MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

June 17, 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. Susana Martinez, President [present 9:15-12:00 p.m.]
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Adelmo Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

**Members Excused:**
The Hon. John Sanchez, Lt. Governor

**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.]

2. **APPROVAL OF AGENDA**

**NEXT REGULAR MEETING: TUESDAY, JULY 5, 2014**

Mr. Aragon moved to approve the agenda, as published. Mr. Archuleta seconded the motion and it passed 5-0 by voice vote.
3. **APPROVAL OF MINUTES: May 20, 2014 (Regular Meeting)**

Mr. Aragon moved for approval of the May 20, 2014, minutes, as submitted. Mr. Archuleta seconded the motion, which passed 5-0 by voice vote.

**EMERGENCY FUND BALANCES**
Presenter: Stephanie Schardin Clarke, Director

4. **Emergency Balances – June 2014**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>1,013,807.99</td>
</tr>
<tr>
<td>FY14 Emergency Water Fund</td>
<td>79,349.00</td>
</tr>
</tbody>
</table>

Ms. Clarke reported these balances. She stated that the Administrative Office of the Courts has notified staff that it would not need the $2,600 grant that was approved for FY14 for a judge pro tem, and that balance has been added back.

**EMERGENCY FUNDING REQUESTS**

Presenters: Eddie Evatt, Board President; Olga Morales, Rural Development Specialist, Rural Community Assistance Corporation; Karl Tonander, Souder Miller & Associates

5. **Hanover Mutual Domestic Water Consumers’ Association – Requests Approval of Emergency Funding ($20,920.83)**

Ms. Morales stated that the Hanover Mutual Domestic Water Consumers Association (HMDWCA) has been affected by the sustained drought in the area. She said they have an emergency connection to the City of Bayard, but the cost of that water over the past few months has created a heavy financial burden on the residents. She said there are 106 connections in Hanover, serving roughly 400 residents, most of them elderly and living on Social Security and retirement pensions. She said the rate is approximately $30 per month for just their basic service.

Ms. Morales stated that Hanover has two wells. One has dried up, and the other is not pumping enough water to meet the demand from the community. Hanover does not have enough revenue to pay the City of Bayard for water purchased to date. She said the HMDWCA annual budget is $40,000.

Ms. Morales said the community has been through this before. In 2006, they had to bring in the National Guard and the Red Cross to provide water.

Ms. Morales asked the Board to approve a grant of $20,920.83 so that the HMDWCA can pay the City of Bayard what is owed and continue with their emergency connection.

Ms. Morales said a request was made for funding from the Colonias Infrastructure Fund a few months ago, at a time when they were not facing the existing problem; and now they are seeking to amend the scope of work so some of the Colonias money can be freed up to drill their existing well deeper. She said another solution is to drill a new well.
Responding to Secretary Brasher, Ms. Morales said the funding for the connection to the City of Bayard, which cost $1.8 million and occurred in 2007, came from the USDA ($600,000), a Colonias initiative, state appropriation funds, and the New Mexico Finance Authority.

Mr. Kormanik asked if Hanover has considered combining its system with the City of Bayard's, and Ms. Morales responded that the City of Bayard views that as a liability because of the condition Hanover's system is in. She said there is an initiative between Grant County and Silver City, in what is referred to as the 180 corridor, to interconnect all of the systems in that area. She said this is a significant project, however, that could be far into the future. She said money was secured last year from the Colonias Infrastructure Fund for a planning study.

Mr. Tonander clarified that the State Engineer is overseeing the monies from the Arizona Water Settlement Act, and they have been doing an updated planning study to address the interconnection of that area, and they have recently been giving public presentations. He estimated that it would be a “minimum of five to 10 years” before the area would be addressed. He said it is only a planning study, and so does not address infrastructure in the communities. He commented that there would be a “big gap” in terms of how the communities would function together.

Mr. Archuleta commented that the water being provided by the City of Bayard is expensive at an estimated $7-$8 per thousand gallons, which is three to four times the going rate. He said he sympathized with the plight of the residents of Hanover, but was concerned about using money from the Board’s Emergency Water Fund to pay an above-market rate.

Ms. Morales responded that, for reasons unknown to her, the water rate was not discussed as part of the agreement with the City of Bayard.

[Governor Martinez arrived at the meeting.]

Mr. Archuleta said he would feel more positive about this request if the Board knew for how long the HMDWCA expected to buy water; what a fair price of the water would be, based on the City of Bayard’s expenses to transfer the water; and for HMDWCA to do an analysis of its own rates and report back to the Board on how much it would need to raise its own rates to meet its expenses.

Responding to Mr. Aragon, Ms. Morales said the Rural Community Assistance Corporation (RCAC) is a nonprofit entity funded by state and federal government to work with rural entities.

Ms. Morales stated that, if they cannot pay the balance due to the City of Bayard, they will be disconnected on August 30.

Mr. Aragon noted that the State Engineer has broad jurisdiction over all water in New Mexico, and has the statutory power to establish long-term policies administratively, particularly in cases of emergency. He added that the HMDWCA’s situation would certainly constitute an emergency if the Board did not approve the requested grant.

