



## A Journal Special Report Reprint

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# Four-Lane Politics

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ADOLPHE PIERRE-LOUIS/JOURNAL

LONG STRETCH: N.M. 44 runs from the Albuquerque metro area to the Farmington area in the northwest part of the state.



**Mike Gallagher**

Mike Gallagher, 45, became an investigative reporter in 1986.

Some of his investigative projects include stories on the deaths of patients at the state hospital for the disabled, drug trafficking along the Southwest border, problems in the state prison system, unsolved murders of prostitutes in Albuquerque, false charges of child sexual abuse, questionable investments of public money, illegal gambling and the private business practices of certain state officials.

Last year, the Journal dispatched Mike on an unusual assignment: report and write on the problems in Russia.



**Colleen Heild**

A 14-year veteran of the Journal staff, Colleen joined the investigative team in 1996.

After moving here from the El Paso Times, she covered federal courts in New Mexico. That led to more in-depth reporting, such as the fatal shooting in 1988 of a Mountainair policeman.

Her work has included investigative projects on problems in the Albuquerque Police Department and the state foster care.

Her investigative stories led to changes in the way the state handles vehicle dealer plates and helped spur the city of Albuquerque to try to recover money spent on a tire shredder that didn't work.

**Why We Did The Series**

The widening of 118 miles of N.M. 44 from San Ysidro to the Four Corners area is the biggest road project in New Mexico history. At a cost of \$420 million, including financing, it is also the most expensive. The Johnson administration says its plan is so innovative it could change the way states handle highway construction projects. Critics call it a disaster in the making.

Journal investigative reporters found that highway officials jumped the project ahead of other needed road work and entered into a questionable warranty deal at a cost of \$62 million. They also found that the only company to bid on the project proposed it in the first place.

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RICHARD PIPES/JOURNAL

**HOT WORK:** Workers lay asphalt on a nine-mile section of N.M. 44 south of Cuba.

# N.M. 44 on Fast Track

## \$420 Million State Project Raises Questions, Criticism

Stories by **MIKE GALLAGHER AND COLLEEN HEILD** ■ *Journal Investigative Reporters*

**P**ete Rahn had a problem. It was April 1997 and Gov. Gary Johnson had let his Highway and Transportation Department chief know in no uncertain terms that he wanted N.M. 44 from San Ysidro to the Farmington area widened to four lanes.

But Rahn didn't have any way to do it. Johnson had just vetoed legislation that would have paid for N.M. 44 and other road projects by raising the gasoline tax.

There was virtually no chance the Democrat-controlled Legislature would agree to shift the bulk of state road-

building money to N.M. 44 so Johnson could fulfill his desire to build the road to the heavily Republican area of the state.

Rahn would have had a tough time selling that kind of solution when N.M. 44 wasn't even his department's top priority.

The project was going nowhere, barring some incredible stroke of good fortune.

And that's just what happened — or is it?

Less than two weeks after Johnson ordered Rahn to find a way to build N.M. 44, what Rahn described as an "unsolicited" proposal showed up at the

highway department from Wichita-based Koch (pronounced "coke") Industries.

The multibillion-dollar conglomerate had an answer for all Rahn's problems. It said it could design the road, build it, finance it and give the state a long-term maintenance warranty.

"If we weren't going to kill projects and we weren't going to take 27 years to complete the project, we had to find something different," Rahn said. "So the something different that came up was this proposal that Koch had submitted.

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“Their (Koch) proposal was crucial to us. Without it we didn’t have an option on building the road.”

Rahn emphasized that the proposal was unsolicited, but Koch representatives told the Journal that state highway officials asked the company to give them one.

What prompted Koch to send the proposal isn’t the only issue involved in the project. Some of the others:

- The department allowed Koch to bid on the project even though the Koch proposal formed the basis for the state’s plans. Rahn contends this didn’t violate state law because the state took only “concepts” from Koch, and not specifics.

- Koch was the only bidder in a process critics contend eliminated any potential

*“I’m just one of those New Mexicans that’s grown up believing that 44 arguably needs four-laning more than any other road in the state.”*



GOV. GARY JOHNSON

competition.

- At the time it was awarded the contract, Koch had never built a major highway in the United States. And the design it proposed had never been used.

- The state is paying Koch \$62 million to provide a 20-year “ride quality” warranty for the state — a sum critics say is way too much for a road design touted for its superior quality.

- The state is financing the road by pledging future federal highway money — a move critics say may divert funds from other projects.

- Other states that have used the financing method have first submitted it to the Legislature or the voters. The Johnson administration did neither.

- Highway department officials vaulted the N.M. 44 project to the top of their priority list even though it didn’t rank first among other state two-lane roads in traffic or accidents.

Johnson said, “I’m just one of those New Mexicans that’s grown up believing

EVOLVING PROPOSALS				
	Koch proposal April 21, '97	State RFP Fall '97	Koch proposal Dec. 1, '97	State/Koch contract
Warranty	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Warranty based on road smoothness	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Warranty life based on traffic	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Financial incentives for rapid construction	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Bond/letter of credit required	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Design/build	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Design/manage	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Private financing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public financing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

RUSS BALL / JOURNAL

that 44 arguably needs four-laning more than any other road in the state.”

The state is committed to pay more than \$20 million a year for the next 20 years for the N.M. 44 widening. That money comes out of about \$300 million a year the state receives from the Federal

Highway Administration.

Rahn says the project is needed for economic development and safety and is a good deal for taxpayers.

Legislative critics disagree.

“This was a monumental mistake,” said

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RICHARD PIPES/JOURNAL

**HEAVY MOVERS:** Trucks hauling asphalt oil and aggregate line up at an asphalt batch plant on N.M. 44.

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Sen. Billy McKibben, R-Hobbs, a frequent critic of the governor.

"I'm an old salty conservative that's been there for a long time and seen lots and lots of things. And I'm telling you there's a disaster in the making in that N.M. 44."

The Koch proposal landed on the highway department's doorstep on April 21, 1997, just 10 days after Johnson had ordered Rahn to come up with options for widening N.M. 44.

"The governor called me and said I want N.M. 44 four-laned and I want a proposal for it," Rahn said.

Rahn, who had lived in Farmington and was head of Johnson's 1994 campaign there, was in a quandary.

He said that unless the department stopped \$214 million worth of road work around the state for three years and redirected the money to N.M. 44, there was no way to pay for the project.

Johnson was one year away from seeking re-election and had made widening N.M. 44 a priority.

After his veto, the Farmington area was in an uproar.

"I personally got a lot of pressure not to sustain a veto," said Republican Sen. Raymond Kysar of Farmington.

Kysar said he transferred that pressure to Johnson.

"Every time I talked to him," Kysar said, "I pushed widening N.M. 44."

### Early contacts

Of hundreds of documents reviewed by the Journal, the earliest mention of any contact between Koch Industries and Rahn was Jan. 17, 1997.

Rahn's calendar indicates he was to meet for more than an hour at the Albuquerque office of Koch Materials, a Koch subsidiary that sells asphalt.

Rahn said he didn't recall the meeting and is sure N.M. 44 wasn't discussed.

He said the most likely reason for the meeting would have been to "drum up political support" among private contractors and suppliers for the department's 1997 legislative package.

Rahn said in an interview that he wasn't aware of any communication

about the N.M. 44 project between his department and Koch Industries prior to the arrival of Koch's proposal.

He said the unsolicited document showed Koch's lobbyists were on top of highway issues in Santa Fe in 1997.

A check of records found no lobbyist registered on behalf of Koch.

Koch officials said there had been several meetings in the winter of 1996-97 with state highway officials about the department's road maintenance problems in northwest New Mexico.

The state ultimately rejected a Koch proposal for taking over the state's highway maintenance in that area.

But according to Koch officials, as those talks came to an end state officials told company representatives they had problems meeting a "pledge" to widen N.M. 44.

The Koch officials said they were asked by highway department officials to come up with some options.

Bob Heitmann, vice president of Koch's Performance Roads Division, said his

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company and state officials had been talking about topics such as higher-quality roads and warranties in the context of repair issues.

After some conversations with highway officials in Santa Fe, Heitmann said, "They said why can't you just give us something written that kind of describes what you're talking about."

As a result, Koch Industries sent the state what it called a "discussion draft" that outlined a plan to design, build, finance and warranty N.M. 44.

The April 21, 1997, cover letter that accompanied the draft said, "The special provisions document will become the document that the state will use to put the project out for bid."

The letter was addressed to Benny Roybal, then-deputy secretary for highway operations, with the salutation, "Dear Benny."

Roybal, who retired this year, denied asking for the proposal.

He said he might have spoken to Koch about the maintenance concept, "but not in regards to necessarily 44."

Rep. Dan Silva, D-Albuquerque,

*"We've always suspected there was a pre-selection of individuals."*



STATE SEN.  
MANNY ARAGON

chairman of the House Transportation Committee, said he was unaware of highway department contacts with Koch before the project was announced.

"I think it raises a lot of questions," he said. "No one likes a situation where there is only one bidder on any project."

Senate President Pro Tem Manny Aragon, D-Albuquerque, said he wasn't surprised.

"We've always suspected there was a pre-selection of individuals," he said.

### Stepping carefully

Rahn said politics played no role.

He said he didn't know that Koch's owners, brothers Charles and David



Koch, were huge financial backers of Republican Party candidates and causes.

Rahn said he thought Koch was a small asphalt supplier, and his first reaction to the Koch discussion draft was that he wondered how the company could fulfill the financial promises contained in the proposal.

Rahn said that as far as he knows, no one in the highway department called Koch about Johnson's orders to widen N.M. 44.

Rahn said he mentioned Koch by name during a 10-minute meeting in May 1997 when he presented Johnson with the options for building N.M. 44 — a 27-year timetable, diverting most other state road money to the project or essentially following the Koch proposal.

"It (Koch's name) didn't carry any weight," Rahn said.

Johnson gave the department the green light to proceed.

On May 13 and 14, Rahn and five highway officials traveled to Wichita to visit Koch Industries headquarters.

"By that time we were obviously interested in what we were hearing (from Koch) and saw there were ways to make this work," Rahn said.

State highway officials said they were careful not to violate any laws in their dealings with Koch after the proposal arrived.

"We were well briefed by the department attorneys not to discuss details of the bid," Rahn said.

Rahn said he and other officials toured Koch's asphalt laboratory, received a briefing about the company and met with company officials.

Koch officials said that after Rahn visited their headquarters, all communication between the department and the company was cut off.

Rahn said his agency took steps to ensure fairness and didn't discuss specifications with Koch representatives.

"We had a very open process, even though there was only one bidder. Everyone had access to this," Rahn said. "Koch was the only one to step up to the plate."

McKibben questions whether there was arm's-length dealing between the company and the state.

"You know how unbelievably stupid the (Indian) gaming compacts are," he said. "You might compare this as the highway construction compacts. Written, titled and finalized by the people that are going to participate."

### Some questions

Department records show the Koch proposal, with some modifications to make it fit state law, became the keystone

*"We had a very open process, even though there was only one bidder. Everyone had access to this. Koch was the only one to step up to the plate."*



PETE RAHN,  
HIGHWAY SECRETARY

of the state's N.M. 44 plan.

