

**MINUTES  
of the  
FIFTH MEETING  
of the  
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**November 1, 2017  
Campus Union Building  
Eastern New Mexico University  
Portales**

**November 2, 2017  
Main Building — Board Room (Room 512)  
Clovis Community College  
Clovis**

The fifth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Bill McCamley, chair, on Wednesday, November 1, 2017, at 9:21 a.m. in the ballroom of the Eastern New Mexico University (ENMU) Campus Union Building in Portales.

**Present**

Rep. Bill McCamley, Chair  
Sen. Jacob R. Candelaria, Vice Chair (11/1)  
Rep. Alonzo Baldonado (11/1)  
Rep. Sharon Clahchischilliage  
Rep. George Dodge, Jr.  
Rep. Kelly K. Fajardo (11/1)  
Sen. Ron Griggs  
Sen. Richard C. Martinez  
Rep. Jane E. Powdrell-Culbert  
Rep. Debbie A. Rodella  
Sen. Nancy Rodriguez (11/1)  
Rep. Patricia Roybal Caballero

**Advisory Members**

Rep. Bealquin Bill Gomez  
Sen. John Pinto  
Rep. Sheryl Williams Stapleton

**Absent**

Sen. Craig W. Brandt  
Sen. Joseph Cervantes  
Rep. Harry Garcia  
Rep. Jimmie C. Hall  
Sen. Michael Padilla  
Rep. Patricio Ruiloba  
Sen. William E. Sharer  
Rep. Linda M. Trujillo

Rep. Brian Egolf  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Rep. Tomás E. Salazar  
Sen. Clemente Sanchez  
Sen. Jeff Steinborn  
Sen. Bill Tallman  
Sen. Pat Woods  
Rep. Monica Youngblood

**Guests Legislators**

Rep. Randal S. Crowder

Sen. Stuart Ingle

Sen. Cisco McSorley (11/1)

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Jeff Eaton, Staff Economist, Legislative Council Service (LCS)

Tessa Ryan, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, November 1****Welcome**

Dr. J.S. Elwell, president, ENMU, welcomed the committee to ENMU's main campus and noted that he assumed his role as president four months ago. He said that the campus has changed somewhat recently, in that the school has added some buildings and has improved the energy efficiency of others.

**Questions and Discussion**

In response to members' requests for additional information about ENMU, Dr. Elwell stated that: 1) the student body has grown to more than 6,000; 2) the university has been successful in its efforts to retain and recruit students and foster a culture of student support; 3) about one-third of students graduate within six years of entering, and the university is striving to increase that figure to two-thirds; 4) approximately 37.1% of students are minorities; 5) the university has a very low tuition and fee rate compared to other universities; and 6) the campus can accommodate about 1,000 students in its dorms, the quality and cost of which vary.

Members praised ENMU for recently having had its Portales and Roswell campuses recognized by the Legislative Finance Committee (LFC) as efficiently run higher education institutions.

On the subject of ENMU's Ruidoso branch's relatively low ranking in the LFC analysis and the problem of inefficiency among many of New Mexico's higher education institutions, a member asked about the university's plans to improve that branch. Dr. Elwell described the campus as relatively small and expensive and its student population, which has dropped by about one-half in the past seven years, as predominantly from the Ruidoso area. He noted that the

university is considering options for the school, including that of pursuing academic programs in wind energy, and is embarking on a search for a new president.

### **Efficiency and Safeguard Provisions in Statute, Rules and Contracts for State Grants, Loans and Tax Incentive Programs**

John Monforte, acting secretary, Taxation and Revenue Department (TRD), and Marquita D. Russel, chief of programs, NMFA, spoke on behalf of their respective agencies, as follows, about legal provisions for the safeguarding of public money applicable to the programs their agencies administer.

#### TRD

***Tax policy principles.*** Understanding the principles underlying tax policy is important to developing a strong tax system. The principles — adequacy, equity, efficiency, simplicity and accountability — are sometimes at odds with each other. Notably in this context, a state's revenue adequacy is often compromised by efforts to make the state competitive with other states through tax incentives. Also of note, it is often hard to determine whether a given tax incentive is the most efficient way to produce a desired outcome because of the limitations on information about desired outcomes and on information derivable from tax returns.

***Tax expenditures and incentives.*** A tax expenditure, which can take the form of a tax exemption, deduction or credit, is a deviation from the baseline system of taxation that gives special treatment to qualifying taxpayers. With exemptions, there is no legal obligation to report on amounts exempted, which improves efficiency in tax administration — but also diminishes accountability. Meanwhile, deductions reduce the amount of a taxpayer's total taxable income, and credits function as dollar-for-dollar reductions of tax due.

Since 2012, the TRD has been producing a tax expenditure report, which provides information on and classifies (as expenditure, non-expenditure or "arguable") each "deviation" from the tax base. The 2016 report includes 244 such deviations, 123 of which are classified as expenditure, 98 as non-expenditure (i.e., they serve a purpose other than to provide special tax treatment) and 23 as arguable. A table on page 26 of the handout shows the 10 most expensive expenditures, with the sale of food gross receipts tax deduction, and the hold harmless distribution associated with it, ranking highest — by a wide margin.

***Tax incentive safeguards; considerations for proposed tax incentives.*** Measures and tools can be used to safeguard public money and help ensure that the intent of a tax incentive program is met, including providing for a clear statement of purpose and clear qualification standards in statutes, agency oversight and monitoring, statutorily clear separation of agencies' roles, statutory caps and, especially, the overall simplification of the tax system.

