



**Report  
to  
The LEGISLATIVE FINANCE COMMITTEE**



Department of Finance and Administration And General Services Department  
Review of Selected Capital Outlay Projects  
November 20, 2009

**Report # 10-03**

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*State of New Mexico*  
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November 20, 2009

Katherine Miller, Secretary  
Department of Finance and Administration  
Bataan Memorial Building, Suite 166  
407 Galisteo Street  
Santa Fe, NM 87501

Arturo L. Jaramillo, Cabinet Secretary  
General Services Department  
John F. Simms Building  
PO Box 6850  
Santa Fe, New Mexico 87502

Dear Secretaries Miller and Jaramillo,

On behalf of the Legislative Finance Committee (committee), I am pleased to transmit the Review of Selected Capital Outlay Projects for the Department of Finance and Administration, General Services Department, New Mexico Environment Department, Public School Facilities Authority, and Energy, Minerals and Natural Resources Department.

The purpose of the review was to examine the planning, implementation and management of each project as well as developing a standard audit methodology for future capital projects. The following projects were selected for this review:

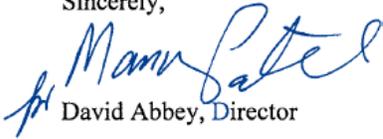
- *Lumberton Water Project*
- *Zuni Schools Roofing and Structure and Drain Damage*
- *Bosque Trail Development*
- *Capitol Parking Structure*

The report will be presented to the committee on November 20, 2009. Discussions were held with each agency to address any concerns before the exit conferences, which were conducted during the last two weeks in October and the first week of November.

The committee would like an action plan to address the findings and recommendations from the departments within 30-days from the date of the hearing. Staff will continuously monitor your progress.

I believe that this report addresses issues the committee asked us to review. Thank you for your cooperation and assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Abbey".

David Abbey, Director

cc: Ron Curry, Secretary, New Mexico Environment Department  
Robert Gorrell, Director, Public School Facilities Authority  
Joanna Prukop, Secretary, Energy, Minerals and Natural Resources Department

BF/mt

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The Legislative Finance Committee (LFC) January 2009 Capital Outlay report stated “LFC may want to require evaluations of additional capital outlay projects using agreed upon procedures in the annual work plan in coordination with the State Auditor and DFA.”

The LFC reviewed four capital outlay projects as part of its program evaluation work plan for 2009. The purpose of the review was to examine the planning, implementation and management of each project. The projects selected for this review were:

- Lumberton Water Project
- Zuni Schools Roofing and Structure and Drainage Damage
- Bosque Trail Development
- Capitol Parking Structure

The projects were selected based on the following criteria:

- Appropriation amount; large, multi-year appropriations; and, large unspent amounts.
- Ranked "red" in quarterly status report.
- Completed or near-completed projects.
- Legislative interest, request and/or known risk.
- Representative combination of agencies and sponsorships.

### Key Findings

**Lumberton Water Project.** The Lumberton Mutual Domestic Water Consumer Association (MDWCA) has been struggling since 1999 to establish a reliable and safe source of water for the community. From 2000 to 2002, engineering plans and subsequent construction of the water system based on these plans failed to rectify Lumberton’s water system and supply issues. Lumberton MDWCA expended funding on a water system design that produced substandard results and was shut down. In 2003, Lumberton MDWCA contracted with engineering consultants to determine the most cost effective and reliable options for the water system improvement plan. However, due to communication breakdowns and the inability to reach an agreement between the Jicarilla Apache Nation and Lumberton the recommended alternative was not feasible. Therefore, Lumberton MDWCA and NMED elected to construct the next best option, a surface water treatment plant.

In May 2007 when New Mexico Environment Department (NMED) intervened, project actions had been mismanaged by Lumberton MDWCA, critical decisions were incorrectly made and funds had been expended that provided unsatisfactory outcomes. However, continued efforts by the association and NMED have demonstrated encouraging results, as Lumberton has safe drinking water and a system that is able

*Since 1999 NMED has issued numerous “Boil Water Order” advisories to Lumberton MDWCA and recently lifted the latest advisory on October 30, 2009.*

*Lumberton MDWCA has received \$1.7 million from four funding sources.*

to replenish consumer demand. NMED's Construction Program Bureau estimates approximately \$1 million in funding will be needed within next three years to properly complete and sustain the Lumberton MDWCA water system. The Lumberton MDWCA water system improvement project should be used as an example of what to avoid in all future water system improvement projects.

**Zuni Schools Roofing and Drainage Damage.** The Public Schools Facility Authority (PSFA) project management needs improvement. PSFA did not have a Memorandum of Understanding (MOU) with the Zuni Public School district (district) that establishes PSFA's roles and responsibilities defining project oversight when emergency funds are used for projects. PSCOC approved the emergency funding contingent on direct project management by PSFA.

The PSCOC established policies and procedures for requesting emergency funds. PSFA guidelines (procedures) for requesting emergency funds are limited to the instructions and information on the application for emergency capital outlay grant assistance. PSCOC and PSFA have not established a time limit in which funds granted through an emergency should be expended and repairs must be completed. PSFA needs improvement on policies and procedures for emergency projects that include more detailed requirements.

The district does not have a formal process for monitoring and documenting contractor performance. PSFA has implemented other initiatives to provide a "cross check" of services that are being used to monitor performance and improve the quality of construction. For example, PSFA has contracts in place for professionals specializing in roof design and oversight of roof installation to ensure the roof is appropriately designed and correctly installed. PSFA plans to contract for professional services to perform post occupancy evaluations after a new facility has been in service for one year.

**Zuni Public School District.** The district's annual financial audit reports from 2005 to 2008 indicate there are various repeat audit findings associated with procurement, primarily non-compliance with State Procurement Code and lack of documentation. As of this writing the district does not have formal procurement procedures. The district's procurement officer issued interim procurement guidance subject to formal adoption.

**Bosque Trail Development.** The Energy, Minerals and Natural Resources Department (EMNRD) was appropriated \$3 million (Laws of 2005, Chapter 347, Section 33) from the general fund to be expended in fiscal years 2005 through 2010 for bosque revitalization and to plan and develop trails in the north bosque area along the Rio Grande. Governor

*Public School Capital Outlay Committee (PSCOC) approved \$2.6 million for two emergency projects at the Zuni Public School District.*

*PSFA has an effective tracking and approval process to ensure expenditures are appropriate and accurate.*

*Estimated cost for the entire bosque trail project is approximately \$21 million.*

*There are 17 different municipalities, agencies and jurisdictions along the entire stretch of the Rio Grande Corridor that require coordination and cooperation in order to complete project between Belen to Bernalillo.*

*The general fund can expect a refund of approximately \$140 thousand depending on the final reconciliation of the EMNRD and MRCOG accounts.*

*The capitol parking structure is GSD's first design and build project.*

*The three-level structure (one underground) has spaces for 596 vehicles.*

Bill Richardson identified the Mid-Region Council of Governments as the agency to plan and develop the bosque trail along the Rio Grande, between Belen and the town of Bernalillo.

Laws of 2009, Chapter 5, Section 1 and 2 (HB9) reverted \$2.7 million to the general fund and reauthorized and changed the \$2.7 million funding to severance tax bonds (STB) for bosque revitalization and to plan and develop trails along the Rio Grande. The authorization does not include construction. Therefore, EMNRD State Parks Division terminated its 2005 Joint Powers Agreement (JPA) with Mid-Region Council of Governments (MRCOG) for trail planning and development along the Rio Grande from Belen to Bernalillo.

***Mid-Region Council of Governments.*** EMNRD advanced \$600 thousand to the Mid-Region Council of Governments (MRCOG) for initial planning, design and development of a “blueprint” and development of associated pilot projects. After four years MRCOG spent \$460 thousand of the \$600 thousand advance or 15 percent of the \$3 million appropriation for an implementation plan that identifies proposed pilot projects.

**Capitol Parking Structure.** Based on the language in the Request for Proposal, PCD paid the responsive, but unsuccessful firm a \$10 thousand stipend. Neither Property Control Division (PCD) nor Legislative Council Services (LCS) developed criteria to determine whether a stipend will be paid as recommended by *Solicitation of Design and Build Delivery Systems*, 1.5.7.9 NMAC. NMAC recommends but does not require that criteria be developed to determine whether a stipend will be paid to the short-listed firms.

***Transition to Operations.*** A management plan will not be in place when General Services Department transfers the ownership of the structure to Legislative Council Services.

### **Key Recommendations**

**Lumberton Water Project.** Lumberton MDWCA should perform a cost benefit analysis between the continued operations of the current system and the potential connection to Dulce’s water system. The cost benefit analysis should consider surcharges for the yearly debt service requirement and any additional construction costs.

The association should work closely with NMED and other regulatory agencies to develop action plans to complete a dependable and sustainable water system.

**Zuni Schools Roofing and Drain Damage.** The Public Schools Facilities Authority should ensure project oversight roles and responsibilities for emergency projects are defined in a memorandum of understanding with the district. Improve policies and procedures for

emergency projects that include requirements for requesting emergency funds and a time frame for completing the emergency project.

The Zuni Public School District should review internal controls to ensure compliance with applicable laws, rules and regulations and ensure procurement procedures are finalized and adopted by the Zuni Board of Education.

**Bosque Trail Development.** The Energy, Minerals and Natural Resources department should request the legislature to amend the project authorization language to allow for construction of the trails.

The Mid-region Council of Governments should determine if the Rio Rancho pilot project can be completed and establish a detail work plan with project milestones to ensure effective use of the funds needed to complete this pilot.

**Capitol Parking Structure.** The General Services Department (GSD) should develop a policy that includes criteria for determining how and when a stipend will be paid. The criteria should include a standard methodology that can be applied consistently. The policy should take into consideration constraints on available revenue in times of budget short falls. In addition, GSD should analyze the cost benefit of a design build project delivery method in comparison to traditional design-bid-build. Review past projects of similar of size and complexity for comparison purposes to identify advantages and disadvantages of design build method.

The Legislative Council Services should draft the Capitol Parking Structure management plan for review and approval by the Legislative Council capital outlay subcommittee.

**Future Capital Outlay Project Evaluations.** The legislators and executive may want to consider creating the capital outlay planning and monitoring act; creating a permanent legislative interim capital outlay committee; creating a capital outlay planning and monitoring division within the department of finance and administration; establish a capital project audit fund within the state treasury. The legislative and executive branches of government have improved accountability for capital outlay appropriations but much more needs to be done from initial planning, prioritization of projects, funding, and management to actual execution of many projects. It is recommended that the legislature consider including requirements in the Capital Appropriation Act for the State Auditor and LFC to conduct special agreed upon procedures audits of major capital outlay project appropriations in consultation with DFA.

## BACKGROUND INFORMATION

**Background.** The January 2009 Capital Outlay report stated “*LFC may want to require evaluations of additional capital outlay projects using agreed upon procedures in the program evaluation annual work plan in coordination with the State Auditor and DFA.*” The Legislative Finance Committee (committee) has an evaluation of additional capital outlay projects as part of its Program Evaluation Work Plan for 2009.

The Capital Outlay Bureau (bureau) of the Department of Finance and Administration (DFA) Local Government Division monitors capital outlay projects for state agencies, public schools, local governmental entities and higher education in the capital projects monitoring system (CPMS), which is populated once the capital outlay appropriation bill is signed by the governor. The bureau has general update authority for all of the fields in the CPMS database. Oversight agency update authority is limited to the expenditure, encumbrance and status fields. Information in selected CPMS fields is available on the DFA Local Government Division web site.

The following data represents the total capital outlay appropriations, funds expended, funds reverted and the balance of the appropriations from 2003 through 2009.

**Table 1. Summary of Capital Outlay Appropriations**  
(in thousands)

Year	Appropriation	Expended Amount	Reverted Amount	Balance
2003	\$150,138.0	\$131,879.3	\$6,039.6	\$18.9
2004	\$475,384.4	\$451,176.7	\$7,589.5	\$9,521.3
2005	\$472,110.0	\$386,323.2	\$7,305.4	\$65,527.8
2006	\$860,917.3	\$555,288.2	\$26,499.6	\$217,242.5
2007	\$796,334.3	\$443,756.5	\$57,221.8	\$309,189.9
2008	\$677,456.6	\$130,334.0	\$11,086.6	\$576,070.4
2009	\$260,358.7	\$10,605.8	\$-0-	\$249,680.6
<b>Total</b>	<b>\$3,692,699.3</b>	<b>\$2,109,363.7</b>	<b>\$115,742.5</b>	<b>\$1,427,251.4</b>

Source: DFA CPMS

### **Objectives.**

- Identify the funding sources and determine if the project was appropriately planned according to legislative intent.
- Evaluate the oversight by sponsoring agencies as well as the project manager’s implementation of the plan.
- Determine what New Mexico gained from this project and if the state received a return on its investment.
- Verify that applicable state laws, rules and regulations, including any federal requirements (if federal funds were expended) were followed.

Projects for review were selected based upon the following criteria:

- Appropriation amount; large, multi-year appropriations; and, large unspent amounts.
- Ranked "red" in quarterly status report.
- Completed or near-completed projects.

- Legislative interest, request and/or known risk.
- Representative mix of agencies and sponsorships.

**Scope and Methodology.**

- Review of laws, rules and regulations,
- Tour facilities and visit project sites,
- Review memorandums of understanding (MOU) joint power agreements (JPA) and grants and contracts,
- Evaluate funding, project expenses and payments,
- Assess project management, outcomes and progress,
- Review reports and deliverables, and
- Interview oversight agencies staff and project managers.

**Authority for Review.** The LFC has the statutory authority under Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies and institutions of New Mexico and all of its political subdivisions, the effects of laws on the proper functioning of these governmental units and the policies and costs. Pursuant to its statutory authority, the LFC may conduct performance reviews and inquiries into specific transactions affecting the operating policies and cost of governmental units and their compliance with state law.

