

**New Mexico Finance Authority
207 Shelby St.
Santa Fe, NM 87501
(505) 984-1454**

November 12, 2013

**Colonias Infrastructure Board Meeting
Museum of the West
845 Motel Blvd
Ruidoso Downs, NM**

Present – Voting Members:

Doug Moore, Chair	Senate Minority Leader Appointee
Oscar Butler	Senate President Pro Tempore Appointee
Zach Dillenback	Designee - NMFA
Jimmy Rodriguez	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.
Priscilla Lucero	Southwest NM Council of Governments
Isidoro Hernandez	Designee - New Mexico Mortgage Finance Authority

Absent:

Steve Kopelman	New Mexico Association of Counties
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Finance Authority Staff:

Bryan Otero	Mark Dalton
Rick Martinez	Dan Opperman

1. Call to Order and Roll Call.

The meeting was called to order at 11:02 a.m. Roll was called and a quorum established.

2. Approval of Agenda.

Mr. Orlando-Antonio Jimenez moved, seconded by Mr. Jimmy Rodriguez, the motion was unanimously approved.

3. Approval of June 13, 2013 Board Minutes.

Mr. Orlando-Antonio Jimenez moved, seconded by Chairman Doug Moore, to table the September 11, 2013 minutes till the following amendments are made: 1) Indicate that Mr. Isidoro Hernandez was present at the meeting; 2) Check the recording to see who seconded

the motion to approve the June 13, 2013 minutes; 3) Correct spelling of Priscilla's name; 4) Indicate that Mr. Oscar Butler was present;. The motion was unanimously approved.

4. Chairman's Report.

Chair Doug Moore expressed concern on the timeliness on getting Colonias funds out to the awardees and commented that he will reserve his verbal report for comments later on in the meeting.

5. Discussion regarding emergency situations within Colonias communities due to flooding.

Mr. Rick Martinez began the discussion of emergency funding of Colonias that experienced flooding this year. Mr. Martinez stated on how the severance tax bond act process works and due to the obligated funds, there is no funding for emergencies from the Colonias Fund. Mr. Martinez also stated that the only place the state typically gets funds is from the state board of finance for emergencies. Chair Doug Moore inquired if it would be possible to use reverted Colonias funds. Mr. Martinez stated it would depend on when the reversion happened due to their termination date.

Chair Doug Moore inquired if there was language in the policy to be able to consider the use of reverted funds for emergencies; Chair Doug Moore commented it would be heavily scrutinized if they tried to jump the fence, but if the board wants to try to develop some kind of language for an emergency, that's the will of the board. Mr. Martinez stated that in the past policy amendment that was done they added that if there are reverted funds only applications that had been submitted originally would be eligible. Mr. Quintana stated there are other funding sources out there for instance like CDBG they have emergency dollars available that you would be able to get from DFA to help address this issue.

Mr. Jimenez stated he had talked to Representative Mary Helen Garcia and with Senator Mary Kay Papen and they agreed that there is no mechanism that could be put in place and Senator Mary Kay Papen stated if there was money left over there is something wrong. Mr. Jimenez then asked the Senator what the repercussions would be if they tried to change the language of the bill, the Senator told Mr. Jimenez it would not be a good idea to do so.

Mr. Jimenez expressed concern that even after the governor declared a state of emergency for all the flooding he did not know where to send the counties for emergency funds. Mr. Quintana stated that as far as he knows that the emergency funds coming from the declaration are coming from homeland security. Mr. Steven Deal stated that those funds exclude the southern part of the state; Dona Ana County is not part of that. Mr. Jimenez asked Mr. Deal why that was. Mr. Deal responded he did not know, he read that it was terminated north of Dona Ana County. Mr. Martinez stated that he would be willing to help those in need get in contact with the right people.

Mr. Jimenez stated on another note some people have told him that they did not know when and where the meeting were going to be held. Mr. Martinez said that he would discuss this when they go over the status update.

6. Discussion regarding the definition of housing infrastructure and anti-donation clause.

The Office of General Counsel provided an opinion as directed by the Board on two issues, namely whether it is prudent to wholesale adopt the definition of "housing infrastructure" as defined in the

Affordable Housing Act and whether and how the Anti-Donation Clause of the New Mexico Constitution applies to the Colonias Infrastructure Act, particularly in light of recent amendments to the Clause permitting certain donations with respect to affordable housing. Mr. Bryan Otero stated that the Colonias Act provides for the funding of certain infrastructure projects from the Colonias Infrastructure Fund, which consists primarily of appropriations from the proceeds of severance tax bonds. “Qualified Project” under the Colonias Act is defined as “a capital outlay project selected by the board for financial assistance that is primarily intended to develop colonias infrastructure. A qualified project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure; but qualified project does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies. The Colonias Act does not further define “housing infrastructure”.