***Highlighted tax credits.*** Some examples of the state's tax credits are the high-wage jobs tax credit, the rural job tax credit and the film production tax credit. The high-wage jobs tax credit has paid over \$215 million in refunds in a recent eight-year period and has been adjusted to

limit the receipt of the credit by unintended recipients. The rural job tax credit, similar to the high-wage jobs tax credit, features a two-tier structure and limits the confidentiality of taxpayers claiming it; the latter feature allows for more comprehensive reporting on the credit. Its cost has fluctuated over the last seven years. Meanwhile, the film production tax credit, which is very complex and requires much work on the part of applicants to claim, involves the participation of the Economic Development Department (EDD), is capped at \$50 million and, among the state's tax credits, has one of the highest rates of claim approval.

### NMFA

The NMFA is a broad-based finance agency that employs many tools to maximize efficiency and safeguard program resources. By law and its own initiative, the NMFA engages in partnerships with other agencies; in many cases, those agencies assist in project selection and program marketing. Several NMFA programs involve third-party lenders that employ their own safeguard mechanisms. In its lending, which is the predominant funding form the NMFA offers, the NMFA considers a potential borrower's organizational management, historic and current cash flows and the conditions of its industry and local economy. All NMFA loans are fully secured, provide a recourse for nonperformance and require performance reporting, including an annual financial review. Moreover, the NMFA often involves its partner agencies in ensuring that projects are progressing appropriately.

### Questions and Discussion

***Proposed tax legislation.*** A member expressed the opinion that there is a general lack of clarity around tax policy and expressed the belief that, given the complexity of much tax legislation, the TRD should be actively involved in drafting tax bills and involved during their course through the legislative process. Acting Secretary Monforte responded that TRD staff respond to tax bills through fiscal impact reports and through direct communications and that the degree of response and involvement depends in large part on the wishes of the bill sponsor. He encouraged legislators to seek drafting guidance from the TRD, which includes about 1,000 employees with expertise in a range of areas, and also to work with other agencies that can provide other types of expertise.

Responding to comments about proposed large-scale tax reform efforts, Acting Secretary Monforte said that policymakers should move forward with such a proposal only if they are confident that its enactment will not have devastating effects on revenue generation.

***Film production tax credit.*** A member commented that the film production tax credit is generating an enormous economic return and expressed hope that it will continue to promote growth in the state's film industry. Acting Secretary Monforte praised the EDD for its role in administering the credit and remarked that its structure is effective.

***State's fiscal health.*** Responding to a member's comment about a recent report citing New Mexico as one of the states most poorly positioned, financially, to face a recession, Acting Secretary Monforte expressed the views that the state is overly dependent on revenue generated

from oil and gas production and that, though it has recently taken steps to reduce that dependency, it needs higher reserves, along with statutory mechanisms to increase those reserves, to buffer against an economic downturn. He further pointed out that less volatility in the distributions to local governments is also needed and suggested that the tax structure should be simplified and the corporate income tax reformed.

A member noted that the state's dependence on federal spending also contributes to its fiscal vulnerability, particularly given the prospect of certain drastic reforms at the federal level and given the state's low reserve levels; the member also remarked that the tax reform measures proposed by Representative Jason C. Harper would probably not overcome the effects of those reforms. Acting Secretary Monforte said that New Mexico would suffer financially from a substantial decrease in revenue from federal spending, regardless of what tax structure were in place in the state. When asked by the member whether tax increases would be needed to overcome an economic downturn, Acting Secretary Monforte responded affirmatively.

A member noted the large amount of money at stake in various tax protests and stated that the TRD should work on resolving those issues. Acting Secretary Monforte replied that the TRD is approaching the issue using its own legal resources and by contracting with a private law firm. He also noted that tax protests are a normal part of a tax system and that the TRD recently changed its tax advocate position from exempt to classified.

A member requested of Acting Secretary Monforte the figure representing the cost of the railroad fuel deduction to the state.

***Tax expenditure reporting.*** A member proposed that the cost of the hold harmless distributions be stated separately from that of the food and health deductions. Acting Secretary Monforte responded that the TRD will consider making that distinction in future tax expenditure reports.

A member stressed the importance of access to information to help improve the state's ability to scrutinize tax incentives and remarked that: 1) though that access has improved over time through the publication of the tax expenditure report, there remains much work needed in this area; and 2) The Pew Charitable Trusts can help the state in that effort. Acting Secretary Monforte stated that a key barrier to knowing more about the effectiveness of tax expenditures is confidentiality laws. The member replied that the past two executive administrations have actively resisted legislative efforts to amend those laws.

## **Minutes**

The committee approved the minutes from the September meeting without objection.

## **New Mexico Renewable Energy Transmission Authority (RETA) Update: Existing Challenges to Timely Expenditure of Funds Process Improvement**

Robert E. Busch, chair, RETA, Lynn Mostoller, general counsel, RETA, and Loralee Hunt, manager, project development, Wind Business Development, Pattern Energy Group, formed a panel to discuss the status of the RETA and various wind energy projects in the state.

### RETA

Mr. Busch summarized his educational and professional background — including that he has a master's degree in electrical engineering, degrees in business and finance and experience working for a major utility company — and continued as follows.

***Background on the RETA and renewable energy development.*** The RETA was established in 2007 to capitalize on the state's renewable energy potential and facilitate the transmission of wind and solar energy to markets. The RETA's mission is to plan, finance, develop and acquire high-voltage transmission lines and storage projects to promote economic development. Given the changes in renewable energy technology, the decrease in the cost of renewable energy generation in the past 20 years and the importance for security of diversifying the nation's energy supply, the RETA's mission and activities are of particular consequence.

