

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

**Minutes of Board Meeting
January 25, 2013
Mabry Hall – Education Building**

Present:

Nann M. Winter, Chair (*telephonically*)
Paul Gutierrez, Vice Chair
Tom Clifford, Treasurer
John Bemis
David Martin
Blake Curtis (*telephonically*)
Jerry Jones
Jon Barela
Lonnie Marquez (*telephonically*)

Stelzner, Winter, Warburton, Flores et al
Executive Director, NMAC
Secretary, Dept. of Finance & Administration
Secretary, NM Energy & Minerals Dept.
Secretary, NM Environment Department
CEO, Curtis & Curtis Seed
CEO, Stolar Research
Secretary, NM Economic Development Dept.
Vice-President - NM Tech

Absent:

William Fulginiti, Secretary
Terry White

Executive Director, NMML
CEO, Sunwest Trust, Inc.

NMFA Staff:

Adam Johnson
Bryan Otero
Dan Opperman
Donna Trujillo
E.J. Peinado
Jana Amacher
John Gasparich
Mark Chaiken
Marquita Russel
Robert Brannon
Sanjiv Doreswamy
Yolanda Valenzuela

Angela Quintana
Connie Marquez-Valencia
Darlaina Chapman
Dora Cde Baca
Gloria Castillo
John Brooks
Leandro Cordova
Mark Dalton
Michael Zavelle
Ryan Helton
Todd Johansen
Zach Dillenback

Guests:

Brian Cesar
Wayne Johnson
Mark Nitcholas
Frank Lauterbur
Craig Dussinger
Kim Nakahara
Dale Lehman

City of Alamogordo
Bernalillo County
Hutchinson, Shockey, Erley & Co.
BofA Merrill Lynch
BofA Merrill Lynch
BofA Merrill Lynch
Piper Jaffray

Danielle Bradford
Debbye Lehman
Leo Valdez
Tomas Campos
Barney Trujillo
Helene Chenier
Donald Fennema
Rachel King
Richard Virtue
Robert Rentschler
Clayton Teueyck

Piper Jaffray
Piper Jaffray
HSE
Rio Arriba County
Rio Arriba County
Bank of Albuquerque
Bank of Albuquerque
Sutin, Thayer & Browne
Virtue, Najjar, Browne
City of Alamogordo
Molzen-Corbin/City of Eunice

1. Call to Order and Roll Call.

The meeting was called to order at 9:05 a.m. Roll was called and a quorum established.

2. Approval of Agenda

Secretary Tom Clifford moved, seconded by Mr. Jerry Jones, to approve the agenda. The motion was unanimously approved.

3. Approval of December 14, 2012 Board Minutes

Secretary John Bemis moved, seconded by Mr. Lonnie Marquez, to approve the December 14, 2012 minutes as presented. The motion was unanimously approved.

4. Report from Chief Executive Officer

Mr. John Gasparich, CEO, reported on the following:

- ◆ Introduced two new employees who recently joined the NMFA – Mr. Bryan Otero, Assistant General Counsel and Mr. Sanjiv Doreswamy, Commercial Lender.
- ◆ Reported on the external audit exit and entrance conferences held on January 23, 2013 with REDW.
- ◆ Reported on the 5 NMFA bills before the Legislature.
- ◆ Ms. Jana Amacher presented an update on the Drinking Water Program.
- ◆ Mr. Michael Zavelle presented a brief status on the bond ratings.

Mr. Paul Gutierrez asked if staff anticipates the negative watch being lifted once the audit is complete. Mr. Zavelle said he expects Standard & Poor's to remove the negative watch at the time of the next bond issue; however Moody's is waiting for completion of the 2011 audit. The negative watch could be dropped at that time. Mr. Gutierrez referred to the recommendations for corrective actions being taken by NMFA and asked if the rating agencies would consider that as exceeding their expectations. Mr. Zavelle said Moody's was simply concerned with the current search for the new CEO and it is anticipated that investors would follow the rating agencies lead.

5. Selection of Chief Executive Officer Search Firm

Mr. John Gasparich announced that the committee assigned to procure a search firm for the CEO position will be meeting and should have a report for the Board at the next meeting.

Secretary Clifford asked if a candidate recommendation would be made at this meeting. Mr. Gasparich said the next action by the NMFA Board would be to accept a contract for a search team. Secretary Clifford questioned why the process was moving slowly. Chair Winter said the legislative session hindered the process but hopes to announce a selection of the search firm within the next couple of months.

6. Audit and Investigation Findings, Recommendations and Actions

Ms. Donna Trujillo and Mr. John Gasparich reviewed the audit findings, recommendations and proposed action. The matrix is attached as part of the minutes. Secretary Clifford referred to the issues related to board governance and recommended the appointment of a subcommittee to keep Board members involved as a follow-through of the recommendations. Mr. Gutierrez suggested the Executive Committee, with another Board member appointed by the Chair, meet in a work session to discuss the recommendations and proposed actions. Chair Winter supported the idea and asked Mr. Gasparich to include updates as a regular agenda item.

7. Open Meetings Act Resolution for 2013. Mr. Dan Opperman, General Counsel, reported that the item before the Board is informational only.

Mr. Dan Opperman said the resolution is for information only. Public comment will be solicited with final approval to be scheduled for the February meeting. Mr. Opperman briefly reviewed the resolution.

8. Inspection of Public Records Resolution Adopting a Policy for Inspection of Public Records for 2013. Mr. Opperman said the material is informational only and will be presented for approval at the next meeting. Comments will be solicited prior to final approval. Depending on the comments received, the resolution may change to accommodate the recommendations.

Mr. Gutierrez asked staff to compile the public comments, if any, for the Board's review.

9. Briefing on Proposed Legislation Pertaining to Water Trust Board. Secretary John Bemis questioned why this particular legislation was being proposed. Mr. Opperman deferred to the Water Trust Board for a response adding that staff is currently reviewing the amendments to determine the impact it may have on NMFA. Rather than continue with the presentation, Secretary Clifford asked staff to provide the Board with a memo outlining their concerns with the bill. He also requested a memo from the Office of the State Engineer's (OSE) explaining the purpose of the bill. Chair Gutierrez directed staff to provide the Board with an update at the February meeting on recommended legislation going forward with potential impacts on the NMFA.

This item was deferred to the next meeting. NMFA staff was directed to provide a memo outlining concerns with the bill, along with a memo from the OSE explaining the rationale for the proposed legislation.

10. PPRF Cash Position for Relending and Removal of PPRF Temporary Protocol. Staff recommends removal of the temporary protocol for Public Project Revolving Fund (PPRF) lending in anticipation of the NMFA's ability to issue PPRF bonds.

Mr. Zach Dillenback presented. At a special meeting on August 8, 2012, the NMFA Board of Directors (the Board) approved a temporary protocol for PPRF lending (the Protocol) that established conditions by which NMFA could continue to lend while the 2011 and 2012 audits are completed and PPRF bonds could again be issued. The primary goal of the Protocol was to first continue serving smaller New Mexico communities having the least access to financial markets with special emphasis on meeting public health and safety priorities.

REDW, the audit firm hired to complete the NMFA 2011 and 2012 audits is doing so concurrently. The exit conference for the 2011 audit was held on January 23 to finalize the 2011 audit before submittal to the Office of the State Auditor. The 2012 audit is expected to be completed and submitted to the State Auditor by the end of March. Staff anticipates that PPRF bonds will be issued in May. Removal of the Protocol will assist staff in bringing loans to the Board for approval in anticipation of resuming bond issuance.

PPRF projects to be considered at the February Board meeting have an application deadline of January 25. Thus, if the Protocol is removed at the January Board meeting, projects will be considered at the March Board meeting, assuming they meet the application deadline of February 22. March approval of projects is in line with an April approval of a 2013A Bond Resolution, along with the Preliminary Official Statement and sale of bonds in May for a June closing.

Secretary Clifford asked if there were applications that could not move forward due to the protocol. Mr. Dillenback said there are a number of projects waiting for the protocol to be lifted. Secretary Clifford asked what the bond estimate would be and Mr. Dillenback said it is anticipated to be approximately \$50-70 million. Mr. Michael Zavelle confirmed that the bond issue would be in the \$50-60 million dollar range and that there are \$6-8 million dollar infrastructure projects for late spring which would require a larger bond issue. Additionally, NMFA is also considering possible refinancing which would affect the size of the bond issue.

Mr. Jerry Jones moved, seconded by Secretary Tom Clifford, for removal of the temporary PPRF protocol. The motion was unanimously approved.

11. Report from Finance & Loan Committee

Chair Gutierrez said, in Mr. Fulginiti's absence, the Board would consider the Finance/Loan Committee recommendations on the projects that follow. Ms. Nann Winter recused herself on agenda items 15, 17, 18, and 26.

12. Consideration and Recommendation of City of Rio Rancho - (*Sandoval County*) – 2885-PP Building Acquisition and IT Equipment. The Finance/Loan Committee recommends approval of PPRF loan financing of \$795,970 for City of Rio Rancho (City) to purchase a building to house the City's fire administration and related IT equipment.

The City seeks to purchase and equip a building for use by its Department of Fire and Rescue. The new building will address the Department's critical administration and conference /training needs and allow for IT upgrades and increased communication efficiencies for the Emergency Operations Center.

