

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

**November 21-22, 2005  
Room 322, State Capitol  
Santa Fe**

The sixth meeting of the New Mexico finance authority (NMFA) oversight committee for the 2005 interim was called to order by Senator Mary Kay Papen, vice chair, at 10:25 a.m. in room 322 of the state capitol.

**Present**

Rep. Daniel P. Silva, chair  
Sen. Mary Kay Papen, vice chair  
Rep. Daniel R. Foley (11/21)  
Sen. Clinton D. Harden, Jr. (11/22)  
Rep. Patricia A. Lundstrom  
Rep. Jane E. Powdrell-Culbert  
Sen. Nancy Rodriguez  
Rep. Henry Kiki Saavedra  
Sen. H. Diane Snyder  
Rep. Joe M Stell  
Rep. Richard D. Vigil

**Advisory Members**

Rep. Jose A. Campos  
Rep. Anna M. Crook  
Sen. Dianna J. Duran  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Ben Lujan  
Sen. Richard C. Martinez (11/22)  
Sen. Leonard Lee Rawson (11/21)  
Rep. Harriet I. Ruiz  
Rep. Edward C. Sandoval  
Rep. Sheryl Williams Stapleton  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. Joseph J. Carraro  
Rep. Dona G. Irwin  
Sen. Lidio G. Rainaldi  
Sen. Shannon Robinson  
Rep. Don L. Tripp

Sen. Ben D. Altamirano  
Sen. Vernon D. Asbill  
Sen. Pete Campos  
Rep. Ernest H. Chavez  
Sen. Kent L. Cravens  
Sen. Joseph A. Fidel  
Rep. Mary Helen Garcia  
Sen. Mary Jane M. Garcia  
Sen. Stuart Ingle  
Sen. Steven P. Neville

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

**Staff**

Renée Gregorio  
Kathleen Dexter  
Cleo Griffith

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, November 21*****Criteria for Water System Planning, Performance and Conservation for State Financing: A Response to House Joint Memorial (HJM) 86***

In response to HJM 86, which requested that the state engineer collaborate with other departments to develop criteria for water system planning, performance and conservation as a condition of state financing, John D'Antonio, state engineer, and Anne Watkins, special assistant to the state engineer, presented their findings to the committee. Ms. Watkins reported that there are 650 public water systems in New Mexico, most of which serve fewer than 500 customers. In the map of public water systems shown, she pointed out that many are contiguous and overlapping and draw from the same aquifer. She added that challenges to the existing water systems arise for many reasons: aging infrastructure, limited expansion capability, volunteer boards, limited funding, lack of water rights and lack of funding for improvements. She indicated that most emergencies that crop up are due to inadequate systems; the drought task force was organized to look at such emergencies. Ms. Watkins spoke of the water infrastructure investment team that was set up by the governor to look at policy issues and procedural changes needed before more emergencies arise. She delineated 10 criteria set forth by the team, including financial and asset management planning, a water accounting system to help with conservation, compliance with various federal and state regulations, planning for infrastructure improvements and operations, regional collaboration and a strategy for energy efficiency. Ms. Watkins then reviewed the 10 recommendations made by the team, which include setting standards, revising statutes, improving project planning, metering all water use, establishing a state planning entity and creating community college training programs to ensure qualified staff for water systems. She ended by admitting the hugeness of the task at hand, but also its necessity in protecting the vitality of the state, protecting public health and supporting economic development.

In response to questions from committee members, Ms. Watkins and Mr. D'Antonio, who were also joined by Richard Rose, bureau chief, construction programs bureau, department of environment, stated:

- water infrastructure needs are estimated at \$3 billion to \$5 billion;
- the state engineer's office is working with three water systems of differing sizes and needs to develop rates, asset management plans, model plans and implementation manuals, which will be completed by June 2006;
- conditions for funding must be established as well as support for systems to comply