***RETA project policies.*** Since its inception, the RETA has developed policies that guide project development. The authority works in partnership with project developers to create financing plans. Its support for a given project increases as the project's viability strengthens. The RETA recently updated its project policies to establish guidelines for developers' contributions, which: 1) the RETA is authorized by law to receive; 2) are neither project-specific nor subject to refund; and 3) the RETA depends on entirely because of the vetoes of its recent state appropriations. The RETA continues to comply with its enabling act's requirements for financial oversight.

***Updates on RETA-sponsored projects.*** The RETA is involved in the Western Spirit Clean Line project, a \$150 million, 140-mile transmission line co-developed and owned by the RETA; the SunZia project, a 515-mile transmission project in New Mexico and Arizona; and the High Lonesome Mesa project, a 100-megawatt wind farm in Torrance County. Concerning the Western Spirit project: 1) many necessary approvals have been secured and others are being sought; 2) Public Service Company of New Mexico has agreed to integrate the line into its grid; and 3) operation could begin in 2019. Concerning the SunZia project: 1) progress, which had been stymied by financial issues, has resumed; 2) federal approval has been given to select Pattern Energy Group as the preferred anchor customer; 3) many other necessary approvals are being sought; and 4) operation could begin by the end of 2020. Concerning the High Lonesome Mesa project, which is in operation: 1) the RETA issued \$50 million in revenue bonds in 2010; and 2) millions of dollars associated with the project are, and will continue, flowing to Torrance County, Estancia schools and local landowners.

All three projects have begun, and will continue, bringing environmental and economic benefits — in the form of state and local tax revenue, job creation and capital investment — to New Mexico. In this sense, the legislature's having established the RETA is proving beneficial.

***RETA funding.*** A table on page 14 of the handout shows the history of RETA funding, including many years in which the RETA received no state money, but relied on private sources for funding. The authority is requesting \$250,000 in appropriations for fiscal year (FY) 2019 because: 1) it is a state entity; 2) it is not yet self-sufficient; 3) it has no staff, only a board; 4) it cannot suitably conduct outreach without a staff; and 5) funding from the state would strengthen the RETA by diversifying its funding sources; that stability, in turn, would improve developers' confidence in the entity.

The RETA's recent audit, which was submitted to the state auditor, resulted in no findings.

#### Pattern Development

Ms. Hunt continued as follows.

***Transmission enabled wind.*** Pattern Development, the largest wind developer in the state, has long-term visions for its projects and strives to develop positive relationships with the public and private communities with which it interacts. The company was recently awarded federal approval to supply renewable energy through the SunZia transmission line, for which the company is currently focusing on the Village of Corona and for which the company has been actively seeking and securing public and private land-lease agreements, permits and financing. The transmission line crosses federal, state trust and private lands in approximately equal proportion.

#### Questions and Discussion

***The RETA — history and status.*** Mr. Busch clarified that the RETA: 1) formerly had two employees on staff; 2) now, has only a board that meets quarterly, a general counsel, part-time administrative support and part-time accounting support; 3) at one time, did not need state money for operations because of private-source funding; 4) receives a different return for each project in which it invests; and 5) will probably be self-sufficient once the Western Spirit project reaches fruition.

***Compensation for private landowners.*** Mr. Busch clarified that landowners associated with the projects receive royalty payments and other payments for the use of their land. Ms. Hunt specified that: 1) Pattern Development treats the landowners it works with equally, and they are compensated at an average of \$7,000 to \$10,000 per turbine; 2) the SunZia project involves approximately 39 private landowners, and of those, only three have yet to reach an agreement on compensation with the company; 3) because New Mexico's prime wind resources tend to be in rural areas, a relatively low number of people are affected by the presence of

turbines; 4) a turbine requires about five acres of land; and 5) compensation for landowners is on a gross royalty basis that provides for minimum payment levels.

***Competition with other states.*** Ms. Hunt explained that California's recent establishment of renewable energy standards has resulted in a push within New Mexico and Wyoming to connect renewable energy transmission lines to deliver power to California. She noted New Mexico's advantage of having wind that, because of the times of day and night it blows, promotes consistency in power supply.

***Broadview Wind project.*** Ms. Hunt explained that the Broadview Wind project, which will connect wind power to a substation for delivery to the California market, is under way. For New Mexico to reach the California market before Wyoming does, the project will have to proceed timely, she said, and added that the recent line-item vetoes of appropriations to the RETA have fostered uncertainty among businesses considering partnering with the RETA in this pursuit.

***Statutory floor for percentage of power from renewable resources.*** Mr. Busch explained that the 30% minimum threshold applicable to projects' renewable resources is reasonable, considering the way the grid works, and he recommended that the number not be changed. Ms. Mostoller noted that the statute as written allows the RETA more flexibility in forming partnerships than it would have if that figure were higher.

***Renewable energy storage.*** Mr. Busch stated that there are no large renewable energy storage facilities in the nation and posited that utility-scale storage technologies probably will not develop within the next decade but possibly will in the five years after that period.

***SunZia project.*** Ms. Hunt updated the committee on the progress of the SunZia project, noting that: 1) a determination of how much firming source is needed is under way; 2) agreements with the federal Department of the Interior and Department of Defense were signed during the Obama Administration; and 3) agreements to bury certain segments of the line where it would otherwise interfere with the White Sands Missile Range have been reached. She also said that all energy generated from the SunZia project will be exported.

***Turbines.*** Ms. Hunt said that the components for Pattern Development's turbines derive from sources around the world and are assembled in the United States and that the company has not explored the possibility of manufacturing turbines in New Mexico.

