MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

May 20, 2014

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:00 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
   The Hon. James B. Lewis, State Treasurer
   Mr. Robert J. Aragon, Public Member
   Mr. Adelmo Archuleta, Public Member [leaving at 2:55 p.m.]
   Mr. Michael Brasher, Public Member, Secretary
   Mr. John Kormanik, Public Member

   **Members Excused:**
   The Hon. Susana Martinez, President

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

   **Legal Counsel Present:**
   Mr. Luis Carrasco, Attorney General’s Office
   Ms. Sally Malavé, Attorney General’s Office

   **Others Present:**
   [See sign-in sheets.]

   Presenters: David Paul, Financial Advisor, Fiscal Strategies Group; David Buchholtz, Rodey, Dickason, Sloan, Akin & Robb, Bond and Disclosure Counsel; Jill Sweeney, Sherman & Howard, Bond and Disclosure Counsel

2. **EXAMINATION OF BIDS, SEVERANCE TAX BOND SERIES 2014A**

   Lt. Governor Sanchez stated the following: “Now is the time and place for receiving bids and publicly examining the same for the purchase of the State of New Mexico Severance Tax Bonds, Series 2014A. A Notice of Bond Sale has been published in the Albuquerque Journal, a newspaper of general circulation in
the state of New Mexico, and also in the Bond Buyer, a recognized financial journal outside of the state of New Mexico, one time at least five business days prior to the date of this meeting.”

Mr. Paul stated that five bids have been received. He listed the five bidders and true interest cost for each.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Interest Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citigroup Global Markets</td>
<td>2.435</td>
</tr>
<tr>
<td>Bank of America/Merrill Lynch</td>
<td>2.419</td>
</tr>
<tr>
<td>Barclay’s Capital</td>
<td>2.413</td>
</tr>
<tr>
<td>Wells Fargo Bank</td>
<td>2.380</td>
</tr>
<tr>
<td>JP Morgan Securities</td>
<td>2.35 – indicated winning bid</td>
</tr>
</tbody>
</table>

Mr. Paul said he would return shortly after verifying the bids and resizing the bonds so the par amounts would meet the state’s requirement for net proceeds.

3. **APPROVAL OF AGENDA**

**NEXT REGULAR MEETING: TUESDAY, MAY 20, 2014**

Mr. Aragon moved to approve the agenda, as published. Treasurer Lewis seconded the motion and it passed 6-0 by voice vote.

4. **APPROVAL OF MINUTES:** April 15, 2014 [Regular Meeting]

Mr. Aragon moved for approval of the April 15, 2014, minutes, as submitted. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

**EMERGENCY FUND BALANCES**

Presenter: Stephanie Schardin Clarke, Director

5. **Emergency Balances – May 2014**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY14 Operating Reserve Fund</td>
<td>$1,475,150.00</td>
</tr>
<tr>
<td>FY15 Operating Reserve Fund</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>FY14 Emergency Water Fund</td>
<td>$79,349.00</td>
</tr>
</tbody>
</table>

Ms. Clarke reported these balances.

**EMERGENCY FUNDING REQUESTS**

Presenter: Dr. Richard Rotert, President

6. **Nogal Mutual Domestic Water Consumers Association – Requests Approval of Emergency Funding for FY14 Budget Shortfall ($10,000)**

Dr. Rotert stated that the Nogal Mutual Domestic Water Consumers Association (MDWCA) is replacing its entire water system. In 2007, they had approximately $13,000 in their accounts, but receipt
of capital funding for replacement of the system bankrupted the MDWCA because it elevated them from Tier 1 accountability under the State Audit Act to Tier 5. While Tier 1 requirements allow for internal audits only, which cost them nothing, they have expended $1,500 and $2,700 for two audits, and will be having another audit after July 2014. In addition, they were required to change their fiscal year to coincide with the state’s fiscal year, which required additional audit work. This cost them $6,000 last year. He said they couldn’t use the grant funds to pay for audit costs.

Dr. Rotert said they are happy to have audits done, but he has asked repeatedly for relief from having to pay the cost of the audits because the requirement “is an unfunded mandate.” He stated that legislation that would have set aside $500,000 for small water associations to cover audit costs died in committee in the last session, which was a disappointment.

Dr. Rotert stated that remaining cash in their account as of June 1, 2014, is about $600. He said they raised rates in March 2013 and two months ago added a $20-per-month assessment, plus received a $3,000 donation from one of their members. This is the only reason there is a positive balance in the account.

Dr. Rotert stated that the lowest tier level is $10,000 for revenue, and it would be very helpful to the MDWCA and other small domestic water consumer associations if that could be raised to $20,000 or $25,000.

Secretary Clifford stated that having an audit is not an unfunded mandate – it is a fundamental responsibility, particularly if an entity is receiving large capital grants. He suggested that the MDWCA work to figure out its revenue structure.

Dr. Rotert responded that Nogal has 66 people on the system, many of whom are on fixed incomes. He said their rates are already high. He said there are 30 connections.

Responding to Mr. Kormanik, Dr. Rotert stated that they received $800,000 over three years in one grant-loan plus $1.2 million from a Colonias grant-loan, which costs $6,000 per year for 20 years. In addition, they are paying for three other loans. The $20 per month assessment they recently imposed was intended to cover the Colonias loan.

Mr. Archuleta disagreed that this was an unfunded mandate. He said, “You’re getting a lot of public money. What you have is a budget problem because of other costs that you’re incurring.” For another $5 per month per user, the audit could be paid for going forward.

Mr. Archuleta also wondered about possible precedent being established by lending emergency funds to a domestic water association to cover the cost of an audit.