The City has two outstanding fire loans with the NMFA utilizing its State Fire Protection Fund distribution. The City's annual State Fire Protection Fund base distribution is \$523,157. This project has been approved by the State Fire Marshal and complies with their 2.0x debt service coverage requirement. The City's FY 2012 audit is currently under review at the Office of the State Auditor.

Secretary Jon Barela moved, seconded by Secretary David Martin, for approval of City of Rio Rancho, Project #2885-PP. The motion was unanimously approved.

13. Consideration and Recommendation of Rio Arriba County - (*Rio Arriba County*) – 2687-PP Project Scope Amendment Request. The Finance/Loan Committee recommends approval of PPRF Project Scope Amendment Request for \$3,573,105 for Rio Arriba County to change the scope of the original loan agreement.

Commission Chair Barney Trujillo, County Manager Tomas Campos, and Financial Advisor Leo Valdez, were in attendance to answer questions.

On May 18, 2012, the NMFA closed a loan with Rio Arriba County (County) for \$3,573,105 to fund a recreation complex secured by the County's fourth increment of County Gross Receipts Tax with a thirty-year term.

The County had originally set aside about \$5,000,000 for the project and planned on financing the rest with this loan. After more detailed planning, the County determined that the project is not in their best interest at this time. First, the complex would require a substantial amount of water. The County believed that the municipal water system could accommodate the increased use, but unfortunately additional water rights would be required. Secondly, the cost to operate the facility was underestimated and the County is concerned with the budgetary stress this would create.

The County requests a change in the scope of the project to an archive center in Tierra Amarilla to centrally house important documents that are currently spread out in seven facilities throughout the County including the Courthouse. The County was already contemplating this project and has set aside \$1,000,000 for any contingencies that may increase the cost above the loan amount. The new center would increase efficiency as well as allow the County to discontinue leases at six storage facilities. The preliminary cost estimate is a little over \$3,300,000.

Prior to closing on this amendment, the NMFA will require the County to meet the following criteria:

- ◆ TRD concurrence on the land appraisal;
- ◆ Completed site selection and condemnation process;
- ◆ Completed plans on the new building;
- ◆ Any additional information requested by the NMFA; and
- ◆ Loan documents shall conform to NMFA standard forms and policies.

Secretary Clifford asked if the condemnation proceedings are related to this project. Chair Trujillo confirmed that the condemnation is necessary because the location is the best site for the building. An estimate of the property was reviewed by the state and an offer from the owners was approximately \$10,000 higher than the County's estimate, which allows moving forward. Chair

Trujillo also noted that the Tax & Revenue Department's (TRD) appraisal caused a delay of the project because it was being financed by a county GRT intercept that required Commission approval. Secretary Clifford referred to the operating expense associated with the recreational project and asked if the archive center was covered in the budget. Chair Trujillo stated that it was included and associated personnel costs were already in the budget. Referring to the TRD's concurrence on meeting the criteria, Ms. Chapman said TRD has already approved the County's appraisal. A discussion ensued on the outstanding criteria and whether it would affect the deadline of the loan closing. Chair Trujillo noted that the County has set aside funds of \$100,000 to purchase the property.

Secretary John Bemis moved, seconded by Mr. Jerry Jones, for approval of Rio Arriba County, Project #2687-PP. The motion was unanimously approved.

14. Consideration and Recommendation of Mogollon VFD (*Catron County*) – 2228-PP

Amendment Request to Allow for Pre-Payment. The Finance/Loan Committee recommends approval of amendment request to allow prepayment of \$76,125 for the Mogollon VFD one year after the loan closing.

In December 2008, the NMFA closed a loan with the County for \$76,125 to be used to purchase a fire pumper truck. The loan was secured with State Fire Protection Funds with a ten-year term and 5.6x coverage. The current loan agreement does not allow for any prepayment. The County is requesting an amendment allowing them to prepay the debt to increase capacity for future projects. The prepayment amount will be available for PPRF relending under the temporary PPRF loan protocol.

Mr. Lonnie Marquez moved, seconded by Mr. Blake Curtis, for approval of Mogollon VFD, Project #2228-PP. The motion was unanimously approved.

15. Consideration and Recommendation of Albuquerque-Bernalillo County Water Utility Authority (ABCWUA) (*Bernalillo County*) 2883-DW – Water Project.

The Finance/Loan Committee recommends approval of ABCWUA DWSRLF loan financing of \$2,067,975 to finance water infrastructure improvements in Carnuel.

Mr. Frank Roth from ABCWUA and Commissioner Wayne Johnson were in attendance to answer any questions. Ms. Darlaina Chapman presented.

**The ABCWUA is eligible to receive 25% in Base Principal Forgiveness.*

The ABCWUA and Carnuel have requested that the median household income (MHI) of the project area be used to determine the amount of subsidy for which the project may qualify. This may increase the principal forgiveness subsidy up to 75%. In order to facilitate this request, the Board would need to approve an amendment to the Drinking Water Intended Use Plan (IUP) and policies that would allow looking at something other than the total service area of the applicant. The MHI of the ABCWUA is in excess of 100% of the state average. A survey was conducted by the Rural Water Association that showed the MHI of the people who would benefit from this specific project at \$18,000 or 41% of the state average.

The ABCWUA applied for a Drinking Water Loan for various water infrastructure improvements to connect Carnuel to the ABCWUA's water system. This loan will fund Phase 3a, allowing 52 users to connect to the system upon completion. The Carnuel community currently utilizes private water wells with disposal through septic systems. Many of these systems are close together resulting in nitrate contamination in many of the wells.

In July 2011, ABCWUA was downgraded by Fitch from an 'AA+' to an 'AA' rated credit. The rating downgrade reflected ABCWUA's breach in its bond covenants and inability to maintain proper debt service coverage due to declining liquidity. Liquidity issues were prompted by various issues including the economy, decline in expansion revenue, decline in demand and usage, and increased spending/expenditures due to its various system improvement and expansion projects.

ABCWUA has since implemented a tiered rate increase that increased revenue requirements: 5% in 2011 and another 5% in 2013. Additionally, the drought of 2011 has caused water demand and usage to increase, thereby significantly increasing revenue. Adjustments have been made in CIP expenditures and have kept expenses down, which has translated to increased liquidity. Because the historic revenues are insufficient to meet NMFA's debt service coverage requirement of 1.2 xs, staff must look at projected revenues to determine coverage requirement. The NMFA used this projected coverage to do a senior lien bond issue in December 2011 which is included in the analysis.

Mr. Roth summarized phase 3a of the project stressing the critical need for Carnuel. He also commented on the MHI survey that was conducted. Commissioner Johnson noted that the only solution to Carnuel's water quality- problem is with assistance from ABCWUA, adding that it is unfortunate that a rule designed to prevent abuse of funds is working against the Carnuel community. Commissioner Johnson urged the Board to look carefully at the policies regarding income-project areas, and asked for support for small communities like Carnuel along with changes to the policy.

Ms. Chapman said the Board could table action until the proposed policy amendments are addressed. She said tabling the project would allow time for amending the NMFA's DWSRLF IUP and Policies to include the possibility of using a different measure of a community's MHI other than the total service area that may provide additional subsidies that can encourage regionalization.

Secretary Clifford asked if staff would refer to the income level on the census data for the area. Ms. Chapman said the income level would be considered; however the County's census information which is in excess of 100% of the state's average did not qualify them for extra subsidy. A discussion ensued on the per capita subsidy and how it is factored for this type of situation. Commissioner Johnson explained how their connection fees are obtained and how the fees are applied to the loan component for the funding. He provided the Board with cost estimate projections justifying the need for high subsidies to fund the different phases of the project. Commissioner Johnson said the County also has various programs to assist customers with the connection charges as well as with the yard line construction. Based on the information provided, Secretary Clifford felt the hook-ups would be unaffordable without assistance from the various programs and felt the County should have a better idea of what their user base would be. He asked if the \$500,000 loan component would be repaid with the utility proceeds of the hook-up charges. Commissioner Johnson

said as the applicant, ABCWUA would be responsible for payment on the loan component reimbursed by the customers when they connect to the system.

A discussion ensued on the risks of ABCWUA backing the loan and relying on customers to hook-up to the system. Commissioner Johnson provided further information on the programs available to customers for hook-up assistance. Secretary Bemis was concerned with amending the policy specifically for this project and asked if a regionalized project could consist of only 5 homes simply because it is a disadvantaged area. Mr. Gutierrez noted this would be discussed during the presentation on the policy amendment. Mr. Andy Edmondson, NMED Drinking Water Bureau explained why the project was ranked 4th on the priority list. Referring to the water quality issues for this project, Mr. Edmondson said \$1 million was spent on engineering research to address the water quality along with completion of a Preliminary Engineering Report.

Secretary Tom Clifford moved, seconded by Secretary David Martin, to table Albuquerque-Bernalillo County Water Utility Authority, Project #2883-DW. The motion was approved with Ms. Nann Winter recused from voting.

Agenda Items 30 and 31 were considered at this point.

- 16. Consideration and Recommendation of Village of Bosque Farms (Valencia County) – 2882-DW Water Project.** The Finance/Loan Committee recommends approval of Village of Bosque Farms DWSRLF loan financing of \$755,480 for the Village of Bosque Farms to finance water infrastructure improvements.

