

## CHAPTER 74:05:07

### CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM

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**74:05:07:01. Definitions.** Words defined in SDCL 46A-1-3 and 46A-2-4 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

(1) "Applicant," the sponsoring entity applying for funding to construct a water resources project;

(2) "Award," grant or loan funds awarded by the Board of Water and Natural Resources for a water resources project pursuant to SDCL 46A-1-61, 46A-1-63.1, and 46A-1-64;

(3) "Board," the Board of Water and Natural Resources acting as that board or as the South Dakota Conservancy District;

(4) "Construction," actual installation of the facility including preparation of final plans, designs, and specifications;

(5) "Cooperative corporation," a cooperative corporation formed pursuant to SDCL chapter 47-15;

(6) "Department," the South Dakota Department of Agriculture and Natural Resources;

(7) "Designated agent," a person or entity specially designated by resolution of the board;

(8) "Emergency," act of God; strike, lockout, or other labor disturbance; act of a public enemy; order or restraint of any kind of the government of the United States of America or of the State of South Dakota or any of its departments, agencies, or officials or any civil or military authority other than the applicant or a municipal utility board; storm; drought; flood; explosion; breakage or accident to machinery, transmission pipes, or canals; or any other cause or event not reasonably within the control of the applicant;

(9) "Facilities plan," an engineering evaluation that describes the need for the proposed supply, treatment, storage, or distribution project based on present conditions and future needs; evaluates the costs and adequacies of appropriate alternatives; identifies potential environmental impacts of the proposed project; and provides the selection and justification of a final alternative;

(10) "Facility," a water resources project as defined in SDCL 46A-2-4(14);

(11) "In-kind contributions," work or materials provided without a cash outlay that can be used as local match;

(12) "Minimum established rates," rates charged to residential users of a wastewater or water system that meet the following criteria:

(a) Applicants that are either incorporated municipalities or sanitary districts must have established rates for the project that meet the following minimum rates:

(i) Drinking water - \$30 per 5,000 gallons per month;

(ii) Wastewater - \$30 per 5,000 gallons per month;

(b) All other applicants must have established rates for the project that meet the following minimum rates:

(i) Water, individual service - \$55 per 7,000 gallons per month;

(ii) Wastewater, individual service - \$40 per 5,000 gallons per month;

(13) "Nonfederal" or "nonfederal share," funds from any legal source other than federal grants received from a federal agency or received from an entity administering federal grants as pass-through grants;

(14) "Nonprofit corporation," a nonprofit corporation formed pursuant to SDCL chapter 47-22;

(15) "Preliminary design stage," that portion of a project associated with the following activities:

(a) Planning studies to identify the project scope of need;

(b) Initial cost estimates;

(c) Cost-effectiveness analysis;

(d) Preliminary site identification surveys; and

(e) The preparation of funding applications and supporting documentation;

(16) "Recipient," the sponsoring entity receiving funds to construct a water resources project;

(17) "Secretary," the secretary of the Department of Agriculture and Natural Resources;

(18) "State water facilities plan," a plan developed by the board as provided by SDCL chapter 46A-1; and

(19) "Watershed assessment," a scientific evaluation that involves the measurement, analysis, and interpretation of the physical, chemical, and biological properties of waters and the region draining into those waters; assesses the current health of waters within a specific watershed; and utilizes predictive modeling of watershed conditions so that management decisions can be made to maintain or improve the health of those waters.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 22 SDR 95, effective January 17, 1996; 28 SDR 95, effective December 19, 2001; 33 SDR 106, effective December 26, 2006; 36 SDR 208, effective June 28, 2010; 40 SDR 14, effective July 29, 2013; 41 SDR 173, effective May 11, 2015; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-3, 46A-1-61, 46A-1-63.1, 46A-1-64, 46A-2-4.

