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Minutes of the
Board of Water and Natural Resources
Remote Meeting via Audio/Visual Conference

November 5, 2020
9:00 a.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, Kathryn Johnson, and Karl Adam.

BOARD MEMBERS ABSENT: Jackie Lanning.

APPROVE AGENDA: Mike Perkovich noted that there were no changes to the agenda.

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

APPROVE MINUTES FROM SEPTEMBER 24, 2020, MEETING: Motion by Adam, seconded by Gnirk, to approve the minutes from the September 24, 2020, 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.

2021 STATE WATER PLAN APPLICATIONS: Water projects which will require state funding or need state support for categorical grant or loan funding need to be on the State Water Plan. At its November planning meeting, the Board of Water and Natural Resources approves projects for placement onto the next year's State Water Facilities Plan. Placement of a project on the State Water Plan by the board provides no guarantee of funding. The projects placed onto the plan at this meeting will remain on the facilities plan through December 2022.

Andy Bruels presented the 55 State Water Plan applications that were received by the October 1, 2020, deadline.

Project Sponsor	Description	Estimated Total Project	Recommendation
Alcester	Wastewater System Improvements	\$5,500,000	Place on Facilities Plan
Baltic	Main Lift Station Replacement	\$718,600	Place on Facilities Plan

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Bear Butte Valley Water, Inc.	Alkali Road Expansion	\$1,999,000	Place on Facilities Plan
Blunt	Storm Water Drainage Improvements	\$1,354,866	Place on Facilities Plan
Canistota	Drinking Water Infrastructure Improvements	\$437,000	Place on Facilities Plan
Canistota	Sanitary and Storm Sewer Infrastructure Improvements	\$1,075,000	Place on Facilities Plan
Castlewood	Water System Improvements	\$800,000	Place on Facilities Plan
Chancellor	Drinking Water Improvements	\$3,300,000	Place on Facilities Plan
Chancellor	Sanitary and Storm Sewer Improvements	\$5,300,000	Place on Facilities Plan
Cresbard	Wastewater System Improvements	\$3,124,127	Place on Facilities Plan
Cresbard	Water System Improvements	\$2,068,305	Place on Facilities Plan
Custer	Wastewater Treatment Upgrades and New Forcemain	\$12,450,400	Place on Facilities Plan
Elkton	Lift Station Improvements	\$867,500	Place on Facilities Plan
Faith	New Water Storage Tank	\$2,274,000	Place on Facilities Plan
Gayville	Sanitary and Storm Sewer Improvements	\$4,429,000	Place on Facilities Plan
Grant-Roberts RWS	System Wide SCADA Upgrades	\$857,000	Place on Facilities Plan
Groton	Water Improvements Phase 2	\$1,265,400	Place on Facilities Plan
Hot Springs	North 24th Street Sewer	\$638,525	Place on Facilities Plan
Hot Springs	North River Street Sewer Replacement	\$704,000	Place on Facilities Plan
Hot Springs	North River Street Water Replacement	\$392,000	Place on Facilities Plan
Joint Well Field, Inc.	Water Treatment Plant Improvements	\$5,623,000	Place on Facilities Plan
Kingbrook Rural Water System	Carthage Elevated Tank Recoating	\$393,100	Place on Facilities Plan
Lake Norden	North Lift Station and Wastewater Treatment Improvements	\$3,000,000	Place on Facilities Plan
Lake Norden	New Water Storage Tank	\$2,700,000	Place on Facilities Plan
Lead	Mill Street Sanitary Sewer and Storm Sewer Separation	\$378,733	Place on Facilities Plan
Lead	Mill Street Watermain Replacement	\$360,138	Place on Facilities Plan
Mitchell	Dredging of Lake Mitchell	\$11,250,000	Place on Facilities Plan
Mitchell	Wastewater Treatment Facility Improvements	\$10,000,000	Place on Facilities Plan
Mitchell	Landfill Cell #4 Construction	\$1,621,905	Place on Facilities Plan
Mitchell	Drinking Water System Improvements	\$11,000,000	Place on Facilities Plan
Mni Waste' Water Company	Highway 63 North Transmission Line	\$32,733,000	Place on Facilities Plan
Mobridge	Wastewater Treatment Facility Improvements	\$1,830,000	Place on Facilities Plan
Mobridge	Water System Improvements	\$11,350,000	Place on Facilities Plan
Northdale Sanitary District	Sanitary Sewer Relocation	\$440,000	Place on Facilities Plan
Philip	Water Meter Replacement	\$464,031	Place on Facilities Plan

