

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

**Minutes of Board Meeting  
February 22, 2013  
Mabry Hall – Education Building**

**Present:**

Nann M. Winter, Chair	Stelzner, Winter, Warburton, Flores et al
Paul Gutierrez, Vice Chair	Executive Director, NMAC
William Fulginiti, Secretary ( <i>telephonically</i> )	Executive Director, NMML
Tom Clifford, Treasurer	Dept. of Finance & Administration
Brett Woods	Designee NM Energy & Minerals Dept.
David Martin	Secretary, NM Environment Department
Blake Curtis ( <i>telephonically</i> )	CEO, Curtis & Curtis Seed
Jerry Jones ( <i>telephonically</i> )	CEO, Stolar Research
Jon Barela	Secretary, NM Economic Development Dept.
Terry White	CEO, Sunwest Trust, Inc.

**Absent:**

Lonnie Marquez	Vice-President - NM Tech
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**NMFA Staff:**

Adam Johnson	Bryan Otero
Connie Marquez-Valencia	Dan Opperman
Darlaina Chapman	Donna Trujillo
E.J. Peinado	Jana Amacher
John Brooks	John Gasparich
Leandro Cordova	Mark Dalton
Marquita Russel	Michael Zavelle
Robert Brannon	Ryan Helton
Sanjiv Doreswamy	Yolanda Valenzuela
Zach Dillenback	

**Guests:**

Art Morales	Siebert, Brandford, Shank & Co.
Helene Chenier	Bank of Albuquerque
Kwali Farbes	Brownstein Hyatt
Kim Nakahara	BofA Merrill Lynch
Jill Sweeney	Brownstein Hyatt
Matt Schaefer	BBVA Compass
Paul Cassidy	RBC Capital Markets
Rachel King	Sutin, Thayer & Browne
Richard Virtue	Virtue, Najjar, Browne

Stan Riggs  
Susan Ellis

Chaves County  
Bank of Albuquerque

**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**

**Mr. Paul Gutierrez moved, seconded by Mr. Brett Woods, to approve the agenda. The motion was unanimously approved.**

**3. Approval of January 25, 2013 Board Minutes**

**Mr. Paul Gutierrez moved, seconded by Secretary Tom Clifford, to table approval of the January 25, 2013 minutes to the March meeting. The motion was unanimously approved.**

**4. Report from Chief Executive Officer**

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

- ◆ Internal Auditor position is being advertised with the applications slated to be received by Mr. Ricky Bejarano.
- ◆ Update the Board on the status of NMFA Legislation and their progress through the Legislature.

Secretary Clifford asked if policies are in place on the administration of the office for the internal auditor position and whether those policies have been reviewed by the NMFA Board. Mr. Ricky Bejarano, State Controller, said the policies are currently being developed. Secretary Clifford requested the Board be allowed to review and approve the policies prior to implementation.

**5. Presentation of Fiscal Year 2011 Audit**

Mr. Bruce Bleakman, Partner, REDW, Mr. Javier Machuca, Audit Manager, REDW and Mr. Stephen Montoya, Audit Manager, REDW presented the 2011 audit for the New Mexico Finance Authority. *(A copy of their presentation is attached to the minutes.)*

Referring to the original 2011 audit and the documents prepared by Clifton Gunderson, Secretary Clifford said the Board was previously advised Clifton Gunderson would not provide that information and it was his understanding the Office of the State Auditor (OSA) agreed to provide assistance with securing it. Mr. Bleakman confirmed they attempted to secure the 2011 documents, however, Clifton's legal counsel cited the professional standards did not apply since a report was never issued, therefore they were not required to provide working documents. Secretary Clifford asked NMFA legal counsel if Clifton Gunderson was in breach of their contract. Mr. Dan Opperman said staff is currently investigating that and moving forward with due diligence. They will update the Board in closed session at a later date. Mr. Bleakman noted the OSA obtained partially-completed 2011 work documents from Clifton and after reviewing REDW's draft audit, the OSA determined there was no conflict with the two reports.

Secretary Clifford asked if monthly dashboard report would be provided to both the NMFA Board and the Audit Committee on the corrective action to be taken by management for the various



findings. Mr. Gasparich confirmed that a report would be on agenda for next month's board meeting.

Secretary Clifford asked about the progress staff was making on improving the communication with state agencies to reconcile the repayment of loans secured by dedicated revenue stream. Ms. Donna Trujillo, Chief Financial Officer, felt confident staff was in control of the reconciliation of NMFA's revenue stream and would like to see more communication from the other state agencies. She noted state agencies have the ability to obtain debt service information and track accounting reports, however, she offered to initiate a more formal reporting process.

Secretary Clifford thanked REDW for their thorough report and for providing the Board with resources to address the findings. Being able to identify substantial weaknesses that NMFA management needs to address will allow them to move forward.

*Mr. Robert Brannon, Controller, provided an overview of the financial statements...*

Mr. Brannon stated the overview was based from the Management's Discussion and Analysis that was part of the audit and will be made available to the public following the meeting on NMFA's website.

*Ms. Trujillo provided corrective action plans on the audit findings...*

Discussion: Secretary Clifford asked if the recommended changes would be in the form of policy and procedures. Ms. Trujillo said in most cases they would, however, there will also be some addressed internally. Referring to the recommended improvements, Secretary Clifford asked if there was a significant difference with state law. He would like to see a report that highlights any major differences between NMFA's recommended changes and what is required in state procurement and the Budget Act. Ms. Trujillo noted it has been her focus to address the findings in a state-wide fashion. Mr. Gutierrez referred to the net assets overstatement and asked if there was any fallout. Ms. Trujillo said it did have an effect that required an adjustment, however overall it was a very insignificant correction.

