

2023 NONPOINT SOURCE POLLUTION PROGRAM

# **319 Program Guidelines and Internal Controls**

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# South Dakota Nonpoint Source (NPS) Project Management System

The SD NPS Project Management System (Tracker) was developed to provide more consistent Section 319 project management for South Dakota. The criteria selected for the South Dakota program are:

- easy to enter and retrieve useful project information.
- ability for coordinators to enter information from a desk top computer.
- provide a standard tracking system that gives coordinators and project officers understandable project status information.

An internet program was selected for development based on certain criteria and other system requirements. The Tracker System can be found at:

<https://apps.sd.gov/NR88BMPExpenseTracking/secure/Login.aspx>

The user manual for the Tracker System can be found after logging on the system. Contact Jeremy Schelhaas to receive a username and password or to report any problems or issues with the system.

# Application Requirements

## Eligible Grant Recipients

Governmental agencies, subdivisions of state government such as conservation districts, water development districts, counties, municipalities, universities, certain nonprofit organizations, and recognized tribes are eligible to apply for Section 319 funds.

## Application Guidance

Section 319 funds may be used for watershed assessment and planning, implementation, ground water, and information and education projects that control NPS pollution. Applicants must follow both federal and state guidelines when preparing an application for funding.

## Federal Guidelines

The US EPA Region 8 Guidance document for Section 319 projects contains the format required to prepare a project proposal and implementation plan for a watershed, information and education, or ground water project (<https://danr.sd.gov/Conservation/WatershedProtection/Section319/Applications.aspx>).

Detailed national guidelines about the NPS Program and project requirements are found in the NPS Program Guidance for States and Territories Document at: <https://www.epa.gov/nps/319-grant-current-guidance>.

## South Dakota Guidelines

Application for Section 319 funds in South Dakota must be made through the South Dakota Department of Agriculture and Natural Resources (DANR). The department has assigned funding priority to watershed assessment/planning and implementation projects that develop or implement Total Maximum Daily Loads (TMDLs) located in close proximity. South Dakota's TMDL waterbodies are listed in the most recent Integrated Report for Surface Water Quality Assessment found on the department's web site at:

<https://danr.sd.gov/Conservation/WatershedProtection/ReportsPublications.aspx>.

Applicants interested in submitting a NPS information and education application are encouraged to contact the South Dakota Discovery Center. SD DANR makes NPS information and education funding opportunities available through a partnership with the Discovery Center <https://sites.google.com/sd-discovery.org/319minigrants///>.

While American Indian Tribes are eligible to apply through the state, tribes are encouraged to investigate applying directly to EPA for possible funding through the 319 Program's tribal set-aside. See Region 8 and National Program Guidance for details.

When preparing an application, please note the following criteria:

- Project duration should not exceed three years. Applications for watershed restoration efforts expected to require a longer time should include a schedule of the entire effort which indicates how the project will be implemented in successive two or three-year segments.
- Implementation project activities funded are restricted to:
  1. Planning, administration, salaries, travel, and monitoring/evaluation
  2. Information and education
  3. Animal nutrient management system (ANMS) design and construction for operations below 1,000 animal units. A cost share of 25% minimum landowner contribution toward the system is required
  4. Nutrient management
  5. Riparian buffers, easements and practices required to defer and/or exclude livestock
  6. Soil health
  7. Grassed waterways and filter strips
  8. Wetland enhancement and protection
  9. Protection of high-quality surface waters
- Funding for the construction of other best management practices (BMPs) must be secured from other sources such as:
  1. SD DANR's Coordinated Natural Resources Conservation Grant Fund
  2. SD Department of Game, Fish and Parks
  3. EQIP, CRP, and other NRCS/FSA programs
  4. US Fish and Wildlife Service
  5. Local funds and private organizations

Access the South Dakota Watershed Project Funding and Technical Assistance Guide (<https://danr.sd.gov/Conservation/WatershedProtection/docs/NPSFundingTechnicalAssistanceGuide.pdf>) for a description of these and other programs and contact information.

- Best management practices must be designed to USDA/NRCS or other applicable standards for specific practices. Deviation from practice standards is allowed with approval of the Watershed Protection Program Administrator.

#### Compliance with Other Federal/State Programs Required

Applicants should be aware that practices requiring NPDES permits are not eligible for 319 funding. Examples include:

- Animal feeding operations housing over 1,000 animal units
- Phase I and Phase II Storm Water Permit activities

If the application is funded, all project activities must obtain:

- applicable storm water construction and 401 and 404 permits
- historic preservation approval (cultural resources consultation)

In addition, projects will not adversely affect threatened or endangered species.

#### Application Assistance

DANR offers assistance with the preparation of 319 project applications. Applicants should contact DANR as soon as possible to ensure adequate staff resources and time are available to provide services to all applicants requesting assistance. To request assistance, contact the Section 319 NPS Coordinator at: (605) 773-4254.

#### Submitting an Application

Applications for watershed assessment/planning, implementation and ground water projects must be submitted to SD DANR in either electronic or paper format and post marked by October 1 of the current year, or earlier. The application must be accompanied by letters from project partners identified in the application detailing the availability status of funding, in-kind services, or technical assistance they will provide.

Submit applications to:

Kristopher Dozark

South Dakota Department of Agriculture and Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3182 ([kris.dozark@state.sd.us](mailto:kris.dozark@state.sd.us))

#### Project Review

Selection of applications for funding includes reviews by SD DANR Staff, the South Dakota Nonpoint Source Task Force and South Dakota Board of Water and Natural Resources prior to sending the applications to EPA for final approval. The applications are sent to the NPS Task Force members as received from the sponsors. For information about the Task Forces review protocol visit:

<https://danr.sd.gov/Conservation/WatershedProtection/Section319/default.aspx>

The Board of Water and Natural Resources considers the recommendations of both the NPS Task Force and DANR staff in selecting projects that will be forwarded to EPA Region 8 for final review. Notices of SD NPS Task Force and SD Board of Water and Natural Resources meetings and meeting agendas and posted on:

<https://danr.sd.gov/Conservation/WatershedProtection/NonpointSource.aspx>

#### Section 319 Grant Timeline

October 1: Applications due

Early November: Applications available for review electronically at:  
<https://danr.sd.gov/Conservation/WatershedProtection/Section319/Applications.aspx>  
Contact the SD DANR Watershed Protection Program for paper copies  
Early December: SD NPS Task Force review  
January: SD Board of Water and Natural Resources review  
February - June: Final approval by EPA  
July: Project grants issued by SD DANR

# Grant Agreement Review

All grant agreements (which includes amendments) must be routed through the grant agreement review process.

Complete the “contract-grant review sheet” and attach the original copy of the agreement.

Originator must sign and date the review sheet once the internal office review and approval is complete. The Division Director will initialize and date.

The DANR Staff Attorney will review the grant agreement for legality before the agreement is forwarded to the Fiscal Officer.

The Fiscal Officer will review the grant agreement for the availability of funds, sign and date the review sheet before forwarding the agreement to the Department Secretary.

The Department Secretary will review the grant agreement, sign and date the review sheet before returning the agreement to the originator.

When all review signatures are secured, the originator emails a copy of the grant agreement, along with Federal and State regulations governing the agreement, to the sub-recipient for signature. The sub-recipient will return two (2) signed copies.

Upon return, forward the two (2) signed copies of the agreement, along with the grant review sheet, to the Department Secretary’s office for signature.

The originator forwards a signed original agreement and the original completed grant review sheet to the Fiscal Office, sends a signed original agreement to the sub-recipient, sends a copy of the agreement to the project officer, and files a copy of the agreement and grant review sheet in the office.

# **Build America Buy America Act (BABA)**

BABA requires that no funds made available through federal financial assistance programs for infrastructure may be obligated for a project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Absent a waiver, all iron, steel, manufactured products, and construction materials permanently incorporated into an infrastructure project subject to the BABA requirements must be produced in the United States.

Included programs include:

- Clean Water and Drinking Water State Revolving Fund Programs (CW and DWSRF)
- 319 Nonpoint Source Management Program Implementation

<https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>

# Use of 319 Funds

During 2013, it was determined that successfully addressing priority NPS pollution issues and sources in the state required that DANR refocus use of its resources. As a result, DANR networked with its state, federal, and local financial assistance partners to develop and implement a policy that directed the use of 319 funds to:

Projects that develop or implement a TMDL or cluster of TMDLs and the following specific implementation project activities:

1. Planning, administration, salaries, travel, and monitoring/evaluation
2. Information and education
3. Animal nutrient management system (ANMS) design and construction for operations below 1,000 animal units. A 25 percent minimum landowner contribution toward the cost of the system is required
4. Nutrient management
5. Riparian buffers, easements and practices required to defer and/or exclude livestock
6. Soil health
7. Grassed waterways and filter strips
8. Wetland enhancement and protection
9. Protection of high-quality surface waters
10. Irrigation conversion
11. Urban BMPs such as retention ponds, infiltration basins, porous pavement, etc.
12. Forestry BMPs including roads, timber harvest, streamside management, fish passage, tree slash pile treatment, etc.

With the change, funding for other project activities and many of the BMPs previously cost-shared using 319 funds was moved to other funding sources such as the USDA conservation programs, the South Dakota Coordinated Natural Resources Grant Fund, US Fish and Wildlife Service, and private organizations such as Ducks Unlimited and Pheasants Forever.

Priority area maps have been developed in all counties for use by implementation projects to use as guidance for installing BMPs. All BMPs utilizing 319 funds should prioritize these areas or have justification and approval from the Watershed Protection Program for implementing outside of these areas documented in the notes area on Tracker.

All practices installed should have pictures of resource concerns in the practice area uploaded to Tracker prior to BMP installation. A follow-up picture should also be taken from proper documentation after the BMP is fully implemented. Projects could request pre- and post-implementation photos from the producer along with receipts to assist in this documentation.

# Types of 319 Projects

## **ASSESSMENT**

This is a project that takes place prior to implementation. It involves an evaluation and appraisal of a watershed/water body to determine the causes and amounts of pollution. It also locates the high priority areas for practice implementation. The report generated should give the local sponsor the information they need to move forward with the next project phase.

## **TRANSITION/NEW/IMPLEMENTATION PROJECTS**

This type of project typically involves the development of a 5-to-10-year plan, information and education, landowner sign-up and practice planning, some practice implementation, and developing the PIP for the next 2-year implementation project segment.

## **SEGMENTS**

Most implementation projects will have two to five segments. Each segment will be treated as a stand-alone project with a separate budget and PIP which will require a new agreement. Segments are typically 2-5 years in length.

# Quality Assurance

## EVALUATION AND MONITORING PLAN

1. It is a priority that data collected under the Section 319 program be useable and of high quality. Region 8 states have EPA-approved Quality Assurance Project Plans (QAPPs) for the nonpoint source and surface water monitoring programs. Quality Assurance Project Plans contain the 16 elements required by the EPA Region 8 Quality Assurance Program.
2. All projects using section 319 funds to collect "environmental data" are required to have a project-specific sampling and analysis plan (SAP). Sampling and Analysis plans must address the 16 elements required of the QAPP and are approved by the State and EPA. Contact the State for specific guidelines on preparing SAPs.
3. Project sponsors may either reference the State QAPP for the standard operating procedures (SOPs) for each type of monitoring to be performed (e.g., photo points, water sample collection, fish shocking, etc.), or attach them to the SAP. Identify any site-specific amendments required for this project that are not covered by the QAPP. A plan/schedule to develop the appropriate procedures must be identified in the proposal. The project-specific SOPs will be approved by DANR Watershed Protection Program staff.
4. The project sponsor has the option of providing the SAP (and SOPs referenced) in this section of the project proposal or including the development of the SAP and SOPs as project tasks with specific milestone dates. The SAP should reference any applicable information from the project proposal and the State's programmatic QAPP, where applicable, to avoid redundant information.
5. Describe the monitoring strategy for the watershed, including goals, objectives, and tasks proposed to evaluate whether the project goals and objectives have been met. Describe sampling and analysis design, (e.g., up-stream/downstream, paired watersheds, site trend, existing groundwater wells, up-gradient/down-gradient wells, geomorphology and/or riparian measurements, random, systematic, stratified random (e.g., by season or discharge)). And specify parameters to be measured: total suspended sediment, temperature, phosphorous, nitrate, etc. Locate on a map sampling sites in relationship to BMP applications and priority treatment areas.
6. Describe how and when data will be stored, managed, and reported. All data collected using Section 319 funding must be entered into the EPA Water Quality Exchange (WQX) database. The State is responsible for assuring that the data is entered into the database.

