

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

**Minutes of Water Trust Board Meeting
April 13, 2022
Teleconference/Via Zoom**

Members Present:

A.J. Forte, Vice Chairman	Executive Director, NMML
Michael Sloane, Secretary	New Mexico Department of Game & Fish
Brent Van Dyke, Treasurer	Soil & Water Conservation District
Jason John	Designee, Navajo Nation
Joy Esparsen	Designee, New Mexico Counties
Judi Kahl	Designee, New Mexico Environment Dept.
Julie Maitland	Designee, Department of Agriculture
Mark Thompson	New Mexico Indian Affairs Department
Marquita Russel	CEO, New Mexico Finance Authority
Priscilla Lucero	Environmental Community Representative
Tonantzin Roybal	Designee, New Mexico Dept. of Finance & Administration
Greg Alpers	Irrigation or Conservancy District Surface Water Rep.
Todd Leahy	Designee, Energy, Minerals and Natural Resources Dept.
Tim McGinn	Irrigation or Conservancy District Group Water Rep.
Mike Hamman	New Mexico State Engineer

Absent:

Robert Baracker	Acequias Water Users Representative
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Finance Authority Staff:

Angela Quintana	Senior Program Administrator
Alysia Sanchez	Program Administrator
Joe Maldonado	Senior Administrative Assistant
Cherise Martinez	Board Administrator
Michael Vonderheide	Managing Director, Program Administration
Bryan Otero	Legal and Compliance Counsel

Guests:

Agnes Valencia	James Martinez, Los Alamos County
Linda Calhoun, Town of Red River	Alan Hook, City of Santa Fe
Jody Garcia, Souder Miller & Assoc.	Andrea Telmo, NMED-CPB
Uday V. Joshi, OSE	Megan Hodgins, Town of Red River
Jesse Roach, City of Santa Fe	Shelly Dalrymple, Montgomery & Andrews Law Office
Ashley Martinez, Wilson & Co.	Georgiana Rael, Town of Red River
Mataya Bachicha	Trevor Birt, NMISC

1. **Call to Order and Roll Call.** Vice-Chairman Forte, called the Water Trust Board (“WTB”) meeting to order at 9:01 a.m. Roll call was taken, and a quorum was established.
2. **Approval of Agenda.** Member Sloane made a motion for approval of the agenda, seconded by Member Van Dyke. The motion passed unanimously by a voice vote.
3. **Approval of the November 23, 2021, Board Minutes.** Member Maitland made a motion, seconded by Member McGinn, to approve the minutes of the November 23, 2021, meeting. The motion passed unanimously by a voice vote.
4. **Consideration and Approval of the Open Meetings Act Resolution.**

The Board considered and adopted the 2022 Open Meetings Resolution.

Member Lucero made a motion, seconded by Member Van Dyke, to adopt the Open Meetings Act Resolution as presented. The motion passed unanimously by a voice vote.

5. **Appointment of Nominating Committee.** – A.J. Forte, Vice Chairman.

Vice-Chairman Forte appointed the following members to serve on a Nominating Committee for recommendations for the Chairman position for the remaining one-year term at the next scheduled meeting: Members Lucero, McGinn, Russel, Esparsen, and Forte.

6. **2022 Legislative Session Update.** – Marquita Russel, CEO-NMFA

Member Russel reported on two pieces of legislation that affected the WTB program. The first was a requested appropriation to the Water Trust Fund (“WTF”) from the General Fund, endorsed by the Board. Unfortunately, the Legislature did not appropriate any monies to the Water Trust Fund. The second was Senate Bill 17 the WTB Authorization Bill, which was approved with full bipartisan support and signed by the Governor.

Chairman Forte sought information from the Board on the new Lead and Copper Rule that was implemented by the Federal Government and its possible effect on entities seeking funds.

New Mexico State Engineer Mr. Hamman introduced himself and briefly remarked on his goals in his new position.

An update was provided on HB200 at the request of Member Lucero. Additional discussion ensued on reviewing current policies versus the feasibility of application requirements and project oversight going forward.

7. **Water Trust Fund Distribution Set-aside Consideration.** – Angela Quintana, Senior Program Administrator

Recommendation for the Water Trust Fund (“WTF”) balance from 2021 canceled projects and the 2022 funding cycle distribution be set-aside to assist funded projects experiencing shortfalls due to increased construction and material costs.

For the 2021 Water Trust Board (“WTB”) funding cycle, the WTB awarded 32 projects in the amount of \$49,254,732. Two projects – City of Eunice (\$882,114) and Santa Clara Pueblo (\$1,398,584) returned the funds.

For the 2022 WTB Application cycle, the New Mexico Finance Authority (“NMFA”) received 36 applications totaling more than \$66.4 million. The WTB at its November 23, 2021, meeting recommended all 36 projects be authorized by the Legislature.