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Presho	Sanitary Sewer Outfall Line Rehabilitation	\$452,000	Place on Facilities Plan
Saint Lawrence	Wastewater Collection Improvements	\$2,134,000	Place on Facilities Plan
Salem	Sanitary Sewer Industrial Area Improvements	\$2,040,000	Place on Facilities Plan
Salem	Drinking Water Industrial Area Improvements	\$1,097,000	Place on Facilities Plan
Sioux Falls	Water Reclamation Facility Expansion Phases 3 & 4	\$98,875,000	Place on Facilities Plan
Tabor	Wastewater Collection System Improvement	\$4,765,000	Place on Facilities Plan
Tea	Sanitary Sewer Regionalization Phase 2	\$7,392,000	Place on Facilities Plan
Tea	272nd Street Sanitary Sewer Extension	\$1,433,000	Place on Facilities Plan
Tea	272nd Street Watermain Extension	\$805,000	Place on Facilities Plan
Terry Trojan Water Project District	Water Meter Replacement	\$347,262	Place on Facilities Plan
Vermillion	Highway 50 Stormwater Improvements	\$4,150,000	Place on Facilities Plan
Vermillion	Tom Street Lift Station Replacement	\$764,000	Place on Facilities Plan
Vermillion	Landfill Cells #6 & 7 Construction and Existing Cell Closure	\$2,240,000	Place on Facilities Plan
Watertown	Wastewater Primary Clarifier Replacement	\$2,500,000	Place on Facilities Plan
Waubay	Wastewater Treatment Facility Bank Stabilization	\$2,168,910	Place on Facilities Plan
Wessington Springs	Second Street Water and Wastewater Replacement	\$1,108,029	Place on Facilities Plan
Wessington Springs	Wastewater Treatment Facility Improvements	\$960,000	Place on Facilities Plan
Wessington Springs	Water Meter Replacement	\$685,000	Place on Facilities Plan
White	Water System Improvements	\$6,000,000	Place on Facilities Plan
White	Wastewater System Improvements	\$6,100,000	Place on Facilities Plan

Motion by Gnirk, seconded by Bernhard, to accept the staff recommendations to place the 55 projects on the 2021 State Water Facilities Plan. A roll call vote was taken, and the motion carried unanimously.

CASH FLOW MODEL: Jon Peschong reported that for the past few years, staff has been discussing the cash flow model, but the idea started to get traction about a year ago when the city of Sioux Falls approached the department. The city indicated that it was planning several projects that would require more than \$200 million dollars in funding requests.

Staff had discussions with Assistant Attorney General David McVey about the legal aspects of the cash flow model, and staff requested that Mr. McVey provide a memo with his legal opinion regarding whether the cash flow model could be used by the State Revolving Fund programs under the state statutes.

On May 5, 2020, Mr. McVey provided the memo, which was included in the board packet. Mr. McVey agreed with prior opinions that “taken together the state statutes establish a legislative intent that the funds in the respective SRF program sub-funds are continuously appropriate” and that the South Dakota Conservancy District does not rely on “State Public Funds” or annual appropriations to fund its loans. He referenced in the memo that he had discussions with Harold Deering, the former Assistant Attorney General for the Conservancy District, and Bruce Bonjour from Perkin’s Coie, who is the Conservancy District’s bond counsel.

In the memo, Mr. McVey concluded that the decision to switch to the cash flow model is a business decision and not a decision based on a legal requirement.

Mr. Peschong stated that it has been the staff’s goal to be able to provide loan funding for any eligible project from an applicant. That has required the board to Issue Leveraged bonds to meet that demand. Under the old approach staff would ensure that enough cash on-hand was available prior to making a loan obligation.

Mr. Peschong provided a slide presentation explaining the differences, advantages and challenges moving to a cash flow model.

Mr. Peschong answered questions from the board. He noted that this was an informational update for the board, and no action was required.

PUBLIC HEARING TO ADOPT FFY 2021 CLEAN WATER STATE REVOLVING FUND INTENDED USE PLAN: Chairman Soholt opened the public hearing.

The hearing was public noticed in accordance with applicable state and federal requirements.

The purpose of the hearing was to receive public input and adopt the FFY 2021 Clean Water State Revolving Fund (SRF) Intended Use Plan (IUP).

The IUP describes how the board intends to use available funds to meet the objectives of the Clean Water Act. A prioritized list of projects is included in the IUP. Projects seeking a Clean Water SRF loan must be included on the priority list.

Andy Bruels presented the FFY 2021 Clean Water SRF IUP and discussed changes from previous years. He answered questions from the board.

Chairman Soholt requested public comments regarding the Clean Water SRF IUP. There were no public comments, and no written comments were received.

Motion by Bernhard, seconded by Gnirk, to approve the FFY 2021 Clean Water State Revolving Fund Intended Use Plan as presented. A roll call vote was taken, and the motion carried unanimously.

