins Coie LLP Conflict Waiver Request for Simultaneous Representation of South Dakota Conservancy District and US Bank.

Motion by Bernhard, seconded by Adams, to authorize the chairman to execute the Perkins Coie LLP Conflict Waiver Request for Simultaneous Representation of South Dakota Conservancy District and US Bank. A roll call vote was taken, and the motion carried unanimously.

ADOPT PROPOSED FUND DISTRIBUTION CRITERIA FOR AMERICAN RESCUE PLAN ACT FUNDS: Mr. Bruels reported that the American Rescue Plan Act (ARPA) includes water and sewer infrastructure projects as an eligible use of the funds. Governor Noem's recommended budget includes \$600,000,000 in one-time ARPA funding to support eligible improvements to water and sewer infrastructure projects throughout the state.

In anticipation of the legislature approving the recommended funding, DANR staff has developed ARPA fund distribution criteria. A copy of the fund distribution criteria was included in the board packet. The criteria were developed to incorporate reasonable project sizes and user rates to create fair and equitable distribution of ARPA grant funds. The criteria allow for some discretionary funding for certain projects for DANR recommendations and board approval when warranted. If approved by the board, these criteria would be used by DANR staff when reviewing and evaluating funding applications during the period that these funds are available.

Funded applicants would receive a minimum 30 percent ARPA grant (percent of total amount requested). A grant cap will be determined by a per person project cost based on the population

served by the system (2020 Census numbers or system service numbers). The grant cap applies regardless of the total project cost or the number of projects seeking funding. The grant cap will be determined as follows:

- a. Service populations up to 1,000: up to 80 percent grant with a \$9,000 per person maximum per applicant for all project(s) considered for ARPA grants. Grant percentages would be less if not meeting rates outlined below.
- b. Service populations up to 2,500: up to 50 percent grant with a \$7,000 per person maximum per applicant for all project(s) considered for ARPA grants. Grant percentages would be less if not meeting rates outlined below.
- c. Service populations above 2,500: 30 percent grant with a \$3,000 per person maximum per applicant for all project(s) considered for ARPA grants.

If an applicant uses local ARPA funds (city or county), these funds will be matched with state ARPA funds up to a maximum of \$5,000,000. The grant cap determined above may be exceeded with the use of local/state match funds.

The grant cap may also be exceeded if an applicant currently has rates or will have rates upon project completion that meet the following user rate targets:

- a. \$55 for 5,000 gallons for each water or sewer for city residents
- b. \$75 for 7,000 gallons for each water or sewer for rural/sanitary districts

If user rates already exceed the target rates, subsidy will not be provided to reduce rates to the target. However, applicants whose current rates exceed the target rate may receive up to an additional five percent of ARPA funding toward the total project cost.

Applicants will also be eligible for Clean Water or Drinking Water State Revolving Fund principal forgiveness or other state grants in addition to state ARPA funds. Additional subsidy funding from non-ARPA funds will be provided based on DANR recommendations and board approval.

Projects addressing regionalization/consolidation, regulatory compliance issues, drought resiliency, water availability, non-point source improvements, or other significant environmental issues may receive funding above the grant cap. DANR will evaluate projects and make recommendations to the board for funding based on merits and positive impacts of the project.

Requests for engineering studies for projects to address long-term drought resiliency, drinking water availability issues, or water or wastewater regionalization projects may be provided up to 100 percent state ARPA funds.

Staff recommended the board adopt the proposed distribution criteria for funding award recommendations for ARPA funding requests contingent on legislative action to appropriate proposed funds and award process.

Mr. Bruels answered questions from the board regarding the proposed distribution criteria.

Motion by Gnirk, seconded by Lanning, to adopt the proposed distribution criteria for funding award recommendations for ARPA funding requests contingent on legislative action to appropriate proposed funds and award process. A roll call vote was taken, and the motion carried unanimously.

INFRASTRUCTURE INVESTMENT AND JOBS ACT: Mr. Perkovich provided a presentation on the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL).

For the Clean Water SRF Base Program the 2021 Capitalization Grant was \$7,779,000. The 2022 BIL allocation is \$8,809,000. The mandated subsidy for the 2021 Capitalization Grant was \$3,111,600 and the 2022 BIL will mandate \$4,316,410 in subsidy.

For the Drinking Water SRF Base Program, the 2021 Capitalization Grant was \$11,001,000. The 2022 BIL allocation is \$17,955,000. The mandated subsidy in 2021 was \$5,390,490 and the 2022 BIL will mandate \$8,797,950 in subsidy.

The BIL authorizes this subsidy for five years. Funding levels are similar to 2022 levels with a slight increase each year. BIL allocations are in addition to annual SRF Capitalization Grants.

New allotments are provided in the BIL for emerging contaminants (PFAS/PFOS). The Clean Water SRF portion of the BIL provides \$462,000 annually for five years and the Drinking Water SRF portion provides \$7,540,000 annually and it mandates that any of the funds are used, they needed to be awarded as 100 percent subsidy.

There is also a new allotment for lead line replacement in the amount of \$28,275,000 annually in the Drinking Water SRF portion of the BIL and it mandates a 49 percent subsidy.

