

Las Cruces Utilities Board of Commissioners

Minutes for the Meeting on
Thursday, January 14, 2016
Immediately following the Work Session
Utilities Center
Conference Room 225

Board Members Present:

Gill Sorg, Chair
William Little, Vice-Chair
Steven Baumgarn, Commissioner
Jim Carmichael, Commissioner
Jim Ericson, Commissioner
Harry Johnson, Commissioner
Olga Pedroza, Commissioner

Ex-Officio Members Present:

Daniel Avila, Assistant City Manager
Jorge Garcia, Utilities Director

Ex-Officio Members Absent:

Robert Garza, City Manager

City Staff Present:

Susan Cerny, Utilities Business Analyst
Carl Clark, RES/TS Administrator
Carol Conners-Lyons, Utility Billing & Receivables
Marcy Driggers, Senior Assistant City Attorney
Paul Edwards, Business Systems Analyst
Lucio Garcia, Gas Administrator
Klaus Kemmer, Solid Waste Administrator
Viola Perea, Internal Auditor
Jose Provencio, Administrative Services Administrator
Mario Puentes, Gas Business Analyst
Alma Ruiz, Office Manager Senior
Dania Soto, Office Assistant Senior
Adrienne Widmer, Water Resources Administrator

Others:

Suzanne Michaels, Public Outreach Consultant

Chair Sorg called the regular meeting to order at approximately 3:52 pm.

1. CONFLICT OF INTEREST

Chair Sorg: Beginning with the conflict of interest. Is there a member of the Commission or the staff that has a conflict with any item on the Agenda?

There were none.

2. ACCEPTANCE OF AGENDA

Chair Sorg: Next item is the acceptance of the agenda.

Little: So Moved.

Baumgarn: Second

Chair Sorg: Moved by Commissioner Little, seconded by Commissioner Baumgarn.

The agenda was moved and seconded; however, the roll call vote did not occur. Therefore, all items on consent will be brought forward again at the February 11, 2016 meeting.

3. *ACCEPTANCE OF MINUTES

a. Regular Meeting of December 10, 2015.

4. PUBLIC PARTICIPATION

Chair Sorg: Is there a member of the public that wants to participate? Seeing on then we'll move on to the Administrative Report.

5. ADMINISTRATIVE REPORT

Dr. Garcia: Joe please start.

Dr. Garcia exited the meeting at 3:53pm

Provencio: Good Afternoon Chairman and Commissioner. I'll provide you an update on Customer Service side. I want to give you a little bit of a preview, there's a duplicate slide here, slide number five, is a duplicate in the update here.

Our Utilities Business Systems Analyst has been working with Gas Pressure & Service. Paul Edwards is our Business Systems Analyst, and through his diligence and unwavering faith in the system, kept bringing and activating this process. This process is a meter import meter process and prior to this all the meters that was received, the information, the data, was entered manually. This process brings in a data file of all the meters that we've received and populates the key information, that I'll point out here shortly, everything in a very fast and efficient manner.

Dr. Garcia reentered the meeting at 3:54pm

As you look here these accounts for all the meters that they receive in the Warehouse and what are out in the trucks, it imports the data at about 135 pieces of information per second and it sidesteps the old fashion, Stone Age entry by keyboard. The information I'm talking about is manufacturer, serial number, purchase date, service category that's Gas and Water, number of dials, type, size, model, and does it have an electronic register transponder (ERT) number and what's the number. All of this is now done and completed with Gas. We'll be doing it for the water meters but it brings us up to today's current standards in terms of inputting this information in the fastest and most efficient manner possible.

That's my point in terms of updating you all on our activities. I'll stand by if you have any questions.

Chair Sorg: Seeing none, let's go on.

Dr. Garcia: I'll start Mr. Chairman. There are no developments of water litigation regarding the TX v. NM. We briefed you a little bit last time, Marcy did, on the New Mexico Copper so Marcy can you tell us - we did a little filing - to stay in the loop as to what is going on with the New Mexico Copper.