**Review Team.**

Manu Patel, Deputy Director for Program Evaluation

Brenda Fresquez, Lead Evaluator

Lawrence Davis, Program Evaluator

**Exit Conference.** The contents of this report were discussed with each agency and its management team at separate exit conferences on the following dates:

October 23, 2009	Capitol Parking Structure
October 29, 2009	Bosque Trails Development
November 4, 2009	Zuni Schools Roofing and Drainage Damage
November 6, 2009	Lumberton Water Project

**Report Distribution.** This report is intended for the information of the Office of the Governor, the Department of Finance and Administration, the General Services Department, Energy, Minerals and Natural Resources Department, the Public School Facilities Authority, the Environment Department, the Office of the State Auditor, and the Legislative Finance Committee. This restriction is not intended to limit distribution of this report, which is a matter of public record.



Manu Patel

Deputy Director for Program Evaluation

## FINDINGS AND RECOMMENDATIONS

### NEW MEXICO ENVIRONMENT DEPARTMENT LUMBERTON WATER PROJECT

**Background.** Lumberton Mutual Domestic Water Consumers Association (Lumberton MDWCA) was incorporated in May 1949. The first well for the community's water system was drilled, constructed, and installed after incorporation, but went dry by 1967. A replacement well was drilled and consisted of a 20,000 gallon storage tank and 12,280 linear feet of distribution line. The Lumberton MDWCA currently serves approximately 70 residential customers and 4 commercial businesses.

In 1985 an emergency was declared due to extremely poor drinking water quality. Lumberton MDWCA relocated its water operations and drilled two additional wells near the Navajo River.

In 1991 an infiltration gallery with a conical sedimentation device was installed under the Navajo River. This water treatment system was later abandoned because the filters could not adequately filter the water to meet safe drinking water standards.

In 1999, 2001, and 2005, the New Mexico Environment Department (NMED) issued Boil Water Orders for the residents of Lumberton because of Lumberton MDWCA's non-compliance with New Mexico Drinking Water Regulations. NMED was unable to verify the safety of Lumberton MDWCA's water supply because the association failed to provide water samples for testing. During this period, Lumberton MDWCA's board was lacking continuity and communication with regulatory agencies. Boil Water Orders remain an issue for the community of Lumberton because of ongoing water supply and quality concerns although orders were lifted by NMED on October 30, 2009. The Department of Homeland Security and Emergency Management (DSHEM) has made several potable water hauling deliveries to Lumberton at an annual cost of \$105.6 thousand.

Since 1998 Lumberton MDWCA has received funding from four sources totaling approximately \$1.7 million. In 2004 and 2005, Lumberton MDWCA received a total of \$280 thousand in state capital outlay funding to support water system improvements. State funds were allocated to plan, design, construct and improve the community's water system.

**Findings and Recommendations.** *The Prior Water System Improvement Project Did Not Meet Requirements.* From 2000 to 2002, engineering plans and subsequent construction of the water system failed to rectify Lumberton's water system and supply issues. In October 2000 all involved parties were notified that the water system designed by Tierra Engineering Consultants Inc. (TEC) was in place and was ready for field testing. On site tests indicated immediate problems with the system, which included the following:

- Chemical feed pumps would not operate properly,
- Fail safe alarms on the treatment plant kept going off,
- Turbidity meters did not function consistently, and
- Back wash level controls were not operating.

After several failed attempts to bring the system into full operation, the system was eventually shut down and did not meet the needs of the Lumberton community. In a letter dated February 21, 2002, TEC stated that the plans were finalized, reviewed and approved by the owner (Lumberton MDWCA), NMED's Drinking Water Bureau (DWB) and the funding agency (U.S. Department of Agriculture (USDA)). The LFC could not determine the total amount expended for engineering and construction services during this improvement phase because of the lack of accounting records and supporting documents, such as contracts and invoices. Funds spent for this portion of the project were primarily administered through USDA and no legal action for recourse was taken.



Non – Operational Monitoring System

*Unpaid Obligations from Prior Period System Improvements (2000-2002).* The plumbing general contractor S.G. Plumbing Inc. claims that USDA owes them approximately \$71.1 thousand for contracted and additional work rendered at the request of Lumberton MDWCA's board members. Approximately \$57.1 thousand was for work completed within the contract and \$14 thousand was authorized by Lumberton's board but was not specified within the contract. The contractor has threatened legal action to pursue outstanding payments but has not taken formal legal action.

*Engineering Consulting Contract.* During 2002 and 2004 Lumberton MDWCA entered into contracts with the Miller Engineers, Inc. doing business as Souder, Miller & Associates (SMA) to provide consulting and design services, including a preliminary engineering report (PER) for the community's water system improvements. The PER submitted by SMA in February 2003 required revisions and clarifications. NMED reviewed and approved the PER on December 15, 2003, and also approved SMA plans and proposals for the Lumberton MDWCA system improvements. The engineering report provided the following three alternatives:

- Alternative A – construction of new surface water treatment plant on land by the existing infiltration galleries and pump house. The plant would take water from the Navajo River and treat it to meet drinking water standards. Unlike Lumberton's current and previous treatment facilities, the new surface water treatment plant would be capable of treating highly turbid river water. Estimated cost \$1.6 million.

- Alternative B – drilling a deep well and using groundwater as Lumberton’s source of drinking water. Estimated cost \$1.9 million.
- Alternative C – construction of a water line between Dulce on the Jicarilla Apache Reservation and Lumberton. Estimated cost \$1.3 million.

*Engineering Firm’s Recommendation.* SMA recommended the optimal “alternative for this project is to purchase water from the Jicarilla Apache Nation (Jicarilla) located in Dulce, NM (Alternative C). When construction costs, system reliability, and ease of operation and maintenance are compared for the three options, this option seems to be the most reasonable.” With the recommended alternative, Lumberton MDWCA would have to pay special attention to coordination with different entities and the legal issues involved in the project. The existing water facilities at the Jicarilla in Dulce are held in trust by the Department of the Interior and operated by the federal Bureau of Indian Affairs. Before Lumberton can purchase water from the Jicarilla, the federal government would need to be involved because the Jicarilla is a sovereign nation and not subject to the rules and regulations of the state. In spite of the coordination issues, obtaining water from Dulce would be the best alternative for Lumberton MDWCA to assure that it has a reliable and safe source of water for the community of Lumberton.

*Due to Communication Breakdowns and the Inability to Reach an Agreement, the Optimal Alternative Was Not Feasible.* NMED stated Alternative C was vigorously pursued but was eventually abandoned because of communication breakdowns and the inability to come to an agreement between the Jicarilla and Lumberton MDWCA. Therefore, Lumberton MDWCA and NMED elected to construct the next best option, Alternative A.

The following contracts were issued for various aspects of the water system improvement project including a new surface water treatment plant:

**Table 2. Contracts Issued for Lumberton Water System Improvements**  
(in thousands)

<b>Contractor</b>	<b>Description</b>	<b>Estimated Cost</b>
Briliam Engineering Services, LLC	Design a new water treatment facility, repair and replace existing raw water intake structure and complete miscellaneous yard piping improvements.	\$43.8
SDV Construction, Inc.	Construct water treatment plant based on design and specifications prepared by Briliam Engineering Services.	\$398.9
Joe Padilla Utility Construction, Inc.	Install water lines, meters and fire and flush hydrants, etc.	\$269.5
Pall Corporation	Construct a micro filtration system, membrane replacement and pretreatment unit.	\$136.4
Souder Miller & Associates	Planning and bidding of west side waterline replacement and miscellaneous plant work.	\$228.6
TLC Plumbing and Utility	Install new meters and assemblies along state and county roads right of ways and reconnect to existing service lines.	\$70.7
Four Corners Electric Company, Inc.	Install new uninterruptible power supply and surge suppression system.	\$10.2
<b>Total</b>		<b>\$1,158.1</b>

Source: NMED



Water Treatment Housing



Membrane and Settling Tank



Pre-Sedimentation Tank



Control System



Chemical Dosage System

## Water Storage Tank



## Waterline Replacement and Construction



*Water Production and Billing Data.* The amount of water produced and amount sold to members in gallons from the third quarter 2008 through the second quarter 2009 are presented in the following table.

**Table 3. Water Production and Sale Data**  
(in gallons)

Year	Quarter	Produced	Sold	Percent Lost
2008	III	2,100,858	779,245	62.9
2008	IV	2,151,133	675,488	68.6
2009	I	2,035,649	556,790	72.6
2009	II	1,398,156	674,642	51.7
2009	III	1,659,122	804,158	51.5

Source: Lumberton MDWCA

Earlier data was unreliable and possibly misleading, so it is not presented in this report. According to Lumberton MDWCA, the amount of water lost to leaks and irregular connections has been alarming, but repairs to the distribution lines in 2008 and 2009 have reduced losses considerably. The effect of the 2008 repairs is not evident because it has been necessary to continue the use of old lines along with new lines in order to maintain service to all members. As such the old lines, of course, continue to leak. The improvement in the second quarter of 2009 results largely from the recent repair of leaks. About 52 percent loss in the second and third quarters of 2009 is not good, but is considerably better than the immediately preceding quarter. It is anticipated that improvement trends will continue as the replacement of the old distribution lines continues. Lumberton MDWCA will soon be taking the old lines out of service on the west side of town and anticipates a marked improvement. According to Lumberton MDWCA, October 2009 data will be more informative. The storage tank has been kept full with less production so the association is expecting low loss percentages in the future.

In fiscal year 2009, Lumberton MDWCA continued to use unspent funding to replace obsolete water lines and install a backup power system but continued to experience water distribution issues. In September 2009 a leak within the new section of water line distribution was discovered and shut down the distribution of water to residence. The leak has since been rectified and water distribution was uninterrupted during October 2009. The association replaced approximately one mile of water line on the west end of the community and previously

replaced approximately two miles of in-town pipe. A back-up power system is also being installed because of frequent power outages at the water treatment facility. This back-up system will allow for surge suppression and will provide 1.5 hours of run time.

*The Lumberton Water System Does Not Provide Adequate Water for Fire Suppression.* This situation presents a safety hazard for students and people within the community of Lumberton. There are three restaurants, three churches and two schools located within the community. There is one water tank with a maximum capacity of 32,000 gallons and a system that has to replenish a daily water supply of approximately 20,000 gallons. As of October 2009 the treatment facility is replenishing water at 14 gallons per minute (gpm) and an average fire engine demand while fighting a fire is 250gpm. Therefore, the association needs to increase the community's water supply. The addition of the proposed 30,000 gallon water tank would greatly enhance the community's fire suppression capabilities.

According to NMED, the Rio Arriba county manager has expressed interest in reviving the possibility for Lumberton MDWCA to connect its water line with the Jicarilla in Dulce. NMED also indicated that the connection length between both communities is as close as 500 feet. A cost estimate for this option has not been developed. However, outstanding debt of Lumberton MDWCA and additional funding for connection expenses need to be resolved prior to actual water line connection. In addition, the possibility of an agreement may be bureaucratically difficult and will need to include a long-term contract to guarantee Lumberton's water supply. Assessing a surcharge to the Lumberton MDWCA for the debt service and construction cost is one possibility and requesting debt forgiveness by USDA also needs to be considered.

*Boil Water Order and Potable Water Hauling.* Since 1999 NMED has issued numerous "Boil Water Order" advisories to Lumberton MDWCA and recently lifted the latest advisory on October 30, 2009. Initially the Department of Homeland Security and Emergency Management (DHSEM) notified Lumberton MDWCA that the New Mexico National Guard would cease hauling water to the community on September 15, 2009. However, Lumberton continued to receive emergency potable water hauling deliveries from DHSEM through October 2009 because of ongoing water leaks. Governor Richardson issued Executive Orders 2006-12 and 2008-37 totaling \$1 million for providing emergency drinking water to water associations that have experienced a cessation in service due to system failure and drought conditions. DHSEM has expensed approximately \$317 thousand from FY07 through FY09 for potable water hauling activities to Lumberton MDWCA, as a result of poor or nonexistent water conditions. Amounts expended for the water hauling missions in prior fiscal years are not available.

*Lumberton's Current Water System Has Not Proved To Be Reliable.* Lumberton MDWCA contracted with the Coyote Creek Enterprises, LLC, a certified operator to manage facility operations at an annual cost of \$14.4 thousand. According to Lumberton MDWCA, the most recent leaks have been repaired but the operator indicated that the infiltration gallery is about to totally fail. Also, the Bureau of Reclamation (BOR) had an accident in September 2009 that caused a great deal of sediment to flow into the Navajo River. This effectively reduced the water level over the infiltration gallery pipes. BOR "scraped" the top layer of sediment off the infiltration piping but did not address the sediment on the sides or bottom areas of the piping. The estimated cost to repair the infiltration galley is \$135 thousand. Although Lumberton may have a valid case, it appears that the association is not pursuing a claim against BOR to adequately

rectify the sediment affecting the infiltration gallery pipes. In addition, when the San Juan Chama diversion is opened (by Albuquerque operators) it compromises the system's ability to properly treat the community's water. However, this aspect was never dealt with within the PER or by any of the approved water system designs.

Since the gallery is not properly repaired, DHSEM may be required to keep the portable water tank (water buffalo) and its associated cost in Lumberton indefinitely or until the system can demonstrate sustainable results. NMED's Drinking Water Bureau (DWB) indicated that it is not their mission to fix Lumberton's infiltration gallery and stated for the first time in a very, very long time, Lumberton is meeting the requirements of the Safe Water Drinking Act. On October 30, 2009, DWB issued a notification to the Lumberton MDWCA rescinding the boil water order because water samples collected since completion of the water system improvements have shown there is no E. coli in the water system.



