

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

April 30, 2014

**Colonias Infrastructure Board Meeting
New Mexico Finance Authority
Las Cruces, NM**

Present – Voting Members:

Doug Moore, Chair	Senate Minority Leader Appointee
Oscar Vasquez Butler	Senate President Pro Tempore Appointee
Robert Coalter	NMFA
Jimmy Rodriguez	Designee - DFA
Jim Grantner (<i>telephonically</i>)	House Minority Leader Appointee

Present – Non-Voting Members:

Tiffany Goolsby	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
Orlando-Antonio Jimenez	Speaker of the House Appointee
Secretary Ryan Flynn	NM Environment Department

Finance Authority Staff:

Bryan Otero	Connie Marquez-Valencia
Rick Martinez	

1. Call to Order and Roll Call.

The meeting was called to order at 1:02 p.m. Roll was called and a quorum was established.

2. Approval of Agenda.

Mr. Robert Coalter moved, seconded by Mr. Jimmy Rodriguez, to approve the agenda. The motion passed.

3. Approval of September 11, 2013 and January 22, 2014 Board Minutes.

Mr. Oscar Vasquez Butler requested an amendment to the September 11, 2013 minutes to reflect that he was present at the meeting.

Mr. Jim Grantner requested an amendment to the January 22, 2014 minutes reflecting his participation via conference phone.

Mr. Robert Coalter moved, seconded by Mr. Oscar Vasquez Butler, for approval of the minutes as amended. The motion passed.

4. **Chairman's Report.** Chair Moore noted that a continuing concern for him as well as the Board has been how to get adjacent property owners to connect to systems. Chair Moore reported that Mr. Rick Martinez had a discussion with funding partners regarding this issue. Mr. Martinez commented that with millions of dollars allocated to the various projects the question remains how to go about determining that residents are connecting to the systems. Mr. Martinez said he would like to require applicants to submit plans for connections in the 2016 funding cycle. In the interim, he proposed traveling to the various districts to meet with entities and engineers. Mr. Martinez indicated that other entities may have funding available for connections.

Chair Moore commented that the heart and soul of the problem is that building infrastructure to which residents cannot connect for lack of personal funds does not adequately serve them. However, as reported by Mr. Martinez, the federal agencies do have money available for those connections.

Mr. Oscar Vasquez-Butler commented that this same issue seems to come up with every water project. He felt that working with the Legislature to modify the Anti-donation provision would eliminate the problem. Mr. Vasquez-Butler noted that the Colonias residents have also raised the issue of the public good outweighing the anti-donation provision.

Chair Moore commented that the Project Review Committee has been addressing this issue over the past month and is requesting an opinion from Attorney General.

Ms. Priscilla Lucero suggested researching the possibility of using the LEDA act for funding the connections.

5. **Consideration for Approval of Open Meetings Act resolution.** Staff recommends approval of the Open Meetings Resolution. Mr. Bryan Otero presented.

Mr. Otero said the Resolution as presented is the same document considered every year by the Board. The Open Meetings act requires that all meetings of a quorum of members held for the purpose of formulating public policy, discussing public business or for the purpose of taking action with the authority of or delegated authority of such body are declared to be public meetings open to the public at all times.

Mr. Robert Coalter moved, seconded by Jimmy Rodriguez, for approval of the Open Meetings Act resolution. The motion passed.

6. **Consideration for Approval of Scope of Work Change to Project #2996-CIF – utilizing \$205,558 to make up the shortfall in the cost of addressing the arsenic issues as outlined in the**

Administrative Order issued by NMED-EPA. Mr. Rick Martinez presented the request from La Union MDW&SA (La Union) to allow a change to Project #2996-CIF to cover the shortfall on funding and award for the construction of the arsenic treatment project. Upon completion of the arsenic treatment project, the Association will use the remaining grant amounts for the original scope of water line extensions.

La Union has been working to address the NMED-DWB administrative compliance order to bring arsenic levels within compliance. Bids for arsenic treatment were open in March; however, bid results were higher than the estimated cost resulting in a need for additional funding to award the project. The funding analysis projects a shortfall of \$205,556.

