



Doña Ana Mutual Domestic Water Consumers Association
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The following are the minutes of the Regular Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, March 16, 2023 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 – Brian Clouse, Present (via Zoom)

Board Member – Clayton Berryman, Present

A Quorum was declared.

Others in Attendance:

Legal Counsel- Josh Smith

Executive Director- Jennifer Horton

Office Manager- Margo Lopez

Executive Assistant- Shelby Sandoval

Approval of Agenda

Dr. Anderson moved to approve the agenda as presented; the motion was seconded by Mr. Berryman. The chair called for discussion of the motion. There was no further discussion, and the motion passed unanimously by roll call vote 4-0.

Minutes

Dr. Anderson moved to approve the Regular Board Meeting Minutes of February 16, 2023 as presented; Mr. Berryman seconded. There was no discussion, and the motion passed unanimously by roll call vote 4-0.

Customer Issues and Public Input

Ms. Horton shared there have been several calls due to white water. She stated with one of the tanks offline there is not enough time for the air to vent and settle out therefore, the well is having issues resulting in air in the system. She stated, however, the water is safe and does clear up. Ms. Horton also reported there is an individual who has reported brown water in Radium Springs several times.

Board President Report

President Melton mentioned with the outstanding staff, things have been running quite smoothly. He further stated projects are moving forward.

Staff Reports

Ms. Horton stated financials have been provided for the month of February. She reviewed the Check Listing Report. She shared there was a large check for \$146,000 to Spartan Construction and another to Maverick Drilling for \$136,000. She further stated there are no other major checks to report. Ms. Horton reviewed the Balance Sheet and stated it is a current cash position. She reported the cash position is down due to carrying receivables, with \$1.2 million out for USDA and a little out with the state. She reviewed the Budget Report as of the end of February with \$4.4 million in revenue, \$3.9 million in operating expenses and approximately \$481,000 in state receivables. She stated once the USDA money closes there will be \$1.2 million to hit

the budget. Ms. Horton stated the Income Statement matches and ties back to the budget.

Ms. Horton reviewed the Project Updates. She stated Water and Wastewater Standards have been finalized with updated items and language to set the expectations for construction and capital projects.

Ms. Horton reported the Dona Ana Village Lift Station and Force Main Project is progressing and will be starting on El Camino Real today. She shared there has been an issue finding a waterline at the intersection of Dona Ana School Road and El Camino Real. She advised a group will be out with radar technology to help locate the line through the asphalt, to avoid having to dig up the intersection. Ms. Horton stated the contractor requested a change order in the amount of \$65,000 for dirt work, which has been denied.

Ms. Horton reported the Southeast Collection Final Phase bids were opened and she is actively working on a cost overrun application for \$3,050,000 with USDA. She stated as expected, the bids came in higher than the funding from USDA. Ms. Horton stated a recommendation will come before the board and advised the Approval to Award Southeast Collection System Project will not take place today, as it was listed on the agenda. Ms. Horton stated a Special Meeting will take place before the next April meeting to award the project. She further stated until the cost overrun application is approved Bohannon Houston cannot provide any type of recommendation documents. Ms. Horton shared there were 2 bidders, and she removed herself from the procurement process of this project due to a conflict of interest with one of the bidders. She stated Ms. Lopez has stepped in as Chief Procurement Officer and both Ms. Lopez and Mr. Smith have discussed this project. Ms. Lopez shared during the

evaluation of the bids Bohannon Houston shared the lowest bidder did not submit a required document as it was made a condition of the bid, deeming that bidder non-responsive. They are currently reviewing the 2nd bid to verify it is responsive and further discussion ensued.

Ms. Horton stated the Parking Lot Improvement Project is complete across the street and is scheduled to start the parking lot next to the office and the sidewalk in the first week of April, to ensure ADA compliance. She stated it should last about 60 days.

Ms. Horton reported on the Dona Ana Tank Rehab Project and stated they are on site working on the large tank. Ms. Horton stated it is being sandblasted and is expected to be done the first week of May and back online May 5th. Ms. Horton shared the large 2-million-gallon tank will wait until Fall before pulling it offline as she does not anticipate any major issues with it.

Ms. Horton reported the Picacho Hills Sewer Main Project design is 75% complete and expects in the next 60 days to reach 90% completion for approval with the funding agency. At that point one of the 2 arroyos will go to bid as there is not enough to complete both sites. Ms. Horton anticipates the Bacellona Arroyo will be selected based on current constraints and what is most reasonable.