- with such conditions, which would include technical assistance and reasonable time periods;
- the facts that there are many systems without qualified operators and with quality violations has not affected federal funding to the state but has affected oversight from the environmental protection agency (EPA);
  - technical advisors are available to help systems with planning and regionalization;
  - ideally there will be incentives for systems that will encourage regionalization, such as giving regional projects priority for funding;
  - a uniform funding application is being worked on and encouraged, which would centralize funding sources so that a requesting entity would have to make only one application and be ensured that the application would reach the proper funding sources;
  - the agriculture funding portion will be worked on separately, as there will be a need to transfer agricultural water rights;
  - a conservation program is being designed for different users and systems that will involve water use accounting;
  - regionalization refers to water systems working together in ways that include sharing the same water source, sharing administration and billing, sharing an operator or merging the actual system;
  - the water trust board handles the larger regional water systems;
  - in many areas of the state there are different kinds of systems, and collaboration is being encouraged among these systems;
  - cooperation among sovereign nations, county officials, state officials and the EPA needs to be established to deal with issues of compliance in areas that cross over into several jurisdictions, and the office of the state engineer agreed to research what requirements will be put into place to ensure this;
  - the memorial specifies that these conditions be established for those entities coming to the state for financing;
  - much of the existing funding going to smaller water systems is for improvements that should be covered by the rate structure; thus the state is not building the kind of infrastructure to meet the demands of the new century;
  - the office of the state engineer has conducted regionalization initiatives at the request of systems in Ruidoso and Ruidoso Downs, but to form a regional authority with powers to develop water and wastewater systems requires changes in statutes;
  - the training proposed by the state engineer would be for certified operators in the management of water and wastewater, for which training is now very limited;
  - the office of the state engineer is only making recommendations this year and would like to work with the legislature to see what is required for implementation, including technical assistance and funding; and
  - there is a tremendous burden on water and wastewater systems to meet regulatory demands, and the advantage to working together is becoming clearer to all involved.

The committee expressed overall support of the work being conducted by the office of the state engineer. Ms. Watkins assured committee members that each would receive a copy of

the final report.

Bill Sisneros, executive director of NMFA, stated that although NMFA agrees with many components of the proposals presented, there is a distinction between funding and financing, and details need to be worked out that support this distinction.

Mr. D'Antonio stressed that the existing statutes governing water and wastewater systems and their financing were established decades ago and are in need of revision. He introduced Judy Flynn O'Brien, interim director of the institute of public law at the university of New Mexico, who provided the committee with a comprehensive chart that covers general powers and authorities, statutory provisions, financial powers and authorities, statutory planning requirements and regulatory oversight and open government requirements of water and wastewater systems by type throughout the state. Ms. O'Brien stated that the effort of a management team, consisting of representatives from the office of the state engineer, the department of environment and the New Mexico rural water association, has been to assess what exists in statute and decide how to move forward with the goal of having sustainable water and wastewater service in the state. She added that statutes providing regulatory authority were reviewed as well as water rights and management statutes, constitutional issues and federal, state and tribal systems that exist but that are not governed by current state law. The management team identified elements that are not in statute but need to be, finding that not many statutes deal with interaction among systems; there is very little guidance in terms of governing structure to ensure a continuity of management; there are no requirements for planning; and oversight for systems is not consistent. (See handout for more details.)

Another comprehensive chart was provided to the committee by Ms. O'Brien that covers all funding sources available for water and wastewater system improvements and includes eligible entities, available funds and a description of the application and selection processes for each.

In response to questions from committee members, Ms. O'Brien, Ms. Watkins and Mr. Rose stated:

- public bodies under the Audit Act are required to have audits, whereas utilities regulated by the public regulation commission (PRC) have their own requirements; membership-based organizations have no particular requirements; most entities are required to do annual audits, but do not; and the state auditor does not have the resources to follow up on this fact;
- in response to Representative Lundstrom strongly recommending that at least a financial review be put into place if audits are not happening, the cost of doing audits was cited at \$5,000 to \$10,000 for small systems; although a financial review could be useful, statute requires an audit; and the suggestion was made that the statute be revised; and
- systems have to be a certain size to be regulated; problems exist when entities do not have to comply with the Open Meetings Act or the PRC; and there is a need for forms

of organization to be created to protect the public.

