



Doña Ana Mutual Domestic Water Consumers Association
Mailing Address: P.O. Box 866 • Doña Ana, NM • 88032
Physical Address: 5535 Ledesma Dr • Las Cruces, NM 88007
(575) 526-3491 Office • (575) 526-9306 Fax

Agenda

The following are the items for consideration at the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors on May 4, 2017, convening at 9:00 a.m. at the Doña Ana Mutual Domestic Water Consumers Association Board Room 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

Approval of Agenda

Minutes:

1. Minutes of 04-20-2017 Regular Meeting

Approval of New Members & Meters

Customer Issues and Public Input

Public Input will be limited to 3 minutes per person

Board President Report

Staff Reports

2. Executive Director

New Business

Consent Agenda

None

Unfinished Business

3. Approval of Line Extension Agreement with Cruces Equity Partners, LLLP
4. Approval to purchase ArcGIS license

Closed Session:

As authorized by the Open Meetings Act, New Mexico Statutes Annotated, Section 10-15-1, Subsections H (2), H (7) and H (8), the following portion of the Board Meeting will be conducted in closed session:

1. Litigation and Threatened Litigation
 - a. Discussion of Radium Springs OSE Permit

General Legal Update

5. Water Rights

Board Open Discussion

Adjournment

A copy of this agenda may be requested by phone by calling (575) 526-3491 or in person at 5535 Ledesma Drive, Las Cruces, NM 88007. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, if summary or other type of accessible format is needed, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Stephanie Nelson at (575) 526-3491 on the Tuesday prior to the meeting or as soon as possible.

Doña Ana Mutual Domestic Water Consumers Association is An Equal Employment Opportunity Agency.



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The following minutes are from the Regular Board Meeting of Doña Ana Mutual Domestic Water Consumers Association Board of Directors, April 20, 2017; convened at 9:00 A.M. in the Doña Ana Mutual Domestic Water Consumers Association Board Room located at 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

President Melton called the meeting to order at 9:00 A.M. and called roll:

Secretary/ Treasurer – Kurt Anderson, Present

Board Member – Raymond Ponteri, Present

Board Member – Jamie Stull, Excused Absence

A Quorum was declared

Others in Attendance:

Executive Director – Jennifer Horton

Community Members – Jim Hayhoe, Pam Sherry, Mike Slover, Bob Zolto, Mike Izon, Jack Hokkanen, Will and Laurel Parker, Forrest Beason, Nancy Simmons

Approval of Agenda

Dr. Anderson moved to approve the agenda for the April 20, 2017 Regular Board Meeting as presented; the motion was seconded by Mr. Ponteri. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Minutes

Mr. Ponteri moved to approve the Regular Board Meeting Minutes of April 06, 2017; Dr. Anderson seconded the motion. The Chair called for discussion of the motion. Mr. Ponteri requested more transparency for the wording with regard to the special sampling under Open Discussion. Mr. Melton requested we begin notating that a Quorum is being declared at each meeting. The Chair called for a vote on the amended minutes; the motion carried by roll call vote 3-0.

New Members & New Meters

Dr. Anderson moved to approve the New Members and New Meters list as presented for April 2017; Mr. Ponteri seconded the motion. The Chair called for discussion of the motion. Executive Director Jennifer Horton advised there are fourteen (14) names on the list consisting of eleven (11) new members, five (5) new meters, and three (3) existing members. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Customer Issues and Public Input

Nancy Simmons questioned when the special sampling will be done. Ms. Horton advised this will be completed no later than June 30, 2017.

Board President Report

Mr. Melton advised it has been a fairly quiet few weeks.

Staff Reports

See Attachment

New Business

No New Business

Unfinished Business

3. Dr. Anderson moved to approve the landscaping project with the PHPOA; the motion was seconded by Mr. Ponteri. The Chair called for discussion of the motion from the public first, with input from the Board to follow. No public input was brought forward. Dr. Anderson asked if legal has looked at this. Ms. Horton advised both legal and the PHPOA have reviewed the contract; this copy is the most updated draft which includes the master landscape map, a key for exact location proposals for the plants, and a copy of the liability insurance. Concerns have been voiced, the first of which is under page 3, item 3G. Mr. Ponteri commented that the last statement is too ambiguous, and proposes an amendment to change the phrase to say “immediately adjacent to Well 15”. Another concern on page 3 is item 3E; other entities may pay for the meter, not the PHPOA. A discussion proceeded where whomever requests the meter will have to sign water user agreement for a binding contract of water responsibilities. From an administrative standpoint we do not have a preference as to who pulls the meter and the member who completes this will ultimately be held responsible for paying the bill each month.

