



Doña Ana Mutual Domestic Water Consumers Association
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The following are the minutes of the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, July 7, 2016, 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

Board Member- Raymond Ponteri, Present

Secretary/ Treasurer- Kurt Anderson, Present

Others in Attendance:

Executive Director- Jennifer Horton

Attorney- Lee Peters

Community Members- Justin Sparks and Jim Hayhoe

Approval of Agenda

Dr. Anderson moved to approve the agenda for the July 7, 2016 Regular Board Meeting as presented; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mr. Peters has requested the Legal Update be moved before Closed Session, after Unfinished Business. Dr. Anderson moved to approve the agenda for the Regular Board Meeting of July 7, 2016 as amended; the motion was seconded by Mr. Stull. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

Minutes

Dr. Anderson moved to approve the Regular Board Meeting Minutes of June 16, 2016 as presented; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mr. Melton advised there are a few grammatical errors that need to be corrected. Mr. Peters provided clarification under the General Legal Update with regard to the prehearing conference. Dr. Anderson moved to approve the Regular Board Meeting Minutes of June 16, 2016 as amended; the motion was seconded by Mr. Stull. The Chair called for a vote on the motion; 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 for June 2016; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Executive Director Jennifer Horton advised there are twenty-seven (27) names on the list consisting of eighteen (18) new members and eleven (11) new meters. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

Customer Issues and Public Input

President Melton addressed the Public to confirm the attendance of Jacob Kurian with regard to addressing Item 3 under Customer Issues. Mr. Kurian was not able to attend this meeting.

Board President Report

Mr. Melton reported on the 21st of June, in accordance with the previous Regular Board Meeting Committee appointment, Dr. Anderson, Executive Director Jennifer Horton, and he met to evaluate the Review for Proposals submitted for Legal Services. Two responses were received and both were evaluated against the same criteria. The Committee

unanimously selected the Firm to be recommended under Agenda Item 7 as the most advantageous for the purposes of the Association.

Mr. Melton also reported that he attended a management class hosted by the offices of the New Mexico Environment Department (NMED) with Mr. Stull and Mr. Ponteri on June 25th. The class provided education concerning budgetary, financial, and asset management issues. Jim Hayhoe asked about any significant take away these classes provide? Mr. Melton informed he appreciated the general overall knowledge received. There was an emphasis of interest on the topic of rate studies and the approach that was outlined by NMED. Per Mr. Melton, it is very gratifying to know that NMED's approach was extremely similar to the methods that Carl Brown took with the Association's evaluation and the rate structure that we have recently adopted. Mr. Melton is pleased that it continues to be transparent that we made a selection of someone who has been proven to be an expert with acceptable techniques. Mr. Stull explained whereas the class was informative, it was also reassuring to know a lot of what was being taught is already in practice at the Association or in the process of being implemented and heading in the right direction. Mr. Melton expressed it is refreshing and enlightening to be reaffirmed we are doing a lot of things right.

Staff Reports

Executive Director

See Attachment A

Mrs. Horton has reminded the Public that several construction projects are preparing to begin. We will have several crews out in the field and do request the Public slow down when driving to ensure the safety of all staff.

New Business

No New Business

Unfinished Business

Mr. Melton personally thanked Mr. Justin Sparks for his Letter of Interest with regard to serving as the Board Member Representative for District Three (3). Dr. Anderson moved to approve Item Four (4) Approval of the appointment of Justin Sparks as the District Three Board Member; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mr. Sparks introduced himself. He has been in the construction business for over twenty five (25) years. He started as a laborer and has worked his way up to Supervisor. Dr. Anderson asked what construction company Mr. Sparks is employed with? Mr. Sparks advised he is with Morrow Enterprises, which is where he needs to bring attention to his conflict of interest with being a Board Member. Mrs. Horton advised this means that Mr. Sparks will not be able to participate in any discussion or vote involving any contracts with Morrow Enterprise; whether it is a large construction contract or an individual contract such as those with Souder, Miller, and Associates. Mr. Sparks would need to abstain with those topics. Mr. Melton confirmed with Mr. Sparks that this will not be an issue. Mr. Stull advised he has been involved with contractors for years through his line of work, but working with Justin Sparks and Morrow over the years has been a breath of fresh air. He explained Morrow holds all to a higher standard and feels Mr. Sparks' involvement with the Board will provide new depth. Mr. Ponteri asked if we inform other bidders of this conflict of interest when Requests for Proposals are advertised? Mr. Peters, legal counsel, advised we could disclose, however this is not required. We would need to take precautions where Mr. Sparks is not involved in any discussions or voting of these types of bids if Morrow has submitted a proposal. Mrs. Horton advised we have had conflicts of interest before that have been handled cautiously without disclosure as the Board Members do have

published biographies online. The Board is only asked to award contracts, they are not involved in the design phase of projects so there would be zero benefit for Mr. Sparks. Mr. Melton has known previous Board Members to be very forthcoming with any potential conflicts of interest and does not see this being an issue. Mr. Ponteri continued that he has prepared the following questions for Mr. Sparks:

1. **Do you reside within District Three (3)?** *Yes*
2. **What is your street address?** *Mr. Sparks address was confirmed to be located within District Three*
3. **This is your residence?** *Yes*
4. **How long have you been a member of DAMDWCA?** *Six (6) years*
5. **What is your educational background?** *High School Diploma*
6. **What is your current employment?** *Morrow Enterprise*
7. **What are your duties with Morrow Enterprise?** *Superintendent*
8. **Are you involved in any of the bidding processes from Morrow?** *No*
9. **Do you or any members of your family have an ownership interest in Morrow Enterprises?** *Yes, his Step-father is the owner. Mr. Sparks' brother also works for the Company, but he is not aware if he holds any shares with the company.*
10. **To your knowledge has your employer ever bid on or been awarded a DAMDWCA contract?** *Yes*
11. **Do you know any of the Board of Director's or the current staff?** *Yes, Jennifer Horton and Jamie Stull*

Mr. Ponteri confirmed the next election for Board Members will be in 2018. Mrs. Horton clarified the next election will be held in January 2018 where Districts One, Three, and Five will be up for review. The Chair called for a vote on the motion; the motion carried by roll call vote:

Jamie Stull – Yes

Kurt Anderson – Yes

Jim Melton – Yes

Ray Ponteri – No

Item Five, Oath of Office

“I, Justin Sparks, having been appointed to the Board of Directors of the Doña Ana Mutual Domestic Water Consumers Association do solemnly swear that I will support the Constitution of the United States and the constitution and laws of the State of New Mexico, and will faithfully and impartially discharge the duties of this office to the best of my ability.”

Dr. Anderson moved to approve Item Six (6) Approval of Contract 6324322 for the 2015 Force Main Wastewater System Improvement, Construction Phase, to Souder, Miller, & Associates (SMA); the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mrs. Horton explained this is the second part of the project for the vacuum station and force main that was discussed at the previous Regular Board Meeting. We have the contract in place for the Vacuum Station Project, which is funded through Colonias Infrastructure (CIF). The Force Main Project is not funded, but is being recommended to the Board in order to ensure this is a viable vacuum station that can begin the collection of wastewater immediately. Without the force main we will not be able to accept wastewater; we will only have a fully equipped building. Estimated construction costs for the force main are \$125,000; with the SMA contract at a rough cost of \$55,000. The SMA contract encompasses all aspects of engineering for bid facilitation, construction administration, close out, and record drawing at a cost of \$25,310; with the Resident Project Observer that is required by the State to be onsite at all times at a cost of \$30,053. The State does require any project that involves state money to be engineered, designed, and stamped by a licensed P.E. in order to build. Dr. Anderson inquired who we have in place to begin sewer connections. Mrs. Horton advised this would open wastewater collection for new subdivisions, a local mobile home park, and commercial buildings for a potential result of 200 new connections within the next year. Mr. Melton asked what the entire total cost is estimated at for our upcoming budget. Mrs. Horton

explained this project will finalize around \$200,000 for construction and engineering fees. The Chair called for a vote on the motion; the motion carried by roll call vote:

Jamie Stull – Yes

Kurt Anderson – Yes

Jim Melton – Yes

Justin Sparks – Yes

Ray Ponteri – No

Dr. Anderson moved to approve Item Seven (7) Approval of the Legal Services Agreement with Watson Smith, LLC; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mr. Ponteri advised he requested Mrs. Horton to provide him the opportunity to review the proposals prior to this meeting and was informed that he could not see them until after the contract was approved. In addition, Mr. Ponteri informed that he requested to be appointed to the committee that would review the proposals. Mr. Ponteri feels the Chair ignored that request, thus resulting in Mr. Melton appointing himself. Mrs. Horton explained all State Procurement Regulations were followed. Mr. Ponteri prepared the following questions:

1. **Is the value of the contract in excess of \$60,000?** *We have no way of knowing this*
2. **Is there a different Procurement Requirement of contracts in excess of \$60,000?** *Yes there is, we utilized the request for proposals for professional services over \$60,000*
3. **How many proposals were received?** *Two proposals*
4. **Were they only firms from Las Cruces?** *The firms are both local*
5. **Did all three members of the review committee attend the meeting where the proposals were reviewed?** *Yes*
6. **What criteria were used to evaluate the proposals?** *There is a chart that is laid out in the RFP that is on the website and published. The template used is from the State Purchasing website*
7. **Is this still on the website?** *Yes it is*

8. **Was there a scoring method?** *Yes, a 1000 point system was used and is in accordance with the State for contracts greater than \$60,000*
9. **What was the number one priority item?** *Experience and qualifications were large factors, but there were points assigned independently by each member of the panel*

Mrs. Horton confirmed Mr. Ponteri's original request was denied in compliance with State Procurement Regulations for RFPs; however, she did contact State Purchasing to confirm all opportunities she had with regard to his request. Mr. Ponteri emailed a second request and was not denied, however he did not arrive this morning prior to the Regular Board Meeting to review the proposals. The Chair called for a vote on the motion; the motion carried by roll call vote:

Jamie Stull – Yes

Kurt Anderson – Yes

Jim Melton – Yes

Justin Sparks – Yes

Ray Ponteri – No

Mr. Stull moved to approve Item Eight (8) Approval of USDA Form 1780-7 for the Legal Services Agreement with Watson Smith LLC; the motion was seconded by Dr. Anderson. The Chair called for discussion of the motion. Mrs. Horton explained the Association is required to have two separate legal contracts; one that is on their standard format, and a second contract using the USDA format. Mr. Ponteri inquired if anyone on the Board of Directors or staff has utilized Watson Smith LLC. The Board confirmed they have not utilized this attorney. The Chair called for a vote on the motion; the motion carried by roll call vote:

Jamie Stull – Yes

Kurt Anderson – Yes

Jim Melton – Yes

Justin Sparks – Yes

Ray Ponteri – No

Legal Update

Mr. Peters counseled that certain legal items involving the Association are open to the public. What Closed Session offers is a more in depth conversation with regard to attorney/client privileges and can encompass pending or threatened litigation, acquisition of real property, water rights, and certain personnel items. Some of these items would then be further discussed in Open Session. There has been a lot of activity from the Attorney General with regard to enforcing the Open Meetings Act. Moving forward, topics slated for Closed Session will need to be itemized on the Agenda. The Board cannot formally act on anything in Closed Session. Any topic that does require an action item must be brought to the Open Session where voting is utilized.

Westmoreland Case and Moongate Case Status:

At this time there has not been any action on the Westmoreland Case or the Moongate Case; both are currently in the hands of Judge Arrieta.

Status of pending water rights applications:

We have a water rights application for the new well in Picacho Hills. The new well has been drilled, but has not been connected to the system yet. We did not draw any protests to this and we were provided emergency authorization. The permit has been issued with conditions on the amount of vested water rights. We have appealed this and are scheduled for a prehearing conference on July 12th. Any hearings will be before the Office of the State of Engineer.

We have also received emergency authorization to replace the failed well in Radium Springs. This permit has been received and did not draw any protests. The option to appeal will be discussed in closed session and is due within the next week.

We have a pending application for existing water rights in the original Dona Ana wells that depend on the results of the Westmoreland case. The State Engineer cannot act on this until the case is rule on by Judge Arrieta.

There is an application to pump Fairview water rights from the Dona Ana main system wells and have received emergency authorization; however we are waiting for the final permit.

General Legal Update:

The Special Master appointed by the U.S. Supreme Court in the Texas vs. New Mexico lawsuit issued a draft report last week. Texas is suing New Mexico claiming under the Compact which divides the waters of the Rio Grande River that subsequent action by New Mexico has depleted the flow of the Rio Grande River and is adversely affecting Texas and the water that Texas is entitled to. The Compact is a very strange document in terms of Compacts in the West because it places everyone below Elephant Butte Reservoir geographically in New Mexico, but hydrologically in Texas. The State of New Mexico has delivery obligations of water into Elephant Butte to meet the Compact requirements. What the Compact does is basically put everyone below the Elephant Butte Reservoir in a state of non-representation from both New Mexico and Texas. In litigation before the Supreme Court it is usually just a State vs State, however Colorado is a part of this as this is where the Rio Grande begins. Elephant Butte Irrigation District (EBID) has moved to intervene as a party due to its unique status. The El Paso Water Improvement District No. 1, the sister irrigation district of EBID within the Federal Rio Grande Reclamation Project, has also moved to intervene.