La Union requests a change to the project as follows:

- ◆ An Arsenic Treatment Facility consisting of a 350 gpm skid-mounted Oxidation-Filtration Unit with ancillary support systems and process piping; 830 square foot building for housing treatment equipment and chemicals; 1,500 linear feet of 8-inch water distribution pipe connecting the second well to the treatment site; excavation and site work for concrete sludge drying beds; infiltration pond enlargement; improvements to existing Well #1 building; installation of a well pump and motor, drop pipe, discharge piping, valves and meter for Well #2.
- ◆ Extension of the water distribution system to parts of La Union's service area that currently do not have a water utility service. Pipelines would extend at 6-inch diameter minimum to be able to provide domestic water and fire protection for the community. One bored crossing across NM28 will be required to continue pipeline extension across this major North-South barrier. New connections would total approximately 20 new customers. Within the original community and these system extensions, several fire hydrants are included to expand fire protection coverage.

Mr. Matt Thompson, of BHI Engineering representing La Union, noted that two production wells will go to filtering systems. Mr. Thompson noted that USDA funding is \$1,216,000 with the Colonias funds proposed for use as match money to meet the shortfall.

Chair Doug Moore moved, seconded by Mr. Robert Coalter, for Approval of Scope of Work Change to Project #2996-CIF utilizing \$205,558 to make up the shortfall in the cost of addressing the arsenic issues as outlined in the Administrative Order issued by NMED-EPA.

Chair Moore asked what assurance is there that the project will mitigate the problem with the arsenic. Mr. Oscar Vasquez-Butler felt the Legislative act does not allow using Colonias funds as matching dollars. Chair Moore said the dollars would satisfy the match requirement from USDA.

Mr. Vasquez-Butler expressed concern about asking for a scope of work change to a project for using money for a match but not for pipe in the ground. He cautioned that the Legislative act does not allow for use as matching funds.

Ms. Priscilla Lucero commented that the request is not necessarily for matching funds but rather for a change of scope to complete the project in its entirety; the reality being that the amount was lower than anticipated and La Union does not have sufficient funds to have a completed project.

Ms. Olga Morales noted that the La Union project is a multi-year project which is \$200,000 short in funding for completion. She said the association has until the end of the month to comply with a Compliance Order issued 3 years ago. La Union may face financial penalties for non-compliance.

Chair Moore commented that he understands the need to address arsenic problem; however, the funds were awarded for one project which is now being changed. He continued that the original project was evaluated against other projects and to now change the scope does an injustice to those other applicants. Chair Moore requested that staff ascertain that other projects were not adversely affected because of this scope change.

In response to a question from Mr. Vasquez-Butler, it was noted that 309 households will be served; however, 24 households would not be receiving service.

Vote taken on the question. The motion passed unanimously.

Mr. Grantner commented he is not fully comfortable voting for approval and is voting with some reservation; however, does not want to delay the project.

7. Discussion Regarding the available balances from the 2012 funding cycle – approximately \$173,000 available for reallocation.

Mr. Rick Martinez said this is an informational item to request Board guidance in reallocating \$173,000. Mr. Martinez commented that typically the direction has been that staff contacts those projects that were not funded.

Chair Moore requested that staff review the original applications looking for those who have potential to complete projects. Chair Moore requested staff present a recommendation at the June meeting. Mr. Rodriguez requested the documentation provide information on whether projects recommended for funding will be completed with the money available.

8. Consideration for approval for Luna County to be the fiscal agent for the Village of Columbus (“Village”) regarding Colonias Project #3004-CIF and request for waiver of loan.

Mr. Rick Martinez reported that the Village of Columbus (Village) cannot meet the executive order; however, Luna County has agreed to serve as fiscal agent provided the loan requirement is waived, as the County cannot afford the loan component.

Chair Moore asked if the Village has the financial ability to pay the 12K up front so the County does not have to worry about repayment. Mr. Priscilla Lucero responded that the Village does not have the financial capacity to undertake the loan.