Ms. Horton reported on funding applications and stated she is waiting for USDA's \$15 million award as she is waiting on final recommendations, working through final documents and the cost overruns for that project to close.

Ms. Horton shared Colonias Infrastructure awarded \$910,000 for the Dona Ana Village Lift Station and Force Main Project in the 2022 cycle that has not yet been

closed. She further stated USDA is required as they are the primary lien holder to consent to any additional debt and the State can no longer make those decisions, as everything will run through Washington, DC. Washington, DC now has requirements to be met in order to obtain a letter to take on a secondary debt. At this point Ms. Horton reported all requirements and comments have been met and is waiting on their concurrence. Further discussion ensued.

Ms. Horton submitted a design application for the West Mesa System Rehab in the amount of \$1.9 million. She stated she was working through some challenges with Mr. Deal on the PER and believes those have been resolved. Ms. Horton stated she has requested an additional \$6 million for construction for the cost overruns for Southeast Collection.

Ms. Horton reported on subdivisions. She stated she is waiting on a new plat to be provided by Vista Rancho for their 1,300 lots.

Ms. Horton shared she is currently waiting on the resubmission of the Desert Oaks Subdivision, which is 187 residential lots in Picacho Hills, with one commercial lot for a club house.

Ms. Horton stated Buena Suerte Subdivision on Valley is 200 lots. She stated she received their plat and sent it to the city to confirm their connection point for wastewater. Ms. Horton further stated she expects to see utility plans in the next 60 days.

Ms. Horton reported the Reyes West Wind Subdivision is 9 lots off West Wind Road. She stated they have been provided a Conditional Will Serve Letter for water only as

it is conditional in the sense, they will need to bring water rights and meet all construction requirements before they can be served water.

Ms. Horton mentioned the replat in Picacho Hills, Consuela Court is progressing.

Ms. Horton shared she received a call regarding a potential subdivision on Bamert and Fairacres. She reported it would be a 300-lot subdivision if purchased.

Ms. Horton reported on Other Matters. She stated no new certifications were obtained in February.

Ms. Horton provided a Water Rights update as of February 28, 2023 and further stated the Westmoreland Rights have been removed as a judgement has been received from the appellate court, to reflect the total vested rights.

Ms. Horton provided and reviewed the Project Budget Report to show what is currently available as of the end of February to spend on projects.

Ms. Horton stated the applications for the Southeast Collection project are currently being accepted and have received 466 completed applications.

Ms. Horton provided a written Customer Service and Operations Report for review. President Melton suggested to review the graphing in the reports.

Ms. Horton reviewed the Pumping Data Report for Dona Ana, Ft. Seldon, and Picacho Hills.

Ms. Horton reported a 14% loss for the annual average in the Pump vs Sold Report.

Dr. Anderson mentioned a hydrant meter with a hose attached was leaking on Taylor Road. Ms. Horton stated she would have staff look into it but believed it was on the contractor's side.

President Melton inquired about Well 7 on the Well Data Report. Ms. Horton stated it is completed, however, it is not online as of yet. She further state there needed to be blending before it is activated. Ms. Horton shared the 2 wells she would like to blend it with are currently having issues. Well 5 is offline as a sand separator is being installed and Well 8 is sucking air.

Ms. Horton stated the well driller has been out to look into Wells 2, 6, and 8. She stated the VFD has been turned down in Well 8 to slow down the motor. Although it has helped, it is losing capacity and will eventually be lost. Ms. Horton shared both Well 2 and Well 6 have lost production. She continued to share new pumps are being ordered for Wells 2 and 6 to have them available to pull and rehab the wells timely, as capacity continues to drop. Further discussion ensued.

Ms. Horton reported on a situation with the City of Las Cruces and the road Isaacks Lane, near Mayfield High School. She shared Isaacks Lane is in our service area and the City of Las Cruces has been providing service to it. She stated her assistant Mrs. Morales is currently working on parcel maps and Ms. Horton filed a IPRA for a list of addresses. Ms. Horton suspects there will be 10 – 15 homes in the area that the City of Las Cruces will need to turn over and further discussion ensued.