After the Koch proposal was delivered and months before the project was let out to bid, highway department files show:

- There was a series of telephone conferences in late April and early May 1997 between state highway and Koch Industries officials to discuss the proposal.

- In early May 1997, department attorneys reviewed the proposal and



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advised Rahn it was sound but needed to be reworked because state law prohibits design-build contracts. The state developed a design-construction management concept to avoid that prohibition.

■ Highway officials traveled to Koch Industries headquarters in mid-May to review Koch's "European" road design.

Asked whether Koch had an advantage over other companies when the project was finally put out for bid, Rahn said, "I guess any time you're the first into a market, you have an advantage."

Sen. John Arthur Smith, D-Deming, had a different view.

"Whenever you have one bidder on a project this size, it raises questions about the process," he said. "You have to wonder if it was a political deal."

### Legal issues

Upon receipt, Koch's proposal was immediately given to the highway department legal staff to review.

Notes from several meetings show repeated references to "Koch." They also show the department was concerned the

state might have to pay Koch Industries a fee for its proposal and was concerned about copyright.

The notes and internal memoranda show the legal staff had questions about the possibility that Koch might be the only bidder.

A May 4, 1997, memo directed to Rahn, reviewing Koch's proposal from department General Counsel Arthur J. Waskey, refers to Koch as the contractor and parenthetically to "(whatever company was selected)."

Waskey in the same memo identified several potential problem areas and made recommendations on how they might be avoided.

He acknowledged that procurement code issues "may be tricky."

A major hurdle was Koch's proposal that the contract include designing and building the road, which was prohibited by state law.

Waskey suggested that be changed to a design and construction management contract. That recommendation ultimately was included in the Request for Proposals.

The department on June 4 submitted a concept paper to the state Attorney General's Office for review. It didn't mention Koch Industries.

The attorney general said in a letter that the project as outlined wasn't prohibited by state law.

### A single bidder

The Request for Proposals, or RFP, that emerged called for one private developer to perform five duties: design; oversee and manage construction; warranty the work; finance construction; and post a \$50 million performance bond.

The highway department had never before requested a warranty on a road project, had never sought private financing and hadn't rolled all the elements of a project into one RFP.

Only once before had the state left construction management up to a private firm, and that was on a much smaller scale.

Koch had reservations about submitting a bid because it was no longer a design/build project.

Koch wanted as much control over construction as possible to make sure the work would be good enough for the warranty, Heitmann said.

"At one point in time because of the way the RFP came out, we had some pretty

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## CHRONOLOGY OF N.M. 44 PROJECT

**1/17/97** — New Mexico Highway and Transportation Secretary Pete Rahn meets with officials of Koch Industries in Albuquerque. Rahn says N.M. 44 wasn't discussed.

**3/20/97** — Legislature passes HB1059 to increase highway funding for major road projects, including N.M. 44, by adding a 2-cent-a-gallon gasoline tax.

**4/10/97** — Gov. Gary Johnson vetoes HB-1059 and orders Rahn to find another way to widen N.M. 44 to four lanes.

**4/21/97** — Koch submits detailed proposal to finance, design, build and warranty N.M. 44 expansion project.

**4/28/97** — Telephone conference between highway department officials and Koch Industries.

**4/29/97** — Telephone calls to Koch from highway department.

**5/1/97** — Highway officials meet

to discuss options for widening N.M. 44 to present to Johnson. Koch Industries proposal is marked with a star. Highway officials also reject public financing option.

**5/2/97** — Conference call between Highway Department officials and Koch Industries main office in Wichita, Kan.

**5/9/97** — Highway department floats internal proposal on innovative financing plan for N.M. 44 Corridor. Proposal calls for private contractor to finance bonds to be paid back from federal funds, and warranty the project work.

**5/13-5/14/97** — Rahn and adjunct secretary John Fenner travel to Wichita to meet with Koch officials.

**5/19/97** — Highway Department officials meet to discuss obtaining federal approval by June for innovative financing proposal for N.M. 44 widening. Koch Industries proposal is discussed. Rahn calls Koch's

Wichita office.

**5/26/97** — Highway department officials meet and discuss request for federal funding, citing economic development and safety problems as justification for fast-tracking federal approval.

**6/4/97** — Highway department sends letter to Attorney General Tom Udall asking for review of the department's proposal for financing the widening N.M. 44.

**6/20/97** — Highway department submits to Federal Highway Administration its innovative financing proposal for N.M. 44 Corridor.

**7/3/97** — Johnson holds three news conferences along N.M. 44 Corridor to announce plans to widen N.M. 44.

**7/23/97** — Legislators hold hearing; concerns are raised about the funding mechanism for widening N.M. 44.

**8/21/97** — Highway Commission approves releasing Request for Proposals to widen N.M. 44.

**8/24/97** — Highway Department submits application to Federal Highway Administration for N.M. 44 widening.

**9/1 through 9/23/97** — Highway officials and legislative leaders negotiate an agreement to allow project to proceed. Legislators get concession that New Mexico Finance Authority will be an alternative to private financing of the project. Amended Request for Proposals issued.

**12/1/97** — Koch's subsidiary, Mesa Developers, later changed to Mesa PDC, submits only proposal for N.M. 44 project.

**12/29/97** — Contract negotiations begin.

**7/22/98** — Johnson signs contract with Koch for N.M. 44 Corridor Project at public ceremony in Farmington.



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major discussions whether we were even going to propose on it," he said.

More than 70 people attended a mandatory pre-bid conference in mid-October 1997. More than a dozen were federal or state highway officials.

Another 23 represented Koch or companies that ultimately became its subcontractors on the project.

Only Koch and Canadian Highways International submitted written questions.

"High quality proposals of the kind required take months to develop," wrote Steve Skelton, of Canadian Highways, in an Oct. 14, 1997, fax to the highway department. "Is an extension of the submission date anticipated?"

At the time, prospective bidders had five weeks to submit a proposal. The deadline was extended by one week to Dec. 1.

Canadian Highway officials said they chose not to submit a proposal because the nature of the project had changed.

Another company opted not to compete because it preferred to bid on various segments of construction.

Heitmann said he was surprised his company submitted the only proposal.

"When we turned in our proposal, we fully expected there would be two other bids coming in," Heitmann said.

Koch's proposal was submitted in the name of Mesa Developers LLC, which at the time was explained as a partnership consisting of Koch Industries; CH2MHill, a national engineering firm; and Flatiron Structures, a construction company.

After Mesa's proposal was accepted for negotiation, CH2MHill and Flatiron Structures dropped out and became subcontractors.

Rahn said the department wasn't concerned about the change.

"This was a Koch project all along," Rahn said. "We knew we were always dealing with Koch during the negotiations." ♦

# New Mexico Law Limits Involvement of Potential Bidders

BY MIKE GALLAGHER  
AND COLLEEN HEILD

Journal Investigative Reporters

**N**ew Mexico's Governmental Conduct Act prohibits agencies from accepting bids on a project from anyone who had direct or indirect involvement in developing the specifications.

Koch Industries Inc. in April 1997 submitted a detailed proposal for the design, construction, financing and warranty of N.M. 44.

The Koch proposal, which the company says the state solicited, provided the blueprint for the \$420 million project the state put out to bid four months later.

State highway officials and Koch representatives had met before Koch submitted the proposal in April.

After the state had the Koch document in hand, there were at least three telephone conversations and one meeting between Koch representatives and highway officials before the state issued its formal Request for Proposals.

According to notes taken during the first telephone conference, Koch and state officials discussed how to get federal financing for the road project; how to privately issue bonds for the work; and arranged a meeting at Koch's Wichita, Kan., headquarters for more discussions on N.M. 44.

Highway and Transportation Secretary Pete Rahn, who was present at the meeting with Koch officials at their Wichita headquarters in May 1977, said the department was careful not to violate the Governmental Conduct Act.

The Act puts responsibility for following the law on state agencies and employees. The law doesn't define what constitutes direct or indirect involvement by a potential bidder.

Rahn said Koch didn't contribute to the department's Request For Proposals, or RFP.

Rather, he said, the highway department borrowed "concepts" from Koch to write the RFP and that doesn't amount to Koch's being involved in developing specifications.

"Our proposal — I guess that there's the nuggets of the Koch proposal that remain

in what we've done," Rahn said in an interview.

One such "nugget" was the long-term warranty first proposed by Koch and then included in the state's proposal request.

The 20-year warranty eventually agreed on by Koch and the state, at a cost of \$62 million, is the first of its kind on a major road project in the United States.

The warranty is one of Koch's selling points. A 1998 Montana State University study could find no other private company in the U.S. proposing a long-term warranty.

Another major similarity between Koch's original proposal and the RFP was a controversial proposal for private financing, which highway officials later abandoned under pressure from legislators who favored issuing tax-free government bonds.

Art Waskey, the highway department's general counsel, said Koch Industries wasn't involved in developing the RFP.

"I don't see any problem in taking concepts from a vendor and developing them into the RFP," Waskey said.

## 'Broad questions'

Rahn said the department checked with the state Attorney General's Office on all facets of the project. He said he assumed the Attorney General's Office was aware of the prior Koch proposal and private discussions because his department was very open with the agency.

But Sondra Frank, an assistant attorney general who reviewed the contract ultimately awarded to Koch, said in an interview with the Journal that she was never told the highway department had been in contact with Koch Industries prior to the RFP being issued.

She said her office was not involved in developing the RFP.

Among the hundreds of highway department documents reviewed by the Journal, there were no memoranda, opinions or other documents that show the department considered the Governmental Conduct Act as an issue in its dealings with Koch Industries.

Rahn said department lawyers talked to highway officials about how to comply with the Governmental Conduct Act in dealing

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with Koch representatives.

He said a written advisory wasn't needed.

"I think the key to it was we couldn't talk specifics. We needed to understand concepts," he said. "And we were to gain as much as we could without telling them what our intentions were."

Rahn said highway officials didn't "allow Koch to give us specifications. We didn't tell them where we were going. We would ask very broad questions. I mean we were careful about this."

Koch officials interviewed at the company headquarters said the department "cut off" communications after their initial discussions in the spring of 1997.

Bob Heitmann, vice president of Koch's Performance Roads Division, said highway officials were tough.

"We couldn't get anything for information — what it (the RFP) was going to look like, when it was coming out. We couldn't get anything."

While department officials say they took only concepts from Koch, some of the language in the state's Request For Proposals tracks the company's April proposal.

For example:

The Koch proposal stated: "A California profilograph shall be furnished by the Contractor for determination of pavement and bridge floor smoothness."

An appendix to the state's Request For Proposals states: "The PDC (Project Development Company) shall supply a profilometer for the project to measure pavement roughness and rutting."

Each document states the device will become the property of the highway department.

### 'Open process'

Critics of the N.M. 44 project say the state's RFP was beyond the scope of many potential bidders.

"The way the RFP was put together eliminated every construction firm in the state," said Sen. John Arthur Smith, D-Deming.

Rahn said procurement for the N.M. 44 project was open, fair and followed state laws.

"We had a very open process, even though there was only one bidder. Everyone had access to this," Rahn said.