Mr. Melton voiced concerns with regard to the types of plant material being native on page 2, item 3C. He has searched and found no mention of moon glow juniper being native and provided examples of other types, such as mesquite. Dr. Anderson inquired as to whom decides what a native plant is. Mr. Ponteri motioned to amend page 2, line item 3C under Terms and Conditions be modified to “the types of plant material installed on Association property will be as specified in the landscape plan exhibit A”. Dr. Anderson seconded the motion. The Chair called for discussion. Dr. Anderson disagrees with Mr. Ponteri’s motion and has a slightly different recommendation to remove ‘as specified’

and simplify the line item to end at ‘types of plant material will be native to this area’; this would require the landscaping plan be modified. Mr. Ponteri recommended we vote on the original motion in order to proceed with a possible new amendment. The Chair called for a vote, which was defeated as follows:

Dr. Anderson – No

Mr. Ponteri – Yes

Mr. Melton – No

Dr. Anderson motioned to have line item 3C under Terms and Conditions on page 2 be modified to read “the types of plant material installed on the Association Property will be native to this area”; the motion was seconded by Mr. Ponteri. The Chair called for discussion. Mr. Ponteri asked that we allow the audience to address the concerns with regard to the moon glow juniper being native. Mr. Melton agreed to allow additional public input. Mr. Slover addressed the Board to explain that the moon glow’s botanical name is *Juniperus Scopulorum* and according to U.S. Department of Agriculture this is a native plant. The moon glow is a cultivar of the *Juniperus Scopulorum*. Mr. Melton advised he will look into this as he has not found a juniper of this nature in the Chihuahuan Desert. Dr. Anderson clarified that his motion to have sentence 3C end at “area” without referring to exhibit A would then require the public to prove the nativity of the shrubbery with references. Ms. Horton asked who will make the determination as to what is native; the Board, the staff, or the public? Mr. Melton advised the Board has final approval authority of the plants utilized as it is the Association’s property. The Chair called for a vote on the motion to have line item 3C under Terms and Conditions on page 2 be modified to read “the types of plant material installed on the Association Property will be native to this area”; the motion carried by roll call vote 3-0.

Mr. Ponteri moved to amend the contract under line item 3G, page 3 to delete “around Well 15” and substitute with “immediately adjacent to Well 15”. Dr. Anderson seconded the motion and recommended we simplify further and only state “adjacent to”,

not using the word immediately. Mr. Melton repeated the motion to confirm the portion of page 3, item 3G, line 4 following “county right of way” delete ‘around to’ and replace with ‘adjacent to’. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Ms. Horton submitted a recommendation to remove line item 3E, page 3 and update item 3F to “the Association will have no obligation to maintain the landscaping in any manner and the Association shall have no obligation for irrigation or the cost of irrigation”. This takes the Association out of any obligations and places the responsibility with the PHPOA. Mr. Melton will need a motion to further discuss the recommendation. Mr. Ponteri motioned to proceed with this line item update; the motion was seconded by Dr. Anderson. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Mr. Melton inquired how we correct the issue with regard to the native plants as we still do not have an agreed upon plan. Mr. Hayhoe provided Mr. Melton with a website from USDA. A recess was called in order to print the documentation for the entire Board.

Recess called at 10:07 a.m. The Regular Board Meeting was reconvened at 10:15 a.m.

Dr Anderson questioned as to where moon glow is listed in the USDA documentation provided? Ms. Sherry advised page 2, under cultivars. Mr. Melton is still wary of approving the moon glow in the desert; Dr. Anderson and Mr. Ponteri are satisfied. Mr. Melton advised this brings us to our motion of approving the contract as amended. The Chair called for a vote on the motion to approve the PHPOA landscaping contract as amended; the motion carried by roll call vote 2-1:

Dr. Anderson – No

Mr. Ponteri – Yes

Mr. Melton – No

The Association's engineering firm has provided a letter responding to the issue that Lane Hauser brought forward with regard to the transmission line construction and a holding pond near his residence. Dr. Anderson moved to accept the report from Souder, Miller, and Associates and take no further action on this matter. Mr. Ponteri seconded the motion. The Chair called for discussion of the motion. Dr. Anderson has walked this area and agrees with the report from SMA; in fact our construction would have routed excess water down Taylor Road rather than this gully. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Open Session

Mr. Ponteri requested a general legal update for our next Regular Board Meeting.