Results from the data analysis should be used to evaluate progress, determine if changes in project/monitoring design need to be considered and assess the overall final project success. Identify organization(s) responsible for project evaluation and specify how the resulting information from the data analysis will be shared and utilized for future projects. Describe any models used, if applicable. Describe the long-term funding plans for the operation and maintenance (O&M) of restoration activities.

A copy of the Standard Operating Procedures Manual for Field Samplers (SAP) developed by the State of South Dakota Department of Agriculture and Natural Resources; Watershed Protection Program is located at:

[https://danr.sd.gov/Conservation/WatershedProtection/ReportsPublications/SOP\\_Volume\\_I.pdf](https://danr.sd.gov/Conservation/WatershedProtection/ReportsPublications/SOP_Volume_I.pdf)

and

[https://danr.sd.gov/Conservation/WatershedProtection/ReportsPublications/SOP\\_Volume\\_II.pdf](https://danr.sd.gov/Conservation/WatershedProtection/ReportsPublications/SOP_Volume_II.pdf)

# Match

## REQUIRED MATCH

Clean Water Act Section 319 Grants from EPA to the state require a 60/40 match. The match requirement for project sub-grants is also 60/40. Individual practices may vary provided the overall project match equals 60/40. Match for project grants to local sponsors (sub-grants) is established in the Project Implementation Plan (PIP).

## GENERAL REQUIREMENTS

To be used as match the expense must be: related to the project, included in the project work plan (PIP), incurred during the grant period, documented, from nonfederal sources, and not be used as match against other federal grants. All matching funds must conform to the same laws, regulations, reporting requirements and grant conditions as the federal funds in the grant. Any expense must be eligible for 319 funding by the Project to be counted as match.

## MATCH CATEGORIES

Cash: actual dollars spent by the sponsor or project partners.

In-kind: the value of goods and services provided by the sponsor, landowner, or third party. To be used as in-kind match the goods and services: must be necessary to accomplish work plan tasks or would have incurred a cost if the sponsor, landowner, or third party had to pay for them. The value of in-kind services is based on "What would it have cost if the grantee had to pay for the goods or services." In-kind match is not paid out by 319 funds, but only considered as the grantee's portion of the match requirements.

Volunteer Services: The rate should be equal to what the grantee would pay their employees for similar work in the project area.

Donated supplies/equipment/buildings/land: This should be based on the fair market rental rate and/or market value at the time of donation.

**FRINGE BENEFITS:** Fringe benefits can be considered as match with extensive documentation. Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Documenting closely the funding from fringe benefits through timesheet submittal is required.

If Project Sponsors want to provide additional benefits such as bonuses, family insurance, etc., the project sponsor will be responsible for covering those costs.

Documenting Match: Submit with requests for payment and clearly identify the source and how the value was determined.

Producer's share of an EQIP project: The EQIP program doesn't require documentation of non-federal match for installed practices. This allows the producer's share of an EQIP funded practice to be used to match a project's Section 319 funds. The Section 319 project must participate in the installation of the practice in some form, either partial funding or working with them to get them into the EQIP Program. All General Requirements still apply.

# Requirements for Procuring Services, Equipment and Supplies

Implementation of Section 319 projects may require the purchase of equipment and supplies as well as the employment of private contractors to construct scheduled conservation practices. Practices that may require the acquisition of a private contractor include BMPs such as livestock manure management facilities, clean water diversions, pipelines, and ponds. Equipment purchases may include such items as computers, flow meters, data loggers, and water quality sampling instruments. Vehicles and construction equipment are not eligible equipment purchases under the NPS Program.

The costs and qualifications of private vendors and contractors may vary significantly within a project area. To ensure the project sponsors or cost share recipients (e.g., agricultural producers, private landowners, homeowners, etc.) secure the most qualified contractor or vendor for the lowest possible cost, the appropriate procurement method must be utilized. When planning major purchases or selecting a contractor, each of the approved procurement methods must be reviewed by the project sponsors and/or cost share recipient to ensure they are aware of their responsibilities and the specific procurement method required for the proposed purchase or BMP construction.

Summaries of the approved methods for procuring construction services, equipment, or supplies are provided in the following subsections.

## **A. Procurement Procedures for Small Purchases:**

This category includes services, supplies, or other property that cost between \$4,000 and \$25,000.

- Provide the appropriate information to potential vendors and obtain written or oral price or rate quotations from three or more qualified vendors. If three price or rate quotations cannot be obtained, written justification must be retained on file explaining why less than three vendors were involved in the process.
- Document the amount and source of each price or rate quote as well as the date the price or rate quotation was received from the vendor.
- Selection of the vendor must be based primarily on the lowest responsible price or rate quotation.
- When possible, for purchases less than \$4,000, previous purchases, local rates, published price lists or similar information should be referenced to ensure a fair and reasonable price is obtained.

## **B. Procurement Procedures for Large Purchases:**

This category includes all services, supplies, equipment, or other property that cost more than \$25,000. Sealed bids, competitive proposals, or noncompetitive proposals are eligible procurement methods for large purchases. The specific method that can be used may differ between projects and will be dependent on the conditions and requirements of the procurement method.

Following the completion of any procurement method for a Large Purchase, a contractual agreement should be developed between the approved contractor or vendor and the recipient of the services, supplies, or equipment.

### **1) Sealed Bids:**

(a) Procurement by Sealed Bid - Bids must be publicly solicited with a firm-fixed price contract (lump sum or unit price) being awarded to the entity whose bid conforms with the material terms and conditions of the bid invitation and is the lowest in price. The sealed bid process is the recommended method for securing construction services. To ensure a sealed bid procurement process is the most appropriate method, the following conditions must apply:

Complete, adequate, and realistic specifications or purchase descriptions are available.

Two or more responsible bidders are willing and able to effectively compete for the business.

The procurement lends itself to a firm-fixed price contract and selection of the successful bidder can be made principally based on price.

(b) Sealed Bid Requirements: If a sealed bid process is used, the following requirements must be met:

Advertisement for bids must be published in the newspaper at least twice prior to opening of bids. The first publication must be in the entity's official newspaper and must be made at least 10 days prior to the date for the opening of bids; however, the second publication can be in any other newspaper in the state. The advertisement shall appear as a legal notice.

The advertisement shall state the time and place where bids will be opened and contain a notice that the organization has the right to reject any and all bids.

The bid invitation shall include specifications and pertinent attachments that clearly define the bid items and/or services associated with the project.

All bids must be publicly opened at the time and location specified in the bid invitation.

Not more than 30 days can elapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all bids presented.

A firm-fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

Any or all bids may be rejected if there are sound documented reasons for rejection.

For more information go to **Appendix D**

## **2) Competitive Proposals:**

(a) Procurement by Competitive Proposal: The competitive proposal process can be utilized if more than one source can submit an offer and either a fixed-price or cost-reimbursement type contract will be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids and factors other than the “lowest price” are needed to select the most appropriate services and/or entity.

In general, the competitive proposal process may include three phases. The first phase involves a publicized request for proposals describing vendor/contractor qualifications, experience, staff, office locations, etc. Rates or costs are not included in this first phase. The second step of the process focuses on the review of all proposals and the selection of the most qualified applicant. During the third and final phase, representatives of the entity soliciting the proposals will meet with the selected applicant to negotiate a mutually agreed upon price or rate. If an acceptable price or rate cannot be established, negotiations can be initiated with the next most qualified applicant.

(b) Competitive Proposal Requirements: If the competitive proposal method is used the following requirements apply:

The request for proposals must identify all evaluation factors and their relative importance and be publicly advertised. Any response to the publicized request for proposals must be honored.

The request for proposals must identify a deadline date and address for submitting proposals. A minimum of 30 days must be allowed for responses to the publicized request for proposals.

Proposals must be solicited from two or more qualified sources.

The project sponsors and/or individual(s) responsible for the approval of the competitive proposals must have an established process and methods for evaluating all proposals and selecting the most appropriate proposal. This review process should not exceed 20 days.

Unless all proposals are rejected, the contract award must be offered to the responsible entity whose proposal conforms to the solicitation and is determined to be the most advantageous to the project, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria should be used in the proposal evaluations.

Written notice of the award of the contract to the successful applicant must be promptly sent to all entities that submitted proposals. The basis for the contract award, including any evaluation worksheets, must be retained on file.

### **3) Noncompetitive Proposals:**

(a) Procurement by Noncompetitive Proposals: This method involves the procurement of services through the solicitation of a proposal from only one source. Noncompetitive proposals can only be used when it has been determined through previous solicitations of multiple sources that competition for the project is inadequate. This method may not be used if the sealed bid or competitive proposal methods can be used to secure the necessary services.

(b) Noncompetitive Proposal Requirements: If the sealed bid, competitive proposal or small purchase procedures are not feasible, procurement by the noncompetitive proposals may be used if one or more of the following circumstances apply:

The necessary services and/or items are only available through a single source  
A public emergency involving the project will not allow for delays associated with other procurement methods.

DANR has approved the use of noncompetitive proposal procedures.

After solicitation of several sources, competition is determined to be inadequate.

# Amendments

Amendments can occur during an active project segment which would not be considered a new segment. An amendment may involve an addition of funds and/or area to be covered by the project which would require a revised budget and work plan. An amendment can be a minor adjustment during a segment such as a time extension, moving funds within the budget, adding additional types of best management practices, and minor funding changes. Substantial changes need a formal amendment whereas minor changes can be approved by letter/memo/e-mail.

Amendments can be made at any time, must be in writing, approved by the state, and agreed to by both parties. (*Example Amendment Appendix A*)

## When to Amend

When work plan activities lack the capability to attain the project goal, additional time will be needed to complete the work plan, or activity costs are exceeding budgeted amounts.

## Suggested Review Times

Semi-annually, GRTS Reports, onsite project visits by DANR project officer, first anniversary of the project start date, or any time it is apparent things have changed.

# Project Reports (GRTS)

“Project Progress Reports” are required for projects funded by 319 grants. The reports are submitted to DANR for review and entry in the U.S. EPA web-based Grant Reporting and Tracking System, (GRTS). Annual reports are due November 15<sup>th</sup>.

The progress reports can be completed through the DANR Tracker system and must include the following information:

## Header Information:

1. Federal Fiscal Year of the project: Federal fiscal year(s) of the 319-grant award
2. Today's Date: Date submitted to DANR
3. Indicate the reporting period: Annual report October 1st through September 30<sup>th</sup>
4. Project Title: Exact title from the Project Implementation Plan
5. State Name: South Dakota
6. Address: Project sponsor's address as listed on the Project Implementation Plan or as corrected
7. Phone: Telephone number of the sponsor (project coordinator)
8. Email: Email address of the sponsor (project coordinator)
9. Prepared By: Name of person who prepared the report (usually the project coordinator)

## Overall Project Accomplishments:

Include a cumulative summary of project activities. Summarize project amendments and changes (attach budget and milestone tables). Indicate project status: on-schedule, behind schedule, ahead of schedule, completed, revised, discontinued, or final report accepted by EPA. If a project status is “behind schedule”, a midyear report may also be required.

## Objectives/Tasks Accomplishments:

List each task and describe specific activities and accomplishments, both since the last report and cumulative since the project started. Include tables comparing the milestones planned and accomplished this reporting period and since the project started. Include a summary of work planned for each objective/task for the next period. Include pictures and web-links related to the objective/task accomplishments. Indicate status of each objective and task: on-schedule, behind schedule, ahead of schedule, completed, revised, or discontinued.

## Conclusions:

Use this section to provide feedback and/or recommendations on issues such as: BMP cost-share policies, local training needs, local match limitations, reporting requirements,

amendments and any other concerns or issues the local sponsors would like to express. Identify local concerns regarding project delivery and activities that need improvement.

