MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
March 17, 2015

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:05 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 10:55 – 11:45 a.m. and 12:15 – 12:30 p.m.]
The Hon. John A. Sanchez, Lt. Governor [leaving at 9:55 a.m.]
The Hon. Tim Eichenberg, State Treasurer
Mr. Robert J. Aragon, Public Member [present 9:05 – 9:25 a.m. & 9:40 a.m. – 12:30 p.m.]
Mr. Adelmo Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

Members Excused:
None.

Staff Present:
Dr. Thomas E. Clifford, Secretary of Finance and Administration
Mr. Jeff Primm, Acting Director, State Board of Finance

Legal Counsel Present:
Mr. Luis Carrasco, Attorney General’s Office

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA

ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, APRIL 21, 2015

Mr. Aragon moved for approval of the agenda, as published. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.
3. **APPROVAL OF MINUTES:** February 17, 2015 (Regular Meeting)

Mr. Aragon moved for approval of the February 17, 2015, minutes, as submitted. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

**EMERGENCY FUND BALANCES**  
Presenter: Jeff Primm, Acting Director

4. **Emergency Balances – March 2015**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,858,328.99</td>
</tr>
<tr>
<td>FY14 Emergency Water Fund</td>
<td>$118,100.00</td>
</tr>
</tbody>
</table>

Mr. Primm reported these balances.

**INTRODUCTION OF GUEST**

Mr. Aragon introduced Jacob Henderson of East Mountain High School, his guest for the day.

**PROPERTY DISPOSITIONS**

Presenters: Katherine Miller, County Manager; Adam Leigland, Public Works Department Director; Robert D. Joe, Assistant County Attorney; Karl Sommer, Attomey; Edmund Healy, Managing Member, Agua Nueva, LLC; Trudy Healy

5. **Santa Fe County – Requests Approval of Sale of Real Property in Taos County, known as Top of the World Farm, to Agua Nueva, LLC ($1,170,000)**

Ms. Joe introduced herself and stated that documentation in support of this sale has been submitted to Board staff.

Responding to Mr. Kormanik’s request, Ms. Joe said Santa Fe County acquired Top of the World (TOW) Farm in 2006 primarily for acquisition of water rights appurtenant to TOW Farm. She said the water rights were acquired as part of the Aamodt Settlement Agreement, which required the County to sell part of the water rights to the Department of the Interior Bureau of Indian Affairs (BIA), with the County retaining the rest. She said the County does not need the property, and so proposes to sell it to Agua Nueva LLC.

Ms. Miller explained the Aamodt lawsuit and settlement to members of the Board. She said the settlement will create a water system for the Pojoaque Valley and Santa Fe County’s share of the water rights will come from TOW Farm, in addition to 1,100 acre-feet that were sold to the BIA. She said the County is working with the tribes, Bureau of Reclamation (BOR) and State Engineer to create a joint powers agreement to set up the governance of the water system. When the water rights are severed from TOW Farm, they will be moved to the diversion point in the area of San Ildefonso Pueblo. She said the County has been leasing the farm out for the past four or five years but has no interest in continuing to hold onto the land going forward.

Secretary Clifford asked how Taos County feels about having this property removed from their tax rolls. Ms. Miller responded that she spoke with the Taos County Manager about the sale of the property, and she was told that the County has no interest in purchasing the land.
Responding to Mr. Archuleta, Mr. Sommer said the Healys reside in Taos County and plan to restore the TOW property and surrounding properties, which have been degraded over many years. They will introduce a method of grazing and animal husbandry that will capture more water and create ecologically sustainable agriculture.

Mr. Kormanik asked if there are provisions in the sale that guarantee that the property, even if it changes hands, will remain agricultural in the future, or is there a chance that it could be developed into condos and high rises. Mr. Sommer responded that there is no guarantee on the future use of the property, but it is zoned agricultural and low density residential. He said such a change would require a general plan amendment and then a rezoning.

Responding to Mr. Brasher, Ms. Miller said all of the water rights were Rio Grande Basin water rights.