Mr. Aragon said the Board is now receiving emergency water requests on a monthly basis, and continues to approve short-term fixes because it has no other choice. He said a comprehensive policy is needed to help these small community domestic water associations, and suggested that the State Engineer appear before the Board to discuss this matter.
Governor Martinez said they have worked hard with the State Engineer to develop policies, especially with respect to wells that go dry. She said she asked for $111 million from the last legislature that would be dedicated to communities that do not have a tax base, or cannot raise water rates further without creating a burden, but the Executive received only $89 million.

Governor Martinez said the money went to projects that were needed and had been thoroughly vetted, and sometimes the funding covered a project from planning to completion, which is ideal. She said she was in favor of granting this emergency funding to the HMDWCA. She commented, “I don’t like to see where $20,000 is going to make or break somebody.” She agreed with Mr. Aragon’s suggestion that the State Engineer be asked to appear before the Board to discuss how his office plans to address the problems being increasingly faced by community domestic water associations as a result of the state’s drought conditions.

Mr. Archuleta said he would favor this grant if a fair market price were being paid for the water in arrears as well as going forward; if the Board knew what rate would be necessary to sustain the system; and when the “fix” would happen in terms of an implementation plan, etc. He suggested that this request be postponed to allow time for the HMDWCA to negotiate with the City of Bayard for a fair market price and to come up with the other information requested.

Mr. Archuleta suggested that the Board approve this request but that it be made into a loan rather than a grant if the HMDWCA is unable to satisfy these contingencies.

Mr. Aragon said this may not be advantageous because there is about $80,000 remaining in the Emergency Water Fund for this fiscal year only and any unexpended funds would revert back to the general fund. Furthermore, he understands the Board will be facing a surge of emergency water requests in the coming fiscal year and will have only $2 million available to cover all of those requests.

Ms. Clarke suggested that, based on the discussion, the Board could approve a loan today that would be converted to a grant if the HMDWCA came back to the Board in three to four months to demonstrate that they have negotiated a fair rate and come up with a long-term fix. She said this would satisfy the Board’s concern about expending the requested funds before the end of the fiscal year.

Mr. Aragon stated that, without a definition of “fair market price,” it becomes arbitrary and capricious and therefore unenforceable. Further, negotiations have to involve the cooperation of both parties, and in this case, the Board does not know whether the City of Bayard would be willing to negotiate.

Responding to Mr. Aragon, Ms. Morales reiterated that the City of Bayard has notified the HMDWCA that their water will be cut off at the end of August for nonpayment.

Mr. Aragon commented that, as much as he doesn’t like the idea of paying above-market rates, this is an emergency as defined by statute. He said the people of Hanover “need water and certainty as to what may happen in their lives.” He said he favored a grant rather than a loan.

Mr. Aragon added that this gets back to the earlier discussion: “We’re just putting one Band-Aid on top of another and we’re not solving any problems unless we have a whole change of culture in the
"legislature," which would mean looking at the entire problem and addressing it that rather than funding things piecemeal.

Ms. Morales stated that their first priority is to negotiate a better rate with the City of Bayard and also reassess the rates being paid now, which are more than sufficient to pay the HMDWCA's operating expenses. As a rate analyst for the past 10 years, she said she could confidently say that any small community paying the rates being imposed by the City of Bayard would go bankrupt.

Mr. Aragon moved approval of a grant from the Emergency Water Fund in the amount of $20,920.83. Mr. Brasher seconded the motion.

Mr. Primm said staff would draft a resolution that would include that the Board would make a determination that an emergency exists that meets statutory requirements. The terms of the emergency grant would be $20,920.83 from the Emergency Water Fund for FY14, and it would be for the HMDWCA to pay its water bills to the City of Bayard and provide an adequate and safe drinking water supply to its residents.

Mr. Primm stated that grants or loans out of the Emergency Water Fund typically require a New Mexico Environment Department recommendation. Since this is not a project, staff could seek their recommendation for whether or not to make the emergency grant.

Ms. Clarke suggested that, since this is not a typical capital project, the Board could waive that part of the policy.

Mr. Aragon amended his motion to include waiving that part of the policy.

The amendment was accepted as friendly.

The motion passed 5-1 by voice vote, with Mr. Archuleta voting against.

Mr. Archuleta stated that he had voted against the motion because he felt it would have been better for the HMDWCA now and in the future to have negotiated a fair water price, with the Board exerting a small amount of pressure toward that. He said he was otherwise very supportive.

Mr. Aragon said he would like some opinion, or summary, as the State Engineer comes before the Board, as to what the authority of the State Engineer is. Given that there are over 300 local water boards or governing bodies, he feels it important for the Board to understand whether the State Engineer has the authority to make recommendations or do consolidations, which would provide continuity, cost savings and stability to smaller communities around the state.

Governor Martinez asked Ms. Clarke to invite the State Engineer and any members of his staff to appear at the next meeting in order to respond to the Board’s questions.
Presenters: Lorenzo Emillio, District Manager; Jennifer Sena, Chief Financial Officer

6. Tenth Judicial District Attorney’s Office – Requests Approval of Emergency Funding for Costs of Expert Witness Testimony in First Degree Murder Trial ($3,071)

Mr. Emillio stated that the Tenth Judicial District Attorney’s Office is requesting $3,071 to pay two expert witnesses who appeared at a homicide trial that ended about three weeks ago. He said his office has insufficient budget to pay these expert witnesses, and was only allocated $5,000 from the legislature to cover expert witness fees for the entire fiscal year. He commented that one expert witness in a case like this one generally costs more than $20,000. He added that his office spent many hours negotiating with the two expert witnesses, and then only using them when absolutely necessary.