Secretary Clifford expressed concern that coming to the state for not only construction money but also operating money essentially makes the MDWCA a state system, and he does not have the staff to monitor this.

Secretary Clifford stated that DFA has been working with a number of communities around the state on the idea of alternative fiscal agents, which is one possibility for the MDWCA.
Responding to Mr. Brasher, Mr. Primm said staff anticipated this request would most appropriately be funded out of the Emergency Operating Reserve Fund.

Ms. Clarke said an emergency in this case, according to statute, would be an unforeseen occurrence that cannot be addressed within the available resources of the public entity, cannot reasonably wait for appropriation from the next legislature, and severely affects the quality of critical government services.

Secretary Clifford asked how the emergency monies would be used, and Dr. Rotert responded that it would “allow us to continue and pay our bills that are threatened with nonpayment.” He added that it would be “disingenuous” to say that there was something direct they would be using the money for right now.

Mr. Primm stated that, based on the cash position summary provided by the MDWCA, there is a demonstrable emergency, but it occurs at the beginning of FY15. He said the resolution could be worded to say the money would come out of FY15 funds and would be subject to the funds being available after the beginning of the next fiscal year.

[No action was taken on this request.]

Presenter: Andy Nuñez, Mayor; Dr. Phil King and Rita King, King Engineering & Associates; Bill Halsell, Chile Farmer, Rincon Valley; Jim Witcher, Geologist; Erik Fuchs, Groundwater Resources Manager, Elephant Butte Irrigation District; Jerry Franzyo, Chile Farmer

7. Village of Hatch – Requests Approval of Emergency Funding for the Hatch Valley Emergency Drought Relief Project ($479,000)

Mr. Nuñez stated that the Village of Hatch is requesting an emergency grant of $479,000 for the Hatch Valley Emergency Drought Relief Project, which will be used for drilling an exploratory test well to confirm the existence of a viable aquifer for the Village and farmers in the Hatch-Rincon valley south of Caballo reservoir. The aquifer would be utilized only during time of drought when surface water from the Rio Grande is limited or unavailable. He stated that the aquifer in the Hatch-Rincon Valley is very salty, which is affecting production.

Dr. King stated that they are in the fourth consecutive year of critical drought. Elephant Butte and Caballo reservoir are under 400,000 acre-feet, and the cumulative effect of this consistent drought has wreaked havoc in the Hatch-Rincon valley. Farmers have managed to maintain production by pumping groundwater, but the valley aquifer is shallow and the water becomes saltier as the drilling goes deeper.

Mr. Witcher said the Central Palomas Basin aquifer, where the test well would be drilled, is potentially a very productive water resource. The aquifer is ultimately connected to the Rio Grande system, and the water quality in this area is very good. He said a copper company that has been developing a mine near Hillsboro has done water well drilling in the area and the aquifer appears to be 800-900 feet thick there. He said the geophysics being done in that area show continuity between the copper company wells and the area where the test well would be drilled. If the findings from the test well were positive, a well field would then be developed for the farmers in the Hatch-Rincon valley.

Mr. Nuñez stated that the Village of Hatch would be fiscal agent.
Secretary Clifford asked if there are water rights for this project, and Mr. Fuchs responded yes. He said the new diversion points would take the place of existing pumping in the Rio Grande alluvium. He added that permits have been secured from the State Engineer Office to drill the exploratory test well.

Secretary Clifford noted that the State of Texas has filed suit against New Mexico for its alleged failure to control groundwater pumping in the basin south of Elephant Butte. He said he understands that this water supply is part of that basin.

Mr. Fuchs responded that it ultimately connects with the main stem of the Rio Grande, but the hydrologic effect of pumping in the Central Palomas would not have an immediate effect on the main stem of the Rio Grande or the Rio Grande project. In that respect, this would be a tremendous benefit to the project and downstream users because this water would be pumped in lieu of other water that would be pumped out of the same basin.

Mr. Kormanik expressed concern that a private copper company financed the initial wells drilled into the aquifer. He said the Board has to be very careful in terms of where the public interest lies versus the private sector; in this case, one industry is paying for it while another industry, the agricultural industry, is coming to the state and to the Village of Hatch for assistance.

Mr. Kormanik noted from the documentation that the Village of Hatch would have a cash balance of about $6 million at the end of the fiscal year, and asked why they couldn’t fund this $500,000 project out of available reserves.

Mr. Nuñez responded that the $9.8 million belongs to Rio Grande Gas and the voters would have to approve how the money would be used. He said Rio Grande Gas is in the process of being liquidated and that is currently in process at the Secretary of State’s Office.

Mr. Aragon commented that, while the dire water situation is certainly recognized, the dilemma is that the Board’s hands may be tied because the requested money is available from another source and there are vehicles by which the money can be accessed, which means that an emergency may not exist.

Ms. Malavé said the statute governing the criteria for emergency funding requests speaks to “a public entity’s inability to deliver critical government services that affect the public health, safety and welfare of individuals or communities.”

Mr. Aragon said this is his concern, as the Village trustees have the ability to vote to begin to address the issue, and could do this in an emergency meeting.

Ms. Malavé also noted from the language that “emergency funding will not be approved for situations that do not severely affect the quality of government services as determined by this board.” She added that the project does not meet the criteria of an emergency in the sense that the Village, in proposing the project, has said that this would provide a backup system. Therefore, the delivery of potable water to the residents of the village is not an issue before the Board.

Mr. Kormanik asked if the Village of Hatch would accept the money from the Board as a loan rather than a grant, and Mr. Nuñez responded that he doubted the trustees would approve a loan.
Dr. King stated that an emergency exists in the sense that the situation is about to reach a tipping point in the Hatch Valley, as the farmers there tend to be heavily financially leveraged to run their operations. He said the collapse of the agricultural industry would happen very rapidly once that point was reached. He further stated that the real emergency nature of this is that they probably need to drill the test well in July to meet water needs in 2016. He said that, while he didn’t know what the water situation would be in 2016, his recent experience doesn’t make him very optimistic.

