

**New Mexico Finance Authority
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September 11, 2013

**Colonias Infrastructure Board Meeting
Dona Ana County Commission Chambers
845 Motel Blvd
Las Cruces, NM**

Present – Voting Members:

Doug Moore, Chair	Senate Minority Leader Appointee
Oscar Vasquez Butler	Senate President Pro Tempore Appointee
E.J. Peinado	Designee – NMFA
Tonantzin Roybal	Designee – DFA
Steven Deal	Designee - NMED
Orlando-Antonio Jimenez	Speaker of the House Appointee

Present – Non-Voting Members:

Jay Armijo	South Central Council of Governments
Hubert Quintana	Southeastern NM Economic Development Dist.
Isidoro Hernandez	Designee - New Mexico Mortgage Finance Authority
Priscilla Lucero	Southwest NM Council of Governments

Absent:

Paul Gutierrez	New Mexico Association of Counties
Jay Czar	New Mexico Mortgage Finance Authority

Finance Authority Staff:

Bryan Otero	Connie Marquez Valencia
Rick Martinez	

1. Call to Order and Roll Call.

The meeting was called to order at 10:15 a.m. Roll was called and a quorum established.

2. Approval of Agenda.

Mr. Orlando-Antonio Jimenez moved, seconded by Mr. Oscar Butler, to amend the agenda by calling for a moment of silence for the 911 victims and Chair Moore's son, Eli Moore, who recently passed. The motion was unanimously approved.

Moment of Silence in honor of the victims of the 911 tragedy and Mr. Eli Moore was observed.

3. Approval of June 13, 2013 Board Minutes.

Mr. Orlando-Antonio Jimenez moved, seconded by Mr. Steven Deal , to approve the June, 2012 minutes with the following amendments: 1) Indicate that Mr. Oscar Butler was present at the meeting; 2) Correct spelling on “Esqueda”. The motion was unanimously approved.

4. Chairman’s Report.

Chair Doug Moore expressed his appreciation to the staff and audience for their energy and especially the audience who participate in the CIB meetings. He said the program is worthwhile, is off the ground and is serving the purpose for which it was intended.

5. Consideration to approve the new Policy Section 6.5 (Refunding of Unused Financial Assistance Awards) as recommended by the Policy Committee. Mr. Rick Martinez presented the proposed new Policy Section 6.5: Refunding of Unused Financial Assistance Awards. Mr. Martinez said the section provides for redirecting financial assistance to potential replacement qualified projects that submitted a Financial Assistance Application during the same funding cycles the project it is proposing to replace using the reverted funds. The proposed section provides the process for applying for the reverted funds, the process used in review by the Project Review Committee and ultimate approval by the Board. Also included is review of fund balances for reverted or unused funds during the second quarterly meeting and establishing a schedule for reallocation of those funds during the third quarter.

Chair Moore said this came about because of two project that reverted funds; however, the Board did not have a policy addressing reallocate of funds. It was decided that the CIB would consider those projects from the prior year that scored well to receive the reverted funds. Mr. Jimenez: asked how applicants that did not receive funding would know that reverted funds are now available and asked if it should be in the policy. Mr. Quintana noted that the policy does address this topic in Section 4.

Because copies of the new policy section were not available for public review, Mr. Jimenez read the proposed amendment for refunding of unused financial assistance awards into the record. Mr. E.J. Peinado suggested changing “refundng” to “reallocation” of unused funds. Deletion of the “s” on last sentence of last paragraph was also requested.

Mr. E.J. Peinado moved, seconded by Mr. Orlando-Antonio Jimenez, to approve the new Policy Section 6.5 (Refunding of Unused Financial Assistance Awards) with proposed changes replacing “Refunding” with “Reallocation” throughout the text where term is used and deletion of the “s” on the last sentence of paragraph 3. The motion was unanimously approved.

6. Consideration to approve the new Planning request application as recommended by the Policy Committee. Mr. Rick Martinez presented and reviewed the revised planning request application as recommended by the Policy Committee.