Mr. Emillio said four more homicide trials are coming up next fiscal year, and at least two will require expert witnesses. He stated that they still do not know where they will find the money to pay them.

Mr. Kormanik asked Mr. Emillio if the district expects to revert any money back to the general fund at the end of the fiscal year, and Mr. Emillio responded that they have no money to revert back.

Mr. Archuleta moved for approval. Mr. Kormanik seconded the motion.

Mr. Primm said the resolution would include a determination that an emergency that meets the statutory requirements exists; the emergency grant being contemplated would be for $3,071 to pay the cost of expert witness testimony; it would be granted as a result of unforeseen occurrences and circumstances affecting the quality of local government services; and it would be out of the FY 2014 general fund operating reserve upon transfer to the Emergency Fund by the Secretary of Finance & Administration to meet the emergency.

Mr. Archuleta stated that his motion included approval of the resolution.

The motion passed 6-0 by voice vote.

Presenter: Andy Nuñez, Mayor; Bill Halsell, Chile Farmer, Rincon Valley; Erek Fuchs, Groundwater Resources Manager, Elephant Butte Irrigation District; Jerry Franzog, Chile Farmer

7. Village of Hatch – Requests Approval of Emergency Funding for the Hatch Valley Emergency Drought Relief Project ($479,400)

Mr. Archuleta said he intends to support this request, but would like a verbal assurance that the infrastructure would be utilized to get the water to the chile farmers and wherever else it was needed.

Mr. Fuchs responded that the Elephant Butte Irrigation District has had a policy in place for a number of years that would allow the conveyance of pumped groundwater into the existing district facility. The only caveat is that the water to be produced would come from outside the district boundaries and would require the Elephant Butte Irrigation District Board to approve a policy amendment. He said this would not pose a problem.
Responding to Mr. Kormanik, Mr. Nuñez said the Village of Hatch is requesting a one-year loan in the amount of $500,000. He said the Village is in the process of dissolving the Rio Grande Natural Gas Association through the Secretary of State’s Office.

Ms. Clarke explained that the original request of $500,000 included a $20,000 contingency, which is not allowed in emergency funding requests.

Ms. Clarke said the resolution reads that the Board has determined that, pursuant to Section 6-1-2 NMSA, an emergency exists that warrants loaning the Village the amount of $479,400 to drill, test and plug an exploratory test well. It would come from the Board’s FY14 general fund operating reserve. This is the result of an unforeseen occurrence or circumstance affecting the quality of government services and requiring the immediate expenditure of money that is not within the available resources of the Village. Disbursement of the funds shall follow Director review of invoices submitted evidencing the actual cost of the drilling, testing and plugging. The loan would bear no interest and shall be repaid by June 30, 2015, and the Village would agree to provide quarterly reports on the form prescribed by the Board each April 15, June 15, October 15 and January 15 until repaid in full.

Mr. Aragon moved approval of the loan request by the Village of Hatch with the contingencies outlined by staff. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

SEVERANCE TAX BONDS AND NOTES
Presenters: David Buchholtz, Rodey, Dickason, Sloan, Akin & Robb, Bond and Disclosure Counsel; Jill Sweeney, Sherman & Howard, Bond and Disclosure Counsel

8. Approval of Amendment to Severance Tax Bond Resolution, Series 2014A

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

Mr. Buchholtz stated that, upon further review by the New Mexico Environment Department, it was determined that a few small water projects were not able to meet the Governor’s Executive Order with regard to readiness. Those were removed from the list. At the same time, a project in Chama was able to utilize extra monies that were made available with the elimination of these projects.

Mr. Aragon moved approval of Item #8. Mr. Brasher seconded the motion.

Mr. Archuleta disclosed that he owns Molzen Corbin and Associates, which will be working on the design of the Chama wastewater treatment facility, a project that is on the list. He asked legal counsel if he should recuse himself when the Board votes on Severance Tax Bonds in general, since they address hundreds of projects at a time and there is always the chance that his company could be indirectly associated with a project.

Ms. Malavé responded that Mr. Archuleta does not need to recuse himself, because he is looking at the resolution as a whole, but can recuse himself if he feels the need to do so.

The motion passed 6-0 by voice vote.
Mr. Aragon moved for approval of Item #9. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

10. Approval of Resolution Reauthorizing Certain Severance Tax Bond Projects

Mr. Buchholtz said there were 35 reauthorized projects reviewed by bond counsel and the Attorney General’s Office, and there were no Anti-Donation or tax problems found. He asked the Board to validate the actions that have already been taken by the legislature and Governor in approving the reauthorization of proceeds for these projects.

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

DEPARTMENT OF FINANCE AND ADMINISTRATION
Presenters: Ricky A. Bejarano, CPA, Deputy Cabinet Secretary of Finance and Administration and State Controller; Steve Gonzales, Deputy Director

11. Financial Control Division – Requests Approval to Transfer Funds from the Operating Reserve Fund to the Appropriation Account to Cover Fiscal Year 2013 Obligations ($18,473,965)

Mr. Bejarano requested authorization to transfer $18,473,965 from the operating reserve fund to the general fund appropriation account for Fiscal Year 13, which essentially balances out the books and allows the closeout of Fiscal Year 13.

