MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
SPECIAL MEETING
Santa Fe, New Mexico
August 25, 2017

A Special 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 via telephone from 10:33 to 11:45
Mr. Michael Brasher, Public Member, Secretary
Mr. Robert J. Aragon, Public Member
Mr. Adelmo Archuleta, Public Member
Mr. John Kormanik, Public Member

**Members Excused:**
The Hon. John A. Sanchez, Lt. Governor
The Hon. Tim Eichenberg, State Treasurer

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

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

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

2. **APPROVAL OF AGENDA:**

**ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, SEPTEMBER 19, 2017**

Mr. Aragon moved to approve the agenda. Mr. Kormanik seconded the motion, which passed 4-0.

3. **Approval of Minutes: July 18, 2017 (Regular Meeting)**

Mr. Kormanik moved approval of the minutes. Mr. Aragon seconded the motion, which passed 4-0.
EMERGENCY FUND BALANCES

Presenter: Leila Burrows Kleats, Director


<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$104,800.00</td>
</tr>
</tbody>
</table>

Ms. Kleats reported these balances.

EMERGENCY FUNDING REQUESTS

Presenters: Johnny Marquez, President, Santa Cruz Water Association; Margaret Trujillo, Secretary and Treasurer, Santa Cruz Water Association; Dennis Trujillo, Operator and Contract Administrator, Ill-D General Contracting, Inc.

5. Santa Cruz Water Association – Requests Approval of Emergency Funding for the Operation and Maintenance Costs Associated with Replacing the Association’s Collapsed Community Well (not to exceed $293,000)

Mr. Trujillo stated that in the Santa Cruz section of the Association, there is only enough water for residents to flush toilets.

Responding to Mr. Archuleta, Mr. Trujillo provided the history of the emergency. About nine years ago, the Santa Cruz Water Association (SCWA) received a grant from the New Mexico Environment Department in the amount of $1.6 million. Phase I consisted of a well house, buildings, water lines, water tanks, uranium treatment filters and meters for the Santa Cruz section and the El Llano section, including about two miles of water lines and 4,500 feet of distribution lines. There will be 104 active connections with 150-200 projected connections upon project completion. The Association received a quote for construction services in the amount of $1,176,000 and engineering services in the amount of $120,000. This consisted of approximately 50% of the water lines in the Santa Cruz section, 35% of the water lines in the El Llano section, 100% of the tanks and uranium filters in both sections. SCWA initially believed they were under budget.

In response to Mr. Archuleta’s inquiry about why the grant funds were not sufficient to cover the Phase I costs, Mr. Trujillo explained that there were several change orders, equaling $250,000, and the main well in the Santa Cruz section collapsed. The change orders include engineering designs for a new well, pressure relief system, pressure reducing valves, booster pumps and easements. SCWA had to hire a new engineering firm, as the original firm left out the design of the new well. Upon hiring the new firm they discovered that easements with Santa Clara and San Juan Pueblos had expired. They are currently negotiating renewals. In addition, the easements through private properties in the Santa Cruz section were never recorded. They hired an attorney to assist, adding further unforeseen expenses. The new engineering firm, Precision Engineering, Larry Medrano, and is U.S. Bureau of Indian Affairs approved.

Responding to Mr. Archuleta’s questions about the various expenses that add up to the $293,000 request, the presenters stated that $9,500 would pay for a hydrogeological survey, $16,595 for a resident representative and emergency repair responses from May 2017 to present, $27,655 for additional anticipated expenses for project management and emergency call outs. The resident representative is Mr. Trujillo from Ill-D Construction. His services include an average of three emergency call outs per week.
The cost for a new pump is $599, the cost to finish the survey and easement transfers is approximately $20,000, and they have a quote for $67,000 to drill a new well. The construction management company is Martin/Martin Inc., which oversees the engineer.

Mr. Trujillo and Mr. Marquez explained there is not enough water pressure to run the uranium filtration system in the Santa Cruz area. The filtration system requires at least 30 gallons per minute. The existing well only produces 10 to 15 gallons per minute. The other issue is that the water lines are galvanized steel and are falling apart and there are constant water leaks. They need to install new water lines and install a pressure regulator. The motor had to be downsized.