Infiltration Gallery Pipes – Navajo River



DHSEM – Water Buffalo

**Funding and Expenditures.** Federal and State funds have been used to plan, design, construct and improve the Lumberton MDWCA water system. Since 1998, Lumberton MDWCA has received funding from four sources totaling approximately \$1.7 million. As of August 25, 2009, \$147.4 thousand in USDA Rural Development grant funding remained unexpended but is planned to be spent within the current fiscal year. Piece-meal funding has been a complicating factor for this project. The funding sources are summarized in the table below.

**Table 4. Lumberton MDWCA Funding Sources from 1998 – 2009**  
(in thousands, as of August 25, 2009)

Funding Source	Allocation Amount	Expensed	Available Funding
USDA (Loans)	\$93.8	\$93.8	\$ -
USDA (Grants)	\$865.4	\$718.0	\$147.4
NMFA – (Water and Waste Water Grant)	\$400.0	\$400.0	\$ -
New Mexico Board of Finance (Grant)	\$31.3	\$31.3	\$ -
Capital Projects Fund	\$280.0	\$280.0	\$ -
<b>Total</b>	<b>\$1,670.5</b>	<b>\$1,523.1</b>	<b>\$ 147.4</b>

Source: USDA, NMFA and NMED

State appropriated capital project funding has been encumbered and expended according to statutory intent. Capital appropriations have been used to plan, construct and improve Lumberton MDWCA’s existing water system. For example, Lumberton MDWCA has used this funding to replace obsolete water lines essential to water distribution operations, both within town and on the west end of the community.

*Lumberton MDWCA Currently has Three Outstanding Loans Totaling \$105.1 Thousand.* The association has two USDA Rural Development loans totaling \$84.6 thousand that require monthly payments of \$427 and one NMED Rural Infrastructure Revolving Loan Program loan for \$20.5 thousand that requires an annual payment of \$2.9 thousand.

**Table 5. Anticipated Items Needed to Complete and Sustain LMDWCA Operations**  
(in thousands)

Priority Level	Description of Item	Estimated Cost
1	Infiltration gallery (including river bank protection)	\$185.0
2	Pump to tank level control	\$20.0
3	Pump lead lag controls	\$10.0
4/5 (could be phased)	4 miles of 6" pipe complete with A/V valves and shutoff valves	\$600.0
6	Fence plant site (including gate)	\$25.0
7	Spare control valves	\$5.0
8	New 30,000 gallon water tank	\$50.0
9	Six additional fire hydrants	\$12.0
10	Refurbish existing water tank	\$20.0
11	New membrane and spare parts	\$60.0
12	New turbid meters (two)	\$10.0
<b>Total</b>		<b>\$997.0</b>

Source: NMED – Construction Programs Bureau

*Lumberton’s Water System is Approximately 50 Percent Complete.* Sufficient funding to support Lumberton MDWCA operations has not been secured. The Construction Program Bureau (CPB) of NMED estimates that an additional \$1 million will be needed within the next three years to properly complete and sustain Lumberton MDWCA operations. NMED also noted that items one through three shown in Table 5 are essential to system operations and must be completed as soon as possible.

*American Recovery and Reinvestment Act of 2009 (ARRA) stimulus funding.* Lumberton requested ARRA funding for two projects from the New Mexico Finance Authority

(NMFA) through NMED. One project in the amount of \$300 thousand was for a “well/tank

feedback system” which qualified as a “Stimulus Green Project.” This project was ranked by NMED and certified by the U.S. Environmental Protection Agency (EPA) as a green project because of frequent water tank overflows. However, NMFA stated that Lumberton’s board did not want to move forward with this project and requested the funding to replace water distribution lines. Unfortunately, waterline replacement did not qualify as a ‘Green Project’ and was by-passed by NMFA. Another project in the amount of \$330 thousand was to replace old water lines, install a new master meter and reconstruct inflow to the treatment plant. NMFA rejected this project because the PER was over five years old. According to NMFA policy, the state environmental review plan should have been completed within a least a five year window and would need to undergo a public review process. Both projects were evaluated and ranked by NMED’s DWB and sent to the NMFA for final evaluation and approval.

*Lumberton MDWCA Fiscal Activities Remain Unaudited but Are Mandated by Law.* Pursuant to New Mexico Attorney General’s Opinion No. 90-30, Mutual Domestic Water Consumer Associations are subject to the New Mexico Audit Act. Pursuant to the State Audit Act (Section 12-6-3, NMSA 1978) that states “The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor.” To date Lumberton MDWCA’s fiscal activities have never been audited.

***Project Management.*** After decades of poor water quality, reduced yields from the existing wells, non-compliance with drinking water regulations, and failed water system projects, NMED intervened in the operation and management of Lumberton MDWCA. On May 2, 2007, under the Sanitary Projects Act and pursuant to Section 3-29-7, NMSA 1978, the Secretary of NMED ordered that the department intervene with full powers in the operation and management of the Lumberton MDWCA. The intervention was a result of a variety of issues that include the issuance of multiple compliance orders from the EPA and NMED, law and regulation violations and the association’s failure to implement an operational water system. According to NMED, this is the first time, to their knowledge (since 1999) that the department has exercised its authority under Section 3-29-7, NMSA 1978 in the operations and management of a mutual domestic water consumer association. NMED frequently visited Lumberton to review recent water line construction activities and issues pertaining to Lumberton’s frequent system failures.

NMED’s CPB uses an access database to track all oversight activities by the department. The program tracks and maintains accurate information for all appropriations, dollar amounts, revenue sources, disbursements, milestones, phases of projects and balances. The program also provides CPB with various customized reports to allow consistent, reliable reporting to fulfill the state and EPA reporting requirements.

Before local water associations implement new water systems or modify existing water systems, they are required by state law to submit plans and specifications for review by NMED. DWB engineering staff reviews for compliance with requirements of the federal Safe Drinking Water Act. The New Mexico Drinking Water Regulation 20.7.10.201, NMAC requires NMED approval prior to the undertaking of a public water system project. NMED reported the DWB will review project plans for sanitary purposes, while CPB will review projects to determine project viability but neither guarantee that such systems will work.

## **Recommendations.**

The Legislature may want to consider instituting a two-phase funding approach for all major capital outlay projects. The first phase to fund project design through programming and schematic. The second phase to fund full construction and equipment costs based on complete design and updated cost estimates.

Lumberton MDWCA should:

1. Perform a cost benefit analysis between the continued operations of the current system and the potential connection to Dulce's water system. The cost benefit analysis should consider surcharges for the yearly debt service requirement and any additional construction costs.
2. Update the preliminary engineering report and state environmental review plan, and financial audits to secure additional funding.
3. Request the Office of the State Auditor to perform an audit of Lumberton MDWCA's fiscal activities.
4. Continue to take an active role in the completion of the community's water system in anticipation of the withdrawal of NMED's construction oversight.
5. Work closely with NMED and other regulatory agencies to develop action plans to complete a dependable and sustainable water system.
6. Request loan forgiveness from USDA if the connection to Dulce and agreement with the Jicarilla is pursued.

**PUBLIC SCHOOLS FACILITY AUTHORITY  
ZUNI SCHOOLS ROOFING AND DRAINAGE DAMAGE**

**Background.** The Public School Capital Outlay Council (PSCOC) is responsible for managing the allocation of state funding to public school facilities in New Mexico's 89 school districts. Section 22-24-9 NMSA 1978 created the Public School Facilities Authority (PSFA) under PSCOC. PSFA operates as staff for the PSCOC; assists school districts in the planning, construction and maintenance of their facilities; assists in training districts' facility and maintenance staff; and implements systems and processes that establish adequate public school facilities throughout New Mexico via efficient and prudent use of funds.

**Zuni Middle School Roofing Project.** The Zuni Public School District (district) is required to follow State Procurement Code. The district started a re-roofing project at the Zuni Middle School (then identified as the Zuni Intermediate School) in September 2004. The contract documents for the 2004 re-roofing project were limited to purchase orders to Frank Hovorka who subcontracted with Davis Peynesta (dba DPJR) to provide all labor for the project. In April 2008 the Zuni Superintendent of Schools requested the Director of Support Services to review the roofing project and prepare a report of findings and conclusions. The report completed in June 2008 identified numerous procurement code violations with this project. For example, awards were made without following the competitive sealed bid process, meeting the performance and payment bond requirements, and including uniform contract clauses. Instead the district issued ten separate purchase orders as shown in the following table:

**Table 6. Purchase Orders  
Issued to Frank Hovorka**  
(in thousands)

Date	Order Number	Amount
6/8/2004	0000020896	\$3.5
7/28/2004	0000021139	\$2.0
1/10/2006	506001597	\$382.0
1/10/2006	506001598	\$455.0
4/26/2006	506002777	\$50.2
8/2/2006	607000090	\$50.0
8/9/2006	607000145	\$75.0
8/18/2006	607000162	\$23.5
9/22/2006	607000619	\$41.0
	607000620	\$2.8
<b>Total</b>		<b>\$1,085.0</b>

Source: Zuni Public School District

According to Section 13-1-125 NMSA 1978, procurement requirements shall not be artificially divided so as to constitute a small purchase. The documentation also showed that from the end of 2001 to September 2004 the district issued Frank Hovorka at least ten other purchase orders totaling \$800 thousand for other roofing work without competition. All of these orders were funded by an Impact Aid Grant from the United States Department of Education.

Beginning in 2006 the roof at the Zuni Middle School failed, and the district Support Services Department has been required to deal with numerous roof leaks. The district hired a roofing expert (The Armstrong Group) to review the condition of the roof and provide an opinion as to the overall deficiencies and some potential course of action to resolve the problems. The roof assessment reported the roofing services performed by Frank Hovorka and DPJR were without a defined scope of work and proper set of plans and specifications. "Their faulty and defective

roofing work and failure to meet applicable industry standards caused the new roof to leak excessively damaging the interior and under lying roof system.” The expert’s opinion stated the roof is prematurely failing and recommended immediate attention in solving the defects.

According to the district’s June 2008 report, the Director of the Technology Department stated all email and computer generated files from the previous Director of Support Services and Superintendent at the time were destroyed. The district’s Chief Financial Officer also stated their financial records prior to 2005 were not available due to implementing new software and hard copy records may be available in the district archives. At the direction of the Zuni Board of Education (board), in July 2008 the Superintendent contacted legal counsel concerning the roofing project irregularities. According to the district, counsel verbally advised that because of the time elapsed since the project was completed, and the individuals involved had limited assets, it was fruitless to pursue the matter.

On August 29, 2008, the district notified the Office of the State Auditor (OSA) of possible violations of criminal statutes in connection with financial affairs and numerous procurement violations, etc. The notification stated the matter was discussed with the New Mexico Attorney General (AG) on August 19, 2008, at which time they agreed to look into the matter. OSA’s November 2008 response to the district Superintendent offered assistance in the matter but according to the OSA there was no response or additional correspondence from the district. A November 7, 2008, letter from the New Mexico AG’s office referred the Zuni Middle School matter to the Public Education Department (PED). On December 30, 2008, the AG and PED met to discuss AG referrals to the PED of complaints from the public received by the AG. PED is not staffed with investigators that could investigate any and all complaints from the public. According to PED’s Office of General Counsel, investigator’s duties are limited to suspected ethical infractions by licensed teachers and administrators. The investigators have no authority to investigate suspected systemic criminal violations or roofing contractor fraud. PED does not enforce procurement code contractual rights or breaches of contract on behalf of school districts. All school districts rely on their own retained counsel for their legal services.

At the direction of PSCOC, in December 2008 the district notified Construction Industries Division (CID) of the Regulation and Licensing Department. CID issued a memorandum dated September 1, 2009, indicating a CID general inspector inspected the property on August 28, 2009, and that the final inspection report is pending. The memorandum indicated that the contractor (Frank Hovorka) the district hired to perform the re-roofing work did not have a contractor license in the State of New Mexico. However, the subcontractor DPJR who Frank Hovorka hired was issued a license (#82943) on January 13, 2000, and held a GB98 classification which includes performing roofing work. DPJR’s license was cancelled January 31, 2009, for failure to renew and to date has not applied for a new license.

Since there were purchase orders funded by an Impact Aid Grant from the United States (U.S.) Department of Education, the district contacted the Office of the Inspector General (OIG) at the U.S. Department of Education on March 29, 2009. In response to the LFC, the OIG stated that while these originated as federal funds the issues Zuni school district identified are typically issues of local and State jurisdiction and not primarily a Federal concern due to the violations being against New Mexico state procurement laws. Additionally, the OIG stated “the passage of

time and the apparent lack of documentation indicate that further investigation will not likely yield much more than the information that the district review has already provided.”

***Zuni High School Drainage and Structural Damage.*** The Zuni High School building was constructed in several phases from approximately 1997 to 2002. The total construction cost of Zuni High School was not available at the time of our review. However, PSCOC allocated approximately \$13 million for construction of the high school. Geophysical studies before construction indicated that any structures constructed in the area would be susceptible to effects of “collapsing soil”. In May 2008 a geotechnical engineering report requested by the district stated the existing conditions at the high school indicate the building exhibits cracking in the interior and exterior walls, has inoperable doors due to heaving, and sandbags are being used to prevent storm water from entering the building. Also, the accessibility of the sidewalks, roof runoff and inadequate drainage affect safety and health. The two principal reasons are likely the result of use of poor engineered fill under the areas of construction and inadequate drainage conditions. The report stated if current conditions are not addressed further damage is inevitable, and could affect the building structure.

Board meeting minutes from 1998 to 2005 regarding the high school construction indicate the district terminated various contracts for cause that included poor performance and unacceptable work. In some cases the district provided the contractor an opportunity to cure the default. Limited documentation showed that there were instances where arbitration took place and the district filed claims and negotiated settlements. However, since the district’s financial records prior to 2005 were not readily available during the LFC review and based on the available documentation; the LFC could not determine how much the district may have recovered or the value of the negotiated settlements.

