Protecting South Dakota's Tomorrow ... Today

BOARD OF WATER AND NATURAL RESOURCES

August 19, 2014

DENR Large Conference Room
523 E. Capitol Ave.
Pierre, SD

9 a.m. to 10 a.m. CDT

Via Teleconference on Tuesday, August 19, 2014 at 9 a.m. CDT

A limited number of phone lines will be available. Interested parties should contact the Department at (605) 773-4216 by no later than 4 p.m. on Monday, August 18 if they wish to participate in the teleconference.

AGENDA

Scheduled times are estimates only. Some items may be delayed due to prior scheduled items or may be moved up on the agenda.

August 19, 2014
9 a.m. CDT

1. Call meeting to order
2. Approve agenda
3. Selection of Investment Banking Firm for State Revolving Fund Program—Mike Perkovich
4. Consulting Contract with Perkins Coie LLP for Bond Counsel Services for State Revolving Fund Program Series 2014 Bond Issue—Mike Perkovich
5. September 25-26, 2014 Meeting
6. Adjourn

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources at least 48 hours before the meeting if you have a disability for which special arrangements must be made. The telephone number for making arrangements is (605) 773-4216.

August 19, 2014
Item 3

TITLE: Selection of Investment Banking Firm for State Revolving Fund Program

EXPLANATION: The Board of Water and Natural Resources ("Board"), acting as the South Dakota Conservancy District ("District"), requested proposals from qualified firms to provide investment banking, underwriting and additional services, such as remarketing, related to negotiated issuances of bonds and notes for a period of three years. The request for proposals was released on June 30, 2014.

Investment banking firms could submit a proposal to serve as senior manager or co-manager. Nine proposals were received by the submission July 21st deadline.

1. Bank of America Merrill Lynch
2. BMO Capital Markets
3. Citigroup Global Markets Inc.
4. Edward Jones - co-manager
5. JP Morgan
6. Piper Jaffray
7. Robert W. Baird & Co., Inc - co-manager
8. Rockfleet - co-manager
9. Wells Fargo Securities

A board subcommittee comprised of Brad Johnson, Gene Jones, Jr., and Todd Bernhard reviewed the proposals. The subcommittee, working with staff and SRF financial consultants, will provide a recommendation to the full board regarding the selection of firm(s) to provide investment banking services.

RECOMMENDED ACTION: Select investment banking firm(s) and authorize the negotiation and execution of multi-year consultant services contract(s) for investment banking services.

CONTACT: Mike Perkovich, 773-4216

August 19, 2014
Item 4

TITLE: Consulting Contract with Perkins Coie LLP for Bond Counsel Services for State Revolving Fund Program Series 2014 Bond Issue

EXPLANATION: Bruce Bonjour has served as bond counsel for the South Dakota Conservancy District since 1994. Mr. Bonjour is with Perkins Coie, LLP in Chicago. Bonjour proposed a fee of $80,000 for bond counsel services for the 2014 bond issue. The services to be provided would be similar to past issues and would consist of the following:

> The Attorney will perform services as bond counsel for all initial services in connection with the proposed Series 2014 Bonds described below ("Bonds") for the Clean Water State Revolving Fund Program and the Drinking Water State Revolving Fund Program. The Bonds will be issued in one or more series (taxable and/or tax exempt) of fixed interest rate bonds to finance State Match and/or provide funds for Leveraged Loans. Services to be provided by Attorney will include the preparation of an official statement for the Series 2014 Bonds, any initial SEC rule 15c2-12 continuing disclosure undertakings, as well as all advice and opinions on other matters customarily provided by bond counsel related to the proposed Series 2014 Bonds.

It is anticipated that the 2014 bond issue will include both a taxable series to provide State Match and tax-exempt series to provide funds for leveraged loans. The projected par amount is $69 million. The financing schedule is attached.

Working with the Office of Attorney General, staff prepared the contract for bond counsel services for the 2014 bond series. The contract runs through 31-Dec-2014.

RECOMMENDED ACTION: Approve a resolution authorizing the execution of the bond counsel contract.

CONTACT: Mike Perkovich, 773-4216

STATE OF SOUTH DAKOTA
AGREEMENT FOR LEGAL SERVICES
BETWEEN

Control # 2014-__

Bruce A. Bonjour	South Dakota Conservancy District
Perkins Coie, LLP	523 East Capitol Ave
131 S. Dearborn Street, Suite 1700	Joe Foss Building
Chicago, IL 60603-5559	Pierre, South Dakota 57501
hereafter referred to as Attorney	hereafter referred to as State

The State hereby enters into an Agreement for Legal Services with the Attorney.

I. THE ATTORNEY

A. The Attorney will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

B. While performing the services hereunder, the Attorney is acting as an independent contractor and not as an officer, agent or employee of the SD Conservancy District or of the State of South Dakota.

C. The Attorney will not use State equipment, supplies or facilities. The Attorney will provide the State with his firm's Employer Identification Number.

D. This Agreement shall commence on execution by both parties and end on December 31, 2014.

II. THE STATE

A. The State will make payment for initial legal services in connection with the issuance of the proposed 2014 Bonds, a fee of $80,000, with a payment to be made in one installment upon closing the 2014 Bonds.

B. The State will not pay Attorney expenses as a separate item, provided, however, that any expense incurred from third parties in connection with the transmittal or filing of a 15c2-12 report, including electronic filing or transmission charges from National Municipal Information Repository Services shall not be an expense of the Attorney, and should be billed directly to the State.