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

PROPERTY DISPOSITIONS

Presenter: Mark Santiago, Museum Director

12. Department of Cultural Affairs, New Mexico Farm & Ranch Heritage Museum Division – Requests Approval of Lease Agreement with Dickerson’s Catering, LLC in Las Cruces ($40,000 per year plus $27,500 per year in in-kind tenant services and optional room rental fees)

Mr. Santiago requested approval of a contract with Dickerson’s Catering LLC, for the development and management of a catering concession in and around portions of the Bruce King Building at the New Mexico Farm & Ranch Heritage Museum. The lease is for a three-year term with two one-year options to renew.

Mr. Santiago said Dickerson’s Catering was awarded this contract in February by the Museum Board of Directors after a request for proposals was issued in early January.

Mr. Primm recommended that any approval be contingent upon: 1) a new resolution of the Museum Board of Directors adopting the revised lease agreement, if necessary; and 2) a copy of a fully executed revised lease agreement.
Mr. Aragon moved for approval, with the contingencies. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

Presenters: Arturo Jaramillo, Legal Counsel, Cuddy & McCarthy; Greg Eden, President, National Campus and Community Development Corporation; Nancy Nieto, Legal Counsel, Cuddy & McCarthy

13. Las Cruces Public School District #2 – Requests Approval of Ground Lease of Real Property at 410 W. Court Avenue in Las Cruces with CYC, LLC ($13,935 per year)

Mr. Jaramillo requested approval of a ground lease of real property known as the Court Youth Center, located at 402 E. Court Avenue in Las Cruces, with CYC, LLC. CYC was selected through a competitive bid process to develop the property, which consists of 2.285 acres and, subject to a separate lease purchase agreement and development agreement not subject to Board approval, will be developed for use by J. Paul Taylor Academy, a State-charted charter school, and Alma d'arte Charter High School.

Mr. Jaramillo made a presentation describing the general background of the lease-purchase financing of the elementary school facilities; the provisions of the ground lease; the debt service and cash flow analysis supporting the tax-exempt lease purchase agreement; timing of the execution of the ground lease with other aspects of the lease purchase financing arrangement, and proposed contingencies for approval of the ground lease.

Mr. Jaramillo stated that the developer will provide design, construction and tax-exempt lease purchase financing in an amount not to exceed $5.5 million.

Mr. Jaramillo stated that this is a proposed 20-year lease with a 10-year extension. Tenant rent payments under the ground lease may be netted against landlord rent payments to the tenant under the Lease Purchase Agreement. He stated that the appraised value was determined to be $0.14 per square foot, for a total of $13,935 per year, which will be adjusted based on the Consumer Price Index every three years.

Mr. Jaramillo reviewed a graphic depiction of the property.

Mr. Archuleta thanked Mr. Jaramillo for an excellent presentation. He commented that it is nice to see the local public schools are working with the charter schools.

Mr. Archuleta asked who would maintain the facilities over the long term and what are the responsibilities of the public entity with respect to maintenance.

Mr. Eden responded that this is truly a public-private partnership, and is very similar to what they did with Early College High Schools I and II. In both cases, they had a maintenance reserve set aside. He said the School District is obligated to maintain the facility and have it comply with all applicable requirements. Whether the monies come from excess cash flow or another bucket, they are still committed to the insurance of ongoing repair and maintenance.
Mr. Archuleta said he only sees $100,000 set aside for that, which seems insufficient for the long term. He asked what budget would address problems a few years from now, such as HVAC repairs and other high cost repairs.

Mr. Jaramillo responded that the allocation between these costs is between the two charter schools, the school district, and their relative share of maintenance costs. He said day-to-day custodial work, etc., is up to the charter schools, and part of their budget is allocated to that amount. He stated that huge maintenance items such as HVAC work would be covered by the differential in the budget. He asked the Board to keep in mind that these are annual differentials.

Mr. Archuleta said his concern is that there is a dedicated revenue stream for maintenance going forward.

Ms. Nieto said these facilities will be treated just like any other Las Cruces Public School facility, and they are part of their capital facility plan that they have to submit to Public School Facilities Authority, and they will have to provide for maintenance in the exact same way they do for all of their other facilities.

With regard to construction of the facilities, Mr. Archuleta said quality control of design and construction has been a concern in the past for the State and the Board. He asked what assurances can be provided that there will be quality control that includes inspections and adherence to specifications and so forth.

Mr. Jaramillo responded that the Public School Facilities Authority has jurisdiction over the plans, and gets the plans at each material stage of development. He said the Director has already begun reviewing the plans, and the project will go nowhere until he gives his approval at each stage.

Mr. Archuleta said his concern is around the construction itself. With a public entity, there are various safeguards that aren't there with a private entity. He suggested that an inspector be hired to provide some monitoring.

Secretary Clifford commented to Mr. Jaramillo that the Public School Capital Outlay Council sees a lot of leases like this; and as long as they are living within the lease payments and not eating into their operating expenses, that is a good deal for the school. He added, though, that the fate of a charter school is very unpredictable and five years down the road the charter might not be renewed, "so I think we need to be very careful about those possible contingencies."

