MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE

SPECIAL MEETING
Santa Fe, New Mexico

June 28, 2013

A Special Meeting of the New Mexico State Board of Finance ("Board") was called to order by Secretary, Michael Brasher on this date at 10:03 a.m. in the Governor's Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL: QUORUM PRESENT

Members Present:
The Hon. John Sanchez, Lt. Governor [Telephonically]
Mr. Michael Brasher, Public Member, Secretary
Mr. Robert J. Aragon, Public Member [Telephonically]
Mr. John Kormanik, Public Member

Members Excused:
The Hon. Susana Martinez, President
The Hon. James B. Lewis, State Treasurer
Mr. Del Archuleta, Public Member

Legal Counsel Present:
Mr. Gregory Shaffer, Chief Legal Counsel, Department of Finance & Administration

Staff Present:
Dr. Thomas E. Clifford, Secretary of Finance & Administration
Ms. Stephanie Schardin Clarke, Director, State Board of Finance
Mr. Jeff Primm, Deputy Director, State Board of Finance

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA
   NEXT REGULAR MEETING: JULY 16, 2013

Lt. Governor Sanchez moved for approval of the agenda, as published. Mr. Kormanik seconded the motion, which passed 4-0 by voice vote.
EMERGENCY FUND BALANCES

Presenter: Stephanie Schardin Clarke, Director

3. Emergency Balances – June 2013

Operating Reserve Fund $1,012,987.87
Emergency Water Fund $ 0.00

Ms. Clarke presented the emergency balance in the operating reserve fund.

EMERGENCY FUNDING REQUEST

Presenter: Duane Yazzie, Chapter President

4. Navajo Nation, Shiprock Chapter – Requests Emergency Funding for Costs to Purchase Tractor ($59,500)

Mr. Yazzie, the elected Chapter President, began his presentation with a brief description of the communities within the Shiprock Chapter (“Chapter”). He explained that the Chapter’s thirty year old tractor, upon which a large number of community members rely for subsistence farming of about 12,000 irrigable acres, is in very poor condition and is anticipated to fail eminently. Families in the region depend on the Chapter’s farming equipment for all aspects of farming, from soil preparation through harvest. He explained that the Chapter had approached the Navajo Nation for funding to replace the tractor in April 2013. However, because of the federal sequester and budget conditions within the Navajo Nation, funding was not made available. He explained the preference was for a grant because the Chapter did not have the legal authority to enter into debt.

Ms. Clarke explained that the information gathered by staff indicates that the Chapter has about a $2,600 balance available in their emergency fund, which appeared to constitute a reasonable emergency reserve. She explained that she also understood the Chapter to be unable to enter into loan. She deferred to Mr. Shaffer’s legal understanding of the legal authority of the tribal entity to enter into contracts for state funding.

Mr. Shaffer explained that his general understanding is that some chapters of the Navajo Nation are certified chapters, and certification allows them to contract directly with the State of New Mexico. Without being a certified chapter, the Navajo Nation, rather than the chapter, was the entity with whom the State would enter into contractual arrangements for state grant, loan or appropriation funding. Since the Chapter is not certified, not only would any contractual agreement for a loan or grant need to be with the Navajo Nation, but the governmental entity that would most appropriately be demonstrating need pursuant to the Board’s emergency funding statutes would appear to be the Navajo Nation rather than the Chapter.
Secretary Clifford asked whether the Board would have to wait to act until the Navajo Nation made the request and until the Navajo Nation’s available funding had been reviewed.

Mr. Shaffer advised that Secretary Clifford’s suggestion would be a plausible manner for the Board to proceed.

Secretary Clifford said that it appeared, then, that the Board did not appear to be at a point at which the Board could even make a conditional award to the Chapter. He asked Mr. Yazzie to clarify whether the tractor had actually failed or whether the emergency was of a sort that there was some time to allow for additional due diligence.

Mr. Yazzie said that the preliminary spring tractor work for this growing season was complete and that the next intensive use of the tractor would take place with the harvest and hay cutting and bailing season later in the summer.

Mr. Aragon said he supported the Chapter’s request, but echoed the concerns of Secretary Clifford that it appeared that the legal standing issues needed to first be resolved. In addition, he was concerned that if funds needed to be awarded to the Navajo Nation the Board may not be able to ensure that the funds made their way to the Chapter for the Board’s intended use.