Chairman Soholt closed the hearing.

PUBLIC HEARING TO ADOPT FFY 2021 DRINKING WATER STATE REVOLVING FUND INTENDED USE PLAN: Chairman Soholt opened the public hearing.

The hearing was public noticed in accordance with applicable state and federal requirements.

The purpose of the hearing was to receive public input and adopt the FFY 2021 Intended Use Plan for the Drinking Water SRF program.

The IUP describes how the board intends to use available funds to meet the objectives of the Safe Drinking Water Act. The IUP describes the set-aside activities to be performed and amount of funding allocated to these. A prioritized list of potential drinking water projects is included in the IUP. Projects seeking a Drinking Water SRF loan must be included on the priority list.

Mr. Bruels presented the FFY 2021 Drinking Water SRF IUP and discussed changes from previous years. He answered questions from the board.

Chairman Soholt requested public comments regarding the Drinking Water SRF IUP. There were no public comments, and no written comments were received.

Motion by Gnirk, seconded by Bernhard, to approve the FFY 2021 Drinking Water State Revolving Fund Intended Use Plan as presented. A roll call vote was taken, and the motion carried unanimously.

Chairman Soholt closed the hearing.

STATE WATER RESOURCES MANAGEMENT SYSTEM DEADLINE: Mike Perkovich reported that there are currently two items related to the State Water Resources Management System (SWRMS) list that have a due date of October 1st of each year; one is the State Water Plan application and the other is the Projected Funding Need application.

Any additions to the SWRMS list resulting from a new State Water Plan application or a request for funding for a project on the SWRMS list must be included in the yearly Omnibus bill. Due to the need to begin preparing the recommendations for the Omnibus bill in late July and early August, receiving notification of new projects or funding needs in October is difficult to accommodate.

Mr. Perkovich stated that staff intends to adjust the deadline to July 1st for receipt of new State Water Plan applications with the potential for SWRMS listing and for projects on the SWRMS list requesting additional funds. This will allow staff adequate time to prepare the draft Omnibus bill and make any necessary changes during the preparation.

This was an informational presentation, and no board action was needed.

STATE WATER RESOURCES MANAGEMENT SYSTEM RECOMMENDATIONS: SDCL 46A-1-2.1 designates the water resource projects included on the State Water Resources

Management System (SWRMS) component of the State Water Plan that serve as the preferred priority water development objectives of the state.

Mr. Perkovich reported that the Board of Water and Natural Resources annually reviews the projects included on the SWRMS component of the State Water Plan and makes recommendations to the Governor and State Legislature regarding any deletions, additions, or retention of projects on the SWRMS list.

The following projects are currently included on the SWRMS list:

Belle Fourche Irrigation Upgrade Project
Big Sioux Flood Control Study
Cendak Irrigation Project
Gregory County Pumped Storage Site
Hydrology and Water Management Studies
Lake Andes-Wagner/Marty II Irrigation Unit
Lewis and Clark Rural Water System
Sioux Falls Flood Control Project
Vermillion Basin Flood Control Project

Staff recommended that the board adopt a resolution recommending retention of all projects on the State Water Resources Management System list.

Motion by Gnirk, seconded by Jones, to adopt **Resolution No. 2020-99** recommending to the South Dakota Legislature and Governor that all water resources projects on the State Water Resources Management System be retained as preferred, priority objectives of the state. A roll call vote was taken, and the motion carried unanimously.

OMNIBUS BILL FUNDING RECOMMENDATIONS: Stephanie Riggle provided a slide presentation discussing the Omnibus Bill funding recommendations.

The board annually conducts a public meeting to take statements from interested parties regarding water and waste funding needs. A board resolution is developed to recommend funding levels to the Governor and Legislature for individual State Water Resources Management System projects, the consolidated program, the solid waste program, and other special appropriations for water development.

Included in the board packet were a draft board resolution, Omnibus Funding Bill Exhibit, Water and Environment Fund flow chart, lottery distribution flow chart, and the Petroleum Release Compensation and Tank Inspection Fee flow chart. Staff has prepared the documents based on the history of actual revenues and expected future revenues for state FY 2021 and FY 2022. Ms. Riggle discussed the process for estimating the funding levels available for the appropriation recommendations.

Since the dedicated funding sources were established in the early 1990s, this process has provided more than \$322,000,000 for water and waste projects throughout South Dakota.

Ms. Riggle discussed the flow charts providing a summary of dedicated funding deposited into the Water and Environment Fund (WEF), the dedicated funding revenue sources, and the projected funds available for appropriation in the 2021 Omnibus Bill. She also discussed the proposed appropriation levels from the WEF and the WEF State Revolving Fund subfunds. The department recommended an appropriation level of \$10,000,000 for the Consolidated Water Facilities Construction Program and \$2,500,000 for the Solid Waste Management Program.