Ms. Clarke recommended that any approval of this ground lease be contingent upon Director receipt of: 1) evidence that the Design Development Documents have been approved as required by the Development Agreement; 2) evidence that the Public Education Department has approved the Tax-Exempt Lease Purchase Agreement; and 3) final signed versions of the Ground Lease, Tax-Exempt Lease Purchase Agreement and Development Agreement.

Mr. Archuleta requested an additional contingency: 4) information as to the adequacy of funds available from the developer for property maintenance.

Mr. Archuleta moved for approval, with the four contingencies. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.
Presenters: Dawn Huffman, Executive Assistant; Zack Cook, Attorney; Bill Mershon, Otero County Fair Association

14. Otero County – Requests Approval of Lease of Real Property at 401 Fairgrounds Road in Alamogordo to Otero County Fair Association, Inc. ($75,000 annual services in lieu of cash rent)

Mr. Cook stated that Otero County is requesting approval to lease its county fairgrounds to the Otero County Fair Association. He said copies of the lease and resolution have been provided to staff, and Mr. Mershon was present to answer questions.

Mr. Archuleta moved for approval. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote. [Mr. Kormanik was not present during the vote.]

Presenters: Dawn Huffman, Executive Assistant; Zack Cook, Attorney; Josette Herrell, Tularosa Basin Historical Society

15. Otero County – Requests Approval of Lease of Real Property at 1004 N. White Sands Blvd. in Alamogordo to Tularosa Basin Historical Society ($44,212.50 annual services in lieu of cash rent)

Mr. Cook stated that Otero County is requesting approval of a lease of real property with Tularosa Basin Historical Society for possession and management of the Historical Plaza Building. He said copies of the lease and resolution have been provided to Board staff.

Mr. Archuleta moved for approval. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote. [Mr. Kormanik was not present during the vote.]

INTEREST RATE EXCHANGE AGREEMENT

Presenters: Paul Cassidy, Managing Director, RBC Capital Markets, LLC; Duane Brown, Bond Counsel, Modrall Sperling; Peter Franklin, Bond Counsel, Modrall Sperling; Susan Nipper, Utility Business Operations Manager, City of Farmington Electrical Utility System; Bob Westervelt, Los Alamos County

16. New Mexico Municipal Energy Acquisition Authority – Informational Presentation Regarding Future Request of Approval of Interest Rate Exchange Agreement

Ms. Nipper made a presentation providing background to the proposed restructuring of the New Mexico Municipal Energy Acquisition Authority’s (NMMEAA’s) Gas Supply Variable Rate Revenue Bonds, Series 2009. This presentation was intended to provide information and background to the Board in preparation of NMMEAA’s interest rate swap approval request, which would be made at the July 15, 2014, Board meeting.

Ms. Nipper stated that, during the last two years, RBC has met with NMMEAA several times concerning potentially adverse regulatory developments in connection with the Basel III banking accords that could result in RBC seeking to restructure or terminate the 2009 transaction.
Mr. Cassidy stated that the team worked in the 2005 to 2008 timeframe putting this entire transaction together. He said the Canadian regulator that oversees RBC is requiring that the two different kinds of capital that RBC uses in a transaction such as this be increased, which reduces the profitability of the transaction. While RBC has the option to collapse the transaction, it does not wish to do that because of the savings being realized by the participants. He said RBC has come up with an alternative structure that would alleviate the need to post the amount of capital that the new regulations require, which in both cases would have been six times what it was previously, and would generate a meaningful discount for the participants.

Mr. Franklin stated that the restructuring would involve a refunding of the outstanding 2009 variable rate demand obligations, with five-year floating rate bonds. The floating rate would be an index rate relating to LIBOR, and a key difference between the refunding bonds and the outstanding bonds is that the refunding bonds would not be subject to tender for purchase until their maturity five years out. This is what reduces a large part of RBC’s capital costs, i.e., they do not have to reserve funds to purchase all the bonds should they be tendered early, unlike in the prior transaction.

Mr. Franklin said the transaction is anticipated to produce the same minimum discount as the 20-cent minimum originally anticipated for the 2009 bonds. The discount would be fixed at the time of pricing and for the entire five-year period. At the end of the original five-year period, if market conditions warrant, NMMEAA would probably extend the period for an additional five years. He said the idea is that there would be five-year resets, and if the discount were still available, NMMEAA would probably continue. If for some reason there is an early termination, both RBC and NMMEAA would just walk away, and all that would be owed would be the unpaid payments up to the point of termination.

**HIGHER EDUCATION DEPARTMENT**

Presenters: Ronald James, Capital Projects Coordinator, Higher Education Department; Scott Smart, Vice President for Business Affairs

17. **Eastern New Mexico University – Requests Approval of Administration Building Piping Replacement ($1,960,000)**

Mr. James stated that Eastern New Mexico University is requesting approval of a project that would replace piping systems in the administration building at its Portales campus, which was originally constructed in the 1930s. ENMU reports that the piping provides heating, cooling and domestic water to the approximately 37,000 square foot facility and is at the end of its useful life. The project cost equates to $47 per gross square foot, and will be funded from university reserves.