### Load Reductions

The annual and cumulative load reductions for nitrogen, phosphorous, and sediment must be entered for all watershed implementation projects. The data must be listed by impaired waterbody "AUID" as listed in the Integrated Report. Also include reductions for all partner sources in the project area, even if Section 319 funds were not involved. Nitrogen and phosphorous should be reported as pounds per year and sediment as tons per year. The reduction goals from the TMDL or PIP should also be included. Indicate whether a TMDL has been completed.

All projects are asked to enter the annual and cumulative acres/feet for wetlands restored, wetlands created, riparian stream bank and shoreline protection.

Load reduction data entry is not required for the following project types: statewide/local education and information programs; nonpoint source program overall coordination and management; nonpoint source project staffing; geographic information systems; developing and revising watershed plans; watershed modeling and other planning.

# Implementation Project Final Report

## EXECUTIVE SUMMARY

PROJECT TITLE \_\_\_\_\_  
SECTION GRANT NUMBER(S) \_\_\_\_\_  
PROJECT START DATE \_\_\_\_\_ PROJECT COMPLETION DATE \_\_\_\_\_  
FUNDING: TOTAL BUDGET \_\_\_\_\_  
TOTAL EPA GRANT(S) \_\_\_\_\_  
TOTAL EXPENDITURES OF EPA FUNDS \_\_\_\_\_  
TOTAL SECTION 319 MATCH ACCRUED \_\_\_\_\_  
BUDGET REVISIONS \_\_\_\_\_  
TOTAL EXPENDITURES \_\_\_\_\_

## SUMMARY OF ACCOMPLISHMENTS OTHER ISSUES

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Best Management Practices Developed And / Or Revised  
Monitoring Results  
Bmp Effectiveness Evaluations:  
TMDL Implementation Effectiveness:  
Surface Water Quality Improvements  
Chemical  
Biological.  
Physical / Habitat  
Groundwater Improvements  
Metals  
Chemistry  
Nutrients  
Other Monitoring  
Quality Assurance Reporting  
Results of Bmp Operation and Maintenance Reviews  
Coordination Efforts  
    Other State Environmental Programs/ Agencies  
    USDA Programs  
    Other Federal Agencies

Other Organizations  
Summary of Public Participation  
Aspects of the Project That Did Not Work Well  
Project Budget/Expenditures  
Budget for Individual Tasks  
Non-Federal Budget  
Actual Expenditures  
Results and Future Activity Recommendations  
Literature Cited  
List of Tables  
List of Figures  
List of Appendices

Copies of the Report

After the report has been approved by DANR and EPA a minimum of 5 copies must be provided to DANR.

# Cultural Resources Procedure

Federal and state laws provide that the State Historic Preservation Officer review certain federal and state “undertakings.” This process is commonly known as SHPO or Section 106 for federal projects. These are projects which include federal funding. These projects are reviewed to ensure compliance with appropriate historic preservation laws which require that the governmental agency consider cultural and historic properties in their planning.

1. Projects will be evaluated for potential historic properties/cultural resources using the SD Archaeological Records Management System (ARMS) to determine potential “hits”. Projects can proceed if no “hits” are returned.
2. If ARMS database indicates the site has potential cultural resources “hits”, the Cultural Resources Effects form (**Appendix C**) and supporting documentation **MUST** be submitted to DANR 60-90 days before construction begins. Do not submit the initial paperwork to SHPO. For an Ag Waste System, submit the SHPO paperwork to Kristopher Dozark about the time the Project Engineer is starting the final design. Kristopher Dozark is the staff person in Pierre that reviews the information before it is sent to SHPO for approval.

Why 60-90 days in advance? Because SHPO, by law, has 30 days from the date of receipt to do their preliminary review. If an on-the-ground search is required by a Registered Archaeologist, it can take another 30-45 days to complete. Once the search is complete, the Archaeologist has another 30 days to write the Findings Report.

3. Two or three sentences on the effects form are not enough. While we may understand what we are talking about, the folks at SHPO are not farmers, engineers, or conservation planners. Explain very clearly, in layman’s terms, and be thorough to what you are planning to do. Remember you are building a word picture for someone who has not physically been on the land and has no understanding of what you are doing.

If you are installing buffers, include if the buffers will be trees or grass, because grass is treated differently than trees for cultural resources.

4. Include the results of the Records Search which is conducted by the Archaeological Research Center in Rapid City, a conservation plan map with the location of the land disturbance clearly marked. Make the map clean and simple. Attach quality photos of the site. It may also help if you attach a descriptive caption to each of the pictures.

5. If more than one federal agency is involved in an undertaking, some or all of the agencies may designate a lead federal agency, which shall act on their behalf, fulfilling their collective responsibilities under section 106 National Historic Preservation Act. When NRCS provides all or most of the federal financial assistance for a project or to implement a plan, it is considered the lead agency.

# **Endangered Species Act (ESA)**

## **Compliance Process**

The process in South Dakota starts when the Department of Agriculture and Natural Resources (DANR) works with local sponsors to carry out watershed assessment projects. The final reports for assessment projects include information on threatened and endangered species listed for the watershed. This information is carried forward to the project implementation plan (PIP). It is important to have a specific section on Endangered Species Act (ESA) compliance in the PIP. It should contain the following:

- information on whether the particular species has been sighted in the area.
- habitat availability.
- species protection measures that are planned.
- the sponsor/state opinion on whether the species would be affected, and if so, positively, or negatively.

# Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies (EPA, 2022).

Overburdened and underserved communities and individuals are particularly vulnerable to impacts of nonpoint source pollution, including low-income communities and communities of color, children, the elderly, Tribes, and indigenous peoples.

- Nonpoint source activities that can assist with environmental justice concerns include:
  - Education and outreach activities that focus on educating underserved communities about nonpoint source pollution topics.
  - Installation of BMPs for the above communities.

EPA's website for environmental justice is at the following link:

<https://www.epa.gov/environmentaljustice>

# Climate Change

Climate change refers to changes in global or regional climate patterns attributed largely to human-caused increased levels of atmospheric greenhouse gases.

Many of our BMPs could help with aspects of climate change.

EPA's website for climate change is at the following link:

<https://www.epa.gov/climate-change>

## Priority Area Maps

Priority Area Maps have been created to help implementation projects target areas of highest concern. Projects should work to implement practices within a 1-mile buffer of nonsupporting (impaired) streams and lakes, 0.5-mile buffer of “named” streams, and 0.25-mile buffer of “unnamed” streams.

Practices outside of priority areas on nonsupporting streams and lakes, named streams, and unnamed streams should be discussed with the DANR project officer and the project coordinator before any contracts are signed.

Priority Area Maps are available through DANR project officers. They are found at the N:\WORK\Maps\WRAP\RiparianOverlay\2023 revised maps.

# Contract for Payment of 319 Funds is Required

A good contract does not need to be complicated or elaborate. Generally, the simpler the contract the more effective it is because it is easier for both parties to understand. A contract for best management practices should, at a minimum, include the following elements:

- Names and addresses of the parties.
- Signatures of the parties.
- Dates of signatures.
- Full amount of contract.
- Particulars of payment (schedule of payments, bid requirements, certifications, etc.).
- Beginning and ending dates of the contract.
- Description of the practices to be installed.
- Location of the practices (a site map and legal description is useful).
- Length of time (date) the practices are to be maintained.
- Requirements for maintenance to be transferred with change in ownership.
- Required repayment and/or payment of damages if the practices are not maintained.
- Process for amending the contract.
- Default provision which specifies what happens if the contract is breached.
- Termination provision which specifies how the contract will be cancelled by mutual agreement in the event of a default or for other stated reasons.
- Provision that provides for the execution of an easement where appropriate.
- A provision that says South Dakota law applies and governs the contract.

See **Appendix E** for example of a producer contract.

# Filing Agreements with the Register of Deeds

The producer agreements can be filed, but don't necessarily have to be - it depends on the circumstances. If an agreement is for a short term - say only a year or two and involves a property that is not going to be leased or sold, it would be discretionary whether to file. The agreement binds the parties and that may be enough. If an agreement for an easement or covenant restricting land use is perpetual or for a long term (say, more than a couple of years) it can and should be filed with the register of deeds. This process informs people who might buy or lease the property from the person granting the easement or covenant, that they are taking the property subject to that restriction.

# **BMP Operation and Maintenance**

## **Conditions**

Recipients of Section 319 cost-share assistance for the installation of BMPs will be responsible for the operation and maintenance (O&M) of such practices. All cost shared BMPs must be maintained at a functional level for the life span of the practice as identified in the NRCS EQIP Manual or as specified in the conservation plan/schedule of operations. The life span of a practice is the minimum number of years the practice should serve its purpose with normal care and maintenance. Cost sharing must be refunded if the recipient destroys a practice during its life span unless a release is approved by the project sponsor and NPS Program before the practice is destroyed.

Maintenance of a practice is the keeping of a practice in a workable condition for its specified life span. There are many practices, such as critical area treatments, and livestock manure containment facilities that should last well beyond the minimum practice life span. Therefore, the project sponsors and staff must advise cost-share recipients they will be expected to maintain the practice for all its useful life.

The operation and maintenance of cost-shared practices will be determined through periodic compliance checks. The frequency of O&M compliance reviews will be dependent on the type of practice and its designated life span. Structural practices with life spans greater than one year will be inspected immediately after construction to verify completion and at least two more times during the project period to determine if the practice continues to be properly maintained.

The local Section 319 project sponsors and/or staff will be responsible for verifying compliance with this operation and maintenance condition for the duration of the project period.

### **BMPS Damaged by Natural Events**

As determined on a case-by-case basis, Section 319 funds may be approved by the State to repair the damage.

# **Destruction of Conservation Practices**

The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the lifespan of the conservation practice as determined by NRCS Technical Guide Standards. The project sponsor/DANR may periodically inspect a conservation practice during the lifespan of the practice as specified in the contract to ensure that operation and maintenance are occurring. When project sponsor/DANR finds that a participant is not operating and maintaining practices in an appropriate manner, project sponsor/DANR will request a refund of cost-share or incentive payments made for that practice under the contract. The refund of financial assistance received will be prorated based upon the lifespan of the applicable conservation practice. Each practice will be evaluated separately.

## Below are a few points of clarification:

- The ending date for producer contracts should be dated to reflect the life expectancy of the practice based on the NRCS Technical Guide Standards.
- The conservation plan for the practice should contain language about maintaining the practice.
- If the conservation practice(s) is destroyed, a refund of financial assistance is required.
- When destruction occurs on a conservation practice(s), a refund will be requested as the cost-share practice(s) is no longer servicing a manageable unit or the purpose for which it was cost-shared (i.e. pasture is 160 acres with 20 remaining as pasture).
- Quite often the conservation practice(s) will not be destroyed; however, it is no longer serving the purpose for which it was cost-shared so financial assistance must be refunded (i.e. pipeline, watering facility, and fence).
- The party responsible for paying back the cost/share would be the individual who owns the land at the time the practice was taken out.
- The money would go back to the local sponsor to be re-allocated for a similar type of practice.
- If the contract is contested by the owner or new owner who is expected to defend the contract, it would be the responsibility of the local entity that entered into the contract with the landowner to enforce the contract. DANR would provide technical support.

# Voucher Preparation

Vouchers must be prepared by the 319 Project Sponsor or their staff through the Tracker system. Access to the System is gained through the link below. PDF instructions for creating a voucher can also be found at this link after logging into the system.

<https://apps.sd.gov/NR88BMPExpenseTracking/secure/Login.aspx>

After the voucher is created it will need to be signed and sent to the Project's DANR project officer along with copies of receipts for expenses being claimed. Receipts can be mailed, email, or uploaded to DANR's FTP site. Contact DANR staff for information on uploading to the FTP site.

# Pay Request Processing

The project coordinator will send, email, or upload pay requests and all receipts so the DANR project officer has access to them.

