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Minutes of the
Board of Water and Natural Resources
Conducted via Teleconference/Microsoft Teams
April 17, 2020
10:00 a.m. Central Time

CALL 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 PARTICIPATING: Jerry Soholt, Gene Jones, Jr., Todd Bernhard, Dr. Paul Gnirk, Jackie Lanning, Dr. Kathryn Johnson, and Karl Adam.

BOARD MEMBERS ABSENT: None.

APPROVE AGENDA: Motion by Adam, seconded by Jones, to approve the agenda. A roll call vote was taken, and the motion with Adam, Bernhard, Johnson, Jones, Lanning and Soholt voting aye.

APPROVE MINUTES OF JANUARY 3, 2020, MEETING: Chairman Soholt noted that there is a typo in the first line on page 21 of the draft minutes; \$2,548,000,000 needs to be changed to \$2,548,000.

Motion by Johnson, seconded by Adam, to approve the minutes of the January 3, 2020, Board of Water and Natural Resources meeting, as amended. A roll call vote was taken, and the motion carried with Adam, Bernhard, Johnson, Jones, Lanning and Soholt voting aye.

PUBLIC COMMENT PERIOD: There were no public comments.

Mr. Perkovich announced that the Water and Waste Funding Program has a new engineer, Suzanne McKinley. Ms. McKinley was not present for the meeting.

REVIEW INTEREST RATES FOR THE CLEAN WATER STATE REVOLVING FUND, DRINKING WATER STATE REVOLVING FUND, CONSOLIDATED WATER FACILITIES CONSTRUCTION FUND, AND SOLID WASTE MANAGEMENT PROGRAMS: Mike Perkovich noted that included in the board packet was a graph showing the current Rural Development and SRF Interest rates. Rural Development's rates declined significantly on April 1, 2020, and DENR staff believes that in order to be competitive with the Rural Development rates, the SRF program interest rates needed to be reviewed. Staff does not believe the rate decline was in reaction to the Covid 19 pandemic.

The current interest rates for the SRF programs were adopted in November 2019. The rules allow rates to be adjusted at any meeting if the action is on the agenda.

The current interest rates for SRF loans are 2.5 percent for a term up to 30 years; 2.25 percent for a term up to 20 years, 2 percent for a term up to 10 years. The new Rural Development interest rate for market is 2.375 percent, intermediate is 1.875 percent, and poverty is 1.375 percent.

Mr. Perkovich noted that the new proposed base rates are 2.125 percent for a term up to 30 years, 2 percent for a term up to 20 years, and 1.875 percent for a term up to 10 years. Proposed adjustments were also made to the administrative surcharges.

Dr. Johnson asked if the department expects the declining interest rates to continue in the future. Mr. Perkovich stated that the board's financial advisor expects the interest rates will be about where they were before Covid 19 and that there will not be any substantial movement in the near future. He noted that the board may need to review the interest rates again in November.

Mr. Perkovich presented the proposed interest rates for the Clean Water State Revolving Fund Program. Staff recommended approval of the proposed interest rates.

Motion by Bernhard, seconded by Lanning, to adopt **Resolution No. 2020-18** setting the **Clean Water State Revolving Fund** interest rates as follows:

1. The interest rate for conventional loans at 1.875 percent (consisting of 1.375 percent interest rate and 0.50 percent administrative surcharge) for loans with a term up to 10 years, 2.00 percent (consisting of 1.50 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 10 years up to a maximum of 20 years, and 2.125 percent (consisting of 1.625 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 20 years up to a maximum of 30 years;
2. The interest rate for interim financing at 2.00 percent (with no administrative surcharge component) for a term up to 5 years; and
3. The interest rate for NPS-Watershed Incentive loans at 1.00 percent (consisting of 0.50 percent interest rate and 0.50 percent administrative surcharge) for loans with a term up to 10 years, 1.25 percent (consisting of 0.75 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 10 years up to a maximum of 20 years, and 1.375 percent (consisting of 0.875 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 20 years up to a maximum of 30 years; and

The interest rates established above apply only to loans awarded after April 17, 2020, pursuant to applications submitted prior to that date.