Chair Winter supported Secretary Clifford's request for a monthly report and asked that it also include any policy or procedure changes. Ms. Trujillo noted there will be a change to the travel and per diem expenditure policy that will be presented at the next meeting. In response to Chair Winter's inquiry regarding a credit card policy, Ms. Trujillo acknowledged only one card is retained by management so a policy does not exist. Chair Winter asked that the NMFA Board receive redline draft documents of policies that currently exist if changes are made.

Mr. Bejarano advised the Board that the 2012 audit review has begun and hope to have it completed and issued by early to mid-April.

**6. Consideration for Approval of Open Meetings Act Resolution for 2013.** Staff recommends that the Finance Authority Board approve the Open Meetings Resolution for 2013.

The Open Meetings Act, Sections 10-15-1 to 10-15-4, NMSA 1978, as amended from time to time, provides in Section 10-15-1(B) that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state or local agency 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.

The Finance Authority Board is subject to the provisions of the Open Meetings Act. The Open Meetings Act, Section 10-15-1(D), NMSA 1978 requires the Finance Authority Board to determine annually what constitutes reasonable notice of its public meetings. The proposed Open Meetings Act Resolution complies with the requirements of the Open Meetings Act.

Secretary Clifford said he would support the modification if the Board is able to adopt the 72 hour advance notice and have the ability to amend it up until the statutory deadline. Mr. Opperman said that the Board would be able to amend it. A discussion ensued on the current agenda timeline with the 24 hour notice and the hardship it causes entities who would like to know if they are on the agenda.

**Secretary Tom Clifford moved, seconded by Mr. Brett Woods, for approval of the Open Meetings Act Resolution for 2013 requiring posting of the agenda within 72 hours of the meeting. The motion was unanimously approved.**

- 7. Consideration for Approval of Inspection of Public Records Resolution Adopting a Policy for Inspection of Public Records for 2013.** Staff recommends that the Board approve and adopt the Inspection of Public Records Resolution which approves and adopts the Finance Authority's Policy for Inspection of Public Records for 2013.

The New Mexico Finance Authority (Finance Authority) is subject to the Inspection of Public Records Act which provides that every person has a right to inspect the public records of the Finance Authority. The Finance Authority is required to post procedures for persons requesting public records. The Finance Authority adopts a Policy for Inspection of Public Records every year.

The proposed Resolution provides for the Board to adopt the Finance Authority's Policy for Inspection of Public Records for 2013. The Policy sets forth the procedures for persons requesting the Finance Authority's public records, and otherwise complies with the requirements of the Inspection of Public Records Act, §14-2-1 *et seq.*, NMSA 1978, as amended and supplemented from time to time.

Secretary Clifford wondered if the policy has sufficient flexibility in the event the document would need to be redacted to provide it in paper format to the requestor. Mr. Opperman outlined the process for providing the document based on how the IPRA was requested. Secretary Clifford asked if staff was providing additional flexibility to the policy on responding to a request and Mr. Opperman clarified staff's recommendation is to insert language to the policy to be consistent with state law. The Records Custodian must respond to a public records request in the same medium, electronic or paper, in which the request was received and can choose to respond in any other medium but still, must respond via the same medium in which the request was received.

Chair Winter commented on her experience with IPRA requests and wanted to ensure the NMFA was meeting the required timeline. She would also like to see language that requires



the IPRA response be made in the same format the request was made. A discussion ensued on the current process for responding to IPRA requests. Mr. Opperman will incorporate the recommended changes and bring the resolution back to the Board at the next meeting.

**Mr. Paul Gutierrez moved, seconded by Secretary Tom Clifford, to table approval of the Inspection of Public Records Resolution. The motion was unanimously approved.**

**8. Report from Finance & Loan Committee.**

Chair Winter for the record, recused herself from item no. 11.

**9. Consideration for Approval of City of Rio Rancho - (Sandoval County) – 2892-PP Special Assessment District No. 6 Restructure.** Staff recommends approval of PPRF loan financing of \$9,482,266 for City of Rio Rancho for Special Assessment District No. 6 Restructuring.

In October 2006, the Finance Authority closed on the SAD 6 loan with the City for \$9,482,266 to fund various improvements within SAD 6. The SAD 6 Loan has both taxable and tax-exempt components and is amortized over 10 years, maturing in 2016. To mitigate any loan defaults due to payment delinquencies by property owners, the SAD 6 loan was structured to have 33% of the principal due in the final year. If and when assessments received from property owners are in excess of the semi-annual debt service payments due, the City often remits the excess payments to the Finance Authority. Excess payments take the form of a prepayment that, in the long run, reduces the back loaded principal obligation.

Because the economic downturn affected the City more than other communities, it has been experiencing delinquencies with property owners paying the special assessments related to the loan. The delinquencies have not impaired the District's servicing of loan payments which are current; however the delinquencies did trigger immediate foreclosure action under the SAD documents that the City sought to modify. At its November 2011 meeting, the Board approved a Forbearance Agreement which allows the City to temporarily forbear from exercising its rights to foreclose on any property which has been delinquent.

Additionally, the Forbearance Agreement allowed the City to work with the delinquent property owners on a modified assessment payment schedule over an 18-month period so that the property owners could become current. If a property owner does not become current on its special assessment obligation by the end of the Forbearance Agreement, June 2013, the City will foreclose on the property. The Forbearance Agreement also allows the City to maintain better control on the timing of foreclosures so that the market is not flooded with foreclosed properties which would drive down property values and compound cash flow issues. No changes were made to the underlying loan terms, payment dates, or payment amounts. The City is current with its Audits and financial reporting.