After the project officer receives the receipts, they will put the entire pay request into one PDF file. The PDF is then matched up with each line on the TRACKER detailed voucher page. Once checked, a copy of the receipts should be placed here: N:\WATERSHED\Waterbodies\Project Name\Implementation Projects\Receipts. If there is any discrepancy between the detail page and the receipts, the project coordinator is contacted, and proper action is taken to correct the error.

After reconciling the voucher, the DANR pay request sheet can be printed from Tracker or entered into an excel spreadsheet. This sheet is then printed, signed, scanned, and attached to the PDF pay request document with the other pay request documentation (voucher summary, voucher detail page, match breakout page). The voucher is then reviewed and approved by the Watershed Protection Program Administrator and signed.

Next, mail or email the PDF created in the previous step to the DANR project administrative assistant for processing.

A signed copy of the voucher summary sheet is attached to the DANR pay request sheet and other printed documentation to be placed in the local project folder.

All payments made on contracts, grants, and loans will be approved by the program administrator and reviewed by the fiscal office for availability of funds and fiscal accuracy. Payments made on professional services contracts will be approved by the program administrator, the fiscal office, and secretary or the division director.

It is the program's responsibility to ensure the request for payment is in compliance with the negotiated agreement.

# Audit Requirements

The Code of Federal Regulations requires the State of South Dakota, as direct recipient of federal assistance who provides federal awards to a sub-recipient to:

- Inform sub-recipient of CFDA title and number, award name and number, award year.
- Advise sub-recipients of requirements placed on them by federal laws regulations and other documents.
- Ensure that sub-recipients are notified of the amount expended at the end of their fiscal year.
- Ensure that the sub-recipients expending \$750,000 or more in federal awards during the sub-recipient's fiscal year have met the audit requirements contained in Title 2 of the Code of Federal Regulations Section 200.501 for that fiscal year.
- Issue a management decision on audit findings within six months after receipt of the audit report.
- Ensure that the sub-recipient takes timely and appropriate corrective action when the audit report discloses instances of noncompliance with federal laws and regulations.
- Consider whether sub-recipient audits necessitate adjustment of the State's own records.

# Grazing Management Systems

Use of Section 319 funds to implement grazing management are limited to areas that contribute to impaired or protected waterbodies. Grazing practices that can be funded with 319 funds are listed below. The following link shows common NRCS EQIP grazing practices and the NRCS codes and standards that should be followed for these practices.

[https://www.nrcs.usda.gov/sites/default/files/2022-10/EQIP-Common Practices Grazing SD-FS-67.pdf](https://www.nrcs.usda.gov/sites/default/files/2022-10/EQIP-Common%20Practices%20Grazing%20SD-FS-67.pdf)

**Rotational Grazing:** NRCS is a good resource to get a producer started with a plan and can help with financial assistance. Cross fencing can only receive 319 cost share if implementing planned rotational grazing system. Any waterbodies encroaching a rotation grazing system should be fenced off or not grazed during the recreational season (October 1-April 30).

**Riparian Grazing:** Exclusionary fence is recommended when working around the riparian area but is not mandatory if alternate water is added to the pasture. Fencing should be installed at least 30 feet from any waterbody and should be out of the flood plain. Funding of RAM (page 38) or SRAM (page 41) may be a possibility for these areas if included by the Project. Preferably, the riparian area should only be grazed outside of the recreational season and must have at minimum a stand of 4-6 inches of stubble. Limitation of access to the riparian areas should be included in the contract with the producer for the life expectancy of BMP.

**Alternative Water:** This practice is allowable for cost share when the current pastures lose access to a waterbody of interest to the 319 Implementation Project. Alternative water could be pumping water from fenced off waterbodies, installing a well, or connecting to rural water. The type of watering can be determined by the producer, but cost share will be based upon the most cost-effective alternative that reaches the Project's goals and functions effectively. If cost sharing of a more expensive alternative is desired, justification must be made prior to installation.

**Fence:** Fencing can be used where control of livestock movement is needed. Fences are not needed where natural barriers are. Fences may be barbed, electric, woven or portable fence.

**Shade:** Shading can be an important part of a working grazing management system. Trees, permanent fabricated shade structures, or portable shades can be cost shared at 75% up to \$10,000, and 50% on \$10,000 to \$20,000. Trees must be protected from livestock for the life expectancy of the trees. Cost sharing of fencing of trees is allowable.

# Animal Waste Management Systems (AWMS)

Use of Section 319 funds to construct Animal Waste Management Systems (AWMS) is limited to small and medium Animal Feeding Operations (AFO). Table 1 outlines the number of animals by type of animal that define small, medium, and large feeding operations. All systems that receive Section 319, SRF-NPS, ARPA, or Consolidated funding must be built to Natural Resources Conservation Service (NRCS) specifications and have a comprehensive nutrient management plan developed.

The following highlights the requirements that must be followed when working with AWMS and Section 319 funds:

**Conventional (Open Lot) System, Roofed Structures, Vegetative Treatment Area, Stacking Pads, ETC:** The NRCS Environmental Quality Incentives Program (EQIP) should be used as a funding source prior to awarding Section 319 funds for an AWMS. Implementation Project funding is not to exceed \$250 per Animal Unit (AU) up to \$250,000 per system if utilizing SRF-NPS, ARPA, RBI funds as opposed to \$200 per AU up to \$200,000 if Section 319 or CWSRF-WQ funding is used.

If no funding is received from EQIP for the construction of the system, then DANR's "Guidelines for 319 Funded Feedlots" must be followed (**Appendix B**). This document covers checklists and criteria required from the Project Engineer. If you have questions, contact Jeremy Schelhaas in the DANR Sioux Falls Office at 605-362-3548 or [Jeremy.Schelhaas@state.sd.us](mailto:Jeremy.Schelhaas@state.sd.us).

**Producer Contribution:** Implementation Projects utilizing Project funds require a minimum producer contribution of 25 percent. The contribution can be a combination of cash and in-kind services/materials from the producer. The producer contribution for an EQIP funded system, which is eligible for funding through Section 319, can be captured as match for the Section 319 project even if Project funds were not spent on the system.

**Expansion:** Expanding feeding operations can receive Section 319 cost share funds to construct an AWMS, even if the expansion will increase capacity above the numbers listed for a large CAFO (Table 1). Assistance is limited to the current capacity AU. Current capacity is not the number of AU that occupy the facility, but rather the number the facility could realistically hold. For example, if a facility houses 500 AU of steers but has capacity for 750 AU, and will expand to 1,100 AU, funding for the system can be set for 750 AU.

**Relocation & Reclamation:** The Section 319 program can provide cost share on expenses associated with feedlot relocation and reclamation if a producer is required to relocate a facility to improve water quality (not for the only reason being that the producer wants it moved). These costs include construction of foundations for any

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buildings moved from the current location to the new location. If a building cannot be moved without damaging the integrity of the structure, the cost of constructing a structure of the same size can be cost shared. The former site must be abandoned and reclaimed using such water quality protection best management practices (BMPs) as determined necessary to reduce nonpoint source pollution from the site. It is understood that, at a **minimum**, the reclamation shall include removal of fences, pens, feed bunks, manure stockpiles, and re-vegetation of the site. Cost associated with the reclamation of the old site is not included in the funding for the new system. This should be considered a separate project for the producer and not to exceed 75% cost share. When cost share assistance is provided to relocate an AFO, a legal agreement prohibiting the future use of the abandoned animal feeding site for that purpose and requiring reclamation of the site to protect water quality must be signed by the producer. The sponsor should also consider requiring a deed restriction or other use-limiting document be filed with the county register of deeds. **(Example in Appendix F)**

**Operation & Maintenance:** Operation and Maintenance (O&M) requirements must be continued over the life of the practice.

If O&M requirements are not followed on a Section 319 funded system, measures for the producer to repay cost share received for the system must be initiated, unless the failure of the facility was beyond the control of normal O&M and the producer.

**System Design:** If Section 319 funds are used to fund the design of a system, the system must be completed within five years from the date the design is completed or by the completion of the implementation project. If the construction is not completed by that time, funds expended for that project must be paid back in full.

**Cultural Resources:** Construction of any type of a waste storage, clean water diversion, or basin is considered an undertaking that must be reviewed by the State Historical Preservation Office (SHPO) if federal funds or technical assistance are involved. If NRCS has the larger financial investment in a system, NRCS will be designated the lead agency for the system and complete the cultural resource review. If Section 319 funding has the larger federal contribution, the Section 319 project sponsor must complete the cultural resource review through DANR. Contact DANR Watershed Protection Program (605.773.4254) for information regarding the cultural resource consultation process.

**Compliance Action / Complaint:** Operations that are considered a large CAFO are not eligible for Section 319 Project funding. Producers with operations that do not meet the criteria of a large CAFO but have formal compliance action taken against them are ineligible for Section 319 Project funding. The Section 319 Project should quantify the pollution reductions from installation of AWMS for these operations, but cannot claim match from producer, state, or local funds to design or construct the system.

Table 1. Number of Animals to Define Large, Medium, and Small Concentrated Animal Feeding Operations			
Type of Animal Feeding Operation	Concentrated Animal Feeding Operations		
	Large Animal numbers equal to or more than:	Medium Animal numbers equal to:	Small Animal numbers less than:
Dairy cows (mature – milked or dry)	700	200 to 699	200
Veal Calves	1,000	300 to 999	300
Cattle other than mature dairy cows or veal calves <sup>1</sup>	1,000	300 to 999	300
Swine (weighing more than 55 pounds)	2,500	750 to 2,499	750
Swine (weighing less than 55 pounds)	10,000	3,000 to 9,999	3,000
Horses	500	150 to 499	150
Sheep or Lambs	10,000	3,000 to 9,999	3,000
Turkeys	55,000	16,500 to 54,999	16,500
Laying hens or broilers <sup>2</sup>	30,000	9,000 to 29,999	9,000
Chickens, other than laying hens <sup>3</sup>	125,000	37,500 to 124,999	37,500
Laying hens <sup>3</sup>	82,000	25,000 to 81,999	25,000
Ducks <sup>2</sup>	5,000	1,500 to 4,999	1,500
Ducks <sup>3</sup>	30,000	10,000 to 29,999	10,000
Geese	30,000	10,000 to 29,999	10,000

<sup>1</sup> Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

<sup>2</sup> Animal feeding operations use a liquid manure handling system.

<sup>3</sup> Animal feeding operation uses other than a liquid manure handling system.

**Procurement of Services and Bid Policies:** Due to construction requirements associated with manure management facilities, **all must follow a bid process (see guideline on bid requirements)**. Local project coordinators should review all the approved procurement methods with the producer and assist them with the selection of the most applicable method.

# Riparian Area Management (RAM)

The following requirements must be followed when spending Section 319 funds on riparian buffers:

## Requirements / Criteria:

1. The land must be actively grazed or cropped and located on or in close proximity to nonsupporting water bodies or in a DANR designated protection area. The maximum distance from an impaired water bodies is 1 mile.
2. Buffers must be immediately adjacent and parallel to a perennial stream, seasonal stream, wetland, or permanent water body.
3. If the land is eligible for Continuous CRP, the landowner must enroll in this program first before being eligible for Section 319 funds. If the land is not eligible for CRP but fits the other criteria, the buffer can be installed using Section 319 funds. The length of the contracts must be for 10 or 15 years to coincide with the CRP contract and require total exclusion.
4. Section 319 funds can also be used to round out a buffer when a portion of the land does not qualify to be enrolled in CRP, not to exceed 40% of the total CRP acres.
5. All buffers will be designed using NRCS standards. Buffer minimum is 20 feet, and maximum is 120 feet without trees, and 180 feet with three rows of trees.
6. Where the property adjacent to the buffer area will be used for grazing livestock, there must be a well-maintained fence consisting of either four strands of barbed wire or two strands of electrically charged high tensile electric fencing.
7. The rental rate as established for the year by the county USDA FSA office for CRP practices (CP21 Filter Strips, CP22 Riparian Buffers, CP29 Marginal Pastureland Wildlife Buffer, and CP30 Marginal Pastureland Wetland Buffer) will be used as the basis for payment. Up to \$10/acre/year additional funds can be added to RAM rental rates to help stimulate priority projects at the Implementation Project's discretion. For example, the buffer totals 20 acres where the County rental rate is \$54/acre (20 acres x (\$54 + \$10(optional)) x 15 years = \$19,200).
8. Property enrolled into a riparian buffer can be hayed once annually between June 15 and August 31 leaving a minimum of 4"-6" of stubble height.
9. Payment of Section 319 funds will be made to the landowner in one lump sum on the date of closing.