Mr. Jimmy Rodriguez moved, seconded by Mr. Robert Coalter, for approval for Luna County to be the fiscal agent for the Village of Columbus regarding Colonias Project #3004 and request for waiver of loan.

Ms. Jessica Etcheverry, Luna County representative commented that the Village does not have the financial capacity at this time and is having a hard time meeting agreements with Luna County. Mr. Vasquez-Butler asked if this request would circumvent the executive order. Chair Moore noted that the executive order mandates that projects cannot be funded without compliance with the audit requirement.

Mr. Martinez said the NMFA did not waive compliance with the executive order with all awardees required to complete the audit requirements. Mr. Vasquez-Butler commented that it appears like the County wants to waive liability on the loan.

Mr. Martinez noted that neither the County nor the Village have the funds. Ms. Etcheverry said the Village has struggled but is making an effort along with assistance from the County to avoid losing the funds for a necessary project.

Mr. Vasquez-Butler expressed concern about awarding funds to projects that agreement with loan component but later return asking for a waiver. Mr. Hubert Quintana commented that many communities had audits but for some reason were not able to meet requirement of the executive order. He continued that the reason was not that they could not take care of money but segregation of duties caused problems. Mr. Quintana said that Colonias in many cases do not have staff; whoever becomes the fiscal agent is assumes the responsibility of the borrower. He noted that many counties are good stewards of their money but are caught by executive order in some administrative findings; additionally, when the executive order came out there was not a lot of coordination between agencies.

Mr. Jimmy Rodriguez spoke briefly about the executive order regarding implementation and its intent to prevent fraud, waste, and abuse. Mr. Rodriguez said that the statute requires that all entities meet the audit requirements. He noted if an entity has findings they can: 1) remedy the audit findings, if possible; 2) work with state agency to implement new process; or 3) use a fiscal agent which should be the last option to be considered. Mr. Rodriguez said the Department of Finance and Administration (“DFA”) recognizes that the executive order caught many by surprise, but DFA did not have sufficient time to go around the state to train entities.

Mr. Bryan Otero reported that the NMFA followed the procedure outlined by Mr. Rodriguez targeted to address the 3 options that as outlined looking at a fiscal agents as the last resort.

Ms. Priscilla Lucero commented that the Village has made huge improvements since the election in March. She said that as a person who does a number of applications, she looks at the financial issue. Ms. Lucero said she has knowledge of the Village’s situation and suggested looking at a fiscal agent.

Roll call vote taken on the question with Mr. Grantner and Chair Moore voting for and Mr. Vasquez-Butler, Mr. Coalter, and Mr. Rodriguez voted against. The motion did not pass.

Mr. Granter clarified his vote saying he has concerns with the request for the loan waiver but not with request from Columbus.

- 9. Consideration for approval of Policy Committee recommendations regarding revisions to the Project Selection and Management Policies.** Chair Moore presented the Policy Committee recommendation requesting an Attorney General opinion regarding housing infrastructure and the Anti-Donation clause. Chair Moore read the proposed letter for the record. *(The letter is attached as part of the minutes.)*

In summary, Chair Moore said the request is to seek the Attorney's General's guidance on whether the Anti-Donation of the New Mexico Constitution applies to the Colonias Infrastructure Board and Finance Authority with respect to funding of housing infrastructure projects and clarification as to what restrictions apply to housing infrastructure projects potentially funded by the Board and Authority. Chair Moore noted that the Board is not trying to circumvent the Anti-Donation clause but rather seeks direction and guidance on how to help these communities fully utilize the infrastructure that the policies attempt to provide.

Mr. Robert Coalter moved, seconded by Mr. Jimmy Rodriguez, for approval of the Policy Committee recommendations regarding revisions to the project selection and management policies.

Mr. Isidoro Hernandez thanked Mr. Coalter and the Finance Authority staff for meeting to discuss this issue. Mr. Hernandez noted that the Mortgage Finance Authority and New Mexico Finance have slightly different interpretations of the Act and believes the Attorney General would be the appropriate party to render an opinion. Because neither party has had an opportunity to review the changes to the proposed document, he requested time to allow Counsel for both parties to review the document to ensure accuracy.