He pointed out that there were no



JIM THOMPSON/JOURNAL

**MOVING THE EARTH:** Earlier this summer, road crews prepared portions of new roadbed for the widening of N.M. 44.

protests, although state law generally limits protests to companies that submit bids.

Rahn said the department fulfilled the intent of the state Procurement Code.

"If you look at the two main themes that run throughout all these various laws, the Governmental Conduct Act and the Procurement Act, it talks about fairness and it talks about good value for the public dollar, and I think we did that."

### Firms disqualified

While the department didn't feel the Governmental Conduct Act was a problem for Koch, department attorneys cited the act in barring two local engineering firms from bidding on the N.M. 44 project.

In the summer of 1997, two engineering firms that had been doing preliminary design work on N.M. 44 were approached by a number of contractors about the possibility of forming joint ventures to submit proposals on the overall project.

But the highway department legal division decided that AVID Engineering and Andrews, Ashbury & Roberts were

prohibited from entering bids because of the state's Governmental Conduct Act.

"Insofar as the preliminary design consultants are actually preparing 30 percent of the design of the Corridor 44 project, this constitutes, at minimum, indirect preparation of specifications," assistant general counsel Kendall Fischer wrote on July 16, 1997.

Fischer rejected an argument that the statute refers only to "sealed bids" and not "sealed proposals."

"We believe that when the Legislature employed the term 'competitive bidding' ... it meant to include, generically, bidding by all methods, including competitive sealed bids and competitive sealed proposals."

Andres Aragon, a principal in AVID, said his company's attorneys reached the same conclusion.

"I think it was good legal advice because you have to be careful of any perceived conflicts of interest," he said.

"They (the engineering firms) were knocked out because they were doing design work for us already," Rahn said. "That's direct involvement." ♦



ADOLPHE PIERRE-LOUIS/JOURNAL

LOOKING BEYOND TWO-WAY: This section of N.M. 44, after being widened to four lanes, will be under a 20-year road surface warranty.

# A 20-Year Warranty

## Some Lawmakers Question \$62 Million Price Tag

**H**ighway and Transportation Secretary Pete Rahn insists the \$62 million price tag for the 20-year performance warranty on N.M. 44 is a good deal for New Mexico taxpayers.

"I'm absolutely convinced this is going to reap a benefit to the taxpayers," he said.

The warranty is the first of its kind in the United States, and critics say \$62 million seems like a lot of money to maintain a road that was touted for its high-quality "Euro-design."

Koch Industries Inc. told the state in its formal proposal in December 1997 that while initial construction costs would be higher, the improved road would require "minimum maintenance."

A Montana study says it's too soon to tell whether road project warranties are a good deal for taxpayers. The ongoing study has found that information about road warranties so far has been "subjective in nature rather than based on demonstrable fact."

Most states asking for road warranties have opted for terms of five years or less, with the cost included in the basic bid.

"The longest I've seen is five years," said Richard Harris of the Associated General Contractors of New Mexico. "It's never been used on anything this large. This boggled the mind."

"These short-term warranties have little effect on price; there is little or no cost increase."

What the N.M. 44 warranty really amounts to is the state paying Koch \$62 million up front to make sure the road is properly maintained for the next 20 years.

Koch Industries officials will decide when the repair work is needed.

The state will award repair contracts, which must meet Koch specifications. Koch will then reimburse the state for the cost.

The company will keep whatever isn't spent on repairs, along with any interest or income generated.

Koch also is required to post a \$50 million surety bond with the state in case of a major design problem.

Rahn claims the warranty will save

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the state \$89 million — a figure Koch says it doesn't use without attributing it to the highway department.

Rahn arrives at his savings total by using department estimates that it would cost \$151 million to maintain a four-lane N.M. 44 in almost perfect condition for 20 years.

He also concedes no state road is currently maintained at that level. Highway department records show that more than 4,500 miles of road in the state are in need of repair.

Rahn's estimated savings also assumes the asphalt surface will have to be stripped and redone at least twice in the next 20 years.

But the state has never maintained a road designed to last 20 years.

Most state roads are 10-year design, with a 6-inch layer of asphalt on top of the "base course." Koch's design calls for a 9-inch asphalt layer.

"If this road design is so good, why are we paying \$62 million for a warranty," asked New Mexico House Speaker Rep. Raymond Sanchez, D-Albuquerque.

Sen. Billy McKibben, R-Hobbs, who has spent 20 years in the New Mexico Legislature, predicted there would be disputes if the state demands certain maintenance and Koch refuses.

"My God, you can't even get your car warranty serviced right," he said.

A revised design of the project, which was done to cut costs, adds another potential warranty issue.

Under the latest plan, more than 20 miles of existing roadway will stay in place. The pavement will be refurbished, and two new lanes added.

Koch officials said they expect to be responsible only for those parts of the road on which they actually managed the construction.

If problems such as rutting or cracking are caused by something beneath the surface of the existing roadway — such as the base course or soil compaction that Koch didn't oversee — the company says it wouldn't be responsible.

Rahn told the state Highway Commission he expects changes will have to be made in the warranty to address that problem.

### No other takers

The long-term warranty on N.M. 44 could retain its "one-of-a-kind" status for some time.

Rahn says New Mexico has no immediate plans for long-term warranties on other road projects.

Koch Industries is pushing long-term warranties elsewhere, and appears to be the only company doing so. But it hasn't met with much success.

The company recently lost a bid to build a \$232 million parkway in South Carolina. The contract was awarded to a group of firms offering a three-year warranty.

"It (a warranty) was one of our selection criteria, but it wasn't one of the heavier items that we



AARON WILSON/JOURNAL

JEMEZ FOOTHILLS: Legislators question the value of the \$62 million warranty on the four-lane widening of N.M. 44 from San Ysidro to the Four Corners area.

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awarded points to," said Roy Tolson, spokesman for the South Carolina Department of Transportation.

Koch officials recently traveled to Montana to push their road-building concept that includes a long-term warranty, but highway officials didn't bite on the proposal.

"Up here it (a long-term warranty) is already politically and economically sensitive," said Jerry Stephens, of the civil engineering department at Montana State University.

"I think we're all waiting for the New Mexico thing ... to see how that turns out," said Stephens, one of the authors of the Montana study on warranties.

Until 1995, the Federal Highway Administration frowned on warranties because it didn't want states to use federal funds to maintain roads.

That changed when federal officials decided warranties might improve quality.

But Rahn said short warranties only protect against construction defects that are obvious within a year of completion.

Typically, state highway departments haven't considered long-term warranties.

Rahn says that's because of their mind-set.

"In my assessment, DOTs (highway departments) are extremely conservative, partly because engineers are trained to avoid risk," he said. "That's their mentality and their training. ... They're very conservative, and you don't typically see a lot of innovation."

Rahn says he doesn't believe the N.M. 44 warranty is a risk.

"In the worst-case scenario the state wins," he said. "When you combine a new highway design with a warranty, you've transferred that risk to the company."

McKibben disagrees.

"Gary Johnson is a lame duck," he said. "When he's through with New Mexico and it's served him personally well, he'll ride off into the sunset and it will be left up to the Legislature to pick up the pieces and salvage all the messes that have been made." ♦

## N.M. Project Large-Scale Test For 'Euro-Design'

**K**och Industries Inc. had never built a major highway in the United States at the time it proposed to design, build, finance and provide a warranty for the widening of N.M. 44.

The so-called "Euro-design" pavement the company plans for the project hasn't been used on any other road in the United States. In fact, Koch designed it specifically for this project.

Koch had been a supplier of asphalt since 1993, and its entry into the road-building market coincided with a big increase in federal funding for state road projects.

The company formed its Performance Roads Division in the fall of 1996 to break into the road-building industry and initially contacted New Mexico highway officials about possible maintenance contracts in the northwest part of the state.

"A lot of companies saw road building as a new profit center," said Richard Harris, executive vice president of the Associated General Contractors of New Mexico.

"They saw the available road-building dollars double, and they naturally wanted in on that."

By the time Koch made its formal proposal for N.M. 44 in December 1997, the company said it had:

- Provided technical expertise and materials for a five-mile, eight-lane section of Interstate 275 in Michigan.
- Provided technical expertise, testing and materials for a 10-mile stretch of Interstate 69 in Indiana.
- Completed a design, build and warranty contract for roads in a Missouri subdivision.

Koch also is a limited partner on a California toll road that has yet to be built and recently completed an eight-mile stretch of a county road in eastern Kansas.

In seeking the New Mexico contract, Koch attempted to shore up its portfolio by bringing in a builder, Flatiron Structures Inc., and a national engineering firm, CH2MHill.

Koch moved into the asphalt business in a big way when it bought asphalt plants from Elf Aquitaine, a French company, in 1993. Elf had 40 American asphalt plants and supplied about 6 percent of the U.S. asphalt market.

"When we purchased Elf's asphalt

operations here, we knew we bought a lot of good assets," said Bob Heitmann, vice president of Koch's Performance Roads Division. "What we didn't realize is the quality of the people who were coming with those assets."

Koch's purchase brought people into the company with road experience in Europe, where the Democratic Socialist governments sponsor a less-competitive and more cooperative relationship with road builders.

European road builders also use different techniques to test and design asphalts for specific roads.

What made Koch unique in its bid to get into the highway construction business was its long-term warranty pitch.

"We had experience with warranties within the company," Heitmann said. "We have a product that water-seals basements that has a 10-year warranty. We had success with that concept."

Heitmann is responsible for Koch's nationwide push on what the company describes as its innovative design, build and warranty package.

Rep. Dan Silva, D-Albuquerque, knew of Koch Industries from attending national transportation meetings as chairman of the House Transportation Committee.

"I personally knew about them before this," Silva said. "They were promoting privatization" of road-building projects at national legislative meetings on transportation.

New Mexico Highway and Transportation Secretary Pete Rahn said he thought Koch was a small asphalt supplier until he visited the company's modern, black glass, high-rise headquarters in Wichita, Kan.

Company officials acknowledged the N.M. 44 project is the biggest test for its road program.

Rahn told prospective bidders in the fall of 1997 that the national spotlight would be focused on the project.

The company or consortium selected as the developer for the project, Rahn said, "will be in a position of competitive advantage as this model is replicated around the rest of the United States." ♦

# Koch Is Nation's 2nd Largest Privately Held Company

**W**ICHITA — Koch Industries Inc. is a privately held company whose 1998 revenues of \$35 billion exceeded those of Microsoft, Disney and Merrill Lynch.

Brothers Charles and David Koch own more than 80 percent of the conglomerate, which employs 16,000 people worldwide and sells everything from cattle feed to water purification filtration systems.

Charles and David are among the richest men in the United States, with Forbes Magazine estimating their personal fortunes at more than \$1 billion each.

For many years, Koch was a commodities-based company that bought oil, refined oil and sold refined oil products, including emulsions used in making asphalt. Koch owns 35,000 miles of oil and natural gas pipelines in the United States and Canada.

The Wichita-based company in recent years expanded into other areas, including road building.

"We're changing from a company that was just involved in commodities to a company that offers services and new products and product concepts," said spokeswoman Mary Beth Jarvis. "The profit margins in commodities are just too thin. If you're going to grow, you have to move into new markets and create new markets."