A roll call vote was taken, and the motion carried unanimously.

Mr. Perkovich presented the proposed interest rates for the Drinking Water State Revolving Fund Program. Staff recommended approval of the proposed interest rates.

Motion by Jones, seconded by Johnson, to adopt **Resolution No. 2020-19** setting the **Drinking Water State Revolving Fund** interest rates as follows:

1. The interest rates for conventional loans at 1.875 percent (consisting of 1.375 percent interest rate and 0.50 percent administrative surcharge) for loans with a term up to 10 years, 2.00 percent (consisting of 1.50 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 10 years up to a maximum of 20 years, and 2.125 percent (consisting of 1.625 percent interest rate and 0.50 percent administrative surcharge) for loans with a term greater than 20 years up to a maximum of 30 years;
2. The interest rate for disadvantaged communities at 1.875 percent (consisting of a 1.625 percent interest rate and 0.25 percent administrative surcharge) for loans up to 30 years for communities with a median household income (MHI) between 80 percent to 100 percent of the statewide MHI, and 1.625 percent (consisting of a 1.375 percent interest rate and 0.25 percent administrative surcharge) for loans up to 30 years and 1.00 percent (consisting of a 1.00 percent interest rate and no administrative surcharge) for loans up to 10 years for communities with an MHI between 60 percent to 80 percent of the statewide MHI, and loans with zero percent interest up to 30 years for communities with an MHI less than 60 percent of the statewide MHI; and
3. The interest rate for interim financing at 2.00 percent (with no administrative surcharge component) for a term up to 5 years; and

The interest rates established above apply only to loans awarded after April 17, 2020, pursuant to applications submitted prior to that date.

A roll call vote was taken, and the motion carried unanimously.

Mr. Perkovich presented the proposed interest rates for the Consolidated Water Facilities Construction Program. Staff recommended approval of the proposed interest rates.

Motion by Adam, seconded by Bernhard, to adopt **Resolution No. 2020-20** setting the Consolidated Water Facilities Construction Program interest rates at 1.875 percent for a term not to exceed the useful life of the project or ten years, whichever is less, 2.00 percent for a term greater than ten years, or the useful life of the project, up to a maximum of twenty years, and 2.125 percent for a term greater than twenty years, or the useful life of the project, up to a maximum of thirty years; and the interest rates established above apply only to loans awarded after April 17, 2020 pursuant to applications submitted prior to that date.

A roll call vote was taken, and the motion carried unanimously.

Mr. Perkovich presented the proposed interest rates for the Solid Waste Management Program. Staff recommended approval of the proposed interest rates.

Motion by Jones, seconded by Lanning, to adopt **Resolution No. 2020-21** setting the Solid Waste Management Program interest rates at 1.875 percent for a term not to exceed the useful life of the project or ten years, whichever is less, and 2.00 percent for a term greater than ten years, or the useful life of the project, up to a maximum of twenty years; and the interest rates established above apply only to loans awarded after April 17, 2020 pursuant to applications submitted prior to that date.

AMENDMENTS TO THE 2020 CLEAN WATER STATE REVOLVING FUND INTENDED USE PLAN AND 2020 DRINKING WATER STATE REVOLVING FUND INTENDED USE PLAN: Andy Bruels reported that with the board’s adoption of new interest rates for the Clean Water SRF and Drinking Water SRF Programs, the Intended Use Plans need to be amended to correctly identify applicable rates and terms.