***PSCOC Emergency Funding to Repair Zuni Middle School Roof and New High School Drainage and Structure Damage.*** On August 29, 2008, the district sent PSFA a letter requesting emergency funding for two projects for approximately \$2.6 million. In November 2008 the district submitted an application for emergency capital outlay grant assistance as directed by PSFA. As part of the application process, a quorum of the school board must meet either in a regular meeting or a special meeting called for that purpose within 24 hours of the event to declare the emergency, certifying that no other funds are available and submit the Declaration of Emergency and Certification with the Application for Emergency Grant Assistance. During the December 2008 PSCOC meeting there were questions as to whether or not the district had met the procedural requirements established by the PSCOC. According to the Director of PSFA, the district met the requirements. PSFA’s Chief Financial Officer stated the emergency funding request process was hampered by a miscommunication by PSFA staff regarding who should sign the emergency grant application. The district considered the request and approval from the board as a declaration of the emergency.

In December 2008 PSFA recommended to PSCOC approval of emergency funding for Zuni Public Schools of \$1.3 million for re-roofing the Zuni Middle School and \$1.3 million for site drainage and structural repairs at Zuni High School. PSCOC approved the emergency funding contingent on direct project management by PSFA.

**Findings and Recommendations**

*Emergency Funding Procedures.* The PSCOC established policies and procedures for requesting emergency funds. PSFA guidelines (procedures) for requesting emergency funds are limited to the instructions and information on the application for emergency capital outlay grant assistance. PSCOC and PSFA have not established a time limit in which funds granted through an emergency should be expended and repairs must be completed.

According to the district and based on actual bids, the emergency request for the Zuni High School included an additional \$500 thousand to construct the required grading, drainage and structural improvements to the existing site and facilities. In July 2009 the district requested additional funding and PSFA recommended that PSCOC approve additional funding of \$200 thousand and that the \$300 thousand cost savings from the bids for the Zuni Middle School re-roofing project will cover the difference. PSCOC approved the additional funding subject to PSFA analysis and review of project requirements.

*Expenditures.* PSFA manages encumbrances and expenditures in the statewide human resource, accounting and management reporting (SHARE) system. In addition, PSFA tracks project expenditures using an internal “invoice system” that includes purchase order amounts and allows the regional managers to review and approve invoices before processing payment requests in SHARE. PSFA has an effective tracking and approval process to ensure expenditures are appropriate and accurate. A summary of funding and expenditures as of October 16, 2009, for each project is shown in the following tables:

**Table 7. Zuni Middle School Re-Roofing Project**  
(in thousands)

			<b>Funding</b>	<b>\$1,276.0</b>
Contract Awards		Expenditures	Encumbrance Balance	
Armstrong Group	\$60.0	\$38.0	\$22.0	
Dyron Murphy	\$52.0	\$40.0	\$12.0	
DKG & Associates	\$744.0	\$447.0	\$297.0	
<b>Total</b>	<b>\$856.0</b>	<b>\$525.0</b>	<b>\$331.0</b>	
			<b>Funding Balance</b>	<b>\$420.0</b>

Source: SHARE and PSFA

**Table 8. Zuni High School Structure and Drainage Repairs**  
(in thousands)

			<b>Funding</b>	<b>\$1,784.0</b>
Contract Awards		Expenditures	Encumbrance Balance	
Depauli Engineering	\$9.0	\$6.0	\$3.0	
John Barton, AIA	\$143.0	\$80.0	\$63.0	
Murphy Builders	\$1,450.0	\$0	\$1,450.0	
<b>Total</b>	<b>\$1,602.0</b>	<b>\$86.0</b>	<b>\$1,516.0</b>	
			<b>Funding Balance</b>	<b>\$182.0</b>

Source: SHARE and PSFA

*Project Management.* PSFA’s project management process can be improved. PSFA did not use a Memorandum of Understanding (MOU) with the district that establishes PSFA’s roles and responsibilities defining project oversight when emergency funds are used as required by 6.27.2.11 NMAC *Oversight and Implementation of Projects Funded Wholly or In Part by the*

*Council* are used for projects. According to the PSFA “in the case of an emergency allocation, the application for emergency grants assistance and PSCOC action serves as the MOU.” The information in the emergency grant application does not specifically define project oversight responsibilities and based on PSCOC’s contingent approval for the emergency funding, PSFA is responsible for direct project management of the two projects, but not procurement or contract preparation.

PSFA’s Construction Information Management System (CIMS) automates and integrates processes involved in managing projects, resources and assets across the lifecycle of a facility and is the primary project development and construction management tool required to be used by design professionals, general contractors and regional managers. The general contractor for the middle school did not enter the progress meeting minutes into CIMS on a timely basis. The minutes did not always have sufficient detail and it was not clear if items from the previous week were addressed and corrected. For example, for three weeks the minutes stated the refrigeration line was icing up and the minutes did not reflect what action was taken to address the issue. According to the district all project documentation including daily job reports and meeting minutes are permanently recorded in CIMS. Although weekly progress meetings have been held, PSFA representatives were not always available to attend. However, the PSFA regional manager has copies of the progress reports and meeting minutes.

According to PSFA regional manager, as of the October 18, 2009, reporting period the middle school re-roofing project is estimated to be 90 – 92 percent complete and a substantial completion walk through is scheduled for October 27, 2009. The high school structure and drainage repair project is approximately 30 percent complete.

#### **Zuni High School Structure and Drainage Repairs**



***Contract Review.*** In October 2008 the district Superintendent designated the Director of Support Services as the procurement officer in response to repeated audit findings related to procurement. The district's annual financial audit reports from 2005 to 2008 indicate there are various repeat audit findings associated with procurement, primarily non-compliance with State Procurement Code and lack of documentation. As of this writing the district does not have formal procurement procedures. The district's procurement officer issued interim procurement guidance subject to formal adoption.

*Internal Control Structure Standards, 6.20.2.11 NMAC* states the internal control structure shall demonstrate that the school district identifies applicable laws and regulations and those procedures are designed to provide reasonable assurance that the school district complies with those laws and regulations. Internal control procedures shall be established, implemented and documented through school district correspondence, manuals, training and other additional methods. Appropriate internal control procedures shall be adopted by the local board within a school district to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency and encourage adherence to prescribed managerial policies. The internal control structure shall address all school district transactions.

The district stated the architect design consultant services contracts for both emergency projects were awarded based on Section 13-1-127 NMSA 1978 Emergency Procurements. Emergency procurements are authorized when there is a threat to public health, welfare, safety or properly requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances.

*Zuni Middle School Re-roofing Project (E09-002).* The architect (Dyron Murphy) for the re-roofing project performed design services without a formal contract. When asked who authorized the architect to start work, neither PSFA nor the district responded. Furthermore, PSFA, the district and architect were not aware that a contract was not in place for design services until after the architect submitted the plans for the re-roofing project to PSFA for approval. According to the PSFA Contract Administrator it was an oversight due to a change in personnel at PSFA with the retirement of the regional manager in May and with the new regional manager on medical leave; the direction to the district to develop the contract and submit for PSFA approval "fell through the cracks." The district used this architect for specification development on other small projects, and the architect thought the work was included in the agreement used for the other projects.

The architect submitted all phases of the re-roofing project for PSFA approval in one package (program statement, schematic design, design development and bid document). The submittal was received by PSFA on July 28, 2009, and approved on August 10, 2009. PSFA's 13 calendar day approval was reduced from the standard 21 day turnaround. PSFA approval of the construction contract award for the re-roofing project on August 3, 2009, was prior to PSFA's approval of the final project documents. PSFA stated that there were technical irregularities including missing the design professional's seal, but there were no material deficiencies that affected or altered the project specifications which warranted withholding approval of the contract due to the emergency.

Although PSFA’s Project Management and Coordination policy requires that the design professional hold a pre-construction conference after execution of the contract agreement and prior to issuance of the Notice to Proceed, the design professional held the re-roofing project pre-construction conference on July 20, 2009, after issuing the Notice to Proceed on July 1, 2009. In addition, the Notice of Intent to Award and Notice of Award has the same date of July 1, 2009. According to the “meeting notes”, a PSFA representative did not attend the pre-construction conference for the re-roofing project as required by the Project Manual.

PSFA and the district awarded the construction contract for the re-roofing project appropriately to DKG and Associates, Inc. (DKG) based on a solicitation of competitive quotes. The LFC review of project documentation for the original Zuni High School build-out revealed that the 2002 Construction Manager Not-at-Risk (Bradbury-Stamm) contract for the Zuni High School Phase II metal roof installation resulted in no single contractor responsible or accountable for coordination or performance and the district was not satisfied with the quality of work by DKG. Project status reports identified issues with the DKG roof installation. The architect’s February 2002 letter stated “the general workmanship looks poor, panels seem to not fit well and appear to be forced or bent in several areas and there were several leaks in the gutter system.” DKG represented that the roofing system was installed in accordance with specification. Since 2002 DKG has installed roofs on three schools in Zuni and according to the district and PSFA they were satisfied with the work of the contractor including the current re-roofing project at the Zuni Middle School.

**Zuni Middle School Roof Repairs**



• This shows voids in the field membrane



This shows the membrane baseflashing not secured with proper fasteners.



This shows that the outside corner wasn't flashed to standards. This has resulted in a void.

**Substantially Complete Roof – Zuni Middle School**



Zuni High School Site and Structural Repairs (E09-003). PSFA and the district awarded the construction contract to Murphy Builders Inc. based on the competitive bid process. PSFA approved and signed the construction contract August 13, 2009. The pre-construction conference for the structure and drainage project was held August 20, 2009 and the Notice to Proceed was issued at that time. The documentation for the conference included a formal agenda, a sign-in sheet that included representation from PSFA and meeting minutes.

**Contractor Performance.** According to PSFA there are many aspects of contractor's performance prior to entering into a PSFA contract that are safeguarded by various state agencies such as CID and New Mexico Department of Workforce Solutions before a contractor can bid and contract for a public works project. The design professional's contract requires oversight of the construction contract to ensure the project is built according to the drawings and specifications. The construction work is also inspected and monitored by other state agencies that include CID electrical and general construction inspectors and the State Fire Marshal Division of the Public Regulation Commission, in addition to checks performed by the PSFA regional manager. The district does not have a formal process for monitoring and documenting contractor performance. PSFA has implemented other initiatives to provide a "cross check" of services that are being used to monitor performance and improve the quality of construction. For example, PSFA has contracts in place for professionals specializing in the roof design and oversight of roof installation to ensure the roof is appropriately designed and correctly installed. In the future, PSFA plans to contract for professional services to perform post occupancy evaluations after a new facility has been in service for one year.

**Warranties.** The construction contract's general conditions state that all work shall be warranted. According to the June 29, 2009, Zuni school board minutes warranty work for the emergency re-roofing project is 15 years with a long-term warranty on materials. According to Section 07542-5 of the project manual, a "No Dollar Limit" 20 year roof warranty will be delivered to the district. Furthermore, PSFA contracted a full-time roof consultant for observation to ensure installation of the new roof is in compliance with the project documents.

**Maintenance.** New Mexico school districts are required by 6.27.3.11 NMAC to create and implement a written preventative maintenance plan and in the best interest of the districts to effectively maintain its facility resources. In August 2007 PSFA requested that all districts update their preventative maintenance plans and now require annual updates.

At the time of the LFC review, the district's preventative maintenance plan had not been updated since September 2005. PSFA's Facilities Assessment Database (FAD) is used to quantify and rank public school facility needs in all school districts. According to the PSFA, the district has not accessed the FAD since 2005. In addition, PSFA's 2008 Annual Report stated it is essential that the district's FAD data is fully up to date, if not, some needs may not be accurately represented. Districts are responsible for keeping their FAD data current and for reporting any changes in building conditions to PSFA. The PSFA Maintenance Division is available to assist districts to assure that district facilities are accurately ranked. Preventative maintenance is the key to any successful maintenance plan. The district submitted an updated plan on September 30, 2009, and it was approved by PSFA on October 1, 2009.

### **Key Issues.**

1. PSFA needs improvement on policies and procedures for emergency projects that include more detailed requirements for requesting emergency funds.
2. Lack of a memorandum of understanding for emergency projects that establish PSFA's roles and responsibilities for project oversight with the district.
3. PSFA project management needs improvement:
  - a. PSFA was not aware that the design services contract for the re-roofing projects was not executed by the district prior to design work beginning.
  - b. PSFA did not attend the pre-construction meeting for the middle school re-roofing project as required by the Project Manual.
4. Procurement oversight and the internal controls need improvement:
  - a. Re-roofing design work was performed prior to a contract in place.
  - b. Construction award for the re-roofing was made prior to PSFA approval of the design specifications.
  - c. The district procurement procedures need to be reviewed and finalized.
5. Zuni Public School District financial records prior to 2005 were not readily available.

### **Recommendations.**

PSFA should:

1. Improve policies and procedures for emergency projects that include requirements for requesting emergency funds and a time frame to complete the emergency project.
2. Ensure emergency project oversight roles and responsibilities are defined in a memorandum of understanding with the district.

District should:

1. Ensure records are maintained based on the appropriate records retention requirements.
2. Establish internal and management controls to ensure compliance with applicable laws, rules and regulations.
3. Ensure procurement procedures are finalized and adopted by the Zuni Board of Education.
4. Ensure that key warranty documents are properly safeguarded.

## ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT BOSQUE TRAIL DEVELOPMENT

**Background.** The 2004 - 2009 New Mexico Statewide Comprehensive Outdoor Recreation Plan required by the federal Land and Water Conservation Fund Act of 1965 identifies the development of multi-use trails as its number one recreation priority. The purpose of the Statewide Comprehensive Outdoor Recreation Plan is to determine the best way to serve the outdoor recreation requirements of the people of New Mexico. According to the Energy, Minerals and Natural Resources Department (ENMRD) website, the governor proposed the establishment of a multi-use trail along the Rio Grande. EMNRD has taken the lead to implement this project, known as the Rio Grande Trail, which would establish publicly-accessible recreational trail along as much of the river corridor through New Mexico as feasible and appropriate. Extending the existing bosque trail in Albuquerque north to Bernalillo and south to Belen will result in approximately 40 miles of Rio Grande Trail. This trail “has the potential to replicate successful long-distance trails in other states”.