The Special Master released his decision through a 250+ page report. The State of New Mexico moved to dismiss Texas' complaint, citing they have not stated a complaint over the Compact; however this was denied and the case will move forward. The Special Master has ruled that Texas has alleged a valid complaint against New Mexico. He has also granted the State of New Mexico's motion to dismiss the United States complaint against New Mexico. The Special Master has recommended the Supreme Court take the United States' case under its alternative jurisdiction even though the United States has not stated a claim under the Compact as they are not a Party. He has recommended the Supreme Court deny EBID and El Paso Water District's motions to intervene. This is only a draft report. The Special Master is allowing until August 1st to receive comments as to whether he has made any legal or factual errors and then the report will be finalized sometime after August 1st. The final report will then be sent to the United States Supreme Court where they will review and ultimately either adopt or reject it, in whole or in part.

The Parties have the opportunity to file exceptions directly with the United States Supreme Court. The effect on the Association is that the claim of groundwater pumping depleting the flow of the Rio Grande River does impact anyone that has a groundwater well, regardless of priority date. If Texas ultimately prevails, as it did over New Mexico with the Pecos River, it may refuse monetary damages, and want the water. The State of New Mexico on the Pecos had to shut down or buy water rights to meet its delivery obligations at the State line. This could be potentially disastrous for groundwater pumpers if this were to occur here. All of the Association's supplies are groundwater; with substantial long term effects. Dr. Anderson suggested a possible resolution is to stop pumping groundwater. Mr. Peters advised that stopping ground water pumping does not mean water is immediately available. It takes years, even decades to correct. The fix is not an easy fix. There are discussions and preliminary settlement talks, but the Supreme Court will probably resolve this part of the case by next spring or summer after everything has been filed.

There is a group that is trying to develop an alternative management scheme in case there are groundwater cut backs. There is an agreement they have entered into that Mr. Peters has provided a copy of to the Board of Directors. The agreement was entered into on June 30th by the City of Las Cruces, Camino Real Regional Water Authority, the Public Service Company of New Mexico, New Mexico State University, the New Mexico Pecan Growers, and the Southern Rio Grande Diversified Crop Farmers. It is called the Lower Rio Grande Alternative Administration of Ground Water Management. EBID is not a part of this agreement as they represent all of the farmers who receive surface water. The Association will have the opportunity to review this most recent agreement with their new attorney. There are no other Mutual Domestics or other similar water suppliers involved in this agreement. There is also an agreement, called the Operating Agreement, entered into in 2008 between Elephant Butte, the El Paso Irrigation District, and the Bureau of Reclamation that amends the allocation of water in the Rio Grande Project; which is effectively the same allocation under the Compact. The Compact adopts the contracts between the Irrigation Districts and the Bureau, which accounts for ground water pumping and basically allocates more surface water to the El Paso District than is generally called for. Generally, the division under the contract is 57% NM, 43% Texas depending on conditions and can vary on drought conditions. The Operating Agreement is still in effect. EBID believes this takes care of the ground water issue. It is recommended that the Association begin developing contingency plans. The bottom line is that free water is gone; cheap water is disappearing, and water is going to cost a lot more. The Association may have to buy more water rights. The Supreme Court decision is coming and could be very difficult for the State of New Mexico. If the results are the same as what happened with the Pecos River then it will be most difficult for the Southern part of New Mexico.

News articles report Camino Real Regional Water Authority recently came under review for not reporting arsenic problems to their consumers. The Association should take pride in not having these issues, however if anything were to arise it is important to always report these matters.

Jornada Water Company is selling their water rights and water system, and the City of Las Cruces has expressed interest. The issue is the service area overlaps with Dona Ana MDWCA. These areas are included in the settlement agreement that the Association will have to discuss with the City.

A notice has been received from Tom Figart, the Assistant County Attorney who is working on the transfer of the wastewater system for the Dona Ana area. He has advised that Clyde Hudson from USDA is hoping to address the paperwork within the next thirty (30) days.

Mr. Peters proposed a work session to meet with the new Board Member, Mr. Sparks, to complete an orientation for legal and ethical matters that come with this position. Mr. Melton suggested all of the Board Members attend as this type of review will be beneficial to all. Mr. Peters advised he will need two to four hours scheduled for the work session. The Board agreed to meet after the next Regular Board Meeting on the afternoon of July 21st.

Mr. Melton called for a ten (10) minute recess at 10:34 am. At 10:44 am Mr. Melton called the meeting back to order.

Closed Session

At 10:45 a.m., Dr. Anderson moved to enter into Closed Session; seconded by Mr. Stull.