Mr. Bruels requested that the board amend Table 2 on page 2 of the Clean Water SRF Intended Use Plan as follows:

Table 2 – Clean Water SRF Interest Rates				
	Up to 5 Yrs	Up to 10 Yrs	Up to 20 Yrs	Up to 30 Yrs
<u>Interim Rate</u>				
Interest Rate	2.00%			
Admin. Surcharge	0.00%			
Total	2.00%			
<u>Base Rate</u>				
Interest Rate		1.25 <u>1.375%</u>	1.50 <u>1.50%</u>	1.75 <u>1.625%</u>
Admin. Surcharge		0.75 <u>0.50%</u>	0.75 <u>0.50%</u>	0.75 <u>0.50%</u>
Total		2.00 <u>1.875%</u>	2.25 <u>2.00%</u>	2.50 <u>2.125%</u>
<u>Nonpoint Source Incentive Rate</u>				
Interest Rate		0.50%	0.75%	1.00 <u>.875</u>
Admin. Surcharge		0.50%	0.50%	0.50%
Total		1.00%	1.25%	1.50 <u>1.375%</u>

*Term cannot exceed useful life of the project.

Staff also recommended amending all anticipated interest rates for unfunded projects listed in Attachment I of the Project Priority List to agree with the table above.

Motion by Johnson, seconded by Adam, to approve the changes to Table 2 on page 6 of the Clean Water SRF Intended Use Plan. A roll call vote was taken, and the motion carried unanimously.

Mr. Bruels also requested that the board amend Table 1 on page 3 of the Drinking Water SRF Intended Use Plan as follows:

Table 1 – Drinking Water SRF Interest Rates				
	Up to 5 Yrs	Up to 10 Yrs	Up to 20 Yrs	Up to 30 Yrs
<u>Interim Rate</u>				
Interest Rate	2.00%			
Admin. Surcharge	<u>0.00%</u>			
Total	2.00%			
<u>Base Rate</u>				
Interest Rate		1.50 <u>1.375%</u>	1.75 <u>1.50%</u>	2.00 <u>1.625%</u>
Admin. Surcharge		0.75 <u>0.50%</u>	0.50%	0.50%
Total		<u>2.00</u> <u>1.875%</u>	<u>2.25</u> <u>2.00%</u>	<u>2.50</u> <u>2.125%</u>
<u>Disadvantaged Rate – 80% to 100% of MHI</u>				
Interest Rate				1.75 <u>1.625%</u>
Admin. Surcharge				<u>0.50</u> <u>0.25%</u>
Total				<u>2.25</u> <u>1.875%</u>
<u>Disadvantaged Rate – 60% to 80% of MHI</u>				
Interest Rate		1.00%		1.50 <u>1.375%</u>
Admin. Surcharge		<u>0.00%</u>		<u>0.50</u> <u>0.25%</u>
Total		1.00%		<u>2.00</u> <u>1.625%</u>
<u>Disadvantaged Rate – Less than 60% of MHI</u>				
Interest Rate				0.00%
Admin. Surcharge				0.00%
Total				0.00%
<ul style="list-style-type: none"> • Term cannot exceed useful life of the project. 				

Staff also recommended amending all anticipated interest rates for unfunded projects listed in Attachment I of the Project Priority List to agree with the table above.

Motion by Bernhard, seconded by Gnirk, to approve the changes to Table 1 on page 3 of the Drinking Water SRF Intended Use Plan. A roll call vote was taken, and the motion carried unanimously.

AMENDMENTS TO THE FFY 2019 CLEAN WATER SRF INTENDED USE PLAN: Andy Bruels reported that the FY 2019 Clean Water State Revolving Fund Intended Use Plan was approved by the Board of Water and Natural Resources in November 2018 and amended in March, June, and September 2019.

For a project to utilize principal forgiveness allowed by the 2019 capitalization grant it must be on the Intended Use Plan associated with that capitalization grant. In order to maximize the use of each year’s capitalization grant principal forgiveness funds, it is necessary to amend projects onto prior years’ Intended Use Plans.