Ms. Miller additionally stated that one member of the Taos County Commission is the mayor of Questa, who expressed interest in the property, but their primary reason was for the water rights. She said the Village of Questa was leasing water rights from Santa Fe County as offsets. Santa Fe County recommended the Village contact the BIA, and both entities are working on an agreement. Ms. Miller said there has been no interest expressed by local governments in purchasing the property. She stated that the Taos County Manager told her that people in the area are supportive of this transaction because they appreciate the Healys' plans for the property.

[Mr. Aragon stepped away from the proceedings to attend his confirmation as a member of the Board of Finance by the New Mexico Senate.]

Responding to Mr. Archuleta, Mr. Sommer said the Healys intend to acquire water rights within the same basin to support their operation, since they would only have a domestic well available for use after the County needs the 611 acre-feet for the regional water system.

Mr. Primm recommended that approval be contingent upon Director's receipt, with review of counsel, of revised deed(s) containing staff's changes and a revised purchase agreement and exhibits containing staff's changes.

Mr. Archuleta moved for approval, with the contingencies. Mr. Kormanik seconded the motion.

Responding to Secretary Clifford, Mr. Primm said Exhibits A and C potentially need to be changed in the lease agreement. As he understands from Santa Fe County's legal counsel, Exhibit C (the water rights lease) is included as a reference within the contract, but has some old information about the lease that is not completed or executed. He said staff, working with legal counsels on both sides, would like to replace it with a more current lease and an exhibit with up-to-date information.

Mr. Sommer said the Healys have no problem with Mr. Primm's recommendations.

[Mr. Aragon returned to the meeting.]

The motion passed 6-0 by voice vote.

[lt. Governor Sanchez left the meeting.]
6. **Santa Fe County – Requests Approval of Lease of Water Rights in Taos County to Agua Nueva, LLC to include approval of waiver of current appraisal requirement ($30,000 per year)**

Ms. Joe stated that Santa Fe County is requesting approval of the lease of 611.5 acre-feet per year for consumptive use, and 1,248 acre-feet per year of diversion water rights for agricultural use, at the TOW Farm in Taos County to Agua Nueva LLC. The lessee is the proposed purchaser of the TOW Farm from the County and the County is severing the water rights from the land as part of the sale. The proposed lease would allow the water rights to continue to be put to beneficial use and provide rental income to the County until the County needs the water for the regional water system.

Mr. Archuleta said he is very familiar with Southwest Water Consultants and the work of Phil Soice, and the good job that they do. He expressed concern, however, over the large number of variables in the analysis. He said it also appears that, at the conclusion of the report, they used statistics from Rio Arriba County and Taos County, gave extra weight to the ones in Taos County to yield an acre-foot value of $62, and then did a comparison of water rights sales in Costilla and averaged those out to come up with a value of $48 per acre-foot. He wished there had been an explanation for how the value had been determined. He added he would have preferred that an appraiser had done a report instead, because appraisers have an established method to determine value.

Ms. Joe said the buyer and seller chose this professional to value the water rights for the lease. She said the County was unable to find any certified real estate appraisers to assess the water rights value.

Mr. Sommer added that the Healys have been in the water rights market in this area “from the top of the county to the bottom of the county,” and their own experience is that in-place water rights are being offered for sale in this area for anywhere from $6,500 per acre-foot to $20,000 per acre-foot. He commented that, based on his own analysis, which was based on the cap rate of the value of these water rights on a one-year lease, the appraisal’s valuation of $30,000 per leased acre-foot is on the high end for leases in this area.

Ms. Joe noted that Mr. Soice was asked to do a valuation based on leasing the water rights, not selling them.

Treasurer Eichenberg commented that ten appraisers can come up with ten different values. He said he is a certified real estate appraiser and feels that Mr. Soice did the best job he could with the information he had.

Treasurer Eichenberg suggested a contingency that a reappraisal of the water rights be done every two years, or at least before the end of the third year. Mr. Sommer said he had no objection to that. Treasurer Eichenberg said it was not his intention that the parties return to the Board of Finance each time for a review of the reappraisal, however.