**74:05:07:02. Eligibility.** A facility is eligible for funding under the consolidated water facilities construction program, established in SDCL 46A-1-63.1, if the facility is included in the state water facilities plan, as required by SDCL 46A-1-63.1, prior to the submittal of the application and if the facility is sponsored by one of the following entities:

(1) Special purpose governmental entities, including irrigation districts organized under SDCL 46A-4, water user districts organized under SDCL 46A-9, watershed districts organized under SDCL 46A-14, water project districts organized under SDCL 46A-18, sanitary districts organized under SDCL 34A-5, conservation districts organized under SDCL 38-8, recycling and waste management districts organized under SDCL 34A-16, and other lawful special purpose governmental entities that may construct a water resources project;

(2) State agencies and general purpose governments such as municipalities, counties, or townships;

(3) Federally recognized Indian tribes; or

(4) Nonprofit corporations and cooperative corporations.

A facility that has been funded by the board is deemed to remain in the state water facilities plan for purposes of a request by the sponsor for additional funding for the facility.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 36 SDR 208, effective June 28, 2010; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:03. Application restrictions.** Eligible entities may apply only if the preliminary design or watershed assessment stage has been completed. Costs associated with the watershed assessment stage may not be considered as local cost sharing and may not be included in the calculation of total project costs.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; 36 SDR 208, effective June 28, 2010; 40 SDR 14, effective July 29, 2013; 41 SDR 173, effective May 11, 2015.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:04. Distribution of returned funds.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; repealed, 28 SDR 95, effective December 19, 2001.

**74:05:07:05. Distribution of uncommitted funds.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; repealed, 40 SDR 14, effective July 29, 2013.

**74:05:07:06. Size and type of awards.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; repealed, 36 SDR 208, effective June 28, 2010.

**74:05:07:06. Size and type of awards.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; repealed, 36 SDR 208, effective June 28, 2010.

**74:05:07:07. Application cycles.** Applications are due on the first day of January, April, July, and October. Applications must be postmarked or delivered to the department no later than the day on which applications are due. The board may consider applications for emergency funding at any meeting.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 22 SDR 95, effective January 17, 1996; 28 SDR 95, effective December 19, 2001; 33 SDR 106, effective December 26, 2006; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:08. Applications.** Each applicant shall submit an application on forms provided by the department. The applicant may arrange with the department for a preapplication conference to provide for orderly application preparation. After the application has been submitted, the board or its designated agent may permit the applicant to add to, amend, or correct the application. The application shall include the following items if applicable to the proposed project:

- (1) Application cover sheet;
- (2) Budget sheet;
- (3) Proposed method of financing;
- (4) Utility information;
- (5) Project narrative; and
- (6) Preliminary engineering design or facilities plan or watershed project implementation plan, and cost estimates.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; requirement for proof of water right transferred from § 74:05:07:18, 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; requirement for proof of water right transferred to § 74:05:07:20, 21 SDR 97, effective November 28, 1994; 22 SDR 95, effective January 17, 1996; 28 SDR 95, effective December 19, 2001; 36 SDR 208, effective

June 28, 2010; 40 SDR 14, effective July 29, 2013; 41 SDR 173, effective May 11, 2015.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:08.01. Application review.** The secretary shall review an application for completeness in accordance with the guidelines in § 74:05:07:08. The secretary shall notify the applicant within 30 days after the application deadline that the application is complete or incomplete. If the application is incomplete, the secretary shall identify in the notice those items required to complete the application. The applicant has 20 days to provide additional information intended to complete an application. The secretary shall notify the applicant whether or not the resubmission or additional information is satisfactory to complete the application.

The secretary shall conduct an overall review of the applicant's financial status and the factors for decision making as identified in § 74:05:07:11. This review may include an analysis of all assets and liabilities and an analysis of the applicant's financial capability as documented by the most recent audit or financial statement. The secretary shall recommend approval or denial of financial assistance. The secretary's recommendation for approval of financial assistance may include awarding any combination of a grant, loan, or partial funding from this program or in combination with other programs.