**The City is eligible to receive 25% in Base Principal Forgiveness.*

The Village of Bosque Farms (Village) has applied for a DWSRLF loan to fund various water infrastructure improvements including installation of infrastructure for communication between wells #1 and #2, development of SCADA software to include remote sites, installation of a backup generator at well #2, installation of motors and pumps at well #2, and an upgrade to the booster station piping. The Village has pledged its Net System Revenues of the Water fund as security and repayment of this loan.

Secretary Jon Barela moved, seconded by Secretary John Bemis, for approval of Village of Bosque Farms, Project #2882-DW. The motion was unanimously approved.

- 17. Consideration and Recommendation of City of Las Vegas (San Miguel County) – Water Project (2878-DW).** The Finance/Loan Committee recommends DWSRLF loan financing of \$1,600,000 for the City of Las Vegas to finance a City water project.

**The City of Las Vegas (City) is eligible to receive 75% in Principal Forgiveness; 25% Base Forgiveness and 50% for a Severely Disadvantaged Community.*

The City has applied for a DWSRLF loan for planning and design project to the Taylor Well Field including but not limited to installation of replacement wells, desalination equipment, and infrastructure to increase production from the well field.

The City has pledged the net system revenue of its water utility as security and repayment of this loan. The City recently performed a rate study on its water utility in order to raise rates to support current debt as well as create capacity for future critical projects. The study was completed in October 2012 with the new water rates taking affect in November 2012. Using the projected revenue and expenses provided by the rate study, staff performed an analysis and used the most conservative year of revenue (FY2013) in determining the City's debt capacity. The City submitted its 2012 audit to the State Auditor's office on December 3, 2012 and is currently under review.

Secretary Jon Barela moved, seconded by Secretary John Bemis, for approval of City of Las Vegas, Project #2878-DW. The motion was approved with Ms. Nann Winter recused from voting.

Mr. Blake Curtis signed off at 11:45 a.m.

18. Consideration and Recommendation of City of Las Vegas (San Miguel County) – 2727-DW Revised Loan Request. The Finance/Loan Committee recommends approval of DWSRLF revised loan request of \$1,100,000 for the City of Las Vegas to fund a City water project.

**The City of Las Vegas (City) is eligible to receive 75% in Principal Forgiveness; 25% Base Forgiveness and 50% for a Severely Disadvantaged Community.*

The City has applied for a DWSRLF loan for a City-wide upgrade of the water meter system incorporating advanced radio read meters. The project will include furnishing and installation of all equipment to make up a fully functional system. The project should qualify for a categorical exclusion and therefore not require an environmental review document.

This project received approval from the NMFA Board in May 2012; however the City has requested a change in security from the GRT to the Net System Revenue of the water utility. The City has pledged the net system revenue of its water utility as security and repayment of this loan. The City has recently performed a rate study on its water utility in order to raise rates to support current debt as well as create capacity for future critical projects. The study was completed in October 2012 with the new water rates taking affect in November 2012. Using the projected revenue and expenses provided by the rate study, staff performed an analysis and used the most conservative year of revenue (FY2013) in determining the City's debt capacity. The City submitted its 2012 audit to the State Auditor's office on 12-03-12 and is currently under review.

Mr. Gutierrez asked if the City is using their GRT for any other purpose. Mr. Peinado said it is the City's intent to pay all water projects through the water utility.

Mr. Jerry Jones moved, seconded by Mr. Lonnie Marquez, for approval of City of Las Vegas, revised Project #2727-DW. The motion was approved with Ms. Nann Winter recused from voting.

19. Consideration and Recommendation of City of Tucumcari (Quay County) – 2876-DW Water Project. The Finance/Loan Committee recommends approval of DWSRLF loan financing of \$902,573 for City of Tucumcari to finance a water project.

The City of Tucumcari (City) has applied for a DWSRLF loan to rehabilitate up to three wells within the City's Metropolitan Park Well Field. The City has chosen to rehabilitate these wells because the wells have a history of producing high quality and quantity of water. In recent years, the City has faced water quality issues, specifically uranium, and had planned to blend the water from these three wells with others to ensure compliance and to avoid costly treatment expenses.

The City has pledged its State Shared GRT as security and repayment of this loan. Staff performed an analysis for the last three fiscal years and used the most conservative year of revenue (FY2012) in determining the City's debt capacity. The City has requested a contingent intercept on the GRT. The City's 2012 audit is currently under review by the State Auditor.

Secretary Jon Barela moved, seconded by Mr. Jerry Jones, for approval of City of Tucumcari Project #2876-DW. The motion was unanimously approved.

- 20. Consideration and Recommendation of City of Tucumcari (Quay County) – 2728-DW – Revised Loan Request.** The Finance/Loan Committee recommends approval of DWSRLF revised loan request of \$1,579,000 for the City of Tucumcari.

The City of Tucumcari (City) has applied for a DWSRLF loan for the replacement of the deteriorating 220,000 gallon water storage tank at the Metropolitan Park Well Field. The current tank is over 70 years old and will be replaced by a 500,000 gallon tank that will increase water storage capacity and allow increased water volume to the City. This increased volume would also allow blending to address water quality issues within the City.

The proceeds will also be used for a City-wide upgrade of the water meter system to incorporate advanced radio read meters, along with associated radio, antenna, antenna supports, software and integration. This project will include the furnishing and installation of all equipment to make up a fully functional system. Both parts of the project should qualify for a categorical exclusion and therefore not require an environmental review document.

This project received approval from the NMFA Board in April 2012; however the City has requested a change in security from the Net System Revenue of the Joint Utility to the City's State Shared GRT.

The City has pledged its State Shared GRT as security and repayment of this loan. Staff performed an analysis for the last three fiscal years and used the most conservative year of revenue (FY2012) in determining the City's debt capacity. The City has requested a contingent intercept on the GRT. Staff recommends approval based on the overwhelming coverage. The City's 2012 audit is currently under review by the State Auditor.

Mr. Lonnie Marquez moved, seconded by Secretary John Bemis, for approval of City of Tucumcari revised Project #2728-DW. The motion was unanimously approved.

Items 21 and 22 were approved with one motion.

21. Consideration and Recommendation of City of Alamogordo (Otero County) – 2880-DW Water Project. The Finance/Loan Committee recommends approval of DWSRLF loan financing of \$1,515,000 for the City of Alamogordo to finance a water project.

22. Consideration and Recommendation of City of Alamogordo (Otero County) – 2881-DW Water Project. The Finance/Loan Committee recommends approval of DWSRLF loan financing of \$1,140,425 for City of Alamogordo to fund a City water project.

The Little Bear fire in the Bonito Lake area created a burn scar in the watershed that resulted in a large amount of sediment being deposited in Bonito Lake after a minor rain event. Subsequent rain events have rendered Bonito Lake unavailable as a water source for an indeterminate amount of time. The City of Alamogordo (City) receives approximately 15% of its water supply from Bonito Lake.

Loan proceeds for 2880-DW will be used to purchase a Mobile Desalination Facility. The project, in combination with 2881-DW loan, will introduce 1.8 million gallons per day (MGD) of potable water into the City's water system. The City received and approved this project as a recommended remedy to the declared emergency on their water supply.

Loan proceeds for 2881-DW will support the following: design and installation of the infrastructure for two wells, install electrical service, install piping to the water transmission lines, and install piping to the Mobile Desalination Facility. The project, in combination with 2880-DW loan, will introduce 1.8 million gallons per day (MGD) of potable water into the City's water system. The project will add to the existing infrastructure supportive of the 6.0 MGD Desalination Master Facility. The City received and approved this project as a recommended remedy to the declared emergency on their water supply.

The City has pledged its Net System Revenues of the Water Enterprise Fund as security and repayment of these loans. Staff has performed a Net System Revenue analysis and used the average net revenues of FY2009, FY2010 and FY2011 to determine the City's debt capacity.

Secretary Clifford noted the coverage ratio was the same for both Alamogordo projects and the Tucumcari projects and asked if the projects are being considered as a package. Mr. Johnson said both loans were considered when the analysis was being performed.

Referring to the Drinking Water loans, Secretary Martin expressed concern with the number of zero-interest loans. He felt consideration was not being given to the long-term sustainability of the fund. Mr. Gutierrez asked for staff to provide an update on an analysis of the funding for the Drinking Water program at the February meeting.

Secretary David Martin moved, seconded by Mr. Lonnie Marquez, for approval of City of Alamogordo Projects #2880-DW and #2881-DW. The motion was unanimously approved.

Mr. William Fulginiti joined the meeting at 11:50 a.m.

23. Consideration and Recommendation of City of Eunice (Lea County) – 2877-DW Water Project.

The Finance/Loan Committee recommends approval of DWSRLF loan financing of \$1,414,000 for the City of Eunice to fund a City water project.

The City of Eunice (City) has recently invested in substantial improvements to the water system identified in a 2007 Preliminary Engineering Report (PER). Phase I of improvements included the replacement of over 13 miles of waterline throughout the City. In addition to improving the water pressure, the project also reduced water loss by replacing the aged lines and increased the fire protection with new fire hydrants and valves.

Phase II of the project includes water distribution and transmission line replacement, a new pressure reducing valve (PRV) station and chlorination station. These improvements provide a disinfection point in closer proximity to the City which obtains its water from a well approximately 20 miles north of the City.

