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Minutes of the
Board of Water and Natural Resources
Telephone Conference Call Meeting

June 5, 2020
11:15 a.m. CT

CALL TO ORDER: Chairman Jerry Soholt called the meeting to order. The roll was called, and a quorum was present.

BOARD MEMBERS PRESENT: Jerry Soholt, Karl Adam, Todd Bernhard, Dr. Paul Gnirk, Dr. Kathryn Johnson, Gene Jones, Jr., and Jackie Lanning.

BOARD MEMBERS ABSENT: None.

OTHERS: Mike Perkovich, Andy Bruels, Dave Ruhnke, Jon Peschong, and Stephanie Riggle, DENR, David McVey, Attorney General's Office, Bruce Bonjour, Perkins Coie, Jessica Cameron Mitchell, PFM Financial Advisors LLC, and Tom Liu, Bank of America Securities, Inc., BofA Securities.

APPROVE AGENDA: Motion by Gnirk, seconded by Adam, to approve the agenda. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD: None.

REQUEST FOR CONSENT TO PERKINS COIE'S CONCURRENT REPRESENTATION OF SOUTH DAKOTA CONSERVANCY DISTRICT AND THE CITY OF SIOUX FALLS: Mike Perkovich stated that Bruce Bonjour of Perkins Coie, LLP, serves as bond counsel for the Clean Water and Drinking Water State Revolving Fund programs, and has served as bond counsel since 1994. Approximately ten years ago, the city of Sioux Falls requested that Perkins Coie serve as bond counsel for the city in connection with its Sales Tax Bonds issued to finance its Convention Center. In 2011, Perkins Coie provided a similar conflict waiver letter to that which was included in the board packet. The district signed the letter and the Attorney General approved it as to form, thus waiving any potential conflict of interest.

Perkins Coie continues to serve as bond counsel to the city of Sioux Falls with respect to specific capital improvements it finances with Sales Tax Bonds. These projects include parking ramps, fire stations, public safety buildings, etc., none of which are related to the SRF Programs or the activities of the district. Although Sioux Falls is a borrower of funds under the SRF Programs, it does not use Perkins Coie as bond counsel for such transactions.

Presently, the district is proposing to issue one or more series of bonds to finance loans to the city of Sioux Falls from the Clean Water SRF Program. Perkins Coie's role in connection with

the bonds will be to represent the district and execute the Work Plan as specified in the legal services agreement. Under no circumstances will Perkins Coie be involved on behalf of the city in connection with any such SRF Program loans.

Mr. Perkovich stated that South Dakota has a new Attorney General and a new board chairman since the last conflict of interest waiver was approved, it was decided that a new waiver letter would be executed. Mr. Bonjour submitted this conflict waiver letter to seek the informed consent of the district to allow Perkins Coie to concurrently represent the city of Sioux Falls as its bond counsel in connection with its various Sales Tax Bonds and also serve the city in the Series 2020 Bond issue as described in the legal services agreement.

Staff recommended that the board authorize Chairman Soholt to execute the Consent Letter for Perkins Coie's concurrent representation of the South Dakota Conservancy District and the city of Sioux Falls.

Bruce Bonjour stated that the consent waiver is mandatory under the canons of ethics in Perkins Coie's view. Perkins Coie does not believe the rolls that they serve for both parties in unrelated matters in any hinders Perkins Coie's ability to continue to serve the district and the city separately to the full extent of their capacity. He requested that the board renew the consent letter for concurrent representation of the South Dakota Conservancy District and the city of Sioux Falls.

Motion by Bernhard, seconded by Johnson, to authorize Chairman Soholt to execute the Consent Letter for Perkins Coie's concurrent representation of the South Dakota Conservancy District and the city of Sioux Falls. A roll call vote was taken, and the motion carried unanimously.

CONSULTING CONTRACT WITH PERKINS COIE, LLP FOR BOND COUNSEL SERVICES FOR STATE REVOLVING FUND PROGRAM SERIES 2020 BOND ISSUE: Mr. Perkovich reported that Bruce Bonjour, Perkins Coie, LLP in Chicago, IL, has served as bond counsel for the South Dakota Conservancy District since 1994 Mr. Bonjour proposed fees of up to \$85,000 for bond counsel services for the 2020 bond issue.

Staff worked with legal counsel from the Office of Attorney General to prepare a contract for bond counsel services for the 2020 bond series. The contract runs through December 31, 2020.

Staff recommended the board authorize execution of the bond counsel contract.

Motion by Lanning, seconded by Jones, to authorize execution of the bond counsel contract with Bruce Bonjour, Perkins Coie, LLP for bond counsel services for the State Revolving Fund Program Series 2020 bond issue. A roll call vote was taken, and the motion carried unanimously.

SERIES RESOLUTION AUTHORIZING STATE REVOLVING FUND PROGRAM BONDS, SERIES 2020: Mr. Perkovich reported that it is anticipated that the South Dakota Conservancy District will issue approximately \$100,000,000 in Clean Water State Revolving Fund Program Bonds, Series 2020 during the week of June 29, 2020 to be deposited to the Clean Water

Leveraged Loan Account established with respect to the Series 2020 Bonds. The Series 2020 Bonds are tax exempt bonds being issued to provide funds sufficient, together with other available moneys to make new and fund existing loans to the city of Sioux Falls, South Dakota and pay costs of issuance.

The Series Resolution for the Series 2020 Bonds prepared by SRF bond counsel, Bruce Bonjour of Perkins Coie, LLP was provided in the board packet.

Jessica Cameron Mitchell, PFM Financial Advisors, discussed the structure of the bond issue, current market conditions, and coverage requirement.

Bruce Bonjour, Perkins Coie, discussed the specifics of the Series Resolution, which provides board approval of the Preliminary Official Statement, the Bond Purchase Agreement, the Bond Order, and the Continuing Disclosure Agreement. The Series Resolution authorizes the chairman and/or secretary to file a Coverage Certificate for each program with the Trustee and to do all acts and to execute or accept all documents as may be necessary to carry out and comply with the provisions of the resolution and the documents approved by the resolution.

Staff recommended approval of the Series Resolution authorizing the State Revolving Fund Program Bonds, Series, 2020.

Motion by Bernhard, seconded by Gnirk, to adopt **Resolution No. 2020-73** authorizing the State Revolving Fund Program Bonds, Series 2020. A roll call vote was taken, and the motion carried unanimously.

JUNE 25, 2020, MEETING: Mr. Perkovich discussed possible agenda items for the June 25 meeting. The meeting will be held remotely.

ADJOURN: Motion by Jones, seconded by Johnson, to adjourn. Motion carried unanimously.

Chairman Soholt declared the meeting adjourned.

Approved this 25 day of June 2020.

(SEAL)

Chairman, Board of Water and
Natural Resources

ATTEST:

Secretary, Board of Water and
Natural Resources