10. The landowner will be required to follow a conservation plan approved by the local project sponsor for the tract of land enrolled in the buffer.
11. The landowner will be assessed penalties by the project sponsor if the landowner is found to be not following the conservation plan for the land under contract.
12. If the project needs match, they can reduce the Section 319 payment to 75%, 60%, etc. The reduction would be eligible as match.
13. The project sponsor will be responsible for annual inspection of the land buffered using only Section 319 funds. If the project sponsor finds that the landowner is not following the conservation plan, they will take appropriate action.
14. The project sponsor must submit a map displaying the area to be included in the RAM agreement.
15. The project sponsor should record the signed agreement and a copy of the aerial photo showing the location with the Register of Deeds in the County. That way there is a record on file and also if there is a change in ownership the new owner is aware there is a restriction on the land use.

# Conservation Easement Program

Conservation easements will be used to restrict or exclude livestock grazing and other farming practices in the riparian areas.

## PROGRAM CRITERIA:

1. Land offered must be adjacent to impaired stream segments.
2. Conservation easements may be held by: Northern Prairies Land Trust, South Dakota Agricultural Land Trust
3. The land offered must currently be used as grazing land for livestock or must currently be cropped up to the stream bank. Land which is currently maintained as a riparian area will be considered a lower priority.
4. Easements will be held for a minimum of thirty (30) years or perpetually (permanent).
5. Easements can be placed on land currently under a USDA Continuous CRP contract.
6. Riparian buffers developed by the easement will be a minimum of seventy-five (75) feet and a maximum of one hundred-twenty (120) feet from the stream bank or the 100-year floodplain.
7. A high accuracy GPS survey of the buffer is required to calculate the acres enrolled.
8. The landowners will be required to follow a conservation plan which will be provided by project sponsor. The conservation plan will outline management of land included in the easement. Maintenance of the vegetation will be required.
9. The payment schedule: Final Payments are based on both the length of the easement and whether there are any other US Department of Agriculture programs, as shown by the following table.

Duration	Time left on USDA contract (if applicable)	Percentage of Wetland Reserve Program (WRP) Geographic Area Rate Cap (GARC)
30 year	0	75
30 year	< 5 years	70
30 year	5-10 years	65
30 year	> 10 years	60
Perpetual	0	100
Perpetual	< 5 years	95
Perpetual	5-10 years	90
Perpetual	> 10 years	85

# Seasonal Riparian Area Management (SRAM)

SRAM is intended to manage livestock impacts in the floodplain along impaired streams. Rules for enrolment into the SRAM are as follows.

## Requirements:

1. Ground must be immediately adjacent to a stream and within 1 mile of a stream impaired by *E. coli* or TSS according to the SD Integrated Report within the last 4 years.
2. Ground must show influence of being grazed in the last 3 years or ability to be grazed at the time of review by the Project (fences are able to contain livestock).
3. If the above conditions are not met, the ground is not eligible for the program unless justification is provided to the DANR project officer and DANR agree to allow an exemption of a requirement.
4. Minimum buffer width of 30 feet from the ordinary high-water mark.
5. Maximum average buffer width of 120 feet unless the flood plain surpasses 120 feet.
6. Livestock shall be excluded from the ground from April 1 through September 30 every year during the life of the contract.
7. If livestock are present from October 1 through March 31, alternative water shall be available at least 100 feet away from the stream.
8. Noxious weed control will be conducted at the landowner's expense.
9. Vegetative spot checks to verify program compliance will be conducted at various times throughout the year on land enrolled in the program. A minimum vegetative stand of 4 -6 inches shall be maintained.
10. Must agree to enroll ground in either 10- or 15-years contracts.
11. All hay bales shall be removed from enrolled areas no later than November 15 each year.
12. Structures shall be removed, and equipment is not to be stored in enrolled areas.
13. Haying is allowed after June 15th of each year and can be utilized as the landowner sees fit. If SRAM pasture is hayed two times in the same year, there shall be no grazing allowed from October 1 through April 1 of the next year.
14. A site evaluation shall be conducted once a year for the first two years and periodically thereafter throughout the life of the contract. (Appendix G).
15. The landowner will be required to follow a conservation plan approved by the local project sponsor for the tract of land enrolled in SRAM.
16. The project sponsor shall submit a map displaying the area to be included in the SRAM agreement.

Project payments to Producers:

1. Payment rates are to be based on the USDA “Pasture Cash Rent Paid Per Acre for South Dakota” publications. The rate can be 120% of the county rate across the Project. A link to the current county rates is at:

<https://www.nass.usda.gov>

2. One of these two optional payment procedures must be followed throughout the life of a Project Implementation Plan. When one option is chosen, the Project must continue with that option unless DANR agree to a change with the Project.
  - a. A one-time upfront payment determined in section 1 above per acre for ground within the floodplain or within 120 feet of a stream. This option includes cost-share of alternative water at 75% maximum cost and fence materials excluding livestock from enrolled pasture at 100% cost share.
  - b. A onetime upfront payment determined in section 1 above + \$10 per acre for ground within the floodplain or within 120 feet of a stream. This option excludes any additional funding for fence or water.
3. If SRF NPS funds are being utilized to secure SRAM acres, an additional bonus per acre can be given based on proximity to the municipality that took out the loan with permission from the municipality and DANR. The maximum funding allowed with the addition of this bonus is 200% of the USDA county rate.
4. Additional land outside of the 100-year floodplain immediately adjoining the eligible acres offered may be eligible and paid 50% of the per acre rate to square up field boundaries. These acres shall only equal a maximum of 50% of the total acres offered.
5. Ground not adjacent to an *E. coli* or TSS impaired stream can be funded at 85% of the county rate if it is located on a priority map and is a “named” stream or at 75% of the set payment rate if it is an “unnamed” stream.
6. Trees and fabric can be cost shared at 75% up to \$10,000 and 50% from \$10,000 to \$20,000.
7. Repair of ground damaged by livestock grazing can be cost shared at 75%.

Link to Big Sioux River Project:

<https://www.bigsiouxriver.com>

# Cropland BMPs

Cropland BMPs must be in a priority area to receive 319 funding consideration. Some practices available for cost share are:

- Grassed waterways (NRCS conservation practice code:412)
  - A shaped or graded channel that is established with suitable vegetation to convey surface water at a nonerosive velocity using a broad and shallow cross section to a stable outlet.
  - Used to convey runoff from terraces, diversions, or other water concentrations without causing erosion or flooding.
  - Used to prevent gully formations and protect/improve water quality.
- Terrace restoration (NRCS conservation practice code:600)
  - An earth embankment or a combination ridge and channel, constructed across the field slope.
  - Used to reduce erosion, trap sediment, and manage runoff.
- Filter Strips (NRCS conservation practice code:393)
  - A strip or area of herbaceous vegetation that removes contaminants from overland flow.
  - Used to reduce suspended solids and associated contaminants in runoff and excessive sediment in surface waters.
- Cover crops (NRCS conservation practice code:340)
  - Grasses, legumes, and forbs planted for seasonal vegetative cover.
  - Used to reduce erosion from wind and water.
  - Maintain or increase soil health and organic matter content
  - Improve water quality by utilizing excessive soil nutrients.
  - Improve soil moisture use efficiency.

# Urban BMPs

Urban BMPs can benefit an implementation project's goal when urban areas are adjacent to nonsupporting waterbodies. Any requirements of a MS4 permitted entity are not fundable by a Section 319 implementation project, but other practices are still fundable. Some practices available for funding include:

- Rain gardens or swales
  - Landscaped depressions that treat on-site stormwater discharge from impervious surfaces
  - Used to collect stormwater and filter through a mixture of soil, sand and/or gravel.
- Stormwater retention ponds
  - Basins that retain stormwater to allow particles and pollutants to settle and reduce peak flow rates.
- Wetland creation
- Urban buffers
- Bank stabilization

Other demonstration projects can be funded with approval from DANR.

# Soil Health

Soil health is defined as the continued capacity of soil to function as a vital living ecosystem that sustains plants, animals, and humans. Healthy soil gives us clean air and water, bountiful crops and forests, productive grazing lands, diverse wildlife, and beautiful landscapes. Soil does all this by performing five essential functions:

- Regulating water
  - Soil helps control where rain, snowmelt, and irrigation water go. Water flows over the land or into and through the soil
- Sustaining plant and animal life
  - The diversity and productivity of living things depends on soil
- Filtering and buffering potential pollutants
  - The minerals and microbes in soil are responsible for filtering, buffering, degrading, immobilizing, and detoxifying organic and inorganic materials, including industrial and municipal by-products and atmospheric deposits.
- Cycling nutrients
  - Carbon, nitrogen, phosphorus, and many other nutrients are stored, transformed, and cycled in the soil.
- Providing physical stability and support
  - Soil structure provides a medium for plant roots. Soils also provide support for human structures and protection for archeological artifacts.

Cover Crops are to be implemented as a demonstration project to producers to increase their adoption of the practice in their farming activities. Payments will be structured off the most recent South Dakota Conservation Commission docket.

<https://danr.sd.gov/Conservation/Conservation/GuidelinesPrioritiesDockets.aspx>

## Requirements:

1. The total acres cost shared may not exceed 160 acres per land operator (first time user) and for one time per land unit.
2. If located adjacent to a waterbody there must be at least a 35 foot perennially vegetated riparian buffer if livestock will be grazed on the cover crops.

## Project Payments to Producers:

1. The payment rate for cover crop practices is established for the year by the South Dakota Conservation Commission docket. The docket will be used as a basis for maximum reimbursement.
2. Payment will be for 100% of seed costs up to the Conservation Commission docket cost. Payment will occur when the seed has been planted.

## Links to soil health

<https://www.epa.gov/agriculture/agriculture-and-soils>

<https://www.nrcs.usda.gov/conservation-basics/natural-resource-concerns/soils/soil-health>

<https://www.ars.usda.gov/natural-resources-and-sustainable-agricultural-systems/soil-and-air/>

# Conflict of Interest Process

The conflict-of-interest process for all new subrecipient agreements:

- Complete risk assessment questionnaire and risk assessment scoring sheet for all subrecipients. The forms are located in Appendix H.
- Based on risk assessment and dollar amount awarded determine the type of monitoring plan to use for each subrecipient. The forms are located in Appendix H.
- Complete the pass-through entity requirements form and include as an exhibit to the grant agreement. The form is located in Appendix H.
- Include the federal conflict of interest policy as an exhibit to the grant agreement. The policy is located in Appendix H.
- In January of each year send an audit reminder letter to the subrecipient for each active project.
- The project officer assigned to each agreement will communicate at least twice with project coordinators per calendar year.

# Appendix A

## EXAMPLE AMENDMENT TO GRANT AGREEMENT

### FIRST AMENDMENT TO GRANT AGREEMENT FOR THE SOUTH CENTRAL WATERSHED IMPLEMENTATION PROJECT SEGMENT 2

FIRST AMENDMENT made and entered into between the State of South Dakota, South Dakota Department of Agriculture and Natural Resources, 523 East Capitol, Pierre, South Dakota 57501-3182, herein the “State”, and the James River Water Development District, 251 4<sup>th</sup> Street SW, Huron, South Dakota 57350, herein the “Sponsor”.

#### WITNESSETH:

WHEREAS, the State and the Sponsor made and entered into a Section 319 Grant Agreement dated August 30, 2021, (the “Grant Agreement”) for the sum of \$1,500,000 in 319 Grant funds to the Sponsor to provide for the implementation of the South Central Watershed Implementation Project Segment 2 (the “Project”) according to the terms and conditions established by the State; and,

WHEREAS, Section 14 of the Grant Agreement provides in part that, “this Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto;” and,

WHEREAS, the Sponsor has submitted a revised Project Implementation Plan dated October 1, 2022, requesting additional FFY 2022 319 Grant funds; and,

WHEREAS, the State and Sponsor mutually agree to increase the Section 319 Grant award by \$626,000 in order to complete the goals of the Project.

#### NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. That the Project Implementation Plan, original project budget and milestone table incorporated into the July 30, 2021, Grant Agreement will be amended as shown in Exhibit D attached hereto and by this reference incorporated herein.
2. That Paragraph A.1. subsections c., d., e., f., g., h., and i. be amended to read as follows:

“c. Federal Award Identification Number (FAIN) 99818521; 99818522

d. Federal Award Date: July 26, 2021; July 12, 2022

e. Sub-award Period of Performance: Execution of Agreement through the 31<sup>st</sup> day of August 2025

f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: \$2,126,000

g. Total amount of federal funds obligated to the Sub-Recipient: \$2,126,000

h. Total amount of the federal award committed to the Sub-Recipient: \$2,126,000

i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: This is the second segment of a locally planned multi-year (10-15 year) effort to implement best management practices (BMPs) in the Lewis and Clark Lake watershed, Lake Andes, Geddes, Academy, and Platte Lake watersheds, impaired stretches of the Lower James River tributaries, and impaired reaches in the Vermillion River watershed. This effort is aimed at restoring water quality to meet designated beneficial uses and address TMDLs established, and to be established, for waterbodies in these watersheds.

3. That Paragraph 2 of the Grant Agreement be amended to read as follows:

“This Agreement shall be effective upon execution by all parties and will end on the 31<sup>st</sup> day of August 2025, unless sooner terminated pursuant to the terms hereof.”

4. That Paragraph 3 of the Grant Agreement be amended to read as follows:

“The Sub-Recipient agrees to use the funds to implement Best Management Practices that control nonpoint source pollution, which shall be developed in accordance with the Workplan dated July 14, 2022, attached hereto as Exhibit D, and by this reference made part hereof. No expenditures may be incurred outside of the attached Workplan without prior approval by the State or its designated agent. Eligible costs incurred prior to the effective grant award date are not eligible for reimbursement. The State and the Sub-Recipient acknowledge that all obligations under this Agreement are conditioned upon satisfactory compliance with the requirements outlined in the Workplan.

The project personnel funded through this Agreement and administration of such personnel for this portion of the Project are the responsibility of the Sub-Recipient.

Each party to this Agreement retains respective ownership of materials and equipment used in this Project which was purchased prior to the date of this Agreement. Any capital assets purchased with funds provided by this Agreement will revert to the State upon termination of this Agreement. All reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein in connection with Sub-Recipient's performance under this Agreement shall belong to and is the property of the State and will not be used in any way by the Sub-Recipient without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are developed as part of the Workplan will not be copyrighted without written approval of the State.

- A. The Sub-Recipient will undertake and complete the work or performance describes as:
1. Use an amount not to exceed \$701,000 of the funds provided under this Grant Agreement for salaries and administration of the project to carry out activities described in Exhibit D.
  2. Submit to the State, at least quarterly, the documentation for nonfederal cost share expenditures incurred while completing the activities described in Exhibit D.
  3. Submit to the State semi-annual reports in accordance with the Project Workplan (Exhibit D)
  4. Submit to the State a comprehensive final report describing all activities related to the Project by August 1, 2025. The report will contain an evaluation of the Project relative to attainment of Project goals and objectives as stated in the Project Workplan. The report will also contain a summary of Project expenditures and documentation of eligible match in the amount of at least \$1,417,333.
  5. Submit to the State, not more than monthly, a request for reimbursement for all eligible cost incurred while completing the activities described in Exhibit D. The Sub-Recipient will provide documentation with each request for eligible costs incurred. Requests for reimbursement should be submitted within 10 days following the end of the period covered by the request to insure timely reimbursement. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service or material for which the payment is sought. Sub-Recipient will not use funds provided pursuant to this Grant Agreement for out-of-state travel, out-of-state legal fees, or out-of-state consultant fees without prior approval by the State or its designated agent.
  6. Perform the activities, labor, and services required of the Sub-Recipient as describe in Exhibit D and submit project updates and data

monthly. All out-of-state travel must be approved by the State in writing prior to the travel occurring.

7. Submit all changes which would alter the purpose, scope, or the functional layout of the Project shall be submitted to the State for approval and no such changes or modifications may be made without prior approval in writing by the State. It is agreed that the Sub-Recipient will not substantially depart from the description of the Project as set forth in Exhibit D without prior written approval of the State.
8. Ensure that all land surveys will be conducted by a land surveyor registered in the State of South Dakota, and the final plans and specifications will be prepared under the supervision of a professional architect or engineer licensed and registered in the State of South Dakota. All construction will be done in accordance with the plans and specifications on file with the State, and all changes made in those plans and specifications will be filed with the State. The Sub-Recipient will maintain an "as built" set of plans and specifications and an acceptance certificate completed by the architect or engineer in charge of the Project at its principal place of business.
9. Provide the State with its Minority Business Enterprise/Woman Business Enterprise Status (MBE/WBE) as well as the status and agreement amount of all sub-grantees.

- B. The State agrees to be responsible for the administration of the EPA Grants awarded to the State by the US EPA and will be responsible for the following:
1. Process reimbursement requests for federal funds submitted by the Sub-Recipient in a timely and efficient manner. Payment for travel and per diem will be at state rates. Reimburse the Sub-Recipient for eligible project costs incurred from EPA Grant funds up to \$2,126,000.
  2. Provide oversight, review, and approval of semi-annual, annual, and final reports and submit those reports to the US EPA as required.
  3. Provide technical assistance to the Sub-Recipient on matters pertaining to water quality.
  4. Perform the activities, labor and services required of the State as described in Exhibit D.

Administer the EPA Grants for the Project as described herein. The State will reserve \$63,780, or an amount equal to three percent of the amount as stated in Section 3(B)(1), whichever is greater, pending successful compliance with all provisions of Section 3(A) hereof by the Sub-Recipient."

5. That Paragraph 4 of the Grant Agreement be amended to read as follows:

"This grant is made for the purpose of conducting the South Central Watershed Implementation Project Segment 2 for project administration and cost share

assistance for installation of Best Management Practices that control nonpoint source pollution as described in the workplan.

Amount provided by State/Grantor is	\$ 2,126,000
Amount matched by Sub-Recipient	\$10,642,000
Other Federal Funds	\$ 5,887,340
Total Agreement Amount	\$18,655,340”

6. That Paragraph 9.d of the Grant Agreement be amended to read as follows:

“d. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service for which the payment is sought. No funds will be disbursed until all fees owed by the Sub-Recipient to the Department of Agriculture and Natural Resources are paid.”

7. That Paragraph 24 of the Grant Agreement be amended to read as follows:

“The Sub-Recipient is required to submit a W-9 form with the “Required Direct Deposit Information” completed which will authorize the State of South Dakota to make electronic payments by direct deposit and provide electronic payment notification to the Sub-Recipient. This form can be downloaded directly from [https://bfm.sd.gov/vendor/Substitute\\_W-9\\_SD.pdf](https://bfm.sd.gov/vendor/Substitute_W-9_SD.pdf). The Sub-Recipient must fax the completed form to (605) 773-4068, or scan and email to [DANRMail@state.sd.us](mailto:DANRMail@state.sd.us) with “Attn: Fiscal Office” in the subject line, or mail to:

DANR Fiscal Office  
523 East Capitol Avenue  
Pierre, SD 57501-3182”

8. This First Amendment is expressly identified as a part of the Agreement.
9. That except as specifically amended hereby, the terms and conditions of the August 30, 2021, Grant Agreement shall continue in full force and effect according to the tenor thereof.

IN WITNESS WHEREOF, the parties signify their agreement effective the date first written by the signatures affixed below.

**SPONSOR**

By: \_\_\_\_\_  
Mike Weiss, Chairman  
James River Water  
Development District

\_\_\_\_\_  
(Date)

**STATE OF SOUTH DAKOTA**

By: \_\_\_\_\_  
Hunter Roberts, Secretary  
Department of Agriculture  
and Natural Resources

\_\_\_\_\_  
(Date)

# Appendix B

## GUIDELINES FOR 319 ONLY FUNDED FEEDLOTS

1. Engineers are required to follow the NRCS Practice Standards.
2. Using Engineers certified according to NRCS Standards as Technical Service Providers (TSP) is encouraged but not required.
3. A pre-design meeting checklist must be signed and sent to Jeremy Schelhaas.
4. All completed designs not done by a TSP will be reviewed and signed off on by Jeremy Schelhaas prior to any construction activities.
5. All systems must develop and follow a nutrient management plan. All plans not developed by the animal waste planning team (John Lentz, NRCS) or TSP must be reviewed by Jeremy Schelhaas prior to construction.
6. A pre-construction checklist must be signed and sent to Jeremy Schelhaas. Note: All systems must be constructed as designed and if the feedlot is being relocated the existing facility must be abandoned and reclaimed.
7. Copies of all designs and nutrient management plans (in 319 project areas) will be provided to Jeremy Schelhaas.
8. A Notice of Completion Form must be signed by the local sponsor, engineer, and contractor with a copy sent to Jeremy Schelhaas.
9. 5% of the projects designed by a TSP will be spot checked.
10. This document will be included as part of all feedlot contracts.

**South Dakota (SD)**  
**Department of Agriculture & Natural Resources (DANR)**  
**Pre-design Meeting Checklist**

The 319 Implementation project contract participant (producer), Project Coordinator, and Technical Service Provider (TSP) engineer must be in attendance for this meeting. Check the following items as they are completed and discussed. All of the meeting participants should sign and date at the bottom of this form. (Note: All forms, documents, spreadsheets, etc. that are referenced throughout this checklist can be found on the South Dakota NRCS Website.

- Authorization for Release of Information to TSP** – The *Authorization for Release of Information to TSP* form must be filled out and signed if it has not already been completed.
- National Environmental Policy Act (NEPA)** – All issues should be discussed regarding possible *NEPA* issues for the project including, but not limited to, wetland compliance, cultural resources, and Threatened and Endangered species requirements. Discuss the proposed location of any conservation practices with the producer, TSP, and the Coordinator. Any changes to the proposed location of planned conservation practices should be discussed by the producer, TSP, and the coordinator prior to construction.
- Review of Preliminary Feasibility Report** – Review the preliminary feasibility report and the different options presented within the report.
- Roles and Responsibilities** - Review the *Roles and Responsibilities for Engineering Technical Assistance to USDA Program Participants (Source 3)*, TSP using *Technical Assistance funds in USDA Program Contract* document with the producer, TSP Engineer, and the Coordinator.
- Review the Statements of Work (SOW)** – Review the SOW for each conservation *practice* for the project. Discuss that the TSP must provide all items included within the SOW. Ensure that the SOWs are the current version.
- Review the Current NRCS Conservation Practice Standards (CPSs)** -Discuss which NRCS CPSs will be used for the project. Ensure that the TSP has the current version of these standards.
- SD One-Call** - SD Codified Law 49-7A, (also known as SD One-Call) requires that no excavator may begin any excavation without first notifying the One-Call Notification Center of the proposed excavation (Phone: 1-800-781-7474). Ensure that this requirement has been completed. NOTE: Subsurface investigations for the project design are considered excavations.