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

**STATE TREASURER’S OFFICE**

Presenter: Stephanie Schardin Clarke, Director

18. **Approval of State Board of Finance’s Appointment of State Treasurer’s Investment Committee Private Sector Member**

Governor Martinez nominated Paul Cassidy as the State Board of Finance State Treasurer’s Investment Committee Private Sector Member. Mr. Brasher seconded the nomination.
Treasurer Lewis commented that Mr. Cassidy has been a great asset to the State Treasurer's Investment Committee and has served the Board and the State well.

The motion passed 6-0 by voice vote.

Presenters: Linda Montoya Roseborough, Chief Investment Officer; Treasurer James B. Lewis

19. Approval of Broker/Dealer List

Ms. Roseborough requested approval of the July 2014-2015 Broker/Dealer list, which the State Treasurer's Investment Committee reviewed and approved on July 11, 2014.

Ms. Roseborough reported that there were 54 Broker/Dealer firms in FY 2013-14, with ten new firms approved for FY 2014-15, for a total of 64. Individual Broker/Dealers in FY 2013-14 numbered 126. Of the 153 who applied, 147 were approved for FY 2014-15.

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

[Governor Martinez left the proceedings.]

20. Monthly Investment Reports for Month Ended April 30, 2014

Ms. Roseborough presented the investment report for the month ended April 30, 2014.

Responding to a request from Mr. Archuleta, Ms. Roseborough said she would consult with STO's investment advisors to see if there were indicators that could measure individual fund performance against peers.

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


Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected a beginning cash balance as of April 1, 2014 of $12,975,011 and an ending cash balance as of April 30, 2014, of $12,333,806. There was one Emergency Declaration in April, in the amount of $18,195, to make a gas line repair at the State Printing Office.

Ms. Nicosin reported that only two résumés were received in response to the posting of the Staff Architect position, and it may be reposted.
STAFF ITEMS
Presenter: Stephanie Schardin Clarke, Director

22. Approval of Disclosure Counsel Services Contract with Rodey, Dickason, Sloan, Akin & Robb, and Sherman & Howard as Co-Disclosure Counsel

23. Approval of Bond Counsel Services Contract with Rodey, Dickason, Sloan, Akin & Robb, and Sherman & Howard as Co-Bond Counsel

Ms. Clarke noted that, following the Board’s ratification at the May meeting of the assignment of two new law firms for the Disclosure Counsel and Co-Disclosure contract and the Bond Counsel contract, the Contracts Review Bureau stated that new contracts should be signed with the assigned firms. Staff has worked with the Contracts Review Bureau and the two new firms to bring these contracts forward today.

Ms. Clarke reviewed the differences between the previous contract, which was with Brownstein Hyatt Farber Schreck, and the new contracts.

Ms. Clarke recommended that approval of Items 22 and 23 be contingent upon any language changes required by the Contracts Review Bureau.

Mr. Aragon moved approval of Item #22, with the contingency. Mr. Archuleta seconded the motion, which passed 5-0 by voice vote.

Addressing Item #23, Ms. Clarke stated that the term of the contract runs through June 30, 2016, but the Board has the option to extend it to June 6, 2017.

Mr. Kormanik moved for approval of Item #23, with the contingency as stated by Ms. Clarke. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.

24. Approval of Proposed Changes to Rule: Dedication of a Portion of the State’s Gross Receipts Tax Increment

Board members agreed to allow public comment.

Secretary Brasher stated the following: “The next item on the agenda is a public hearing on the adoption of amendments to a Board rule. I now declare the hearing record open. Staff will propose the changes to the rule, and we will start with staff providing testimony on why these rules should or should not be adopted. The Board is free to ask any questions. We will then allow anyone from the audience to provide oral or written testimony. We should hold off on any deliberations among ourselves until we receive all testimony. When we have received all of the testimony, I will close the hearing record. Then, the Board may start deliberating the merits of the rule. I will entertain a motion to accept, modify or reject the proposed rule. We may modify the rule as long as it is a logical outgrowth of the rule as published. Rules become effective upon publication in the New Mexico Register. The legal standard is we need to inform the public of our reasoning when we choose to amend a rule. The comment of one member on the record that explains our reasoning satisfies this legal standard.”
Secretary Brasher disclosed that he received a telephone call, and did have a conversation with the caller. He said he later realized he was wrong in taking this call. He said the conversation did not include any information that was not already provided to the Board or wasn’t on the record. He asked Board members if he should abstain from voting.

Ms. Clarke commented that she is aware that members of the public contacted at least one other Board member to discuss this item.

Mr. Buchholtz stated that, in the interest of transparency, and this has been discussed this with Ms. Clarke, he represents someone who may be making public comment today. He said he had suggested to them that they could make calls to members of the Board because he understood that this was acceptable in a rulemaking proceeding as opposed to a judicial proceeding, and apologized.

Mr. Archuleta disclosed that he has not spoken with anyone, but received an email and responded that he would prefer to wait until now. He said he was assured that the information in the packet was what they wanted to talk about.

Treasurer Lewis said his office received a call, and he received a batch of messages last Friday that individuals from Winrock Town Center would like to visit with him. They did not say what the topic was. He said he spoke with one individual on the phone and mostly listened.

Mr. Carrasco said he did not think any of these disclosures would disqualify any member of the Board from participating in the rulemaking. He reminded Board members that any decision should be based only on the information contained in the record and that any extraneous communication should not be considered as part of that decision.