Mr. Archuleta said it would be helpful to know when the $9.8 million would be freed up for the Village to use. If the money is to be tied up for an extended period or somehow can’t be used at all, perhaps the Board could then consider a loan or some other arrangement.

Secretary Clifford commented to Mr. Núñez that the Water Trust Board has annual appropriations of Severance Tax Bond money, and generally those have been funded with taxable debt. He said this is important because if there is some private use associated with the project, then the constraints are different for taxable issues. He added that this is a slower cycle, as the Village would be making application for next year, but this would be the right time of year to do that.

[No action was taken on this request.]

The agenda was reprioritized.

**SEVERANCE TAX BONDS AND NOTES**
Presenters: David Paul, Financial Advisor, Fiscal Strategies Group; David Buchholtz, Rodey, Dickason, Sloan, Akin & Robb, Bond and Disclosure Counsel; Jill Sweeney, Sherman & Howard, Bond and Disclosure Counsel

9. **Approval of Severance Tax Note Resolution, Series 2014S-A**

Mr. Paul announced that they have received and verified the winning bid for the Series 2014A bonds, which was submitted by JP Morgan Securities. The transaction has been sized to a final par amount of $143,770,000. He added that, over the past year and for the first time in a long time, municipal securities across the yield curve are trading below the rate for Treasuries.

Ms. Sweeney stated that the Series 2014S-A notes are being issued in the maximum principal amount of $70,339,000 and are taxable notes that will be sold to the State Treasurer. The notes will be issued on June 26 and will mature on June 27. The interest rate is equal to the 30-day LIBOR rate plus 5 basis points and will be set on June 16.

Ms. Sweeney said the taxable projects being funded include projects for the Tribal Infrastructure Board, Colonias Infrastructure Board, and a portion of the Water Trust Board projects.

Mr. Aragon moved for approval. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

10. **Approval of Supplemental Severance Tax Note Resolution, Series 2014S-B**
Ms. Sweeney stated that the maximum principal amount of the Series 2014S-B notes is $65,159,500. These notes will be issued on June 26 with a final maturity of June 27, and will be sold to the State Treasurer at an interest rate equal to the 30-day LIBOR rate plus 5 basis points on June 16. She stated that these taxable notes would be sold for the benefit of Public School Capital Outlay projects.

Mr. Brasher moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

11. WITHDRAWN

12. Acceptance of Bids and Adoption of Bond Resolution, Including Form of Official Statement, Severance Tax Bond Series 2014A

Ms. Sweeney stated that this item includes two resolutions rolled into one. The first is the formal action accepting the best bid, from JPMorgan in the final part amount of $143,770,000, for the purchase of the State of New Mexico Severance Tax Bonds, Series 2014A. She said the bond resolution sets out the terms and conditions of the tax-exempt sale. The total project amount will be $166,054,198, and some WaterTrust Board projects have been moved into this sale. The amount for the Water Trust Board will be $3,537,729, and project number 14-1827 was moved into the taxable 2014S-A note.

Mr. Buchholtz noted that there were 95 pages of projects, and the computerization of the list substantially improved the ability to collate the projects and deal with the agencies involved.

Ms. Clarke noted that the Board's staff has been happy with the services received to date from the new firms acting as co-bond counsel and co-disclosure counsel.

Mr. Aragon moved for approval. Mr. Archuleta seconded the motion, which passed 5-0 by voice vote. [Lt. Governor Sanchez was not present during the vote.]

EMERGENCY FUNDING REQUESTS (Cont'd)

Presenters: Arthur W. Pepin, Director; Oscar Arevalo, Chief Financial Officer; Patrick Simpson, Deputy Director

8. Administrative Office of the Courts – Requests Approval of Emergency Funding for Jury, Witness and Court Interpreter Expenses ($463,942.01)

Mr. Pepin requested approval of an emergency grant of $463,942.01 to assist with a shortfall to pay jurors, witnesses and court interpreters who serve courts throughout the state. He stated that the Administrative Office of the Courts (AOC) received $6 million from the general fund plus $600,000 in supplemental funding, and there are other revenue sources that provide about $2 million. However, because the income streams are variable and the amount of expenditure is unpredictable from year to year, the AOC has frequently had to request supplemental funding from the legislature as well as emergency loans (converted to grants) from the SBOF for the Jury and Witness Fund.

Mr. Kormanik asked if the AOC has the ability to reduce the per diem rate as a way of lowering expenditures.
Mr. Pepin responded that the New Mexico Supreme Court has statutory authority to prospectively adjust juror pay so that it falls within the annual appropriation. By statute, jurors must be paid the prevailing minimum wage, which is currently $7.50. In June 2013, the Supreme Court prospectively set the rate for FY14 at $6.25 an hour, which saves about $550,000 annually in the fund. He stated that, although it is a reduction in the statutorily required compensation rate for jurors, the General Appropriations Act exempts the AOC from that law.

Mr. Kormanik questioned whether this was legal, and Mr. Pepin responded that the law has not been tested. He added that the AOC would be asking the Supreme Court to increase juror pay to $6.75 per hour for FY15 and ultimately to raise it to $7.50 in FY16. He will be requesting supplemental funding from the legislature to cover the cost and will approach the SBOF as a last resort.

Mr. Brasher asked what the result would be if this emergency funding were not granted.