Since execution of the Forbearance Agreement in January 2012, delinquency rates have dropped for SAD 6; however, it is still suffering from a 40% delinquency rate from the remaining 298 active properties. The City expects that property and real estate activity will pick up with commercial development and improved economic conditions. The City has analyzed the market values of four properties it has possessed through foreclosure and the property values range from \$39,000 to \$51,000, above SAD 6's average special assessment of \$17,000 and applicable property tax due.

The City seeks to restructure the SAD 6 loan due to declined special assessment collections from delinquent property owners. This restructure will extend the loan term an additional five years, moving the loan maturity to May 2021 from the existing maturity of May 2016. The extension of the SAD 6 loan will allow the City to keep working with property owners to become current as well as allow them time to spread out any required foreclosure proceedings instead of flooding the market in such a short time period. The extension to a 15-year amortization meets useful life guidelines on the underlying SAD 6 improvements funded. The restructured SAD 6 loan will convert to a taxable structure. In addition, the new loan will keep the 25 basis point fee that was part of the original loan. The City has requested that these rates be locked in at this Board meeting for a public meeting that will be held on February 28 with the property owners to explain this restructure and how it can help delinquent property owners become current. This loan does not contain the NMFA's usual interest rate margin and these will be the final rates for this restructure.

Secretary Clifford questioned the trend on delinquencies and asked what the process was with property owners. Ms. Olivia Padilla-Jackson, Finance Director, explained the proactive approach the city was taking to address the cash-flow for fiscal year 2015. Because of the downturn of the housing market, the city experienced delinquencies with property owners paying the special assessments related to this loan. The delinquencies also triggered foreclosure action under the SAD documents that the City sought to modify. The City has been working with the property owners, which has improved the delinquency; however, it has been difficult to determine how many of the current delinquent properties will be able to get back on track as well as predict the housing market. Rio Rancho has been working with NMFA staff on a conservative cash flow forecast; however, the City does not feel housing will recover enough to improve the cash flow within the next few years. Ms. Padilla-Jackson said the City's foreclosure rate during fiscal year 2011-2012 was down 10%. Structuring this SAD with an 8 year term would make it consistent with the SADs which would also be fair to property owners. Referring to the balloon payments, Ms. Padilla-Jackson said a balloon structure was not included in their proposal since it is the City's intent to pay off the amount of the loan before the final maturity. This process would provide them with the most flexibility as the recovery occurs and eliminates the need to sell properties.

A discussion ensued on the debt service schedule and the assessments. Ms. Padilla-Jackson stated the balance of the current investments due are amortized over a longer period on a level basis so there will not be a balloon payment at the end. Secretary Clifford felt it would be helpful to the Board if staff would provide sufficient information on the restructure to repay loans.

Chair Winter asked how many foreclosed properties the City had and how many are owned by the City. Ms. Padilla-Jackson said currently the City owns four properties and recently filed foreclosure on over 100 properties. The City is hopeful the restructure will allow the property owners to begin paying which will then remove them from the foreclosure list.

**Mr. Paul Gutierrez moved, seconded by Mr. Terry White, for approval of City of Rio Rancho, Project #2892-PP. The motion was approved with Mr. Jerry Jones recused from voting.**



**10. Consideration for Approval of Chaves County - (*Chaves County*) – 2890-PP Building Project.**

Staff recommends approval of PPRF loan financing of \$5,602,241 for Chavez County to renovate and expand the County's Adult and Juvenile Detention Center facility.

The County plans a three phase \$15,000,000 Chaves County Detention Center expansion and renovation. Phase I of the project includes; construction of a new Sally Port, new S.O.R.T area, and new staff entrance, new staff amenities, replacement of existing electronic security system, renovation of master control and visitation area, and construction of video visitation building and public plaza. Phase one of the project will provide the necessary infrastructure for the overall expansion of the detention center, ultimately culminating with 264 additional beds and additional 38,923 sf. The estimated time frame for Phase I is 10 months.

The County's GRT has increased, on average, 1.69% over the last three years. Staff used the average to determine debt coverage. Additionally, the top 10 GRT tax payers comprise approximately 24% of the total GRT revenue collected.

Secretary Clifford referred to the source of funding that listed \$10 million of accumulated cash balances and asked for the revenue source. Mr. Stan Riggs, County Manager, said the County has been able to increase their permanent fund over the past 6 years in anticipation and preparation of this building project. The gross receipts tax has already been imposed and has been used in the past for operating expenses. Secretary Clifford asked how much of the revenue the County's operating budget constituted. Mr. Adam Johnson said the County uses it specifically for the operation of the detention center.

A discussion ensued on the funding used for the facility's operating costs. Secretary Martin asked for further information on the funding and timing for the 2<sup>nd</sup> and 3<sup>rd</sup> phases of the project. Mr. Riggs said the County anticipates going out to bid in March for all three phases and will be funded by the County.

**Mr. Paul Gutierrez moved, seconded by Mr. Terry White, for approval of Chavez County, Project #2886-PP. The motion was unanimously approved.**

**11. Consideration for Approval of City of Raton (*Colfax County*) – #2890-PP Solid Waste Project.**

Staff recommends approval of PPRF loan financing of \$1,036,400 for a Solid Waste project.

The loan proceeds along with \$100,000 of the City's own funds will be used to purchase solid waste equipment, the construction of a new transfer station, and the closing of a landfill.

The City has pledged the Net System Revenue of the Sanitation Enterprise as security and repayment for this loan. The City recently passed an ordinance raising rates to support the current debt request as well as create capacity for future critical projects. The ordinance was passed in June 2012 with the new rates taking affect in August 2012. Using the projected revenue and expenses provided by the City, staff performed an analysis using the most conservative year of revenue in determining the City's debt capacity. The City's 2012 audit is under review at the State Auditor's office.