Mr. Primm said one option could be that both parties decide upon an escalation that would be built into the lease. The escalation could be that the lease rate would be based upon an appraisal by a general certified appraiser that would be completed in advance of the third year.

Mr. Sommer responded that he searched “far and wide” for a certified appraiser for water rights, and could find no one in New Mexico who did that work. Otherwise, he had no objection to Mr. Primm’s suggestions.
Mr. Primm stated that the Property Tax Division did inform him that there might be two or three general certified appraisers in the state that might be able to conduct this type of appraisal.

Treasurer Eichenberg expressed concern that imposing the requirement he suggested could be too cumbersome and complicated, and that he would like to withdraw his suggestion.

Mr. Aragon said the Board has a fiduciary responsibility to be cognizant of the value of leases, and suggested that it would be appropriate to indicate that all future payments for water rights must be commensurate with fair market value.

Treasurer Eichenberg said his concern is that the Healys are only trying to improve the land in a beneficial way, and he did not want to see them burdened with additional expense or having to make another appearance before the Board of Finance. He said the County has heard the Board’s concerns today, and he would hope the County Manager and County Attorney would keep that in mind in extending the lease.

Mr. Aragon responded that the Board would have done its fiduciary duty by requiring that the payment for water rights going forward be at fair market value.

Mr. Primm suggested that the more conservative approach would be to require that the lease amount be at a minimum threshold of $30,000. Mr. Aragon agreed with the suggestion.

Mr. Aragon moved for approval with any additions that staff might need for legal sufficiency, and with the additional language just discussed for fair market value.

Mr. Primm said approval of this request would require a waiver of the rule requirement for an appraisal with the finding that it is in the best interest of the state to accept the alternate appraisal of the water rights value.

Mr. Primm noted that the Board of County Commissioners approved a resolution for 611 acre-feet rather than 611.5 acre-feet, so staff will be requesting that the Commission adopt an amended resolution reflecting 611.5 acre-feet.

Mr. Primm recommended that approval of this request be contingent upon Director’s receipt and review of counsel of a revised resolution of the Commission authorizing lease of 611.5 acre-feet per year and receipt of a final signed lease containing staff’s changes.

Mr. Aragon expressed concern about setting precedent by allowing the waiver, although perhaps that could be mitigated with a finding that there are no known appraisers in this field. Rather than a waiver, he would prefer a statement that the Board recognizes that this is the situation with this type of transaction, and instead of requiring that the County and others go through more expense, the Board is requiring that the County satisfy themselves on the fair market value now and going forward.

Mr. Aragon asked legal counsel if the Board can move forward without establishing that there is a waiver. Mr. Carrasco responded that the rule allows for either an appraisal or acceptance of some other documentation of fair market value. He commented that this is not necessarily a waiver because the Board is comporting with that rule in accepting some alternative documentation as to fair market value. If the Board were going to accept the alternative form of valuation, it should make a finding of
circumstances, or an expression of confidence that the alternative documentation is sufficient to protect the interests of the state with respect to fair market value.

Mr. Aragon asked if the Board has to affirmatively have a finding that there is a waiver to the rules. Mr. Carrasco responded that this is how counsel has been construing the rule up to that point. However, the rule does contemplate either an appraisal or alternative documentation of fair market value, so in pursuing one of those avenues, the Board may not be waiving the rule but may have complied with the rule by accepting the alternative documentation. Counsel’s approach has been the more conservative one, which is to require an appraisal or a waiver and a finding that waiver is in the best interest of the state.

Mr. Aragon said he did not want the Board to establish a precedent that it can move forward without a finding of a waiver specifically. Mr. Carrasco responded that, to keep with past precedent, the Board could make the waiver and the finding that, under the circumstances here, that there are no known appraisers who could provide this valuation, the Board is using the best information available, and has required an amendment to the lease to impose the greater of $30,000 or fair market value; and that those actions combined are sufficient to protect the interests of the state and to justify the waiver of an appraisal.

Mr. Aragon said he agreed with that.

Treasurer Eichenberg seconded the motion.