The loan proceeds will complete the remaining water line replacements for both Phases I and II. The remaining improvements are recommendations from the existing PER. Bundling the completion of Phase I and II will result in savings on construction costs.

The City has pledged its Net System Revenues of the Water Enterprise Fund as security and repayment of this loan. Staff has performed a Net System Revenue analysis and used the lowest net revenues of FY2009, FY2010 and FY2011 to determine the City's debt capacity.

Secretary Clifford asked for the balance in the Drinking Water fund. Ms. Amacher said there is well over \$42 million in the fund which is seeing significant activity and significant draws in securing funding. She said as projects are secured with financial agreements and loan repayments are received, staff has been able to continue the perpetuity model for the next four years to ensure the success and longevity of the program.

Secretary John Bemis moved, seconded by Mr. William Fulginiti, for approval of City of Eunice Project #2877-DW. The motion was unanimously approved.

Chair Gutierrez said Items 24-28 would be considered for approval with one motion with Ms. Nann Winter recused on Item 26.

24. Consent of Agua Fria Community Water System (Santa Fe County) – 0238-WTB – Scope of Work Change. The Finance/Loan Committee recommends approval of Agua Fria Community Water System Scope of Work Change.

Agua Fria was approved for funding on April 25, 2012, by the Water Trust Board for water storage, conveyance and delivery project in an amount not to exceed \$785,107. The approved project was for the plan, design and construction of additional distribution lines on six streets including fire hydrants, valves and street repair. Staff is requesting approval and concurrence from the NMFA Board to amend the scope of work to include the design and replacement of the existing well upon the condition that the plans and specification be approved by NMED before disbursement of any construction dollars.

WTB #238: totaling \$785,107 with a 40% loan component in the amount of \$314,043 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$471,064. The loan/grant funding agreement has not been secured pending the approval of this request.

The proposed changes conform to the legislative authorization and Water Trust Board rules and policies. Prior to release of funds, approval of the plans and specifications must be secured by the NM Environment Department.

25. Consent of La Asociacion de Agua de Los Brazos (*Rio Arriba County*) – 0217-WTB – Scope of Work Change The Finance/Loan Committee recommends approval of La Asociacion de Agua de Los Brazos Scope of Work Change.

The Asociacion was approved for funding on June 1, 2011, by the Water Trust Board for water storage, conveyance and delivery project in an amount not to exceed \$488,665. The project was for the Phase I construction of a 3500LF of 6" PVC piping water transmission line between Los Brazos and Los Ojos MDWCA.

Staff is requesting approval and concurrence from the NMFA Board to amend the scope of work in the existing funding agreement, WTB #217 to include design for Phase I upon the condition that the plans and specifications be approved by NMED before disbursement of any construction dollars.

WTB #217: totaling \$488,665 with a 10% loan component in the amount of \$48,867 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$439,798. The loan/grant funding agreement was secured March 2, 2012 and has a current balance of \$486,515.

The project for Phase I was to include a well connection to allow Los Ojos MDWCA to supply Los Brazos with bulk water. The current available funding does not allow for the completion of Phase I as submitted in the application. The project was re-examined to determine how to construct a complete project within the awarded budget without the connection of a new water supply.

Los Brazos re-designed the project to allow the completion of Phase I and will prepare Los Brazos to receive water from Los Ojos. The Asociacion is requesting the scope of work to include design work for Phase I.

The proposed changes conform to the legislative authorization and Water Trust Board rules and policies. Prior to release of funds, approval of the plans and specifications must be secured by the NM Environment Department.

26. Consent of City of Gallup (*McKinley County*) – 0111-WTB/0150-WTB – Time Extension The Finance/Loan Committee recommends approval of City of Gallup contract amendment for two time extensions on the City of Gallup Water Trust Board Projects, WTB #0111 & #0150.

Staff is requesting approval and concurrence from the NMFA Board to extend the funding agreement time period for WTB projects #111 and #150 for 12 months (March 5, 2014).

Specifically, the City of Gallup would like a 12 month extension to address the following:

WTB #111 to complete planning and design on Projects 7, 9, 10, 11, 12, and 13;

WTB #111 to complete construction on Projects 3 and 4; and

WTB #150 to complete planning and design on Projects- 5 and 6.

Each loan/grant agreement through the Water Project Fund has a limited time of three years to expend the funds. To date, the City of Gallup has been awarded \$22,329,550.75 by the Water Trust Board. The Water Trust Board has recognized this regional project, the Navajo-Gallup Water Supply Project as one of two State Sponsored projects, thereby exempting the City of Gallup from the Project Continuation Policy. The City of Gallup has \$8,160,463.75 available in two other Water Project Fund agreements towards the development of the regional system. In the 2013 application cycle there is a request for \$4,275,608 by the City of Gallup for Project 6 currently under review by the Project Management Team.

The funding agreements for WTB #111 and WTB #150 were approved for scope amendments in April 2011 by the Water Trust Board. The City of Gallup was approved for the planning, design, and acquisition of rights of way and easements for the remaining Gallup Rural Navajo Water Supply Projects. These amendments were in addition to the original scopes of work of construction for Projects 1, 3, and 4 from WTB #111, and planning and design for projects 5 and 6 from WTB #150.

WTB #111 totaling \$5,883,865, approved in April 2008, with a 20% loan component in the amount of \$1,176,773 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$4,707,092. The City of Gallup match requirement of \$ 1,176,773, 20% of the total award, has been met through a contribution from Indian Health Services.

WTB #150 totaling \$1,601,856, approved in April 2009, with a 20% loan component in the amount of \$320,371 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$1,281,485. The match requirement of \$320,371 has been met through a contribution from Indian Health Services.

The Water Trust Board waived the loan component for WTB #111 and WTB #150 accepting in lieu thereof a cash match of \$3 million from the Bureau of Reclamation as secured by Senator Bingaman's office.

27. Consent of City of Bloomfield (*San Juan County*) – 0139-WTB - Scope of Work Change

Contract amendment for expansion in scope of work to the City of Bloomfield Water Trust Board Project WTB #139.

Staff is requesting approval and concurrence from the NMFA Board to amend the scope or work in the existing funding agreement to include upgrade of the current meter reading system to an automated meter reading.

WTB #139: totaling \$1,100,000 with a 20% loan component in the amount of \$220,000 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$880,000. The loan/grant funding agreement was secured on April 30, 2010 and currently has a remaining balance of \$303,133.28.

In the spring of 2011, the construction of the 800,000 gallon tank was completed and the City of Bloomfield (City) had a remaining balance of \$303,133. At the May 5, 2010 Water Trust Board meeting, the City requested an expansion of the scope of work to use the remaining balance. The request included the restoration of an existing 500,000 gallon water tank and the design of a new 900,000 gallon water tank to be located along the eastern service area. The City has since determined that a more urgent need for the water system is to upgrade the meter reading system. The estimated cost to set up the entire system with AMR modules on each meter, a handheld unit and the system software is approximately \$312,000. The City will use reserve funds to pay the difference of \$8,867.

The proposed changes conform to the legislative authorization and Water Trust Board rules and policies.

28. Consent of Village of Taos Ski Valley (Taos County) – 0176-WTB – Time Extension Contract amendment for extension of time on the Village of Taos Ski Valley Water Trust Board Project WTB #176.

Staff is requesting approval and concurrence from the NMFA Board to extend the funding agreement time period for WTB #176 for the requested twenty-two months (November 15, 2014).

In May 2009, the Village of Taos Ski Valley (Village) was approved for funding for water storage, conveyance and delivery project in an amount not to exceed \$2,557,006. WTB #176 is due to expire on January 15, 2013, with a remaining balance of \$1,044,264.89. The Village seeks a time extension to fully expend the remaining funds to complete the Chlorination Station and the Kachina and Lake Fork Water Distribution Line projects. The Village has completed the Pioneer Glade Water Storage Tank with the control room and final electrical still pending.

WTB #176: totaling \$2,557,006 with a 20% loan component in the amount of \$409,121 at a 20 year term, 0% interest with a .025% administrative fee, and a grant in the amount of \$2,045,605. The loan/grant funding agreement was secured January 15, 2010 and has a current balance of \$1,044,264.89.

Secretary Clifford referred to the two time extension requests and asked about the timelines. Ms. Amacher said the City of Gallup was requesting a 12-month extension for two existing funding agreements to secure time to expend the awarded funds. Also, Taos Ski Valley was seeking a 22-month time extension that would allow them to fully expend their awarded funds.

Mr. William Fulginiti moved, seconded by Mr. Jerry Jones, for approval of Water Trust Board projects #0238-WTB, 0217-WTB, 0111-WTB/0150-WTB, 0139-WTB and 0176-WTB. The motion was approved with Ms. Nann Winter recused on Projects -0111-WTB/0150-WTB.

29. Consideration and Recommendation of Revised Policies Governing the Local Government Planning Fund (LGPF). Staff recommends approval of the revised LGPF Policies.

Ms. Marquita Russel reported that following months of review, the NMFA Board of Directors and Legislative Oversight Committee approved revised rules governing the LGPF which accommodate amendments to the statute that broadened the use of the fund. The proposed Policies will work in tandem with the revised Rules in the NMFA's administration of the program. Ms. Russel briefly summarized the proposed changes.