Chair Moore commented that in previous discussions the CIB did not have an application that was for planning only and when a planning application was received it typically scored low based on the criteria of a shovel ready project. He continued that staff and the Committee worked to develop a new application that would be for planning only with the point structure arranged in such a way that when compared with other planning projects it would be better reviewed.

Mr. Rick Martinez reported that the Policy Committee did review at length the proposed application with all the recommended changes incorporated in the final draft for the Board's consideration. Mr. Martinez said the reason for creating a planning application is to keep those applications scored only against planning requests.

Mr. Martin Lopez asked if the application includes design. Mr. Stephen Deal said it does not include design and is for planning to include PER, EID, NEPA, asset management plan, and maybe 40 year water plan. Chair Moore said many planning applications have been received and has been at the top of the discussion list for the past two years because many entities receiving federal funding require a plan in place before consideration and many entities do not have the financial means for the technical requirements. Ms. Olga Morales commented that the Board is moving in the right direction but there is need for further change. Ms. Morales said one of the challenges encountered when applying with USDA is the fact that USDA does not pay for planning or design until closing for the construction phase. She continued that engineers are not carrying projects through the design as done years back. Ms. Morales said "we're there, but we're not there". She asked how do we go from planning, skip over the design phase and then get to a shovel ready project.

Mr. Steven Deal thought that in the other application there is an allotment for getting money for design so this application is delineating one more step by providing a clearer path towards completing a project. Chair Moore said that many times what has to be addressed first is the need and then start to create a plan. He continued that design money could be tens if not hundreds of thousands of dollars to develop a design. Chair Moore said he envisions, especially on multiple phase projects, a pipeline mechanism of planning money. He continued that some of the projects are well stated on the community need but when funded, the community does not want it. Chair Moore said the Board does not want to fund a project that may not be well received in the community.

Ms. Morales said having a separate application does make it easier for projects receiving lower rankings. However, she continued that at some point the rankings will have to be separated for design as has been done for planning. Chair Moore said the objective in preparing the application was to provide access to funding for smaller communities. He continued that once the communities have their plan the application for design can be solicited.

Mr. Deal noted that Section 6 requires evidence of public participation. Ms. Karen Nichols commented that a separate application for design may not be required as long as the policy reflects and the mind set in the review process reflects that design is a separate stage of the project. Chair Moore said the issue being addressed is the need for a different application for planning because in many cases the need is evident but cannot be funded because there is no plan.

Mr. Deal asked about the length of time for funding agreements. Mr. Martinez said the eligibility agreement is for 3 years; however, the shorter terms have been established in the criteria and application.

Mr. Steven Deal moved, seconded by Mr. Oscar Butler, to approve the new Planning request application as recommended by the Policy Committee. The motion was unanimously approved.

- 7. Housing Infrastructure Requests – Policy Consideration.** Mr. Isidoro Hernandez commented that the Colonias Infrastructure Act does not provide a definition for “housing infrastructure” but does allow housing as a qualified project. He reported that in 2006 Constitutional Amendment 4 amended the “anti-donation clause” thereby permitting the State, the New Mexico Mortgage Finance Authority (NMMFA) and local governments to pay a portion of the cost of infrastructure, land, buildings, or necessary financing for affordable housing projects. The 2007 amendment to the Act permits state and local governments to provide or pay the cost of land, buildings or necessary financing for affordable housing projects.

In an effort to provide a definition to “housing infrastructure” and remain consistent with a legislatively approved definition, the NMMFA recommends that the Affordable Housing Act definition of Housing Infrastructure be adopted.

Mr. Steven Deal said he does not remember the wording in the Act; however, his main concern is that the proposal does not violate the Colonias Infrastructure Act. Mr. Rick Martinez said that the Act does mention housing infrastructure but does not address whether it will be above or below ground. He continued that the Board made the determination that eligible costs for the category would be predevelopment infrastructure for housing adding that it would be a good process to establish policy to leverage Mortgage Finance Authority funds as well.