Mr. Peinado explained the net system revenues were listed as a weakness because it was based on a projection. The multiple audit opinion for the FY2011 audit was also listed as a weakness because of the opinion on their federal awards; however, those findings are not related to this request. Secretary Martin asked if the landfill is closed, where the waste from the transfer station would be taken. Mr. Peinado said it would be taken to a regional recycling facility. The 113% rate increase for curbside pick-up was passed by the city council and their financials show they are on track with revenue projections that will also be used for future loans. Mr. Paul Cassidy, Financial Advisor, said the rate structure was designed by the city manager with input from the city council that would put them in a position to cash fund projects. The debt service for this loan is structured to match the useful life of the assets.

**Mr. Terry White moved, seconded by Mr. Brett Woods, for approval of City of Raton, Project #2890-PP. The motion was approved with Chair White recused from voting.**

- 12. Consideration for Approval of Grant County - 2888-PP – Building Project.** Staff recommends approval of PPRF loan financing for the purchase and installation of a metal building to house animal exhibits at the Grant County Fairgrounds.

Grant County will use the proceeds to purchase and install a metal building to be used as an animal exhibit hall at the County Fairgrounds replacing the existing building irreparably damaged by extreme winds. The proposed facility will be 22,000 sf and house multiple tack stalls, wash racks, steer pen, and rabbit and poultry pens, as well as restrooms, office space, and storage.

The County's GRT has increased on average over the last four years which staff used for determining debt coverage. The County is current with its Audits and financial reporting.

Mr. Terry White asked if the building is insured for the wind damage and if the County collects on the insurance, would a pre-payment be made to the NMFA. Mr. Cordova said it was not clear if the building was insured but offered to follow-up with the County.

**Mr. Brett Woods moved, seconded by Mr. Paul Gutierrez, for approval of Grant County, Project #2888-PP. The motion was unanimously approved.**

- 13. Consideration for Approval of Sapillo Creek VFD (*Grant County*) – 2887-PP - Equipment Project.** Staff recommends approval of PPRF loan financing for Sapillo Creek VFD of \$36,505 to purchase a Brush Truck.

The loan carries a 3-year term with 2.78 x coverage secured by State Fire Protection Funds. The Sapillo Creek Fire Department receives a minimum base distribution of \$52,418 per year with an ISO rating of 8B.

The proceeds of the loan, along with \$80,000 of the Department's accumulated fire protection funds, will be used to purchase a Brush Truck. The Sapillo Creek Fire Department is located in the Gila National Forest and has been affected by forest fires the last few years. The Brush Truck is needed to enhance the protection area.



The State Fire Marshal's Office has reviewed and approved the purchase of the water tanker apparatus. The District currently has an outstanding loan pledged to the Fire Protection Funds scheduled to mature 5/2014. The County is current its Audit and financial reporting.

**Secretary David Martin moved, seconded by Secretary Jon Barela, to approve Sapillo Creek VFD Project #2887-PP. The motion was approved with Mr. Blake Curtis recused from voting.**

- 14. Consideration of Local Government Planning Fund Guidance Documents.** Staff recommends approval of the identified guidance documents as the approved minimum criteria for various Local Government Planning Fund documents.

Secretary Clifford referred to the asset management plan and asked staff to meet with Dr. Richard Rose of the Office the State Engineer to address his concerns with the Water Trust Board's asset management plan. Secretary Clifford said it was his understanding NMFA staff has not been sufficiently proactive with the plan. He requested staff report back to the Board on Dr. Rose's concerns and resolutions reached. Ms. Russel acknowledged a meeting has taken place with Dr. Rose and will provide the board with his comments. Chair Winter noted that some of the documents are aged and asked if the successor documents would simply replace the previous ones. Ms. Russel recommended that staff continue with the current document in place. A discussion ensued on how the guidance documents will be used by NMFA staff as well as potential applicants when applying for funding. Referring to the following LGPF projects, Secretary Clifford asked if these items could be approved as a consent items. Ms. Darlaina Chapman referred to Item Nos. 15 and 16, Water Preliminary Engineering Reports, may require Board discussion based on their request. Ms. Chapman said both projects have administrative compliance orders from NMED because of contaminants in the water.

**Secretary Tom Clifford moved, seconded by Mr. Terry White, for approval of Local Government Planning Fund Guidance Documents. The motion was unanimously approved.**

*Agenda Items 15 and 16 were approved with one motion.*

- 15. Consideration for Approval of Upper Holman MDWCA (Mora County) - 2893-PG – Water Preliminary Engineering Report.** Staff recommends approval of Local Government Planning Fund financing of \$50,000 for a Water Preliminary Engineering Report (PER).

The Association is a small water system in Mora County serving about 325 residents or 74 connections. The Association has high fluoride levels and has received an administrative compliance order from the Drinking Water Bureau of the Environment Department. The Association has exceeded the maximum contaminant level for fluoride at Well #2 in four separate tests since 2010. The Association needs the PER to determine a solution and submit a plan to NMED as soon as possible.

Under the new rules and policies adopted by the Board, the local match requirement can be waived if the project is determined to be urgent. This is defined in part by a project that can cure a regulatory compliance issue cited by the Environment Department.

**16. Consideration for Approval of Vallecitos MDWCA (Rio Arriba County) – 2894-PG - Water Preliminary Engineering Report.** Staff recommends approval of Local Government Planning Fund financing of \$50,000 to finance a Water Preliminary Engineering Report (PER).