Driggers: In the minutes that we reviewed from last month's meeting I'd given sort of a summary of the recent changes that have occurred with the Copper Mine Litigation, in which the City had decided not to jump into that prey because the opponents to the Copper Mines increase to water rights were very adequately being represented by the Turner

Ranch Properties, and yes that is Ted Turner. He had the money to afford the best legal representation to oppose it, plus the State Engineers Office, through its attorney were taking the same position that Turner Ranch Properties had, which was too many years had gone by to allow the Copper Mine group to get additional water rights beyond what they'd already perfected almost 40 years ago, which was about 888 acres feet, they claim they are entitled to 6,000.

The City decided what would have been our interest would have been adequately represented by the Turners Group and by the State Engineers Office. There were a barrage of pleading filings. Suddenly late last fall the State Engineers Office withdrew their motion supporting the Turner Group and decided, no, that the Adjudication Judge did not have the power to make the decision that was being requested by the Turner Group. Instead the Turner Group had to go through the Administrative Review Process, then if it was unhappy at the completion of that process it could seek judicial relief.

The City didn't quite know what to do but we decided to cover all of our basis by trying to get our position in support of the bottom line position of the Turner Group, that too many years have passed to allow them to come back and prove up water rights because they failed to show a clear development plan to put those rights to beneficial use. If you remember that the Copper Group is going to claim there was litigation, there were bankruptcies, we were delayed, and that's why we couldn't start the Administrative Process until we were sure that we were the legal owners of these Water Rights.

What Dr. Garcia would just like me to let you know is that the City's Water Attorney, Jay Stein, has filed a motion in the Stream Adjudication lawsuit asking permission for a very brief oral argument in support of the position of the Turner Ranch Group that too many years have passed to allow them to come back and start claiming additional water rights. We're not actually jumping into the litigation, we just want a right to state our position. The reason we do it that way is to fold as Councillor Pedroza knows, we're not a party, you have to ask permission of the judge to basically make your oral argument but even if he doesn't grant your motion he had to read your motion before he makes his decision, so do all the other parties. The well stated position of the City is indirectly before the Court and before the other attorneys even if Judge Wechsler does not allow us a brief argument in support at the beginning of the hearing.

Chair Sorg: May I ask a question?

Driggers: Yes.

Chair Sorg: How often, if at all, do water rights that haven't been perfected, say for that 40 years or beyond, are they allowed to use them?

Driggers: It's unsure by case law to what is failure to pursue due diligence and I shouldn't have said 40 years because the Copper Group, they're not entitled to that 40 year planning period, it's only governmental entities and non-profit such as Dona Ana Mutual that are blessed by the State with a 40 year planning period. Private water companies such

as Moongate, Jornada, or other private entities are not allowed 40 years so they have to show more diligence in perfecting those water rights by showing that they expanded they're plant, they got necessary permits, that they were methodically going towards the additional use of the water. Their defense is going to be "litigation, bankruptcy, and we weren't going to spend any money until we're sure we own those contested water rights". They bought the company but it was uncertain what water rights they got and they litigated that.

Chair Sorg: I see. So the price of copper doesn't have much to do with this?

Driggers: We don't know, like I said before, I didn't know there were extensive copper deposits still in the Hillsboro, New Mexico, area. Whether the price of copper has gone up so now it's worthwhile mining them now, but remember Hillsboro is 50 miles to the North of us, which is why we sort of backed off on the position, you can't fight every war.

Chair Sorg: Right. I'm just thinking of the precedent allowing the use of this water after the perfection hasn't been done.

Driggers: Yes they drilled their wells in the 1980's and they put about 888 acre feet too use in some type of a mining operation. Then whether the market plummeted or there were bankruptcies and there was massive litigation.

Chair Sorg: Okay, thank you very much.

Driggers: Certainly.

Chair Sorg: Next.