EMNRD is responsible for implementing the State Trails Act, Sections 16-3-1 to 16-3-9 NMSA 1978, which includes coordinating trail development by assisting counties and municipalities with the formation of their trail plans. EMNRD is also responsible for administering the Federal Highway Administration (FHWA) Recreational Trails Program that provides funding for recreational trails.

Laws of 2005, Chapter 347, Section 33, appropriated \$3 million from the general fund to EMNRD to be expended in fiscal years 2005 through 2010 for bosque revitalization and to plan and develop trails in the north bosque area along the Rio Grande. Governor Bill Richardson identified the Mid-Region Council of Governments (MRCOG) as the agency to plan and develop the bosque trail project as a regional multi-use trail in the bosque area along the Rio Grande between Belen, and Bernalillo, New Mexico.

Laws of 2009, Chapter 5, Section 1 and 2 (HB9) reverted \$2.7 million to the general fund and reauthorized and changed the \$2.7 million funding to severance tax bonds (STB) for bosque revitalization and to plan and develop trails along the Rio Grande. EMNRD incorrectly reported expenditures of \$300 thousand instead of \$600 thousand because expenditure data prior to July 1, 2006 were not transferred to the statewide human resource, accounting and management reporting (SHARE) system. Therefore the reversion and reauthorization amount was not accurate in HB9. The amount used to address the FY09 budget shortfall is overstated by \$300 thousand. EMNRD certified that the New Mexico Board of Finance (BOF) would sell the STB for \$2.4 million in July 2009. EMNRD certified the bond sale based on two pilot projects; the Rio Rancho Open Space trail and Los Lunas River Park trail. The bond proceeds were deposited into a BOF managed account awaiting draw downs from EMNRD for the bosque trail project.

*Joint Powers Agreements.* The FY06 Joint Powers Agreement (JPA) between EMNRD and MRCOG establishes roles and responsibilities for the project. The MRCOG is responsible for developing the “blueprint” for a regional multi-use trail along the Rio Grande, selecting, designing and building pilot projects in the north bosque area. In addition, MRCOG shall manage the pilot projects and contract for and oversee contracted services as needed, for the development of the blueprint and provide written quarterly progress reports to EMNRD.

EMNRD responsibilities include reviewing and approving MRCOG blueprint and project work plans, advancing the MRCOG funds for initial planning, design and development of the blueprint.

The JPA authorizes EMNRD to advance up to a total of 10 percent of the \$3 million in project funds or \$300 thousand for materials and labor associated with the initial planning and development of the blueprint. Funds can also be advanced for pilot projects, based on approved work plans and estimated project costs up to \$3 million. EMNRD is responsible for reconciling the advance and expenditures based on actual costs incurred for materials and labor supported by invoices, time sheets and other documents to support MRCOG’s project costs.

In late August 2009 EMNRD terminated the JPA with MRCOG due to the legislative change of the funding source from the general fund and the appropriation language changing the original funds to severance tax bonds. The \$2.7 million appropriation reversion and reauthorization legislation states that the STB proceeds be expended by EMNRD “... for bosque revitalization and to plan and develop trails along the Rio Grande.” According to BOF’s rule *Interpretation of Authorizing Language* 2.61.6.8 NMAC the definition of “develop” and “plan” states “... (e) Develop - establish the process for future implementation of a project; similar to ‘design’ however less tangible and more conceptual”; and “... (o) Plan - see “develop”.” The BOF advised they cannot provide a waiver to the definitions, but can assist in interpreting the appropriation language. The JPA will be replaced if and when STB funding is properly reauthorized to allow for construction, rather than just planning and development.

In January 2007 EMNRD established a JPA with the City of Rio Rancho (Rio Rancho) based on a New Mexico Recreational Trails Grant Program application that Rio Rancho filed. The Recreational Trails Program provides funds to the States to develop and maintain recreational trails and trail-related facilities for both non-motorized and motorized recreational trail uses. The RTP is an assistance program of FHWA. As part of the agreement Rio Rancho constructed one mile multi-use trail from Rio Rancho’s existing trail at Willow Creek to the town of Bernalillo, and maintain the trails and public access to the trail for a minimum of 25 years. FHWA provided \$69.4 thousand and Rio Rancho’s match was \$17.4 thousand. The one mile multi-use trail was completed in May 2008.

**Fiscal Impact.** MRCOG used the FY06 advance for the development of the blueprint and in FY07 for development associated with the pilot projects. Advances to MRCOG from the \$3 million appropriation and expenditures by year are summarized in the table below.

**Table 9. Expenditure of Advances  
FY06 through FY10**  
(in thousands)

Laws 2005, Chapter 347, Section 33 Appropriation			\$3,000.0
Fiscal Year	Advance Amount	Expenditures	Balance
2006	\$300.0	\$164.9	
2007	\$300.0	\$145.0	
2008	-	\$ 5.7	
2009	-	\$84.5	
2010		\$10.0	
<b>Total</b>	<b>\$600.0</b>	<b>\$460.1</b>	<b>\$139.9</b>

Source: EMNRD and Mid-Region Council of Governments

**Summary**

The Rio Grande Trail Alignment Analysis and Implementation Plan (plan) was completed in July 2006 by MRCOG. The plan identified alternate segments for recommended pilot projects, and recommends that the project be divided into phases. Opportunities exist to coordinate trail construction with planned road, levee, and storm water improvements, and new developments. A phased approach would allow for completing levee and flood studies and securing funding from federal and state sources.

In addition, using other funds, EMNRD completed in 2008 a Rio Grande Trail Corridor Study for the segment of the proposed Rio Grande trail between Belen and Sunland Park. The EMNRD corridor study analyzed proposed routes for the Rio Grande trail from Belen to Sunland Park, identified alternative alignments within the study corridor, inventoried land status and ownership, and identified necessary trail access improvements.

There are 17 different municipalities, agencies and jurisdictions along the entire stretch of the Rio Grande Corridor that require coordination and cooperation in order to complete project between Belen to Bernalillo. At a minimum, for any pilot project coordination is required between six different entities: the local municipality, Middle Rio Grande Conservancy District, Bureau of Reclamation, U.S. Army Corps of Engineers, EMNRD, and the local flood control authority. General challenges and constraints including ease of implementation, accessibility, environmental considerations, public safety, user accommodations and level of stakeholder support have and will continue to impact the progress of the bosque trail project. Jurisdictional matters such as an agency’s capacity to provide management and maintenance pose additional challenges.

**Implementation Plan** The plan identifies seven trail alignments for approximately 40 miles, and probable construction costs shown in the following table.

**Table 10. Summary of Trail Alignments**  
(In millions)

Segment Location		Probable Costs
Town of Bernalillo to Rio Rancho		\$2.5
Rio Rancho to Corrales		\$0.8
Village of Corrales		\$1.8
Bernalillo County	Corrales to Alameda	\$0.5
	South Diversion Channel to Isleta Pueblo	\$3.7
Isleta Pueblo		\$1.1
Bosque Farms to Los Lunas		\$1.8
Los Lunas to Belen		\$5.0
Total		\$17.2
Design Contingency		\$4.3
<b>Total</b>		<b>\$21.5</b>

Source: Rio Grande Trail Alignment Analysis and Implementation Plan, MRCOG

Each of these alignments were evaluated based on information from plans already adopted by the community, long range bikeway system, Valencia County mobility plan, site visits and other sources such as stakeholder meetings. A team approach was used to set the criteria used to evaluate each alignment. The screening criteria used to compare the alternative alignments are shown in **Appendix A**.

As a result of evaluation and rating, three pilot projects were recommended: 1) Rio Rancho bosque open space trail, 2) Corrales to Alameda connection, and 3) Los Lunas river park trail. The evaluation results for the selected alignments included in the three pilot projects are shown in the following table.

**Table 11. Pilot Projects Evaluation Summary**

Criteria	Rio Rancho	Corrales to Alameda	Los Lunas to Belen
	Rio Rancho Bosque Open Space - Alignment 2A	Loma Larga/Main Canal - Alignment 3D	Levee Road, east side of Rio Grande - Alignment 7A
Connectivity	Good	Moderate to Good	Good to Moderate
Character	Good	Moderate to Good	Good to Moderate
Political Support	Good	Good	Good to Moderate
Environmental Concerns	Moderate	Moderate	Good to Moderate
Ease of Implementation	Moderate	Moderate	Moderate
Safety	Good	Poor to Moderate	Good to Moderate
User Accommodation	Moderate to Good	Moderate to Good	Good to Moderate

Source: NM State Parks and MRCOG

**Pilot Projects.** The status of the pilot projects, issues encountered and the estimated cost to complete the projects is discussed below.

Rio Rancho The Rio Rancho trail is the most developed of the pilot projects. It goes from Corrales Road north to the Willow Creek parking lot that is within the City of Rio Rancho. The construction design is complete and nearly all trail agreements are in place. The major issue delaying the project is Sandia Pueblo's approval of the trail in pueblo owned land located in the Rio Rancho's River's Edge I community. A proposal for a new trail has been completed for Sandia Pueblo Governor and Lieutenant Governor's review. Timing of the review and approval by Sandia Pueblo may be an issue because there is a new governor each year. In addition, within the proposed Rio Rancho trail there are five archeological sites that will need protection. The trail in this area would tie in with Willow Creek trail.

The October 2006 Memorandum of Understanding (MOU) between MRCOG and Rio Rancho states that the city shall provide the labor to apply the polypave trail surface to the Rio Rancho bosque trail. As a result, the MOU will save approximately \$107 thousand. The estimated probable cost for the Rio Rancho pilot project is \$553 thousand. Rio Rancho is already participating in the trail development and has agreed to maintain the trail.

Corrales. The Middle Rio Grande Conservancy District (Conservancy District) owns the ditches and the land that constitutes the Corrales Bosque Preserve. The Village of Corrales manages Corrales Bosque Preserve under a joint powers agreement with the Conservancy District. The Village of Corrales officially opposed the trail within the Corrales Bosque Preserve. Residents that wanted the trail in the Corrales Bosque Preserve have expressed disappointment at not having an environmental study to determine the impact of the trail through this area. However, the Village of Corrales approved an alternate route that runs along the Corrales main canal, adjacent to Loma Larga road. The Conservancy District is willing to allow a trail within their right-of-way as long as it does not interfere with maintenance activities. However, Conservancy District staff has consistently expressed serious concern due to lack of right-of-way on the

Village-approved alternative route. The Village-approved route has not yet been presented to the Conservancy District elected board which has final approval authority. The estimated cost for the Corrales pilot project depends on the selected alignment that ranges from \$1.6 million to \$1.8 million.

Los Lunas. The Los Lunas pilot project is 2 – 3 miles and runs south from Main Street (Highway 6) along the east side of the Rio Grande. It will be located on land that is within unincorporated Valencia county, but adjacent to Los Lunas municipal limits. The Conservancy District, Bureau of Reclamation, and United States Army Corps of Engineers (Corps of Engineers) own and are responsible for managing the land. There is authority and permitting challenges that have to be addressed before continuing with the development of the pilot project trail. Construction permits may be required from the Corps of Engineers, Fish and Wildlife Services and U.S. Bureau of Reclamation, the state's departments of environment and transportation and the Conservancy District all issue separate and distinct permits for construction. The Corp of Engineers is planning to rebuild levees along the Rio Grande south of Albuquerque beginning in 2015. It is uncertain when the Los Lunas segment of levee would be scheduled for construction. The estimated cost for the Los Lunas pilot project trail is \$1.3 million.

Belen Belen is a destination in the bosque trail extension proposal; however, discussions are in the very early stages. The Whitfield Wildlife Conservation Area located in the city of Belen has expressed an interest in linking to the trail. There is an opportunity to provide wildlife observation and other amenities (i.e., restroom, water, and parking) to the public at the Whitfield Wildlife Conservation Area if a bridge is built to connect the trail.



Albuquerque Bosque Trail (within city)



Rio Rancho Willow Creek Trail



Proposed trail area in Rio Rancho



Rio Rancho Sandia Property



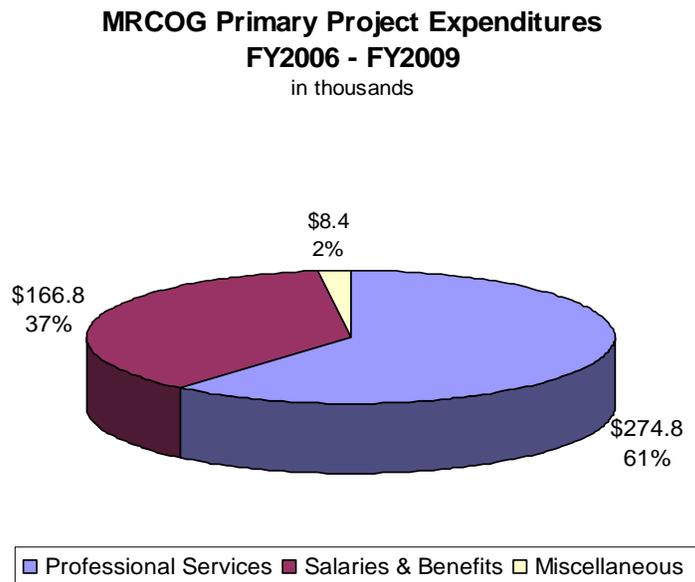
Corrales Acequia



Los Lunas Levee Road

**Environmental Compliance.** Concerns for safeguarding the environment and protecting cultural resources will be crucial components to the success of the trail project. The only trail segment to receive a formal site visit by New Mexico Environment Department, Corp of Engineers, and Bureau of Reclamation is the Rio Rancho Bosque Preserve between Willow Creek parking lot and Corrales road.