**Zoning Requirements** – Review the county zoning requirements that need to be addressed for the project. Zoning requirements may include, but are not limited to:

- Obtaining a zoning permit
- Engineering design criteria
- Setback requirements
- Nutrient Management and manure hauling restrictions
- Requiring a SD Department of Agriculture and Natural Resources (DANR) General Water Pollution Control Permit for Concentrated Animal Feeding Operations

**Permit Requirements** – Discuss other possible required permits that are applicable including, but not limited to:

- Storm Water Discharge (SWD) General Permit for SWDs Associated with Industrial or Construction Activities
- SD DANR General Water Pollution Control Permit for Concentrated Animal Feeding Operations
- Clean Water Act Section 10 or 404 Permits from the United States Army Corps of Engineers
- Wetland Easements -SD DANR Water Rights Permits
- County Drainage Commissions
- SD DANR Safety of Dam Requirements

**Nutrient Management Plan (NMP)** – Determine whether the TSP or the NRCS will develop the NMP. Discuss preliminary acreage requirements, zoning requirements, and gather information to develop the NMP. Discuss the NMP record keeping requirements with the producer. Check who will complete the NMP:

- NRCS
- TSP

By signing, I accept that the entity checked above will complete the NMP:

\_\_\_\_\_  
TSP Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Producer Signature

\_\_\_\_\_  
Date

- 319 Project Contract** – The following items should be discussed and understood by the producer, TSP Engineer, and the Coordinator.
  - Practice Payment Schedule – Discuss the practice payment system.
  - TSP Technical Service Payment Reimbursement – It is the producer’s responsibility to hire and pay the TSP. The 319 Project will reimburse the producer based on the rate for the practices that are included in the 319 Project contract for design, installation, and check-out. The producer will not be reimbursed for work that is completed prior to the approval of the 319 Project contract (i.e., if the design is complete prior to the start of the 319 contract). The TSP and/or producer must be in communication with the 319 Project Coordinator and notify the 319 Project Coordinator prior to beginning the design, installation, or check-out of any of the conservation practices for the project. Proper documentation of the billed amounts by the TSP is required for the 319 Project Coordinator to process reimbursement requests.
  - Construction Risk – The producer, TSP, and the 319 Project Coordinator must discuss the possibility of construction problems associated with the proposed project. An example of a construction problem is unsuitable soils to complete a compacted clay liner. Difficulties during construction may arise, which could result in substantial changes to the project that may far exceed the original cost estimates. The producer will be responsible for at least 50% of costs associated with the construction changes and the additional TSP fees that may result. The producer will be responsible for all cost after the max cost share is reached.
- TSP Expectations** – Discuss the expectations that the producer and the 319 Project Coordinator expects from the TSP for the project. This includes, but is not limited to, expected timeframe for design completion, billing procedures from the TSP, amount of inspection provided during construction, amount of inspection when problems arise during construction, etc.
- Typical Design Issues for Animal Waste Projects** – In order to avoid some reoccurring design errors and omissions for TSP designed projects, discuss the fact that all practices must be designed according to the NRCS CPSs. The documentation must be provided that is required within the SOW for each practice and NRCS South Dakota Engineering Documentation and Spot-Checking Manual.
- Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362) CPSs** – As part of the Waste Storage Facility (313) CPS, the fencing, seeding, sediment basins, and diversions are required to be completed using the Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362) NRCS CPSs. The TSP is responsible for the design, installation, check-out, and certifying the Waste Storage Facility (313). The TSP is also responsible for certifying any Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362).

**Construction** – Discuss Selecting a Contractor.

**By signing below, I attended, discussed, and understand my responsibilities that were discussed during this pre-design meeting:**

\_\_\_\_\_  
Technical Service Provider Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
319 Project Coordinator Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
319 Implementation Project Participant

\_\_\_\_\_  
Date

**South Dakota (SD)**  
**Department of Agriculture and Natural Resources (DANR)**  
**Preconstruction Meeting Checklist**

**Items that must be completed and provided by the Technical Service Provider (TSP) before this meeting can move forward:**

- The TSP must provide all items in the Design portion of the Statements of Work (SOW) for each practice for the project. A complete copy is to be provided to the 319 Project Coordinator.
- Documentation must be shown that all appropriate permits have been obtained that are required for construction.

The Section 319 project contract participant (producer), 319 Project Coordinator, TSP engineer, and contractor must be in attendance for this meeting. Check the following items as they are completed/discussed. All of the meeting participants should sign and date at the bottom of this form. (Note: All forms, documents, spreadsheets, etc., that are referenced throughout this checklist can be found on the South Dakota NRCS Website.

- National Environmental Policy Act (NEPA)** – All issues should be discussed regarding possible NEPA issues for the project including, but not limited to, wetland compliance, cultural resources, and threatened and endangered species requirements. The designed location of the conservation practices should be approved by all parties. Any possible changes to the designed location of conservation practices should be discussed and approved by the producer, TSP engineer, and the 319 Project Coordinator prior to construction. Avoidance of problem areas is always the best course of action.
- Review of Preliminary Feasibility Report** – Review the preliminary feasibility report and the different options presented within the report. Ensure that any options that were listed as possible problem areas have been appropriately addressed within the design (i.e., have possible problem areas been avoided or addressed by appropriate engineering methods).
- Roles and Responsibilities** - Review the *Roles and Responsibilities for Engineering Technical Assistance to USDA Program Participants (Source 3)*, TSP using Technical Assistance funds in USDA Program Contract document with the producer, TSP engineer, and the 319 Project Coordinator. Pay close attention to how the contractor fits into each of the roles and responsibilities.
- Review the Statements of Work** – Review the SOW for each conservation practice for the project. Discuss that the TSP must provide all items included

within the SOW. Discuss the requirements for installation and check-out for each of the conservation practices for the project.

- Review the Current NRCS Conservation Practice Standards (CPS)** - Discuss which NRCS CPSs will be used for the project. Ensure that the TSP has the current version of these standards.
- SD One-Call** – The SD Codified Law 49-7A, (also know as SD One-Call) requires that no excavator may begin any excavation without first notifying the One-Call Notification Center of the proposed excavation (phone: 1-800-781-7474). Ensure that this requirement has been completed.
- Zoning Requirements** – Review that all county zoning permits and/or requirements that need to be addressed for the project have been obtained.
- Permit requirements** – Ensure that all applicable permits have been obtained that are required for construction. These permits may include, but are not limited to:
  - Storm Water Discharge (SWD) General Permit for SWD Associated with Industrial or Construction Activities
  - SD Department of Agriculture and Natural Resources (DANR) General Water Pollution Control Permit for Concentrated Animal Feeding Operations
  - Clean Water Act Section 10 or 404 Permits from the United States Army Corps of Engineers
  - Wetland Easements
  - SD DANR Water Rights Permits
  - County drainage commissions
  - SD DANR Safety of Dam Requirements
- Nutrient Management Plan** – Discuss the status of the Nutrient Management Plan.
- 319 Project Contract** – The following items should be discussed and understood by the producer, TSP, and 319 Project Coordinator.
  - Practice Payment Schedule – Discuss the practice payment system.
  - Review 319 contract items and the final design to ensure that the 319 contract reflects the proposed construction. If the contract does not reflect the final design, the 319 Project Coordinator will promptly modify the contract with these new practices/practice extents if the change is within policy and funding is available.
  - Contract Modifications – At any point when the practices or practice extents change for the project, the TSP must immediately provide the 319 Project Coordinator a change order prior to any construction activity associated with the change. The 319 Project Coordinator will promptly modify the contract with these new practices/practice extents if the change is within policy and

funding is available.

- TSP Technical Service Payment Reimbursement – It is the producer’s responsibility to hire and pay the TSP. If funding is written in the contract, the 319 program will reimburse the producer based on the rate for the practices that are included in the 319 contracts for completed design, installation, and check-out. The producer will not be reimbursed for work that is completed prior to the approval of the 319 contracts (i.e., if the design is complete prior to the start of the 319 contract). The TSP and/or producer must be in communication with the 319 Project Coordinator and notify the 319 Project Coordinator prior to beginning the design, installation, or check-out of any of the conservation practices for the project. Proper documentation of the billed amounts by the TSP is required for the 319 Project Coordinator to process reimbursement requests.
  
- Construction Risk – The producer, TSP, and the 319 Project Coordinator must discuss the possibility of construction problems associated with the proposed project. An example of a construction problem is unsuitable soils to complete a compacted clay liner. Difficulties during construction may arise, which could result in substantial changes to the project that may far exceed the original cost estimates. The producer will be responsible for at least 25% of costs associated with the construction changes and the additional TSP fees that may result. The producer will be responsible for all cost after the max cost share is reached.

**TSP Expectations** – Discuss the expectations that the producer and the 319 Project Coordinator expects from the TSP during the construction of the project. This includes, but is not limited to, expected timeframe for project certification, billing procedures from the TSP, amount of inspection provided during construction, amount of inspection when problems arise during construction, etc.

**Typical Installation and Check-out Issues for Animal Waste Projects** – In order to avoid some reoccurring installation and check-out errors and omissions for TSP projects, discuss the fact that all installation and check-out documentation that is required in the SOW must be provided for each conservation practice and the NRCS SD Engineering Documentation and Spot-Checking Manual.

**Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362) Practices** – As part of the Waste Storage Facility (313) CPS, the fencing, seeding, sediment basins, and diversions are required to be completed using the Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362) NRCS CPSs. The TSP is responsible for the design,

installation, check-out, and certifying the Waste Storage Facility (313). The TSP is also responsible for certifying any Critical Area Planting (342), Fence (382), Sediment Basin (350), and Diversion (362) conservation practices that are part of the project. If the construction of any of these conservation practices (i.e., seeding or fencing) is to be completed by the producer, the producer must understand that they will not receive 319 payments until these practices are constructed and certified by the TSP.

- Construction** – Review the following:
  - Identify the probable construction timeline of the project
  - Review the construction inspection plan
  - Review the seeding plan and discuss how the approved seeding dates synchronize with the proposed construction timeline
  - Discuss who will be seeding and fencing the project, and the fact that the fencing and seeding for the project must be completed according to SD NRCS CPS prior to certification of the whole project
  - Discuss all other items that should be brought to all party’s attention prior to the construction of the project

- Warranty of Technical Services Provided Form** – Ensure that the TSP has a copy of the *Warranty of Technical Services Provided Form* to use to certify the completion of the conservation practices for the project.

**By signing below, I attended, discussed, and understand my responsibilities that were discussed during this pre-construction meeting:**

\_\_\_\_\_  
Technical Service Provider Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
319 Project Coordinator

\_\_\_\_\_  
Date

\_\_\_\_\_  
319 Implementation Project Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Construction Contractor

\_\_\_\_\_  
Date

# Appendix C

## CULTURAL RESOURCES EFFECTS ASSESSMENT SUMMARY FOR 319 PROJECTS

Applicant \_\_\_\_\_ Project Contact \_\_\_\_\_  
Address \_\_\_\_\_ Telephone Number \_\_\_\_\_

Legal Location of Project \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ Project No. \_\_\_\_\_

Project Description \_\_\_\_\_

For projects that involve new construction on vacant land please include information as to what previously occupied the site and whether that site has any known historic or archaeological significance. \_\_\_\_\_

Please describe below or attach information supporting the determination of effect. \_\_\_\_\_

A map showing the project location is required. Drawings or photographs may also be helpful.

Please indicate the effect the project will have on cultural resources based on the review performed:

\_\_\_\_\_ No Historic Properties Affected: There are no historic properties present or the undertaking will not affect any properties eligible for or listed in the National Register of Historic Preservation.

\_\_\_\_\_ No Adverse Effect: This property is listed in or eligible for the National Register of Historic Places. This project will have no adverse effect upon the historic significance of the property because the proposed undertaking meets the Secretary of the Interior's Standards for the Treatment of Historic Properties.

\_\_\_\_\_ Adverse Effect: This property is listed in or eligible for eligible for the National Register of Historic Places. This project will have an adverse effect upon the historic significance of the property. (Attach proposed mitigation measures that may minimize the adverse effect.)

Prepared by: \_\_\_\_\_ Date \_\_\_\_\_

### **DETERMINATION OF EFFECTS**

I have reviewed the project description and the information provided concerning historical and cultural effects of this project. Based on that review, the Department of Agriculture and Natural Resources concurs with the applicant's determination of the effects that the construction of this project will have on historical or cultural resources.

Additionally, if historical or cultural resources are discovered during project construction, the contractor is required to cease construction and notify the State Historical Preservation Officer.