Mr. Perkovich stated that staff proposes to issue an RFP for a contract to complete a lead water line inventory across the state.

Funding is authorized for five years.

There are new requirements for this. The Build America, Buy America Act requires that construction materials used in a project are produced in the United States and that all manufacturing processes for the construction material occurs in the United States. Construction material includes iron and steel, lumber, and sheetrock. More guidance will be forthcoming.

The BIL reduces state match from 20 percent to 10 percent for the first two years, then it goes back to 20 percent after that. DANR staff will be required to do increased tracking and reporting.

The presentation is available on the Boards and Commissions Portal at [https://boardsandcommissions.sd.gov/bcuploads/Board%20Presentation%20\(1\).pdf](https://boardsandcommissions.sd.gov/bcuploads/Board%20Presentation%20(1).pdf) starting on page 18.

Amendment to the 2022 Omnibus Bill Recommendations: Ms. Riggle stated that the Infrastructure Investment and Jobs Act (IIJA) of 2021 includes specific funding for lead service line replacement and other costs directly related to the replacement of lead service lines. To identify the extent of lead service lines in the state, \$1,500,000 will be allocated to contract for lead service line inventories for all public water systems in the state. Line 9, Lead Service Line Inventory was added to the 2022 Omnibus Water Funding in the amount of \$1,500,000 bringing the total Omnibus Bill appropriations to \$16,996,227.

In order for the Conservancy District to utilize the funding, a new resolution will need to be approved to include the additional funds.

Staff recommended the board rescind Resolution 2021-90, which the board approved at its November 2021 meeting for the Omnibus Water Funding Bill, and approve a new resolution providing recommendations to the Governor and the State Legislature on Water & Environment Fund state fiscal year 2023 funding levels for the State Water Resources Management System projects, the Consolidated program, and the Solid Waste Management program, and for appropriations from specific state revolving fund subfunds.

Motion by Jones, seconded by Adam, to rescind Resolution No. 2021-90 and approve **Resolution No. 2022-98** recommending to the Governor and State Legislature Water and Environment Fund Fiscal Year 2023 appropriation levels of \$249,727 for the Big Sioux Flood Control Study, \$1,021,500 for Hydrology and Water Management Studies, \$10,500,000 for the Consolidated Water Facilities Construction Program, \$2,750,000 for the Solid Waste Management Program, \$300,000 for Clean Water SRF Water Quality Grants, \$250,000 for Clean Water SRF Application and Administration Assistance, \$275,000 for Drinking Water SRF Application and Administration Assistance, and \$150,000 for Drinking Water SRF Small System Technical Assistance, and \$1,500,000 for a lead service line inventory. A roll call vote was taken, and the motion carried unanimously.

Amendment to the FY 2022 Drinking Water SRF Intended Use Plan: Mr. Bruels stated that the FFY 2022 Drinking Water State Revolving Fund Intended Use Plan was approved by the Board of Water and Natural Resources in November 2021.

The Infrastructure Investment and Jobs Act (IIJA) of 2021 includes specific funding for lead service line replacement and other costs directly related to the replacement of lead service lines. To identify the extent of lead service lines in the state, \$1,500,000 will be allocated to contract for lead service line inventories for all public water systems in the state.

Staff recommended that the board approve the amendment to the FFY 2022 Drinking Water SRF Intended Use Plan to include language regarding the \$1,500,000 for a lead service line inventory.

Motion by Bernhard, seconded by Adam, to amend the FFY 2022 Drinking Water SRF Intended Use Plan to include language regarding the \$1,500,000 for a lead service line inventory. A roll call vote was taken, and the motion carried unanimously.

RESCIND SALEM’S CLEAN WATER SRF LOAN C461057-04 AND DRINKING WATER SRF LOAN C462-57-05: Mr. Perkovich reported that on March 25, 2021, the board awarded a Clean Water SRF loan for \$1,128,000 and a Drinking Water SRF loan for \$439,000 to the city of Salem for improvements to its wastewater collection and water distributions systems.

The loans were for Phase I of Salem’s industrial area project. Due to the bidding climate and the increased construction costs, the city reevaluated its options and has decided to decline the two SRF loans. The city plans to reapply for both Phase I and Phase II of the industrial area project at a later date.

Staff recommended the board rescind Resolution No. 2021-32 which approved the Clean Water SRF loan and Resolution No. 2021-33 which approved the Drinking Water SRF loan.

Motion by Adam, seconded by Newman, to rescind Resolution No. 2021-32 which approved the Clean Water SRF loan and Resolution No. 2021-33 which approved the Drinking Water SRF loan. A roll call vote was taken, and the motion carried unanimously.

NEXT MEETING: The next meeting is March 24, 2022. Mr. Perkovich discussed possible agenda items for the meeting.

The board will also meet April 12-13, 2022, to consider funding applications. Mr. Perkovich noted that the department received 151 funding applications requesting a total of \$1,344,000,000.

ADJOURN: Motion by Adam, seconded by Gnirk, to adjourn the meeting. Motion carried.

Approved March 24, 2022.



Chairman, Board of Water and Natural Resources

ATTEST:

Secretary, Board of Water and Natural Resources