Mr. Pepin responded that, while trials would continue and jurors would eventually be paid, jury pools would be skewed. He said litigants are constitutionally entitled to a fair cross section of the community when selecting jurors, but people who are privately employed will ask to be excused because of economic hardship, since they would not be paid for an extended period.

Responding to Secretary Clifford, Mr. Pepin said his highest priority is to be current on interpreter payments, because there are 1,170 interpreter payments made each month. Without interpreters, they would only be able to conduct trials in English.

Mr. Primm summarized the resolution for a grant in the amount of $463,942.01 out of the fiscal year 2014 General Fund Operating Reserve for the purpose of the request that would be disbursed subject to Director’s review of actual costs.

Mr. Kormanik moved for approval. The motion was seconded by Treasurer Lewis and passed 6-0 by voice vote.

**PROPERTY DISPOSITIONS**

Presenters: Agnes Leyba-Cruz, Projects Specialist; Tony Flores, Assistant County Manager, Richard Lucero, Christus St. Vincent Medical Center; Greg Smith, Community Services

13. **Santa Fe County – Requests Approval of First Amendment to Lease Agreement with Christus St. Vincent Medical Center at 2015 Galisteo Street, Santa Fe ($69,984 per year)**

Ms. Leyba-Cruz requested approval of a First Amendment to Santa Fe County’s lease agreement with Christus St. Vincent Medical Center for office space located at 2052 Galisteo Street in Santa Fe to operate a Sobering Center and Care Connection Program. This amendment reduces the square footage from 6,439 square feet to 4,374 square feet, and provides for continued rent of $16.00 per square foot, which was the appraised value as of April 2013 when the original lease was approved in October 2013.

Mr. Kormanik asked if any concern has been expressed about the idea of putting teenagers in close proximity to people in the Sobering Center.
Mr. Smith responded that teenagers have been visiting the teen court assessment center in this facility for the past six to eight years. He said the Sobering Center has a secured door system, and there is complete separation between these two areas. He said the teens would be in the building three days a week for about one hour each time.

Responding to Treasurer Lewis, Mr. Smith said there haven’t been any issues at this location at all. He added that the building is quite large.

Mr. Brasher asked why the square footage is being reduced for the Sobering Center, and Ms. Leyba-Cruz responded that the County needs more square footage to relocate some community services functions. In addition, Life Link, a Santa Fe nonprofit, is taking over the assessments that were previously done by Christus.

Ms. Clarke said staff recommends that any approval of this request be contingent upon Director’s receipt of lease amendment signed by the parties and evidence of County Commission approval of the lease amendment.

Mr. Archuleta moved for approval, with the contingency. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

Presenter: Kelly Kuentsler, County Manager
14. Luna County – Requests Approval of Donation of Real Property to Deming Public Schools at 1808 and 1810 S. Lime Street in Deming

Ms. Kuentsler stated that Luna County is requesting the transfer of two pieces of government property to the Deming Public Schools. She said the County has owned this vacant property for many years and has done nothing with it. The buildings and property are deteriorating, and the County would like to transfer the property to the Schools for their building trades program at Deming High School.

Ms. Clarke said staff recommends that any approval of this request be contingent upon Director’s receipt of the signed version of the donation agreement, evidence of County Commission approval of the final version of the donation agreement, and satisfaction of contingencies found in sections 6, 9 and 11 of the donation agreement.

Mr. Aragon moved for approval, with the contingency. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

Presenters: Adan Delgado, Superintendent; Charlotte H. Hetherington, Legal Counsel, Cuddy & McCarthy; Tony Flores, Assistant County Manager
15. Pojoaque Valley School District – Requests Approval of Sale of Real Property Known as Little League Facility Including Surface Water Rights, in Pojoaque to Santa Fe County ($335,000)

Ms. Hetherington clarified for the record that the purchase agreement reflects that the seller, Pojoaque Valley School Board, is reserving the surface water rights. What is being transferred are the water rights associated with the well on the property.
Mr. Delgado requested approval of the sale of real property known as the Little League Facility in Pojoaque to Santa Fe County. He stated that the insurance, operating and administrative costs to maintain the property are significant. Therefore, the District would like to sell the property. Santa Fe County would make the facility available for community use.

Mr. Delgado stated that the property serves thousands of students in the counties of Rio Arriba, Santa Fe and Los Alamos. He said the District would like to use the funds generated by this sale to purchase land that sits within the main campus of the school district. The owner of that property within the main campus would consider the possibility of relocating his operations to another site. He said this collaborative process has taken two years.

Responding to Mr. Kormanik, Ms. Hetherington said there have been a couple of appraisals done on the property. The appraisal used as the basis for the original purchase price was based on the highest and best use of the property. After the original purchase agreement was negotiated, based on that appraisal, the State Parks & Recreation Division came forward and pointed out that there had been a federal grant to develop the property for "public community recreational uses," and that was one of the conditions of the grant. Based on that analysis, the County and School Board agreed to adjust the purchase price recognizing that its uses would be more limited than originally understood.

Ms. Clarke said staff would recommend that any approval of this transaction be contingent upon Director receipt of evidence of approval of Office of the State Engineer to transfer water rights, a signed amendment to the purchase agreement extending the date of closing, and evidence of approval of the amendment by school board.

Mr. Archuleta moved for approval, with the contingencies. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

16. WITHDRAWN.

HIGHER EDUCATION DEPARTMENT

Presenters: Ronald James, Capital Project Coordinator, Higher Education Department; Dr. Joseph Shepard, President; Stan Peña, Director of Facilities & Planning

17. Western New Mexico University – Requests Approval of Acquisition of Real Property, including Water Rights and Acceptance of Certain Special Exceptions, at 502 West College Avenue in Silver City from RSVP Properties ($350,000)

Mr. James stated that Western New Mexico University (WNMU) is requesting approval of the purchase of real property at 502 West College Avenue in Silver City from RSVP Properties. The property is sited between the President’s residence and Bowden Hall and contains a 2,700 square foot home constructed in 1890, two small apartments and a three-car garage.