Mr. Hubert Quintana asked if this change would enable collection lines on private property making the connection between the trunk and the house. Chair Moore noted that you cannot expend public funds on private property so adopting this proposal will not give the Board the ability to make connections on private property. He said the debate here is Board direction. He said housing infrastructure is in the policy but is not clearly defined. Mr. Quintana said his question arises from the language in the handout that says that if you are working with affordable housing the specific law Section 6.27.3 exempts affordable housing from the anti-donation clause which would make it possible to go onto private property to provide services. Mr. Hernandez said that the Affordable Housing Act does allow going onto private property for projects with a very specific process that must be followed. Mr. Quintana said that it would seem to him that if the policy is adopted it would make it possible then to not only put in trunk lines but in some cases if the homeowner did not have financial means to pay the hook-up fees the fee could be included as part of the project. Chair Moore felt that even if the Act is adopted, the Board cannot use state money on private property without serious legal ramifications.

Mr. Oscar Butler said what the Board needs is a legal opinion on the anti-donation provision that precludes going onto private property and exemptions allowed. Chair Moore said this is not an action item but rather asking for direction. He said the Board has boiler plate language as recommended by Mr. Hernandez to begin developing the discussion about what is housing infrastructure. Chair Moore said the question before the Board today is what direction should be given to develop a definition for housing infrastructure so that it can be applied in future applications. Mr. Hernandez said he can work with Legal and provide the different documents to

the attorney to determine eligibility. Chair Moore said the Board should get a legal opinion with boiler plate language available for Board consideration on what can or cannot be done at the next meeting. He continued that the Board can then provide direction to the Policy Committee for policy development.

Ms. Olga Morales said that as a co-author of the legislation that formed the Colonias, the initial thought was that millions of dollars have been put into community wastewater projects yet a very small percentage of the community has been able to tap into services primarily because of the excessive cost to connect. She continued that the objective was to develop a mechanism which provides the ability to make those connections happen. Ms. Morales said that years back the federal government would have the ability to pay for connections to projects; however, that is not being seen any more so funds are being used on big infrastructure projects that are not serving the Colonias' residents.

8. **Lake Roberts MDWCA request for consideration to waive loan component of 2790-CIF award.** Mr. Rick Martinez presented the request from the Lake Roberts Water Association (LRWA) that the entire 10% loan component associated with the \$100,000 Colonias Infrastructure Board (CIB) funding be waived due to the fact that the "hard" match is greater than the amount of the required Colonias Infrastructure loan component of \$10,000.

Project Selection and Management Policies, Section 2.5 B2 – Funding Match Obligation defines "hard match" as actual dollars expended on the project other the CIB funds for the specified scope of work. Further, the "hard match" may be provided in the form of non-CIB loans, local cash contributions, private donations or federal funds. Mr. Martinez said this loan complemented USDA funds with the issuing arising since that time is the ability of the LRWA to pay the 10% loan component. The review by USDA and Finance Authority staff has determined that there is no room for the loan component; if the loan component has to be part of the award then LRWA would not qualify for the USDA funds which are over \$800,000.

Ms. Kathy Prince, LRWA, requested a waiver of the 10% loan component because the loan component is creating a hardship on members who cannot afford another rate increase. She said with the USDA loan LRWA has taken a \$44,000 loan component which has raised the rates \$4.90 above what is being paid out a month. Ms. Prince said that with the 10% loan component with the Colonias grant would put can extreme hardship on the members. She continued that LRWA is a small community comprised of mostly retirees who cannot afford the increase. Ms. Prince said it is going to make them choose between eating and paying their water bill. She said LRWA would appreciate approval of the waiver so residents can get their water and be able to afford to live. Ms. Prince said there was a rate increase two years ago but when the new system is in the rate will go up to \$4.90 per month.

In response to a question from Chair Moore, Ms. Prince said the minimum is \$23.10 which will go to \$28.00/month average. Ms. Priescilla Lucero commented on the hardships the LRWA is struggling with adding that in the last couple of months Lake Roberts was without water for 10 days. She said without improvements to the system and without the waiver, then all funding that has already been allocated to them will be lost not only to LRWA but also to the State. Ms. Lucero said she totally supports the request. Ms. Lucero said it is going to be imperative that if the request is

approved, that the award letter be sent out as soon as possible because without the award letter the loan with RCAC for the engineering and design cannot close.