At the time of the authorization recommendation, the anticipated available funds were **\$51.3 million** --\$53 million from Severance Tax Bonds plus \$4 million from the WTF distribution, less 10% to the Office of the State Engineer for adjudication. The Legislative Authorization list included all 36 projects totaling approximately 130% of the expected available funds.

Category	Policy Target	Applications Requested		PMT Recommended		
		# of Apps	Total Request	# of Apps	Total Amount	%
Water Conservation	15% - 30%	6	\$ 12,470,000	6	\$ 12,470,000	24%
Flood Prevention	Up to 10%	5	\$ 6,325,000	5	\$ 6,325,000	12%
Water Storage	50% - 75%	21	\$ 44,111,547	21	\$ 44,111,547	86%
Watershed	10% - 20%	3	\$ 1,577,000	3	\$ 1,577,000	3%
ESA	Up to 5%	1	\$ 2,000,000	1	\$ 2,000,000	4%
TOTAL		36	\$ 66,483,547	36	\$ 66,483,547	130%

The SBOF estimates as of January 2022 show a significantly higher amount available:

Expected STB as of January 2022	\$ 76,300,000
2022 WTF Distribution	\$ 4,000,000
Total	\$ 80,300,000
Less 10% Adjudication	\$ (8,030,000)
Expected 2022 Funds	\$ 72,270,000*

**Pursuant to WTB policies, the maximum amount a single project can receive is 15% or \$10,840,500*

Projects recommended to the Legislature were invited to complete a Readiness Application that initiated a review of regulatory, policy, and executive order compliance, including mandatory spending of prior WTB awards. Of the 36 applications authorized by Senate Bill 17, 34 applicants submitted readiness applications. Of the 34 applicants, one applicant, NM New Model Ditch Association, withdrew their application for funding.

The summary below lists project types that may be considered for funding in the 2022 cycle:

Category	Authorized Application Requests	
	# of Apps	Total Request
Water Conservation	6	\$12,470,000
Flood Prevention	5	\$6,325,000
Water Storage	18	\$41,649,329
Watershed	3	\$1,577,000
ESA	<u>1</u>	<u>\$2,000,000</u>
TOTAL	33	\$64,021,329

The past year saw a substantial increase in construction and materials costs that may affect the progress of the 2021 awarded projects and the current 2022 cycle. Staff recommends the WTF balance from 2021 canceled projects - \$2,280,698 and the WTF distribution from the 2022 cycle - \$3.6 million (\$4 million – 10% adjudication) be set-aside to fund projects from the 2021 awards and 2022 cycle that may experience construction funding shortfalls. The NMFA proposes that based on the community MHI, some of the set-aside funds may be delivered as a grant in combination with current funding packages.

Project Review Committee reviewed this request and concurred with staff’s recommendation.

Member Van Dyke made a motion, seconded by Member Kahl to set aside funds as recommended by the PRC and staff. The motion passed unanimously by a voice vote.

8. Consideration and Recommendation of 2022 Water Project Fund Waiver Requests. – Angela Quintana, Senior Program Administrator

Consideration of requests from 2022 Water Trust Board (WTB) applicants for waivers to WTB and Regulatory policies.

The 2022 WTB application cycle is a two-step application process that includes a Project Application and a Readiness Application. A Project Management Team comprised of staff from seven agencies and the Legislative Finance Committee evaluated the Project Applications. Thirty-six applications were evaluated, and all were recommended for potential funding and legislative authorization at the November 23, 2021, WTB meeting.

The second step required all applicants recommended for legislative authorization to complete a Readiness Application, which initiated a review of regulatory, policy, and Executive Order Compliance including mandatory spending of prior WTB awards. Readiness Applications were due by January 28, 2022. Thirty-four legislatively authorized applicants submitted Readiness Applications (Talpa MDWCA and Ramah WSD did not submit readiness applications). The policies require that applicants evidence compliance with all relevant regulations and WTB policies prior to receiving awards from the WTB. Applicants who had compliance issues were notified of all outstanding issues and were given an opportunity to: 1) correct identified issues by March 22, 2022, 2) discontinue their applications and correct compliance issues in preparation for the next funding cycle, or 3) request a waiver from the WTB.

Below are the applicants with their requested waivers and recommendations/comments from the responsible oversight agency.

- a. **Albuquerque Bernalillo County WUA (5659-WPF & 5660-WPF)** Water Conservation, Treatment, Recycling and Reuse Project (*Policy Compliance: Project Continuation*)

Waiver Request: Project Continuation

Recommendation: Staff recommends approval

Justification: The Authority had a 2020 WTB award that did not meet the 95% expenditure requirement for Project Continuation at the time of the compliance deadline. The Authority has since expended the remaining funds.