***Future of the RETA and renewable energy in the state.*** Several members expressed support for the RETA's mission and an interest in ensuring that the authority receive the appropriation it is requesting; members also recognized the benefits that ensue from the authority's work, including financial investments in rural communities and job creation. Ms. Hunt expressed her view that there are many such project-related economic opportunities in the



state, and that New Mexico, should it choose to pursue the course, could be a leader in wind and solar energy development and, perhaps, renewable energy storage.

### **Regional Water Infrastructure Funding and Water Infrastructure Update**

Michaelene Kyrala, policy and legislative director, Department of Environment (NMED), discussed water infrastructure funding challenges, progress and a related partnership as follows.

**Challenges.** The problem of — and discussions around solutions to — inefficiency within the water infrastructure project funding process have persisted for decades. Often, the problem stems from: 1) entities' noncompliance with audit requirements; 2) the slower spending pace inherent in the project planning and design phase; 3) funding inadequacies; 4) entities' lack of managerial, financial and technical expertise; and 5) entities' unwillingness to borrow money. For example, in the Wastewater Facility Construction Loan Fund (WFCLF) program in FY 2015, over \$21 million in loans — \$4 million of which was offered at a 0% interest rate — was declined. To improve efficiency in water infrastructure funding, lawmakers could condition capital outlay awards on the receipt of other, loan-oriented funding; however, it is worth noting that loan offers will not be extended to entities deemed unable to service debt and repay loans.

**Progress.** In efforts to overcome these challenges, the NMED has promoted relevant statutory and rule changes and has instituted a partnership. Namely, in the WFCLF program, eligibility has expanded, and for certain types of projects, loan terms have been extended from 20 to 30 years and the maximum interest rate has been decreased from 3% to 2.375%.

**Partnership.** In 2013, the NMED formed the Water Infrastructure Team, consisting of related state and federal agencies and nongovernmental organizations, to address complaints about funding program deficiencies and to improve interagency collaboration. In 2014 and 2015, the team embarked on several initiatives, including the development of capacity assistance contracts; the creation of a simple, uniform asset management plan, a local government funding source guide and a website for information dissemination; a survey of water infrastructure needs; and a public awareness campaign in conjunction with The Value of Water Campaign. In 2016, the team focused on issues around project funding, including by forming a subgroup to review certain projects (brought to its attention through the needs survey) for program eligibility and provide information about those funding sources. This year, the team has continued that endeavor and has researched best state practices for collaboration among programs. The team plans to continue its work of helping communities access fair funding for their water infrastructure needs.

**Construction Programs Bureau report.** Ms. Kyrala highlighted a July 2017 report on infrastructure development that was prepared by the Construction Programs Bureau of the NMED. The report is prepared twice a year and shows the progress of the water, wastewater and solid waste projects administered by the bureau, she said.

## Questions and Discussion

***Water system emergencies.*** Responding to a member's comment that water systems at times encounter emergencies and those who oversee them are unsure where to turn for help, Ms. Kyrala noted that page five of the report shows a map of the bureau's service areas, the project managers who oversee those areas and the managers' phone numbers. She encouraged committee members to call her or the appropriate manager when such a situation arises.

***Loan acceptance.*** On the topic of entities' willingness to accept loans for water projects, Ms. Kyrala indicated that: 1) some entities, which are capable of repaying them, turn down 0% interest loans; 2) the state's capital outlay system, which offers no-cost funding for such projects, serves as a disincentive to entities to borrow money for the projects; 3) the NMED has not explored other states' measures to encourage entities to accept loans; 4) with the changes recently made to the WFCLF program, more entities might be encouraged to accept program loans; and 5) the legislature can help overcome the challenge by conditioning capital outlay funding on supplemental funding from loans. Ms. Kyrala also clarified that: 1) the NMED works with councils of governments in this area; and 2) the team is working to help make entities aware of the various funding programs' time lines. Responding to a member's request that the NMED strive to develop a uniform application form accepted by all agencies involved in project funding, Ms. Kyrala said that, toward the goal of making the various project application processes more uniform, the NMED has worked with state agencies to accept a single form of asset management plan, which is a key component of funding. Ms. Kyrala elaborated on aspects of the chart on page five of the handout, including that the determination of grant funding is made using a standardized scoring process.

### **Water Trust Board (WTB) Update: Existing Challenges to Timely Expenditure of Funds Process Improvement**

Tom Blaine, P.E., state engineer, and chair, WTB, and Ms. Russel gave an update on the WTB program.

Mr. Blaine prefaced the presentation by noting that the board worked closely with NMFA staff to make improvements to the WTB program in the last few years. He said that, in his role as chair, he has reviewed program policies and procedures in response to concerns voiced by the legislature, including that program money is spent too slowly and that the project authorization list reaches the legislature too late relative to the timing of legislative sessions. He said the board has instituted changes to address those concerns and that, moving forward, the board will continue its efforts at improving program efficiency.

Ms. Russel continued as follows.

***Program history.*** The WTB program has been in effect for 15 years and has spanned three "eras": 1) that in which the program functioned as an extension of the capital outlay program, wherein funding was in the form of grants, and evidence of project readiness was not a condition of funding approval; 2) that in which the WTB embraced policies imposing readiness

standards; and 3) that in which those standards were heightened. Specifically, in 2015, the WTB began requiring that projects be fully evaluated before they could be proposed for legislative authorization, and it made changes that improved transparency and predictability.

***Project evaluation criteria.*** All projects are evaluated using a set of weighted criteria; 50% of project ranking hinges on health and safety factors, 40% on factors established by statute and 10% on a regionalization factor related to the state water plan.