Mr. Kormanik asked if the new well has to generate the 30 gallons per minute or if the existing well and the new well combined need to generate the 30 gallons per minute. Mr. Trujillo replied the combined wells can be used. If the new well hits the river bed it could yield 60 gallons per minute. They only need an additional 6 gallons per minute to combine with the existing well to run the uranium filtration system.

Responding to Mr. Aragon, Mr. Marquez stated that the original engineer was bonded and insured and that the bonding company would be notified of claim upon completion of project. Mr. Aragon expressed a reluctance to approve nearly $300,000 of the $2 million appropriated to the board for emergencies without the easements in place. This is a legal impediment that could take a year or more to resolve and should be resolved before seeking funding. He said he was not sure if the project was ready, and suggested that SCWA come back to the board once they have the easements in place.

Mr. Brasher stated he believes SCWA is not ready to proceed with the current proposal. He asked if SCWA had reported the original engineers to the licensing board. Mr. Trujillo stated they have not yet filed a complaint.

Mr. Archuleta suggested that SCWA postpone the funding request for a month to prepare a more concise presentation of all the costs and accounting. He volunteered to assist them.

Mr. Kormanik suggested SCWA contact the New Mexico Environment Department (NMED) for guidance. Mr. Marquez confirmed they are currently working with Andrea Telmo from NMED. Ms. Telmo was present and introduced herself. She mentioned in addition to the NMED grant, SCWA has a NMED Rural Infrastructure Project loan and applied to the Water Trust Board for funds. The Water Trust Board was not funded this year. SCWA will apply again to the Water Trust Board, but those funds would not be available until the end of 2018 if they were awarded.

Mr. Kormanik stated he would rather entertain a motion for a loan instead of a grant, with a possibility that the loan could be converted to a grant in the future if they meet contingencies of a more viable rate structure.

Mr. Archuleta suggested that SCWA meet with Ms. Telmo while the next agenda items are presented and decide if there is another smaller project that could be presented to the Board for approval today. A project with well-defined costs, possibly the new well. SCWA agreed to revise the request and present at the end of the agenda.

Board action deferred until later in the meeting.
Presenters: David Paul, Financial Advisor, Fiscal Strategies Group; Jill Sweeney and Parker Schenken, Co-Bond Counsel, Sherman & Howard LLC; David Buchholtz and Luis Carrasco, Co-Bond Counsel, Rodey Law Firm; Ken Guckenberger, Disclosure Counsel, Kutak Rock

6. Approval of Resolution to Restructure the Escrow Relating to the Series 2015 General Obligation Bonds; Approving a Restated Escrow Agreement; Delegating Authority to the Executive Officer to Authorize the Investment and Reinvestment in Tax Exempt Securities Pursuant to the Restated Escrow Agreement; Authorizing the Filing of Notices for Security Law Purposes; and Taking Other Related Actions

Mr. Paul said, “We wish we weren’t here. We made a mistake for which we all bear responsibility. But, more than that, I know I let you down and I apologize for that.”

Mr. Paul stated that on July 18, 2017, the State Board of Finance sold $148,520,000 General Obligation Bonds, Series 2017A and $151,790,000 General Obligation Bonds, Series 2017B. The Series 2017A Bonds were sold to fund capital projects, pursuant to the bond referendum approved by the voters in November 2016. The Series 2017B Bonds were sold to refund selected maturities of the State’s General Obligation Bonds, Series 2013 and Series 2015. Proceeds of the Series 2017B Bonds were deposited in an Escrow Account, and invested in U.S. Treasury securities.

The refunding of the Refunded Series 2013 Bonds was a current refunding. Those bonds were subject to optional redemption by the State, and they will be redeemed and paid off on September 1, 2017 from a portion of the securities on deposit in the Escrow Account. The balance of the securities on deposit in the escrow account were intended to be used to pay scheduled interest payments on the Refunded Series 2015 Bonds through March 1, 2020, and then the redemption of those bonds on that date.