Mr. Aragon stated that he did not return any telephone calls.

Mr. Kormanik said no one tried to contact him.

Ms. Clarke reported that at the Board’s April 15, 2014 meeting, the Board approved publishing proposed changes to the Board’s rule entitled Dedication of a Portion of the State’s Gross Receipts Tax Increment. Notice of the proposed rule change was published on the Board’s website, in the New Mexico Register, and in the Albuquerque Journal. The public comment period was from April 30, 2014, through May 30, 2014. During the public comment period, she received two sets of public comments. Those comments were provided in the Board’s materials as Exhibits A and B. Exhibit A is comment received from Richard Minzer of the Rodey Law Firm, representing Western Albuquerque Land Holdings. Exhibit B is comment received from Winrock Partners, LLC.

Ms. Clarke reviewed the suggestions outlined in Exhibit A and Exhibit B.

-- Relating to establishing submission requirements for requesting a revised base year, Winrock Partners commented that the Board should not require parties requesting a revised base year to resubmit an entire application as if they were requesting a new dedication. They suggest this would be onerous and not in the spirit of the 2014 legislation that allows revised base years with Board approval. They suggest the Board should make the finding that the revised base year is in the best interest of the state based on examining the effect of the changed base year based on relevant data.
— Relating to expiration of dedications made after which legislative approval of a bond is not received for three years, Western Albuquerque Land Holdings (WALH) made several suggestions. First, they suggested a four-year rather than a three-year expiration term. Staff agrees that four years would be fairer, as it ensures everyone has two 60-day sessions to achieve legislative approval. WALH also suggested that such expiration should only apply if it is provided at the time the Board originally approved the dedication. Staff’s suggested language would allow TIDDs to apply for extensions from the Board to prevent expiration. It would also allow leniency for dedications that are already over four years old by giving them until December 2014 to request an extension, which the Board could then approve or deny.

Responding to Mr. Archuleta, Ms. Clarke stated that if the Board were to allow a more cursory and shorter submission for a revised base year, it could find itself in a position where it could not make a finding as required by law. Based on the information in the submission, the Board would not be able to tell if its approval was in the best interest of the state or not, and so it would then have to ask for more information. This could draw the process out for several months, which would defeat the purpose and not be in anyone’s interest.

Responding to Secretary Brasher, Ms. Clarke stated that a lot has changed since the time the Board approved the dedication for Winrock Partners. She said the timing of the development is very different from what was originally presented, which changes the revenue impact, employment impact and housing impact. In addition, there were three districts involved from two different developers: Winrock, and the Quorum TIDD. Quorum’s land was eventually sold to Target and the TIDD was dissolved.

Secretary Brasher asked for public comment.

Darin Sand, Vice President of Development at Winrock Partners, addressed the Board. He said the Winrock project was sold in 2008 due to the economic recession and the gross receipts taxes at that time, in 2007, were at their highest. Today, in 2014, they are not up to that level from the tenants currently on site. Mr. Sand said the request to rebase the year will allow them to issue bonds three years sooner than they would today. He stated that their plans are the same with respect to square footage, and the market feasibility studies in terms of tenants coming to the site are still accurate. He said they would just like to bring the project online a little sooner.

Mr. Sand said they recently signed key leases with Nordstrom Rack and DSW, both of which are reflected in the market study. In order to build the parking structure required for the tenants, they would need to issue bonds in 2017. Otherwise, the two tenants may leave.

Ms. Sand stated that it would be quite burdensome for Winrock Partners to redo a complete application, which originally cost them $100,000. He questioned how they would be able to complete the application between today and June 30 so they could be considered in December. Mr. Sand stated that some dates would have to be changed, and the base year changed from 2007 to 2009, but materialy the plan and application are still the same.

Mr. Archuleta suggested that the Board consider creating a process for reapplications where only the base year has changed, and detailing what information is necessary for the Board to review and feel comfortable with in making a decision.

Mr. Aragon asked if Winrock Partners has calculated what this administrative change might mean in
terms of cost to their process. Mr. Sand responded yes, but he did not have the figures readily available. He said that they have hired an economist who has compared the 2007 base year and 2009 base year and what the timing would be as far as postponing certain infrastructure.

Mr. Aragon asked if this change would put the leases with Nordstrom Rack and DSW in peril, and Mr. Sand responded that it would. He said the lease requires that they have their space at the latest in the spring of 2016, with about 140 days’ cure time after that. At that time, they can terminate their lease if Winrock does not produce the space. In order to provide the space for them, a parking structure is required, which is actually underneath their buildings. In order to build the parking structure, they will need to issue bonds in 2017 and their lender needs to know for sure that Winrock has a TIDD increment to issue the bonds against so the lender can loan the money to build the parking structure.

Mr. Aragon asked if this change would compromise their ability to sell the bonds to effectuate the structure being built, thus bringing in the tenants that would hopefully bring in additional gross receipts tax revenue. Mr. Sand responded yes. He added that these tenants, especially Nordstrom Rack, would “raise the eyebrow” for prospective tenants nationally who would not otherwise consider locating in New Mexico or Albuquerque. To lose that tenant specifically “would be quite a blow” for the Winrock project.

Secretary Clifford asked Mr. Sand how Winrock Partners sees retail enterprise as meeting the criteria in the rule, which discusses jobs that leverage economic growth in the state.

