MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
March 21, 2017

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:08 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
The Hon. John A. Sanchez, Lt. Governor [left at 11:00 a.m.]
The Hon. Tim Eichenberg, 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:
None

Staff Present:
Ms. Leila Burrows Kleats, Director, State Board of Finance
Ms. Donna Maestas, Deputy Director
Ms. Duffy Rodriguez, Secretary of Finance and Administration

Legal Counsel Present:
Mr. Joseph Dworak, Attorney General’s Office

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA

ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, APRIL 18, 2017

Mr. Brasher moved for approval of the Agenda. Mr. Aragon seconded the motion.
Mr. Aragon requested that item 6 be removed from the Consent Agenda and added to the regular agenda.

The amendment was accepted as friendly.

The motion, as amended, passed 7-0 by voice vote.

CONSENT AGENDA (Items 3-5 and 7-9)

Submitted by Leila Burrows Kleats, Director
3. Approval of Minutes: February 21, 2017 (Regular Meeting)

Submitted by: R. Daniel Castille, Cuddy & McCarthy, LLP
4. Deming Public Schools – Requests approval of Sale of Real Property and Water Rights Located at 3840 Hermanas Road SW in Deming to Billy Franzov ($450,000)

Submitted by R. Daniel Castille, Cuddy & McCarthy, LLP
5. Farmington Municipal Schools – Requests Approval of First Amendment of Lease of Real Property Located at the Southeast Corner of the Farmington High School Campus to GTP Acquisition Partners II, LLC

Contingent upon Director’s receipt and counsel review of (a) fully executed revised lease amendment; and (b) resolution or minutes indicating school board approval of revised lease amendment.

6. MOVED TO AGENDA

Submitted by: Gerald Hoehne, New Mexico Higher Education Department Capital Projects Director; Dr. Stephen Wells, President New Mexico Institute of Mining and Technology; Dr. Cleve McDaniel, VP Admin & Finance
7. New Mexico Institute of Mining and Technology – Requests Approval of a New Data Center Building ($2,674,766)

Submitted by: Gerald Hoehne, New Mexico Higher Education Department Capital Projects Director; David Harris, University of New Mexico Executive Vice President; Chris Vallejos, Associate Vice President, Institutional Support Services; Lisa Marbury, Executive Director, Institution Support Services
8. University of New Mexico – Requests Approval of Renovations to Coronado
**Residence Hall**  
**($1,500,000)**

Responding to Mr. Brasher, Ms. Maestas stated that the renovations to Coronado Residence Hall would not be funded with student fees.

Submitted by: Joey Moya, Chief Clerk, New Mexico Supreme Court  
9. **New Mexico Supreme Court – Requests Approval of Partial Conversion of Emergency Hardship Loan to Grant**  
**($2,614)**

Mr. Brasher moved approval of the Consent Agenda, with the contingencies outlined. Mr. Kormanik seconded the motion, which passed 7-0 by voice vote.

**Agenda items**

Presenter: Terry Lease, Real Property Specialist, Santa Fe County  
6. **Santa Fe County – Requests Approval of Second and Third Amendments to Lease of Real Property at 1318 Luana Street in Santa Fe to Life Link, Inc. ($42,280 per year)**

Mr. Lease requested approval of these two amendments to the Life Link agreement. He said Amendment #2, for a downward rent adjustment, was approved by the Santa Fe County Commission; however, SBOF staff subsequently identified some contingencies that needed to be addressed. He said Amendment #3 was then drafted and resubmitted to the SBOF. He noted that the Santa Fe County Commission would approve the amendment after the Board of Finance identifies any additional contingencies today.

Mr. Aragon stated that he removed this item from the Consent Agenda over his concern about whether the appraisal was still viable under the board rules.

Ms. Kleats responded that the rule requires that an appraisal be current within one year of the submission date. This was originally submitted in January 2017 and was withdrawn the following month because of a conflict. While the appraisal date of December 11, 2015 is not within the one-year requirement, Ms. Kleats said she researched prior waivers by the board and noted that typically there is some additional documentation provided that indicates the appraised value is still current. She said that can be in the form of a letter from the appraiser or another form of valuation.