Mr. Otero informed the Board the constitution was amended in 2006 to permit certain donations to support housing projects specifically, subsections (E) and (F) were added to the Clause. Subsection (E) provides that the state housing authority, counties, and municipalities may donate land, costs of construction and renovation, and “the costs of financing or infrastructure necessary to support affordable housing projects. Subsections (E) and (F) are implemented by the Affordable Housing Act. The New Mexico Mortgage Finance Authority is the agency of the State specifically designated to provide affordable housing pursuant to the Act. Subsection (F) provides procedural steps that must be taken before any grant can be made to any entity in support of affordable housing.

Mr. Otero stated they may choose to adopt a definition of “housing infrastructure” that is modeled on the definition of “infrastructure improvements” in the Affordable Housing Act. However, he recommends that the definition not be adopted wholesale, but rather that each subsection be separately examined and that the Affordable Housing Act definition be used as a guide. Even if that definition were adopted completely by the Board, that would not relieve the Board and the Authority from the restrictions of the Clause. Both because of the restrictive definition of “qualified entity” in the Colonias Act and because of the Clause, the Board may not approve and the Authority may not finance, directly or indirectly, any grant or donation to a private person or in aid of private enterprise.

Mr. Quintana asked if we have some infrastructure that needs to be moved to a house could the wastewater and water destitution system be taken on to private property without violation. Chair Doug Moore stated he would say the answer is “no”. Mr. Martinez said “yes” the answer is “no”.

Chair Doug Moore thanked Mr. Otero for getting him what he needed and doing a great job he then asked for Mr. Otero to write up a definition of housing that he believes is appropriate and legal.

Mr. Isidor Hernandez requested that the NMFA attorney meet with the MFA attorney to discuss what is and is not allowed, Mr. Hernandez stated that the MFA is not the soul entity that does affordable housing and the act allows other entities to donate as well. Mr. Otero stated they would meet with him. A lengthy discussion ensued on the flooding and anti-donation in the southern part of the state.

7. Discussion regarding possible MOU with NMED or other possible mechanisms for funding project oversight. Mr. Martinez presented a sample MOU that the Water Trust Board uses to

oversee projects. This sample was give to the Board as an example of the wording and the servives provided in the document. Mr. Martinez stated that there are not adequate funds to date from the loan paybacks and there are not adequate funds from the New Mexico Finance Authority budget which is separate from the Colonias fund.

Mr. Martinez stated in the last meeting that if they fund a project they want to add a sentence of project oversight. Mr. Martinez stated that some of the engineering firms are providing the project oversight. Mr. Martinez also informed the board as to how the water trust board pays for the project oversight with loan repayments. However, currently all Colonias expenses to date come out of the NMFA overall budget.

Chair Doug Moore stated that he was informed that DFA is making it mandatory the COG step in and have oversight over the projects even though the entity is quasi governmental and has to make sure they have their audits caught up. That is pretty heavy handed from big brother as far as he is concerned. Mr. Quintana stated he had serious concerns about that as well.

Chair Doug Moore stated that the issue that brought them to this discussion was as a board they are lending these funds and at some point it's possible that the board does not control the situation, so how do we provide a level of integrity that there are checks and balances these funds are being appropriately handled. a lengthy discussion ensued between the board, Chair Doug Moore stated he would like to continue to have this discussion in the future he feels it will benefit the program and the entities applying for funds to have oversight.

- 8. Status Update of 2013 Project Awards.** Chair Doug Moore informed Mr. Martinez that he has received complaints from entities asking why they do not have their money yet. Mr. Martinez replied that do to the executive order they had to request documents from the entities and they have gotten them all in however the projects have to be reviewed by the NMFA CFO now.

Chair Doug Moore asked Mr. Martinez how many projects were award funding to in 2013. Mr. Martinez replied 37. Chair Doug Moore inquired out of those 37 projects how many of them have you sent the closing paper work to. Mr. Martinez replied he believed 5. Ms. Lucero stated she believes that the 5 that went out where from the 2012 reverted funds. Chair Doug Moore Inquired why all 37 entities do not get there closing packages at the same time. Mr. Otero explained that due to the executive order they had a setback. Mr. Otero stated they had created and sent out a document that was sent to all potential awardees, this document informed them of all the information that was required by the executive order. The information requested was asked to be sent back to the NMFA by October 1st. Mr. Otero stated that the NMFA CFO has to review all the information and determine whether or not the individual awardee has sufficient controls to administer and manage the funds. The deadline for the CFO to review the documents was on November 1st.

Chair Doug Moore inquired if the deadline was the same for coloinas and water trust board. Mr. Otero responded saying yes. Mr. Otero stated for next year's application process they have added all the requirements of the executive order to avoid the delay experienced this year. Chair Doug Moore stated in the future he would like the funds to be received by the entities in the same year

they are awarded. Chair Doug Moore inquired as to when the entities will be getting there closing paper work, and if the CFO has reviewed all projects. Mr. Martinez replied he was not sure if the CFO has reviewed all of them yet, and would look into it. Chair Doug Moore stated that the CFO deadline was November the 1st and now they are 12 days late and noted disappointment in staff.