Although WNMU is currently working on a facilities master plan to determine the desired use of this property, WNMU reports that the acquisition is strategic because it could provide space for the expansion of future program facilities and allow for continuous ownership of the south boundary of WNMU’s property along College Avenue. The source of funding for the acquisition is a 2013 Severance
Tax Bond appropriation. The encroachment issue of a wall and carport onto an adjoining public right of way has been resolved by action of the Town Council of the City of Silver vacating the right of way easement, subject to the acquisition of the adjoining property by WNMU.

Mr. Primm stated that staff recommends that any approval of this request be contingent upon Director receipt of a revised title binder removing all standard exceptions and documentation from the Office of the State Engineer regarding ability to transfer water rights.

Mr. Primm said an explanation has been provided describing the process for the water rights transfer, which may resolve this contingency concern for the Board.

Mr. Primm said a phase I report was provided yesterday, which staff has reviewed and finds acceptable.

Mr. Primm said there were a couple of issues that staff reviewed and became comfortable with. He said the first was how the legal description carries through the documents and also through the appraisal and the phase I report. In this case, it appears that the appraisal legal description does cover the material and important aspects of the property as far as the valuation is concerned, even though on its face it mentions the portions of lots 1 and 2 when there are also portions to lots 3, 4 and 5. The effect of that would be that, if they weren’t capturing something there, the negotiated price would work in favor of the public entity. For that reason, and because it appears that the actual structures and value of the property seems to be captured in the appraisal, that seems to be sufficient. He said the phase I report also seems to address the relevant portions of the property. The title binder and legal description doesn’t match the deed legal description exactly, the difference being the approximation of the acreage of the property being conveyed. Mr. Primm said staff has been informed that the title company doesn’t normally include that because they are insuring against a legal description of the property being accurate and they are not insuring the correct estimation of the acreage. He said this seems to make sense. He said the metes and bounds callouts are exactly the same, so there is no question that the deed and title binder are talking about the same perimeter-defined property.

Secretary Clifford noted that this property would be removed from the property tax roll. He asked if WNMU has been communicating with the town and county about that; and more broadly, with respect to the development of the master plan, are they at the table in terms of the potential impacts to the tax base and services.

Dr. Shepard responded that they have a very robust master planning process that included city and county government, and there have been at least four public hearings as well.

Dr. Shepard said the Town has a right of way they are willing to abandon, which amounts to .2 acres, and which forms the driveway to the President’s house. He said public hearings and a council meeting were held with respect to abandonment, which is subject to the sale of this property.

Mr. Carrasco stated that, if the Board votes to approve this item, let the record reflect that the Board has received correspondence from John F. Kennedy of Cuddy & McCarthy, LLP, counsel for Western New Mexico University, explaining each special exception listed in Schedule BII (Exceptions from Coverage) listed in the Commitment for Title Insurance issued by WFG National Title Insurance Company. Mr. Kennedy represents that one of the special exceptions has been deleted from the policy to be issued and that none of the remaining special exceptions are adverse to the University.
The remaining special exceptions include federal patents which are the source of title from the United States government and an agreement facilitating the Town of Silver City in vacating a portion of property so that it could be conveyed to the University and which was for the benefit of the property being conveyed to the University in the instant acquisition.

Following up on Dr. Shepard’s comments, Mr. Primm clarified that this item originally came forward with the city right of way donation as part of the request packet, but that is no longer an issue before the Board.

Mr. Kormanik moved for approval, with the contingencies. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

Presenters: David Harris, Executive Vice President for Finance & Administration; Tom Neale, Interim Director of Department of Real Estate; Lisa Kuuttila, CEO & Chief Economic Development Officer; Lisa Marbury, Internal Support Services.

18. University of New Mexico – Presentation on Innovate ABQ Project

Mr. Harris stated that, when President Robert Frank arrived at UNM about two years ago, he spent about 100 days studying “burning” issues at UNM and concluded that the University needed to play a stronger role in economic development. Among other things, Dr. Frank held an economic summit with 500 participants, and also did a great deal of research on a university-inspired economic development effort before creating Innovate ABQ.

Mr. Harris stated that Innovate ABQ has a group of funding partners that includes most of the major funding entities in Albuquerque: the Federal Educators Credit Union, City, County, and federal government through an EDA grant.

Ms. Kuuttila made a presentation to the Board.

Mr. Neale discussed the Innovate ABQ site. He said the property is 7 acres with 100,000 square feet of improvements. There are three structures developed from the 1930s through 1986. He said this is a brownfield site with known environmental contaminants. There was a fueling station operated for many years adjacent to the property as part of the railroad right of way, and diesel contaminants migrated into the groundwater and to a portion of the site. He said the railroad has been identified as the responsible party for the contaminants, and this is being processed through the New Mexico Environment Department’s voluntary remediation program, which defines the appropriate remediation measures. At the conclusion of the process, a covenant not to sue is issued to prospective buyers, which gives the Science and Technology Corp. (STC) and Lobo Development the protections relative to the contaminants covered in the remediation program.

Mr. Neale said the other piece of the due diligence being addressed is also an environmental indemnity agreement with the railroad. He said protections not assured through the covenant not to sue is what happens if there is excavation and contaminants are encountered. He said UNM is working with the railroad on a process where the railroad would be responsible for any contaminants found during construction.