Dr. Garcia: Mr. Chairman no big changes on the acquisition of the Mesa Development, it's our understanding that they submitted the paper work on the division of land. Remember they need to turn the well sites to us and before we can buy their system we need to subdivide the land. I don't know if Marcy had heard anything else from their attorney? The ball is in their court, in other words, we cannot buy the system until we can acquire those wells.

Driggers: Dr. Garcia correctly summarized it. Mesa didn't realize it had to go through all of these subdivision compliance procedures and they've been working very cooperative, very desperately with the City's Community Development Department to do this as soon possible. They retained the engineering services of a subdivision developer, a guy who does subdivision work, Henry Magallanes, he used to be with EBID now he's seems to be running Jorge Moy Engineering company in town since Mr. Moy has moved out of the area and so as far as I know there no impediments that they can't reach. It looks like they're going to have to dedicate a little more right of way because Mesa Drive is no longer the little neighborhood street that it once was years ago, it's now considered a major throughway. They're going to have to dedicate some additional land to they hadn't contemplated doing so. It appears to be going forward

but have not received any estimates as to completion, staff is still reviewing their submittals.

Chair Sorg: Okay, thank you.

Dr. Garcia: Projects Report, Carl.

Clark: Chairman, Commissioners. I'm here to give you the January 2016 Projects update. The two projects that I've selected are the Salopek/Sunrise Subdivision Sewer Improvements Project, Phase II and the Drilling and Developing Replacement Water Wells 29, 31, 32. Both of these projects were paid for partially approved by the 2014 State Legislative fund.

The Salopek/Sunrise Subdivision Sewer Improvements Project. The contractor on this project is Timberland Construction, out of Silver City. The contract cost is approximately \$1.6 million that is the largest project out of the three projects. The contract time is 130 working day with a start date of November 30, 2015, and an estimated completion date of August 31, 2016. Currently the contractor is working on O'Hair Drive, the upper right picture and the lower right picture are both photos of O'Hair Drive and the new sewer installed, they installed approximately 1,000 lineal feet of the 8" SDR-35 along with five (5) manholes. They are backfilling & compacting the trench that they installed the pipes in. The contractor has been moving along, he will continue working over on the portion of off Stern Drive, which is Salopek/O'Hair and Oleita Drive. Then they'll move over to the East Mesa side where it's Windridge Circle and Windridge Court, when they'll start working there after McGuffy.

Any questions on this project?

Ericson: Mr. Chairman, we're not anticipating any type of problems like with the project that we're doing like they have been some of these subdivisions where the developer put in the lines and then you had to go back and do a bunch of fixes?

Clark: Mr. Chairman, Commissioner. No, Public Works is running that project for us and they have the inspectors watching that job right.

Ericson: Okay, I just wanted to make sure.

Dr. Garcia: It's not a private project it's a City project.

Clark: It's a City project with City inspections and City project management.

Ericson: Okay.

Chair Sorg: Okay, any others?

Clark: The next project is the Drilling and Developing Replacement Water Wells 29, 31, and 32. The contractor is Rodgers & Company. The contract cost is approximately \$2.4 million. The contract time is 270 calendar days, the start date was issued for

December 14, 2015, with an estimated completion date of September 27, 2016. Percent complete in regards to payments it's about 6%, they have submitted their first payment. Summary of the project, took a little bit of time to get the approval by the Office of State Engineers for the plug and abandonment of the wells. Those did get approved, the contract moved forward and began plugging and abandoning the wells. You see 29 and 32 completed already and they are wrapping up Well 31 on Monday actually, it took them two days to get it done. A couple of pictures that I have in here is the cement pumper, pumping cement into the shaft in Well 29 so they can plug that off. Well 31 that's a picture of them installing the tremie pipe so they can run that concrete down to the bottom of the hole and bring it up.