Mr. Aragon commented that he is in favor of this request, but his concern is that the current appraisal would not meet the well-defined time limits set out in the rules. He said he understands the board has carved out some exceptions in the past in cases like this, but he wanted to be sure the board was comfortable with that.
Mr. Archuleta said he would hate to see the county spend money on an appraisal given the relatively small amount involved, unless there were some drastic change that would warrant another appraisal, which he did not believe was the case here. He said he was inclined to approve this waiver because of the short time it went over and especially because the original application came in January.

Mr. Aragon agreed with Mr. Archuleta and suggested that the board consider requiring some form of letter affirming that there has been no material change in the appraisal. He said he felt this would reasonably fit within the board rules.

Mr. Kormanik recommended that board additionally require a review of any such document by the Taxation & Revenue Department’s Property Control Division. Mr. Aragon agreed.

Ms. Kleats read Rule 1.5.23.11(C) NMAC (Submission of Requests to the State Board of Finance): “Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule, provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the item, and that the state’s interest still will be sufficiently protected.”

Mr. Aragon said this would indicate that the board would need an independent affirmation of the original documents indicating what the appraised value was. He said he would have a technical issue going through the board’s department for that, but it clearly indicates that it has to be a third party; otherwise, the board would be using its internal appraiser.

Mr. Kormanik commented that there is also an issue of efficiency. He said if the board starts making exceptions, it opens itself up to situations where other entities might feel they could also do the same thing. He said the board should keep this in mind, since the rule is very clear.

**Mr. Aragon moved for approval of this item, contingent upon Santa Fe County providing a letter of affirmation as to the appraised value from the original appraiser and that it be reviewed by staff and board counsel; and that the property appraisal be reviewed by the Department of Taxation and Revenue.**

**Mr. Eichenberg seconded the motion.**

Ms. Kleats requested that approval also be contingent upon Director’s receipt and counsel review of (a) fully executed revised Amendment No. 3; and (b) resolution or minutes indicating Board of County Commissioners of Santa Fe County approval of revised Amendment No. 3 to Lease.

**Staff’s contingencies were accepted as friendly.**

The motion, as amended, passed 7-0 by voice vote.
EMERGENCY FUND BALANCES
Presenter: Ms. Leila Burrows Kleats, Director
10. Emergency Balances – March 21, 2017
   Operating Reserve Fund    $ 1,201,421.00
   Emergency Water Fund      $  85,999.56
   Emergency Hardship Fund   $  896,332.00

Ms. Kleats reported these balances.

EMERGENCY FUNDING REQUESTS
Presenters: Jason Thomas, City of Bloomfield, Public Works Director; Ernest Archuleta, Chief of Staff, Public Regulation Commission; Eric Strahl, City Manager; Commissioner Lynda Lovejoy, Public Regulation Commission; Peggy Hogan, Board Member, Apple Orchard MDWCA; Germaine Chappelle, Attorney for AV Water; Megan Marsee, Community Coordinator, NMED Drinking Water Bureau
11. City of Bloomfield – Requests Emergency Funding for the Harvest Gold Subdivision (not to exceed $184,500)

Mr. Thomas stated that the proposed application is to connect the City of Bloomfield water system with the Harvest Gold water system with a pump station and an 850-foot forced main. The system would serve about 460 individuals in the Harvest Gold system, although the city will not operate the distribution system. As the board knows, the Blanco Mutual Domestic Water Users Association had declined in the previous application; and with the urging of some legislators and encouragement by the New Mexico Environment Department (NMED) and the Public Regulation Commission (PRC), the City of Bloomfield applied for the same project.

Mr. Thomas discussed details of the pump station conceptual plan, which would require approval by the NMED, as well as the proposed schedule for the project. The pump station and forced main would be located in San Juan County right-of-way and owned and operated by the City of Bloomfield. He said the station would be located inside of a shipping container in the event it needed to be relocated.

Mr. Strahl commented on the City of Bloomfield's current financial situation. Based on a survey by the Municipal League, only two other municipalities in New Mexico have suffered a greater decrease in gross receipts tax revenues. During their last fiscal year, they had an 11 percent drop in GRT revenues, and in the current fiscal year they have seen another 16 percent drop. They have cut slightly more than $1.5 million from their general fund budget and have also reduced the number of fulltime and part-time employees. He said they are still providing the same services, albeit at reduced levels, with some employees doing two and three jobs. From a financial standpoint, they would not be able to take on the burden of this project without financial assistance on the construction end.
Mr. Strahl also stated that they would like to pursue acquisition of water rights that are tied to the subdivision.