Mr. Neale also stated that a phase I environmental site assessment was conducted that took extreme additional measures that included a geophysical survey and a soil vapor study.
Referring to the financing structure, Secretary Clifford asked what the parties are expecting in return for their investment of these assets. Mr. Harris responded that the credit union has an interest in furthering economic development in Albuquerque, while Mayor Berry’s primary objective is downtown revitalization. He said UNM will enter into an MOU with all of the funding partners that will create a governing structure, and there will be clawback provisions in all of the agreements with the funding entities should the project not succeed and have to be sold.

Secretary Clifford asked what role the private sector will play in managing and developing the enterprise. Ms. Kuuttila responded that additional private sector members may be added to the governance structure over time. The most important private sector involvement will be in the form of development agreements entered into with individual developers for specific projects, so they will be using their own risk capital.

Ms. Kuuttila also clarified that Innovation Academy will be under the purview of the Provost’s Office within UNM and will be more of an academic program. Mr. Harris added that the project will be completely outsourced.

Secretary Clifford expressed concern that UNM, which would be providing public funding, would be competing with the private sector by crowding out angel investors and other private investors in this segment of the market. He said he worried about UNM taking such a large ownership interest in downtown Albuquerque.

Ms. Kuuttila responded that she is on the board of the New Mexico Angels and works closely with its president, John Chavez, on the gap funding program, which bridges the funding gap for early stage businesses. She said the Angels invest in only two projects a year.

Ms. Kuuttila said there is a wonderful opportunity in working with developers and helping to get these early stage companies off the ground so they can grow and employ people.

Mr. Kormanik noted that the Board of Regents has committed $800,000; and while Mr. Harris has stated that he does not anticipate using any instruction and general (I&G) money in this, he pointed out that UNM has other funds it could potentially tap. He asked if the $800,000 would be “it.”

Mr. Harris responded that UNM has not spent any institutional funds in an operational mode, and he could not envision that happening given all of the financial stresses UNM is facing.

Mr. Kormanik asked, “So you don’t think there’s the possibility that we get one hand in it, and we can’t get it out, and then we bring in the other hand to get that out, and then all of a sudden we’re in?”

Mr. Harris responded that once the environmental concerns are addressed and there is an indemnification agreement in place, and this project then does not “take off,” they will be able to dispose of the property. He added, “I think President Frank’s attitude is that we really need to get behind something like this, and you can see by the excitement we’ve generated with the other funders that our liability is very limited so far.”
Treasurer Lewis commented that he personally was very excited by this project. He said, “Somebody needs to lead, and we’ve been following for many, many years and it’s time somebody stepped up to the plate.”

Mr. Archuleta said it will be important to avoid the temptation to be “Monday morning quarterbacks” regarding a project that is only in its infancy. He said he hoped the project would ultimately succeed, “but if we don’t try, it’s not going to succeed.”

Lt. Governor Sanchez stated he personally would “work very hard to bring this to fruition.”

Responding to Lt. Governor Sanchez, Ms. Kuuttila said they are planning to convert the sanctuary on the property into a possible event space for the community related to entrepreneurial opportunities.

Mr. Harris said there are no plans to raze the structures on the property.

Mr. Brasher said he believes there is a Superfund site in the vicinity of the property. Mr. Neale responded that the Superfund site is the Fruit Avenue plume, which is a vast plume of chlorinated solvents that is further south. EPA did send a “comfort letter” to UNM providing assurances that the Superfund site would have no impact on UNM’s ability to develop the subject property.

Presenter: Secretary José Z. Garcia; Derrick Welch, Director of Operations; Ronald James, Capital Project Coordinator

19. Higher Education Department – Presentation of Program and Credit Hour Information by State Educational Institution

Dr. Garcia stated that, as requested by the Board in April, the Higher Education Department has prepared spreadsheets with the following data:

- List of all degrees and certificates, by program, offered by an institution.
- Sites in which these degrees are offered.
- Minimum number of credit hours required for each degree/certificate.
- Online availability of the program.
- Transferability of the degree.
- Cost per credit hour.
- Student/Faculty Ratio for each degree.

Mr. Welch stated that there were two main observations as a result of analyzing the data: 1) considerable differences in credit hours; and 2) duplication of programs around the state. He reviewed the spreadsheets handed out to the Board to call attention to examples of these observations.

Mr. Welch noted that New Mexico is producing so many teachers and social workers that they are leaving the state.

Dr. Garcia stated that the first major concern is that New Mexico spends 15.3 percent of its budget on higher education, which is the highest in the country. The average is 6.8 percent. On the other hand, New Mexico is in the bottom 5 or 10 states in terms of performance, graduation rates, retention rates,
remediation rates, and so on. He said the goal is to raise performance and make the system more cost effective.

Dr. Garcia said the second major concern is that there appears to be a large mismatch between what the system is producing in the way of a workforce profile and what the needs of the state are, particularly in the future in terms of economic development. The state is overproducing teachers and social workers, which are relatively low paying jobs, and under-producing engineers, nurses and other high knowledge-based jobs.

Dr. Garcia said HED is undertaking a degree study in the fall of 2014 that will identify the numbers of graduates in each program. By program, the study will review program performance (graduates), graduate to student ratios, and graduate debt load. He said the intent of the study will be to identify those programs that are underperforming and should be discontinued.

Dr. Garcia said a degree cost study will be initiated in early 2015 that will identify expensive and inexpensive program offerings, which will enable the department to make appropriate policy decisions.

Dr. Garcia said a third study will look at core education requirements, statewide transfer requirements, etc.

Dr. Garcia said a fourth study will look at institutional governance. He noted that there are 24 institutions of higher learning in New Mexico, each with a separate governing board, and with very little communication among them.