Approved by: \_\_\_\_\_ Date \_\_\_\_\_  
SD Department of Agriculture and Natural Resources

# Appendix D

## **State of South Dakota Bid Requirements**

Advertisement for bids must be published in the newspaper at least twice prior to opening of bids. The first publication has to be in the entity's official newspaper; however, the second publication can be in any other newspaper in the state. (SDCL 5-18-3) (AGR 85-24)

The first publication must be made at least 10 days prior to the date for the opening of bids. (SDCL 5-18-3)

The advertisement shall state the time and place where bids will be opened and contain a notice that the board reserves the right to reject any and all bids. The advertisement shall appear as a legal notice in the appointed legal newspaper. (SDCL 5-18-3) If the entity has no official newspaper, the notice for bids is to be published in a legal newspaper with a general circulation in the entity's area. (SDCL 5-18-3)

Local governments may also participate in the centralized bid exchange. Bid specifications are provided to the exchange by local governments. The bid exchange then makes these bid requirements available to the vendors participating in the exchange. If an entity lists a bid on the centralized bid exchange, the second bid publication required by SDCL 5-18-3 is not required. (SDCL 5-18-1.1, 5-18-3)

### Opening of Bids

The sealed bids must be publicly opened and read orally at the time and place specified in the bid advertisement. While most bids are opened at regular or special board meetings, they may be opened at a different time and place as specified in the bid advertisement. The entity, by authorization in the bid specs, may set an alternate date and time for the opening of bids. However, no authority exists to postpone the date on which bids must be received. Only those bids received by the original date are permitted to be opened. (SDCL 5-18-8) (AGR 85-24) (AGR 72-77)

Since statute only allows for "sealed" bids to be submitted, a vendor may not FAX a bid directly to the entity. All bids should be spread in the minutes by vendor and amount unless the volume of bidders or items bid makes publication prohibitive. Then only the successful bidder needs to be published with a reference that all other bids are on file.

### Tabling of Bids

Not more than 30 days can elapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all bids presented. (SDCL 5-18-7, 7-25-9) (AGR 1959-60, p. 380; AGR 72-77)

### Withdrawal and Modification of Bids

Any bid may be withdrawn by letter, in person, by FAX or by telegraphic communication. Any bid may be modified by mail, FAX or by telegraphic communication provided such notice is received no later than the time set for the opening of bids. The telegraphic communication or FAX cannot reveal the bid price but only the addition or subtraction to the bid price. A telegraphic communication or FAX may not be withdrawn after the opening of the bid and all FAX and telegraphic communications must be confirmed in writing before the awarding of the contract. (SDCL 5-18-8)

The discovery of a computational error in the low bid after its acceptance by the governing board does not authorize additional payment by the governing board. (AGR 75-120) No bid can be changed or altered verbally by telephone. (SDCL 5-18-8)

### Lowest Responsible Bid

Existing statute requires the acceptance of the lowest responsible bid in all cases. (SDCL 5-18-2)

The attorney general has stated that financial responsibility, judgment, skill, ability, capacity, and integrity of the bidders are to be considered in selecting the lowest responsible bidder. (AGR 1953-54, p. 21; AGR 1955-56, p. 78)

In the event total cost bidding is a part of the bidding procedure, the attorney general has stated that the time use of money has to be considered as a part of the bid. To consider the time use of money, an interest rate must be specified in the bid notice. This interest rate is then used to put each of the conditions of the contract (guaranteed repairs, maintenance and repurchase price) into a present value so that each of the bids may then be made comparable. (AGR 86-01)

If two bids are submitted that are equal in dollar amount, the board may consider additional attributes in determining the lowest responsible bidder. Some of the additional attributes to be considered are: 1) the bidder's ability to respond to the requirements of the contract, 2) his ability to execute the contract, and 3) his integrity, judgment and skill.

### Rejection of Bids

The governing board has the right to reject any and all bids if they feel the bids are not satisfactory or if they believe an agreement has been entered into to prevent competition. (SDCL 5-18-2)

Notwithstanding the provisions of SDCL 5-18-2, the board of township supervisors may reject a bid as unsatisfactory on the basis that the bid was the only bid received and may readvertise for bids.

In the event the low bid is not responsible, or the bid is withdrawn, the bid of the next lowest bidder may be accepted. (SDCL 5-18-9)

### Awarding of Bids

All contracts, whether for the construction of public improvements or contracts for the purchase, lease, or rental of materials, supplies or equipment, must be let to the lowest responsible bidder. (SDCL 5-18-2, 11, 5-18-9)

If the lowest responsible bid exceeds the final estimated project cost by ten percent or less, any local government may negotiate with the low bidder for the construction of a public improvement or for the purchase of the materials, supplies or equipment at the most advantageous price. (SDCL 5-18-9)

If other than the lowest bid is accepted, the board minutes must clearly document the reasons why the lowest bid was not accepted. (AGR 1955-56, p. 286)

A public body cannot reject the low bidder and accept another if the low bid is in conformance with the specifications, follows SDCL 5-18 and the low bidder is responsible. (AGR 91-10)

When purchasing from the bid of another entity, the second government entity may purchase an alternative model item from the low bidder as long as the item purchased from the lowest responsible bidder contains no material variance from the original specifications. (AGR 94-08)

# Appendix E

## Example Producer Contract for Receiving EPA 319 Cost Share funds

This agreement is made and entered into between the Randall Resource Conservation and Development Association Inc., P O Box 247 Lake Andes, SD 57356 (Hereafter referred to as "RC&D") (the project sponsor) and the below named landowner/operator (Hereafter referred to as "Owner") for the purpose of receiving cost share funds for the implementation of conservation practices as listed in the attached Conservation Plan Schedule of Operations.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### CONDITIONS OF CONTRACT

Funds not to exceed \_\_\_\_\_ at \_\_\_\_% cost share of actual costs will be dispersed to the above-named Owner when the attached listed conservation practices have been implemented according to the Conservation Plan and field checked by RC&D representatives, Conservation District or NRCS personnel and approved for payment by RC&D.

BMPs to be implemented:

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It is agreed the Owner will provide to the Local Conservation District (CD) copies of receipts and invoices for all labor and materials used to implement the conservation practice(s) being cost shared.

Cost shares for implemented conservation practices are from the Corsica Lake Watershed 319 Program Cost List or other agency cost lists for certain practices and specified in the Conservation Plan/Schedule of Operations.

Cost share amounts for implemented conservation practices paid for by this contact will not exceed 75%. Cost share for implementing the practices are not to exceed the appropriate percentage of the unit cost as specified on the appropriate fiscal year Program Cost List. If actual costs are less than the unit cost, the 75% cost share rate will be based on the actual conservation practice costs accrued by the Owner.

It is agreed that all Best Management Practices (BMPs) implemented through this contract shall be maintained by the Owner based upon conservation practice life spans in Section 515.143 of the NRCS EQIP Manual or as specified in the conservation

plan/schedule of operations. It is agreed by the Owner to operate and maintain the BMPs under this contract according to the South Dakota Natural Resources Conservation Service (SDNRCS) Technical Guide Practice Standards and operation and maintenance plans and/or the South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations.

It is mutually agreed that in the event the BMPs are not properly implemented or maintained for the required period, the Owner agrees to repay RC&D all cost share monies disbursed to the Owner for the contracted BMPs. Any alteration or changes in components will be allowed only after consultation with the South Dakota Department of Agriculture and Natural Resources.

This contract can be modified by mutual agreement between the RC&D and the above-named Owner if the installed practice fails or deteriorates because of conditions beyond the control of the participants, if the installed practice causes adverse impacts to significant cultural or environmental resources identified prior or those discovered during the practice installation, or if another practice will achieve at least the same level of environmental benefits. Changes to this contract may also require the concurrence of the South Dakota Department of Agriculture and Natural Resources (SDDANR). The RC&D watershed coordinator should be contacted before any changes to this contract are initiated. A modified contract will be sent to all participating parties who will have ten days to approve or reject such changes.

In the event ownership of lands covered by this contract changes, maintenance of cost shared conservation practices must be continued as specified by this contract with the new owner or operator. It is further understood by both parties to this Contract/Letter of Agreement that in the case of the property on which the conservation practice has been built is sold or leased, the Owner will remain responsible unless otherwise agreed by the parties hereto. Failure to adhere will require all cost share monies to be refunded by the Owner.

The terms of this contract shall commence on \_\_\_\_\_ and end on \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated below.

Authorized Representative (Randall Resource Conservation & Development Association Inc.) Date

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Landowner/Operator

Date

# Appendix F

## Agreement for Reclaiming an Abandoned Animal Feeding Operation

In order to improve water quality, the abandoned feedlot located in \_\_\_\_\_ will be reclaimed. To qualify for 319 cost share assistance, the landowner and operator of the abandoned open feedlot agrees to the following conditions:

1. At a minimum, the reclamation shall include removal of fences, pens, feed bunks and manure stockpiles.
2. The entire feedlot must have a permanent vegetative grass cover established and maintained within two years. The existing feedlot area may be hayed or grazed in a manner, which maintains adequate residual plant growth to prevent erosion or excessive runoff.
3. Routine feeding, bedding or confinement in the reclaimed feedlot area, regardless of the time frame, which allows an accumulation of nutrients subject to removal by runoff events will be considered a violation of this cost share agreement.
4. When cost share assistance is provided to reclaim an animal feeding operation (AFO), a legal agreement prohibiting the future use of the abandoned animal feeding site for that purpose must be signed by the producer. The project sponsor should also consider requiring a deed restriction or other use-limiting document be filed with the county register of deeds.

This agreement shall be in effect for a 10-year period. Failure to adhere to all the above requirements will require forfeiture and repayment of the cost share received on an equally adjusted 10-year basis (10% for each year remaining in agreement).

This agreement has been accepted by.

\_\_\_\_\_  
Watershed Coordinator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Project Sponsor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Facility Operator

\_\_\_\_\_  
Date

# Appendix G

## Seasonal Riparian Area Management (SRAM) Bi-annual Site Evaluation

Name: \_\_\_\_\_ Phone # \_\_\_\_\_ Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Farm # \_\_\_\_\_ Tract # \_\_\_\_\_ Legal Description \_\_\_\_\_ Estimated Acres \_\_\_\_\_

For the office review:

1. Review of most recent aerial photography.
  - a. Date of photography \_\_\_\_\_
  - b. Describe any points of interest (i.e. points of erosion, obstructions) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - c. Print map to attach to review and denote route to site.
  
2. Landowner Contact.
  - a. Date \_\_\_\_\_
  - b. Method \_\_\_\_\_
  - c. Current Landowner(s) Verified Name(s) and contact information.  
\_\_\_\_\_
  - d. If new landowner(s), have they been notified of O&M of Stabilization site and buffer? -Y/N
  - e. Has the landowner requested to be present during on-site review? Y/N
  - f. Follow up requested by Landowner(s)? -Y/N If Y, date followed up with  
landowner(s). \_\_\_\_\_
  - g. Confirmed route to site with landowner? -Y/N, comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - h. Landowner(s) comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For field Review:

1. Access
  - a. Is the site accessible as described in the Office Review? Y/N
  - b. If no, describe route used. \_\_\_\_\_  
\_\_\_\_\_
  - c. Is the boundary clearly marked and identifiable? Y/N If N, list actions needed. \_\_\_\_\_  
\_\_\_\_\_
  
2. Buffer (from top of bank to pasture)

- a. Is the 20ft buffer from top of bank in place? Y/N If N, what is the average width of the buffer? \_\_\_\_\_  
\_\_\_\_\_
- b. Is the buffer fenced? Y/N If Y, what is the condition of the fence? \_\_\_\_\_  
\_\_\_\_\_
- c. What is the condition of the buffer vegetation?  
\_\_\_\_\_
- d. Are there noxious plant or pest species problems that need to be addressed? Y/N If Y, describe species that are present? \_\_\_\_\_  
\_\_\_\_\_
- e. Is the minimum vegetative cover of 4-6 inches being maintained? Y/N IF N, what is the vegetation height? \_\_\_\_\_  
\_\_\_\_\_
- f. Is there evidence of livestock grazing on the enrolled acres during the deferred period? Y/N
- g. Are installed practices being properly operated & maintained according to O&M plans? Y/N If N, what areas and actions are to be addressed? \_\_\_\_\_  
\_\_\_\_\_
- h. Are planned restoration/enhancement objectives being met? Y/N If N, what actions are to be taken? \_\_\_\_\_  
\_\_\_\_\_

3. Photo Points

- a. Take pictures at established photo points
- b. Describe any concern or action items recommended: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Site comments:

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