Dr. Garcia exited the meeting at 4:07pm

Basically the contractor is going to start drilling next Monday on Well 29, they're setting up the temporary fence right now, moving their equipment and getting prepared to actually start the well drilling. We will inform the Board about the critical phases of the project, of the drilling process, that way you all can show up when we have staff there and take a look at some of the things that are going on. We're not really scheduling any tours, we'll let you know when the critical phases are happening and then you can show up when we have a staff member there to work with you and talk with you about it.

Dr. Garcia reentered the meeting at 4:08pm

Chair Sorg: Sure.

Dr. Garcia: Mr. Chairman.

Chair Sorg: Yes.

Dr. Garcia: Just to clarify Carl, that Well 29 is on Valley Drive behind the Fire Station.

Clark: Right, Well 29 is on Valley.

Dr. Garcia: This is just down Valley Drive a little ways from North Amador behind the Fire Station. When we're drilling you'll see the rig up there so you won't miss it.

Clark: Yes you won't miss it, you'll see it from Valley Drive. We have a large area there we're working in.

Chair Sorg: Which one is by the Munson Center?

Clark: Well 32.

Chair Sorg: 32, okay. Next.

6. RESOLUTIONS ON CONSENT AGENDA:

Resolution 15-16-LCU002A: A Resolution Approving an amendment to Resolution 15-16-LCU002 for Professional Legal Services with Keleher & McLeod, P.A., Law Firm, in Matters Related to The El Paso Electric (“EPE”) Rate Case Intervention Process and in Addition Any Other EPE Rate Matters as Authorized by Management, and Authorized an Indefinite Quantity and Indefinite Cost Subject to Approved Budget Appropriations.

Resolution 15-16-LCU015: A Resolution Documenting the Conditional Donation of Outdated Operator Qualification Training Modules to New Mexico State University (“NMSU”), the Conditional Sale of a Tub Grinder to Northwest New Mexico Regional Solid Waste Authority for \$25,000, and the Conditional Sale of Two Side Loaders to The North Central Solid Waste Authority for \$108,000.

The agenda was moved and seconded; however, the roll call vote did not occur. The two Resolutions on consent were therefore, not officially approved and will be approved at the February meeting.

7. RESOLUTIONS FOR DISCUSSION

Chair Sorg: Board Resolutions for discussion. There isn't any Board Resolutions.

8. OLD BUSINESS

Chair Sorg: We'll go right to Old Business then.

Dr. Garcia: We're ready for Old Business, staff doesn't have any Old Business right now. We do have some New Business.

Chair Sorg: The Commission, any Old Business? Okay let's go on to New Business.

9. NEW BUSINESS

Dr. Garcia: Mr. Chairman, this new business relates to your second Resolution that was on consent. I will ask Marcy first to give us the legal reason as to why we're doing this. Then Klaus will give you a briefing on additional disposal of some old containers to Los Alamos. Marcy can you tell us what else changed in the new world of DFA (Department of Finance & Administration).

Driggers: State Statues control how the City disposes of property and when we want to dispose of property to another governmental entity we have to get DFA, well the Small Government Division of DFA's approval. In the past I must confess that this pretty much is rubber stamp process. You would send you proposed disposal, state what the price was, and DFA would approve it. But for whatever reason they have incredibly tightened up their compliance procedures and now they require that the City Governing Body, which would be you, be notified of the proposed sale. Not that you have to approve it but that you're on notice of it.

We think what has happened is somebody may have said: “DFA by approving a sale for a certain price somehow validated that it was a good price” and they don't want to assume that responsibility. They want you to assume that responsibility to assume that responsibility and of course most of this equipment involves Solid Waste equipment.

That Resolution also included, they even want a Resolution or notification in the minutes, when we give away equipment to the University for old worthless Gas Manuals. In fact, when they started making that as a requirement for a donation, I thought maybe we should just have said University Gas Department on such and such day these materials will be in our garbage can, you can go pick them up. But we were complying.