Dr. Garcia said HED is currently doing a study that tries to identify an aspirational workforce profile that the institutions would then work together to replicate.

Mr. Aragon asked if any model legislation has been proposed that would try to get a handle on the governance issue.

Dr. Garcia responded that they have not tackled this issue but plan to in the future. When he began as Secretary of Higher Education three and a half years ago, he felt the most pressing need was to create a funding formula based on performance rather than on student credit hours. Since then, there have been attempts to get legislative support. He noted that, from 1990 to 2010, the proportion of New Mexico's population with a college degree was dead last of the 50 states. From 2000 to 2010, the number actually decreased, so for the first time in history the older generation in New Mexico is better educated than the younger generation.

Dr. Garcia stated that the new funding formula focuses on three metrics: to produce more college degrees; getting at-risk students through the system; and STEMH (science, technology, engineering, mathematics and health).

Mr. Aragon suggested that, if possible, the funding formula be adjusted to reward institutions that get a student through in four years and offer the necessary classes to those students to assist them.
STATE TREASURER'S OFFICE
Presenters: Linda Montoya Roseborough, Chief Investment Officer; Cindy Cordova, General Counsel; Treasurer James B. Lewis

20. Requests Approval of Changes to Investment Policy

Ms. Roseborough described the year long process involved in creating the State Treasurer’s Investment Policy. The process began with review of GFOA standards, as well as input from key stakeholders including the State Treasurer’s Investment Committee (STIC). She said the STIC recommended approval of the policy at last week’s meeting. She noted that Ms. Clarke voted against the recommendation.

Ms. Roseborough reviewed changes made to the Investment Policy.

-- Procedures were removed and inserted in a separate Policies and Procedures document.

-- Broker/dealer process was removed.

-- Board approval of Investment Advisor contracts was removed.

-- Minor changes were made to the composition of the STIC and the language changed from “the State Treasurer shall have a STIC committee” to “the State Treasurer may establish the State Treasurer’s Investment Committee.” She noted that Section 6-10-10 of state statute does not require that the State Treasurer have a STIC committee.

Ms. Roseborough stated that Ms. Clarke expressed concern about a recommendation to alter the language requiring the State Treasurer to solicit three bids for every transaction. She said the State Treasurer’s Office (STO) worked with Ms. Clarke to develop more acceptable language.

Responding to Mr. Archuleta, Treasurer Lewis described operational changes made after he came into office and the history of the STIC committee and stated that he objects to the use of the word “shall” because the STIC has a couple of members who are simply volunteers and are not bonded. He said STIC is simply an advisory committee. In addition, there are concerns about possible conflict of interest, and that while the assumption is that all positions can be filled, there may not be candidates who do not have a conflict of interest of some kind.

Treasurer Lewis questioned the practice of binding the next State Treasurer to the STIC requirements. He said binding a future elected official in any office to previous policy is not a responsible practice.

Responding to Mr. Archuleta, Ms. Clarke stated that Executive Order 2006-006 had been issued after the end of the 2006 legislative session. She said her understanding was that in the session following the indictments of Treasurers Vigil and Montoya, the legislature had not enacted legislation creating greater oversight of STO, and that the Executive Order was issued to extend oversight of STO.

Mr. Kormanik asked Mr. Carrasco to discuss the Attorney General’s opinion.

Mr. Aragon commented that Section 6-10-10 is ambiguous in terms of defining “advice and consent.” He stated that, if a board is suggesting that advice and consent means oversight, certainly the
interpretation could be there, and he has read case law in other states where “advice and consent” constitutes oversight. He said he has researched majority opinions and in most cases “advice and consent” generally leads to “some implicit oversight.” He said the extent of that is up to the entity charged with the oversight, and in the State Treasurer’s case the State Board of Finance has had an oversight role that predates Treasurer Lewis’s term.

Mr. Aragon said the Attorney General’s opinion is not far off from his own conclusions. He said he feels there is “a whole lot of room for interpretation and direction given the language in 6-10-10.”

Mr. Carrasco responded that the Attorney General was asked what is meant by the term “advice and consent” as used in 6-10-10, and how does that advice and consent affect the Treasurer’s ability to invest public monies pursuant to statute. The second question was how that advice and consent role equates to oversight; and if so, is there a separation of powers issue that would render 6-10-10 unconstitutional. Finally, the question was whether a governor by executive order has the legal authority to order oversight of any and all aspects of running the State Treasurer’s Office; and if so, who assumes the liability.

Mr. Carrasco said that the Attorney General opined that “advice and consent” was basically the same thing as the relationship between the President and U.S. Senate, where that exact term is used. What that contemplates is the State Treasurer proposing investments to the Board, and the Board as a body deliberating whether the investment is a good idea or not, and conducting a vote as to whether the proposed investment is accepted or rejected.

Mr. Carrasco said that, with respect to the second question, the Attorney General found no separation of powers issue. All of the power being exercised is within the Executive branch, so there is no intrusion into the Legislative or Judicial powers, so no constitutional issue that would render 6-10-10 unconstitutional could be found. Thus, the Board may exercise advice and consent over investments.

Mr. Carrasco said that, with respect to the executive order, the Attorney General concluded that, to the extent that the Executive Order goes beyond the advice and consent role with regard to investments, that is not acceptable. However, an Executive Order that would govern investments, where the statute has explicitly given the Board advice and consent authorities, would be consistent with the law.

Mr. Kormanik asked Mr. Carrasco if the STIC is a mechanism whereby the Board of Finance can, though that committee, provide the oversight and portions of the advice and consent as an assurance that the policies are being followed. Mr. Carrasco responded that this was accurate.