Discussion ensued on the request. Chair Moore said he does not object philosophically to the request; however, noted that he cannot see \$1/month having people make a decision whether they eat or don't eat whether the waiver is granted or not. Ms. Prince said that Lake Roberts residents are retirees with minimal income. Chair Moore said he is not making light of \$1 not being a lot to most people, but at the outset, the statement was that we need to forgive the loan component because if not people are going to have to make a decision between eating or not eating which he felt was not a fair statement. Ms. Lucero said there is an issue with the increase and the rates but the real issue is that without the waiver, LRWA cannot make the payment on the USDA loan. She continued that she worked closely with Mr. Adam Johnson with the Finance Authority to look at the financials based on the \$44,000 loan, based on the grant which is how the analysis was developed. Chair Moore noted that the \$44,000 is not Colonias funding; the loan component on the \$100,000 grant is a \$10,000 loan component. He asked if the LRWA would be paying the \$44,000 on the USDA loan to which Ms. Prince responded yes. Ms. Olga Morales said she did the rate analysis 2 years ago when LRWA first approached USDA. At the time of the analysis based on the median household income there was a \$44,000 loan from USDA; however, Ms. Morales said the real kicker here that creates the significant rate increase is that USDA mandates is that LRWA fund absolutely 100% of the short lived assets. USDA requires sustainability; the rates are heavily impacted to create sustainable projects;

Chair Moore said this Board can only address the \$10,000 and determine if the Board has the legal authority to grant a waiver. Mr. Oscar Butler expressed concern with granting a waiver. He continued that the philosophy was that the repaid monies would be generating more funds if waivers are granted it would be taking funds from other Colonias. Mr. Butler said he does not personally feel that \$1 is going to break the system adding that getting potable water for \$29 is a steal.

Ms. Tonantzin Roybal asked how often similar requests come before the Board and how often are the requests approved. Mr. Martinez said that when USDA prepares their financials a determination was that they would not approve with this loan component. Ms. Roybal said her concern is consistencies and to start issuing waivers will impact the Colonias fund; however, if denying the waiver means losing federal funds then perhaps it should be considered.

Mr. Deal asked about the term of the loan adding that the analysis does not say that USDA will not give the loan if the loan component is in the agreement. Mr. Jimenez felt that USDA documentation that loan will not be approved without loan waiver should be obtained. He felt consideration should be given to whether or not the funding will be lost.

The request was discussed at length. Concerns were raised that staff did not present a recommendation to approve or disapproved. Ms. Lucero said she does have a recommendation from Finance Authority staff; however, it was not included in the Board book. Ms. Roybal said that from a financial perspective, the Board should consider the analysis prepared by the Finance Authority and the importance of the Board supporting the request.

Ms. Tonantzin Roybal moved, seconded by Mr. Orlando-Antonio Jimenez, to support the waiver of the loan component on Project #2790-CIF.

Mr. E.J. Peinado stated his belief that with a rate increase the loan component could be sustained adding that he is concerned with the precedent it will set because communities do not want to raise their rates.;

The motion was approved with Mr. E.J. Peinado voting against the motion.

- 9. Brazito MDWCA (c/o Lower Rio Grande MDWCA) consideration for a change of scope on project 2791-CIF.** Mr. Rick Martinez presented staff's recommendation to approve all loan/grant documents for Brazito MDWCA's Project 2917-CIF to include design and to substitute Lower Rio Grande Public Water Works Authority (LRGPWWA) as the Borrower/Grantee.

Brazito was awarded a loan/grant for \$581,503.92 for waterline construction. The application specifically identified design as one of the cost components; however, due to a technical error the project description only refers to construction. As a result of Brazito merging with LRGPWWA, the loan needs amending to substitute LRGPWWA as the Borrower/Grantee and include design as a component.

Chair Doug Moore moved, seconded by Mr. Orlando-Antonio Jimenez, that the CIB approve amendment of all loan/grant documents for Project 2791-CIF to include design as part of the project. The motion was unanimously approved.