**Source:** 22 SDR 95, effective January 17, 1996; 24 SDR 80, effective December 14, 1997; 29 SDR 58, effective November 6, 2002; 36 SDR 208, effective June 28, 2010; 40 SDR 14, effective July 29, 2013; 41 SDR 173, effective May 11, 2015.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:09. Authority and responsibility.** Each applicant must demonstrate to the board that it has the legal authority and financial ability necessary for constructing, operating, repairing, and maintaining the proposed facility or service for its expected life and for obtaining and administering the proposed funding. The applicant is responsible for the facility and shall provide for continued availability of its services even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:10. Eligible use of funds.** The board may award funds for facilities included in the state water facilities plan for one or more of the following uses:

- (1) To improve, restore, enlarge, extend, construct, or protect facilities, lakes, streams, rivers, watersheds, and other surface or ground water resources;
- (2) To construct, acquire, or lease buildings and works essential to the operation or protection of facilities;

(3) To construct or relocate roads, bridges, utilities, fences, and other public improvements or relocate roads, bridges, utilities, fences, and other private improvements related to the construction and operation of facilities;

(4) For the following if they are necessary for the construction or operation of a facility funded under subdivisions (1), (2), or (3) of this section:

(a) Fees, services, and costs such as legal, engineering, environmental, architectural, fiscal advisory, recording, planning, management, and for establishing or acquiring rights;

(b) The purchase of an interest in or access to existing facilities if the purchase is necessary to provide efficient service and an agreement between buyer and seller is reached;

(c) The acquisition of interests in land, water rights, permits, rights-of-way, and other evidence of land or water control which are necessary for development of the facility;

(d) Purchase or lease of equipment necessary to install, maintain, extend, protect, operate, or use facilities;

(e) Start-up expenses for a period not exceeding one year if the recipient will be unable to pay such expenses;

(f) Refinancing debts incurred by or on behalf of a water resources project sponsor if both of the following conditions exist:

(i) The debts were incurred for the facility, any part of the facility, or a service being refinanced; and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the debt so that the project can remain fiscally sound;

(5) To pay eligible expenses incurred before approval of funding if there were reasons for proceeding before funding was approved;

(6) Capitalized interest; or

(7) Televising and cleaning sewer lines.

The board may consider in-kind contributions as match at a level established by usual and customary rates. All in-kind contributions require prior approval by the board or its designated agent.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; 33 SDR 106, effective December 26, 2006; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:11. Factors for decision making.** In exercising its discretion in determining whether to award funding for a project, the board may consider the factors described in this

section. Assistance recipients that meet the minimum established rates may receive grant assistance in an amount determined by the board. Assistance recipients seeking assistance for storm water or nonpoint source projects may receive grants in an amount determined by the board without meeting the minimum established rate. The decision-making factors in alphabetical order are as follows:

- (1) Annual utility operating budgets;
- (2) Available local cash and in-kind contributions;
- (3) Available program funds;
- (4) Compliance with permits and regulations;
- (5) Debt service capability;
- (6) Economic impact;
- (7) Other funding sources;
- (8) Readiness to proceed;
- (9) Regionalization or consolidation of facilities;
- (10) Technical feasibility;
- (11) Utility rates; and
- (12) Water quality benefits.

The Board may award grant assistance to recipients not meeting the minimum established rates for economic development opportunities, expansion into new areas, regionalization or consolidation of facilities, or other unique situations that may require special consideration.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 28 SDR 95, effective December 19, 2001; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64, 46A-2-3.

**74:05:07:12. Decisions on applications.** Within 120 days after applications are presented, the board shall either disapprove the application or by resolution approve the application as requested or as modified by the board. The board may award less than the amount requested in the application or may deny assistance. If the applicant is eligible for assistance from more than one program, the board may approve financial assistance under any of the programs or under a combination of more than one program. If financial assistance is approved from more than one program, the amount of assistance approved may not exceed the aggregate amount of funding requested. In determining any financial assistance, the board may consider the factors in § 74:05:07:11.