I will admit that Klaus was out of the County in Latvia and I have never gotten an email from anybody from Latvia before. He was trying to communicate with me as we were dealing with this crisis with DFA because the City Manager had already conditionally approved the sale of this equipment to the other governmental entities with were other Reginal Solid Waste Facilities throughout the State. The condition was you can have it for this price conditional on DFA approval, if DFA doesn't approve it, you have to bring it back to us and we'll refund the money.

What Klaus is going to be addressing, DFA has said that it doesn't necessarily have to be by Resolution, which I've already done, as long as it's in the minutes so he's going to give you some information that's going to be verbatim in the minutes and that will satisfy DFA's requirement. You have been notified concerning the sale of some Solid Waste containers for \$1.00 each.

Dr. Garcia: Klaus put on the record please.

Ericson: I have a question before Mr. Kemmer starts. I don't have a problem with it obviously. I do have a question, Marcy just for future Resolutions, you're doing three different things in the same Resolution. I'm thinking it's the legislature, has a provision, if my memory serves me perfect, called log rule and you can't do non-related issues in one action. It's so minimal that it really doesn't matter, but just for my own edification, in theory, shouldn't these have been three separate Resolutions? Each one dealing with each item?

Driggers: Well I chose to put them in one because you're submitting this required by DFA to show that you have been notified that these different commodities are being sold to various Regional Solid Waste Facilities. We could've made it into three but what you're talking about is when there's a legislative appropriation, they slip something in there because they figured you want the money appropriated so you'll agree to this, defunding Plan Parenthood or something else that they slip in a bill.

Ericson: Congress can get away with and I just don't want DFA to kick it back. I would say it needs to be three clearly separate issues.

Driggers: But what is ironic about this is the Resolution or the minute's notification is supposed to be from the entity selling it. A couple of months ago the Manager approved the City selling some expensive equipment to South Central Solid Waste Authority and South Central got a Resolution because the City is their purchasing agent but DFA said a Resolution is a Resolution we don't care whether the seller approves it or the buyer

approves it. It wasn't fair to make these little Solid Waste Districts throughout the State due a Resolution so we're accommodating them that one fell swoop, we did three. Including the donation of the workless materials to the University's Gas Department.

Chair Sorg: Okay.

Dr. Garcia: Klaus please tell us about what your next transaction, for \$1.00 dollar each will be.

Kemmer: I have an interest from the City of Los Alamos. They were down here looking at trucks and they saw some old trash containers that I'd set aside and then I told them yes they're available too. These are trash containers that were cleaned up as part of the process to provide 64-gallon cans to the customers. These were old 64-gallon cans that are 20 years old that were put out there and are a completely different color than what we normally use so we brought all of these in, in order to get on the right page. Unfortunately these particular containers are made in such a way that they cannot be recycled. Most of our other containers that we have now are all recyclable so when they break down, when they crack or anything else, we send them back to recycling and we actually get money for them. These particular ones cannot be sold, in order to dispose of them I would have to take them to the Landfill and pay the disposal charge. So I was more than willing to sell them for the \$1.00 apiece. Apparently they want to start a practice recycling thing and they're more than willing to use these old dirty trash cans to see if this process will work so I'm just notifying you that we will probably get a letter from them of this interest and they'll come down and pick up somewhere between 600-800 of these containers.

Driggers: Tell us the name again.

Kemmer: Los Alamos, will be coming to get these containers. They don't know how many they can fit on their trailer or truck that they're bringing down so that's why they didn't have an exact amount yet.

Chair Sorg: Commissioner Pedroza.

Pedroza: Yes, thank you. Klaus are those the containers that are up there on Foothills Landfill? They're metal, they're not plastic.

Kemmer: No, I have metal containers up there that need to be refurbished but these particular ones are plastic. I also have residential containers up there, I have a lot of storage space up there.

Pedroza: I saw them, thank you.

Chair Sorg: Okay, thank you Mr. Kemmer.