Secretary Tom Clifford moved, seconded by Mr. William Fulginiti, for approval of revised policies governing the Local Government Planning Fund. The motion was unanimously approved.

30. Consideration of Revised Drinking Water State Revolving Loan Fund (DWSRLF) Policies.

Ms. Marquita Russel presented. She briefly outlined the affordability criteria to be established for the entire public service of a public water system. Ms. Russel said public review and comment is required with the State of New Mexico requiring consultation with the Environment Department in making those determinations. The criteria to be amended goes back to 1998 when the program was first established for the first capitalization grant. The state statute directs the Environment Department the responsibility to publish the Intended Use Plan (IUP) which is sent out to the public annually showing how the funds provided will be used through the DWSRLF fund capitalization grant.

Mr. Gutierrez asked if the amendments before the Board are to determine if public comment is necessary or is staff asking for approval. Ms. Russel said the IUP is not an approval item since it is approved by the EPA after public comment review; however, the portion inserted by NMFA staff is the policy which addresses regionalization and includes the drafted amendments for which staff is requesting adoption. The NMFA Board determines the affordability criteria and since it is being changed in the IUP, the item requires Board approval. Ms. Russel noted this item is being presented at the direction of the Finance and Loan Committee to expedite the changes in order for Carnuel to bring back their project in March. If approved today, the recommended changes could go out for public comment and the Board could adopt it in February at which time the amended IUP would go out for the required 15-day comment period.

The Board discussed how to move forward with the amended policy, the timeframe for public comment and the impact it would have on the Carnuel project. Commissioner Johnson recognized the importance of public comment; however, said that if funding availability becomes a factor, Carnuel and ABCWUA would hate to lose funding because of an arbitrary deadline.

Ms. Russel explained the revisions to the policies in detail, specifically regionalization. Secretary Clifford referred to the MHI of the regionalized area that is encompassed by ABCWUA and asked who would conduct the census survey to verify the income levels. Ms. Russel said staff would create a list of household addresses and use 95% of those for their survey in determining the MHI.

Secretary Bemis said because he did not have sufficient time to thoroughly review the amendments, he would not support moving forward with the policy changes. Mr. Jerry Jones agreed saying steps should be taken to protect everyone involved to ensure proper handling.

Mr. Gutierrez recommended staff be directed to seek public comment for 30 days, bring the policy amendments back at the February meeting for further Board discussion, including any public comments. Secretary Clifford suggested input from the Environment Department in terms of potential implications of the proposed rule change; he also requested formal comment from the NMFA.

Mr. Jerry Jones moved, seconded by Secretary David Martin, to place policy discussions out as a discussion paper and seek comment from various entities. The motion was approved with Secretary John Bemis voting in the negative.

31. Review of Amended FY 2013 Intended Use Plan for Drinking Water State Revolving Loan Fund.

Secretary Tom Clifford moved, seconded by Mr. Lonnie Marquez, to table review of the amended FY2013 IUP pending public comment on the proposed policy changes. The motion was unanimously approved.

Report from the Chairperson of the Economic Development Committee. *Committee members are: Paul Gutierrez, Chair; Terry White, Vice-Chair; Jerry Jones, Blake Curtis; and Secretary Jon Barela or his designee.*

Chair Gutierrez reported the Economic Development Committee met on January 18, 2013. In addition to the monthly portfolio report, staff presented one informational item relating to a policy interpretation and recommended approval of two items, both of which were recommended for approval and appear on today's agenda as 33 and 34.

32. Update on Activities and Report from Finance New Mexico, LLC Advisory Board.

Ms. Marquita Russel presented. Finance New Mexico, LLC Advisory Board met on December 7, 2012 to review in detail revisions to the New Markets Tax Credit policies as proposed by staff. The Advisory Board requested that points for job retention stay in place and staff has adjusted the policies in line with the Advisory Board's recommendation. The Advisory Board also reviewed the Prioritization of the applications submitted as part of the 13th round of competitive applications. The Advisory Board recommends the prioritization as presented by staff on the agenda item that follows.

33. Consideration of Revised Policies Governing the New Markets Tax Credit Program. The Finance New Mexico, LLC Advisory Board and NMFA staff recommends approval of the proposed policy revisions to the New Markets Tax Credit ("NMTC") Program Policies.

Over the past four months, the NMFA has been reviewing changes to the NMTC Program Policies that were established in May 2008 and updated approximately two years ago. Currently, the program is operated through three distinct policies: the *NMTC Program Policies and Procedures*, which acts as the program rules and incorporates aspects of federal regulations, Finance New Mexico application commitments and CDFI Allocation Agreement requirements; the *NMTC Economic Impact Policies* which provides the framework for application reviewers to rank the applications received under the competitive application cycles and to outline the various steps in the application process; and the *NMTC Credit and Lending Policies* which incorporates the CDFI

Allocation Agreement requirements that the funds be delivered as either equity or debt with flexible and non-traditional lending criteria and provide the framework for how Finance New Mexico's investments may be structured. All of these policies are reviewed periodically and revised to adapt to current program targets, market conditions and other elements.

Pursuant to current practice, policy revisions are vetted through the NMFA Economic Development Committee and the Finance New Mexico, LLC Advisory Board, both of which recommended approval of the revised document as presented.

Proposed Revisions to the NMTC Economic Impact Policies

Staff recommends several changes to these policies which will focus the credits more on job-creating businesses. Specifically, staff proposes amending the following criteria which reduces the points assigned to "Community Impact" and increases the points export based revenues and projects located in rural areas:

	Existing	Proposed	Comments
Environmental	10	5	Changed description & reduced points
Targeted Industries	5	0	Assigned points to "Rural"
Rural Project	0	5	Enhances geographic distribution
Export-Based	5	10	Supports wealth creating projects

In its first proposal to the Board, NMFA staff recommended eliminating altogether the points assigned for job retention as it had been interpreted very broadly by several applicants who erroneously claimed that they would shut down their businesses if the NMTC funding did not go forward. However, several NMFA Board Members asked that points for job retention remain and that staff look for ways to administratively tighten the criteria so that it does not lend itself to bloated claims of job retention. The Finance New Mexico, LLC Advisory Board similarly voiced concern that staff's proposal would reduce the value placed on job retention and voted to retain the original 10 points. As a result, the revised policies recommended by the Finance New Mexico Advisory Board continue to provide that 25% of the points possible are based upon job creation and retention.

Additionally, the revisions capture current practice as to how applications are reviewed and the role of the Finance New Mexico Advisory Board under Section 3.3 Financial Review of Applications. Added to this section is the review by Finance New Mexico, LLC Advisory Board of the prioritizations and the proposed Economic and Community Impact Recommendations as well as a description of a Preliminary Approval and a Final Approval. The revisions also conforms the language in Section 3.3 regarding the 150 day period to the language that appears in the NMTC Program Policies and Procedures as there was a slight disconnect between the two provisions. The modification in Section 3.3 says that a transaction has 60 days from the point of term sheet execution to complete the documentation for the transaction, rather than close as this can sometimes be driven by events outside the control of the borrower.

New to the policies is the recommendation that an application must receive at least 60 points and a "moderate readiness" designation to move forward to a Preliminary Approval. This revision addresses two issues. The first is to ensure that staff is not using its resources to vet projects that

have not met a sufficient level of project readiness. The second is that it ensures that credits will be targeted to the best projects available, not just those that are most ready to proceed.

Proposed Revisions to the NMTC Credit and Lending Policies

The primary area of suggested revisions center around the fees charged by Finance New Mexico.

There are four suggested revisions dealing with fees:

- 1) To clarify in Section 1.4 that the NMTC Proceeds Loan is subject to an “Exit Fee” rather than a buy-out of the loan; “Exit Fee” is a standard term in the industry and this clarification will help outside Financial Advisors and Attorneys better understand our fee structure. The parameters on how the Exit Fee is calculated remain the same;
- 2) To clarify that the 3% “NMTC Sponsor Fee,” though typically paid at the CDE level, can also be paid at the Investment Fund level or the Borrower level;
- 3) To clarify that audit and tax preparation fees for subsidiary CDEs will be paid from the NMTC Proceed Note payments, but that all other extraordinary fees will be paid by the borrower; and
- 4) To allow Finance New Mexico to charge an Investment Fund Management Fee of 1%. This fee had been included in the original policies adopted by the Board, but was deleted because we were not asked to manage Investment Funds. This request recently occurred and staff wants to be transparent about the cost of Finance New Mexico providing this service.

Lastly, staff is proposing to Section 4.9 Character and Credit History the explicit requirement for background checks to be performed on applicants in transactions where the leverage lender proposed is neither a regulated bank nor a publicly traded companies.

Proposed Revisions to the NMTC Policies and Procedures

The last set of revisions recommended are to the Policies and Procedures which conform the policies to the existing process of having the Finance New Mexico LLC Advisory Board review prioritizations and Economic and Community Impact Recommendations, adds throughout the reference to the second allocation agreement signed with the CDFI and simplifies the description of the application process. The new description eliminates the requirement to publish the notice in three newspapers statewide and provides that application cycles will occur at least monthly while allocation exists. Lastly, the revisions suggest a lower amount of \$8 million (instead of \$10 million) for projects that can apply outside of the competitive process.