**Funding and Expenditures.** A summary of the primary project expenditures to date are shown in the following chart.



Source: MRCOG

MRCOG uses a fund accounting system to track project expenditures. Based on a review of MRCOG’s general ledger detail and support documentation, expenditures were adequately supported to ensure the expenditures are appropriate and accurate.

EMNRD State Parks Division tracks project expenditures using expense summaries included in MRCOG quarterly reports and the advance is tracked in SHARE. The documentation supporting the advances is kept in EMNRD’s project files. Although EMNRD does not approve individual project expenditures, it is their responsibility to review and approve task completion and contract deliverables. EMNRD reconciles the advance to actual costs and reviews—MRCOG documentation to ensure project expenditures are appropriate.

When the JPA was terminated, EMNRD requested that MRCOG no longer charge to the project and refund the advance balance. The general fund can expect a refund in an amount to be determined, approximately \$140 thousand depending on the final reconciliation of the EMNRD and MRCOG accounts.

**Contract Awards.** MRCOG was responsible for contracting professional services for the development of the plan and preliminary and final design of pilot projects. MRCOG awarded two contracts appropriately through a request for proposal (RFP) process using qualification-based evaluation criteria. Although the RFP required pricing information, it was not a factor in

the evaluation. Based on the documentation provided, it appears MRCOG did not perform a price analysis to ensure they obtained a fair and reasonable price.

Contractor services were performed on a work authorization (task) basis that included a scope of work and estimated costs. However, the majority of the work authorizations did not clearly define deliverables, i.e. reports and studies and did not include any milestones or due dates. The contract states compensation for each task will be specifically identified in each work authorization. Work authorizations and contractor proposals stated billing will be on a time and material basis with a not to exceed threshold.

*Contractor Invoices.* In every instance the amounts billed equaled the not to exceed amount included in the proposal. Billed amounts appear to be fixed at the not to exceed threshold.

According to MRCOG, the contractor billing rates were evaluated and negotiations were verbal. At the time of our review, MRCOG could not provide documentation to support the evaluation and how the rates were agreed on. It appeared that in some instances billing rates changed without an agreement of rate increases. For example, billing rates increased over a six month time period and in some cases the rates were approximately nine percent higher and in one instance 20 percent higher.

According to Section 13-1-122 NMSA 1978, the secretary or his designee...or designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In addition, Section 13-1-112 states in the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.

Furthermore, MRCOG's procurement policy states the procurement system maintained by MRCOG shall include sufficient detail history of the procurement, including but not limited to rationale for the method of procurement, awardees selection and the basis for the agreement on price.

A properly documented procurement file provides an audit trail from the initiation of the acquisition process to the award of the contract. The file provides the complete background, including the basis for the decisions, and supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries. A well-documented file is without need of interpretation from the contract administrator. Enough information should be included in the procurement file so that a person versed in procurement practices can read the information and conclude that all actions taken relative to the procurement were appropriate and in the best interests of EMNRD and State of New Mexico.

***Project Management.*** Project management by EMNRD and MRCOG needs improvement. EMNRD did not have documentation showing that the prior State Trails Coordinator or staff reviewed and approved the blueprints and work plans as required by the JPA. Documentation related to project milestone achievements were also not available in EMNRD's project files or

archives. In addition, prior to June 2008 EMNRD did not have a written approval process in place for reviewing and approving work plans.

EMNRD monitors the project by reviewing quarterly reports from MRCOG. The quarterly reports are the primary project monitoring tool. The quarterly reports include meeting and coordination efforts, status of “active” pilot projects, project expenditures and tasks to be accomplished by the next quarter. EMNRD also reviews and approves task completion and contract deliverables. However, as stated above work authorizations did not always define the deliverables and include due dates or milestones. MRCOG stated project completion dates for the pilot projects have not been formally established. Project management cannot be effective without milestones. Maintaining documentation, a project timeline, and establishing due dates for deliverables are important components of project management.

It is not clear if MRCOG has an implementation plan for the Rio Rancho pilot project or the other pilot projects that includes how the trails will be constructed, material to be used, and the timeframe in which to construct.

Cultivating partnerships with federal, state and local governments, pueblos, and user groups have impacted the progress of the project and delayed the use of available funds. Due to the jurisdictional complexities over the almost 40 miles of trail and the re-engineering of the levee system in Valencia County, the trail is not likely to be built for many years. New Mexico’s current fiscal condition could jeopardize the continuance of funding for this project.

**Key Issues.**

1. EMNRD’s inaccurate reporting of expenditures for the reauthorization of funds.
2. Estimated cost for the entire bosque trail project is approximately \$21 million.
3. Project management needs improvement.
4. MRCOG did not have documentation in the contract files to show how the final price including the billing rates was negotiated.

**Recommendations.**

EMNRD should:

1. Request the Legislature to amend the project authorization language to allow for and construction of the trails.
2. Assess the viability of completing the pilot projects.
3. Ensure project documentation including approval of project milestones and deliverables are consistently maintained.
4. Ensure MRCOG work plans, deliverables and milestones are in place, reviewed and approved before advancing any additional funds.

MRCOG should:

1. Determine if the Rio Rancho pilot project can be completed and establish a detail work plan with project milestones to ensure effective use of the funds needed to complete this pilot.
2. Ensure that procurement documentation includes evidence that it obtained a fair and reasonable price.

## GENERAL SERVICES DEPARTMENT CAPITOL PARKING STRUCTURE

**Background.** The Laws of 2005, Chapter 320, Section 1 authorized the Property Control Division (PCD) of the General Services Department (department) in cooperation with New Mexico Legislative Council Service (LCS) and in accordance with the capitol buildings master plan, to design, construct and equip a parking structure in the Main Capitol Campus in Santa Fe. Upon completion, PCD will transfer the parking structure to the Legislative Council which will own, operate and maintain the parking structure. When completed, the three-level structure (one underground) will have spaces for 596 vehicles.

Section 13-1-119.1 NMSA 1978 states a design and build project delivery system may be authorized when the state purchasing agent makes a determination in writing that it is appropriate and in the best interest of the state to use a design and build project delivery system with a maximum allowable construction cost (MACC) more than \$10 million. In December 2007 the State Purchasing Director determined that a design and build project delivery system could be used for the capitol parking structure. Based on preliminary planning for the parking structure, the projected MACC was \$11.1 million. The overall objective of the design and build delivery system is to reduce the total cost to the state and deliver projects more quickly than the traditional design-bid-build approach. A study conducted by Pennsylvania State University and the University of Texas at Austin shows a decline in the use of the traditional design-bid-build delivery model from about 82 percent of projects in 1985 to about 41 percent in 2007. In design-build, the owner/client passes the responsibility for both design and construction to one entity and reduces risk and number of change orders. The capitol parking structure is PCD's first design and build project.

*Memorandum of Understanding.* In March 2008 PCD established a Memorandum of Understanding (MOU) agreement with the Office of Archaeological Studies (OAS), a division of the Department of Cultural Affairs to conduct archaeological testing and archival research for the location of the parking structure, west of the capitol building in the Santa Fe Capitol Complex Historic District. In preparation for construction, a research design and data recovery plan were developed and executed by OAS. OAS provided weekly progress reports on the archaeological investigations and submitted preliminary reports in May 2008. OAS documented over 230 features and recovered 23 thousand artifacts as a result of their investigations. OAS will submit a final report after construction is complete.

**Fiscal Impact.** Laws of 2005, Chapter 320, Section 1, authorized PCD to expend certain bond proceeds to plan, design, construct and equip the parking structure. The New Mexico Finance Authority (NMFA) issued State Building Tax Revenue bonds necessary for the project. The following table summarizes the funding and expenditures as of October 7, 2009.

**Table 12. Summary of Capitol Parking Structure Funding and Expenditures**  
(in thousands)

<b>NMFA Funding – State Building Tax Revenue Bonds \$15,600.0</b>			
<b>Contract and Purchase Order Awards</b>	<b>Expenditures</b>	<b>Contract Balance</b>	<b>Unexpended Balance</b>
Gerald A. Martin Ltd	\$14,809.0	\$14,491.0	\$318.0
Architectural Research Consultants	\$277.0	\$277.0	\$0
Dept. of Cultural Affairs	\$340.0	\$247.0	\$93.0
Public Service Company of New Mexico	\$91.0	\$91.0	\$0
Bradbury & Stamm Construction	\$10.0	\$10.0	\$0
Other - Signage	\$2.0	\$2.0	\$0
PCD Administrative Fees	\$3.0	\$3.0	\$0
<b>Total</b>	<b>\$15,532.0</b>	<b>\$15,121.0</b>	<b>\$411.0</b>
<b>Funding Balance</b>			<b>\$68.0</b>
			<b>\$479.0</b>

Source: NMFA and PCD

Total project expenses include site costs of \$2.7 million. Site costs include items such as landscaping, sidewalks, and exterior lighting.

In November 2007 Property Control Division (PCD) of the General Services Department contracted with an architect consulting firm (consultant) to assist in organizing and administering the design-build selection process. The consultant as the “design criteria professional” developed the facility program and performance specifications. The consultant completed a site development plan, developed the Request for Design and Build Qualifications (RFQ) and Request for Proposal (RFP) that served as the basis for competitively selecting the design-build team for construction of the project. The consultant was disqualified from participating in the design-build contract for the project.

The initial project estimate for the capitol parking structure was approximately \$12.5 million, inclusive of site costs and gross receipts tax. Approximately \$3.1 million in change orders increased the estimated cost to \$15.6 million. The most significant change order included \$2.9 million to redesign and build one level below grade and to address issues raised by the City of Santa Fe’s (city) Historical Review Board regarding the exterior. In addition, change orders of \$41.7 thousand for relocation of utilities, \$93.3 thousand for special inspections and \$15.8 thousand for an electrical conduit increased the estimated costs. Based on industry standards historically PCD has set aside 6.5 percent of the budget for contingencies that would include design problems and owner requested changes.

The project was initially scheduled for substantial completion by February 2009. Based on the change orders mentioned above the substantial completion was changed to August 1, 2009. However the contractor did not meet the date due to the city’s delay in water sewer hookups, and weather. Project delays due to weather, city utility permitting challenges, and north side design issues resulted in a subsequent change order extending the substantial completion date to September 11, 2009 and to change the gross receipts tax rate effective July 1, 2009. Then in mid-September a change order was issued to change the substantial completion date to October 13, 2009 due to weather and delays by the city to install utilities. According to the project manager, the city refused to install the water meters until the curb and gutter were complete on the southwest corner in order to see the elevations.

***Funding and Expenditures.*** This project was funded through State Building Tax Revenue bonds by New Mexico Finance Authority. As of October 2009, project expenditures are \$15.1 million. Project funding is being used for its intended purpose. Funding has been encumbered and expended for its statutory purpose. PCD's documentation supported approvals for the progress payments and amounts reimbursed to the general contractor. PCD retains payment voucher documentation for the project expenses and reconciles the payments to the statewide human resource, accounting and management reporting (SHARE) system. The encumbered amounts in SHARE reconcile to the contracts and purchase orders.

***Contracts.*** Contracts issued by PCD for the capitol parking structure project are valid, properly authorized, approved, adequately documented and contract terms were effectively monitored. Justification and documentation for change orders was appropriate to ensure the work was necessary.

Procurement rules require that a two-phase request for qualification based proposals be implemented in order to award a design and build contract to perform the work. PCD issued the qualification based request for proposal (RFP) November 29, 2007. For phase one the best qualified of five firms who responded were evaluated and two were determined to be qualified and made the short-list for phase two. PCD awarded the design-build contract April 18, 2008. Based on the language in the RFP, PCD paid the responsive, but unsuccessful firm a \$10 thousand stipend. Section 13-1-119.1 NMSA 1978 states unsuccessful firms on the short-list that have been invited to submit detailed specific technical concepts or solutions, costs and scheduling may be paid a stipend to cover proposal expenses. *Solicitation of Design and Build Delivery Systems*, 1.5.7.9 NMAC recommends but does not require that criteria be developed to determine whether a stipend will be paid to the short-listed firms. A stipulated stipend, according to NMAC, means using funds, as determined by the using agency (LCS), to cover some expenses likely to be incurred by short-listed firms. Neither PCD nor LCS developed criteria as recommended by NMAC. Instead the decision was made based on available funds, being the first time a stipend has been paid.

Other states were contacted to determine how they handle stipends to responsive, but unsuccessful firms (offerors). Even though Arizona and Colorado have statutory language allowing fees to be paid to responsive unsuccessful firms, neither has written policies, procedures and guidelines to establish criteria for paying a stipend.

***Project Management.*** The project was properly planned and executed. Project management, planning and implementation have been successful under the design and build delivery method. PCD monitored the project status consistently; project delays were justified and properly documented. The parking structure's location in a historic district was one of the factors that caused delays and increased project costs. PCD stated lessons learned from the city's Historical Review Board processes and requirements will benefit the next project at the Capitol Campus (Executive Office Building). According to PCD the recognizable benefits from the design-build delivery include time saved and reduced number of change orders. Project completion would have taken at least another year under the "typical" design construction method.

The advantages of a team approach of design-build, time and cost savings could be applied to many more projects if the maximum allowable construction cost (MACC) threshold of \$10 million is lowered to \$7 million.

Laws 2009, Chapter 23 (HB360) provides procedures for capital outlay projects that fall under the Historical District and Landmark Act. Before commencing the design phase, the state shall consult with the local government when the design standards would impact costs and the project is within a historic district. This new legislation will be applied to the next design-build project and will add time to the process – PCD’s estimation is at least an additional five months.