The Association is a small water system in Rio Arriba County serving about 96 users or 32 connections. The Association receives its drinking water through an infiltration gallery. The system has consistently had problems meeting safe water quality standards. The Association has many violations going back to 2005 and has been under an administrative compliance order from the Drinking Water Bureau of the Environment Department since 2005. The Association completed a PER in 2006 to address the compliance issues, but the alternatives did not work and the violations continue. This PER will look at new alternatives to resolve old and new violations.

Under the new rules and policies adopted by the Board, the local match requirement can be waived if the project is urgent. This is defined in part by a project that can cure a regulatory compliance issue cited by the Environment Department.

The Association closed on a Local Government Planning Fund grant in 2007 (1912-PG) for a PER to address the 2005 compliance order. The PER was completed and the Association received funds from the Governor's office to implement a SCADA system and, more recently has secured funds from USDA to put in a much needed water tank. In the 2012 Regular Session, the Legislature approved HB55 which, in part, removed the requirement that LGPF funds be repaid when the Grantee secured non-NMFA funding for the projects identified from the planning document, thereby making LGPF funding pure grants. Prior to the passage of HB55 and the subsequent amendment to LGPF statutes, LGPF agreements contained the reimbursement clause [Section 2.1(o) of the Association's 2007 LGPF Agreement] that required repayment back to the NMFA. The Association is a small, poor community and does not have the available funds to repay the original grant. The Association has been working closely with both NMED and RCAC to become a sustainable water system with clean, safe drinking water. They are requesting that the Finance Authority forgive the reimbursement now owed on the 2007 PER so the Association can dedicate their future earning to becoming a sustainable water system for their users.

**Secretary Jon Barela moved, seconded by Mr. Paul Gutierrez, for approval of Upper Holman MDWCA, Project #2293-PG and Vallecitos MDWCA, Project #2894-PG. The motion was unanimously approved.**

*Agenda Items 17, 18 and 19 were approved with one motion.*

**17. Consideration for Approval of Village of Cloudcroft (Otero County) – 2823-PG – LEDA/Comprehensive Plan.** Staff recommends approval of Local Government Planning Fund financing of \$50,000 to finance a Comprehensive Plan.

The scope of services includes examination of land use, housing conditions, infrastructure, economic development, transportation, and hazard mitigation. The firm completing the plan will spend significant time meeting with village leaders, health & education providers, significant employers as well as the general public of the Village. Once complete and accepted by the Council, the plan will be adopted by resolution for the Village. Pursuant to Section 5.2 of the Rules Governing the Local



Government Planning Fund, staff recommends funding 100% of the amount requested allowing the Village to implement the Local Economic Development Act.

- 18. Consideration for Approval of Pendaries Village MDWCA (San Miguel County) – 2873-PG Water Master Plan.** Staff recommends approval of Local Government Planning Fund financing of \$50,000 for a Water Master Plan.

The new plan will address future growth of the water system, the efficiency of the current system, and the possible replacement of existing infrastructure. The Pendaries Village MDWCA has a median household income of \$29,167, which is 66.56% of New Mexico's MHI. Additionally, the local burden ratio is 3.12x the state water rate burden. Accordingly, by NMFA policies, the Association qualifies for the full project amount.

- 19. Consideration for Approval of Mora County – 2891-PG – LEDA/Comprehensive Economic Development Plan.** Staff recommends approval of Local Government Planning Fund financing of \$50,000 to finance a LEDA/Comprehensive Economic Development Plan.

The plan will enable the County to identify potential economic opportunities. The County recently adopted a LEDA Ordinance and now has a five member Economic Development Committee that will facilitate the implementation of an economic development plan within the Comprehensive Land Use Plan.

Pursuant to Section 5.2 of the Rules Governing the Local Government Planning Fund, 100% of the project amount is recommended because the plan is needed to implement the Local Economic Development Act.

**Secretary Jon Barela moved, seconded by Mr. Brett Woods, for approval of Village of Cloudcroft, Project #2823-PG, Pendaries Village MDWCA, Project #2873-PG, and Mora County, Project #2891-PG. The motion was unanimously approved.**

- 20. Information Item – PPRF Cash Position and Portfolio Management Options.** Mr. Michael Zavelle presented.

The Finance Authority's cash position reflects dwindling Contingent Liquidity Account ("CLA") funds to make new loans and an expanding Replacement Loan cash position which serves as a back-up. The CLA cash position is of limited concern because it is anticipated that it will be replenished with a PPRF bond issue closing in June. Restoration of the Wells Fargo line of credit for new loans is also likely once Wells Fargo has an opportunity to review the 2011 audit.

Mr. Zavelle said the question is how best to deploy funds in the Replacement Loan pool. The pool exists because loans are being pre-paid but the bonds to which these pre-paid loans were pledged are still outstanding and cannot be called until 2014 – 2018 depending on the bond issue. The outstanding bonds are required to have a loan payment stream underlying them that matches or exceeds the debt service of the bonds year by year. Replacement Loan funds have been used to make new loans pledged at a macro portfolio level to all still outstanding 10-year call bonds that have had

some portion of their pledged loans pre-paid. The macro approach is used because replacement loans can be more efficiently allocated to a group of bonds rather than to a single bond given that loan repayment streams are very varied and revenue streams from new loans do not replicate 7- 10 year old loans well.