- 10. Consideration to allow Morningside Water Users Cooperative (Morningside) to use the City of Artesia as Fiscal Agent for award number 2810-CIF.** Mr. Rick Martinez presented staff's recommendation that the CIB authorize an amendment to Project 2810-CIF substituting the City of Artesia as borrower/grantee and fiscal agent.

Morningside was awarded funding in the 2012 cycle for \$406,000. In the application Morningside was identified as a mutual domestic; however, it was later determined that Morningside is not a mutual domestic and is therefore not an eligible entity due to its status as a cooperative association and not a political subdivision. Consequently the agreement with Morningside needs amending to substitute a political subdivision as the fiscal agent. The City of Artesia has agreed to assume the role.

Mr. Orlando-Antonio Jimenez moved, seconded by Mr. E.J. Peinado, that the CIB authorize amendment of the loan/grant documents substituting the City of Artesia as fiscal agent for Project 2810-CIF. The motion was unanimously approved.

- 11. Discussion and consideration of action to notify State Board of Finance of 2012 Project approval changes.**

Chair Doug Moore moved, seconded by Mr. Orlando-Antonio Jimenez to table consideration of action to notify State Board of Finance on 2012 project approval changes to the next meeting. The motion was unanimously approved.

12. Project Oversight –Mechanism and Budget for Project Oversight. Mr. Rick Martinez said the Board has previously discussed the need for project oversight and is on today for continuing the discussion on oversight of the actual projects. Mr. Martinez said the Finance Authority currently has an MOU with the New Mexico Environment Department for project oversight while the CIB does not. Mr. Martinez noted the difference being that other programs such as Drinking Water and Water Trust Board pay for themselves while the Colonias fund has not had the benefit of funds coming back to pay for similar uses. Mr. Martinez said one possibility would be building oversight into the application.

Chair Moore felt that oversight is definitely needed. Discussion ensued on possible option. Chair Moore requested boiler plate on what oversight will entail providing applicants with as many options as possible. Another option mentioned was having the project engineers provide oversight although noting that cost may be prohibitive. Mr. Hubert Quintana said that the Southeastern NM Economic Development District has developed an administrative services charge of 4% including travel. Chair Moore requested that Mr. Quintana as well as the other COGs provide those documents to staff for discussion at a future meeting.

13. 2014 Colonias Application Cycle Calendar. Mr. Rick Martinez said the 2014 proposed calendar is on the agenda for review and consideration. Ms. Prescilla Lucero and Mr. Hubert Quintana mentioned the difficulty in coordinating the calendar with DFA. The suggestion was made to schedule meetings mid-November, mid-February, June, and again in the August/September timeframe. Mr. Quintana expressed his desire to add another date to the schedule requiring that award agreements be disbursed within 90 days of approval. He also suggested letters of award be sent within 2 weeks of approval.

Ms. Olga Morales felt awards by March would be appropriate to enable leveraging federal funds. Lengthy discussion ensued on moving dates to accommodate USDA. Ms. Morales noted that federal funds were lost this year with over \$2 million returned to Washington.

Mr. Bryan Otero explained that two things required prior to drafting the agreements are determination of compliance with the Governor's Executive Order, and receipt of all appropriate documentation. Mr. Quintana said the target date would be for next year's funding cycle wherein the grantees are given the certification form with the award letter with a requirement that documents be returned within 15 day. Chair Moore requested boiler plate documents be made available to the Board at the November meeting for the Board's review and consideration.

14. Public Comment.

Mr. Orlando-Antonio Jimenez acknowledged and welcomed Mr. Ben Rawson, Dona Ana County Commissioner who was in attendance

15. Proposed Date for Next Meeting

Mr. E.J. Peinado moved, seconded by Chair Doug Moore, to schedule the November Colonias Board meeting mid-week in Ruidoso, New Mexico. The motion was unanimously approved. Mr. Hubert Quintana indicated he would secure a location for the meeting.

16. Adjournment.

**Mr. Orlando-Antonio Jimenez moved, seconded by Mr. E.J. Peinado, to adjourn the meeting.
The motion was unanimously approved.**

The meeting adjourned at 1:10 p.m.



Chairman

Date