Ms. Lovejoy thanked the board for considering this emergency funding request. She said Harvest Gold customers have been on a Boil Water Advisory for nine months, which is posing health and economic issues for them. She said the PRC has adopted a resolution in support of this project.

Chief of Staff Archuleta said the Harvest Gold subdivision became a mutual domestic water association yesterday. This status will allow them to request public money when necessary.

Lt. Governor Sanchez asked if there are efforts to hold the original water suppliers, AV Water, responsible.

Chief of Staff Archuleta responded that fines have been levied against AV Water but “that hasn’t been resolved at this point.” He said the PRC would continue to pursue this matter.

Ms. Lovejoy added that the PRC has asked the Attorney General’s Office to look into criminal charges against AV Water for not providing adequate services.

Member Archuleta asked how much users are currently paying for their water. Chief of Staff Archuleta responded that they are paying approximately $31 a month, or $2.12 a gallon. Member Archuleta noted that the bulk water would cost more, at $4.57 per thousand gallons. Mr. Thomas clarified that this is the in-city rate. Member Archuleta asked if this amount factors in depreciation of the line and equipment, and Mr. Thomas responded that the city realized last year that it was not considering the need for future capital improvements, and early this year began setting money aside for that purpose. Member Archuleta asked if the $4.57 includes the cost of retiring water rights, and Mr. Thomas responded that he did not think so. Member Archuleta commented that he wanted to make sure that the $4.57 rate did not include the cost to retire the debt on the capital for the line now going in; on the other hand, if this rate included the cost to replace the line in the future, that was a different thing. He said he wanted to make sure that the $4.57 was “a true bulk water rate.”

Mr. Thomas stated that they have “Permit C” water rights through the San Juan Water Commission and can use that water in the interim, although they would prefer that Apple Orchard or the City of Bloomfield procure the water rights for Harvest Gold.

Member Archuleta commented that he was in favor of approving this loan, but asked what assurances the board has that the assets owned by Harvest Gold would ultimately be turned over to the Mutual Domestic Water Association (MDWA).

AV attorney Germaine Chappelle responded that she was “happy to affirm, confirm, and completely agree that the underlying assets of the Harvest Gold water system will be
transferred to the mutual domestic." She said she understands that Stonetown Animas Lenders intends to waive its lien encumbrance on the asset as well.

Member Archuleta asked if AV Water has stated in writing that they will not stand in the way of turning all of these assets over at no cost to the MDWA. Ms. Chappelle responded that they have provided that to the PRC in the form of an application when Blanco was considering this along with statements made in the application that AV Water would transfer the assets free and clear. She added that AV Water could make sure to amend this to reflect Apple Orchard MDWA.

Member Archuleta said he thought the board should require a written guarantee that guarantees that they will cooperate, and at no additional cost.

Mr. Brasher asked if the rate structure included the cost of water rights. Ms. Chappelle responded that this is a complicated issue and they would have to go back and research this with PRC staff. She explained that the water system has been unregulated since the 1970s, when it was built, and only a year ago obtained its Certificate of Convenience and Necessity (CCN). She said there is an argument that a certain portion of the water rights would be owned by the membership, but there may also be some private ownership involved. She said another “wrinkle” is that the water rights also have a security interest from former owner Geoff McMahon. With respect to Bloomfield, the MDWA, or the San Juan Water Commission owning those, that is potentially where the water rights would go, and the underlying asset would be transferred free and clear.

Responding to Mr. Brasher, Ms. Hogan stated that the recently approved MDWA has established a registered agent and elected a board of directors. They have discussed membership fees to ensure that they have at least three months’ of operating expenses in reserve.

Ms. Chappelle clarified that the application before the PRC will have to be amended to reflect the transfer of the water rights to Apple Orchard. Once the application is finalized, the MDWA would be in charge of setting up its own rates in coordination with NMED.