Secretary Clifford stated that he believed the Nation would cooperate in making sure the funds made their way to the Chapter. However, he asked staff whether it was possible to structure the agreement so that the funds might, for instance, be drawn on a reimbursement basis by the Chapter to address Mr. Aragon’s concerns. Ms. Clarke said that was possible, and Mr. Yazzie agreed his Chapter could work through that arrangement.

Mr. Kormanik asked Mr. Yazzie to explain the rationale behind the Navajo Nation’s inability to provide the Chapter with financial assistance.

In response to Mr. Shaffer’s earlier comments, Mr. Yazzie stated that he agreed with Mr. Shaffer’s assessment that the Navajo Nation was probably the appropriate entity to enter into the requested funding agreement. In response to Mr. Kormanik’s question about their request to the Navajo Nation for funding, he said the request was part of the Navajo Nation’s consideration of a plan to access about $8 million in permanent trust fund interest earnings to fund a number of current needs among its chapters. However, the Navajo Nation decided against that plan. So, the intended funding was not made available for the Chapter’s request.

Mr. Kormanik said his concern was that when the financial due diligence is carried out on the nation level that the Navajo Nation would need to demonstrate an inability to fund the emergency need.
Mr. Brasher asked for staff input. Ms. Clarke stated she thought it was possible that a grant resolution could be drafted containing the types of contingencies being discussed. Ms. Clarke stated that she believed the wording on today’s agenda would allow for any approved emergency funding to flow through the Navajo Nation while still remaining compliant with the Open Meetings Act, although she said she deferred to Mr. Shaffer for his interpretation on that issue.

Mr. Shaffer advised the public notice was sufficient and would not preclude the Board from contracting with the Navajo Nation to facilitate funding the Chapter emergency.

Ms. Clarke added that as of last week, Mr. Russell Begaye, the Chapter’s Council Liaison, had informed her that the current tractor was inoperative and that the emergency could not wait until the Board’s next regular meeting. It seemed that as of today the current tractor had been made at least temporarily operational, so the timing issue was more flexible.

Secretary Clifford asked whether it was even possible for the Board at this late date in the State’s fiscal year to grant out of the current fiscal year’s emergency balances if the resolution contained contingencies that would not be met until after the end of the fiscal year. Ms. Clarke said she believed it would be possible because the potential obligation would allow for the funds to be encumbered. Mr. Shaffer said it might depend on the types of contingencies associated with any Board approval.

Mr. Kormanik asked if, given the questions that have not been resolved, the Chapter could wait until the Board’s July meeting.

Yazzie said waiting until the July meeting was agreeable—especially if it meant being able to come back to request their full need amount including tractor implements.

Responding to Mr. Brasher, Mr. Yazzie said that that he thought the Navajo Nation would be able to provide all the required information on its financials to the Board in time for the July meeting.

In response to a question about the Chapter’s 2011 audit sanction from Kormanik, Mr. Yazzie said that he was confident that the Chapter’s new leadership had addressed the audit concerns and that the Chapter was on track to have the sanction lifted by September 2013. At that point he expected that the Chapter would be certified by the Navajo Nation and able to enter into funding contracts directly.

Mr. Kormanik moved for deferral of Item #4. Mr. Aragon seconded the motion, which passed 4-0 by voice vote.

Mr. Brasher stated that, as a point of personal privilege, he wanted to make a statement regarding the University of New Mexico’s (“UNM”) contemplated
condemnation that has been reported and was brought to the Board's attention during discussion at the Board's last regular meeting. Mr. Brasher stated that he was concerned about an opinion that was offered by previous Board Counsel to UNM regarding whether UNM needed to come before the Board for approval of condemnations with which he did not agree. Mr. Brasher stated that it was his wish that the condemnation would come before the Board.

Mr. Aragon said he concurred with Mr. Brasher and said he was concerned that the condemnation process might be used to circumvent Board approval of a property acquisition. He stated that his belief is that a condemnation is a property acquisition that should come before the Board.

Mr. Brasher asked if there were any additional comments by Board Members or staff prior to adjournment. Ms. Clarke introduced the Board's new Management Analyst. The Board Members welcomed the new member and thanked staff.

Its business completed, the State Board of Finance adjourned the meeting at 10:40 a.m.

Susana Martinez, President

Date

Michael Brasher, Secretary

Date

New Mexico State Board of Finance

June 28, 2013

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