The company is made of up nine business groups, some of which include a number of subsidiary companies.

The major groups include Koch Petroleum Group, Koch Capital Services Group, Koch Energy Group, Koch Gas Liquids Group, Koch Chemicals Group, Koch Chemical Technology Group, Koch Agriculture Group and Koch Mineral Services Group.

Despite being the second-largest privately held company in the country, Koch Industries isn't particularly well known.

The company didn't seek publicity and only in the past decade has it publicized its activities and responded to reporters' questions.

The controversies that have put Koch Industries in the limelight were not wel-



COURTESY OF KEN MANTYLA

**CONTRACTOR HEADQUARTERS:** Charles and David Koch run their billion-dollar oil and gas conglomerate out of Koch Industries Inc. corporate headquarters in Wichita, Kan.



**DAVID KOCH:** One of richest men in U.S.

comed by the company.

They include:

- A series of bitterly fought lawsuits filed by William Koch, the estranged brother of Charles and David, including allegations that the company systematically short-changed owners of oil leases.

- Environmental problems and government fines at Koch's

two oil refineries.

Over the past decade, William Koch put Koch Industries on the front pages of national magazines and newspapers by filing more than 20 lawsuits in federal and state courts.

The family fight started in 1980 when



**CHARLES KOCH:** Target of ouster attempt

William Koch tried to oust his older brother, Charles Koch, as chief executive officer.

William opposed the company's policy of reinvesting 90 percent of profits back into the company.

Charles Koch won the boardroom battle, and in 1983 Charles and David Koch bought the shares of William, another brother, Frederick, and several cousins for

\$1.1 billion.

William Koch subsequently filed suit claiming that he and other stockholders were cheated in the 1983 buyout. He alleged that Charles and David misrepre-

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sented the value of the company and said the former minority shareholders were owed about \$2 billion.

A jury rejected William Koch's claims, finding there were no significant misrepresentations or omissions. He wasn't awarded any money and vowed to appeal.

William Koch has brought another lawsuit in Oklahoma claiming the company systematically misled oil producers when measuring the amount of oil taken from their wells.

The case is being tried in Tulsa and is expected to conclude this month. Koch Industries responds that the producers agreed to adjustments in order to sell low-grade oil and to compensate for sediment buildup in oil holding tanks.

## Environmental issues

Like many companies in the oil business, Koch Industries has had its share of battles with state and federal environmental agencies.

- The state of Minnesota assessed a \$6.9 million pollution penalty against Koch's Rosemount refinery south of Minneapolis in 1998 for gasoline spills and leakage from underground storage tanks that polluted the Mississippi River. The leaks and spills occurred over several years.

- A Koch pipeline spill at Corpus Christi, Texas, in 1994 led to a \$10.5 million class-action settlement for people in the fishing industry.

- In 1989, the company was hit with a \$2 million penalty for dumping waste water into the Mississippi River from the Rosemount, Minn., plant.

- The federal government has a pending lawsuit against the company for failing to report pipeline spills in Texas and Oklahoma. A civil case arising from the Corpus Christi spill is pending.

Koch Industries has fought the civil cases in court and has a long record of supporting changes in federal laws and regulations that environmentalists oppose.

But the company also has been recognized by the Environmental Protection Agency for some of its programs.

"On the compliance side there has been an evolution," Jarvis said. "That is, we're very strong believers in environmental compliance..."

"We have always paid a lot of attention to the results. I think in the last number of years we have become better at the compliance. Early to mid-'90s we fought it. In the last few years we have communicated better."

Jarvis said the company also has seen technological advances that make it easier to comply with clean air and water standards at its refineries and pipelines.

"The one part that has been unchanged is that we have a very strong sense of stewardship — that's always been there," Jarvis said. ♦

# Widening of N.M. 44 Jumped to Top of List

▪ Critics say highway not the most heavily traveled or the most dangerous in the state

**T**he widening of N.M. 44 from San Ysidro to Bloomfield vaulted to the top of New Mexico's road-building priority list because Gov. Gary Johnson wanted the job done.

The road project initially wasn't included in the list of transportation priorities submitted by the state to federal officials for 1997-2002.

And N.M. 44 wasn't the most heavily traveled road in the state, nor was it the most dangerous, according to a 1997 highway department study of a dozen two-lane roads. The study showed N.M. 44 ranked seventh in the number of fatalities per 100 million vehicle miles traveled and sixth in accidents.

But there were other considerations.

Johnson made widening N.M. 44 a high priority during his first term, but vetoed a funding bill twice because it relied on a gasoline tax increase. After the second veto in early 1997, Johnson directed highway officials to find some other way of financing the project.

The Farmington area, served by N.M. 44, is a Republican stronghold where Johnson defeated Democrat Bruce King by 8,000 votes in 1994 and Martin Chávez by 12,000 votes in 1998.

Sen. Billy McKibben, R-Hobbs, said that moving the N.M. 44 project to the top of the list was "deep politics."

McKibben noted highway statistics that show the stretch of N.M. 44 to be widened serves an average of 3,000 drivers a day.

"Is that incredible? Is that not 'politics before people,'" he said, referring to Johnson's "people before politics" campaign slogan.

"You know you could spend that (money) on one of the main arteries in Albuquerque and serve New

Mexico much, much better. Again, there's some deep politics there."

Johnson said he just wants a safer road.

"I remember as a family driving up to the Four Corners area, and we had our series of near head-ons — everybody does. I was told then as a 13-year-old or 14-year-old that 'Don't worry, this is going to be four-laned shortly,'" Johnson said.

State officials added construction of N.M. 44 to the State Transportation Improvement Program, or STIP, after private discussions in early 1997 with Koch (pronounced "coke") Industries Inc. — the Kansas-based company that offered to finance, design and warranty the project. Koch ultimately won the state contract in 1998 as the sole bidder on the project.

A project must be included in the STIP plan to be eligible for federal funds. Until it was added in the summer of 1997, only the preliminary engineering for the project had been included.

The state Highway Commission agreed to add construction of N.M. 44 to the STIP plan in June 1997 and approved a Request for Proposal two months later.

Highway officials said the project would increase safety and promote economic development in the Four Corners area.

They presented the state Highway Commission with an analysis showing the road as the top priority for widening among 12 two-lane roads studied.

Traffic volumes, population served, accident rates and future projections were considered.

U.S. 550 between Aztec and the Colorado state line ranked first in fatalities and accidents; N.M. 68 between Española and Taos had the

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second-highest rates.

Neither road was included in the STIP plan, and neither is slated to be expanded to four lanes in the near future.

According to the analysis, average daily traffic on N.M. 44 was fifth highest of the 12 roads. That ranking wasn't expected to change by 2016.

The analysis for N.M. 44 included traffic counts and accidents in the Bernalillo area — by far the most congested portion of the entire stretch of the roadway.

But that 20-mile stretch had already been approved for widening — a project that was paid for by state money and completed in 1998.

The San Ysidro-to-Bloomfield portion did rank first in heavy commercial traffic with more than 1,000 trucks a day, but that ranking was expected to drop to fourth by 2016.

Another N.M. 44 analysis conducted by the highway department in 1995 looked at cost, safety and economic factors.

“While it appears that (accident) rates in general are moderate to high on this route, it is not clear to what extent construction of four lanes will improve accident rates,” oversight staff engineer Bob Bass said in the report.

The 1995 study said that providing two more lanes would reduce the potential for head-on crashes caused by vehicles attempting to pass. It stated that adding a median could reduce accidents caused by vehicles drifting across the center lane.

But a large number of accidents on the road have occurred at junctions and other access points where vehicles enter and leave traffic.

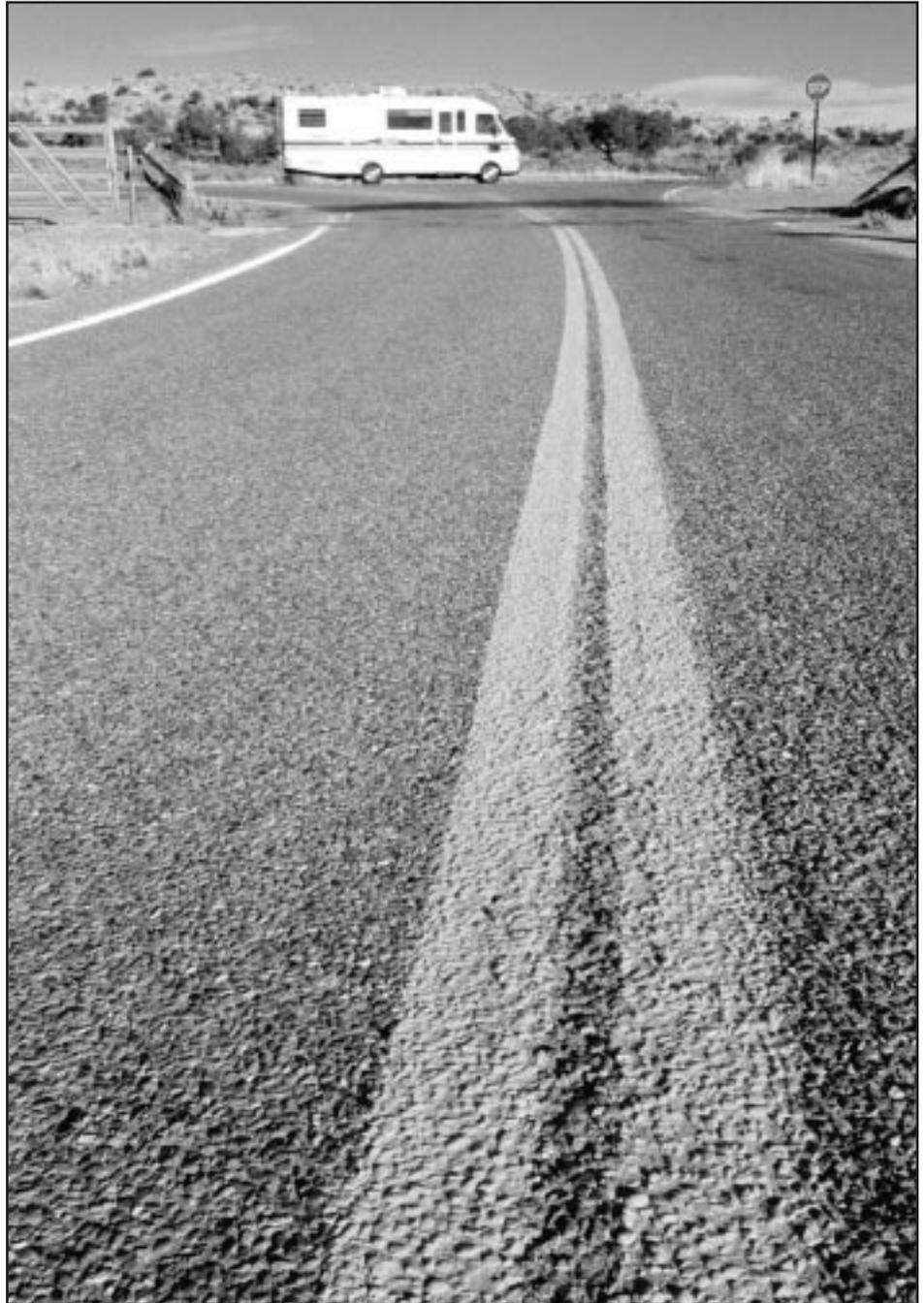
Those would still be present with a four-lane N.M. 44, Bass said, so “it is likely that four-lane construction will not create the safety benefits people anticipate.”