Ms. Joe said she believes the County has the discretion to interpret its own resolution passed by the County Commission. She said the resolution authorizes the County Manager to negotiate the terms and conditions of the lease of the water rights, which is what she has done. She said there is therefore no reason to go back to the County Commission to amend the resolution from 611 acre-feet to 611.5 acre-feet.

Secretary Brasher responded that it appears the County Commission could simply adopt the amended resolution as a consent item.

The motion passed 5-0 by voice vote.

Presenters: R. Daniel Castille, Counsel, Cuddy & McCarthy, LLP; Geno Zamora, General Counsel; Shirley McDougall, Property Asset Manager; Gabriella Blakey, Assistant Superintendent for Curriculum and Professional Development; Katherine Freeman, President and Chief Executive Officer; Mona Kay, Vice President of Finance, United Way of Santa Fe County

7. Santa Fe Public School District – Requests Approval of Lease of Real Property at 3160 Agua Fria Street in Santa Fe to United Way of Santa Fe County ($94,100 per year services in lieu of cash rent)

Mr. Castille stated that, after the last meeting, the parties worked with staff and the Board attorney to make revisions to the lease. The primary revision makes clear that the allowable costs under the lease do not include any state, CYFD or other government monies, and other changes incorporate suggestions made by Mr. Aragon at the last Board meeting.
Mr. Primm stated that, at the last minute, it was discovered that the rent amount of $94,100 per year was slightly off the appraisal amount. He asked that Board approval include a contingency that the rent amount be increased to $94,140.

Mr. Castille said this change was acceptable.

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

[Governor Martinez joined the proceedings.]

Presenters: Veronica Gonzales, Cabinet Secretary; Erin K. McSherry, General Counsel; Marsha Bol, Director, Museum of International Folk Art; Staci Golar, Associate Director; Leigh Ann Brown, Board Chair; Connie Burke, Acting Director, Folk Art Market Alliance; Mona Valicenti, Attorney General’s Office, Counsel to the Board of Regents

8. Department of Cultural Affairs – Requests Approval of Lease of Real Property at Museum Hill in Santa Fe to International Folk Art Alliance to include approval of waiver of current appraisal requirement ($15,000 cash rent and $20,000 in-kind services per year)

Secretary Gonzales stated that the Department of Cultural Affairs (DCA), through the Museum of Indian Arts and Culture/Laboratory of Anthropology and Museum of International Folk Art of the Museum of New Mexico request approval of a lease of real property to the International Folk Art Alliance (IFAA) for the production of the International Folk Art Market. She noted that DCA was integrally involved in the creation of the International Folk Art Market 12 years ago; since that time, it has grown into the largest and most successful folk art market in the world.

Ms. McSherry stated that DCA is requesting a waiver from the requirement for a current appraisal and review by the Property Tax Division because their market rates are based on rates posted for the spaces, which are rented for anywhere from 1 day to 33 days, and each space has a different rental period. She said prices are based on a daily rate for a particular area or a combination of areas, so they have gone through each of the areas and come up with a market value.

Mr. Primm referred the Board to an Evidence of Fair Market Value Worksheet that was submitted by the agency.

Ms. McSherry stated that total compensation is $15,000 in cash to the state and $20,000 in advertising support. She said the Market spent a little over $200,000 in media advertising, and they are working with staff to meet the contingency that they be able to determine the value of that support, which is $20,000. She noted that 90 percent of the $200,000 is directed at the Santa Fe market.

Mr. Primm explained that staff is requiring a methodology for calculating the value of the services received.

Mr. Aragon said the Board will have to document and verify that the value being represented is the value received, and asked how staff contemplates achieving that without being arbitrary and capricious from one request to another. In addition, how does the Board get around the idea of equal protection
from one entity to another if the forms are different? He said this is a concern, because the Board is seeing more and more of this.

Mr. Primm responded that this is an interesting question, because sometimes in-kind services are closely aligned with the statutory or governmental mission of the public body before the Board, and other times, they are largely unrelated. In this case, the arrangement being proposed is what the applicant would term "joint programming." The Folk Art Museum sees this lease occurring on their space; and being one of the premier folk art museums, and this being one of the premier folk art markets in the nation, there is a value to the state in terms of that event happening at the museum. He said this is reflected in the worksheet, in that the lease rates were taken to 50 percent of their value for some of the buildings during the Market. He said staff and general counsel struggled with this, but became comfortable with using half the rental rate for the exclusive use during the Market days.