Dr. Garcia: One more item of New Business Mr. Chairman. You may have read some of this in the paper but we had a delinquency with Las Cruces County Club on water use and the Manager was misquoted earlier in the paper. We did file a lien, once Carol

informed me that they were about to give the golf course back to Sonoma Ranch in very short notice so we filed the lien on the property. It happens that, and Marcy will elaborate how that works, Sonoma Ranch had some ownership still in the property. I don't know if it was an owner financing on the sale of it. We filed a lien, I think the same day they turned it back, so we are covered for about \$54,000 of delinquencies. They were on a payment plan for all of their meters including their club house, not just the reclaim water, golf course water itself, but some of the club house meters. They were late on all their bills from pretty much the very beginning of their tenure in the golf course so they ended up with a \$54,000 debt at the time of giving it back. We don't know what the contract looks like but we have a \$54,000 lien on that properties. Marcy can you elaborate on that?

Driggers: Just a follow up. Thanks to Carol's insider information, she had good word that the Las Cruces County Club was going to turn ownership of the entire facility back to the formal owners and what complicated it a little bit is there wasn't the usual deed and mortgage type situation. The former owner sold it in what is called a Real Estate Contract, which means they remain the legal owners and Las Cruces Country Club was just what they call the equitable owners. If and when they had made the final payment then deeds would've been conveyed to them for the ownership so we had to file the lien against both entities. The former owners as the legal owners and against Las Cruces County Club as the equitable owner. Then we had to file a second amended lien once Carol's group was able to get the final reads on the meters and then so that when the old owners resumed ownership of the facility, the Utility bill started off at zero.

Chair Sorg: Very good, thank you Marcy.

Driggers: Certainly.

Dr. Garcia: We'll be appraising you of any changes from that but we did timely file that lien so we are protected and the lien is good for four years, right Marcy?

Driggers: Yes.

Dr. Garcia: You can always refile it if we don't get paid.

Driggers: No, you'd have to foreclose if you're getting near your four years.

Dr. Garcia: One more thing. Carl can you elaborate, I stepped out for a minute, but when you were talking about projects, we'll offer a tour also and informing the Governor's Office and the Secretary of Environment, they funded the \$2 million dollars out of those projects and that would be on the second Well. Brief the Board on that and we will of course inform everybody if and when they can come down here, to thank them for the drilling and have a photo op.

Clark: Chairman, Commissioners. We contacted Jamey Rickman so she can start contacting the Governor and the Bureau Secretary to come down and have a groundbreaking for when we get to Well 32 over at Munson Center. I believe that's established for right

around March so we've given enough leeway so they can put it into their schedule and get down here. We'll meet there again where we had the first one with Governor Martinez. Hopefully they'll respond back, we gave them a couple of days, options, and then they'll tell us what they want and we'll move forward with that.

Chair Sorg: Okay, thank you.

Dr. Garcia: Thanks Carl.

Chair Sorg: Thank you Carl.

Dr. Garcia: That's all we have Mr. Chairman.

11. BOARD GENERAL DISCUSSION

Chair Sorg: Is there any comments up for Discussion with the Board? Commissioner Little.

Little: Somehow this passed us by but the draft Resolution that you gave us yesterday, during the Work Session you said that based on what we had learned and experienced during the Work Session that you would bring it back to the next Board meeting as a discussion item. We weren't sure that we learned anything that would make us want to substantially change that draft ordinance and so there could be the possibility of bringing it to us for action in February.

Chair Sorg: Is there any objection from the Commission to that? Okay let's bring it forward then to the next meeting.

Dr. Garcia: Okay, very good.

Chair Sorg: Anything else?

12. ADJOURNMENT

Chair Sorg: I'll call for an adjournment then.

Baumgarn: So Moved.

Johnson: Second.

Chair Sorg: Moved by Commissioner Baumgarn second by Commissioner Johnson. Those in favor say Aye. Meeting is adjourn.

The motion to adjourn was Unanimous 7-0.

Meeting adjourned at approximately 4:23 p.m.



Gill Sorg
Las Cruces Utilities Board Chair



Date