The department also recommended the following Water and Environment Fund Subfund appropriation levels:

State Revolving Fund Administrative Surcharge Fees	
CWSRF Water Quality Grants	\$1,250,000
CWSRF Application and Administration Assistance	\$ 200,000
DWSRF Application and Administration Assistance	\$ 50,000
Federal Set-Aside Funds and Federal Subsidy Payments	
DWSRF Small System Technical Assistance	\$ 75,000
WEF Subfund Total:	\$1,575,000

Motion by Bernhard, seconded by Jones, to adopt **Resolution No. 2020-100** recommending to the Governor and State Legislature Water and Environment Fund Fiscal Year 2022 appropriation levels of \$10,000,000 for the Consolidated Water Facilities Construction Program, \$2,500,000 for the Solid Waste Management Program, \$1,250,000 for Clean Water SRF Water Quality Grants, \$200,000 for Clean Water SRF Application and Administration Assistance, \$50,000 for Drinking Water SRF Application and Administration Assistance, and \$75,000 for Drinking Water SRF Small System Technical Assistance. A roll call vote was taken, and the motion carried unanimously.

2020 ANNUAL REPORT AND 2021 STATE WATER PLAN: In accordance with South Dakota Codified Laws 46A-2-2, 46A-1-10 and 46A-1-14, an Annual Report and State Water Plan is to be presented to the Legislature and the Governor by the first day of the legislative session.

Andy Bruels presented the annual report, which provides a description of the activities that were undertaken by the Board of Water and Natural Resources during calendar year 2020. The report includes tables detailing the funding awards approved by the board throughout the year.

The board has awarded nearly \$165,500,000 in grant and loan funding for planning, design, and construction of municipal drinking water, wastewater, lake and watershed restoration, rural water, solid waste disposal, and recycling projects. The awards were critical in having environmental projects being completed across the state.

The State Water Plan identifies the projects approved for placement onto the 2021 facilities plan and provides information for projects on the State Water Resources Management System. The board placed 55 projects on the facilities plan earlier in today's meeting, bringing the total number of projects on the 2021 water facilities plan to 189. Projects that have received funding

from the board remain on the facilities plan until project completion and remain eligible to request additional funding if costs increase.

The SWRMS component of the State Water plan includes the nine existing projects on the list and the recommendation to retain the nine projects. The final version of the report will provide the recommendations in the Omnibus bill and will be submitted to the Governor and Legislature on the funding levels for various water and solid waste projects, the programs, and activities. The board's recommendations for the SWRMS list designations, the funding levels for projects, programs and activities, and the Water and Environment Fund special condition statement are provided as appendices to the report.

Staff recommended approval of the 2020 Annual Report and the 2021 State Water Plan and that the board authorize the staff to print and distribute the report to the State Legislature, Governor and other interested parties on behalf of the board.

Mr. Bruels answered questions from the board.

Motion by Gnirk, seconded by Adam, to approve the 2020 Annual Report and 2021 State Water Plan, and to authorize the staff to print and distribute the report to the State Legislature and the Governor. A roll call vote was taken, and the motion carried unanimously.

BIG SIOUX COMMUNITY WATER SYSTEM INTERCREDITOR AGREEMENT: Ms. Riggle reported that the Big Sioux Community Water System submitted a letter requesting approval of a new Intercreditor Agreement.

The Big Sioux Community Water System has two outstanding Drinking Water State Revolving Fund loans with the South Dakota Conservancy District. The water system also has three existing loans with USDA-Rural Development and four existing loans with CoBank in which the Conservancy District has parity debt status with.

The Big Sioux Community Water System is preparing to finance a new loan with CoBank and refinance two other loans currently held by Rural Development to receive a lower interest rate. The water system has requested that the District agree to amend the current intercreditor agreement with the updated loans. After a review of the new debt service it was determined by department staff that Big Sioux Community Water System will have the required debt coverage for the loans with the Conservancy District.

Staff recommended that the board authorize the chairman to execute the amended Intercreditor Agreement among Big Sioux Community Water System, USDA Rural Development, CoBank, and the South Dakota Conservancy District.

Motion by Bernhard, seconded by Jones, to authorize the chairman to execute the amended Intercreditor Agreement among Big Sioux Community Water System, USDA Rural Development, CoBank, and the South Dakota Conservancy District. A roll call vote was taken, and the motion carried unanimously.

NEXT MEETING: The next meeting is January 7, 2021. Mr. Perkovich discussed possible agenda items for the meeting.

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

Approved this 7th day of January 2021.

(SEAL)

Chairman, Board of Water and Natural Resources

ATTEST:

Secretary, Board of Water and Natural Resources