Mr. Sand responded that full time jobs are created for construction and permanent full time jobs include retail development. He said they see no change in those numbers other than just changing the dates.

Secretary Clifford suggested that Winrock Partners may also feel they cannot meet some of the new standards in the rule. He noted that there is discussion about justifying the state contributing a portion of its gross receipts tax, and that the project demonstrate that it is a benefit to the state’s economy as a whole and not just the immediate area.

Secretary Clifford said another issue is about timing. His concern is that the language proposed by Winrock Partners doesn’t address all of the issues that the Board would have to look to in order to answer what the legislation requires, e.g., that the adjustment of the base is in the best interest of the state. He said the Board would probably need more time to look at this if it wants to take a different approach from what staff has taken, which would mean Winrock Partners would miss the July 1 submission deadline.

Ms. Clarke said staff could draft some language that would allow a one-time grace period. Because the rule is still in flux and not effective until July 15, staff could accept an application as late as August 1. She asked Mr. Sand if having an extra month to put together the application would be helpful.

Mr. Sand responded that any extra time would help, but it is still quite an undertaking to put together a completely new application. He said it would be much more palatable if they could simply change the dates, as discussed earlier.

Ms. Clarke stated that, at the bottom of page 6, under timeline and submittal requirements, a new sentence could be added to state, “A district requesting a revised base year to be approved at the
Board’s December 2014 meeting is granted an extension until August 1, 2014 to submit its application." She stated that she was proposing this language in the event the Board wants to approve a rule today that sticks with the requirement to resubmit everything.

Mr. Aragon asked Mr. Sand if the August 1 date would give them sufficient time, and Mr. Sand responded that it would, provided they could grandfather in their original application that didn’t quite conform to the new language.

Responding to Mr. Aragon, Ms. Malavé said part of the problem in carving out this exception is that a future applicant may want the same treatment. If the Board wants to make exceptions for Winrock, she said it should not be done in the context of rulemaking.

Mr. Aragon agreed. He stated that he has two concerns: at least theoretically, the Board may be passing a rule administratively that will affect someone retroactively, which this may do to Winrock, thus resulting in a legal challenge. He would also not want to do something so specially narrow where that issue comes up in the future.

Secretary Clifford commented that, to him, this is a transition period and the Board would not be favoring one taxpayer, but is acknowledging the amount of time it took to put the new rule in place.

Mr. Aragon agreed, and he would urge the Board to consider that as a finding of fact.

Mr. Aragon commented that it may be appropriate to grandfather in, for a short period of time, the application process that is already in place.

There were no other persons wishing to address the Board.

The hearing record was closed.

Mr. Aragon suggested that the Board discuss an effective date for a submittal. He said this would not circumvent the legislative directive.

Mr. Kormanik said he personally thought it very important for the economists to have as much information and data as possible in order to meet the new statutory requirements. He said he supports the rule as drafted with the exception of granting the extension to August 1. Over the long term, he feels the Board’s role to make these decisions will be predicated on having as much data as possible.

Mr. Aragon suggested that the Board consider tabling this matter until the July 15 meeting, which would preclude the need to grant an extension as discussed.

Responding to Mr. Aragon, Ms. Malavé stated that a rule becomes effective 30 days after filing with State Records Center.

Ms. Clarke clarified that a rule becomes effective upon publication in the New Mexico Register.

Ms. Clarke reminded the Board that the rule, as it would be amended, already states that the Board may waive the provision of any information otherwise provided by the rule provided the requesting party can demonstrate that the other documents provided are equivalent to, or satisfy the rationale for,
submitting the item and that the state’s interest will continue to be sufficiently protected.

Ms. Clarke stated that, whether these applications are due July 1 or August 1, the review process is extensive and complex with a lot of iterations and a lot of back-and-forth discussion and work with the applicant. She said it is not as though the applicant has to get it right the first time. She wondered if it would make more sense to inform the applicant of the “law of the land” sooner rather than later, knowing that the applicant will be able to work intensively with staff for months.

Mr. Kormanik said that, as he understands it, Ms. Clarke is saying there is flexibility within the rule, and the part that is problematic is the resubmission of the entire application. He said the Board could amend the rule as proposed, with the August submittal date, with that understanding.

Ms. Clarke said that was correct. She stated that she would envision that staff and counsel, as it reviews an application, would keep a running list of what was submitted and what was being submitted as equivalent to a rule requirement.

Mr. Aragon moved to table consideration until the July 15 meeting. Mr. Brasher seconded the motion, which passed 4-1 by voice vote, with Mr. Kormanik voting against the motion.

25. Fiscal Agent/Custodial Bank Fees

Ms. Clarke said fiscal agent billings through April are consistent with historic averages, and custody bank charges through February are in line with historic averages.

Ms. Clarke reported that the new fiscal agent agreement provides for the waiving of all banking fees for the first six months of the contract, so the Board will not see any out-of-pocket charges for May through October.

Ms. Clarke also reported that only the State Treasurer’s Office will be reported on the custody bank billings beginning in FY15 because the other three investing agencies have entered their own custody bank contracts for the new fiscal year.

26. Joint Powers Agreements

Ms. Clarke asked the record to 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 1:55 p.m.

Susana Martinez, President

Date

New Mexico State Board of Finance: June 17, 2014