C. TOTAL CONTRACT AMOUNT is an amount not to exceed $80,000. Payment will be made pursuant to itemized invoices. Payment will be made consistent with SDCL ch. 5-26.

III. OTHER PROVISIONS:

A. This Agreement may not be assigned without the express prior written consent of the State. The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

B. This agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice.

C. The Attorney, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

(1) Commercial General Liability Insurance:

The Attorney shall maintain occurrence based commercial liability insurance or equivalent form with a limit of not less than $2,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

The Attorney agrees to procure and maintain professional liability insurance with a limit not less than $20,000,000.

3. Business Automobile Liability Insurance:

The Attorney shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

4. Worker's Compensation Insurance:

The Attorney shall procure and maintain workers' compensation and employers' liability insurance if required by South Dakota law.

Before beginning work under this Agreement, the Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Attorney agrees to provide immediate notice to the State and provide a new certificate of insurance showing

continuous coverage in the amounts required. The Attorney shall furnish copies of insurance policies if requested by the State.

D. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

E. It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

F. The Attorney will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

G. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to David Ruhnke on behalf of the State, and by and to Bruce Bonjour, on behalf of the Attorney, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

H. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

I. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

J. The Attorney certifies that neither the Attorney nor the principals of his firm are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Attorney further agrees that it will immediately notify the State if during the term of this Agreement the Attorney or his firm's principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

K. The Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit B.

In Witness Whereof the parties signify their agreement by the signatures affixed below:

ATTORNEY	STATE
_____	_____
Bruce A. Bonjour, Partner (Date) Perkins & Coie	Brad Johnson (Date) Chairman, Board of Water and Natural Resources

The foregoing Agreement is hereby approved.

_____

Craig Ambach (Date)
Litigation and Legal Services Manager
For the Governor

The foregoing Agreement is hereby approved as to form.

_____

Marty J. Jackley (Date)
Attorney General

EXHIBIT A
WORK PLAN

The Attorney will perform services as bond counsel for all initial services in connection with the proposed Series 2014 Bonds described below ("Bonds") for the Clean Water State Revolving Fund Program and the Drinking Water State Revolving Fund Program. The Bonds will be issued in one or more series (taxable and/or tax exempt) of fixed interest rate bonds to finance State Match and/or provide funds for Leveraged Loans. Services to be provided by Attorney will include the preparation of an official statement for the Series 2014 Bonds, any initial SEC rule 15c2-12 continuing disclosure undertakings, as well as all advice and opinions on other matters customarily provided by bond counsel related to the proposed Series 2014 Bonds.

EXHIBIT B
POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; <u>unless</u> the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.

3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney.

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of $50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of $50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

South Dakota Conservancy District

PRELIMINARY SCHEDULE OF EVENTS
Prepared August 12, 2014

AUGUST						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

SEPTEMBER						
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OCTOBER						
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19	20	21	22	23	24	25
26	27	28	29	30	31	

STANDING CONFERENCE CALL: 1-877-577-9567 ACCESS CODE: 8198980930

Date	Event	Responsibility
AUGUST		
Week of August 18	Preliminary sizing circulated.	FA
	Draft documents circulated.	BC
August 19	BWNR Meeting. Approve selection of underwriters.	CD
Week of August 25	Conference call to review documents.	All
	Comments due on documents.	All
	Preliminary cashflows and loan portfolios circulated.	FA
SEPTEMBER		
September 1	Labor Day Observed.	
Week of September 1	Updated draft of documents circulated.	BC, AG, UC
	Updated sizing prepared and default tolerances produced.	FA
Week of September 8	Conference call, if necessary.	All
Week of September 15	Near final versions of financing documents circulated for inclusion in Board packets.	BC, AG, UC
	Documents, cashflows and default tolerance analyses circulated to rating agencies.	FA
Week of September 22	Conference calls with rating agencies.	CD, FA
	Updated sizing circulated for use in POS.	FA
	Final draft of POS circulated.	BC
	Marketing plan due.	UW
September 26	BWNR Meeting. Approve financing.	CD
Week of September 29	POS disseminated.	
	Ratings received.	RA
OCTOBER		
Week of October 6	Bond pricing.	All
	Bond Purchase Agreement signed.	CD, UW
	Draft of Final OS circulated.	BC
October 13	Columbus Day observed.	
Week of October 13	Comments on Final OS due.	All
	Final OS printed.	BC
	Distribute draft closing documents and closing memorandum.	BC, Fa

RESPONSIBILITY KEY

CD – Conservancy District
AG – Attorney General
FA – Financial Advisor
BC – Bond Counsel
T - Trustee
UC – Underwriter Counsel
UW – Senior Managing Underwriter
RA – Rating Agency

South Dakota Conservancy District

PRELIMINARY SCHEDULE OF EVENTS
Prepared August 12, 2014

AUGUST						
S	M	T	W	T	F	S
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SEPTEMBER						
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OCTOBER						
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26	27	28	29	30	31	

STANDING CONFERENCE CALL: 1-877-577-9567 ACCESS CODE: 8198980930

Date	Event	Responsibility
OCTOBER		
Week of October 13	Comments on closing documents due.	All
	Bonds sent to DTC.	T
Week of of October 20	Final closing documents and closing memorandum distributed.	BC, FA
	Closing and Delivery of Bonds.	

RESPONSIBILITY KEY	
CD – Conservancy District	**T -** Trustee
AG – Attorney General	**UC –** Underwriter Counsel
FA – Financial Advisor	**UW –** Senior Managing Underwriter
BC – Bond Counsel	**RA –** Rating Agency