Staff proposed to amend Attachment I - Project Priority List of the FY 2019 Clean Water Intended Use Plan by adding the following entry:

Priority Points	Loan Recipient	Estimated Loan Amount	Expected Loan Rate & Term
13	Montrose	\$1,008,000	2.125%, 30 years

Staff recommended approval of the amendment to the FY 2019 Clean Water SRF Intended Use Plan.

Motion by Adam, seconded by Lanning to approve the amendment to the 2019 Clean Water SRF Intended Use Plan. A roll call vote was taken, and the motion carried unanimously.

AMENDMENTS TO THE FFY 2019 DRINKING WATER SRF INTENDED USE PLAN: Mr. Bruels stated that the FY 2019 Drinking Water State Revolving Fund Intended Use Plan was approved by the Board of Water and Natural Resources in November 2018 and amended in March, June, and September 2019.

For a project to utilize principal forgiveness allowed by the 2019 capitalization grant it must be on the Intended Use Plan associated with that capitalization grant. In order to maximize the use of each year’s capitalization grant principal forgiveness funds, it is necessary to amend projects to prior years’ Intended Use Plans.

Staff proposed to amend Attachment I - Project Priority List of the FY 2019 Drinking Water Intended Use Plan by adding the following entries:

Priority Points	Loan Recipient	Estimated Loan Amount	Expected Loan Rate & Term
27	Saint Lawrence	\$1,148,000	2.125%, 30 years
25	Webster	\$6,631,000	1.625%, 30 years

Staff recommended approval of the amendment to the FY 2019 Drinking Water Intended Use Plan.

Motion by Gnirk, seconded by Bernhard, to approve the amendment to the 2019 Drinking Water SRF Intended Use Plan. A roll call vote was taken, and the motion carried unanimously.

REVISE RANDALL COMMUNITY WATER DISTRICT’S CONTINGENCY REQUIREMENTS FOR LOAN C462128-03: Stephanie Riggle pointed out that there was a change to the title page that was included in the board packet. Staff had planned to remove Cobank and First National bank

as parties to the intercreditor agreement, but due to last-minute developments, the only change to the parties of the intercreditor agreement is to remove First National Bank, and to add US Bank.

On June 27, 2019, the Board of Water and Natural Resources awarded Randall Community Water District a \$4,600,000 Drinking Water SRF loan with 49.2 percent principal forgiveness not to exceed \$2,263,000 for improvements to the system and to provide individual service to the residents of Geddes.

Originally, South Dakota Conservancy District required an Intercreditor Agreement among the United States of America, CoBank, The First National Bank in Sioux Falls, as trustee and the Conservancy District being approved and executed. Since that time US Bank took over from The First National Bank in Sioux Falls as trustee on the 2017, 2018 and 2019 Bonds. The new debt with the South Dakota Conservancy District is authorized by Randall's Trust Indentures of the 2017, 2018 and 2019 Bonds. At that time, the loan was also contingent upon receipt of the 2019 capitalization grant. The 2019 capitalization grant has since been received by the District.

Staff recommended rescinding Resolution No. 2019-60 and adopting a resolution approving a Drinking Water State Revolving Fund Loan up to a maximum committed amount of \$4,600,000 with up to 49.2 percent principal forgiveness not to exceed \$2,263,000. Staff recommended the award being contingent upon the borrower adopting a bond resolution and the resolution becoming effective, the borrower establishing rates sufficient to provide the required debt coverage, the borrower approving and executing a security agreement and mortgage, and an Intercreditor Agreement among the United States of America, Department of Agriculture, acting through its Rural Utilities Service (RUS), US Bank, as trustee, CoBank, and the Conservancy District being approved and executed.