Secretary Clifford referred to the rural definition and asked if an income criterion was included or was it geographical. Ms. Russel said it conforms to the CDFI definition which is outside metropolitan counties.

Secretary Tom Clifford moved, seconded by Mr. William Fulginiti, for approval of the proposed policy revisions to the New Markets Tax Credit (“NMTC”) Program Policies. The motion was unanimously approved

Ms. Nann Winter signed off at 12:15 p.m.

34. Consideration of Prioritization of the Thirteenth Round of Competitive Applications for the New Markets Tax Credit Program. Staff recommends approval of the prioritization for Round 13 of NMTC applications.

Ms. Marquita Russel and Mr. John Brooks presented. A team comprised of seven reviewers, including members of the New Mexico Economic Development Department and Baker Tilly, NMFA's Financial Advisor for NMTCs, evaluated each application.

The criteria weighted several aspects of a potential impact with the understanding that no single project would be able to score 100.

Community Impact and Support	40 points
Applicant Readiness	20 points
Job Creation	25 points
Business Location	5 points
Economic & Export Based Companies	5 points
New Investment Capital	<u>5 points</u>
Total	100 points

The policies also direct the evaluation team to evaluate each project and present its findings and priority recommendations to the NMFA Economic Development Committee which makes its recommendations to the NMFA Board of Directors. According to policy, the review criteria are used only to prioritize applications and in no way represent a guarantee that a project will receive NMTC financing.

The second step is the financial review and due diligence on each application in the order of economic impact priority. This second review is undertaken by NMFA staff and consultants who will report their findings to the NMFA Economic Development Committee before proceeding to the full Board of Directors for preliminary approval of any project.

On October 1, 2012 the NMFA released round 13 of NMTC competitive applications for the unused allocation totaling approximately \$32 million. NMFA received nine complete applications that were scored by the review team and are presented for prioritization.

The Community Development Financial Institutions Fund has given Finance New Mexico five years to deploy all of its tax credits. Given this limited timeframe, the NMFA Board-approved policies require the projects to be able to execute a financing term sheet within 90 days and an additional 60 days to document and close the transaction.

Round 13 Projects

<u>Project</u>		<u>Amount of NMTC</u>
<u>Rank Score Applicant</u>	<u>Readiness</u>	<u>Authority Requested</u>

1	66.86 New Mexico Wineries, Inc. (Luna County)	Mod	\$ 8,000,000
2	58.71 Oso Biopharmaceuticals Lyo & Lab Expansion/Upgrade (Bernalillo County)	Low	27,000,000
3	57.14 P & M Signs (Otero County)	Low	10,500,000
4	55.57 Oso Biopharmaceuticals Syringe Installation/ Serialization (Bernalillo County)	Low	14,000,000
5	54.71 City of Albuquerque/UR 205 Silver/Sunbay/ Paradigm & Company (Bernalillo)	Low	8,300,000
6	50.00 Shiprock Hotel & Conference Center (San Juan) (Bernalillo County)	Low	17,000,000
7	46.86 La Academia de Esperanza (Bernalillo County)	Low	4,611,000
8	46.0 Indion Acquisition I, LLC (Taos County)	Low	10,000,000
9	31.71 New Mexico Technology Center, LLC	Low	1,500,000

Total Allocation Requested for Rural Round Projects **\$100,911,000**

Mr. William Fulginiti moved, seconded by Secretary Jon Barela, for approval of the prioritization for Round 13 of NMTC applications. The motion was unanimously approved

Report from the Chairperson of the Investment Committee. *Committee members are: Terry White, Chair; Paul Gutierrez, Vice-Chair, Secretary David Martin; and Blake Curtis.*

35. Update on Activities. The Committee did not meet this month.

Report from the Chairperson of the Audit Committee. *Committee members are: Secretary Tom Clifford or designee Ricky Bejarano, Chair; Paul Gutierrez, Vice-Chair, and Secretary John Bemis.*

36. Update on Activities

Secretary Clifford reported that the external audit exit conference was held on January 23, 2013 with REDW auditors. The FY12 audit should be completed by the end of March. Secretary Clifford said Ms. Donna Trujillo is drafting responses to the audit in coordination with the Audit Committee chair. The entrance conference for FY12 was also held. Chair Gutierrez suggested that the findings be combined with other reports prepared for LFC and Regulation and Licensing to ensure that nothing falls through the cracks. Secretary Clifford agreed saying there are numerous findings and recommendations to be addressed by the Board.

Report from the Chairperson of the Contracts Committee. *Committee members are: Secretary David Martin, Chair; Lonnie Marquez, Vice-Chair; Secretary Jon Barela or his designee*

The Contracts Committee met on January 22, 2013. The following items were presented by staff:

- ◆ Contracts with Arbitrage Rebate Compliance Services Contracts, specifically AMTEC & BNY Mellon have been executed. AMTEC continues to work on the PPRF arbitrage

compliance issues, with an anticipated completion date of June 30, 2013. It is anticipated that BNY Mellon will soon begin work on the GRIP bond program.

- ◆ The Reznick Group (now CohnReznick through business combination) has completed its audit of Finance New Mexico and its subsidiaries.
- ◆ Discussions with Bank of Albuquerque and their counsel in Tulsa, OK have been going smoothly. It is anticipated that the substitution will become effective at or near the end of February 2013, at which time Bank of Albuquerque will officially become the trustee, replacing BNY Mellon.
- ◆ The Finance Authority is in weekly contact with the NMDOT and their Office of General Counsel on making changes to the MOU to reflect legislative initiatives that will temporarily suspend the requirement that one-half of the GRIP administrative fees be transferred to the Local Transportation Infrastructure Fund. The goal is to have the MOU executed in February, although the Finance Authority is waiting for additional comments from NMDOT.
- ◆ Update on Memorandum of Understanding (MOU) with the New Mexico Environment Department Construction Programs Bureau (CPB).

Mr. Opperman reported that Finance Authority staff and CPB are collectively working to make changes to the existing MOU to better reflect the activities performed under a new MOU. The changes include examination of preliminary engineering reports, review and comment on procurement of the design and professional services contract by the applicants if funding will be used to pay for these services, providing a list to CPB by the Finance Authority of all WTB projects the Finance Authority wants CPB to perform work, compensate CPB for all time spent on the projects including meetings, conference call and related activities involving the projects, and increase in compensation to CPB to the current applicable rates for current federal schedule for engineering contract pay – Executive Schedule for a Level IV- at the hourly rate of \$74.76 which reflects an increase from \$73.65 in 2009. The total amount of compensation to CPB will be \$250,000 through the end of the term unless otherwise amended by the parties in writing. Any increase in compensation will have to be approved by the Contracts Committee.

Mr. Gutierrez commented on the FY2011 REDW findings and asked if the findings would be combined with other audit documents. Secretary Clifford requested a detailed description of the findings that also included proposed recommendations addressing the findings. Mr. Gasparich said staff would be prepared to provide the Board with an update at the next board meeting.

37. Update on Activities.

The Contracts Committee requests approval of the Contracts Committee Report.

Secretary Tom Clifford moved, seconded by Mr. William Fulginiti, to approve the Contracts Committee Report. The motion was unanimously approved.

38. Executive Session - Closed meeting to discuss matters subject to attorney-client privilege pertaining to threatened or pending litigation as allowed by NMSA 1978, Section 10-15-1(H) (2).

Chair Gutierrez asked for a motion to go into Executive Session pursuant to NMSA 1978, Section 10-15-1 (H) (2) to discuss matters subject to attorney-client privilege pertaining to threatened or pending litigation.

Mr. William Fulginiti moved, seconded by Secretary Tom Clifford, to go into Executive Session pursuant to NMSA 1978, Section 10-15-1(H)(2) to discuss matters subject to attorney-client privilege pertaining to threatened or pending litigation.

Roll call vote taken with all members present voting in the affirmative. The motion was unanimously approved.

The Board returned to open meeting at 1:00 p.m.

Upon reconvening in open meeting, Chair Gutierrez stated: "We are now in open meeting. Let the record reflect that no action was taken during the closed meeting and the only things discussed were matters subject to attorney-client privilege pertaining to threatened or pending litigation matters."

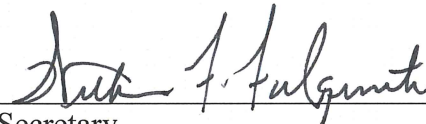
OTHER ITEMS

39. Next Board Meetings

February 22, 2013
Mabry Hall - Education Building
9:00 a.m.
Santa Fe, NM

40. Adjournment

The meeting adjourned at 1:10 p.m.


Secretary

3-26-13
Date

Findings Related to Staff

Reviewer	Findings
HEK	Increased workload, employee turnover & vacancies, particularly the CFO, contributed to the delegation of completion of the audit to one person and created a situation that allowed the audit to be faked.
HEK	Cross-training staff, particularly in critical areas such as accounting, deserves more attention. Having only one employee, the Controller, solely responsible for the financial statements and audits is a poor management practice that creates unnecessary risk for the organization.
HEK	Allowing the CFO position to remain open for almost two years meant that the Controller was not closely supervised, which created an environment in which a fake audit could be produced.
RLD/SD	For an organization of this size and complexity, the accounting staff was inadequate.
RLD/SD	...the organizational structure is an important internal control. The vacancies and absence of clearly defined roles during this period of transition represented a breakdown of internal controls.
RLD/SD	Inadequate staffing of the accounting department and the Controller's excessive workload appear to have contributed to breakdowns in the audit process - resulting in missed deadlines and influencing Campbell's decision to forge the audit report.
PWC	It appears that NMFA senior management, as well as some members of the Accounting Department, had limited knowledge of the OSA Audit Rule and its requirements.