***Project awards and expenditures.*** Since 2007, the WTB has required that an entity spend a certain proportion of program funding received before it receives a new award; in 2016, the policy was changed to exclude a project from inclusion on the project authorization list if the entity had not spent the threshold amount. A table on page six of the handout illustrates how the program improvements have increased spending efficiency over time. A chart on page seven shows a trend shift in 2012. Before then, in each program year, more program money was awarded than expended; after that, the converse was true. As can be seen in the chart on page eight, the proportion of amounts expended to amounts awarded has steadily increased over time.

***2018 application cycle.*** For the current application cycle: 1) 83 notices of intent to file an application were received; 2) 73 applications, for projects totaling over \$72.4 million, were filed; 3) five of those applications were for projects deemed ineligible because of failure to meet spending requirements; 4) 63 of those applications will be evaluated by the seven-agency review team, whose recommendations will be presented to the board at its November 29 meeting; and 5) a final project list will be presented to the committee at its December 1 meeting.

#### Questions and Discussion

***Eastern New Mexico Water Utility Authority (ENMWUA) project funding.*** Responding to a request for clarification of whether the ENMWUA's application for WTB funding was recently denied, Mr. Blaine offered the following: 1) the WTB project review committee determined that the utility authority did not meet expenditure requirements, as outlined in the presentation, and so its application could not be considered without a waiver from the board; 2) at the board's recent meeting, the utility authority requested the waiver, but the board denied the request by a vote of six to three; 3) on the motion to grant the waiver, Mr. Blaine voted affirmatively because of the utility authority's unique position of having access only to ground water, the declines in that area of the Ogallala Aquifer, the importance of the utility authority's decades-long Ute Reservoir project and the broad-based measures for ensuring water security, which involve regionalization and a bottom-up approach, and which consider the region's economy and communities, being pursued by the utility authority; 4) the funding request, for \$2.9 million, is for a small portion of the project, but the funding would help facilitate the project's incremental development; and 5) the utility authority actively seeks out diverse sources of funding, including federal funding, for the project. The member stressed the importance of the project to the region and its communities and of the WTB funding for helping the project move forward.

In response to the question of what can be done at this point to help secure the ENMWUA's funding, Mr. Blaine indicated that: 1) the legislature could add the project to the project authorization bill; or 2) the committee could request that the WTB reevaluate the request for a waiver, though were the board to take that step, it might delay the review of other projects and otherwise interfere with the program's time line. Ms. Russel added that: 1) the value of the projects whose applicants requested waivers constitutes about one-fourth of the funding requested; 2) she believes that the WTB's decision to deny the waiver was grounded in its focus on ensuring that money is timely expended; and 3) staff did not have a basis in program policy for recommending the project for funding, nor for recommending the grant of the waiver.

Responding to a member's questions about options for appealing board decisions, Ms. Russel indicated that: 1) WTB program rules allow an applicant whose request for waiver was denied, as in this case, to petition the board to reconsider its decision, or the applicant could appeal the decision to district court; 2) in the program's history, only two applicants have appealed board decisions to district court; in one of those cases, the parties reached a negotiated settlement, and in the other, the court upheld the decision; 3) to date, the ENMWUA has not requested a reconsideration of the board decision; and 4) the board could reconsider the decision at its next scheduled meeting or at a special meeting called by the chair, notice for which would have to be given about 15 days in advance. She further elaborated on the ENMWUA request, saying that: 1) the utility authority received funding in 2014 that remains unspent; and 2) in the NMFA's estimation, the utility authority lacks authority to generate revenues sufficient to repay the loans in question; the project finance plan establishes that other public entities will generate the revenue.

Ms. Russel clarified that the project authorization bill lists projects in general terms, without dollar amounts and whose total value exceeds the amount projected to be available for funding; that way, it can be ensured that all funding will be used, even if one or more projects become ineligible after the bill is enacted. She added that projects are not listed in order of priority. A member commented on the undesirable possibility that the board's approval for the ENMWUA project would displace another otherwise qualified project.

***Policy for timely expenditure.*** Ms. Russel elaborated on the recent changes in the WTB program's policy to encourage the timely expenditure of program funding, saying that the new policy added a preliminary target — October 3 — for spending a certain amount of program funds. Mr. Blaine added that the policy was enacted to accelerate the pace of spending but that the board left open the possibility of waivers to allow for the accommodation of applicants with special circumstances.

***Program funding.*** Ms. Russel clarified that the program requires that a certain portion — no less than 10% — of funding be in the form of a loan and that the portion level depends in part on whether the applicant has a ratepaying constituency.

***Condition of water systems; water quality.*** Mr. Blaine stated that the Drinking Water Bureau of the NMED does an excellent job of ensuring through testing that drinking water is safe for consumption by the public. Were tests to reveal that the water is unsafe to drink, which might be the case in one or two small systems in the state, the bureau would notify the affected public and recommend that they employ safety-related measures, he said.

***Program appropriation.*** Ms. Russel clarified that funding from the severance tax bonding program otherwise dedicated for the current year's WTB program was swept during the 2017 special legislative session for fiscal solvency. She also said that the measure mostly affected larger-scale water projects like that of the ENMWUA.

## **Recess**

The committee recessed at 3:47 p.m.

## **Thursday, November 2**

The committee reconvened at 9:10 a.m. on Thursday, November 2, with Representative McCamley chairing the meeting.

## **Welcome**

David Lansford, mayor, City of Clovis, and Dr. Becky Rowley, president, Clovis Community College, greeted the committee and gave updates on aspects of their work in their respective roles.

## **Clovis Area Water Supply**

Referring to maps showing water saturation levels in the Clovis region that were distributed to the committee, Mayor Lansford discussed the status of the region's water supply and management as follows. A map from about 1940 shows that the Southern High Plains Aquifer around Cannon Air Force Base and its vicinity had relatively high saturation levels. A map of those measures from 1977 shows declines in those levels. Maps showing projections of those measures in 2025 and 2040 show substantial further declines.