***Albuquerque-Bernalillo County Water Utility Authority (ABQ-BC WUA) Projects in the North and South Valleys***

Mark Sanchez, executive director of the ABQ-BC WUA, and Mary Murnane, water resources program manager for the valley utilities project, gave a history and overview of their respective projects. Mr. Sanchez reviewed the authority's establishment in law two years ago as well as the bill from the 2005 regular session that gave the authority the statutory power provided to public water and wastewater utilities in the state. The authority serves the population of Bernalillo county, which is 165,000 customers, he said. The board has instructed the authority to increase its conservation efforts, he added, and it has responded by reducing unaccounted for water by one percent, saving 400 million gallons per year. Mr. Sanchez indicated that the authority has saved \$13 million in debt expenses by working with the NMFA on loans. He stated that the challenge for the authority is to continue the valley utilities project, which consists of shifting from ground- to surface-water pumping. Ms. Murnane continued by stating that the valley utilities project was started in 1999 to protect ground water from further contamination and to provide good quality drinking water and fire protection to south valley residents. The legislature committed funding for this project for 10 years; thus far the county has received \$12 million, with the next installment for \$2 million coming in December, she added. Ms. Murnane reiterated the critical importance of this state funding for the project, stating that over 5,000 service connections have been completed. The project has also received funding from other sources, including federal block grants and county gross receipts tax as well as revenue bonds sold for the project by the county.

In response to committee member questions, Ms. Murnane said:

- federal funding received at the front end of the project helped to capitalize the project, and the project has received federal funding every year, but not as much as hoped for;
- prior to the creation of the authority, the city had not contributed to the project;
- the authority has identified the project as the highest priority and collects about \$13 million per year, of which \$7 million goes to the project;
- because of rising material costs, it is estimated, for example, that a project that started as a \$300 million one now costs \$375 million;
- costs to a new customer include yard costs for lines from the street to the house: sewer is around \$2,000 to \$2,500, water is about half that for the same distance, utility expansion charge is \$1,200 for sewer and \$1,419 for water and customers can get financial assistance or pay over time with interest; and
- the authority is increasing its customer base at the rate of three percent per year, which amounts to 3,000 customers per year.

A motion to approve the minutes for the November 1-2 meeting was made and seconded; the minutes were then unanimously approved.

### ***Mesa del Sol Project***

Several parties participated in a discussion on the Mesa del Sol project, which is a development being constructed in the southern part of Albuquerque that will include residential, commercial and public education properties. Jerry King, assistant commissioner for surface resources at the state land office, stated that the state land office has leased an 11-acre plot of land to forest city enterprises for the development. Rhonda Faught, secretary of transportation, said that the department of transportation has an agreement with the city of Albuquerque regarding cost breakdowns for road improvements and expansion, which was provided to the committee. It details all funding received by the department for road projects associated with the Mesa del Sol project and includes funding sources such as severance tax bonds, general fund, state lands maintenance fund, Governor Richardson's investment partnership (GRIP) bond proceeds, surface transportation urban funds and matching funds from the city of Albuquerque. (See handout for cost breakdown.)

Committee members expressed much concern over the amount of funding going to the Mesa del Sol project, stressing that needs exist in both the south valley area of Albuquerque and the southern part of the state that are not being met. In answer to these concerns as well as others stated, Mark Daly, chief operating officer for forest city enterprises, joined Secretary Faught, Mr. King, Andres Villamonte, deputy secretary of transportation programs and infrastructure, department of transportation, Tom Horan, lobbyist, and John Tull, deputy cabinet secretary of economic development, and stated:

- the main role of forest city enterprises in the Mesa del Sol project is to create economic development;
- under the annexation agreement between the state land office and the city of Albuquerque, all infrastructure is being paid for by a private developer;
- forest city enterprises is currently leasing the land from the state land office and will purchase it when the university of New Mexico and the state land office work out an agreement; forest city enterprises is paying \$9 million for the land; and the university of New Mexico will participate as a 15 percent partner;
- the funding for road projects related to Mesa del Sol were authorized by the legislature with the passage of the 2003 GRIP legislation;
- a diversity of housing will be built at Mesa del Sol, with a commitment to five percent being workforce housing (\$120,000 range), and architecturally the houses will be compatible and built together with no gated areas;
- proposed tax increment financing (TIF) legislation now being crafted for the revenue stabilization and tax policy committee is a tool used to create new increased value and taxable development within communities;
- the anti-donation issue should not be a problem with the project because the state's money will be spent on public infrastructure improvements;
- forest city enterprises tends to work with local developers, hire 90 percent local people and use mostly local materials, depending on cost;
- forest city enterprises identifies communities with economic development projects that are ready to implement but have a financing piece that is needed, looking at a

- variety of projects in terms of scale and need; and
- there is enough water to support this development, and the project is working with the ABQ-BC WUA to enter into a development agreement with the authority.