Motion by Adam, seconded by Johnson, to rescind Resolution No. 2019-60 and to adopt **Resolution No. 2020-22** approving a Drinking Water State Revolving Fund loan up to a maximum committed amount of \$4,600,000 at 2.25 percent interest for 30 years with up to 49.2 percent principal forgiveness not to exceed \$2,263,000 to **Randall Community Water District** for 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, the borrower establishing rates sufficient to provide the required debt coverage, the borrower approving and executing a security agreement and mortgage, and an Intercreditor Agreement among the United States of America, Department of Agriculture, acting through its Rural Utilities Service (RUS), US Bank, as trustee, CoBank, and the Conservancy District being approved and executed. A roll call vote was taken, and the motion carried unanimously.

RESCIND LAKE BYRON SANITARY DISTRICT CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM GRANT 2019G-100 AND CLEAN WATER STATE

REVOLVING FUND LOAN C461482-01: Mike Perkovich reported that the Lake Byron Sanitary District was formed in 2015. The primary reason for forming the district was to construct a wastewater system around the lake. In March 2018 the district was awarded a \$2,000,000

Consolidated Water Facilities Construction Program grant and \$3,475,000 Clean Water State Revolving Fund Loan to construct the wastewater system.

It has come to the department's attention that certain fundamental errors were made in the formation of the Lake Byron Sanitary District, and as a result, the district was not legally formed. Legal counsel with the Office of the Attorney General has concluded that because the district was not properly formed, it is ineligible to receive funding from either the Consolidated Water Facilities Construction Fund Program or the Clean Water State Revolving Fund Program, and that the funding approved by the board should be rescinded.

Staff recommended that the board rescind Resolution No. 2018-16 approving \$3,475,000 Clean Water State Revolving Fund loan and rescind Resolution No. 2018-17 approving the \$2,000,000 Consolidated Water Facilities Construction Program grant.

Motion by Gnirk, seconded by Jones, to rescind Resolution No. 2018-16 approving \$3,475,000 Clean Water State Revolving Fund loan and to rescind Resolution No. 2018-17 approving the \$2,000,000 Consolidated Water Facilities Construction Program grant.

In response to a question from Kathy Johnson, Mr. Perkovich stated that the loan was never closed, and no money was expended from either the loan or the consolidated grant.

Ted Dickey, NECOG, commented that the Lake Byron group is working to correct the errors that were made. Once that is done, the group will again request funding from the board.

A roll call vote was taken on the motion, and the motion carried unanimously.

MILLER'S REQUEST TO AMEND THE SCOPE OF THE CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM GRANTS 2018G-108 AND 2020G-104, DRINKING WATER CONSTRUCTION GRANT 2020G-DW-101, AND DRINKING Water SRF LOANS C462128-03 AND C462128-04: Drew Huisken reported that On March 31, 2017, the city of Miller was awarded a \$1,099,000 Drinking Water SRF loan and a \$1,300,000 Consolidated Water Facilities Construction Program grant to replace water infrastructure as part of its Phase II utility improvements project.

Additionally, on March 28, 2019, Miller was awarded a \$400,000 Drinking Water SRF loan, a \$2,000,000 Consolidated Water Facilities Construction Program grant, and a \$100,000 Drinking Water Construction grant to replace water infrastructure as part of its Phase III utility improvements project.

On December 2, 2019, DENR received a letter from the city of Miller requesting that the scope of the Phase II funding be amended to include a new water main on the south end of East 3rd Avenue to address a problem area in the water system as well as eliminate dead end mains by providing looping.

On March 3, 2020, DENR was notified that due to other project expenses in Phase II, there may not be sufficient project funds to address the new water main under the current contract. Miller sent

another letter requesting that the scope of the Phase III funding be amended to also include this work should there be insufficient funding in Phase II.

Staff recommended that the board amend the scopes of Consolidated Water Facilities Construction Program grants 2018G-108 and 2020G-104, Drinking Water Construction Grant 2020G-DW-101, and Drinking Water SRF loans C462128-03 and C462128-04 to include the proposed work.

