



*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*

The following are the minutes of the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, May 2, 2019 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:

Vice President – Jamie Stull, Present

Secretary/Treasurer – Kurt Anderson, Present

Board Member – Paul Maxwell, Present

A Quorum was declared

### **Others in Attendance:**

Legal Counsel – Josh Smith

Members of the Public – James, Melendrez, Kevin Whiteley, Patrick Woods, Wes Leneapey (sp?), Martin Pillar, David Ballard, Samantha Barncastle-Salopek, Ken Thurston

### **Approval of Agenda**

Dr. Anderson moved to approve the agenda for the May 2, 2019 Regular Board Meeting as presented; the motion was seconded by Dr. Maxwell. The Chair called for discussion of the motion. Ms. Horton is on an extended leave of absence so there is not an Executive Director Report. Item Seven also needs to be removed as the paving contract is not ready. Dr. Anderson amended his motion to accept the minor changes. Dr. Maxwell

seconded the motion. The Chair called for a vote on the amended motion. The motion carried by roll call vote 4-0.

### **Minutes**

Dr. Anderson moved to approve the Regular Board Meeting Minutes of April 16, 2019 as presented; the motion was seconded by Dr. Maxwell. The Chair called for discussion of the motion. Dr. Maxwell requested his questions be exact in the meeting minutes and not a summarization; specifically, on page three when Dr. Maxwell inquired about a status update and information regarding the wastewater treatment plant (WWTP) in District Five. Dr. Anderson amended his motion to accept the changes; Dr. Maxwell seconded the motion. The Chair called for a vote on the amended minutes; the motion carried by roll call vote 4-0.

### **New Members & New Meters**

Dr. Anderson moved to approve the New Members and New Meters list as presented. Mr. Stull seconded the motion. The Chair called for discussion of the motion. We have eight (8) names on the list; seven are new members. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

### **Customer Issues and Public Input**

Mr. James Melendrez approached the Board as he is the owner of the property in question that Ms. Adrianna Sanchez has submitted concerns about. Ms. Sanchez is moving a mobile home onto Mr. Melendrez property. An estimate of costs for both water and wastewater was provided. Ms. Sanchez has expressed concerns regarding the sewer fees and insists that there is a sewer connection to the Association. A sewer stub out was located on the property, however there is no indication of there ever being a connection to the Association collection system. Mr. Melendrez confirmed there has never been a sewer

connection, only the stub out, as the property has a septic tank. Mr. Melendrez also confirmed that there used to be two meters on the property many years ago. Mr. Melendrez requested the secondary meter be pulled as he was only using it for landscaping. He later rented the property out, but when his tenant moved out the meter was pulled. Dr. Maxwell inquired when the meters were pulled. Mr. Melendrez advised one meter was pulled over twenty years ago and the second meter was pulled about eighteen years ago. Mr. Melton clarified the original Request to Address the Board was to determine what fees applied to this property. Mr. Melendrez confirmed that both meters were pulled which means that a new connection must be established with all applicable fees and policies in place. Mr. Melendrez does not agree with the connection fees, however he is leaving the payment up to whomever moves on to the property. Mr. Melton explained we do not become involved with how the fees are paid, but the membership and responsibility will be in Mr. Melendrez's name as he is the parcel owner. We do offer a Landlord Agreement if he wants Ms. Sanchez to be billed directly, however the responsibility of the final billing is held by the owner. Mr. Melendrez understood.