The first 10-year call bonds that included loans that could be pre-paid mature in 2014. Investment banking firms have noted that the PPRF 2004B1 bonds in particular could be refunded to achieve NPV savings that exceed the Finance Authority's 3% policy and could reach 9 – 10% in NPV savings. Finance Authority staff has undertaken an extensive analysis of PPRF refunding opportunities and have concluded that PPRF portfolio management would be better served by taking a different approach. Specifically, to maximize capacity and fiscal strength of the PPRF portfolio while minimizing costs, the PPRF will be best served by using Replacement Loan funds to pay off currently callable bonds or bonds requiring minimum defeasance of interest costs, such as the PPRF 2002A, 2003A, 2003B and soon the 2004 series bonds. Paying off a callable high coupon bond having a similar tenor to the pre-paid loan rather than making a new loan is equivalent to substituting a high interest loan for a low interest loan in the Replacement Loan pool. This is so because still outstanding loans pledged to the paid off bond become part of the macro pool. New loans can be funded with new bonds with no interest rate or maturity mismatches. This procedure also has the benefit of reducing the denominator rather than adding to the numerator in PPRF coverage calculations. The result is better coverage and thus more capacity and stronger PPRF financials.

The approach the Finance Authority likely will take for the next several years is to use funds from loans pre-paid to pay off high coupon bonds, rather than making new loans with these funds. Why is paying off callable bonds and issuing new bonds to make new loans a better approach than refunding bonds and making loans with replacement funds when there appears to be savings in doing refunding's. Savings are more speculative than real if refunded bonds are tied to underlying loans the repayments of which are not controlled by the bond issuer. If the Finance Authority refunded 004B1 bonds, for example, with a normal 10-year call and with underlying loans payable at any time, an unfortunate new mismatch would occur. Instead, staff has considered using Any-Time call refunding bonds. The cost would be 40 – 50bp added to the refunding bond interest rate. Doing so, should loans be pre-paid, would allow the same amount of refunding bonds to be called and paid off thereby managing interest rate and mismatch risk.

There are apparent NPV savings in this approach but again as all of the underlying loans can be pre-paid almost immediately, savings are not assured. There are costs to issue bonds -- \$300,000 - \$400,000. Refunding the 2004B1 bonds would require an additional \$1,000,000 to be borrowed to cover interest defeasance due to negative arbitrage, or the difference between the interest rate for the bond being defeased and the lower interest rate of the securities used to defease. New, inefficient replacement loans would have to be made so that the Replacement Loan pool revenue stream would in aggregate match the debt service of bonds outstanding. The amount of bonds outstanding would slightly increase. Were Replacement Loan funds deployed instead to pay-off the 2004B1 bonds, mismatch risk and interest rate risk would be eliminated, the remaining macro pool revenue stream would better match further reduced bond debt service and the portfolio overage ratios and thus capacity would both be increased at a lower cost than refunding.

The Finance Authority expects to receive a solid stream of pre-payments and the ability to retire the



2004B1 bonds should take place by June 2014, or earlier, thus producing a much better financial result than a refunding of the 2004B1 bonds would today.

Secretary Clifford thought it would be useful for the Board to know the status of the portfolio outstanding, such as the callable and non-callable. Mr. Zavelle outlined the timeline and amounts of the callable bonds that would be available for the Board's review. Secretary Clifford asked for more detailed information with regards to rates and how they match up to expected loan re-payments. Mr. Zavelle will develop a strategy for providing that information.

*Secretary Jon Barela departed the meeting at 12:00 Noon.*

**21. Information Item – Drinking Water State Revolving Loan Fund** Ms. Marquita Russel and Ms. Jana Amacher presented.

Ms. Russel briefly reviewed the handout detailing the DWSRLF. Referring to page 13, Secretary Clifford asked if the term "additional subsidy" was the grant portion of the loans. Ms. Russel confirmed it was. The historical percentage average will be until 2020 with 41% forgiveness. Currently NMFA is unable to provide principal forgiveness or any subsidy from the re-loaned capital. In response to a question regarding projects moving forward in March, Ms. Russel said the information would be publically available through the quarterly priority list.

**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.*

**22. Update on Activities.**

**23. Request to Open the 14 Round of Competitive New Markets Tax Credit Applications.** Staff recommends a 14th Round of competitive applications be opened February 25, 2013 with a closing deadline of March 25, 2013.

The NMFA Board, on behalf of Finance New Mexico, has offered thirteen competitive application cycles, including an exclusive application round for projects located in rural areas. To date nine projects have closed and three projects are working to have term sheets submitted in February for a March preliminary approval. Those projects total approximately \$25 million in NMTC financings and will be used in rural New Mexico and meet the QEI obligation of Finance New Mexico.

At the January 2013 NMFA Board meeting, the Board approved the amended NMTC application policy and procedures which govern the future ranking of applications that have been received during an application cycle. In order for an applicant to move forward for consideration by the Board, the applicant needs to score 60 points out of 100 points in that current cycle. Documents that would be required to obtain at least 60 points or more need a term sheet or a letter of intent, from a bank, private lender or some leverage lender source. If an applicant falls short of the required threshold, the applicant will be afforded the opportunity to re-apply in the next application cycle.

NMFA's thirteenth round application cycle closed on November 16, 2012, which brought forward 3 projects which potentially meet the readiness to proceed with an NMTC closing. If these project are not able to meet the readiness, all applicants from the thirteenth round have been asked to reapply to this round and have been asked to submit all project readiness items to the Finance Authority by March 25, 2013.

In response to Secretary Clifford's question regarding staff's outreach process, Mr. Brooks said staff held seminars and scheduled meetings with local banks and businesses. Secretary Clifford asked about the status of federal appropriation cycle and if a new round of funding was received for the current fiscal year. Mr. Brooks said the allocation has not yet been determined. Ms. Russel reported congressional reauthorization of the program for two years at \$3.5 million a year and as noted by Mr. Brooks, the application submitted by NMFA has not received a determination. Because Congress received an extension, an application is expected to be opened in June. A discussion ensued on the amount that subject to appropriation.