Two days after the closing of the sale of the Series 2017B Bonds on August 1, 2017, Donna Maestas contacted Mr. Paul asking about a supplement to the Official Statement that was posted on the board’s website. There were two Official Statements issued for the 2015 Bonds; the second Official Statement was a correction to the first and it included a supplement or “sticker” noting that the bonds were not subject to optional redemption. The stickering of the Official Statement created some confusion that was manifest in the transaction. He noted that three law firms, two financial advisors, and the verification agent all missed the error.

Responding to Member Archuleta, Mr. Paul noted that 2015 Bonds were changed to noncallable prior to the sale because market conditions made noncallable a preferred option. He noted that the constraining issue now is that the IRS only allows refunding of bonds for savings or other public purposes. Responding to Member Kormanik, Mr. Paul said the net present value savings on the refunded bonds was initially calculated as $1.5 million on the 2013 Bonds and $8 million on the 2015 bonds, but in hindsight the $8 million was “an illusion”, “it was never there.”

Mr. Paul presented 6 scenarios of potential investments for the escrow funds and the estimated cost and IRS risk of each scenario: 4 in tax-exempt securities and 2 in U.S. Treasury securities. Mr. Paul noted that the IRS sets conditions governing when the escrow can be invested in tax-exempt or taxable securities, and in this case, the escrow funds need to be rolled into tax-exempt securities by August 31st. The two taxable options lead to a higher IRS risk, so they are not recommended.

The first of the tax-exempt options would be to invest the escrow in a broad basket of tax-exempt municipal bonds in the top three rating categories, but include in that the ability to buy New Mexico bonds
to allow maximum flexibility. The second option would be to purchase back the General Obligation bonds through a tender process. This option tends to be less attractive from a yield point and the price goes up when bondholders realize they have leverage. Third is to purchase pre-refunded Treasury obligations, which would be like the 2015 Bonds if they had been callable and were refunded, but these are rare and hard to purchase. Fourth would be to keep the money in a tax-exempt mutual fund for about six months and purchase the new Severance Tax Bond issuance in the spring following the approval of the capital outlay bill. In response to Member Aragon’s questions, Mr. Paul noted that the ideal situation is to have the escrow be self-supporting.

Member Archuleta asked if there is some hidden cost to the state in terms of the opportunity cost if the escrow were used to purchase New Mexico severance tax bonds. Mr. Paul noted that would depend upon the rates and that an increase in rates would be good, whereas a decrease would be bad.

Responding to Members Kormanik and Aragon, Ms. Sweeney stated that the legislative approval process to purchase the severance tax bonds would remain the same and that if that action didn’t occur, than a different option would be necessary. Mr. Buchholtz added that the statutory underpinnings always allow sale to the state and in fact this is how the sponge note program operates. He noted that no new legislation would be required. Ms. Sweeney clarified that the escrow agreement would allow the option of purchasing tax-exempt bonds from other states in the event the purchase of New Mexico bonds was not attractive for whatever reason.

Member Kormanik stated that if the purchase of Severance Tax Bonds option was pursued, the board would need to wait until after the session to resolve the matter. Member Aragon asked if the board could visit a resolution that would resolve the problem today. Mr. Paul said yes.

Referring to the cost savings analysis, Mr. Paul summarized the pricing expectations depending on the rating and expected interest rate of various purchase options. Mr. Paul noted there would be an escrow inefficiency of 45 to 135 days because of the expected discrepancy between the maturity dates on the tax-exempt securities and the payment dates on the Series 2015 Bonds.

Mr. Paul stated the estimated escrow cost savings of the scenarios ranged from negative $680,000 to $1.1 million relative to the proceeds from the 2017B Bonds that funded it. When including the net present value savings on the 2013 Bonds, which would not have been issued otherwise, the net positive impact to the state is estimated to be $1.6 million to $3.5 million. He noted that in the aggregate of all that has transpired, this would still result in a reduction of the mill levy paid by taxpayers, savings to the state, and no further issuance of bonds.

Member Archuleta asked if there were any soft costs associated with this. Mr. Paul stated that there are no transaction costs and that no professional fees were being charged by any party involved in the error since the date of discovery. Mr. Buchholtz and Ms. Sweeney concurred. Member Archuleta asked that this be confirmed in writing.