Mrs. Samantha Barncastle-Salopek approached the Board on behalf of her clients regarding the newly adopted policy 2019-04. Mrs. Barncastle-Salopek advised while many understand the need for this kind of water rights policy, the abruptness of the effective date has caused many concerns. Now developers are looking for an opportunity to craft a policy that works well for all parties involved to resolve the issues prior to the possibility of any litigation. Mrs. Barncastle-Salopek explained her clients are requesting an opportunity to meet with the Association to create a pathway forward and further define the details in the policy. Developers claim uncertainty with how much water to bring to the table. The Association's current estimation is one-half acre foot per lot, however Mrs. Barncastle-Salopek claims many homes may not use this much water. Who gets the excess water that is not used? The lack of water rights available in the market has caused prices to go through

the roof. Instead of fair market value, the pricing for water rights has reached ten to fifteen thousand dollars per acre foot. One of her clients does have a letter of intent for water rights, but given the size of his subdivision the price is now quite high and unexpected. The Board asked for Legal Counsel Mr. Smith's input. Mr. Smith confirmed this policy has created an unintended consequence. Water rights are not available at this time and the one party who holds adequate water rights has extremely high prices. Many entities do have a policy similar to this one however there is a caveat that each situation has the potential to be reviewed on a case by case basis.

Mrs. Barncastle-Salopek explained the issue is not the policy itself, but the abruptness of implementing the policy and needing further transparency in the details. For example, what is the basis for the cut off of pre-1960 water rights? If the condition remains solely pre-1960 then no water rights are available; this comes from farmers only. Dr. Maxwell clarified that the specifics of the policy may need some fine tuning to avoid unintended consequences. We are very concerned about water rights. Our policies are designed specifically to ensure the future of our community.

Mr. Ballard from Desert View approached the Board to explain the goal is not to be confrontational. They have been researching water rights, but the pricing has become expensive. Mr. Ballard is also looking for clarification of how many units per share. He claims two units per share is excessive as he is building smaller lots. His company has held back on their plan submission to try to resolve this policy. They are asking for some time and leeway on the existing subdivisions as the details of the policy are discussed. Mr. Ballard suggested a workshop to try to work together to resolve the issues. Timing is everything and commitments were made prior to this policy being instated. The Board acknowledged the urgency of the matter.

Dr. Anderson believes decent water rights with fair market value are closer to ten thousand dollars. Mr. Smith advised the idea of this policy is that we have many large developments coming in that will put a burden on the Association's water rights plan that

is in place. The burden is now being placed on the developers; no one is attempting to stop development. We can review the policy in place to attempt to move forward.

Mr. Ken Thurston approached the Board regarding his subdivision, Vista Rancho, for three hundred and fifty acre lots. He received a letter of comittment one year, six months ago. This policy adoption does endanger his subdivision. What happens if he cannot obtain the water rights or a letter of no service is issued? Mr. Smith confirmed some areas are issuing letters of no service due to a lack of water rights. Some areas cannot bring on a new connection for an individual who's well went out within the service area. Mr. Thurston explained he has been unable to find water rights, but is hoping to avoid litigation.

Mr. Melton advised we will place this as an item for Unfinished Business on the agenda for our next Regular Board Meeting, and Mr. Smith will provide insight on a potential path forward.

Mr. Eugene Petit did not attend the meeting to complete his Request to Address the Board of Directors.

### **Board President Report**

Mr. Melton thanked Dr. Maxwell in responding to membership concerns. Mr. Melton referred to the Association policies for current fees regarding Ms. Sanchez's customer input concerns and the pricing for water and wastewater services. The Radium Springs Rehabilitation Project is progressing. Mr. Melton acknowledged the water outages are frequent as the construction continues. He has spoken with Ms. Horton as she temporarily works from home while on her leave of absence. Mr. Melton does have a personal appointment the week of the next Regular Board Meeting, but does anticipate attending if all goes well with his appointment.

## **Staff Reports**

None

## **New Business**

None

## **Unfinished Business**

Dr. Anderson moved to approve to Renew the Legal Services Agreement with Watson Smith, LLC; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. This is our standard yearly renewal. The Chair called for a vote on the motion. The motion carried by roll call vote 4-0.