The City of Clovis is involved in a large-scale project to convey water from Ute Reservoir to the region — and in so doing, to connect population centers — but it is also pursuing avenues for accessing ground water reserves and conserving water in the period before that project is complete. For instance, the city recently purchased the water rights of an irrigated farm and took the farm out of production. The saturation levels associated with the property have since risen.

Agriculture is important to the region's economy. For that industry and the entire community to be sustained in the interim period, the industry needs to adopt, and farmers need an incentive to convert to, certain sustainable practices around water use. Maintaining a sustainable water supply is critical for recruiting business to the area and for creating jobs.

Mayor Lansford expressed appreciation for the opportunity for reconsideration of WTB funding of the Ute Reservoir project and noted that: 1) to achieve the desired economy of scale and justify construction on the project, the project needs at least \$25 million; and 2) the city is able and willing to repay the money it borrows for the project.

#### Clovis Community College

Dr. Rowley spoke as follows about Clovis Community College. The school, with between 3,400 and 3,800 students, is a medium-sized community college with a focus on health and nursing programs. The college has educated 70% of the nurses in the immediate area. It also has programs to prepare students for careers as physical therapy assistants and radiological technology assistants, careers associated with less job opportunity but for which the college meets all of the area's workforce needs, and as emergency medical technicians.

The college focuses on student retention and on serving the educational needs of the community. It works diligently to retain its students — many of whom are parents, hold down jobs and face other obstacles — from semester to semester.

The college's original facility was built in 1980, and it has not been changed much since then. Rather than pursue elaborate building projects, the college focuses on changes in line with enrollment growth and program need, on maintaining up-to-date facilities and on energy-efficiency, cost-savings projects.

#### Questions and Discussion

***Ute Reservoir project.*** A member suggested that the ENMWUA seek possible funding for the Ute Reservoir from private lenders, whose loan rates might be lower than those of the NMFA. Mayor Lansford explained details about the initial WTB denial of funding for the project, including that: 1) the reason given for the denial is that there is insufficient assurance that the communities involved in the project would repay the loan; and 2) the applicant is working on appealing the decision. A member stressed the importance of the project to residents in the eastern part of the state and expressed a willingness to help in the appeal process.

***Regional water supply.*** Mayor Lansford offered the following in response to questions about the region's water supply: 1) Cannon Air Force Base actively practices water conservation; 2) the declines in saturation thicknesses illustrated by the maps are primarily attributed to irrigation farm practices and the production of feed stock for dairy cattle; that is, the use of mined water from sources with minimal recharge rates; 3) the practices referred to in the presentation that are being promoted for adoption by the agricultural industry include dryland farming, or growing feed stock in lower concentration, which would conserve water and allow the aquifer to recharge and rest; 4) employing those practices would require that feed stock — which is mostly corn — be grown over a larger area or imported by rail; and 5) if such practices are not adopted, the region will face a water shortage crisis.

A member suggested that policymakers in the region explore other possibilities for water conservation and expressed support for providing them with the tools they need to contend with the issue.

***Clovis Community College.*** A member suggested that the college explore the possibility of offering programs in the area of water and sewer systems, for which the state faces a workforce shortage.

Dr. Rowley clarified that: 1) about 15% of the college's students are from Texas; 2) the college participates in the border state participation agreement and offers tuition rates attractive to Texas residents; 3) the college employs a full-time recruiter who recruits strategically at high schools in the area, in Albuquerque and in nearby areas of west Texas; 4) the college enrolls as many nursing students as it can accommodate and is limited by the capacity of the opportunity for clinical practice in the area; 5) the college tracks its graduates' job placement, particularly through its alumni association and the ongoing contact between former students and program chairs; and 6) the majority of the college's nursing program graduates stay in the state, in part because the pay for nursing jobs is better than in Texas.

Members praised the success of the college, its work to educate students from the broader community and its early participation in a dual-credit, distance education program.

#### **Statewide Broadband Infrastructure: Capital Programs and Projects and Federal and Other Funding Source Availability**

Darryl Ackley, secretary, Department of Information Technology (DoIT), and Maria Sanchez, general counsel and policy director, DoIT, discussed broadband infrastructure in the state. Secretary Ackley spoke as follows.

***Recent accomplishments.*** Many state agencies and other entities have made concerted efforts to expand broadband — i.e., increase the access to fiber optic connectivity — to public schools in the state and to make that access affordable. The effort has paid off; currently, 99% of schools are connected to fiber (the only available technology that will not become obsolete), and the cost of that connectivity has dropped by 52% from a year ago. Further, nearly two-thirds of school districts are paying less for internet this year than they paid last year.

Notably, however, the demand for wireless capabilities grows, and will continue to grow, at a rate that far outpaces the ability to deliver wireless services.

***Publication of information on broadband.*** The DoIT's website contains extensive information related to broadband research and resources. It features the DoIT's statewide final strategic plan from 2014, which contains statewide broadband maps.

***Recent efforts to improve broadband infrastructure in the state.*** In its recent history, the DoIT has pursued the following initiatives: 1) the Broadband Technology Opportunity

Program, begun in 2010 with \$227 million in federal grant funding for fiber, last-mile, wireless and sustainable adoption projects; 2) the Broadband Deficiencies Correction Program, begun in 2014 to use \$50 million over five years to correct broadband infrastructure deficiencies affecting public schools; 3) the Broadband for Education Initiative, begun in 2015 with the goal of providing affordable connections at one megabyte per second (Mbps) per student by 2018; 4) the DoIT's Office of Broadband and Geospatial Initiatives (OBGI), begun in 2016; and 5) legislation enacted in 2017 to improve broadband access and infrastructure.