In other discussion by committee members, it was noted that much money has been put into development at Santa Teresa for economic development projects. Representative Lundstrom requested that, in light of public scrutiny on this project, a breakdown be provided to committee members on public support for the Mesa del Sol project. Senator Snyder noted that during the course of the Mesa del Sol project there have been several land commissioners and governors and that she would like to see a comparison done by the office of the state engineer that shows the original intent of the project versus the current reality.

The committee recessed at 4:45 p.m. and reconvened at 9:30 a.m. on November 22.

## **Tuesday, November 22**

### ***NMFA Mission Statement and Values***

Mr. Sisneros gave the committee an overview of how the NMFA works with the bond market, assuring the committee that although the recent problems in the state treasurer's office have made rating agencies watchful of the state in general, the rating for NMFA was still increased from A3 to A2. Because the rating agencies look closely at the policies and practices of agencies, the NMFA created an internal team to develop a mission and value statement and to review the direction of the authority. Dora Cde Baca, human resources director at NMFA, discussed the mission statement, which is: "We are dedicated to improving the lives of New Mexicans by planning and financing infrastructure, strengthening the economy through public/private partnerships and setting the standard for superior, diverse, innovative and solution-driven financing." She also gave details of the values as delineated by the internal team that include customer orientation, discipline, a great place to work, initiative, quality and results orientation. Mr. Sisneros added that the internal team has evolved into an implementation team now that the mission and values are set. He stressed that the fact that the NMFA has an oversight committee strengthens its position with rating agencies and with its board.

In response to questions from committee members, Mr. Sisneros stated:

- the assessment of how the stated values are being manifested among the employees of the NMFA will be done in employee performance evaluations;
- the NMFA has broken the state into five areas and given responsibility for each area to an NMFA employee so that when the NMFA receives feedback on its services in particular areas, it can locate the responsible employee, and the values will be tied into a point system for evaluation;
- the NMFA has a \$1.2 billion capacity that builds on itself and grows, chiefly because of the backing of the portion of the governmental gross receipts tax (GGRT) that flows to the NMFA and is seen as a level of security for its financing programs;
- the NMFA can help restructure debt so that entities do not default, can give a better interest rate than most agencies and offers support in terms of cost of issuance and

- bonds and support to communities that are otherwise underprivileged;
- collaboration between the NMFA and the office of the state engineer will be required to establish a financing partnership to deal with the large amount of money needed to protect the state's water supply through adjudication and the purchase of water rights, recognizing, as Representative Stell stated, that water will be the key to future expanded economic development in the state; and
- Bill Hume, state planning officer in the governor's office, could be a good resource in terms of a public/private partnership forming around water issues faced by the state.

In general discussion by the committee, Representative Lujan, in response to the mission statement and values presentation, mentioned that it is important to stress that the NMFA was formed as a partnership with the legislature, and coordination with the legislature needs to be in NMFA's vision statement. Senator Rodriguez asked if mutual domestics also charge the GGRT; Mr. Sisneros was not sure and said he would check this out.

Mr. Sisneros reviewed the presentation to rating agencies given by the NMFA, a financial advisor and a lead banker on the public project revolving fund's (PPRF) subordinate lien bonds in its 2005F series. He stated that the presentation can take up to two hours per agency, and that the purpose is to reacquaint each agency with the workings of the NMFA. (See handout for details of the presentation, which include an overview of legislative support for the PPRF, the growth of the loan program, the structure and policy-based programs of the NMFA, rules development, a history of the GGRT and its relationship to the PPRF.)