## Public comment

State highway officials have come under fire for the way the N.M. 44 construction project was added to the transportation plan.

Federal regulations stress public access to key decisions on road projects and require public hearings on major revisions to the STIP.

State highway officials held no public hearings on the road proposal in 1997



RICHARD PIPES/JOURNAL

**SAFETY ISSUE:** A 1995 highway department report says widening N.M. 44 to four lanes won't necessarily make road junctions that much safer. This junction is the turnoff to Chaco Canyon.

before adding it to the plan.

The public had opportunities to hear about the project during state Highway Commission meetings during the summer of 1997, but the agendas don't show any time set aside for public comment.

Meeting agendas didn't refer to N.M. 44 by name, and minutes reflect little discussion about the project among highway commissioners.

Highway and Transportation Secretary Pete Rahn said the

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commission did talk about the issue in committee meetings, but minutes of those discussions aren't routinely kept.

The Rio Grande chapter of the Sierra Club protested the lack of public involvement in a January 1998 letter to the Federal Highway Administration.

"The proposed action ... denies the public required opportunity for early and continuing involvement in identifying the social, economic and environmental impacts of the project," wrote chapter chairman John R. Buchser.

The Sierra Club also alleged the Federal Highway Administration failed to allow a required 30-day public review after finding that the project would cause no significant environmental impact.

Records show highway officials launched the contracting process a few days after the environmental impact finding.

The Sierra Club said the "closed nature of the process prevented objection and comment by officials and the public" in other areas of the state that needed road improvements.

State and federal officials said there had been ample discussion in prior years.



RICHARD PIPES/JOURNAL

**HIGHWAY TOLL:** Roadside crosses along N.M. 44 mark the sites of past tragedies. State highway officials hope widening the road to four lanes will make it safer.

"Four-laning N.M. 44 has been in the long-range plan of (the highway department's) for over 20 years," Rahn said in a September 1997 letter to U.S. Transportation Secretary Rodney Slater.

Reuben S. Thomas, the New Mexico-based division administrator of the

Federal Highway Administration, told the Sierra Club in a February 1998 letter that "appropriate planning procedures" had been followed.

State highway officials, Thomas wrote, had provided for "early, continuing and proactive public involvement." He cited public meetings held in 1994 and 1995. ♦

## Koch Supports Many Candidates, Causes

### ■ Campaigns of Gov.

Johnson, Rep. Heather

Wilson among the recipients

**C**harles and David Koch are billionaire businessmen with a penchant for politics and conservative causes.

Since 1993, David Koch and Koch Industries have contributed more than \$1 million in so-called "soft money" to the national Republican Party and its various committees.

Soft money at the national level finds its way to state candidates for both major political parties. Gov. Gary Johnson, for

example, received at least a quarter of a million dollars in national Republican soft money in his two successful runs for office.

The Koch brothers and their company also have contributed hundreds of thousands of dollars directly to candidates running for state and federal offices — most of them Republicans.

Johnson and Rep. Heather Wilson, R-N.M., were among the recipients of Koch's direct largess in 1998. Koch gave Johnson's re-election campaign \$5,000 and contributed \$10,000 to Wilson through a political action committee.

Koch spokeswoman Mary Beth Jarvis said the philosophy behind the company's political contributions "is to support peo-

ple who believe in free markets, open markets."

Johnson and Wilson both say they don't know the Koch brothers personally.

"I wouldn't recognize them if they were in the room," Johnson said.

The Koch brothers control several philanthropic foundations that support academic and policy organizations promoting smaller government, privatization, regulatory reform, school choice, private property rights and reduced military spending.

The family has a history of political activism.

Fred Koch, the father of Charles and

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David, was an avowed anti-communist who served on the board of advisers of the John Birch Society. Charles was on the board until the late 1960s, when he quit because of his opposition to the Vietnam War. He actively supported term limits with a \$300,000 donation.

David Koch was the Libertarian Party's vice-presidential nominee in 1980.

The Koch family also helped found and finance the Libertarian Washington-based think tank, the Cato Institute.

The institute has applauded Johnson for cutting taxes, reducing the size of government and, most recently, for his stand on legalization of drugs.

Johnson recently was a keynote speaker at a Cato forum in Washington, D.C., on drug policy and spoke at a Cato seminar in 1998 in Albuquerque on Social Security reform.

The Cato Institute released a study prior to the 1998 gubernatorial election that praised Johnson for his positions on tax reductions and smaller government.

David Koch serves on the board of directors of the Cato Institute.

Johnson said in an interview earlier this month that he might have met the Koch brothers, but didn't have any specific recollection of such a meeting.

The governor said he was familiar with the Koch name in the context of the N.M. 44 Corridor Project.

Wilson said she never met the Kochs and doesn't recollect the contribution.

"It probably was made at one of the fund-raisers in Washington," she said in a telephone interview. "I assume they supported pro-business candidates, and I am definitely pro-business."



C. KOCH:  
Actively  
supported  
term limits



D. KOCH: On  
Libertarian  
ticket in 1980

For the past six years, the Kochs also have contributed small amounts to moderate and conservative Democrats through the Democratic Leadership Council.

The Kochs over the years have moved toward many mainstream Republican positions, supporting free trade with China, NAFTA and other initiatives to open foreign markets.

David Koch was finance committee vice chairman of former Kansas Sen. Bob Dole's presidential bid in 1996. The Kochs are listed among Gov. George W. Bush's financial supporters.

### Johnson campaign

The \$5,000 contribution by Koch Industries Inc. to Johnson's 1998 campaign was made more than a month after the November election. Johnson's campaign committee at the time reported no debts and a cash balance of \$13,000.

The N.M. 44 contract between Koch Industries and the state highway department was signed six months earlier.

Doug Turner, Johnson's campaign manager, said campaign staff solicited businesses and individuals after the election to help sponsor Johnson's inauguration. But Turner said he didn't believe Koch Industries was among those contacted.

"We've been very, very careful not to solicit in areas where it could be construed to be a conflict of interest," Turner said.

He said the Koch contribution might have been solicited by the Republican Governors Association.

A big part of the Kochs' political contributions are in "soft" money, which is supposed to be used for "party building" efforts but not to help specific candidates for federal office.

However, soft money from national political parties can be disbursed to support candidates for state offices.

Koch Industries and David Koch contributed \$677,000 to the Republican National State Elections Committee from 1994 through March of this year.

That committee gave Johnson's cam-

paign \$160,000 in 1998 and \$75,000 in 1994.

The state Republican Party also received more than \$535,000 in 1997-98 from the same Republican national committee.

"Soft money is unlimited and unregulated," said Sheila Krumholz, a researcher with the Center For Responsive Politics.

Critics such as Common Cause consider "soft money" donations as a way to get around the full disclosure of who is supporting candidates for political office.

### Congressional probes

The Koch name also surfaced in the 1997 debate over the financing of congressional campaigns.

Democrats on the Senate Governmental Affairs Committee believed the Kochs were responsible for more than \$1.2 million spent by a nonprofit group to support Republican congressional candidates in the last weeks of the 1996 campaign.

The Kochs won't answer questions about it.

"Get over it," Jarvis said in an interview with the Journal. "It happened in 1996."

The Senate committee at the time was investigating alleged fund-raising irregularities by the Democratic National Committee — including contributions made in return for overnight stays at the White House.

But Democrats on the committee wanted an investigation into funding of a last-minute television campaign. The campaign was designed to aid Republican candidates who were short of money and to offset a similar campaign for Democrats paid for by organized labor.

The listed sponsor for the Republican television ads was a group called Citizens for the Republic Education.

But that group allegedly was bankrolled by another organization called the Economic Education Trust, according to the Washington Post.

The Post also reported that investigators for Senate Democrats believed "but can't definitively prove" that the Economic Education Trust is funded by Charles and David Koch. ♦



JARVIS: Firm  
supports "free  
markets, open  
markets"



RICHARD PIPES/JOURNAL

ONE STEEP ROAD: The price of aggregate hauled to the asphalt batch plant on N.M. 44 has increased the cost of widening N.M. 44.

## Gov. Defends Going Into Debt for N.M. 44

**N**ew Mexico will be paying the \$420 million bill for widening N.M. 44 long after Gov. Gary Johnson leaves office.

The next five administrations are locked into using more than \$20 million a year from New Mexico's anticipated federal highway funding to pay off bonds sold to finance the 118-mile project.

The Johnson administration is leaving this legacy without submitting the plan to voters or winning formal legislative approval.

"Members of the Legislature are going to be left trying to explain it," said Sen. John Arthur Smith, D-Deming.

"I think that we (legislators) are going to be back here, replaying and rehashing this, when everybody is retired from the highway department."

Johnson said he believes the state needed to go into debt to get the project completed.

"I would just argue that if you don't go into debt to build highways that it's not going to happen," Johnson said. "We're

never going to make improvements with cash."

Some legislators are concerned that a shortfall in future federal highway funds will affect other New Mexico road projects because the N.M. 44 bonds have first priority on federal money — which accounts for nearly half the state's \$608 million highway budget this year.

Critics fear that Johnson and his highway secretary, Pete Rahn, are in effect trading future road projects for a gold-plated N.M. 44.

Only a few states so far have used this method of borrowing against future federal revenue to accelerate road projects. New Mexico was among the first to issue the so-called Garvee bonds under a program Congress approved in 1995.

Arkansas, Colorado, Massachusetts, Mississippi and Ohio are funding road projects with the bonds. All obtained either legislative or voter approval first.

State highway officials said they weren't required to get legislative or voter approval. Ultimately, they did consult with

legislative leaders.

Unlike the other states that have issued the bonds, New Mexico hasn't articulated how it will pay them off if future federal funding falls off. Other states, such as Mississippi, have pledged state revenues if that happens.

Historically, New Mexico has built roads on a pay-as-you-go basis.

"New Mexico hasn't borrowed money to build roads," Rahn said. "And that's gotten us to where we are, with 25 percent of our system in deficient status (not being repaired in a timely manner)."

State Sen. Raymond Kysar, R-Farmington, is a longtime supporter of widening N.M. 44 to the Four Corners area he represents.

"If you took all the tax money we (the Farmington area) send to the state, we would have the money to four-lane N.M. 44 in one year," Kysar said.

He supports Rahn's efforts to get the project completed quickly.

"Pete's the type of guy who once he gets

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going on something, he gets it done no matter what it takes," said Kysar, who once employed Rahn as a salesman in his insurance company.

But Democrats in the Legislature see things differently.

Legislative Finance Committee vice chairman Rep. Max Coll, D-Santa Fe, said, "If we were paying as we go, that \$100 million (in interest) would be going to our state for other projects, instead of us putting it in some investment banker's pocket back East."