***Definitions and considerations.*** The following definitions and considerations relate to efforts for improving broadband infrastructure: 1) broadband, whose rate is defined by the DoIT as 25 Mbps down and three Mbps up; 2) fiber, which includes both dark and lit; 3) fiber to the premise, or FTTP, and fiber to the home, or FTTH; 4) point of presence, or POP; 5) distribution, defined by three tiers; and 6) considerations such as infrastructure costs, operation and maintenance costs, regulations, reliability and rights of way.

***Funding models and sources.*** There is a multitude of models for funding for broadband infrastructure but no "one size fits all" model. Often, broadband funding programs are limited to a specific domain, like education or telehealth. Efforts at funding broadband infrastructure can take the form of: 1) laissez faire, the simplest approach; 2) government-owned and -operated networks, the opposite of laissez faire; 3) government-funded projects; 4) government-enabled projects; 5) regional collaboratives; or 6) public-private partnerships. The last four of those are considered hybrid approaches and are common. In New Mexico, the OBGI has taken an "all of the above" approach and engages in: 1) planning, mapping and analysis; 2) technical support; 3) public-private coordination and capacity building; 4) identification and promotion of best practices; 5) maximization of federal fund benefits; and 6) digital literacy and awareness.

Some of the funding sources available to government and private sector entities from the federal government for broadband infrastructure are: 1) the Universal Service Administrative Company, wherein fees applied to cell phone bills generate revenue to subsidize discounted rates for certain public entities and to expand broadband connectivity; and 2) the U.S. Department of Agriculture's Rural Utilities Service program, which offers loans and grants for broadband infrastructure to rural areas. Some of those sources provided by the state are: 1) the recently enacted Public Regulation Commission (PRC) State Rural Universal Service Fund; and 2) the Broadband Deficiencies Correction Program for public schools; the Local Economic Development Act program; NMFA-administered programs; the Tribal Infrastructure Project Fund; and the Colonias Infrastructure Project Fund. Each of these funding programs has a unique set of requirements and restrictions. The DoIT actively seeks out funding opportunities and helps in navigating their complexities.

## Questions and Discussion

***State's efforts to build out broadband in rural areas of the state's northwest region.*** Secretary Ackley indicated that there is no single project or plan to expand broadband in the Acoma-Grants-Milan area of the state, but several initiatives are under way, including: Connect



America Fund program initiatives; Frontier Communications initiatives; a collaboration between the University of New Mexico and the Navajo Nation; Navajo Nation initiatives; collaborations between the DoIT and the Pueblo of Laguna and the DoIT and area school districts served by the state's public school funding formula; and an application by the Continental Divide Electric Cooperative to the NMFA for \$10 million to build out its infrastructure, in partnership with the Kit Carson Electric Cooperative. Robert Coalter, chief executive officer (CEO), NMFA, who was in the audience, added that the application is for the new markets tax credit program, that the applicant wants to use the rights of way of its existing electricity lines and that it is hoped that the loan will close by the end of the year.

Secretary Ackley further explained that the DoIT helps with projects and increases awareness of related funding opportunities, but it is ultimately up to local governments or the private sector to pursue such projects.

Ms. Sanchez noted that the PRC is in the process of promulgating rules for the State Rural Universal Service Fund program, whose enabling law was recently enacted.

***Broadband connections to state agencies.*** Secretary Ackley noted that the state has, overall, improved the broadband connections to state agencies but that those agencies' demand for connectivity has risen.

***State's plan for improvement.*** Responding to a member's comment that New Mexico is still behind other states in connecting its residents to broadband, a member's comment on the importance of those connections to the state's economy and a member's recommendation that the state develop and pursue a specific strategy for improving statewide broadband infrastructure, Secretary Ackley remarked that: 1) such a specific strategy has been developed and, step by step, is being pursued according to the degrees of need and funding availability; 2) New Mexico has not adopted a model like Kentucky's because it would not be financially viable; and 3) in the next year, improvements in broadband infrastructure will most likely accelerate. The member recommended that, in its last year under the current administration, the DoIT strive to develop a statewide solution to the state's broadband infrastructure problems and prepare a step-by-step plan for the next administration. Secretary Ackley indicated that such a plan is being drafted.

A member suggested that states like Kentucky, which are largely rural and mountainous, might attribute their broadband success to the enactment of public-private partnership laws. In response, Secretary Ackley said he believes that those laws might have played a role those states' outcomes but that there is some disagreement about whether those projects can be considered to be successful. He further stated that, for a public-private partnership to be successful, it must overcome local control and regulatory and procurement issues and have certain degrees of cooperation and legwork from the partners.

## **Spaceport Authority (SA) Update and Outlook**

Daniel Hicks, CEO, SA, noted that he has been in his position for 11 months. He gave an update on the spaceport as follows.

**Key points.** Of particular note: 1) the United States has a renewed focus on leading the world in space exploration; 2) the commercial space industry continues to expand worldwide; and 3) Spaceport America is an economic engine, having created an estimated 100 jobs in FY 2018 and generated \$9.2 million in customer revenue to date.

Recognizing that it is in a position to grow, the SA is requesting that the state fund it at its FY 2012 level of \$1 million, up from its FY 2018 level of \$375,000. The SA also asking lawmakers to support legislation protecting commercial space customers.