Mr. Primm noted that, while the methodology will never be perfect, in this case, the methodology is clear for the rental rates. He noted that the rent that has been determined would be just over $30,000, and they are recouping half of that in rent, and would actually recoup in excess of that if they were to get the full $20,000. Technically, $15,055 would have to be received in in-kind services. He said one of the remaining items would be figuring out exactly how the $20,000 would be accounted for. He stated that his understanding is that DCA was either going to try to ascertain a possible methodology through the Tourism Department, which has the ability to value out advertising relationships, or to take a more simplistic route of looking at invoices and assigning a certain portion of costs expended for a couple of identifiable items between the International Folk Art Alliance and the Museum. He said he understands DCA is proposing the latter.

Mr. Kormanik asked Secretary Clifford how the $20,000 would be treated by the Department of Finance and Administration (DFA) from an accounting perspective, since the value is not strictly monetary. Secretary Clifford responded that it would have to be recognized, since it will be offsetting an expense. Mr. Kormanik asked that the Board be informed in the future how in-kind services will be treated by DFA, since the Board will be seeing more of this in the future.

Mr. Primm recommended that any approval of this request include a finding that it is in the state's best interest to waive receipt of a current appraisal and review by the Property Tax Division; and that any approval be contingent upon Director's receipt and counsel review of a signed governing body resolution approving the final lease and an executed lease with exhibits containing staff's changes.

Mr. Primm recommended that Ms. McSherry clarify which methodology has been chosen.

Ms. McSherry responded that DCA is willing to utilize either approach, but it would be more straightforward to calculate 50 percent of actual expenditures that advertise the Department and museums. She added that this would also be easier for the auditors to understand.

Mr. Brasher asked Secretary Clifford if he had any suggestions.

Secretary Clifford responded that it is a complicated question. He said he would need additional time to make a recommendation.

Governor Martinez commented that the Department of Tourism would be able to provide the methodology and/or the value of advertising.
Mr. Primm said the easiest and most straightforward way would be to use a multiplier against the actual verified expenditures.

Mr. Primm stated that, if 50 percent doesn’t feel like the correct number, and if DCA is confident that the advertising activities would end up being in the $100,000 range, the Board could choose a more conservative percentage. He said perhaps it could go as low as 20 percent and still meet the need.

Mr. Archuleta commented that the Board is overcomplicating this. He said he has been on for-profit and nonprofit boards that do this all the time. He suggested the Board follow Mr. Primm’s first suggestion, which is to use the actual expenses and allow the Department to set what they feel is the indicative value on both sides, and document it so that there is a reliable audit trail.

Mr. Archuleta moved for approval, with the recommendations made by staff, which is to allow the valuation to be based on actual expenses and the split that is recommended by DCA, with proper documentation. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

Presenter: Rebecca L. Avitia, Executive Director; Veronica Gonzales, Cabinet Secretary; Erin K. McSherry, General Counsel; Alberto Cuessy, Finance Director; Jennifer Salazar, Attorney General’s Office, Counsel to the National Hispanic Cultural Center

9. Department of Cultural Affairs – Requests Approval of Lease of Real Property at the National Hispanic Cultural Center in Albuquerque to M’Tucci’s Cocina ($38,000 annual rent and 4 percent gross revenues plus annual in-kind food and food services equal to $18,000)

Ms. McSherry stated that DCA requests approval of the lease of real property at the National Hispanic Cultural Center (NHCC) to M’Tucci’s Cocina for a one-year term, with the option to renew for one year extensions, not to exceed six years. The annual rent is based on 4 percent gross revenues generated from both dining and catering, along with annual in-kind goods and services worth $18,000. Based on the restaurant’s projected gross revenue of $500,000 annually, this represents an expected income of $20,000, plus in-kind of $18,000, totaling $38,000 in compensation received.