**Mr. Paul Gutierrez moved, seconded by Mr. Terry White, to approve opening the 14 Round of Competitive New Markets Tax Credit 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.*

**24. Update on Activities.** The Committee did not meet this month.

Chair Winter reminded the Board the Investment Committee agreed to meet on a quarterly basis and Mr. White confirmed the committee will meet in March. Chair Winter requested the item be included on the agenda only when a report will be presented.

**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.*

*Mr. William Fulginiti signed off at 12:10 p.m.*

**25. Update on Activities**

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

Mr. Dan Opperman reported on the status of the ongoing MOU discussions regarding portfolio management services and functions to be provided by the NMFA for the Commission and NMDOT. Mr. Opperman further explained that the NMDOT was unable to place this item on the Commission's February agenda therefore the Commission still needs to provide final sign-off. The Contracts Committee recommended Board approval of the MOU contingent upon the NMDOT/Commission's approval.



Mr. Opperman reported that Finance Authority staff and CPB have agreed to terms for a new MOU for technical assistance and review to facilitate the NMFA's obligations to administer the Water Project Fund providing support for the Water Trust Board to ensure that funded projects are completed in accordance with the Act.

**26. Consideration for Approval of Memorandum of Understanding between the Finance Authority, the New Mexico Department of Transportation and the New Mexico State Transportation Commission for the Administration of the GRIP Bond Program.** The Contracts Committee and staff recommend approval, contingent upon NMDOT and Commission final approval, for the NMFA to enter into a Memorandum of Understanding with the NMDOT and the Commission.

Under the previous MOU, the NMDOT paid the NMFA an annual fee equal to 0.25% of the outstanding principal amount of State Transportation Revenue Bonds from the State Road Fund and the Highway Infrastructure Fund. Historically one-half of the annual fees have been deposited into the Local Transportation Infrastructure Fund. The NMDOT helped pass legislation in 2012 that temporarily suspended the LTIF Requirement, and is again seeking similar legislation for the 2013 session and beyond. In relevant part, the revised MOU does the following:

1. Provides that the Commission and NMDOT shall pay to the NMFA an annual fee equal to the NMFA's actual costs incurred for portfolio management services and functions (the "Annual Fee"). The Annual Fee, plus 3<sup>rd</sup> Party Costs as defined in Paragraph 2 below, shall never exceed Eight Hundred Thousand Dollars (\$800,000.00) without prior approval of the Commission, such approval not to be unreasonably withheld. For purposes of this MOU, the phrase "actual costs incurred for portfolio management services and functions" includes, without limitation and subject to change upon written agreement between the Commission, NMDOT, and the Finance Authority, the following: (1) NFMA staff time allocated on a full cost basis for work on GRIP State Transportation bond investment and debt management matters; (2) GRIP State Transportation bond related request for proposal ("RFP") expenses; (3) GRIP State Transportation bond related subscription expenses for information and software services; (4) GRIP State Transportation bond related out-of-pocket expenses; and (5) Expenses incurred for special projects undertaken by the NMFA at the request of NMDOT staff or commissioners of the Commission.
2. Provides that NMDOT shall reimburse the NMFA for costs incurred for 3<sup>rd</sup> party services, which include: (1) Services of Trustees, Continuing Disclosure Agents, Arbitrage Compliance Agents and any other professionals providing legally required services for or on behalf of NMDOT or the Commission, provided, however, NMDOT shall have the absolute right to review, on demand, all payment invoices submitted by any third-parties; and (2) GRIP State Transportation bond related legal services for or on behalf of NMDOT or the Commission, provided, however, NMDOT shall have the absolute right to review, on demand, detailed billing invoices in the form as said invoices would customarily be provided in the legal industry, submitted by any person or entity providing legal services (collectively, the "3<sup>rd</sup> Party Costs").
3. The Annual Fee shall be calculated by using the NMFA's actual costs incurred for portfolio management services and functions for the previous fiscal year. NMDOT shall pay the Finance Authority one-half of the NMFA Annual Fee in June and one-half of the NMFA Fee in December of each fiscal year, on or before the first day of each calendar month, respectively. The Annual Fee

due in each subsequent year shall be calculated by the NMFA based on the previous twelve months actual costs and shall be submitted to the NMDOT by September 1 of each new fiscal year.

4. In the event that the pending 2013 legislation does not become effective, or at any time additional Future legislation ceases to be enacted and fails to remain in effect, to compensate the NMFA for services related to the New Money State Transportation Revenue Bonds or the Outstanding State Transportation Revenue Bonds to be provided for and on behalf of the Commission and NMDOT pursuant to this MOU, the Commission and NMDOT will pay to the NMFA an annual fee equal to two-times the NMFA's Annual Fee. One-half of the Annual Fee received by the NMFA each June and December will be deposited directly into the LTIF, pursuant to statutory requirements set forth in Section 6-21-6.8(B)(1) NMSA 1978 (the "LTIF Requirement"). Therefore, the net Annual Fee received by the NMFA, after satisfying the LTIF Requirement, will be NMFA's actual costs incurred for portfolio management services and functions. NMDOT shall pay the NMFA the Annual Fee in accordance with Paragraph 2, above.

Secretary Clifford stated that both the NMDOT and the NM Transportation Commission support the change.

**Secretary Tom Clifford moved, seconded by Mr. Paul Gutierrez, for approval of MOU between the Finance Authority, the New Mexico Department of Transportation and the New Mexico State Transportation Commission for the administration of the GRIP Bond Program. The motion was unanimously approved.**

**27. Consideration for Approval of Memorandum of Understanding between the Finance Authority and New Mexico Environment Department for Review of Project Oversight and Other Necessary Services for Administration of the Water Project Fund.** The Contracts Committee and staff recommend approval of the Memorandum of Understanding between the NMFA and NMED. Mr. Dan Opperman and Ms. Jana Amacher presented.