Recommendations

Perform a thorough assessment of the talent, staff levels and outside resources needed to handle each key function, particularly the accounting function.
Reassess the span of control for each of the executive functions.
Cross-train staff in critical functions so that backups are available and staff rotations can take place. Divide duties related to the preparation of the financial statements and other high risk areas so that sound internal controls are maintained.
Promptly fill vacant executive positions with qualified individuals.
Every year, the OSA holds training throughout New Mexico on the Audit Rule and current year updates to the Rule. The NMFA should consider requiring representatives from the NMFA Audit Committee to attend the OSA's training each year. At a minimum, the CEO, CFO and Controller should attend this training, and the NMFA should consider allowing other members of the Accounting Department to attend this training to raise awareness of the requirements throughout the Department.

Progress to date

- The NMFA now has a Controller and Chief Financial Officer (CFO) on staff to complete financial reporting and address compliance requirements across all programs. The responsibility for these functions now rest with more than one person.
- A risk assessment and thorough examination of the internal control structure, including segregation of duties, of the organization is in process by the CFO.

Findings Related to Staff - continued

Progress to date-continued

- The current CFO is knowledgeable in the NM state audit process and will be overseeing all functions in full collaboration with all the accounting staff and management of the NMFA.
- CFO is thoroughly involved in preparation of the audit and provides regular updates to management.
- The job duties of each of the staff of the accounting department are being reviewed by the CFO. Part of the review is to ensure that duplicate efforts are eliminated and that the staff preparing schedules and adjustments are involved up to conclusion of the reporting period and/or audit.

Next Steps

1. Continue to address accounting needs: organization, staffing levels, technology, and skills necessary to ensure that improvements are made and sustained.
2. Perform cross- training for all programs. This will help ensure that there is sufficient coverage in all programs which generally experience differing busy periods.
3. Automate processes to ensure staff has adequate time to be involved as appropriate.
4. Perform in depth review of accounting positions and functions.

Findings Related to Loan Servicing System

Reviewer	Findings
HEK	Current loan servicing software is insufficient.
RLD/SD	The NMFA did not have a functional loan servicing software. Loan servicing is was performed using Word Documents and Excel spreadsheets.
PWC	During the loan confirmation process, several contact names provided by the NMFA for the loans selected were out-of-date, requiring additional research to identify the correct contact person. Additionally, there were certain loans included within the testing selection that appeared to have characteristics of intergovernmental receivables.

Recommendations

Evaluate and acquire new software applications that will provide sufficient functionality for the loan program and enhance the preparation of financial statements.
The NMFA should consider reviewing borrower contact information on a regular basis and updating it as needed.
The NMFA should consider establishing clear procedures based upon authoritative guidance when determining which assets should be classified as “loans” and which assets should be classified as “intergovernmental receivables.”

Progress to date

A System to Integrate Loan Operations (SILO) is in the implementation stage. SILO will serve as the system for all lending activities from financing and funding to servicing. Recent tasks completed are noted below.

- The meeting with Nortridge development on the distribution of interest, using the weighted average calculation to individual loans was successful. Determination of where the program funds and reserve funds will be stored before responding, as that affects the outcome.
- The demonstration, using the NLS escrow module to store Debt Service and Debt reserve funds, storage of interest paid on both reserves and disbursement of debt service and interest per the weighted average calculations is in unit testing with a minimum configuration. If this goes well with the unit testing, we can show accounting the results.
- The Off Loan Balances to maintain the principal, interest, and unused principal balances on the program fund is in configuration.

Next Steps

1. Continue weekly status meetings.
2. Continue testing.
3. Align current work flow with new system capability.
4. Implement system
5. Update accounting procedures

Findings Related to Internal Audit and the Audit Committee

Reviewer	Findings
HEK	No internal auditor on staff, previous contract internal auditor provided services that were insufficient for a complete internal audit function
HEK	The absence of an Audit Committee charter defining the Committee's responsibilities, membership requirements and meeting expectations is a governance issue.
HEK	The NMFA Audit Committee members are not provided special training.
HEK	The Audit Committee has been ineffective due to its failure to meet with the internal auditor and its failure to meet with the external financial auditors. The lack of monthly meetings also violated the NMFA's audit policies.
RLD/SD	Lack of communication and poorly understood scope of responsibility.
RLD/SD	Failure to conduct thorough review.
PWC	The schedule and content for NMFA Audit Committee meetings appears to have been directed by NMFA senior management. No Audit Committee meetings were held between August 2011 and April 2012.
PWC	In April 2012, the Audit Committee attended what was represented as an "Exit Conference". At this meeting, Mr. Campbell suggested that Clifton would not be attending because of a "schedule mix-up." The Audit Committee went on to accept the Fraudulent Audit Report, even though the Audit Rule requires an Exit Conference with the Independent Auditor presenting the Audit Report in person. It appears therefore that the Audit Committee may not have had a full understanding of the Audit Rule.
PWC/ RLD/SD	Failure to Convene/The NMFA Audit Committee did not meet between August 2011 and April 2012.
PWC	While minutes are kept for full meetings of the Board, no minutes were kept for Audit Committee meetings.
PWC	...both orientation and continuing education sessions could be enhanced and more comprehensive.
PWC	For FY 2011, the Audit Committee met with Clifton during the planning stages of the audit, and met with one of the Audit Committee members in August to perform a SAS 99 interview. It does not appear that there were other communications between the Audit Committee and Clifton after August 2011.

Recommendations

Create a position description for the internal auditor that incorporates the requirements specified by the Institute of Internal Auditors.
Maintain reporting lines from the internal auditor to the Audit Committee or the Board.
Ensure the internal auditor attends all Audit Committee meeting, and meets regularly with the Board itself, in both open session and periodically in executive session.
Have the Audit committee approve the annual internal audit plan.

Findings Related to Internal Audit and the Audit Committee - continued

Recommendations - continued

Adopt a comprehensive Audit Committee Charter
Require the Audit Committee to have a least one member who is a financial expert
Record official minutes of the Audit Committee meetings.
Develop a compliance mechanism for the existing audit policies.
Hold in-person entrance conferences, mid-audit conferences and exit conferences with the outside auditor during each audit cycle.
Establish specialized training sessions for Audit Committee members.
The NMFA should consider requiring that Audit Committee meetings are held at least once every quarter, and more frequently while the audit is ongoing.
Audit committee members should be required to attend the exit conference with the IPA in person.
The NMFA should consider providing meeting materials to the Audit Committee a reasonable period of time prior to the meeting based on the content and volume of the materials. At a minimum, materials should be provided no later than 24 hours prior to a meeting.
The NMFA Board should consider requiring that the Audit Committee, as well as the Board Chair, attend training or otherwise be provided with information on the Audit Rule.

Progress to date

- NMFA has established an Internal Auditor position reporting to the Audit Committee and the Board. The job description is being developed.
- Reporting lines for the internal auditor will be included in the Audit Committee Charter and Internal Auditor job description.
- Expectations will be included in Audit Committee Charter and Internal Auditor job description.
- Audit Committee Charter is being drafted.
- Official minutes are being recorded.
- The State Controller chairs the Audit Committee
- In-person entrance and exit conferences as well as periodic progress reports are the current practice.
- Best practices are currently being evaluated to help the Audit Committee carry out its function.

Findings Related to Internal Audit and the Audit Committee - continued

Next Steps

1. Recruit internal auditor who will be selected by the Audit Committee with Board approval.
2. Complete and adopt Audit Committee charter.
3. Establish collaborative development of an annual internal audit plan for Audit Committee & Board approval with input from management.
4. Develop training and compliance policies and procedures.
5. Finalize detailed Audit Committee policies and procedures.
6. Formalize the Audit Committee regarding membership and rules.

Findings Related to External Audit Process

Reviewer	Findings
PWC	Based on interviews performed and the events surrounding the Altered Audit Report, senior management and the Audit Committee did not adequately supervise the financial reporting and external audit process. Additionally, it appears that Senior Management may not have had a full understanding of audit requirements under the OSA's Audit Rule.
PWC	Greg Campbell was the primary point of contact for completing the audit and Mr. Duff was not heavily involved in the process.
PWC	For the FY 2011 audit, Clifton made several requests to both Mr. Campbell and Mr. Duff for the remaining documentation to complete the audit. It appears that, had Clifton received this documentation timely, the audit may have been completed on time. However, there was no evidence that Clifton contacted any other individuals from the NMFA or the Board to obtain this information after September 23, 2012.
PWC	For the FY 2011 "Exit Conference" that was held in April 2012, Mr. Campbell sent the meeting materials, which included the Fraudulent Audit Report, on the morning of the meeting. As such, it appears that the Audit Committee members did not have adequate time to review the materials prior to the meeting.
PWC	For the FY 2011 audit, Clifton met with the Audit Committee as part of the audit planning activities. It appears that a schedule was discussed for the audit that should have resulted in the audit being completed by September 27, 2011.