Mr. Paul noted the escrow agreement presented to the board includes a range of permitted investments. The intention is to liquidate on August 28th with delivery on August 29th, immediately reinvest the proceeds in a tax-exempt municipal bond fund, pending a securities purchase in conjunction with approval by the Executive Officer to acquire the securities that would become the permanent defeasance escrow of the 2015 Bonds.
Responding to Member Kormanik, Mr. Paul stated that the funds would be invested in the tax-exempt mutual fund so that they are available in liquid form to be able to pursue a purchase of portfolio securities without any time pressure, and to ensure by August 31 that we are in compliance with IRS requirements that proceeds are invested in a fund that is fully tax-exempt. The scenario analysis is predicated on a close date of mid-September.

In response to Member Archuleta, Mr. Paul said that we would not have refunded the 2013 Bonds without the 2015 Bonds, in which case the 2017B Bonds would not have been issued and the net savings would have been $0. Member Aragon asked if that means there is no loss to the state and Mr. Paul confirmed that this is the case. Mr. Paul noted that the costs associated with the issuance of the Series 2017B Bonds were less than $300,000.

Ms. Sweeney and Mr. Buchholtz stated concurrence with Mr. Paul’s conclusions. Mr. Guckenberger stated that disclosure counsel had also reviewed the tax issues and were in agreement that this was a reasonable approach.

In response to a question from Member Archuleta, Ms. Malave recommended addressing agenda item 7 before seeking further advice from bond counsel.

Board action deferred until later in the meeting.

Presenter: Sally Malave, Board Counsel and Assistant Attorney General
7. Approval of Requests for Waiver of Conflict of Interest from Co-bond Counsel Related to Series 2017B General Obligation Bonds

Mr. Archuleta made a motion to move approval.

Ms. Malave stated that on August 10, 2017 co-bond counsel firms of Sherman & Howard and Rodey Law requested a waiver of conflict of interest with regards to the Series 2017B refunding bond issuance. This was necessary because the law firms may have an interest in how they advise the board in order to reduce whatever liability they may have with regards to the error. Initially, Ms. Malave was unsure if the firms were requesting a waiver of liability of any claims the board may have regarding this issue in the future. After speaking with general counsel for both firms, Ms. Malave received confirmation from both firms that they are not seeking a waiver of liability or of indemnification as contemplated in the bond counsel contract.

Mr. Brasher stated that as he has not heard a motion from any board member to enter into an executive session, the discussion will continue in open meeting.

Mr. Aragon complimented the firms for their candor and how they reacted to this error. He has reviewed the rules of professional conduct and he is in agreement that a waiver is required. Mr. Aragon noted that he has also reviewed the waiver request and confirms there is no request for a waiver of liability. He stands in support.

Mr. Kormanik read from the waiver request letter, “This waiver does not include any claims for indemnification or other actions the board may have now or in the future against Sherman and Howard and Rodey Law Firm for any reason whatsoever.” He then asked what are the possible liabilities that the Board could face, even if the probability is low?
Mr. Schenken replied there are two areas of concern, the economics of the solution and the federal tax liability. From informal discussions with the IRS, co-bond counsel believes that the tax risks are mitigated. He noted that David Paul had presented the economics of the solution, which appear to be favorable.

Mr. Aragon seconded the motion, which passed 5-0.

Discussion of agenda item 6 resumed.

Member Archuleta noted that the conflict handling was “top notch.” He would like both firms to state that the alternatives presented are not self-serving and in the best interest of the state. Mr. Schenken said he hadn’t heard any statement that any of the decisions being made are anything but in the best interest of the state. Mr. Buchholtz noted that Rodey Law Firm concurs.

Mr. Archuleta suggested that going forward all should make sure processes are in place to ensure these mistakes don’t occur. Ms. Maestas noted that staff would be working with bond counsel to establish procedures and checklists that staff and counsel could follow.

Mr. Carrasco presented the revised resolution. Mr. Schenken presented the restated escrow agreement. He noted that section 2(c) of the agreement allowed for two options, the first of which would only allow the state to use the escrow funds to purchase New Mexico bonds while the second option would allow the state to purchase New Mexico bonds or other states’ bonds. Mr. Carrasco confirmed that the restated escrow agreement is incorporated in the board resolution by reference.