Discussion ensued with Chair Moore ultimately requesting that staff distribute the document for any proposed changes or suggestions. He requested the Board redline the document allowing the full Board to see any additions or deletions. Chair Moore requested staff place on the June meeting agenda.

Mr. Coalter and Mr. Rodriguez withdrew the motion for approval.

Mr. Robert Coalter moved, seconded by Mr. Oscar Butler, to table this item to the June meeting. The motion passed.

- 10. Discussion, consideration, and adoption of a Resolution to certify the need of the 2014 Colonias infrastructure allocation of Senior Severance Tax Bonds.** Mr. Bryan Otero presented the Certification of Need for Colonias Infrastructure Projects. Staff recommends the Board adopt the Resolution, Notification, and Certification as required by the Severance Tax Bonding Act.

The Severance Tax Bonding Act provides that after the annual estimate of Severance Tax Bonding Capacity, the Board of Finance Division shall allocate five percent of the estimated bonding capacity each year for Colonias Infrastructure Projects. The Legislature authorizes the State Board of Finance to issue Severance Tax Bonds in the annually allocated amount for use by the Colonias Board to fund projects. Therefore, the Colonias Board is required to certify to the State Board of Finance the need for issuance of bonds for the Colonias projects on an annual basis.

The Resolution presented for approval certifies that at least Fourteen Million Two Hundred Thirty Five Thousand Six Hundred Forty Dollars (\$14,235,640) is needed to fund said projects. The Board will consider adoption of another resolution with the list of recommended projects at the June meeting.

Mr. Jimmy Rodriguez moved, seconded by Mr. Robert Coalter, for approval of the Resolution certifying the need of the 2014 Colonias infrastructure allocation of Senior Severance Tax Bonds. The motion passed unanimously.

11. Appointment by the Chairman of a Nominating Committee to recommend officers to the Board. Chair Moore appointed the following to the Nominating Committee for Board officers: Mr. Jimmy Rodriguez, Mr. Oscar Vasquez-Butler, and Ms. Priscilla Lucero.

12. Appointment by the Chairman of a Task Force to review Board member Code of Conduct rules. Chair Moore appointed the following to the Task Force to review Board member Code of Conduct rules resulting from an allegation of misconduct by a Board member. Chair Moore reported that he, along with Mr. Oscar Vasquez-Butler would serve as the Task Force.

13. Presentation of the 2014 applications submitted for consideration for funding. Mr. Rick Martinez said this is an information item updating the Board on applications received for the 2014 cycle. Mr. Martinez reported that 77 applications were receiving totaling approximately \$40,351,172 representing a variety of projects.

14. Public Comment

Ms. Karen Nichols inquired about Project Review Committee membership. Chair Moore responded that members are Mr. Jimmy Rodriguez, Mr. Oscar Vasquez Butler, Mr. Izzy Hernandez, Ms. Priscilla Lucero, Mr. Hubert Quintana, Mr. Jay Armijo, Mr. Steve Kopelman and Mr. Doug Moore.

15. Proposed Next Meeting Date.

June 4, 2014

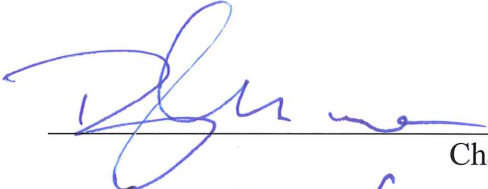
Location TBD

Ms. Priscilla Lucero offered to host the June meeting in Deming. The Board accepted the invitation. Ms. Lucero said she try to get reduced hotel rates at the Holiday Inn Express, and would secure a meeting site.

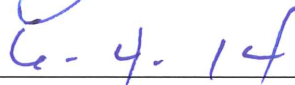
16. Adjournment.

Mr. Robert Coalter moved, seconded by Mr. Doug Moore, to adjourn the meeting. The motion passed unanimously.

The meeting adjourned at 4:15 p.m.



Chairman



Date