### State Capitol Parking Structure



***Transition to Operations.*** Good project management practices require a transition to operations plan that outlines how a project will move from construction to full operation of the facility. In late June 2009, Legislative Council Service (LCS) requested information from the contractor on how to manage a parking structure and as of this writing a management plan has not been developed. At an August 2009 jobsite meeting LCS stated the garage would be open for everyone on a first come first serve basis until later in the fall. LCS will monitor its use and then make a decision on a management plan. The management plan will be submitted to Legislative Council capital outlay subcommittee for review and approval.

According to PCD, the Legislative Maintenance Department will maintain the parking structure, and LCS will hold the title to the structure, therefore it will not be in PCD’s FacilityMax system. In addition, according to the design-build contract approximately 30 days prior to the one-year anniversary of the date of substantial completion, the owner (LCS), and the design-builder shall conduct an inspection of the project to determine any correction of the work which may be required at that time.

### **Key Issues.**

1. Lack of criteria for determining stipend amount; no policies or procedures.
2. A management plan will not be in place when the ownership of the structure is transferred to Legislative Council Services.

## **Recommendations.**

The General Services Department should:

1. Develop a policy that includes criteria for determining how and when a stipend will be paid to responsive, but unsuccessful firms (offerors). The criteria should include a standard methodology that can be applied consistently. The policy should take into consideration constraints on available revenue in times of budget short falls.
2. Analyze the cost benefit of design build project delivery method in comparison to traditional design-bid-build project delivery system. Review past projects of similar size and complexity for comparison purposes to identify advantages and disadvantages of design build method.
3. Consider proposing legislation to amend the maximum allowable construction cost threshold.

The Legislative Council Services should draft the Capitol Parking Structure management plan for review and approval by the Legislative Council capital outlay subcommittee. The management plan may include:

- Parking fees,
- Operating hours,
- Security,
- Additional staff need or an automated control system,
- Utilities,
- Parking structure maintenance plan,
- Account (fund) in which fees will be deposited, etc.

## **STATUS OF PRIOR FINDINGS AND RECOMMENDATIONS**

The January 2009 LFC report *Review of Selected Capital Outlay Projects* identified areas where improvements could be made and provided recommendations for corrective action for the four capital outlay projects reviewed. The follow-up on the prior findings and recommendations is limited to significant findings.

### **Department of Finance and Administration – Water Innovation Fund**

**Finding:** The Department of Finance and Administration (DFA) Capital Outlay bureau has not established a tracking system to measure project performance and outcome. Whether a project and system is operational or project has been abandoned it must be tracked. If the project is abandoned then the system should also track final equipment inventory, including who has custody of the equipment, its location or if it could be used for any other project, etc.

**Recommendation:** Compile an inventory of equipment purchased, location of equipment, custodian, and current usage of equipment. Transfer unused equipment to other WIF projects that could benefit from such transfers.

**Status:** DFA has not implemented the LFC recommendation. According to LFC documentation the paperwork to transfer the equipment to New Mexico State University (NMSU) Ag Science Center in Clovis for its Dairy Wastewater program has been under review by DFA's Legal Division since December 2008. The prior report stated DFA has not approved the transfer of the

equipment because the paperwork is still in the Legal Division. NMSU confirmed that the equipment has not been transferred as of October 2009. Furthermore, the equipment for the Santa Fe County lagoon filtration system located at New Mexico Corrections Department remains abandoned as shown in the following picture.



DFA's target completion date for its corrective action plan was summer of 2009. The corrective action stated equipment purchased through contract with local government entity will be sole responsibility of that entity. Unused equipment will be inventoried and state agencies will be contacted internally for transfer of the equipment.

#### **General Services Department - Tri-Services Laboratory**

**Finding:** Piecemeal funding for Tri-Services Laboratory planning and construction monies resulted in lost savings and expertise for the state.

*Recommendation:* GSD should propose legislation to institute a two-phased funding approach for all major capital outlay projects. First phase should fund project design through programming and schematic. Second phase to fund full construction, furnishings, and equipment costs based on completed design and updated cost estimates.

*Status:* According to GSD discussions were held with DFA when they made a presentation to the Capital Outlay subcommittee. The idea is to have a plan with bridging documents and a detail cost estimate for design prior to requesting capital outlay funds for construction. Bridging documents would include items such as a feasibility study, plans and specifications. However, GSD did not propose legislation to institute a two-phased funding approach for all major capital outlay projects

**Finding:** There is a need for legislation to be introduced that would require all capital outlay projects under the jurisdiction of the PCD to submit a maintenance plan and an annual maintenance report, similar to the master planning, maintenance and utilization model implemented by the Public School Facility Authority.

*Recommendation:* Encourage GSD to continue to work on proposed legislation requiring the inclusion of maintenance planning and submission of periodic maintenance reports on new construction projects to PCD.

*Status:* Legislation (HB358) was proposed during the 2009 Legislative Regular Session requiring all agencies occupying space in buildings owned by GSD to develop and file a preventative maintenance plan. HB358 did not make it through the session.

### **Department of Game and Fish – Eagle Nest Dam Repairs**

*Finding:* The cost transfers from the Department of Game and Fish (DGF) to the Interstate Stream Commission (ISC) for the contractor invoices do not reconcile with the ISC's records. As a result, the reauthorized appropriation amount may be overstated.

*Recommendation:* Reconcile the DGF expenses/payment transfers with ISC payment records to ensure the appropriation balance is correct.

*Status:* DGF has not reconciled payments with ISC payment records due to ISC's lack of response to DGF July 22, 2009 correspondence. DGF will continue to attempt to engage ISC in a reconciliation process and will make contact within the next two weeks.

*Finding:* DGF does not have a complete Operation and Maintenance Manual and Emergency Action Plan as required by Dam Design, Construction and Dam Safety, 19.25.12.21 NMAC.

*Recommendation:* DGF should at a minimum, take action to complete the Operations and Maintenance (O&M) manual and the Emergency Action Plan (EAP), this would show due diligence as the dam owner to meet the applicable requirements of the dam safety rules and regulations.

*Status:* According to DGF they are on track to complete O&M and EAP manuals by December 2009.



**BILL RICHARDSON**  
Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**  
**Water & Wastewater Infrastructure**  
**Development Division**  
525 Camino de Los Marquez, Suite 4  
Santa Fe, New Mexico 87505  
Telephone (505)476-8611  
Fax (505)476-8656  
**Karen E. Gallegos, Director**



**RÓN CURRY**  
Secretary

**JON GOLDSTEIN**  
Deputy Secretary

November 16, 2009

Mr. David Abbey, Director  
Legislative Finance Committee  
State Capitol North, 325 Don Gaspar  
Santa Fe, NM 87501

Dear Mr. Abbey

The Department appreciates the opportunity to work with your staff on the review of the Lumberton Mutual Domestic Water Consumers Association (MDWCA) Water System Improvement Project. In general the report prepared by your staff highlights the challenges faced by many small communities throughout the state in attempting to provide safe drinking water that meets EPA standards without having sufficient resources to make critical capital improvements.

In response to some of the identified key issues and recommendations contained in the report, the Department offers the following:

1. Lumberton has had a significant need for improvement in its water system for a considerable length of time. Lumberton's situation is representative of many small, remote communities throughout the state. It has faced multiple challenges in developing not only the technical capacity through physical infrastructure development but also has lacked professional financial and managerial capacity as well. These challenges are recognized by NMED and have led to a series of developments to provide more assistance to these communities.
2. NMED launched the Uniform Funding Application (UFA) in August of last year which provides communities with access to the majority of available water and wastewater infrastructure funding opportunities through a single, web-based portal. NMED collaborates with other state and federal funding agencies to identify the most affordable funding options for an entire water or wastewater project.
3. NMED's Construction Programs Bureau requires the use of a standardized contract for Engineering and Design so that projects can be reviewed more

easily and efficiently. Additionally, use of the standard format makes explanation of the various contract aspects more straightforward for communities that do not have either a lawyer or an engineer on staff.

4. NMED has also worked with the Professional Technical Assistance Board to strengthen the review of RFP's to better ensure conformity between the services needed and those that are procured.

In other words, NMED has been working diligently to improve the infrastructure development process and address challenges faced by water systems such as Lumberton. The UFA process may provide an opportunity for collaboration with the Legislature to support the capital outlay funding process in the future. The UFA process could allow for a more thorough technical evaluation of the project in advance of a legislative funding decision, provide an opportunity to utilize multiple funding sources thereby leveraging available state dollars, and identify a complete, affordable funding package.

The Department is committed to continuing to provide assistance to all communities across the state to ensure the availability of safe and effective water and wastewater treatment. Should you have any questions, comments or require additional information, please do not hesitate to contact me or my staff.

Sincerely,



Karen E. Gallegos  
Director  
Water and Wastewater Infrastructure Development Division

**Lumberton Mutual Domestic Water Consumers Association**  
**HC 71 Box 113, Lumberton, New Mexico 87528**

November 16, 2009

Legislative Finance Committee  
State Capitol North - 325 Don Gaspar  
Santa Fe, New Mexico 87501

Dear Committee Members:

We welcome this opportunity to present to you our reactions to the staff report from the point of view of Lumberton. This statement has been reviewed and approved by the Board of the Lumberton MDWCA.

\*\*\*\*\*

It has been a long and difficult road for Lumberton to achieve drinkable water, a road stretching from the 1950s to now. Lumberton is in area of little groundwater and an area whose soil contains a large concentration of coal, shale, and sulphur. For many years, Lumberton water was brown and smelly, and certainly undrinkable. In the early years, the water supply was supplemented by the hauling of barrels of water from the Navajo River. Many attempts were made to improve the situation, but met failure because of the combination of objective difficulty and lack of financial resources. Some well-meaning attempts left the Association with a burden of debt that further diminished our ability to find a solution.

The commitment of the State to the proposition that all New Mexicans should have safe drinkable water provided a breakthrough for us. The State and the federal Department of Agriculture provided financial resources in the past few years in the form of grants and the State provided expertise and guidance from the New Mexico Environment Department. The Lumberton community had to endure the humiliation of a virtual takeover by NMED and the spreading through the state of rumors and tall tales of Lumberton stupidity. The positive side of that experience is that the grant money flowed, a workable system was constructed, the Association was prodded into contracting a certified water operator and raising water rates to a high level in order to pay for the additional expenses. The outcome is a good one: We have safe drinking water today.

\*\*\*\*\*

We will not attempt a detailed line-by-line response to the report, but will concentrate on the summary and recommendations.

1. In the Summary and again in the Recommendations, mention is made of a proposal to obtain water from the Jicarilla Apache Nation. That idea did, indeed, have appeal at the time it was made, but the Association's petition to the JAN were rebuffed. It was not a problem of communication, but of conflict of interest. The JAN was concerned about its liability in the event of problems and of the potential for a shortfall of water to Dulce in drought conditions. We do not fault the JAN, which has as its primary concern the welfare of its members. In any case, this proposal seems to us to be water under the bridge, as it were, in view of the fact that the Association has obtained a water system of its own since that time.
2. It is stated in the Summary that "the association expended funding on a water system design that produced substandard results and did not establish a safe and reliable source of water for the community." In fact, the Association accepted and implemented a properly engineered system to derive clean drinking water from the waters of the Navajo River. The system worked well considering its temporary location in a tent, the insufficiency of funding to construct an intake gallery according to the engineer's specifications (more on this later), and the continued use of an old and leaky distribution system. The same processing plant that was constructed at that time (2005) is in use today and is working satisfactorily. The substandard results came about because (a) the Association attempted to save money by having the plant operated by the Board members, who did not have adequate knowledge to operate it successfully; and (b) the distribution system was still inadequate. With the help of NMED, the management errors have been corrected, and with the help of grants from the State and from the Department of Agriculture, funding allowed construction of a permanent building for the plant and improvement of the distribution system.
3. We take exception to the summary statement: "The Lumberton MDWCA water system improvement project should be used as an example of what to avoid in all future water system improvement projects." There have been problems, but the management system in place for NMED and the local associations has succeeded in bringing about a successful outcome. The problems that were encountered were largely due to the small size of the Lumberton community and the poverty of its residents. The proposal to hold the Lumberton system up to ridicule – for this is what it amounts to – is insulting and wrong.
4. As to present and future needs:

The intake gallery has not been built according to specifications and this lack will have a negative impact on the continuing smooth functioning of the plant. This is a priority item.

For the present, we have proposed to repair the existing gallery and have obtained an estimate of \$8800 for the repair, but have been stymied in ordering the work by the need to involve the present contractor, TLC Plumbing, and the refusal of that contractor to perform the work or to subcontract the work to the contractor we have identified or to any other contractor. We are seriously worried that if the work is not accomplished this month, freezing conditions will block the access of water to the plant, rendering the plant useless and depriving our members of water for the winter season.

The distribution system has been replaced in the downtown area and most of the west side and the east side.

There is a short gap in the line on the east side that must be bridged so as to allow the abandonment of the old leaky line. We hope that this will be corrected before freezing sets in this season.

There will remain a section of older pipe on the east side, south of the highway, on the near-west side, and on the far-west side. There is pipeline from the plant to the storage tank and from the tank to the downtown area that is not suspect of leaking at present.

We are not competent to estimate the cost of these items. We have been astonished at the high cost of work completed to date.

5. On the recommendations to the Legislature, we prescind from comment as these matters are outside of our competence.
6. On the cost-benefit analysis, we have already addressed the proposal to link to the Dulce water system. The recommendation for surcharges for debt service seems to answer a nonexistent problem. The current rate schedule has been sufficient to cover debt service. The rates seem adequate also to cover routine maintenance and replacements. Major construction will have to be funded from outside sources.
7. The cost of updating engineering reports, environmental reports, etc. is high. Unfortunately, the mandates of government, however well intentioned, can damage the viability of small organizations such as ours.
8. We will proceed with the recommendations to request that the State Auditor perform an audit of our books and we will request loan forgiveness by the USDA. The loan-forgiveness suggestion does not extend to the NMED loans, but we may ask for forgiveness there also.

