

RESOLUTION NO. 2022-3

RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND.

WHEREAS, one of the purposes of SDCL Chapters 34A-5 & 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of system of waterworks for the purpose of providing water and water supply for municipal, industrial, and domestic purposes; and,

WHEREAS, a sanitary water user district is authorized to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned and is authorized to pledge the net income or revenues from the system in accordance with Section 15 of the Act; and,

WHEREAS, the Spring Creek Cow Creek Sanitary District (the “Sanitary Water District”) currently operates a system of waterworks for the purpose of providing water and water supply for municipal, industrial, and domestic purposes and has determined that improvements to the waterworks are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its waterworks system; and,

WHEREAS, the Sanitary Water District has determined to issue its revenue bonds to finance the improvements to its waterworks system (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Drinking Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the Sanitary Water District will adopt rates and charges to be pledged, segregated and used for the payment of the Revenue Bond.

NOW THEREFORE BE IT RESOLVED by the Sanitary Water District as follows:

SECTION 1. Definitions. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“Act” means South Dakota Codified Laws Chapters 34A-5 and 9-40.

“Loan” means the Loan made by the South Dakota Conservancy District to the Sanitary Water District pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“Project” means the Spring Creek\Cow Creek Sanitary District Water Storage and Infrastructure Project.

“Revenue Bond” means the revenue bond or bonds issued the date of the Loan Agreement by the Sanitary Water District to the South Dakota Conservancy District to evidence the Sanitary Water District’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“System” means the Sanitary Water District’s system of waterworks for the purpose of providing water and water supply for domestic municipal and industrial purposes.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The Sanitary Water District hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The Sanitary Water District does hereby find as follows:

2.2.1. The Sanitary Water District hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the Sanitary Water District and its inhabitants, and will make the Sanitary Water District unable to comply with state and federal law.

2.2.2. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the Sanitary Water District hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The Sanitary Water District hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the system as improved, financed by the Revenue Bond, be pledged for its payment.

SECTION 3. Authorization of Loan, Pledge of Revenue and Security.

3.1. Authorization of Loan. The District hereby determines and declares it necessary to finance up to \$2,220,000 of the costs of the Project through the issuance of bonds payable from net revenues of the System and other funds secured by the Sanitary Water District. The Sanitary Water District hereby determines that because the Revenue

Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Sanitary Water District Clerk (the "District Clerk") and open to public inspection, between the Sanitary Water District as Borrower and the District, are hereby in all respects authorized, approved and confirmed, and the President and Sanitary Water District Clerk are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Sanitary Water District deems appropriate and approves, for and on behalf of the Sanitary Water District. The President and District Clerk are hereby further authorized and directed to implement and perform the covenants and obligations of the Sanitary Water District set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the District Clerk and is available for inspection by any interested party.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$2,220,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the President, Sanitary Water District Clerk, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the Sanitary Water District, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The President and Sanitary Water District Clerk are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapters 34A-5, 9-40 and 6-8B, and the provisions of the Act are hereby expressly incorporated herein.

3.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the Sanitary Water District's general credit or taxing power, but shall be a limited obligation of the Sanitary Water District payable solely out of the System Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Sanitary Water District hereby irrevocably pledges to the South Dakota Conservancy District all income and revenues of the System, including, without limitation, fees, charges to users of the System, penalties and hook-up fees, sign-up fees, proceeds of business interruption insurance, proceeds from the sale of property constituting part of the System and investment income on all such revenues, but only to the extent that the revenues exceed

the amounts necessary to operate and maintain the System, provided there shall be excluded from this pledge the proceeds of any federal or state grant or loan, and the investment income therefrom, to the extent such exclusion is a condition of such grant or loan. The Sanitary Water District covenants and agrees to charge rates for all services from the System or establish charges or rates which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the System, and depreciation, and the Rate Ordinance shall be revised from time to time so as to produce these amounts. The Sanitary Water District hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Sanitary Water District set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. Rates, Certification, Segregation and Review.

4.1. Rates and collection There shall be charged rates for each fiscal year which shall ensure that its Net Revenues Available for Debt Service will equal at least 110% of its System Debt Service for such fiscal year.

4.2. Certification. In each fiscal year, or as soon as practicable, and in any event by the date of the delivery of the unaudited financial statements required in the Loan Agreement, the Sanitary Water District shall (a) calculate its Net Revenues Available for Debt Service and System Debt Service for the fiscal year, and (b) certify such figures to the South Dakota Conservancy District. The certification described in clause (b) of the preceding sentence shall be substantially in the form of the certificate attached as Appendix E to the Loan Agreement. If the Sanitary Water District fails to meet the Rate Covenant set forth in Section 6.4 of the Loan Agreement, the District shall supply the Sanitary Water District with quarterly reports on the actions it is taking to correct its coverage deficiency until it delivers an annual coverage certificate showing compliance with the first sentence of this Section.

4.3. Segregation. The Sanitary Water District Clerk shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue.

4.4. Periodic review. The water rates shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The rates may be set by ordinance or resolution in accordance with this Section. The rate ordinance or resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The Sanitary Water District shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 6. System Fund Accounts. For the purpose of application and proper allocation of net income of the System and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the Sanitary Water District and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

6.1. System Revenue Account. There shall be deposited periodically into the System Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the Ordinances and resolutions of the District of Spring Creek Cow Creek Sanitary District, South Dakota (collectively the "Rate Ordinance"). Moneys from the System Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. System Debt Service Account. Out of the revenues in the System Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated System Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the District's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the System Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Board of Trustees to be a proper and adequate amount for repair and depreciation of the System.

6.4. System Surplus Account. There shall be established the System Surplus Account. Revenues remaining in the System Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the System Surplus Account. If at any time there shall exist any default in making any periodic transfer to the System Debt Service Account, the Board of Trustees shall authorize the Sanitary Water District Clerk to rectify such default so far as possible by the transfer of money from the System Surplus Account. If any such default shall exist as to more than one account or fund at

any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the System Debt Service Account, moneys in the System Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the System Debt Service Account and the System Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then;
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Board of Trustees;
- (e) No moneys shall at any time be transferred from the System Surplus Account or any other account of the Fund to any other fund of the District, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

SECTION 7. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, Seattle, Washington, hereby designated as paying agent and registrar.

SECTION 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

SECTION 10. Covenants. The Sanitary Water District hereby covenants and agrees with the Sanitary Water District and other owners of the Revenue Bond as follows:

10.1. The Sanitary Water District will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

10.2. The Sanitary Water District agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. The Sanitary Water District covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest on the Revenue Bond, and the Sanitary Water District agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Sanitary Water District.

10.4. The Sanitary Water District covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 11. Depositories. The Sanitary Water District Clerk shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the Sanitary Water District, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the Sanitary Water District's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

SECTION 12. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the System are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Sanitary Water District hereby consents to the

appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 13. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 14. Authorization of District Officials. The President, Sanitary Water District Clerk, Sanitary Water District Attorney and Sanitary Water District officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Sanitary Water District any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 15. Effective Date. This Resolution shall take effect on passage.

Adopted at Spring Creek Cow Creek Sanitary District, South Dakota, this 10 day of AUGUST 2022.

APPROVED:

**SPRING CREEK COW CREEK SANITARY
DISTRICT, SOUTH DAKOTA**


President

(Seal)

ATTEST:


District Clerk