Mr. Aragon said he would like to see a memorandum of understanding that codifies the agreement that the two liens would be released. Ms. Chappelle responded that she thought both parties would agree to that, since both of them have previously submitted public documents to the PRC reflecting that commitment. She said AV Water and Stonetown are committed to transferring the distribution assets to the MDWA, which means they can be up and running and operating without any private interest or concern about governmental funds aiding a private entity. She added that the water rights are more complex given Mr. McMahon’s security interest, however. Because the City of Bloomfield is a member of the San Juan Water Commission, that could be a potential place to “park” the water rights; and if not there, then with the City of Bloomfield or the MDWA. She said that piece would have to be worked on separately.
Mr. Aragon asked Ms. Chappelle where something is written and signed by the parties addressing the water rights issue. Ms. Chappelle responded that, because of the PRC’s jurisdiction over a private utility, AV Water could not by itself effectuate a contract to make this happen, and would have to go through an abandonment procedure with the PRC.

Member Archuleta asked if the owner of the water rights brought them into the subdivision, or did they charge a fee to acquire those water rights as part of the homeowners rate. Ms. Chappelle responded that, historically, that is part of the complexity of the water rights issue with respect to this. Mr. McMahon’s argument in this case is that he brought the water rights into the system himself.

Member Archuleta suggested that the board get a letter from AV Water stating that AV Water will not in any way fight the MDWA in acquiring the distribution system. Ms. Chappelle agreed.

Mr. Aragon recommended the board create a contingency or a letter of understanding that the lines and equipment can be conveyed and that the water rights also can be conveyed in a fee simple.

Ms. Marsee introduced staff members from the NMED Drinking Water Bureau who have been assisting Harvest Gold in their efforts toward compliance.

Member Brasher asks whether the transfer of this system would mean that if the mutual domestic now owns the system the fines and any action on behalf of NMED are not the responsibility of the new owner. Ms. Marsee says correct.

Ms. Maestas says her concern is that it sounds like there are complications re: the water rights. If taking care of the water right issue would take a long time, it would again prevent them from getting the grant funding, and the residents wouldn’t get water right away.

Member Archuleta commented that he would be “immensely surprised” if the owner of these water rights intended to transfer them as easily as the rest of the system was being transferred, given their history of not performing and not cooperating, and because the water rights have a lot of value. He expressed concern that “if we tie that up with trying to get this project going, I think we’ll be here a year or two years down the road, and nothing will get done.” He suggested approving the grant so the City of Bloomfield could move forward, but that the board obtain a letter providing assurances that AV Water would not stand in the way of the new MDWA using the distribution system.

Member Archuleta also recommended that the board take action with the PRC and/or the Attorney General’s Office to make sure that the water rights are tracked to see that they are not owed either because they have been paid for in the past by the users through rates, or as a
“trade for penalties that can be imposed on them for all of the abuse that’s gone on and the fact that we’re having to make this grant.”

Member Archuleta moved for approval of this request in the form of a grant, contingent upon the board receiving a commitment from the owner of AV Water, subject to the board’s legal review, that all of the physical assets of AV Water are intended to be transferred and that they will not stand in the way of the City of Bloomfield serving the subdivision and will not stand in the way of donating those at no cost in the future to the new mutual domestic.

Member Archuleta said water rights should not be included, since he did not believe the owner had any intention of transferring them.

Mr. Eichenberg seconded the motion.

Mr. Aragon expressed concern that a letter is not an enforceable document and should instead be a letter of understanding or some other legally enforceable document, and said he would like to make another motion to address that concern.

Mr. Dworak stated that, if this is contingent upon some type of agreement, it would have to be a legal document between the two parties conveying their intent to transfer the property, so having the Board of Finance as a party to this could pose a problem. He said the second question is if it is violated, since it seems this transfer would not occur within an ideal timeframe, what would happen, and that might be between the two parties. He said legal staff would be happy to put together such a document, but it would have to be signed by the two parties themselves.

Member Archuleta asked Ms. Lovejoy and the PRC to clear the way so that the MDWA could use the distribution system. He commented, “It would be terrible if we go do all of this and somehow this gentleman escapes and says nah, I’ve changed my mind.” He said he would also encourage the PRC to find out whether Harvest Gold has paid for the water rights.

Ms. Maestas said she has just spoken with the PRC, and she was told that the abandonment process could take only a week. She asked if the documents from the abandonment process would be sufficient. Mr. Aragon said he would leave that up to staff.

Ms. Chappelle said the intention is to move as quickly as possible to transfer the underlying asset.

Ms. Kleats says she wants to make clear that the emergency water fund has a balance of $84,999.56 and that the grant would be partially funded from the water fund and partially funded from the operating reserve.
Ms. Kleats noted that $100,000 would come from the Operating Reserve Fund and $84,500 would come from the Emergency Water Fund.