### Figuring costs

Of the \$420 million tab for the project, only \$180 million has been set aside for construction, to be performed by companies that bid on various segments of the road.

A review of state records by the Journal found the \$180 million for construction to be overly optimistic. The state this summer rejected most of the initial construction bids as too high.

Further, highway department budget estimates didn't include either a contingency fund or a projected \$17.4 million in gross-receipts taxes.

But Rahn insists \$180 million is enough. And he says if the road can't be built for that amount, it won't be completed.

"I want to build this road. I want this to move forward," he said. "We've made improvements (on the cost). We've gone from a \$230-to-\$250 million range to under \$200 million, and there are still areas we want to address that can bring this cost down."

After construction costs, interest payments on the bonds take the next biggest piece of the pie: \$124 million.

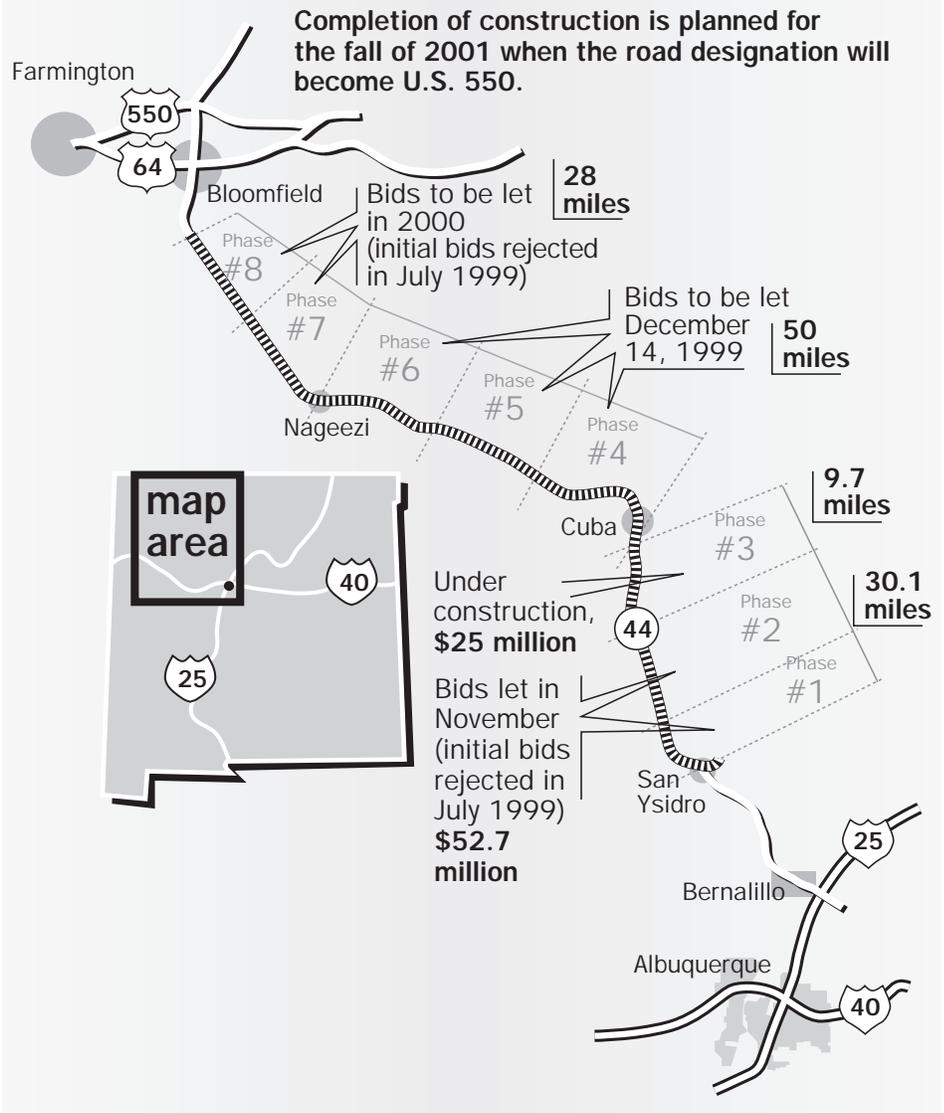
Koch (pronounced "coke") Industries of Wichita, Kan., will be paid \$62 million for the warranty and \$46 million to design the road and oversee construction. About \$8 million was spent on preliminary studies and design.

The state is in the process of issuing \$296 million in bonds to pay for the project — the limit the Federal Highway Administration would allow.

And that was after the state convinced federal highway officials to accept the already-completed widening of N.M. 44 from Bernalillo to San Ysidro as the required 20 percent in state matching money.

That allowed Johnson administration officials to avoid going back to the

## STAGES OF CONSTRUCTION



RUSS BALL / JOURNAL

Legislature for money.

All that wrangling, along with the deal Rahn cut with Koch Industries, may have left the state short of money for actual road building.

After the first round of construction bids exceeded the engineers' estimates by millions of dollars, highway officials and Koch redesigned major portions of the project.

Rahn told the state Highway Commission recently that the redesigns may require the state and Koch to renegotiate the warranty.

Rahn defends the high cost of the warranty by saying the state will get a

road in tip-top condition after 20 years. The warranty is backed by a 20-year \$50 million performance bond.

Rahn also acknowledges the amount the state is paying for design and construction management is high — 25 percent of construction costs. But he says the state is buying Koch's road design and Koch will take on the state's inspection duties in overseeing the road construction.

Koch will conduct more inspections than the state normally would in order to protect its warranty, Rahn said. And that means a higher-quality road.

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## Necessary trims

Koch told the department in its formal proposal submitted in December 1997 that its "design alternative is slightly more expensive than a traditional approach."

It is difficult to say how much more expensive it will be.

In 1998, the state widened the first segment of N.M. 44 between Bernalillo and San Ysidro at a cost of \$16.4 million.

That project simply added two lanes on either side of that 20-mile stretch, costing about \$800,000 per mile.

For the Koch project on the remaining 118 miles of the road, the highway department budgeted about \$1.5 million per mile.

That is because the Koch plan called for total four-lane reconstruction of the road.

But bids from construction companies were coming in higher than the budgeted \$1.5 million per mile.

In November, the department opened bids on two sections north of San Ysidro. Those bids came in at between \$1.75 million a mile and more than \$2 million a mile.

The low bid, of \$52.7 million to build 30 miles of road, was more than 10 percent lower than the engineer's estimates of \$61.8 million.

Officials are scheduled to open the third round of bids on sections of N.M. 44 north of Cuba later this month. If those bids come in higher than \$2 million a mile, the project could be in trouble.

The department budgeted \$180 million for construction without knowing what Koch's Euro-pavement design — which involves a thicker layer of asphalt — would look like or cost.

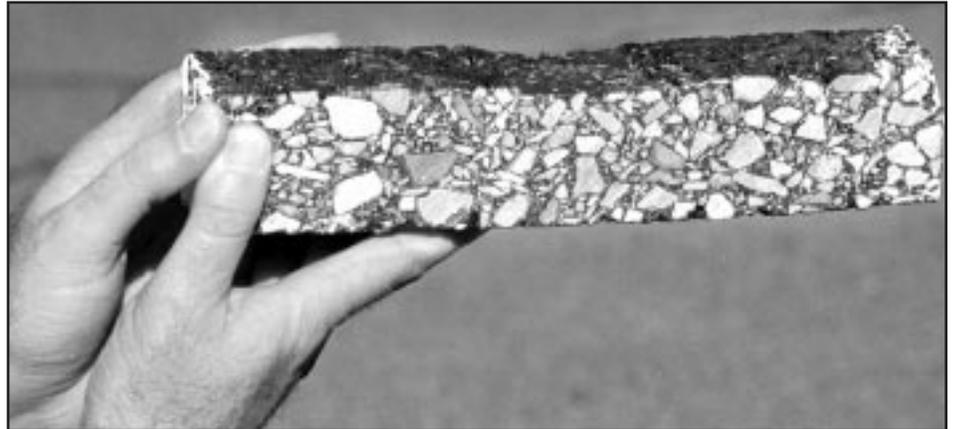
The department also ignored its own 1995 engineer's report that said it would cost \$1.65 million per mile to build four new lanes.

Instead, it based its cost estimates on a study done in April 1997 that came up with the \$1.5 million per mile to rehabilitate two lanes and build two new ones.

In interviews with the Journal, Rahn defended the department's estimates as the best available.

But some low bids this summer came in as high as \$2.5 million per mile. Bids on all but one section were rejected, and Rahn admits the state can't build the road at those prices.

To cut projected cost overruns, one major change the department made in the design is that the northern two sections of



PAUL BEARCE/JOURNAL

**SLICE OF WORK:** A cross section of asphalt base course from the N.M. 44 widening project.

the project won't be completely rebuilt. Those sections, approximately 22 miles, will be widened but the existing road will be used as a base.

The state also has agreed the shoulders will be narrower than planned and not covered by the warranty. Retaining walls have been removed from portions of the road.

"I don't know that we're at \$180 million yet, but we're getting there," Rahn said.

But he wonders if the first round of rejected bids were high because contractors weren't "hungry enough" to give the state a good price.

"Highway construction projects have seen significantly higher inflation this year above the entire economy's inflation rate," Rahn said. "That goes back to the fact that we are increasing spending on highways in this country by 45 percent. I don't see a lot of hungry contractors out there."

Koch officials agree.

"We're seeing inflation rates of 16 percent each of the last two years," said Bob Heitmann, vice president of Koch's Performance Roads Division.

But Richard Harris, executive vice president of the Associated General Contractors of New Mexico, said contractors are simply "pricing the cost of their risk."

Harris said contractors believe their risk is greater on N.M. 44 than other projects because there is a greater possibility of work being rejected by warranty-conscious Koch.

## Cost of rock

Why was the department so far off in its cost estimates?

The largest single cost item in road

construction is the aggregate used in making the asphalt and the base course.

New Mexico highways have a 6-inch layer of asphalt. Koch N.M. 44 design calls for a 9-inch asphalt layer requiring more aggregate.

Highway officials told legislators this summer that bids on aggregate were coming in at \$28 a ton — 40 percent higher than in the past.

There are few developed sources of aggregate along N.M. 44 north of San Ysidro and south of Bloomfield, which means the rock has to be hauled in to the asphalt plants.

The amount of other material, asphalt oil and additives also increases with the Koch design.

Also, contractors were warned there would be more inspections to make sure the aggregate and the asphalt mix met specifications.

"I think the contractors are aware there's going to be an exceptional level of inspection," Rahn said. "I think that scared some contractors."

The highway department also required lump-sum bids, moving away from the normal procedure in which the department would pay extra for materials if its estimates were too low.

"A lump sum (bid) gives us a lot more comfort because there's no opportunity for multimillion (dollar) change orders," Rahn said. "That's why lump-sum (bids) are appealing to us and not to contractors."

This increased the risks to the contractors, so they factored that risk into their bids, according to Harris.

Despite the problems, Rahn says he believes the project will succeed.

"I haven't given up on Koch here," Rahn said. ♦

# Financing Project Through Koch Would Have Cost State More

It could have been worse.