Project Review Committee has reviewed this request and concurs with staff's recommendation.

- b. **Eldorado Area WSD (5668-WPF)** Water Storage, Conveyance and Delivery Project (*Policy Compliance: Project Continuation*)

Waiver Request: Project Continuation

Recommendation: Staff recommends approval

Justification: The District has a 2020 Award (\$0 expended) that does not meet the 95% expenditure requirement for Project Continuation. The 2020 award is for the Santa Fe County Pipeline extension to the District's area. The coordination between the District and the County delayed the project due to technical issues that have since been resolved. The project went out to bid and was awarded in February 2022. Construction will begin in May with anticipated project completion by the end of 2022.

Project Review Committee has reviewed this request and concurs with staff's recommendation.

- c. **Los Alamos County (5673-WPF)** Water Conservation, Treatment, Recycling or Reuse Project (*Policy Compliance: Project Continuation*)

Waiver Request: Project Continuation

Recommendation: Staff recommends approval

Justification: The County has a 2020 Award (\$0 expended) that does not meet the 95% expenditure requirement for Project Continuation. The project went out to bid in July 2021 and the bids came in \$1,250,000 over the expected budget. The County phased the project to adjust to the budget and went out to bid in December 2021. The construction contract was awarded in January 2022. Due to the availability of materials the project start date was pushed to July 2022 which coincided with the middle of the irrigation season. The project will commence at the end of October 2022. The County anticipates completion of the project by January 2023.

Project Review Committee has reviewed this request and concurs with staff's recommendation.

Member Russel made a motion, seconded by Member Kahl to approve the Albuquerque Bernalillo County WUA, the Eldorado Area WSD, and the Los Alamos County waiver requests of

the WTB Policy requirement for the Preliminary Expenditure Target as recommended by PRC and staff. The motion passed unanimously by a voice vote.

- d. **Sangre de Cristo MDWC&SWA (5688-WPF)** Water Storage, Conveyance and Delivery Project (*Policy Compliance: Project Continuation; Regulatory Compliance: OSE and NMED-DWB*)

Waiver Request: OSE Regulations

Recommendation: OSE does not recommend approval

Justification: The Association was asked to file an application to combine the regional water rights in 2006. The Association never filed the application and now the UP-202 is over diverting and a repayment plan is needed. An additional combine and commingle permits are required to be filed per OSE. The Association reached out to OSE on April 6, 2022, to address the compliance issues.

Project Review Committee moved this request without recommendation pending verification and updates from OSE.

Waiver Request: Project Continuation

Recommendation: Staff recommends approval

Justification: The Association has a 2020 Award (6% expended) that does not meet the 95% expenditure requirement for Project Continuation. The Association's 2020 award is for the design of their 2022 WTB application. The Association anticipates completing the design by the end of 2022.

Waiver Request: NMED-DWB

Recommendation: NMED-DWB recommends approval

Justification: The Association's certified operator quit unexpectedly in January 2022. The Association, with the assistance of RCAC and the Mora County Water Alliance, hopes to have an operator under contract by the end of April 2022.

The Association's Engineer spoke on behalf of the Association. Member Russel made a motion, seconded by Member Esparsen not to approve the waiver request for Sangre de Cristo MDWCA&SWA as recommended by OSE. The motion passed unanimously by a voice vote.

- e. **Village of Ruidoso (5685-WPF)** Water Storage, Conveyance, and Delivery Project (*Regulatory Compliance: OSE Regulations*)

Waiver Request: OSE Regulations

Recommendation: OSE recommends approval

Justification: The Village has filed two applications with the OSE to meet permit requirements to repair and/or deepen wells H-1979-PODS and H-19790-PODS.

Project Review Committee has reviewed this request and concurs with staff's recommendation

Member Alpers made a motion, seconded by Member Kahl, to approve the waiver request for the Village of Ruidoso as recommended by the OSE. The motion passed unanimously by a voice vote.

- f. **Town of Red River (5683-WPF)** Water Storage, Conveyance, and Delivery Project (*Regulatory Compliance: OSE Regulations*)

Waiver Request: OSE Regulations

Recommendation: OSE recommends conditional approval

Justification: The Town and the Red River Ski Area (“RRSA”) are currently working with OSE. The Town resubmitted the replacement well application and draft payback calculation of over diversion to OSE for review. The RRSA is reviewing the required metering plan for submission to OSE.

Conditions: Update of status will be verified as part of the Readiness to Proceed requirements.

Member Russel made a motion, seconded by Member Alpers to approve the waiver request for the Town of Red River as recommended by OSE. The motion passed unanimously by a voice vote.

