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TO: Environmental Quality Council

FROM:  Kevin J. Stoner, Water Permits Division Administrator

THRU:  Steven M. Goans, Deputy Director – Water Division

DATE: May 3, 2016

RE: Explanatory Statement for proposed revisions to Title 131 – RULES AND REGULATIONS FOR THE WASTEWATER TREATMENT FACILITIES AND DRINKING WATER CONSTRUCTION ASSISTANCE PROGRAMS

### **EXPLANATORY STATEMENT**

The current proposal to amend Title 131, *RULES AND REGULATIONS FOR THE WASTEWATER TREATMENT FACILITIES AND DRINKING WATER CONSTRUCTION ASSISTANCE PROGRAMS*, revises the language of the existing Title 131.

Title 131 establishes procedures governing the eligibility, application, and award of State Revolving Funds for Clean Water and Drinking Water projects under the Wastewater Treatment Facilities Construction Assistance Act, Neb. Rev. Stat. §81-15,147 to §81-15,157 and the Drinking Water State Revolving Fund Act, Neb. Rev. Stat. §71-5314 to §71-5327. The regulations impact public, private, for-profit, and non-profit entities seeking funding for wastewater and drinking water projects eligible under the federal Clean Water Act and Drinking Water Act.

#### **Linked Deposit Program (LDP):**

On January 23, 2013, LB514 was introduced to Nebraska State Legislature. On February 13, 2014, LB514 was approved and signed by Governor Heineman. LB514 included an amendment to Nebraska State Statute for the ability of the Clean Water State Revolving Fund (CWSRF) to implement a Linked Deposit Program as well as allow the CWSRF to refinance debt obligation of municipalities for wastewater treatment works. An amendment to Title 131 to incorporate the refinancing debt obligation of LB514 was submitted and approved by the Environmental Quality Council on November 12, 2015.

The proposed amendments will provide the option for the CWSRF to partner with lending institutions who disburse loans to borrowers for nonpoint source projects through a Linked Deposit Program (LDP). Under a LDP, the State agrees to accept a lower rate of return on an

investment (e.g. low-yielding deposit account, certificate of deposit, or other authorized deposit) and the lending institution agrees to provide a loan to a borrower at a similarly reduced interest rate.

This LDP provides benefits for the CWSRF program, local financial institutions, and borrowers. The CWSRF program can support high priority pollution control projects, as well as broaden the number of projects assisted by the CWSRF and management responsibilities with local lenders. Financial institutions can benefit from the linked deposit agreements and provide additional service to their customers. Borrowers save money with low-interest loans and can comfortably work with their local bank or credit union.

Targeted recipients who could borrow for water quality improvements include homeowners for new septic systems or the replacement of inadequate or failing septic systems; livestock producers could be assisted with manure management plans, structures, and equipment; and land owners to address water quality improvements like sediment and nutrient control practices.

**These revisions are to accomplish the following goals:**

1. Incorporate the ability for the CWSRF to create and implement the Linked Deposit Program.
2. Correct outdated references and language found in several sections of the Title.
3. Correct minor transcription errors throughout the Title.

**Chapter and Section changes to Title 131 – *RULES AND REGULATIONS FOR THE WASTEWATER TREATMENT FACILITIES AND DRINKING WATER CONSTRUCTION ASSISTANCE PROGRAMS* for the June 2016 EQC hearing.**

**General Changes Made Throughout Title 131**

<u>Section</u>	<u>Propose change and purpose</u>
Title 131	<u>Proposed text revision.</u> Revision of “Public Water Supply System” to “Public Water System” is proposed due to comments received from Department of Health and Human Services.
Title 131	<u>Proposed text revision.</u> Revision of “loan contract” to “loan” is proposed due to elimination of possible confusion of loan contract and linked deposit loan contract and to provide consistent language for both CWSRF and DWSRF loans.

## Chapter 1

<u>Section</u>	<u>Propose change and purpose</u>
005 (p. 1-1)	<u>Proposed text removal.</u> Removal of “Council” is proposed due to term also being present in the Nebraska Revised State Statute.
008 (p. 1-1)	<u>Proposed text revision.</u> Revision of “DHHSR&L” to “DHHS” and “Regulation and Licensure” to “Division of Public Health” is proposed due to an update to DHHS’ title for Public Health.
009 (p. 1-1)	<u>Proposed text removal.</u> Removal of “Department” is proposed due to term also being present in the Nebraska Revised State Statute.
011 (p. 1-1)	<u>Proposed text removal.</u> Removal of “Director” is proposed due to term also being present in the Nebraska Revised State Statute.
012 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Eligible Financial Institution” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
015 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Account” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
016 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Borrower” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
017 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Lender Agreement” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
018 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Loan” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
019 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Loan Contract” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.
020 (p. 1-2)	<u>Proposed text addition.</u> Addition of the term “Linked Deposit Program” is proposed due to addition of Linked Deposit Program and proposed Chapters 10 and 11.

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028 (p. 1-3)	<u>Proposed text revision.</u> Revision of “Public Water Supply System” to “Public Water System” is proposed due to comments received from Department of Health and Human Services.
General	<u>Proposed text revision.</u> Revision of section numbers is proposed due to the additional additions and removals of terms throughout this chapter.