The state would have paid millions of dollars more in interest payments on the N.M. 44 project under the original financing plan proposed by New Mexico highway officials.

The highway department's original Request for Proposals called for a private developer to finance the project as well as design it, manage construction and provide a warranty.

The only company that submitted a bid was Koch Industries of Wichita, Kan., which suggested the idea of private financing to the highway department in the first place.

In April 1997 Koch offered to provide the up-front money for the project but didn't suggest how it would be repaid.

The private-financing idea hit a snag in September when legislative leaders pleaded with federal officials to put the brakes on what some lawmakers considered to be a runaway project.

Legislative leaders ultimately agreed to support the project if the highway department compared the private financing with that offered by New Mexico Finance Authority.

The state rate turned out to be more cost-effective.

The agreement between Highway and Transportation Secretary Pete Rahn and legislators also accelerated four other road projects, including the Big I reconstruction in Albuquerque and U.S. 70 between Alamogordo and Las Cruces.

Tom Pollard, director of the Finance Authority, said in an August 1998 memo that NMFA's involvement on the N.M. 44 project "saved New Mexico well over \$100 million in interest over the eighteen years financing."

Pollard said the NMFA's ability to offer tax-exempt financing and to secure a AAA rating lowered the interest rate by about 2.75 percentage points.

Highway officials earlier had rejected

the idea of using the NMFA to issue bonds, and pushed ahead with the private-financing option.

Highway legal department notes of an internal meeting dated May 1997 listed possible N.M. 44 funding mechanisms and showed "NMFA" with a line drawn through it.

Rahn said in a recent interview that he wasn't sure why his agency decided against going through the state Finance Authority.

"We didn't know we could use the Finance Authority," he said.

Rahn said the department considered the Koch proposal for financing because "we had no other way to pay for this if the company didn't come forward with dollars to loan the state."

Rep. Max Coll, D-Santa Fe and vice chairman of the Legislative Finance Committee, asked U.S. Transportation Secretary Rodney Slater to intervene in July 1997.

Legislators also contacted members of New Mexico's congressional delegation.

Among other concerns, lawmakers questioned the lack of public input on the financing plan.

Highway officials said they didn't need to consult with the Legislature because no state funds were being tapped.

But Reuben Thomas, a federal highway official based in Santa Fe, said in an e-mail obtained by the Journal that acting Federal Highway Administrator Gloria Jeff indicated "she would not approve the project until the two parties reached an agreement."

At Jeff's request, Rahn in September

met with the Legislature's leadership, Senate President Pro Tem Manny Aragon and House Speaker Raymond Sanchez, both Albuquerque Democrats.

Pollard said in a recent interview that highway officials never made a formal request for state financing prior to the meetings with Aragon and Sanchez. He said he couldn't recall any informal conversations.

Although the highway department's original RFP called for private financing, Rahn said his agency was working on the idea of public financing when legislators intervened.

Legislative leaders scoff at that claim, saying they first proposed the idea.

Aragon said legislative leaders asked, "How can a private company get better rates (on bonds) than the state?"

"It had never been discussed until we asked them to do this," Aragon recalled. "They agreed to hold it (the award of the contract) up until the comparison was done."

Legislative leaders and Rahn had several meetings over a three-week period. Jeff attended the first meeting Sept. 3.

A subsequent letter from legislative leaders to Slater said Jeff "expressed concern about the lack of public participation and involvement by all stakeholders in the N.M. 44 corridor project and said a unilateral 'decide, announce, defend' approach for innovative financing and contracting of highway projects is not acceptable to the Federal Highway Administration."

Rahn responded that there had been more than adequate public notification and acceptance of the plan after it was announced months earlier. ♦



ARAGON: Wondered about bond rates



# Officials Defend N.M. 44 Project

State highway officials told a legislative committee hearing on Thursday they acted within the law in hiring Koch Industries of Wichita, Kan., for the 118-mile widening of N.M. 44.

Highway and Transportation Secretary Pete Rahn also gave legislators attending the Legislative Finance Committee meeting a handout containing criticisms of a recent Albuquerque Journal series on the N.M. 44 project.

Koch will be paid \$108 million to design the project, manage construction and provide a 20-year warranty on the road surface. Other companies will perform the actual construction.

Koch was the sole bidder for the project, which highway officials say is the first of its kind in the country.

Art Waskey, the highway department's top lawyer, told committee members that he advised agency officials in 1997 that Koch shouldn't be barred from bidding simply because it provided "ideas and concepts" for the project.

The state Governmental Conduct Act bars state agencies from accepting bids from private firms that had direct or indirect involvement in preparing the bid specifications.

The committee had already decided prior to Thursday's public hearing not to ask Attorney General Patricia Madrid to

investigate the N.M. 44 contract.

Instead, legislators have asked staff to look into ways the Legislature could increase oversight of highway department procurements.

Waskey said during the committee hearing that Koch had no involvement in writing the specifications and that it wouldn't have been "fair to them to eliminate them" as bidders.

"At some point in your professional judgment you have to draw the line," Waskey told committee members. "I take responsibility. I draw the line."

The Journal reported in the series that highway officials were meeting privately with Koch officials about the project six months before the state solicited competitive proposals for the contract.

Koch officials in April 1997 sent the highway agency a 27-page "draft discussion document" outlining how Koch would privately finance, design, build and warranty the road job.

There were follow-up conversations, and highway officials visited Koch headquarters in Wichita to find out more information. Both the agency and company say the private communications then ended.

Rahn presented lawmakers with a Dec. 15 letter from Bob Heitmann, Koch vice president for Performance Roads.

Heitmann's letter states the "draft discussion document" was sent to Benny

Roybal, then-highway deputy secretary of highway operations, after Roybal mentioned "that the State was interested in rebuilding NM-44 and expanding it to four lanes."

"He asked if I had any ideas on how NMSHTD might approach this kind of project," Heitmann's letter said.

Heitmann said in his letter that the document sent to Roybal was previously given to the Pennsylvania Department of Transportation "and was not written to apply specifically to NM 44 or any particular New Mexico road."

But in reviewing highway documents, the Journal found an April 21, 1997, cover letter from Heitmann to Roybal that had been attached to the "draft discussion document."

In that letter, Heitmann referred to the possible cost of the N.M. 44 project and stated that the "special provisions" of the discussion draft "will become the document that the state (of New Mexico) will use to put the project out for bid."

Heitmann, in the letter presented to lawmakers, also disputed that some of the language in that discussion draft ended up in the bid specifications.

Rahn said Thursday that he had not seen the cover letter to Roybal or the financial proposal that Koch had sent Roybal for discussion purposes. ♦

## Highway Department Criticizes Journal Series

Highway and Transportation Secretary Pete Rahn's handout criticizing the Journal series published Dec. 4-7 said the newspaper incorrectly reported that widening of N.M. 550 north of Farmington wasn't scheduled. Rahn said that construction is under way.

Rahn also said Koch will post a \$114 million performance bond for the life of the warranty — not \$50 million as the Journal reported in its series.

The bond posted so far is \$50 million. Rahn said the company will be required to post the larger bond when the project is completed.

He also criticized the series for crediting legislative leaders with helping to shave off more than \$100 million from

project costs by requiring a comparison of private financing to that provided by the New Mexico Finance Authority.

Lawmakers said public financing was their idea.

Rahn was quoted in the series as saying the highway department came up with the idea of public financing. Executive director Tom Pollard of the finance authority had said he couldn't recall any informal meetings with highway officials about N.M. 44.

On Thursday, Rahn said he has since checked with his staff and that they met with Pollard and finance authority's bond counsel nearly three weeks before legislative leaders raised the issue.

Duane Brown, the bond attorney, said Thursday there was a meeting about possible public financing of N.M. 44. He

recalled the discussion being "real general."

Pollard was out of the office Thursday and couldn't be reached for comment.

Rahn said he didn't tell legislators at the time they raised the public financing issue that his agency had met with NMFA officials.

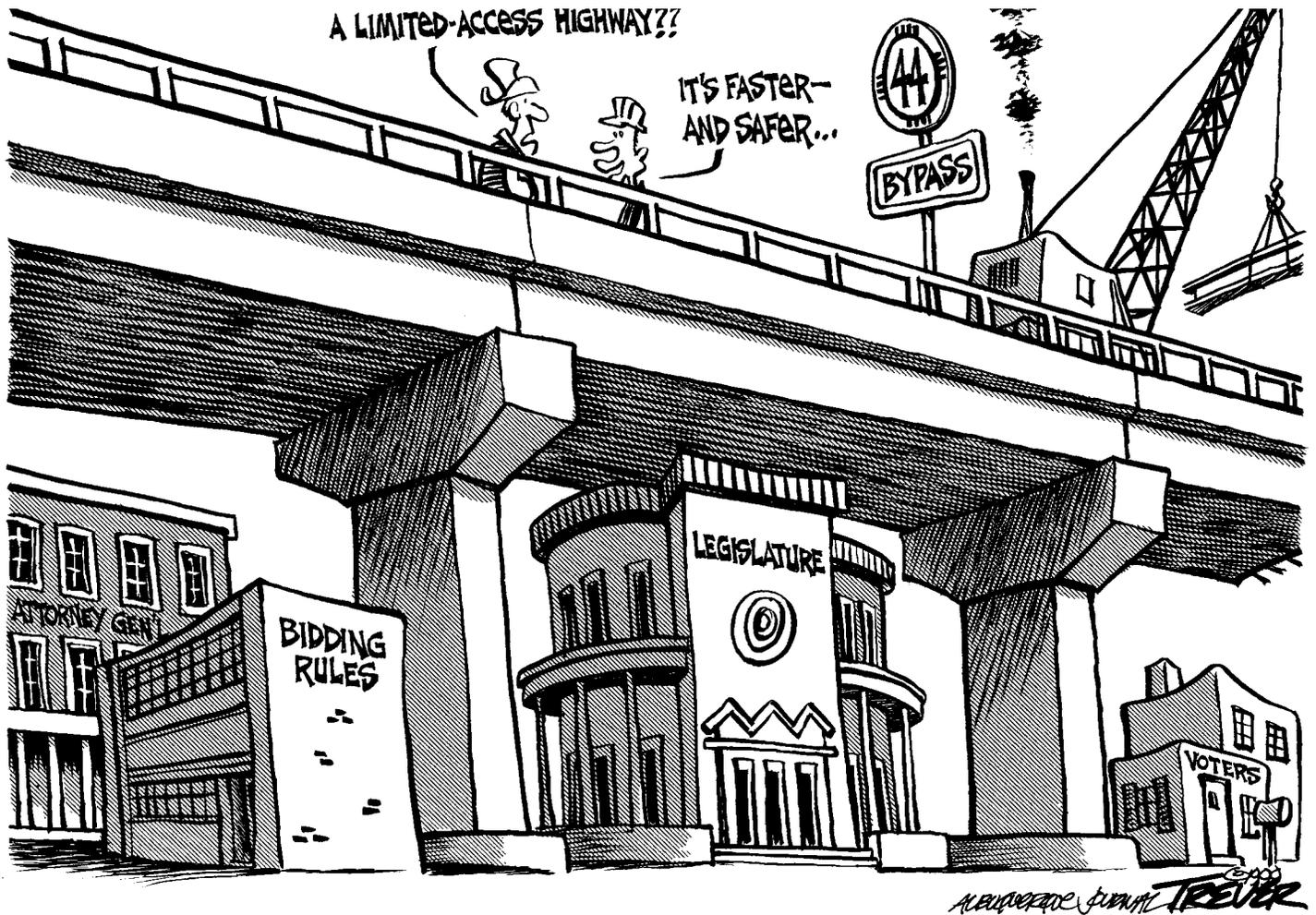
After Thursday's hearing, Rahn said he felt the series implied that he lied when he said he wasn't aware of any communication about the project between his staff and Koch prior to the arrival of Koch's "unsolicited" proposal on April 21, 1997.