## **Open Discussion**

Dr. Maxwell stated he thought he was straightforward when he asked about the status and information regarding the WWTP in the last Regular Meeting. The anticipated stop work that was in progress was discussed. After the meeting he spoke with an individual from his district who advised Dona Ana County placed their own stop work order due to a lack of landscaping required for a permit at the WWTP. Dr. Maxwell claimed he was surprised this was not discussed in detail at the meeting. Dr. Maxwell represents a group of people who have issues with Dona Ana Water, and questioned why the landscape issue was not discussed in detail? Mr. Melton advised the topic of landscaping was briefly touched upon at the last meeting. He asked Mr. Smith if the landscape was resolved and Mr. Smith confirmed it was. Mr. Melton clarified the actual work stoppage was waiting on the delivery of items for construction. The landscape was resolved without any issues. Mr. Melton stated when a major construction project is in progress in a confined area it is not feasible to install landscaping until after the construction is complete. At the same time when the permit presented landscape, it was not the proper time of year for planting. Dr.

Maxwell stated he is looking to work to move forward in a professional and transparent way that allows him to mitigate issues his district presents to him. Dr. Maxwell feels the Association took on the legal obligation when the permit was pulled to fulfill the commitments. Mr. Melton confirmed we were able to resolve the issues with the County during our scheduled stop work. Mr. Melton advised as the Board President he has been tracking the landscape issue. This did not affect day to day operations of the Association or the construction progress, and as such he has always worked with the discretion of not bringing forward every small item that would turn each meeting into a three-hour block. Dr. Maxwell feels the more information he has the better position he holds in his district and is requesting further transparency. The Board agreed.

Dr. Anderson inquired about the paving on El Camino Real; the roadway is difficult. Mr. Melton explained the contract was pulled today due to pricing issues. Mr. Stull witnessed our operators watering the road as drivers are going too fast and on the wrong side of the road. It is dangerous. We do have signs posted. Mr. Melton advised as soon as we can resolve the pricing issues, we will be able to pave. There is urgency in resolving this, but we are legally bound by procurement requirements.

Dr. Anderson expressed interest in discussing our current water rights fee at \$3500 an acre foot. Mr. Melton addressed the unfortunate circumstance of the price hike for water rights and can understand the points brought forward today that need to be reviewed.

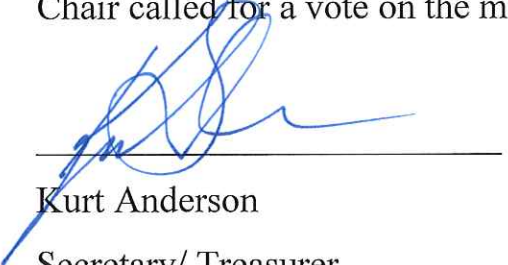
Mr. Melton advised there is a member who sent an email expressing concerns with needing a larger meter, however only a few Board Members received the notice. Mr. Melton will forward the message to the Board Members who did not receive the original notice. Dr. Anderson confirmed our base rates are charged off the size of the meter. Mr. Stull requested to go back to the fee for water rights. He can appreciate both sides regarding this issue. Mr. Smith explained we need to have the option to review each situation on a case by case. We do not want to stop responsible development. The Association engineers may have the opportunity to review the water usage data available to determine the

appropriate water rights fee. Dr. Maxwell added we want to encourage sustainability with the responsibility. Dr. Anderson explained our water rights fee needs to be reviewed for actual fair market pricing. Mr. Smith advised the policy can be modified and the effective date reviewed to provide the opportunity to address the concerns presented. The Board discussed the Association 'will serve' letters address that the policies are subject to anything currently in effect and have a finite period.

Dr. Maxwell stated he visited the new tank site in Picacho Hills, and the fence gate may need to be adjusted as there is currently a large gap.

**Adjournment**

Dr. Maxwell moved to adjourn at 11:17 a.m., with a second from Mr. Stull. The Chair called for a vote on the motion. The motion carried by roll call vote 4-0.

  
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Kurt Anderson  
Secretary/ Treasurer

6/10/2019  
Date