Motion by Gnirk, seconded by Bernhard, to adopt **Resolution No. 2020-23** approving an amendment to the project scope for Consolidated Water Facilities Construction Program grant agreement 2018G-108 to the city of Miller, to adopt **Resolution No. 2020-24** approving an amendment to the project scope for Consolidated Water Facilities Construction Program grant agreement 2020G-104 to the city of Miller, to adopt **Resolution No. 2020-25** approving an amendment to the project scope for State Revolving Fund Program Drinking Water Grant agreement 2020G-DW-101 to the city of Miller, to adopt **Resolution No. 2020-26** approving an amendment to the project scope for Drinking Water SRF loan C462128-03, and to adopt **Resolution No. 2020-27** approving an amendment to the project scope for Drinking Water SRF loan C462128-04. A roll call vote was taken, and the motion carried unanimously.

REVISE INTEREST RATES FOR VIBORG CWSRF LOAN C461240-03: Mr. Perkovich reported that at the January Board of Water and Natural Resources meeting, Viborg was awarded a \$1,771,000 Clean Water SRF loan with an interest rate of 2.75 percent for 30 years.

Viborg's application was submitted by the July 1, 2019, deadline and was first presented to the Board of Water and Natural Resources at its September meeting. Due to pending grant applications with other agencies, the funding award was deferred until January 2020. Had the application been awarded in September the interest rate on the loan would have been 2.75 percent. In November 2019, the board lowered interest rates. Because the application was submitted for the funding round preceding the rate change, the loan was awarded at the old rate of 2.75 percent.

After re-reading the interest rate resolution, it was discovered the interest rate of 2.75 percent is incorrect, and Viborg should get the new, lower interest rate of 2.50 percent that was approved in November.

Staff recommended the board authorize staff to prepare loan documents identifying an interest rate of 2.50 percent.

Motion by Adam, seconded by Johnson, to authorize staff to prepare loan documents for Viborg identifying an interest rate of 2.50 percent for Clean Water SRF loan C461240-03. A roll call vote was taken, and the motion carried unanimously.

UPDATED WELLS FARGO INVESTMENT BROKER AGREEMENT: Jon Peschong reported that the board packet included an updated investment broker agreement with Wells Fargo. The agreement was renegotiated to match the South Dakota Investment Council's agreement. Some of the changes include the removal of the investment advisor representation clause, changes to the waiver of jury by trial clause, and some changes to the general terms.

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Staff has been working with the South Dakota Investment Council to review processes for investing in fixed income trading of U.S. Government and Agency securities. There has also been discussion with working with Bank of America and JP Morgan to serve as brokers, but they currently do not require customer agreements. Staff will be working with the South Dakota Investment Council to assist with the purchase or sale of investments in the future.

Staff recommended that the board authorize the chairman to execute the updated Wells Fargo investment broker agreement.

Motion by Bernhard, seconded by Adam, to authorize the chairman of the Board of Water and Natural Resources to execute the updated Wells Fargo investment broker agreement. A roll call vote was taken, and the motion carried unanimously.

BOARD OF WATER AND NATURAL RESOURCES STATE FISCAL YEAR 2021 MEETING SCHEDULE: Mr. Perkovich presented the tentative meeting schedule for the coming fiscal year.

Motion by Gnirk, seconded by Lanning, to adopt the following tentative meeting schedule for SFY 2021:

September 24-25, 2020
November 5, 2020
January 7, 2021
March 25-26, 2021
June 24-25, 2021

A roll call vote was taken, and the motion carried unanimously.

APRIL 27, 2020 MEETING: Mr. Perkovich stated that the funding applications will be presented to the board at the April 27, 2020, meeting, which will be held using Microsoft Teams.

ADJOURN: Motion by Jones, seconded by Jones, that the meeting be adjourned. Motion carried.

Approved this 25 day of June 2020.

(SEAL)



Chairman, Board of Water and
Natural Resources

ATTEST:



Secretary, Board of Water and
Natural Resources