\*\*\*\*\*

We close by thanking the legislature and the State government as a whole for the help provided to the Lumberton MDWCA over the past several years. We hope that you will regard this program as a successful one deserving of continued support, as needed, in the future.

Sincerely,

Elma Garcia, President

**State of New Mexico  
Public School Capital Outlay Council**

**Chair:**  
Katherine Miller, DFA

**Members:**  
Bill Hume, Governor's Office  
Veronica Garcia, PED  
Frances Maestas, LESC  
David Abbey, LFC



**Public School Facilities Authority**  
Robert Gorrell, Director  
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Santa Fe, NM 87505  
(505) 988-5989 Fax: (505) 988-5933

**Vice Chair:**  
Paula Tackett, LCS

**Members:**  
Lisa Martinez, CID  
Vicki Smith, NMSBA  
Catherine Smith, PEC

November 10, 2009

Ms. Brenda D. Fresquez  
Program Evaluator  
New Mexico Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, New Mexico 87501

Dear Ms. Fresquez:

Thank you for allowing PSFA to gain the benefit of your review of the Zuni Emergency project. Reviewing processes through new and impartial eyes is a great benefit to PSFA and provides the constructive feedback we welcome. We recommend a few revisions, some grammatical and some material, to the draft and with these changes we find the document acceptable.

With highest regards,

A handwritten signature in cursive script, appearing to read "A. Gorrell".

Robert Gorrell, Director  
Public School Facilities Authority

# ZUNI PUBLIC SCHOOL DISTRICT #89

P.O. DRAWER A, 12 TWIN BUTTES DR.

ZUNI, NM 87327 PH 505-782-5511 FAX 505-782-5870

**SUPERINTENDENT**

Kaye L. Peery, Ph.D.

Mr. Thomas A. Jackson,  
Interim Superintendent



**BOARD OF EDUCATION**

Mr. George DeVries, President  
Mrs. Carmelita A. Sanchez, Vice-Pres.  
Ms. Virginia R. Chavez, Secretary  
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Mr. Tyler Lastiyano, Member

November 12, 2009

Mr. David Abbey  
Director  
New Mexico Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, NM 87501

Dear Mr. Abbey:

We would like to take this opportunity to thank you for the time and effort of your staff in conducting the review of the two emergency projects which are underway in the Zuni Public School District. We find the background information in the report to accurately reflect the conditions which led up to the need to request emergency funding.

We agree with the four recommendations contained in the report which are directed at the Zuni Public School District.

Again, thank you for your assistance and review of these two projects.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Jackson', is written over the word 'Sincerely,'.

Thomas A. Jackson  
Interim Superintendent



New Mexico Energy, Minerals and Natural Resources Department

**Bill Richardson**  
Governor

Joanna Prukop  
Cabinet Secretary

David J. Simon  
Division Director  
State Parks



November 5, 2009

Mr. David Abbey  
Executive Director  
Legislative Finance Committee  
State Capital  
Santa Fe, NM 87501

Mr. Abbey,

Please accept this letter as the Energy, Minerals and Natural Resources Department, State Parks Division's formal response to the Summary and Conclusions report published by the Legislative Finance Committee regarding the Bosque Trail Development project. The State Parks Division (SPD) appreciates the opportunity to respond to this report as it represents a careful review of a priority project for SPD and we are committed to a successful project outcome.

The Bosque Trail Development project has experienced numerous successful milestones since its initial funding by the Legislature in 2005. Among the most important successes was to negotiate and enter into a Joint Powers Agreement with the Mid-Region Council of Governments (MRCOG) to lead the planning and construction of the trail system that will serve to connect communities from Bernalillo to Belen and beyond. Our partnership with MRCOG has led to the development of a design and implementation plan for 40 miles of trail, the identification of three high-quality pilot projects along the trail alignment and considerable progress towards securing the necessary rights-of-ways and community support for those projects. Construction of trail for one of those pilot projects in the Rio Rancho area was imminent. Further, reauthorization of the funds during the 2009 Regular Session resulted in a change of language that allows these funds to be used for trail development throughout the Rio Grande corridor.

Unfortunately, due to a legislative change in the funding source and the Board of Finance's rule that does not equate "development" with "construction", SPD has terminated its agreement with MRCOG and suspended activity on this project as we seek to amend the authorization language to allow for trail construction. In your report you state that the Board of Finance cannot waive the definitions despite the fact that its rule, 2.61.6.11 NMAC, provides "the executive director of the board, in consultation with bond and board counsel, may approve exceptions to the provisions herein when circumstances warrant." If the Board of Finance has advised that it will not waive its definition, the report should reflect that advice.

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New Mexico State Parks  
1220 South St. Francis Drive • Santa Fe, New Mexico 87505  
Phone (505) 476-3355 • Fax (505) 476-3361 • [www.nmparks.com](http://www.nmparks.com)



The LFC's Summary and Conclusions report has identified many of the accomplishments and challenges experienced by MRCOG and SPD during the course of executing this project. We have paid particular attention to the comments and recommendations of the Committee regarding the importance of carefully documenting contract-related activities such as contract negotiations and the establishment of work plans, deliverables and milestones. In discussions with Committee staff, we have agreed to comply with these important recommendations upon successful reauthorization of the funds.

The Bosque Trail Project remains a critical piece of the larger Rio Grande Trail initiative. These funds represent the State's best chance to construct significant sections of this trail in the near future. Communities along the river from Questa to Sunland Park have expressed a desire to see this trail completed and to develop and implement plans to take advantage of the trail for the betterment of their communities. Of course, the Rio Grande Trail is a large, multi-year project that will require additional support and resources for its completion. However, the current funds can go a long way toward development of the larger trail system by leveraging a portion of them to secure additional federal monies (e.g. Recreational Trails Program), which we intend to do.

In closing, we would like to emphasize that we understand and endorse all of the recommendations contained in the Summary and Conclusions report. In particular, we appreciate the Committee's support of our upcoming request to the Legislature to amend the project authorization language to allow for trail construction. We also want to express our appreciation of the fairness and professionalism exhibited by LFC staff during this review process.

Sincerely,



David J. Simon  
Division Director  
New Mexico State Parks



# Mid-Region Council of Governments

Larry Abraham  
Chair, Board of Directors  
Mayor, Village of Los Ranchos  
de Albuquerque

November 4, 2009

Lawrence Rael  
Executive Director

## MEMBER GOVERNMENTS

City of Albuquerque  
Albuquerque Public Schools  
Albuquerque Metropolitan  
Arroyo Flood Control  
Authority  
City of Belen  
Bernalillo County  
Town of Bernalillo  
Village of Bosque Farms  
Village of Corrales  
Village of Cuba  
Town of Edgewood  
Village of Encino  
Town of Estancia  
Village of Jemez Springs  
Village of Los Lunas  
Los Lunas Schools  
Village of Los Ranchos  
de Albuquerque  
Middle Rio Grande  
Conservancy District  
City of Moriarty  
Town of Mountainair  
City of Rio Rancho  
Rio Rancho Public Schools  
Sandoval County  
Southern Sandoval  
County Arroyo Flood  
Control Authority  
Village of Tijeras  
Torrance County  
Valencia County  
Village of Willard

State of New Mexico Legislative Finance Committee  
325 Don Gaspar Suite 101  
Santa Fe, NM 87501

Dear Committee Members,

We want to express our appreciation of the Legislative Finance Committee's review of the Bosque Trail project, and the discussion and clarifications provided by the review team during the October 28, 2009 exit interview conducted at the New Mexico Energy, Minerals and Natural Resources Department.

During the exit interview it was agreed that the Mid-Region Council of Governments (MRCOG) carried out the project in good faith and in compliance with applicable state laws and regulations. It was also noted that we could enhance our documentation in regards to work order negotiations pricing.

The MRCOG issued an RFP for professional services for the Bosque Trail project and awarded two on-call services contracts in full compliance with the New Mexico State Procurement Code. The responses to the RFP included fully burdened pay rates for personnel that would be working on the project. This information formed the basis for price negotiation of work orders authorized under the contracts.

During the life of the on-call contracts (currently in year 3), salaries for personnel increased and subsequent work order negotiations reflected the new salaries. The MRCOG received justification from the contractors for the increases both verbally and in writing, and since our exit interview we have requested certified payrolls and formal letters of justification to fully document these salary increases in our project files.

We believe the negotiated scope of work for each work order authorized under the on-call contracts provided a detailed description of work and identified deliverables. Work authorizations were the product of meetings,

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November 4, 2009  
Page 2

telephone calls, e-mails, and draft scope of work proposals. By the time a work authorization was issued intensive contract negotiations had taken place. Based on the LFC project review, we will provide a written synopsis of individual work order negotiations and retain the most relevant communications in order to provide the "audit trail" as described in the review.

MRCOG believes that the Bosque Trail project is very worthwhile as it will enhance the accessibility and enjoyment of area and provide a non-vehicular link to communities along the river. We are fully prepared to resume work on this project and eager to improve our processes.

Thank you for considering our formal response.

Sincerely,

A handwritten signature in blue ink, appearing to read "LR", is positioned above the typed name of Lawrence Rael.

Lawrence Rael  
Executive Director

LR/jl

BILL RICHARDSON  
NEW MEXICO GOVERNOR

ARTURO L. JARAMILLO  
CABINET SECRETARY

BILL TAYLOR  
DIRECTOR  
PROPERTY CONTROL DIVISION



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RISK MANAGEMENT DIVISION  
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TRANSPORTATION SERVICES DIVISION  
(505) 476-1902

## MEMORANDUM

**To:** Brenda Fresquez, Legislative Finance Committee

**CC:** Larry Miller, Deputy Director, PCD  
Lemoyne Blackshear, Staff Architect, PCD  
Charlie Kitay, Project Team Leader, PCD  
Martha Perrins-Dallman, Project Manager, PCD

**From:** Bill Taylor, Director, PCD *BT*

**Through:** Arturo Jaramillo, Cabinet Secretary, GSD *Arturo Jaramillo*

**Date:** October 30, 2009

**Re:** Review of Capital Outlay Projects II, General Services Department, Capitol Parking Structure Response to LFC Recommendations

### LFC Recommendation - The General Services Department should:

1. Develop a policy that includes criteria for determining how and when a stipend will be paid to responsive, but unsuccessful firms (offerors). The criteria should include a standard methodology that can be applied consistently. The policy should take into consideration constraints on available revenue in times of budget short falls.

### GSD/PCD Response –

The Property Control Division agrees that there should be a standardized policy for calculating and administering stipends. PCD is in the process of developing the policy and procedures. We anticipate the policy to be completed and in place by July 1, 2010.

JOSEPH MONTOYA BUILDING 1100 ST. FRANCIS DRIVE, RM 2022  
P.O. BOX 6850 SANTA FE, NEW MEXICO 87502 (505)827-2141

**LFC Recommendation - The General Services Department should:**

2. Consider proposing legislation to amend the maximum allowable construction cost (MACC) threshold for the use of the Design-Build project delivery method.

**GSD/PCD Response –**

The Property Control Division of GSD agrees that the MACC threshold for the use of the Design/Building project delivery method should be lowered to increase the beneficial impact of this project delivery methodology. GSD/PCD has prepared and received favorable approval from the Governor to submit legislation for the 2010 Legislature that would lower the MACC threshold for Design/Build project delivery.

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Bosque Trail Development – Evaluation Matrix Rating Guide

Evaluation Matrix Rating Guide

Screening Criteria	Poor/Low	Moderate	Good/High
<b>Connectivity</b> To approved trail/bikeway network, transit Destinations: park, activity centers, etc. Access/trailheads Population	No connections Isolated No existing access; Low population density	Circuitous connections Some access Potential access Suburban/rural	Good connection to network Good linkages to destinations, mixed use Good existing access Activity center, Higher population density
<b>Character</b> Views River/valley experience Low traffic Compatible adjacent land uses	Unpleasant views No relation to river, water, natural areas Along or on high volume road Industrial Area	Acceptable views Along floodway, park, irrigation facility Along or on low volume roadway Commercial/residential area	River, mountains, natural or agricultural lands Along river corridor Complexity separated from road Park, open space
<b>Political Support</b> Policy, Political Support Capacity for maintenance Capacity for enforcement	Official opposition (Fatal Flaw) No capacity for maintenance No capacity due to jurisdictional or financial constraints	No official opposition or endorsement Maintenance needs can be worked out Law enforcement can be increased	Official endorsement, adopted plans Already maintain trails Within municipal limits – no issues
<b>Environmental Concerns</b> Impacts on critical habitat Proximity to know hazardous materials Impact on historic, architectural, cultural resources.	Serious impact with limited possibilities for mitigation Known hazardous materials	Impacts can be mitigated No known or minimal hazardous materials nearby	No critical habitat No hazardous materials No negative impacts on historic or cultural resources
<b>Ease of Implementation</b> Cost Available of right of way Need to rebuild levees, other hazardous or major improvements required	High cost No available Right of Way, utility conflicts Significant structural engineering required: Levees need to be rebuilt	Costs in line with typical trail costs Limited Right of Way needs to be acquired Moderate amount of engineering or structures required	Costs in line with typical trail costs No additional Right of Way needed
<b>Safety</b> Road crossings Heavy traffic Other hazards – steep slopes, dangerous waters, poor sight distance	Difficult crossings Next to high volume high speed traffic No design solutions	Safe crossings Next to low volume or slow traffic Moderate hazards requiring solutions to protect users	No road crossings Completely separated from traffic No hazards or good design can protect users from hazards
<b>User Accommodation</b> Equestrian Road bicycle Bikes with fatter tires Pedestrians ADA	Cannot accommodate one or more users	Accommodates all users with separate facility or with trail that is less than highest standard	All users accommodated to highest standard

Source: NM State Parks and MRCOG