Ms. Horton approached the Board about the upcoming National Water Conference in Reno, NV held September 17 through Septemeber 21. As this is an event that reserves well ahead of time and does have cancellation fees we will need a firm count on who can attend. Mr. Melton will attend this conference with Executive Director Jennifer Horton.

Adjournment

Dr. Anderson moved to adjourn at 10:53 a.m.; Mr. Ponteri seconded the motion. The Chair called for a vote on the motion: the motion carried by roll call vote 3-0.

Kurt Anderson
Secretary/ Treasurer

Date

| New Meters | | April 27 2017 | | | | | | | Total |
|------------------|-------------------|---------------|--------------|------------|-----|-------|------------|-----------|-------|
| Name | Address | Tap In Fee | Water Rights | Membership | Tax | Sewer | Other Fees | Fees | |
| Marcella Fierro | 2827 La Union | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| Laura L. Aguirre | 2905 Borrourghs | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| Joanne Flores | 2823 Borrourghs | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| Zack Robinson | 4094 Follow Deer | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| Bruce Shilliger | 1855 Cochita Lane | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| Daniel J. Reyes | 608 Shadow Valley | | | \$ 75.00 | \$ | 3.75 | | \$ 78.75 | |
| | | | | | | | | \$ - | |
| | | | | | | | | \$ - | |
| | | | | | | | | \$ - | |
| Totals | | \$ - | \$ - | \$ 450.00 | \$ | 22.50 | \$ - | \$ 472.50 | |

LINE EXTENSION AGREEMENT FOR WASTEWATER BETWEEN DONA ANA MDWCA AND CRUCES EQUITY PARTNERS, LLLP

This Agreement is entered into on the _____ day of _____, 7 between Dona Ana Mutual Domestic Water Consumers Association (“the Association”), a political subdivision of the State of New Mexico formed under the New Mexico Sanitary Projects Act, and Cruces Equity Partners, LLLP (“Property Owner”).

Whereas, the Property Owner desires wastewater service for its Rancho del Gallo Subdivision (“the Subdivision”), and

Whereas, the Subdivision lies within the service area of the Association, and Whereas, the Association has the authority to provide wastewater service within its service area, provided a subdivision developer pays the costs associated with constructing wastewater infrastructure in and to the Subdivision, and

Whereas, a prior developer installed some wastewater infrastructure at the Subdivision but did not complete a wastewater system, and

Whereas, the Association does not presently have facilities to treat wastewater and has in place an agreement with the City of Las Cruces for the acceptance and treatment of wastewater from the Association, and

Whereas, the Association presently does not own the wastewater collection system to which the Subdivision will connect but is currently in the process of acquiring ownership of that collection system from Dona Ana County, and

Whereas, the Property Owner, may be entitled to reimbursement, pursuant to the Association's wastewater line extension policy, for a portion of the cost of extending the Subdivision's wastewater system to Association wastewater collection lines.

In consideration of the mutual covenants set forth below, the parties hereby agree as follows:

1. The Association will provide wastewater collection service to the Subdivision, subject to the consent or approval of Dona Ana County and subject to the ability of the Association to deliver Subdivision wastewater to the City of Las Cruces under existing agreements. The consents or approvals of Dona Ana County and the City of Las Cruces to this Agreement will be required.

2. The Association will operate the vacuum collection system within the Subdivision and will operate the force main from the Subdivision to the delivery point to the City's collection system.

3. Property Owner must pay for or otherwise provide the following improvements to the Association's wastewater collection system or for the construction of the following improvements to be donated upon completion by the Property Owner to the Association:

a. An operable vacuum pumping station at the Subdivision. The AirVac system presently on site must be shipped by the Property Owner back to the manufacturer for certification by the manufacturer that it is fully operable. Acceptance of this certification must be accepted in writing by the Association prior to its re-installation at the Subdivision. A building meeting the Association's requirements must be constructed to enclose the AirVac system and the vacuum station. The easement upon which the vacuum station will be located shall be transferred to the

Association.

b. An 8-inch force main to the existing Association lift station at 220 Pedro Madrid Road, to the force main to be located on property and easements provided by the Property Owner.

c. Collection lines, valve pits and related appurtenances located within the Subdivision.

d. Modifications to the Pedro Madrid lift station to accommodate the proposed forced main connection may be required, as determined by the Association. Direct expense by the Property Owner for these modifications is limited to \$50,000.00, which may be provided in cash to the Association.