Ms. Horton shared she had a meeting with Paul Dugie with Souder, Miller and Associates, former flood commissioner. She stated Columbia Elementary School is in the process of rebuilding their school and shared there are 3 waterlines running interference with the ponding they need to put in. She continued to state they would like reroute the 18 inch, 10 inch and 6 inch lines on Elks. Ms. Horton stated she will have Bohannon Houston review and provide a recommendation.

Ms. Horton reported the county is putting in a walking path or trail on Elks toward Dona Ana School Road and Smith Engineering is requesting to relocate the 18- inch line that is in that area as well.

Ms. Horton stated the county is putting in a park along the Rio Grande, off Shalem Colony and are requesting water service for thier bathrooms. She further stated they would like to run a line from Valley to Shalem Colony to the river. Ms. Horton stated it was a very long way, however, she would agree to providing service with a 6 inch line requirement for fire protection as it would be for a public park.

Unfinished Business

Dr. Anderson moved the Approval of New Members New Meters; the motion was seconded by Mr. Berryman. The Chair called for discussion of the motion. Discussion was initiated by Ms. Horton. Ms. Horton stated there was one for January and another for February as they did not make it on the agenda for the last meeting. Dr. Anderson moved to approve the agenda as amended, Mr. Berryman seconded. The motion was amended to include New Members New Meters for both January and February of 2023. There was no further discussion, and the motion passed unanimously by roll call vote 4-0.

Dr. Anderson moved to table the Approval to Award Southeast Collection System Project; the motion was seconded by Mr. Berryman. The Chair called for discussion of the motion. There was no further discussion, and the motion carries by roll call vote 3- Yes and 1- Abstain (Mr. Clouse)

Dr. Anderson moved the Approval of Resolution 2023 – 07 Budget Adjustment; the motion was seconded by Mr. Brryman. The Chair called for discussion of the motion. Discussion was initiated by Ms. Horton. Ms. Horton stated there were 2 budget adjustments to make. One is to the revenue for \$180,000.00 for the sale of Hope Road. She further stated it was not budgeted as it was unknown it was going to be sold this year. The second adjustment is for \$132,000 for the purchase of Water Rights from Bill Cupit as it was not foreseen to purchase. Ms. Horton shared both adjustments were approved previously but cannot issue checks until the budget adjustment is made. There was no further discussion, and the motion passed unanimously by roll call vote 4-0.

Dr. Anderson moved the Approval of Commercial Meter Application for Patrick Tingen; the motion was seconded by Mr. Berryman. The Chair called for discussion of the motion. Discussion was initiated by Ms. Horton. Ms. Horton stated the application is for the purpose to grow cannabis, a commerical agriculture crop. Ms. Horton stated the Association is federally prohibited from deriving income from a federally illegal source, as cannabis is illegal on the federal level, causing concern with the request for this meter application. Pesident Melton stated with a great percentage of support for infrastructure construction through federal loans and grants the Association is prohibited from receiving income from a production in violation of federal law and could be in danger of losing federal support. Mr. Smith, Legal Counsel stated the statute states, if you derive income from a federally illegal enterprise you

may be ineligible for federal funding, which applies to Mutual Domestics. He continued to state regardless if New Mexico has legalized it and or if the county granted them a permit, Federal Law trumps State Law. Mr. Smith stated there is no need to change the policy manual as the Association is bound to adhere to State, Local and Federal Law. Mr. Smith further stated if the Association wanted to supply them water, he would advise not to. Mr. Smith provided the statute from the Federal Regulations:

§ 5001.127 Borrower ineligibility conditions.

A potential borrower is ineligible for a guaranteed loan under this part as identified in paragraphs (a) through (g) of this section. The borrower remains ineligible until the condition causing ineligibility is resolved.

(d) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute. *A borrower that intends to lease space or enter into a power purchase agreement with a marijuana dispensary is not eligible given our borrower would be receiving income from the marijuana operation which is a violation of federal laws since marijuana is a controlled substance under federal law and subject to federal prosecution under the Controlled Substances Act (21 USC 81).*

There was no further discussion, and the motion for approval was defeated unanimously by roll call vote 4-0.

Board Open Discussion

None

Adjournment

Dr. Anderson motioned to adjourn at 10:00 a.m., with a second from Mr. Berryman.

The motion passed unanimously 4-0.


Kurt Anderson

Secretary/ Treasurer

4/20/23
Date