The department shall notify each applicant in writing of the board's decision on the application.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; 36 SDR 208, effective June 28, 2010.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:13. Security.** The funding agreement for a loan must contain specific



requirements to secure the loan. The loan may be secured by one or more of the following:

- (1) Full faith and credit of the borrower;
- (2) Pledges of taxes or assessments;
- (3) Pledges of facility revenue; or
- (4) Liens on the interest of the applicant in all real and personal property, easements, rights-of-way, water rights, water purchase contracts, and similar property rights, including leasehold interests, used in connection with the facility, whether owned at the time the loan is approved or acquired with loan funds.

A debt coverage ratio, which is a comparative statistic showing the relationship between the applicant's debt and the security pledged toward repayment, of at least 100 percent must be demonstrated in all funding agreements.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**Cross-Reference:** Funding agreements, § 74:05:07:20.

**74:05:07:14. Time restrictions.** The recipient shall expend the funds awarded to it within four years from the date the board awarded financial assistance.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 28 SDR 95, effective December 19, 2001; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:15. Terms and conditions of grants and loans.** The board shall establish in the funding agreement provided for in § 74:05:07:20 the terms and conditions of grants and loans made through the consolidated water facilities construction program.

Loans must be prior to or at parity with other loans having the same security unless the board approves otherwise.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; 40 SDR 14, effective July 29, 2013.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:15.01. Loan interest rates.** The board shall set the interest rates for the consolidated water facilities construction program based on the following:

- (1) Current market rates;
- (2) Current rate of alternative federal or state programs; and
- (3) Current demand for program funds.

Based on the criteria above, the board may adjust the interest rates at any meeting if the proposed action is included on the agenda posted for the meeting.

**Source:** 33 SDR 106, effective December 26, 2006.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:16. Review of financial status.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; repealed, 40 SDR 14, effective July 29, 2013.

**74:05:07:17. Environmental impact statement.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; repealed, 40 SDR 14, effective July 29, 2013.

**74:05:07:18. Transferred to § 74:05:07:08.**

**74:05:07:21. Deposit of contributed funds.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; repealed, 19 SDR 102, effective January 17, 1993.

**74:05:07:22. Evidence of other funding sources.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; repealed, 28 SDR 95, effective December 19, 2001.

**74:05:07:23. Disbursement of funds.** The department shall disburse funds as costs are incurred. Total payments provided may not exceed the percentage provided in the award agreement.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 33 SDR 106, effective December 26, 2006.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-62, 46A-1-63.1, 46A-1-64.

**74:05:07:24. Land surveys and engineering plans.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective

July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 95, effective December 19, 2001; repealed, 40 SDR 14, effective July 29, 2013.

**74:05:07:25. Facility monitoring.** The board or its designated agent shall reach any needed agreement with the sponsoring entity and the representatives of other sources of funds concerning the sponsoring entity's responsibilities for handling various aspects of the design and construction of the facility.

The department may monitor facility design and construction through inspections and may review facility inspection reports, change orders, construction payment receipts, and other invoices such as payment for engineering and legal fees and other materials. If discrepancies occur, the board or its designated agent may withhold payments until the discrepancies are considered corrected.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 102, effective January 17, 1993; 19 SDR 202, effective July 4, 1993.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:26. Recipient accounting methods.** Each recipient shall maintain accounting records in accordance with applicable financial and reporting standards as set forth in the funding agreement. Each recipient shall retain all records, books, and supporting material for a minimum of three years after the completion of the project. This material shall be made available upon request to the board or the secretary.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; 31 SDR 89, effective December 27, 2004; 33 SDR 106, effective December 26, 2006.

**General Authority:** SDCL 46A-1-65.

**Law Implemented:** SDCL 46A-1-61, 46A-1-63.1, 46A-1-64.

**74:05:07:27. Filing of plans.** Repealed.

**Source:** 13 SDR 23, effective September 3, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 19 SDR 202, effective July 4, 1993; repealed, 33 SDR 106, effective December 26, 2006.