4. The improvements listed above shall be consistent, as determined solely by the Association, with the planned system of the Association.

5. All plans related to the improvements listed above must be submitted by Property Owner to the Association's engineer and must be approved by the Association's engineer prior to the commencement of any construction.

6. In making all improvements hereunder, the Property Owner shall comply with all applicable State and County subdivision requirements, building codes, zoning codes, environmental rules, and other requirements. If any of these requirements substantially affect the obligations of the parties under this Agreement, the parties may discuss appropriate amendments.

7. Upon installation, inspection and approval/acceptance by the Association, the wastewater infrastructure and relevant easements, rights-of-way and permits shall become the property of the Association, upon proper conveyance by the Property Owner.

8. The Property Owner must secure permanent property rights, easements, permits and/or rights-of-way necessary for the infrastructure and for its subsequent ongoing operation and maintenance by the Association. Property Owner shall provide all documentation necessary to determine the adequacy of each such conveyance in order to allow for timely review and approval by the Association's counsel. Liability for failure to secure adequate easements, permits or rights-of-way, or for failure to properly install the infrastructure within those easements, permits and rights-of-way shall be that solely of Property Owner. The Property Owner shall similarly be solely responsible for the defense of all claims and payment of all damages and judgments associated with claim of misplacement of any part of the wastewater collection system outside of valid easements, permits or rights-of-way. Alternatively, the Property Owner may secure a policy of insurance covering these liabilities and naming the Association as the insured party, following approval by Association counsel.

9. 9. Within sixty days after complete installation of all infrastructure, the Property Owner shall present the Association with documented proof of the Property Owner's actual and reasonable costs of installation of the infrastructure listed above. The Association will verify such costs and may reduce any excessive or inappropriate charges, in its sole discretion.

The Property Owner may include only its own expenses and shall not include expenses of any prior or other developer. Property Owner shall have the opportunity for reimbursement of up to 28.57% of such verified costs, based upon the Property Owner's ownership and responsibility for 101 of 140 developable lots which can be serviced by such infrastructure. This percentage is subject to change, through written amendment, should the actual number or percentage of lots be

different or change.

10. Reimbursement to the Property Owner of up to 28.57% of the verified costs shall occur in accordance with the Wastewater Collection System Extension Policy of the Association, as amended. A copy of the current Policy is attached hereto as Exhibit A. Under no circumstances shall Property Owner's reimbursement exceed the amount paid by Property Owner for infrastructure beyond the 28.57% of approved and verified actual costs as set forth above. Reimbursement is available from connection fees paid by those properties which are a part of the Rancho del Gallo Subdivision but not owned by the Property Owner at the time of execution of this Agreement. Exhibit B hereto is a list of the Subdivision lots not owned by the Property Owner. A map or plat of the Subdivision is attached to this Agreement as Exhibit C for reference. The Association will bill and collect from each property owner of a lot listed on Exhibit B connecting to the infrastructure a connection fee of 1/140 of Property Owner's verified and approved costs. The Association shall remit that amount of this connection fee actually collected from each connecting property owner to Property Owner within sixty days of collection. The Association, however, reserves the right to determine whether 1/140 of costs results in an excessively high amount, in conjunction with other Association connection charges, to assess new customers, and the Association retains the right to reduce the reimbursement to the Property Owner by lowering that part of the overall connection fee. Reimbursement to Property Owner shall only be allowed as to those connecting properties occurring within the first five years following the date of the final installation of the infrastructure with an option for a five-year renewal if 75% of the 39 lots (existing owners) are connected. The Association and Property Owner shall reach agreement upon

this date and confirm this by letter, which letter becomes a part of this Agreement.

11. In addition to the pre-construction plans required, the Property Owner shall provide the Association with record (“as-built”) drawings of all infrastructure constructed or provided by Property Owner and conveyed to the Association. The Property Owner shall also provide an operation and maintenance manual for the vacuum wastewater system. The Property Owner shall additionally provide GIS points and related data, as required by the Association, for the project.

12. The Property Owner shall provide the Association at least a one-year warranty (following the date of the Association’s acceptance) on all materials and workmanship for all infrastructure and improvements constructed or provided by Property Owner. The Property Owner shall transfer to the Association any warranties from manufacturer for any equipment or other items conveyed to the Association hereunder.