Chair Doug Moore inquired as to when they can expect all the loan documents to go out. Mr. Martinez stated that it will probably take 30 more days to get all the closing documents out to the entities. Chair Doug Moore inquired what the cause of the delay was. Mr. Martinez replied saying it's the work load. Mr. Otero explained the process on closing a loan. Chair Doug Moore noted he understands that because of the executive order there has been a big work load added however expressed disappointment in the turnaround time on getting the funds out.

Chair Doug Moore stated that he has had complaints of entities saying they have not gotten the 2012 funding and inquired how many they have outstanding from 2012. Mr. Otero responded saying he only knows of Virden from 2012. Ms. Lucero stated that the projects that were awarded the reverted funds are still outstanding, but from the initial awards the only one out standing is Virden. Mr. Otero confirmed that and thanked Ms. Lucero for all her help in trying to help get that loan closed.

A discussion ensued on the delay of getting out the funds the board members concurred with Chair Doug Moore and expressed frustration with the delay in processing funds.

9. Consideration for Approval of Proposed 2014 Colonias Application Cycle Calendar. Mr.

Martinez presented the draft calendar to the Board. Chair Doug Moore stated that he wanted to push some of the dates up and asked Mr. Martinez if the application was going to be changing. Mr. Martinez stated that he was just going to add the requirement of the executive order and stated that it would not change the actual application. Mr. Quintana expressed concern regarding pushing the dates up due to other deadlines the COG's have to meet in that same time period with other applications. Chair Doug Moore stated he was trying to get it out before CDBG.

Ms. Lucero asked when the session ends. Mr. Quintana replied saying it starts on the 20th of January and ends on the 20th of February. Chair Doug Moore asked the board for input. Mr. Quintana recommended they keep the days for the application submission as it was on the draft calendar. Ms. Lucero agreed with Mr. Quintana.

Mr. Jimenez asked with the dates provided would they be able to get it to DFA to sell the bonds earlier and to get it approved by State Board of Finance. Mr. Martinez informed Mr. Jimenez that it does not go to State Board of Finance. Chair Doug Moore explained to Mr. Jimenez that the Colonias board approves the projects and then it's taken to the NMFA board to ratify there decision. Mr. Jimenez then asked if they could get it done by July if they kept the dates. Mr. Martinez said yes.

Mr. Quintana stated that the State Board sells bonds twice a year in June and December. Chair Doug Moore asked Mr. Martinez if they needed the 30 days for technical review. Mr. Martinez stated that it is a multi-agency review, for instance for member Deal, if they get 30 applications for

waste water he is the one that will review those 30 applications, so it gives him and the other team member's time to do a thorough review. Chair Doug Moore said ok.

Chair Doug Moore inquired why there is a board meeting on the 20th of March, is that to hit the quarterlies. Mr. Martinez replied stating is for a couple of reasons: Yes to meet the quarterly and to give the status of all the applicants, however it is at the discretion of the board if they would like to change the date. Chair Doug Moore stated that he did not want to have so many meetings and stream line it. He suggested removing the meeting on the 20th of March and move up the technical review from the 31 of March to the 15th of March.

Chair Doug Moore asked Mr. Martinez what the process was and why there was a gap in between the dates. Mr. Martinez stated that is the time needed for staff to upload the projects and to get them to the technical team. Technical review starts on March 31st to the 25th of April. The Board meeting on March 20th was moved up to January 22nd 2014. Chair Doug Moore asked if the board wanted to keep the review process as is. Mr. Lucero stated it's functional the way it is. Mr. Jimenez said to keep it as is. A discussion ensued as to when the board would like to have a board meeting and as to when they would like to have the project review. The board decided to have the Board meeting on the 30th of April and to have project reviews on the 1st and 2nd of May in Las Cruces, NM.

Mr. Orland- Antonio Jimenez moved, seconded by Chair Doug Moore, to accept the proposed 2014 application cycle calendar with the changes. The motion was unanimously approved.

10. Public Comment.

Ms. Olga Morales commented that she was not happy with the dates on the calendar do to the fact that they missed out on over two million dollars from the federal government due to the fact the projects where not obligated early enough, so entities where not able to comply with all the federal requirements to get the USDA funding. Char Doug Moore responded saying that they are pushing the dates up by 30 days this year. Ms. Morales stated that the meeting to award the funds come to late for the entity to react. Chair Doug Moore asked Ms. Morales how they missed out on the two million dollars. Ms. Morales replied federal projects require an environmental component and that has 30 to 60 day publication period, if the entities do not have that kind of time frame federal funding will close by mid-July, which will not give them enough time to meet the requirements. The board engaged in a lengthy discussion in an attempt to resolve the issue due to time constraints they were unable to make the changes.

Mr. Karl Tonander stated If the review committee could provide feedback of prior applications and scoring, comments. Mainly in solid waste. It has been challenging to figure out what is an acceptable solid waste application to this board.

11. Proposed Next Meeting Date.

**January 22,2014
Santa Fe, NM**

Location TBD

12. 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 2:51 p.m.


Secretary

3-25-14
Date