The Finance Authority and NMED have agreed to terms for a new MOU for technical assistance and review that will facilitate the NMFA's obligations to administer the Water Project Fund and to provide support for the WTB, ensuring that funded projects are completed in accordance with the Water Project Finance Act.

During the term of this MOU, NMED, through its Constructions Programs Bureau ("CPB") or other appropriate bureau, will render assistance to the NMFA and to qualifying entities that have been approved for funding to ensure that projects are completed in accordance with applicable laws and regulations, that they are cost effective, and that required and approved design elements, including available technologies and operational design for water use efficiency, are incorporated into the plans and specifications for each project and are carried through in the construction and completion of the project.

As a follow-up to Item No. 26, Mr. Opperman explained the NMDOT MOU does not have an expiration date since the GRIP Bond Program is an on-going process. Secretary Clifford asked for clarification that the cost for the MOU with NMED is a permissible use of severance tax bonds



proceeds. Mr. Opperman confirmed that it was and staff has received confirmation from the State Board of Finance.

**Secretary Tom Clifford moved, seconded by Mr. Brett Woods, for approval of MOU between the Finance Authority and NMED for Review of Project Oversight and other necessary services for administration of the Water Project Fund. The motion was approved with Secretary David Martin recused from voting.**

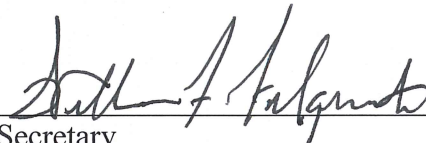
#### **OTHER ITEMS**

#### **28. Next Board Meetings**

March 22, 2013  
Apodaca Hall – Former PERA Building  
9:00 a.m.  
Santa Fe, NM

#### **29. Adjournment**

The meeting adjourned at 1:10 p.m.

  
Secretary

3-26-13  
Date



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## **Fiscal Year 2011 Audit Report New Mexico Finance Authority**

**February 22, 2013**

### **Audit Scope**

- Financial statements of New Mexico Finance Authority as of and for the year ended June 30, 2011.
- Laws, regulations and internal controls applicable to major federal award programs
- New Mexico State Auditor Rule

### **Auditor Responsibilities**

- Opine on the financial statements
- Report on internal controls and compliance with applicable laws and regulations
- Provide reasonable, not absolute assurance
- Detect and report on
  - Material inaccuracies in the financial statements
  - Material instances of fraud
  - Serious internal control weaknesses
  - Material noncompliance with laws and regulations applicable to major federal awards (Drinking Water State Revolving Funds CFDA 66.468)

### **Management Responsibilities**

- Accounting policies
- Accounting systems
- Internal controls
- Significant estimates
- Financial statements

### **Audit Results**

- Unqualified (“clean”) opinion on the financial statements
- Unqualified report on compliance related to the major federal award programs
- Findings reported in accordance with OMB Circular A-133, the Single Audit Act and the State Audit Rule
  - Two findings considered material weaknesses
  - Ten additional findings





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## **Fiscal Year 2011 Audit Report New Mexico Finance Authority**

**February 22, 2013**

### **Findings**

- 2011-1 (FS) Financial Reporting Oversight (Material Weakness)
- 2011-2 (FS) Payment of Public Funds Without an Approved Contract (Significant Deficiency)
- 2011-3 (FS) Account Reconciliations and Cutoff Procedures – (Significant Deficiency)
- 2011-4 (FS) Use of Company Credit Cards (Significant Deficiency)
- 2011-5 (FS) Information Technology (IT) Issues (Significant Deficiency)
- 2011-6 (FS) Bond Covenants — Other
- 2009-2 (FA) Timely Submission of Reports (Repeated and Modified) (Material Weakness)
- 2011-7 (FA) Reporting (Significant Deficiency)
- 2011-8 (SA) IRS Required Reporting of Taxable Fringe Benefits — Other
- 2011-9 (SA) Timely Cash Receipts Deposit - Other
- 2011-10 (SA) Travel and Per Diem Expenditures — Other
- 2011-11 (SA) Equipment — Other

### **Response to the Fraudulent Audit Report**

- Testing materiality was lowered in order to test smaller dollar transactions.
- Increased time spent on understanding internal controls over cash receipts, payments to vendors, and loan transactions
- Increased the amount of senior, manager, and partner involvement throughout this engagement.
- Continually revised our audit approach for transaction groups and accounting processes that were identified as having been reviewed or recorded by the former CFO.
- Considered the reports issued by the New Mexico Office of the State Auditor, the New Mexico Regulation and Licensing Department's Securities Division, and the New Mexico Legislative Council in determining audit procedures and potential effects on financial statements and audit reports



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## **Fiscal Year 2011 Audit Report New Mexico Finance Authority**

**February 22, 2013**

- Communicated with the State Auditor's Office regarding concerns they may have based on their knowledge of the activities and operations of NMFA. Performed additional audit procedures in response to those concerns.
- Requested and received a representation letter from the New Mexico Office of the State Auditor on conflicts between the special investigative reports and NMFA's 2011 audited financial statements. The New Mexico Office of the State Auditor was unaware of any conflicts.
- Net assets reported in fraudulent report exceeded net assets in the audited financial statements by \$1,335,939 (\$381,179,097 v. \$379,843,158)

### **Cooperation and Coordination**

We appreciate the full cooperation of the following, which greatly facilitated our ability to complete the audit:

- NMFA Audit Committee
- NMFA management and staff
- Office of New Mexico State Auditor

### **REDW Contact Information**

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