- g. **Lincoln MDWCA (5672-WPF)** Water Storage, Conveyance, and Delivery Project (*Regulatory Compliance: OSE Regulations*)

Waiver Request: OSE Regulations

Recommendation: OSE recommends conditional approval

Justification: 1) The Association and its engineer are developing a Well Plugging plan for OSE approval. The well plugging task will be included as part of the new well investigation/permitting on the proposed project. 2) The permit to drill and use a new well is included in the project scope of the proposed project. 3) Meter readings for wells H-210-S and H-210-S2 have been documented and sent to OSE for review.

Conditions: Update of status will be verified as part of the Readiness to Proceed requirements.

Project Review Committee has reviewed this request and concurs with staff’s recommendation

Member Russel made a motion, seconded by Member Kahl to approve the waiver request for Lincoln MDWCA as recommended by the OSE. The motion passed unanimously by a voice vote.

- h. **EMWT Regional Water Association (5669-WPF)** Water Storage, Conveyance and Delivery Project (*Regulatory Compliance: OSE Regulations*)

Waiver Request: OSE Regulations

Recommendation: OSE recommends conditional approval*

Justification: The Association has no identifiable water rights identified nor permits for water rights filed with OSE. The Association provided an initial modeling and water rights feasibility report for OSE review.

Additional Information-OSE review: Although the report is hopeful of resulting in a successful system, there are still huge hurdles that must be met before the Association would be considered as a water system with a valid water right. As no application has yet been filed, OSE will not be verifying the modeling data provided in the report for this project. OSE will provide feedback on the report to correct several identified misstatements and clarify the law around the alternative water supply that is proposed.

Conditions: With the submittal of the initial report, the following additional milestones should be put into place before funds are distributed.

- EMWT must have filed an application to Change Point of Diversion, Place, and Use of valid water and successfully complete the protest period prior to the next RTP deadline set forth as September 30, 2022. This process can take up to 70 days, not including the time to transfer the ownership of the right via an instrument of conveyance and the completion of the OSE Change of Ownership form which is required prior to submittal of the application. That application must also be submitted with a filing map delineating the move-from, move-to locations of the wells, and places of use.
- If the OSE review of the application filed by EMWT's impairs existing senior users, the proposed project may be approved for a lesser amount, and/or perhaps the Association should scale back its plans and request for funding.

**The conditional approval is an equitable solution acknowledging the need and the work that has gone into this request, but from a water rights point of view, this system is new and does not have its own water rights.*

Project Review Committee moved this request without recommendation pending additional information and clarification from OSE.

Member Hamman made a motion, seconded by Member Lucero to approve the waiver request for EMWT Regional Water Association as recommended by the OSE. The motion passed unanimously by a voice vote.

- i. **City of Anthony (5664-WPF)** Flood Prevention Project (*Regulatory Compliance: State Audit Rule, EO-Compliance*)

Waiver Request: State Audit Rule, EO-Compliance

Recommendation: Staff recommends conditional approval

Justification: The City's FY2021 audit is anticipated to be submitted by April 22, 2022. The submission date is prior to the date that the WTB will pass a resolution on the certification of the 2022 Severance Tax Bond sales.

Conditions: Verification of audit submission will be part of the Readiness to Proceed requirements.

Project Review Committee has reviewed this request and concurs with staff's recommendation.

Member Lucero made a motion, seconded by Member Russel to approve the waiver request for City of Anthony as recommended by the PRC and staff. The motion passed unanimously by a voice vote.

- j. **City of Santa Fe (5689-WPF)** Water Storage, Conveyance and Delivery Project (*Regulatory Compliance: State Audit Rule, EO-Compliance*)

Waiver Request: State Audit Rule, EO-Compliance

Recommendations: Staff recommends conditional approval

Justification: Due to considerable staff turnover in critical departments, specifically Finance and Accounting, the submittal of the FY2021 audit was delayed. The City has submitted a Trial Balance to its external auditors (March 31, 2022), with an estimated target date of submission to the State Auditor by June 30, 2022.

Conditions: Verification of audit submission will be part of the Readiness to Proceed requirements.

Project Review Committee has reviewed this request and concurs with staff's recommendation.

Member Lucero made a motion, seconded by Member Russel to approve the waiver request for City of Santa Fe as recommended by the PRC and staff. The motion passed unanimously by a voice vote.


9. Next Meeting.

- * April 27, 2022, 2:00 p.m., Project Review Committee (Teleconference)
- * May 5, 2022, 9:00 a.m. Water Trust Board Meeting – 2022 Awards (Teleconference)

10. Adjournment.

Vice Chairman Forte adjourned the meeting.

The meeting adjourned at 10:42 a.m.



Mike Hamman, Chairman
5/17/22

Date

ATTEST:

Michael Sloane, Secretary

Date