The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call 5-0.

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. Real Property and Water Right Acquisition
 - a. State Engineer permit for Radium Springs well
 - b. Potential new applications affecting water rights.
 - c. State Engineer permit appeal at Picacho Hills
2. Litigation and Threatened Litigation
 - a. Status of Westmoreland and Moongate lawsuits
3. Limited Personnel Matters

At 11:40 a.m. Dr. Anderson moved to exit Closed Session and enter back in to Open Session; seconded by Mr. Stull. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call 5-0.

Mr. Melton stated nothing had been discussed in Closed Session other than what was listed on the Agenda. No actions were taken on items discussed in Closed Session.

Open Session

President Melton called the Open Session to order at 11:41 A.M

Dr. Anderson would like to know what our wells are doing and will be provided a report by Executive Director Horton. Mr. Melton will approach the Board at the next Regular Board Meeting with a proposal for how to handle certain staffing scenarios. Dr. Anderson inquired on the Budget update. Mrs. Horton advised we are getting in final invoices now,

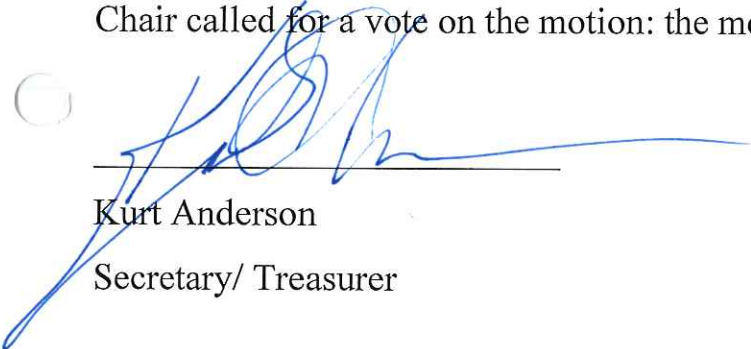
with ninety-five percent of the reporting completed by June 30. We are expecting a few utility bills to come in the mail to wrap up the Fiscal Year, but all is looking good with where we were projected.

Mrs. Horton advised we have published in the most recent newsletter reports of people breaking into our waste water plant, vandalizing it, and causing potential disruption of the functionality of the plant. We must put up a fence now, rather than later. Mrs. Horton inquired as to the type of fencing the Board would prefer? Mrs. Horton is recommending the chain link fence as it is the most cost effective. We do have the opportunity to accept bids for colored fencing if the Board will allow this. We can paint and epoxy coat a galvanized fence, but this does not last long so if color is wanted we do need to order this ahead of time. Mr. Melton asked if the wire gauge is the same on a color fence as a standard galvanized fence. Mrs. Horton confirmed the gauge is the same. Mr. Stull inquired into the life expectancy of the finish. Mrs. Horton advised it does depend on the manufacturer of the product and the color is about a 10% increase in price. The challenge is we are not the ones purchasing the material, so it does depend on if the contractor has a markup fee for material handling due to not scratching the color. Mr. Sparks confirmed there is usually a markup for special handling of material. This is something we have to bid as the projected cost will be over \$60,000. The intrusions mean we have to address this now as the headworks system has been turned off at one point. Had we not been able to address this right away there could have been raw sewage spilled out on the ground and we cannot have that type of contamination. The Board requested two numbers for two bids, one for basic galvanized and one for the brown color. Mrs. Horton advised we can do this, but we will need to determine how to award the low bidder in the event one contractor has the low bid on the galvanized and a different contractor has the low bid on the colored fencing. Mr. Melton's concern is that we already have to borrow money to complete the work in this area and now we are being asked to spend more money for aesthetics. Mr. Ponteri asked if we are filing police reports. Mrs. Horton advised we are

trying to file the reports; however the Sherriff's Department prefers we file online. This has proven to be a challenge due to the value of the property. The Sherriff's Department filing system will not accept this high value property to be reported online, but we cannot find someone in the office to file as they consider this minor. We do not want someone disturbing the operations of the plant and effecting how the treatment plant functions, or causing a sewer spill; nor do you want someone to accidentally fall into the sewer plant. Mrs. Horton does want to remind everyone that tampering with a utility system is a Federal Offense. The Board agreed that the fencing contract will be awarded to the lowest bid overall, regardless of type.

Adjournment

Mr. Ponteri moved to adjourn at 11:55 A.M.; the motion was seconded by Mr. Stull. The Chair called for a vote on the motion: the motion carried by roll call vote 5-0.



Kurt Anderson
Secretary/ Treasurer

8/4/16

Date