Rahn said he has since checked with members of his staff and hasn't found anyone who may have asked Koch to send the department the April 1997 proposal.

He said he would continue to look into the matter. ♦

EDITORIAL, DEC. 9, 1999

# N.M. 44 Road Deal Needs Scrutiny



The administration of Gov. Gary Johnson has danced a massive, privatized project to four-lane N.M. 44 from San Ysidro to the Farmington area past state law's public bidding restrictions with virtually no feedback or participation from any other branch or agency of state government.

Koch Industries, of Wichita, Kan., has been awarded a contract for the project, one that will give Koch about \$108 million to design, manage construction and provide an unprecedented 20-year warranty on the road. Another \$180 million is budgeted for construction -- though early bid openings suggest that sum might prove inadequate.

The Bernalillo-to-Bloomfield highway

would be built to deluxe quality standards never before required in New Mexico, perhaps in the whole country -- while the Big I rebuild at the crossroads of Albuquerque and the entire state goes begging for funds to round out a bare-bones design. These are the political priorities of the Johnson administration.

The deal is rife with indications that the contractor was the tail wagging the state dog in putting the package together. Koch Industries brought a design-build-finance-warranty idea to the state. It was modified by the state to design/supervise to comply with state law, then -- surprise -- a subsidiary of Koch emerged as the only bidder.

The tangled history of the project was

dissected in a four-part series by Journal investigative reporters Mike Gallagher and Colleen Heild.

By its terms, New Mexico is to get about \$180 million of actual road construction, with the balance of the \$420 million package going for design, bond interest -- and the \$62 million warranty.

This deal has major problems:

- N.M. 44 wasn't even on the Highway and Transportation Department's priority list until Johnson decided it should be the priority four-laning project. It probably didn't hurt that the Farmington area gave Johnson substantial majorities in his first race and could help in his 1998 re-election bid. The 20-year term of the bonds, to be

Continued on Page 23 ►



Editorial continued from Page 22

paid with a portion of New Mexico's federal highway funding, takes away from future governors and Highway and Transportation Commissions discretion in the spending of state funds.

- It is a privatization of the function of the state Highway and Transportation Department on a scale never before attempted, done without voter approval or meaningful participation by the Legislature or the Attorney General's Office.

- The Highway Department persuaded federal officials to accept already completed portions of four-laning N.M. 44 as the state's required match in the project.

- A subsidiary of Koch Industries was the sole bidder on it -- despite state law that prohibits anybody who had a direct or indirect part in preparing bid specifications from bidding on that project.

- Koch is responsible for the warranty on the road -- but Koch also designed it, meaning it can protect its repair cost prospects through the construction specifications. Highway and Transportation Secretary Pete Rahn defends the cost of the warranty with highly questionable maintenance cost figures -- figures Koch never uses without attributing them to the state.

- Though Rahn said he was totally unaware of it, the brothers who own the closely held Koch Industries are promi-

nent conservative political financiers who contributed \$5,000 directly to Gov. Johnson's campaign and \$677,000 to the Republican National State Elections Committee from 1994 through March of this year.

That committee, in turn, gave the Johnson campaign \$160,000 in 1998 and \$75,000 in 1994.

- The Koch family helps finance the Cato Institute, the Libertarian think tank that has been an enthusiastic supporter of Johnson's continuing drug legalization crusade.

- Sondra Frank, an assistant attorney general who reviewed the contract, told the Journal that she was never told the highway department had been in contact with Koch industries prior to the request for proposals being issued. She said the AG was not involved in developing the RFP.

- Legislative leaders became involved by objecting to the plan to have Koch arrange the financing for the 20-year bonds, insisting tax-free, state-issued bonds be used if they were cheaper. They packaged the project with several others and approved the project list -- but not the details of the Koch Industries deal.

- The deal was assembled and pushed through in a manner such that only Koch had the time and background to submit a responsive bid.

The clear conclusion from all of this is that Koch, not the state of New Mexico,

has been in the driver's seat. The Johnson administration acted alone in setting the priority and hocking a significant segment of the state's roadbuilding assets for 20 years into the future.

This is no way to run a state supposedly governed by the checks and balances of a state constitution and statutes. The Attorney General's Office should launch an investigation to determine whether this deal was done in compliance with law.

The Legislature should exercise its responsibility to make certain that the true priorities of the state are being carried out in the manner prescribed by law.

The early construction bids suggest that the state may not be able to build the road to Koch's design specifications for the \$180 million currently allocated to construction. Not a dime of additional money should be siphoned into this deal until it has been examined by state officials outside the closed circle of the Johnson administration.

Finally, even if the Attorney General's Office and the Legislature ultimately determine that this deal got pushed through without running afoul of any state law or constitutional provision, the Legislature should enact new restrictions on the discretion of the executive branch. A constitutional amendment requiring prior voter approval for long-term road bond issues would be a good start. ♦

## Bids on N.M. 44 Meet Expectations

### Ariz. Paving Firm Sends in Lowest Total

BY MIKE GALLAGHER  
Journal Investigative Reporter

It appears efforts by the state Highway Department and Koch Industries Inc. to cut the cost of widening N.M. 44 have paid off.

Based on bids opened Tuesday, highway officials said they considered the \$180 million set aside for construction to be enough.

"It looks very good," Deputy Highway Secretary Charlie Trujillo said after bids were opened. "We're ready to roll."

Highway officials and Koch representatives recruited contractors to increase competition and spent months redesigning the project to reduce costs.

The new road design eliminated concrete retaining walls; allowed contractors to use recycled asphalt pavement from the existing road for base course, a layer below the asphalt; eliminated base course along some stretches of road; and changed specifications on the aggregate to allow the use of rock found closer to N.M. 44.

Wichita, Kan.-based Koch was awarded a \$46 million contract to design the road and manage construction. It also is being paid \$62 million for a first-of-its-kind 20-year warranty.

It hasn't been determined how the design changes will affect the warranty.

An Arizona paving company, FNF Construction, submitted the low bid of \$75.7 million to build 50.2 miles of N.M. 44 north of Cuba. The bid is on target with the department's budget breakdown of \$1.5 million per mile.

Contracts for widening 40 miles of road south of Cuba have been approved.

But the budget is still tight for the final stretch of road. Based on the \$180 million construction budget the state will have \$26.2 million for the last 28 miles.

The highway department has decided to use the final 23 miles of existing road in its design. The state used existing roadways in previous widening projects that have cost less than \$1 million a mile.

The project has been under legislative scrutiny, and there have been concerns the work couldn't be done for the money set aside.

The project is being paid for with \$296 million in bonds issued by the state that will be repaid by highway money provided in the future by the federal government. The state will pay \$124 million in interest on the bonds over 20 years. ♦



# N.M. 44 Deal Gets 2nd Look

## AG Orders Review Of Widening Contract

BY MIKE GALLAGHER  
Journal Investigative Reporter

The state Attorney General's Office is looking into a \$108 million contract between the state highway department and a Kansas company for design, construction, management and a warranty for widening N.M. 44 from San Ysidro to the Four Corners area.

Attorney General Patricia Madrid said, "Given the size of the contract and the novelty of it, we have a great many concerns."

She said she asked staff lawyers from several divisions in her office to begin reviewing the contract.

"I wouldn't call it an investigation at this time. Due to the holidays we're just beginning to look at it. I would call it an inquiry right now," Madrid said.

She said she asked her staff specifically to review the \$62 million, 20-year warranty and issues surrounding the awarding of the contract.

"We're most interested in the warranty. It's very unique, and we're very concerned about it," Madrid said. "We're also concerned about a contract this size having only one bidder, that bidder having contact with the department prior to the Request for Proposal, and the short time potential bidders had to develop their proposals."

Highway Secretary Pete Rahn said he believes the attorney general's inquiry will find the highway department did nothing wrong.

"Our general counsel, Art Waskey, called the Deputy Attorney General Stuart Bluestone and told him that anything we have is available to them," Rahn said. "They said they would take us up on that offer."

Bluestone said he had been in "informal" contact with the highway department's lawyer.

Madrid said she asked her staff to read a four-part series of stories published last month by the Albuquerque Journal on the contract.

The series on N.M. 44 examined the New Mexico Highway and Transportation Department's contract with Koch

*"We're most interested in the warranty. It's very unique, and we're very concerned about it. We're also concerned about a contract this size having only one bidder, that bidder having contact with the department prior to the Request for Proposal, and the short time potential bidders had to develop their proposals."*



PATRICIA MADRID  
ATTORNEY GENERAL

Industries Inc., a Kansas-based oil and gas conglomerate.

"We have assembled a team of people to look into various issues raised in the newspaper series," Bluestone said. "We are examining what options the attorney general will have to pursue this."

Madrid said, "I have to be careful in discussing this because of potential litigation, but I am most concerned with what remedies the state has under the law."

Koch (pronounced Coke) Industries sent highway officials a proposal in April 1997 for widening N.M. 44 to four lanes from San Ysidro to the Four Corners. Koch's proposal outlined how it could finance, design, build and warranty the project.

At the time, Koch was the only company promoting a long-term warranty to highway departments around the country.

After receiving the proposal, department officials were in contact with Koch representatives in the spring of 1997 — months before the department issued a public Request for Proposals to finance, design, manage construction and warranty the ride quality of 118 miles of road work on N.M. 44.

Koch Industries, owned by Charles and David Koch, large Republican National Party contributors, was the sole bidder.

Under the contract, Koch gets paid \$46 million for designing and overseeing

construction of the road and \$62 million for its 20-year warranty. Under the warranty, Koch agreed to pay for repairs and maintenance to keep the road surface at standards established by the highway department.

The highway department has begun putting out bids on the construction contracts, budgeted at \$180 million.

Highway department officials criticized the Journal series at a Legislative Finance Committee hearing on the department's budget in mid-December. Koch officials said in a letter that they believe the department followed procurement laws.

Highway officials said at the hearing they didn't violate state procurement laws or the state's Governmental Conduct Act, which prohibits anyone with "direct or indirect" involvement in the development of specifications from bidding on that project.

Highway officials said they borrowed "concepts" from Koch in preparing the Request for Proposals but that Koch had no involvement in preparing the specifications.

The committee decided in private session not to request a formal investigation by the Attorney General's Office.

Madrid said legislators have discussed the contract with her informally and that she fully expects to receive formal requests from them for her office to review the legality of the contract. ♦