

REPORT TO THE LEGISLATURE'S EXECUTIVE BOARD

AGENCY #33 - NEBRASKA GAME AND PARKS COMMISSION

Federal Coronavirus State Fiscal Recovery Fund pursuant to the Federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended.

LB1014, introduced and adopted during the second session of the 107th Nebraska State Legislature and signed by the Governor on April 13, 2022, appropriated \$8.1 million dollars to the Nebraska Game and Parks Commission from the Federal Coronavirus State Fiscal Recovery Fund pursuant to the Federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended.

Our agency presently has numerous wastewater facilities in need of maintenance or replacement at various park locations. The appropriated funds are assigned to agency identified wastewater treatment projects in most critical need of attention and actions necessary to continue the proper operation of park infrastructure and remain in service to the general public. Such infrastructure includes cabins, campgrounds, shower facilities, trailer dump stations and related public facilities at the following park locations:

Niobrara State Park – Niobrara, Nebraska
Branched Oak State Recreation Area – Malcom, Nebraska
Two Rivers State Recreation Area – Waterloo, Nebraska
Lewis and Clark State Recreation Area – Crofton, Nebraska
Mormon Island State Recreation Area – Grand Island, Nebraska

Each of the identified park locations are public facilities, accessible to the general public, and each serve as critical economic drivers for the various nearby communities, offering recreational services, tourism revenue and employment opportunities.

To determine eligibility of the above referenced projects the Commission evaluated the Treasury Final Rule document listed on the Federal Register. Specifically, the Treasury Final Rule Section D. Investments in Water, Sewer and Broadband Infrastructure. This section discusses necessary investments in water and sewer on pages 260 through 271 and includes public comment and Treasury response through page 293.

We understand that Treasury indicates it has aligned eligible uses of the State Fiscal Recovery Fund with the types of projects that are eligible under the Clean Water State Revolving Fund or Drinking Water State Revolving Fund (Administered by the Environmental Protection Agency). Specifically, the Final Rule provides that assistance can be provided to “any...state agency for construction of publicly owned treatment works...” as defined by section 212 of the Clean Water Act, which includes wastewater collection and treatment. Furthermore, we consulted with the Nebraska Department of Environment and Energy for review of our Agency Guidance Document to ensure that the wastewater projects comply with the clean water act; compliance was confirmed by NDEE leadership on May 27, 2022.

Treasury Final Rule Section D. Investments in Water, Sewer and Broadband Infrastructure on Page 260 identifies two general provisions that apply across water, sewer and broadband infrastructure investments.

First – Investments must be “necessary” and designed to provide adequate minimum level of service and are unlikely to be carried out with private fund sources. (Pages 261 – 262).

Each of the above listed projects are “necessary” in order to properly handle wastewater, protect the public and natural groundwater, and allow for the continued public services provided at the listed park locations. These projects will not be carried out by assignment of private fund sources. These projects will provide great public benefit.

Second – Fund recipients are encouraged to use strong labor standards and produce high quality infrastructure that promotes efficiency and is carried out in compliance with relevant permitting laws and regulations. (Pages 262 – 264).

State approved processes for selection of qualified and professional engineering firms will ensure that project designs comply with all federal and state, (Nebraska Department of Environment and Energy), regulations requiring proper operation and maintenance of wastewater treatment facilities. Game and Parks will follow State of Nebraska procurement processes for competitive selection of qualified contractual services for construction. The listed projects will maintain adequate minimum levels of service and gain efficiency through centralization of services and elimination of individualized treatment facilities.

Each of the two provisions and project eligibility is more broadly defined within pages 264 through 271 of the Treasury Final Rule.

Special attention was given to the final paragraph of page 269 and continuing onto page 270, which reads.

“Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater. Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management and treatment of wastewater and stormwater are the typical responsibilities of “water and sewer” authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.”

The Commission believes that considering the context of the sentence, water infrastructure structures or elements other than drinking water and wastewater facilities or services would be deemed ineligible. This opinion is shared by a representative of our Legislative Fiscal Office. We are charged to serve as the designated authority for management of compliant wastewater facilities on our park areas, our projects will continue to broadly provide essential services to the public, and the identified projects address deferred maintenance needs. We determine that the reference is targeting infrastructure related to dams and reservoirs and that the ability to apply funds for the wastewater projects remains an eligible application. (Page 288 paragraph 2).

The Commission is confident that the listed projects comply with the federal act and regulations that apply to this process and are therefore eligible for funding.