Recommendations

The NMFA should hold management accountable for the timely completion of audits and should consider incorporating it into key employee's job descriptions as well as include it as a factor in performance evaluations.
Management should provide the Audit Committee with regular updates regarding the progress of the audit and should be notified as soon as possible regarding issues that could potentially keep the audit from being completed on time.
The CEO and CFO should review and sign off on a draft of the audit report prior to the report being sent to the OSA.
The NMFA should hold management accountable for the timely completion of audits and should consider incorporating it into key employee's job descriptions as well as include it as a factor in performance evaluations.
Management should provide the Audit Committee with regular updates regarding the progress of the audit and should be notified as soon as possible regarding issues that could potentially keep the audit from being completed on time.
The NMFA should consider creating a detailed timeline and checklist for the external audit process. This checklist should include items such as the OSA recommendation letter, signed OSA contract, engagement letter, planning meeting, management representation letter, audit report deadlines, exit conference, due date to the OSA, meeting of the quorum of the board for the IPA to present the final audit report, etc. The checklist should be provided to the Accounting Department, Senior Management, the Audit Committee, and external auditors. The CEO and CFO should be held responsible for timely completion of the action items and should report on the status of the checklist at Audit Committee meetings.

Findings Related to External Audit Process- continued

Recommendations -continued

<p>The NMFA should consider clearly defining the roles and responsibilities of NMFA staff and management with regard to the audit. For example, the NMFA should consider requiring the CFO and CEO to review and sign-off on the Audit Report and should document evidence of this review prior to release to the OSA. In their review of the financial statements and related disclosures, the CEO and CFO should consider evaluating completeness, accuracy, compliance, and appropriate supporting information.</p>
<p>The NMFA should also document the Audit Committee’s approval of the Audit Report at the exit conference and the Board’s approval of the Audit Report after release by the OSA.</p>
<p>The NMFA should consider setting a response time limit for all audit requests. If no response is received after this defined time period, the independent auditor should contact a member of the Audit Committee who is designated to resolve such issues.</p>
<p>The NMFA should consider assigning one employee the responsibility of communicating directly with the external auditors and coordinating the timely completion of all Prepared by Client (“PBC”) items. This will likely require following up with various employees in the accounting department, fulfilling requests and handling issues as they arise. This employee should provide regular updates to the CEO and CFO to allow them to follow up on outstanding items and communicate with the external auditors.</p>
<p>The NMFA Board should consider distributing the timeline agreed to in planning meetings in writing to all members of the Audit Committee, the Board Chair and Senior Management. This timeline should incorporate key OSA requirements and deadlines (e.g. an Exit Conference). The NMFA Board should consider including this timeline in the meeting materials for all Audit Committee meetings that occur during the audit and should incorporate a standing agenda item during this period to discuss the progress of the audit against the timeline.</p>
<p>The NMFA Board should consider incorporating a standing agenda item in the full Board meeting for the month after the targeted audit completion date that relates to the status of the audit.</p>
<p>The NMFA Board should consider having the external auditors report directly to the Audit Committee.</p>
<p>The NMFA Audit Committee should consider requesting that the Independent Auditor attend Audit Committee meetings while the audit is ongoing. For meetings where the Independent Auditor will be in attendance, the NMFA Board should consider including an agenda item to discuss problematic items.</p>
<p>The NMFA Audit Committees should also consider requesting that the Internal Auditor attend Audit Committee meetings to discuss Internal Auditor findings and potential risks for the organization, e.g. accounting issues, illegal acts and fraud.</p>
<p>Increase management participation in the audit process.</p>

Progress to date

- Management acknowledges its accountability for timely submissions of external audited financial statements.
- Management is currently holding monthly meetings with the audit committee
- The CFO and the CEO will sign management representations regarding the financial information reported in the financial statements.

Findings Related to External Audit Process- continued

Progress to date-continued

- The deliverables requirement that is prepared by the external auditors is currently being used as a checklist and schedule. Weekly updates are provided to management, including the Audit Committee chair, regarding the items outstanding or in process.
- The audit report will be presented to the full Board as soon as it becomes available for public dissemination.
- The external auditor has been attending the board meetings.
- The Audit committee will be present at the exit conference to approval submittal to the State Auditor's Office.

Next Steps

1. Complete the 2011 audit.
2. Complete the 2012 audit by March 31, 2013.
3. Complete the 2013 audit by December 15, 2013.
4. Correct financial statement findings
5. Submit 2014 as a Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers' Association (GFOA) for review.
6. Submit the 2015 audit report to the GFOA for certificate of excellence.

Findings Related to Accounting Practices

Reviewer	Findings
PWC	During bank reconciliation testing, errors were found in certain reconciliations which may have been caught if the reconciliations had been timely reviewed by appropriate personnel. In addition, a voided check was not correctly cancelled in the system. As a result, there was a variance from the general ledger for several months until the system was updated to reflect the cancelled check.
PWC	During vendor testing, instances were noted where invoices lacked approval or were approved after the check or wire transfer was processed. Additionally, the employee who requested the goods or service would typically approve the invoice for payment.
PWC	During journal entry testing, there were instances where journal entries did not have proper approval and in some cases, supporting documentation was incomplete. For example, for one of our wire transfer selections, the journal entry packet included only the wire authorization. Additionally, for automated entries such as payroll, it did not appear that there was evidence of review and approval of the entry.
PWC	It appears that the NMFA's Accounting Policies and Procedures were last updated in 2009, prior to the implementation of the current General Ledger System (Sage). Additionally, the Accounting Procedures Manual does not include procedures related to the external audit process or the process for creating audited financial statements. It also does not include sections on areas such as payroll processing, wire procedures, and accounts payable, which are instead documented on checklists
PWC	In the Fraudulent Audit Report, Mr. Campbell changed the method of accounting for the NMFA's reversions to the State. Mr. Campbell stated in a meeting with the Board that he was struggling with how to account for this item, and Mr. Duff noted that, while he and Mr. Campbell discussed the issue, it was a brief discussion.

Recommendations

The NMFA should consider consulting with the IPA on accounting method or presentational changes to the financial statements. Senior management should consider documenting these consultations with the Independent Auditor and retaining this documentation.

The NMFA has created checklists for various processes that document the steps required to complete the process. These are currently used as a guide but are not completed and retained for each transaction.

to date

- A risk assessment and thorough examination of the internal control structure, including segregation of duties, of the organization is in process by the CFO.
- All reconciliations are up to date and performed and reviewed monthly by the controller and the CFO.

Findings Related to Accounting Practices-continued

Progress to date - continued

- Procedures are being updated to address procurement and purchasing.
- All documentation is required to be provided to the controller or CFO for journal entry approval. No batches are approved for processing by other staff until review and approval has been documented.
- Accounting methods for treatment of non-recurring or special items are being addressed with the auditor.

Next Steps

1. Create and document an internal control structure that properly addresses the assessed risk, environment, control activities, and communication
2. Implement training plan for all staff.

On-going

- Continue to automate processes.
- Cross train all accounting staff
- Update all policies and practices

Findings Related to Board Governance

Reviewer	Findings
HEK	The NMFA Board's authority to hire and terminate the CEO is a sound governance practice that does not need to change. Having the CEO be responsible for the remainder of the staff is also in line with both common and best practices.
HEK	Board member independence and financial expertise are not required but these requirements, at least for some portion of the Board, may improve the Board's ability to fulfill its governing and oversight role.
HEK	Finding qualified individuals to serve on the Board may be more achievable if the ability to make appointments is expanded beyond the Governor's office.
HEK	Lack of consistency among the individuals actually attending the meetings.
HEK	...both orientation and continuing education sessions could be enhanced and more comprehensive.
HEK	The content of the Board meeting materials could be greatly reduced and improved to empower the Board with the type of information it needs to fulfill its role as a governing body.
HEK	A collaborative strategic planning process with the Board and staff and the adoption of annual work plans for the Board would keep the board focus on the most important topics.
RLD/SD	The Board relies heavily on the Audit Committee and even more on senior management and staff to ensure that the external audit is conducted correctly and in a timely manner; nonetheless, the Board bears ultimate responsibility for the activities of the organization as a whole and possesses final approval authority on all that the organization does.
PWC	As several members of the Board are political appointees, there may be significant turnover when there is a new administration (as was the case for FY 2011). With the new Board, the NMFA compiled some onboarding materials for the new Board members. These materials provided background on the NMFA and PPRF, as well as some high level roles and responsibilities for each of the Board committees. However, they did not include detailed information on the Audit Rule.

Recommendations

Discuss the feasibility and benefits of having independence and financial expertise requirements in statute for some or all of the Board members.
Consider expanding the authority for appointing Board members beyond the Governor's office.
Encourage the ex-officio members to improve the consistency of their attendance or the designees' attendance at Board meetings.
Reassess the activities of the Board, the types of decisions it makes, its authority to delegate duties, and the information it receives for meeting.
Consider adopting a more comprehensive set of governance documents. 2. Engage in long range strategic planning for the organization. 3. Establish annual work plans for the board.
The NMFA should consider enhancing the on-boarding package for the Audit Committee by providing information on the Audit Rule and other audit-related guidance, as well as a detailed outline of the Audit Committees responsibilities for the audit.