Ms. Avitia stated that NHCC is particularly excited about M’Tucci’s Cocina because they will thematically match NHCC’s programming with their food offerings. She noted that NHCC has presented a number of pop-up dinners in the past six months. This vendor served two pop-up dinners that sold out at capacity, and the presence of the dinners resulted in an increase in ticket sales for the performances that followed. NHCC is hopeful that this trend will continue.

Mr. Brasher asked if there were any Anti-Donation issues with respect to the $18,000 of in-kind services, given that this arrangement is between a public entity and a private entity.

Ms. Avitia responded that the $18,000 proposed in in-kind would be used for public programming. For example, NHCC has art exhibit openings fairly frequently, and typically provide light fare to compliment the exhibit. These are the types of events that they would be using the in-kind services for. In the last six months, NHCC has secured approximately $9,500 in in-kind food donation from various vendors, so they have no doubt they will use the $18,000 being proposed here. Their mechanism for ensuring they are receiving fair market value is to compare it to the catering prices they would be charging individuals. She added that the menu is still being created, and part of their proposal included...
expected price points, which were consistent. Those were for sit-down meals, however, and off of that menu will be the catering fees.

Responding to Mr. Aragon, Ms. Avitia said NHCC partners with Albuquerque Public Schools and the City Water Authority to bring every single fourth grader through the museum. She noted that more than half of NHCC’s 700 annual events are free to the public and school tours of the museum are free of charge.

Mr. Aragon expressed concern that local children are not taking full advantage of the museum system in New Mexico as well as cultural events related to museum activities. He said admission should be free to children to encourage attendance, because there is much more to the arts than just “pictures.”

Mr. Primm recommended that any approval of this request be contingent upon Director’s receipt, with review by counsel, of evidence of governing body approval of the final lease containing changes and signed lease agreement containing staff’s changes.

Mr. Primm stated that staff’s changes in the lease agreement are a typo and some minor wording changes to the rent paragraph to make sure that the services in lieu of cash rent are being submitted on a monthly or at least quarterly basis.

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

Presenters: William Mattiace, Executive Director; Joseph Dworak, Attorney General’s Office, Counsel to the New Mexico Border Authority; Cathy Lane, Verizon Wireless, LLC; John Tyke, Verizon Wireless, LLC

10. New Mexico Border Authority – Requests Approval of Lease of Real Property at 221 Pete V. Domenici Memorial Highway in Santa Teresa to Verizon Wireless, LLC ($18,000 per year)

[Governor Martinez left the meeting during the presentation of this item.]

Mr. Mattiace stated that New Mexico Border Authority is requesting approval of the five-year lease of a 2,500 square foot tract of land along Pete Domenici Memorial Highway at the Santa Teresa Port of Entry to Verizon Wireless, LLC (Verizon). This lease was previously approved with contingencies that, after further negotiation with Verizon, would result in changes to the lease beyond the scope of those contemplated in the Board’s contingencies. He said roaming charges are being borne by the Border Authority and other agencies in the Santa Teresa area because the only available service is from the nearby Mexican cell tower.

Mr. Mattiace stated that Verizon representatives were present at today’s meeting to respond to any questions.

Mr. Primm requested that any approval of this request be contingent upon Director’s receipt, with review of counsel, of the final signed lease containing staff’s changes and receipt of a clean Phase I report.
Mr. Primm stated that there was a Phase I report done on the property, and there is some casualty language in the lease. It would be helpful to see the clean Phase I report to make sure that the language is not a major concern for any future liability. Staff also understands that the Border Authority believes it is reasonable for the language having to do with the option to place equipment on the tower not be unreasonably withheld or delayed or otherwise conditioned.

Mr. Primm asked Verizon representatives if the clean Phase I report could be provided to the Board.

Ms. Lane responded that Verizon did possess a Phase I, but it is confidential and proprietary. To share that with the Board, a non-disclosure agreement would have to be filled out. She added that the report was clean.