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## Chapter 2

<u>Section</u>	<u>Propose change and purpose</u>
001.02 (p. 2-1)	<u>Proposed text revision.</u> Revision of “of Public Water Supply System” to “at Community and non-profit Non-Community Public Water Systems” is proposed due to comments received from Department of Health and Human Services.
001.03A (p. 2-2)	<u>Proposed text revision.</u> Revision of “Public Water Supply System” to “Public Water System” is proposed due to comments received from Department of Health and Human Services.
003 (p. 2-2)	<u>Proposed text revision.</u> Revision of this section is proposed due to the removal of specific cross cutters from 003.01 to 003.04. The proposed text revision would require loan recipients to continue to comply with federal cross-cutting authorities if applicable.
003.01 to 003.04 (p. 2-3)	<u>Proposed text removal.</u> Removal of Sections 003.01 to 003.04 is proposed due to constant changes to federal cross-cutting authorities.
006 (p. 2-4)	<u>Proposed text revision.</u> Revision of text is proposed to remove references to cross-cutting authorities and specific chapter reference that is being proposed for removal.

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## Chapter 3

<u>Section</u>	<u>Propose change and purpose</u>
001.05 (p. 3-1)	<u>Proposed text revision.</u> The proposed revision of text to this paragraph is due to include administrative language with the description of the interest rate process and to make the language clearer on the Department’s establishment of interest rates and administrative fees within the IUPs.

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001.05A (p. 3-1)	<u>Proposed text revision.</u> Removal of majority of text from this section is proposed to clarify the language to make it more simple and understandable.
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001.05B (p. 3-2)	<u>Proposed text revision.</u> Removal of majority of text from this section is proposed to clarify the language to make it more simple and understandable.
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002.02 (p. 3-2)	<u>Proposed text addition.</u> Addition of Linked Deposit Program is proposed to allow for a statement about the Linked Deposit Program to be added to the annual Intended Use Plan.
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General	<u>Proposed text revision.</u> Several minor changes are proposed throughout this chapter including updating references to other chapter/section of this Title and minor changes of wording to make the language clearer.
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#### **Chapter 4**

<u>Section</u>	<b>Propose change and purpose</b>
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General	<u>Proposed text revision.</u> Revision of “loan contract” to “loan” is proposed due to elimination of possible confusion of loan contract and linked deposit loan contract and to provide consistent language for both CWSRF and DWSRF loans.
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#### **Chapter 5**

<u>Section</u>	<b>Propose change and purpose</b>
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General	<u>Proposed text revision.</u> Revision of “loan contract” to “loan” is proposed due to elimination of possible confusion of loan contract and linked deposit loan contract and to provide consistent language for both CWSRF and DWSRF loans.
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#### **Chapter 6**

<u>Section</u>	<b>Propose change and purpose</b>
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General	<u>Proposed text revision.</u> Revision of “Public Water Supply System” to “Public Water System”, “loan contract” to “loan”, and update of a reference to another section in this Title are being proposed in this chapter.
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## Chapter 8

<u>Section</u>	<u>Propose change and purpose</u>
004.04 (p. 8-2)	<u>Proposed text revision.</u> Revision of “of” to “up to” is proposed to allow the Department to apply an administrative fee up to 1% and not just strictly 1% if an administration fee is applied.
005 (p. 8-2)	<u>Proposed text revision.</u> Revision of “Loan Contract” to “Loan Conditions” is proposed due to general reasons mentioned for the revision of “loan contract” to “loan”.
005.03C (p. 8-3)	<u>Proposed text removal.</u> Removal of “under a loan contract” is proposed due to general reasons mentioned for the revision of “loan contract” to “loan”.
General	<u>Proposed text revision.</u> Revision of “shall” to “will” is proposed to update chapter to preferred grammar usage of legal terms.

## Chapter 10

<u>Section</u>	<u>Propose change and purpose</u>
General (p. 10-1 to 10-3)	The addition of “CHAPTER 10 – ELIGIBLE USE OF LINKED DEPOSIT FUNDS AND APPLICABILITY OF FEDERAL, STATE, AND LOCAL REQUIREMENTS” is proposed to add regulations governing the new Linked Deposit Program as established by the approval of LB514. The chapter covers eligible and ineligible projects for the program.

## Chapter 11

<u>Section</u>	<u>Propose change and purpose</u>
General (p. 11-1 to 11-3)	<u>Proposed text addition.</u> The addition of “CHAPTER 11 – GENERAL REQUIREMENTS FOR ELIGIBLE FINANCIAL INSTITUTIONS FOR THE LINKED DEPOSIT PROGRAM” is proposed to add regulations governing the new Linked Deposit Program as established by the approval of LB514. The chapter covers regulations for financial institutions and borrowers to follow. Included are details of the Department’s authority, the eligible financial institution’s authority, and the borrower’s responsibilities. The chapter discusses requirements for legal documents to be signed between financial institutions and borrowers as well as between financial institutions and the Department.