The motion, as amended, passed 7-0 by voice vote.

[ Lt. Governor Sanchez exited the meeting. ]

STATE TREASURER’S OFFICE
Presenter: Vikki Hanges, General Fund Investment Pool Portfolio Manager

Ms. Hanges presented this report, noting that STO managed $3.6 billion in assets at the end of January 2017. On an unrealized mark-to-market basis, the portfolio increased by about $800,000, and a contribution of $100 million from the Tobacco Settlement Fund in January was very helpful in shoring up cash balances.

Ms. Hanges said balances for the entire pool are down year over year by about $500 million.

Mr. Kormanik noted that general fund reserves at the end of 2016 were down to less than 3 percent. He said the board should continue to monitor this, since this is a continuing concern.

Mr. Brasher said the legislature is part of this equation, however, since it is responsible for the budget.

Ms. Rodriguez said the concern now is cash with the lack of reserves and the outflows that the General Fund Investment Pool has seen. While all last year it was easy to keep up with thanks to high reserves and cash in the pool, that was not the case this year. During the special and regular sessions, the state needed more money to cover its obligations than was made available. She said she made every effort to convince people to shore up general fund reserves for 2017, but legislators opted to address 2018. Since the 2017 tax increases happened too late in the year to make any difference, DFA is tasked with juggling cash issues with spending issues with only three months left in the fiscal year.

Addressing Mr. Brasher, Mr. Kormanik said the legislature did in fact look at the problems in the current fiscal year through a solvency plan, which held off the prospect of a negative cash reserve in 2017.

Ms. Hanges said an additional issue is that interest rates are edging higher. When STO looks to supply additional cash out of the core fund, it is faced with fewer choices of issues to sell while still generating gain, because prices go down as interest rates go up, which causes the portfolio to decline.

GENERAL SERVICES DEPARTMENT
Presenter: Leila Burrows Kleats, Director

[Informational.]

STAFF ITEMS
Presenter: Leila Burrows Kleats, Director

14. Approval for Staff to Issue Requests for Quotes for Arbitrage Services Contract

Ms. Kleats said this contract is up again for renewal; as was the case last year, staff would be issuing a Request for Quotes. She stated that staff worked with DFA’s legal department to structure the RFQ in such a way that a little bit of qualitative information could be obtained to ensure that the board would be getting the best services possible. As this is an RFQ, the contract would have a one-year term. Next year, the hope is to issue a formal RFP, which would allow for a four-year contract.

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

15. Approval of Fourth Amendment to Fiscal Agent Banking Services Agreement with Wells Fargo Bank Extending for a Term of Two Years and Expanding Scope of Services to Include Participation In State Tax Refund Return Opt-In Program

Ms. Kleats said the fiscal agent services contract would expire in April 2018. Because the transition to a new fiscal agent is so involved, a full year's notice is required to go out to RFP. This request is for clarification from board members as to whether the contract should be extended for two years; if not, then staff would issue an RFP.

Ms. Kleats noted that Wells Fargo offers what is known as the State Tax Refund Return Opt-In Program, also called the R17 program, which is an ACH return program. Under this program, Wells Fargo would issue an ACH on a tax refund. If the receiving bank suspects that the refund is not legitimate for some reason, they could return the refund back to the state. Under the current return policy, returns can only take place for 72 hours after the ACH is sent. Under the new program, R17 returns could take place up to 60 days after the original ACH is sent. She said the Taxation & Revenue Department has indicated its support for this program.

Mr. Aragon moved for approval of both components outlined by Ms. Kleats. Mr. Eichenberg seconded the motion, which passed 6-0 by voice vote.

16. Fiscal Agent/Custodial Bank Fees
Ms. Kleats stated that fees are in line with historical rates. She added that the contract allows the state to receive, as earnings credit, the greater of 50 basis points or the monthly auction average on the 3-month Treasury Bill. For the month of February, for example, the state earned 53 basis points, but that is now up to about 78 basis points based on recent auctions, and is expected to continue to increase because of higher interest rates.

17. **Joint Powers Agreements for Month-Ended February 2017**

Ms. Kleats read the Joint Powers Agreements into the record.

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at 11:25 a.m.

[Signature]
Susana Martinez, President

4.21.17
Date

[Signature]
Michael Brasher, Secretary

4/27/17
Date