Mr. Mattiace said the Border Authority paid for an environmental assessment of the area for hazardous materials (e.g., asbestos) in an old building located nearby, and it was submitted to the Board. [The Board notes that the Border Authority provided its Limited Asbestos Survey to staff on April 9, 2015.]

Ms. Lane said Verizon’s attorney did review the Phase I. Had there been any issues with it, they would have requested a Phase II, which is more in depth.

Mr. Primm stated that the concern is that paragraph 28 (Environmental) of the lease contains potential liabilities for the landlord that could be addressed with a review of the Phase I report. If Verizon wishes to keep the report confidential, it would need to agree to remove any references to lessor’s liabilities regarding environmental conditions on the property.

Mr. Archuleta moved for approval, with staff’s contingencies.

Mr. Primm asked Mr. Archuleta if his motion included the contingency that the Board either receive a copy of the Phase I or that the language referring to the lessor’s liabilities regarding environmental conditions on the property be removed.

Mr. Archuleta asked Mr. Carrasco if the Board really needs the Phase I report if Verizon can affirm that it was clean. He said perhaps a non-disclosure agreement could be signed and then a decision made on whether it would be necessary to have a copy of the report.

Mr. Carrasco responded that, at maximum, if it received a request to inspect the Phase I Report, the Board could agree to notify Verizon within a certain amount of time so that it could bring an action to halt production, but that the report is most likely a public record and there would be no legal authority to not provide the report for inspection.

Mr. Carrasco stated that if the Board is comfortable not seeing the report, at minimum it would need to insist on removing any liability that the state may incur from any environmental concerns that did ultimately result.

Ms. Lane reiterated that the Border Authority ran their own Phase I, which was identical to the one Verizon ran, so that should give them the necessary comfort.
Mr. Carrasco explained that, if something were to arise without an agreement by Verizon to remove any liability on behalf of the state for any environmental conditions that did arise, it would be subjecting the state to that liability.

Mr. Archuleta said he would not be comfortable with accepting the Border Authority’s Phase I report in lieu of Verizon’s Phase I. If Verizon states that the Phase I is clean, then they should have no problem in removing the language regarding liability. Otherwise, he would want the Board to look at both reports to be sure they were identical.

Mr. Aragon said he thought paragraph 30 (Indemnification) was all-inclusive and would give the state proper indemnification coverage. If there were any issues filed against the state, this clause would appear to address all of them. Mr. Primm asked Mr. Aragon if he believed the language would cover environmental damage prior to the lease, as well, and Mr. Aragon responded that it had no date that would preclude this or anything that would happen as a result of this.

Mr. Carrasco said his concern is that it states that it only applies to their negligent act or failure to act, and Verizon may argue that existing environmental conditions on the property is neither of those. Mr. Aragon said the question is whether it is negligent non-disclosure, which is covered. Mr. Carrasco expressed concern that the state would incur legal costs in proving negligent non-disclosure, and added that it would be more prudent and cost effective to require removal of those obligations now.

Mr. Dworak said he wasn’t sure what the overall intent of this provision was in the agreement. He asked that Verizon clarify that. He said he understood the intent was to avoid having Verizon responsible to remedy any future abatements or hazardous material that is the result of the Border Authority’s action. He said he thought that should be considered. Additionally, the discussion he had with Verizon’s counsel in Denver was just providing a termination clause that if some hazardous material is discovered, it allowed an option for the state to withdraw from the contract. He said he understood this discovery would happen before construction of the tower.

Mr. Kormanik seconded the motion.

Mr. Archuleta said his motion included a request for counsel’s advice on which option to choose. He suggested that the paragraph be stricken from paragraph 28 or that some other language be provided that assures the state that there is no contamination, etc.

Ms. Lane said she had texted her attorney just now, and he had said he would be “more than happy” to strike the language in paragraph 28 because “right now, this is in your favor.” Mr. Carrasco commented that he did not interpret that to be in the state’s favor, but if the attorney were willing to strike the language, it would solve the problem.

Mr. Mattice said he would like Verizon to provide the Border Authority with a letter certifying that Verizon’s Phase I was clean.