Treasurer Lewis asked where it says this in statute, and Mr. Carrasco responded that it does not specifically say that in statute, but the statute gives the Board advice and consent authority.

Mr. Aragon asked Mr. Carrasco if he was saying it was implicit in statute, and Mr. Carrasco responded that it is contemplated within advice and consent.

Mr. Kormanik commented that, if the STIC for whatever reason does not exist, then he would assume the Board has to assume that responsibility. He said the STIC is a tool for the Board to facilitate rendering its advice and consent role.
Ms. Clarke clarified that there are two ways the Board can exercise its advice and consent. One way is to micro-approve every transaction that happens daily, which isn’t practical, so the Board approves an investment policy with various parameters and requirements. She said the STIC is a tool the Board uses to facilitate ensuring that the investment policy is complied with, and if there are aspects of the policy that aren’t working well, STIC would help them reach the surface and be presented to the Board. She said the STIC is not approving investments, nor is the Board approving individual investments.

Ms. Cordova stated that Section 6-10-10 creates a relationship between the State Board of Finance, which falls under the jurisdiction of the Governor, and the State Treasurer’s Office, which falls under the jurisdiction of the State Treasurer. She said the reference to “advice and consent” falls under investments only in 6-10-10, and section 7 of the policy (eligible investments).

Ms. Cordova said Black’s Law Dictionary states that, for public officers, the Senate’s advice and consent generally includes the right to vote on approval of appointments. That can also be equated to, say, they can vote on approval of investments with respect to the State Board of Finance. She said approval is yes or no. In New Mexico law, reference to advice and consent can be found in the New Mexico Constitution, Article 4, Section 42, where it talks about advice and consent on hearings for confirmation of governor appointments. If it is consistent with advice and consent for appointments, it is consistent with advice and consent on investments. She said Section 42 says that the Senate, “in exercising its advice and consent responsibilities over gubernatorial appointments, may by resolution designate members of the committee to operate as an interim committee for the purpose of conducting hearings and taking testimony on confirmation or rejection of government appointments.” She said advice and consent is “yes or no, I confirm or I reject, that’s it.” She said it doesn’t include oversight; and when STO has asked the Attorney General to review what it means for investments, the Attorney General agrees it is approval of investments only. She said anything beyond that is really an invalid oversight of the Governor.

Ms. Cordova said the STIC is not approving investments, they are advising the Treasurer and the Board. And the Board is not approving individual investments, but rather giving preapproval to anything within the investment policy. She said this is in accordance with Governor Richardson’s Executive Order 2006-006. She said Governor Richardson was directing the Board of Finance to come up with safeguard for investments only. She said numerous safeguards have been imposed in the policy that were not in the policy in previous administrations.

Mr. Carrasco said he could respect and appreciate Treasurer Lewis’s wanting to preserve the authority of his office. In consultation with Board staff, Mr. Carrasco suggested the Board could approve the policy presented today contingent upon the addition of the following language to Section VI, subparagraph G (State Treasurer’s Investment Committee):

The State Treasurer may establish the State Treasurer’s Investment Committee. This advisory committee will review investment reporting and any other matters of the State Treasurer’s choosing. In the event the State Treasurer does not establish the State Treasurer’s Investment Committee, the Board President may establish an advisory committee to review investment reporting and any other matters relating to the Board’s advice and consent authority. Both the State Treasurer’s Investment Committee and any advisory committee established by the Board pursuant to this paragraph are hereafter referred to as “STIC” or “Investment Committee”.

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Treasurer Lewis said he had no problem with this additional language.

Mr. Archuleta moved for approval of the Investment Policy with the new language. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

21. Requests Approval of Changes to Local Government Investment Pool Investment Policy

Ms. Clarke stated that subparagraph G in the LGIP policy could be amended in the same way, with the same additional language as reflected in subparagraph G of the Investment Policy:

Mr. Aragon moved to approve the LGIP Investment Policy, as amended. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

[Mr. Archuleta left the meeting.]

22. WITHDRAWN.

23. Monthly Investment Reports for Month-Ended March 31, 2014

Ms. Roseborough presented the monthly investment reports for March 2014.


Ms. Roseborough presented the quarterly investment report for the quarter ended March 31, 2014.

GENERAL SERVICES DEPARTMENT
Presenter: Pamela Nicosin, Deputy Director, Facilities Management Division


Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of March 1, 2014 of $13,132,779 and an uncommitted cash balance as of March 31, 2014 of $2,361,048. There were no emergency declarations in the month of March.

Ms. Nicosin noted that the State Personnel Office has approved the reclassification of the State Architect position.

26. Facilities Management Division – Requests Approval of Contract with Donner Plumbing and Heating, Inc. for Heating, Ventilating and Air Conditioning Replacement for Housing Units 1, 5, 6 and 7 at Western New Mexico Correctional Facility in Grants ($5,558,023.96)
Ms. Nicosin requested approval of this contract. She said the current HVAC systems are past the useful life expectancy and are dependent on a constantly-leaking hot water piping loop, which will be eliminated. Replacement and installation will include new independent high efficiency energy saving HVAC systems with electrical and gas distribution. A competitive bid process was conducted and 2 bids were received and evaluated. Donner Plumbing and Heating, Inc. was the low bidder.

Mr. Aragon moved for approval. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote.

STAFF ITEMS
Presenter: Stephanie Schardin Clarke, Director

27. WITHDRAWN.

28. WITHDRAWN

29. Fiscal Agent/Custodial Bank Fees

Mr. Primm presented this report.

30. Joint Powers Agreements

Ms. Clarke asked that the record reflect that the Joint Powers Agreements have been read into the record.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 3:05 p.m.

Susana Martinez, President

Date

Michael Brasher, Secretary

6/17/2014

Date