In answer to questions from the committee, Mr. Sisneros and Mark Valenzuela, director of intergovernmental relations at NMFA, stated:

- institutions of higher education are qualified entities that often have a difficult time finding a proper income stream with which to pay off debt, but that the NMFA can work with to lower the overall cost of loans;
- pledged revenue is project dependent, and the NMFA looks at each community's project individually to determine appropriate revenue sources;
- the NMFA will supply the committee with the staff level and the amount of loans over the past 10 years to determine the relationship between increased business and the need for more staff;
- the NMFA receives one-quarter of one percent on every financial deal it makes, collecting about \$1 million each year in fees;
- a database management system for the NMFA is crucial, considering that every time a new loan is made, it needs to be serviced for 10 years or more; and
- the NMFA is not clear on what effect it would have on its operations if the legislature made it a state agency, but the NMFA already voluntarily complies with public finance statutes.

Mr. Valenzuela presented the legislative agenda for the NMFA, apologizing that because of the timing, the NMFA board has not yet approved the agenda. Included in the requests are the

following:

- an appropriation request for \$30 million from the general fund to help carry out the provisions of amendments made to the Statewide Economic Development Finance Act that authorizes the NMFA to make, participate in and guarantee loans for economic development projects (designated the "smart money initiative" by the NMFA);
- two authorization bills, one for the "smart money initiative" and the other for the PPRF;
- a bill that amends the New Mexico Finance Authority Act to deal with the delayed repeal in the urgent economic development public project section, which sets the repeal at June 30, 2006; to allow the NMFA to participate in public/private partnerships with subsidiary organizations of qualified entities; and to change the title of "executive director" to "chief executive officer"; and
- a bill that amends the New Mexico Finance Authority Act to allow the NMFA to be authorized as a community development entity for purposes of being able to participate in the federal new markets tax credit program.

On questions from the committee, Mr. Valenzuela stated:

- the majority of companies seeking funding under the "smart money initiative" are based in New Mexico;
- the banks will market the "smart money initiative" in communities throughout the state;
- the request for a \$30 million appropriation for the initiative carries with it a reversion date of one year beyond the year it is appropriated, which puts pressure on the NMFA to create activity;
- the PPRF authorization bill begins with a small list of projects that grows to about 200 in its final form and can be amended as the committee sees fit;
- the NMFA will provide committee members with a more comprehensive listing of projects and project descriptions proposed for both the PPRF and "smart money initiative";
- the amendment to the New Mexico Finance Authority Act would allow the NMFA to more fully participate in public/private partnerships by allowing it to use credit enhancement in deals where a qualified entity has a subsidiary organization that is seeking financing, while preserving the integrity of the PPRF; and
- the amendment to the New Mexico Finance Authority Act to allow the NMFA to participate in the federal new markets tax credit program already supports what the NMFA is doing, and it feels it knows more about this arena than any other agency in the state.

In committee discussion, it was suggested that the reversion date be extended to two years for the \$30 million appropriation for the "smart money initiative". Representative Lundstrom stressed that she would like the oversight committee to have input as the amendment

to the New Mexico Finance Authority Act is crafted that would allow the NMFA to be authorized as a community development entity for purposes of being able to participate in the federal new markets tax credit program. Senator Snyder asked that projects in the authorization bills be identified more specifically so that the committee has a clearer idea of what is being funded. On motion made and seconded, the committee voted to sponsor both authorization bills.

Representative Stell made a motion to strike out language on the second bulleted item on proposal number 3 of the NMFA's legislative agenda, which originally indicated allowing the NMFA to participate in private/public partnerships for "institutions of higher learning", which is the language that was struck. The motion was seconded and approved by the committee. Senator Snyder then expressed concern over expanding the NMFA's authority to allow a nonprofit entity to receive funding by allowing it to participate in public/private partnerships as a subsidiary organization of qualified entities; she asked for more details on this from the NMFA. Representative Lujan mentioned that he wants to be assured that the PPRF is solid, and that this amendment would not in any way threaten or reduce the fund. The committee approved this amendment to the New Mexico Finance Authority Act in concept, with the caveat that the NMFA study what percentage would be appropriate to dedicate to loans going to subsidiary organizations of qualified entities.

Because the oversight committee will be needed to vote on rules changes for the NMFA that will not be crafted until January, the chair asked that the legislative council authorize a meeting on January 16, the day before the start of the legislative session. Because the proposed legislation was mainly voted on only in concept, the NMFA was also asked to present legislation in conjunction with legislative council service drafting staff in a more final form at that time.

The committee adjourned at 12:30 p.m.