Treasurer Eichenberg commented that any reference to Phase I makes it a public document, so eventually it would come out. He pointed out that a letter certifying that Phase I was clean was meaningless and could not be relied on without the document itself.
Mr. Aragon moved to have a substitute motion, which would be to approve Item 10 contingent upon the disclosure of the Border Authority Phase I and the Verizon Phase I, and staff’s contingencies. Mr. Kormanik seconded, and the motion passed 5-0 by voice vote.

The substitute motion passed 5-0 by voice vote.

Mr. Dworak said he has been informed that the possibility of Verizon’s Phase I report becoming public record could be a deal breaker for them. He said he was not sure what the next step would be.

Mr. Aragon pointed out that, based on the motion just passed, he saw no impediment to Verizon and the Border Authority entering into a renegotiated agreement.

[Agenda was reprioritized.]

STATE TREASURER’S OFFICE
Presenter: Vikki Hanges, Local Government Investment Pool Portfolio Manager

Ms. Hanges presented this report.

[Governor Martinez returned to the meeting.]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Presenters: Tommy Mutz, State Parks Division Director; Grady Barrens, Business Enterprise Coordinator, State Parks Division
11. Energy, Minerals and Natural Resources Department - Requests Approval of Concession Contract for the Marina Del Sur Facility at Elephant Butte State Park in Sierra County to Lago Rico, Inc. (8 percent of net receipts from sales and services per month plus $8,000 per year)

Mr. Mutz requested approval of this concession contract, noting that there is a 20-year term with an option to renew two times for an additional five years. Energy, Minerals and Natural Resources Department (EMNRD) awarded the contract to Lago Rico, Inc., through the request for proposals process. The contract has been effective since October 31, 1986, with an expiration date of March 31, 2015. The proposed contract will not become effective until approved by the BOR and the Board of Finance, or by April 1, 2015.

Mr. Primm stated that there is a master lease between EMNRD and the BOR that lasts through 2023. He noted that, if the lease agreement between EMNRD and the BOR were not extended, this contract would cease. Mr. Mutz said that was correct. EMNRD is negotiating a statewide lease template with the BOR that would cover all nine BOR properties that EMNRD manages around the state. He said the hope is to have it signed by March 31.

Mr. Primm recommended that any approval of this request be contingent upon Director’s receipt, with review of counsel, of the final signed contract containing staff’s changes.
Mr. Primm said staff believes that there is an incorrect statutory reference in paragraph 26, and is requesting that EMNRD legal counsel review it and determine whether it needs to be changed prior to final approval.

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

12. Energy, Minerals and Natural Resources Department – Requests Approval of Concession Contract for the Sports Adventure Marina Facility at Elephant Butte Lake State Park in Sierra County to Sports Adventure, Inc. (9 percent of net receipts from sales and services per month)

Mr. Mutz requested approval of this concession contract for the purpose of operating and maintaining full service of the Sports Adventure Marina facility at Elephant Butte Lake State Park to Sports Adventure, Inc. The contract is for a term of 20 years with an option to renew two times for an additional five years. The contract has been effective since December 31, 1999, and expired December 31, 2014. The proposed contract will not become effective until approved by the BOR and the Board of Finance, or by April 1, 2015.

Mr. Primm stated that there is a master lease between EMNRD and the BOR that lasts through 2023. He noted that, if the lease agreement between EMNRD and the BOR were not extended, this contract would cease. Mr. Mutz said that was correct.

Mr. Primm recommended that any approval of this request be contingent upon Director's receipt, with review of counsel, of the final signed contract containing staff's changes.

Mr. Primm said staff's changes referred to an incorrect statutory citation in paragraph 26.

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

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

Ms. Nicosin presented the monthly report for January 2015 and details on selected projects.

STAFF ITEMS
Presenter: Jeff Primm, Acting Director
15. Fiscal Agent/Custodial Bank Fees

Mr. Primm stated that the fees were available for review in the Board packet.

16. Joint Powers Agreements

Mr. Primm read the Joint Powers Agreements into the record.
ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 12:30 p.m.

Susana Martinez, President

April 22, 2015

Date

Michael Brasher, Secretary

4/21/2015

Date