Member Aragon moved to revise the restated escrow agreement to strike the first subparagraph i of section 2(c). Member Archuleta seconded the motion.

Mr. Carrasco noted that bond counsel and Mr. Paul were in concurrence with the revision.

The motion carried 4-0.

Mr. Guckenberger stated that upon discovery of the noncallability, disclosure counsel recalled the notice of defeasance. This is important because the bonds trade differently after they have been legally defeased. This notice was sent out the Monday following discovery, August 7th. Disclosure counsel will report back to the market following the outcome of today’s actions. When we accomplish the full economic refunding in September, disclosure counsel will issue another notice to update some of the debt service and other tables in the official statement to reflect the economic defeasance rather than a legal defeasance.

Mr. Aragon made a motion to approve the resolution. Mr. Kormanik seconded the motion.

Member Brasher noted that the restructuring of the Escrow Account will accomplish several goals:

- The State will continue to show a positive economic benefit from the sale of the 2017B Bonds, which is projected to range from $1.6 to $3.5 million.
• The 2015 Bonds will continue to be legally outstanding, however the debt service mill levy paid by taxpayers will be reduced by the escrow to below what it would have been without the sale of the 2017B Bonds.

• No holder of New Mexico general obligation bonds will be adversely affected. Absolutely no risk of default. All of the bonds remain general obligations of the State with the pledge and security of property tax revenue.

• No new bonds will be issued, and no costs will be incurred to complete the restructuring.

• Financial advisors, legal counsel and staff intend to put into place processes to ensure mistakes of this magnitude do not occur in future.

Mr. Kormanik asked that the cost savings scenarios be updated as the transactions occur.

The motion passed 4-0.

Discussion of agenda item 5 resumed.

Ms. Telmo presented the following cost estimates for the SCWA revised emergency funding request to drill a new well which she believes is the true emergency: drilling of new well $70,000 for 400 feet, hydrogeological report of $20,000, engineering costs of $5,000 for plans and specs, survey and easements of $5,000, construction of water lines, power and site work of $25,000, inspections and construction management of $4,000. Adding a 10% contingency and GRT, the total request is $151,123.50.

Mr. Archuleta instructed SCWA to prepare the new request and send it to staff and legal counsel. He noted that construction costs should not be restricted to the amount listed for each expense as long as the project stays in the total amount of $151,123.50.

Mr. Kormanik made a proposal to provide a loan to SCWA in the amount of $151,123.50 with a deferred payment date. In the interim, SCWA will provide the Board with progress reports every six months on the construction process, especially the metering and new rate structure upon completion. Mr. Archuleta suggested that SCWA come back to the board to request the other needed funds with a detailed accounting of expenses.

In response to Mr. Brasher, Ms. Trujillo stated that SCWA is current with their audit reporting. In 2016 the audit had no findings. In two years the system may not be 100% metered. It is difficult to collect money from residents when there is only enough water to flush toilets. The majority of the Santa Cruz customers are senior citizens who live on very low incomes. Ms. Trujillo warned that they may not have the new meters and rate structure in place, therefore they may have difficulty paying the loan.

Mr. Kormanik asked if SCWA could begin making payments on the loan in three years and Ms. Trujillo agreed.

Mr. Kormanik made a motion to approve a loan to the Santa Cruz Water Association in the amount of $151,123.50 for the construction of a new well. The Association must report to the board periodically with progress reports. The first payment is due three years from the date of approval. If the project
achieves completion within three years, the board will consider converting the loan into a grant. Mr. Aragon seconded the motion, which passed 4-0.

Ms. Malave confirmed the progress reports are due January 1 and July 1 of each year. Ms. Malave will prepare the resolution upon receipt of the written revised cost proposal from Ms. Telmo. The board delegated Mr. Archuleta the authority to review the revised cost proposal and sign the board's final loan resolution.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 1:00 p.m.

Susana Martinez, President

9-28-2017
Date

Michael Brasher, Secretary

10/6/2017
Date