13. Additional requirements of Dona Ana County to be met by Property Owner include installation of a meter at or before the Pedro Madrid lift station to record incoming flows.

14. The Property Owner will adopt and record covenants governing all lots in the Rancho del Gallo Subdivision requiring connection to the Association’s wastewater system, which connection must be made within a reasonable time.

15. Formal correspondence and notices under this Agreement shall be sent to:

Association:

Jennifer J. Horton, Executive Director
Dona Ana MDWCA
P.O. Box 866
Dona Ana, NM 88032

Property Owner:

Cruces Equity Partners, LLLP
Randy McMillan
1155 S. Telshor Blvd., Suite B
Las Cruces, NM 88011

Other communications may be sent by email, phone or facsimile to:

Association:

(575) 536-9306 (fax)

(575) 526-3491 (phone)

jennifer@dawater.org (email)

Property Owner:

_____ (fax)

_____ (phone)

_____ (email)

16. The Property Owner agrees to indemnify and hold harmless the Association and its officers, employees, and contractors from and against all suits, actions or claims arising from or related to any intentional or negligent action, or negligent omission, of the Property Owner related to the obligations and actions of Property Owner under this Agreement.

17. The Association and its officers and employees are protected by the New Mexico Tort Claims Act. The Association does not waive any of its privileges, immunities or defenses it or its officers and employers have under this or any other law.

18. This Agreement does not create any partnership, association, joint enterprise or other similar relationship between the Association and Property Owner.

19. This Agreement contains the entire agreement and understanding between the parties regarding the subject matter of this Agreement. No prior or other agreement, discussions or other arrangements are valid, except to the extent explicitly provided for herein.

20. This Agreement shall not be amended or modified except by written amendment executed by both parties.

21. This Agreement is assignable by either party upon written amendment executed by both parties.

22. No provision of this Agreement is intended, or shall be interpreted, to create in any other person or entity, or in the public or any member thereof, any rights or third party beneficiary status, nor does this Agreement authorize any person or entity not a party hereto to maintain any claim whatsoever arising from or relating to the provisions of this Agreement.

DRAFT

ASSOCIATION:

**DONA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION**

James Melton
President, Board of Directors

May 4, 2017
Date

Attest:

Kurt Anderson
Secretary, Board of Directors

PROPERTY OWNER:

CRUCES EQUITY PARTNERS, LLLP

Name: _____
Title: _____

_____, 2017
Date

DRAFT



ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853 Fax: (909) 307-3025
 DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 02/14/2017 To: 05/15/2017

Quotation # 20502275

Date: February 14, 2017

Customer # 454374 Contract # 2012MPA246

Dona Ana Mutual Domestic Water
 5535 Ledesma Dr
 Las Cruces, NM 88007

ATTENTION: Jennifer Horton
PHONE: (575) 526-3491
FAX: (575) 526-9306

| Material | Qty | Description | Unit Price | Total |
|----------|-----|--|--|--------------------|
| 93206 | 2 | ArcGIS Desktop Standard Single Use License | 6,370.00 | 12,740.00 |
| 130573 | 1 | ArcGIS Online Level 1 Plan; Includes Up to 5 Named Users and 2,500 Service Credits | 2,525.00 | 2,525.00 |
| | | | Item Total: | 15,265.00 |
| | | | Subtotal: | 15,265.00 |
| | | | Sales Tax: | 129.41 |
| | | | Estimated Shipping & Handling(2 Day Delivery) : | 0.00 |
| | | | Contract Pricing Adjust: | 0.00 |
| | | | Total: | \$15,394.41 |

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For questions contact: Suzanne Timani **Email:** stimani@esri.com **Phone:** (909) 793-2853 x1627

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FAX: (575) 526-9306

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FOB Redlands, CA, USA

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Hardware: Manufacturer's terms apply. Lead times depend on make/models purchased.

Note: Standard delivery method is ground or two (2)-day air for software and surface carrier for hardware. Actual delivery method may vary depending on weight. Other services are available for an additional fee (e.g., overnight delivery).

PAYMENT TERMS

Net thirty (30) days, on approved credit. Orders less than eight hundred dollars (\$800) require prepayment by check or credit card unless your organization is a government agency, university, college, or Fortune 500 company.

TAXES

This quote includes applicable sales or use taxes for the prices quoted as required by law. The tax amount may change depending on the time lapse between this quote and your order to us. Esri will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.