**Aerospace activity and customers at the spaceport.** Aerospace activity at the spaceport increased markedly in FY 2017; the spike reflects a corresponding uptick in the nationwide activity of the commercial space industry. The spaceport serves five aerospace customers and expects more. One of those customers, Virgin Galactic, recently presented on its aerospace program. The company has an impressive overall portfolio and an entrenchment in New Mexico. There have been many launches of payloads into space and high-visibility space testing — including some involving White Sands Missile Range and the National Aeronautics and Space Administration — at the spaceport, and the future demand for launches from the spaceport is solid.

**Educational outreach; Spaceport America Cup.** Spaceport America also engages in educational outreach and hosts virtual field trips in which spaceport personnel communicate remotely with classroom students. Since the program launched in February, 17 classrooms in New Mexico have participated. Meanwhile, in June, the spaceport hosted its first Spaceport America Cup, an international intercollegiate rocket engineering competition. The event attracted 1,100 students and a total of 1,622 visitors to the spaceport, 82% of whom were from out of state and some of whom represented sponsors interested in recruiting the students to their workforces. Overall, the event had a positive economic impact on the state and provided the opportunity to leave its participants with a favorable perception of New Mexico.

**Current and future growth in the commercial space market.** Spaceport America anticipates growth in its revenues from suborbital launches (for research, astronaut experience and university support purposes) and orbital launches. Spaceport America also sees the prospect of serving as a point-to-point transportation hub. These expectations are supported by information in a report published recently by Bank of America Merrill Lynch in which it was predicted that the commercial space market will grow in value from its 2016 level of \$339 billion to \$2.7 trillion in 2045. Meanwhile, news agencies are reporting that Saudi Arabia is investing heavily in Richard Branson's space companies and that venture capitalists, likewise, are investing billions of dollars in space companies. Like New Mexico did when it established the spaceport, these entities see the promise of commercial space-related investments.

***Comparison with other spaceports.*** Increasingly, other states are seeing the high potential of commercial space investments and pursuing commercial space endeavors. New Mexico, however, has a competitive edge over other states in the spaceport arena. First, as air traffic becomes increasingly congested across the nation, Spaceport America, by virtue of its proximity to, and collaboration with, White Sands Missile Range, will continue to boast 6,000 square miles of restricted airspace. Furthermore, Spaceport America offers favorable weather patterns, a relatively high launch-start elevation, air free of corrosive salt, a low area population density and a remote location with around-the-clock security. A table in the handout shows the relative advantages (in green boxes) of Spaceport America over other spaceports and its relative disadvantages (in orange boxes) to them. A key advantage is that Spaceport America can accommodate new space technologies.

***Inaugural National Space Council; microgravity research; New Mexico's legacy of space exploration.*** Further underscoring the promise of the state's investment in the spaceport: 1) the recently formed National Space Council met recently and discussed the goal of the United States becoming a world leader in publicly and privately sponsored microgravity research, including in such areas as medicine; 2) Spaceport America is in an excellent position to support those research efforts; and 3) in the near- to mid-term, there is considerable opportunity in the launch of low earth orbit satellites and habitats and in point-to-point transportation with spaceplanes. New Mexico, with its rich history of space exploration, continues to occupy a strong position to take advantage of these and other space-related developments.

#### Questions and Discussion

***Microgravity research applications.*** Mr. Hicks affirmed a member's suggestion that microgravity research might help develop ways to contend with water shortage issues on Earth.

***Private investment in the spaceport.*** Mr. Hicks indicated that the SA has looked at the possibility of financing through private investment and through investment pools but that more research in the area and staff are needed before such an initiative can be pursued.

***Support for the spaceport.*** Responding to a member's question about how leaders in the state can help support the spaceport, Mr. Hicks suggested that lawmakers: 1) adopt the mindset that the spaceport, particularly because of its market advantages, is a promising economic engine with the potential to diversify the state's economy; 2) provide for the spaceport's continued financial sustainment and, through words and actions, acknowledge that the spaceport is worthy of state support; and 3) support the proposed legislation protecting commercial space customers. He added that other spaceports enjoy the advantages of their states' generalized support.

***Capital projects.*** Mr. Hicks noted that the SA is pursuing several capital projects, including the construction of a southern road to the spaceport, which is critical to the spaceport's development. He also noted that the locally generated tax revenue, along with all other sources of its funding, are critical to the SA and that, when it becomes more self-sustaining, the SA will work with the local counties to sunset the tax.

***Proposed commercial space customer protection legislation.*** Mr. Hicks elaborated on the proposed legislation he mentioned in his presentation by saying that the act would allow the spaceport's customers to keep shielded from public view information that gives them a competitive edge in their industry. He added that the intent of the legislation is not to protect the SA from the exposure of information related to its use of revenues.

***Budget requests.*** Mr. Hicks clarified that the SA's additional appropriation request would allow it to expand from 20 to 26 full-time employees — some of whom would be aerospace engineers who work with customers and attract business and one of whom would be an aerospace manager — whose work will be critical once commercial flights begin. He added that: 1) having those employees is critical to the SA's ability to grow; 2) the SA currently has 16 employees and four vacancies; 3) many existing employees are highly strained because of the staff shortage; 4) the appropriation would also be used for maintenance and information technology infrastructure; and 5) because of cuts in appropriations, the SA has been operating on less revenue than what a recent study revealed is required for it to operate at a minimum level.

***Commendation.*** Members lauded Mr. Hicks: 1) on the strides the SA has made in his short time with the authority; 2) for having shifted the spaceport's focus away from serving as an entertainment venue and toward one in which other burgeoning opportunities are capitalized on; 3) for the SA's having spearheaded the Spaceport America Cup; and 4) for Spaceport America's work with area students.

## **Adjournment**

There being no further business before the committee, the committee adjourned at 12:38 p.m.