

Las Cruces Utilities Board of Commissioners

Minutes for the Meeting on

Thursday, July 14, 2016

3:00 p.m.

Utilities Center

Conference Room 225

Board Members Present:

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

Board Members Absent:

Jim Carmichael, Commissioner
Jim Ericson, Commissioner

Ex-Officio Members Present:

Daniel Avila, Interim City Manager
George Garcia, Utilities Director

Others:

Suzanne Michaels, Public Outreach
Consultant
Julie P. Samora, CH2M Hill

City Staff Present:

Susan Cerny, Business Systems Analyst
Carl Clark, RES/TS Administrator
Carol Conners-Lyons, Billing & Receivables Supervisor
Marcy Driggers, Senior Assistant City Attorney
Paul Edwards, Business Systems Analyst
Luis Guerra, Water Quality Laboratory Manager
Klaus Kemmer, Solid Waste Administrator
Diana Montoya, Rate Analyst Senior
Viola Perea, Utilities Internal Auditor
Jose Provencio, Administrative Services Administrator
Mario Puentes, Gas Business Analyst
Joshua Rosenblatt, Regulatory Environmental Analyst
Alma Ruiz, Office Manager Senior
Andy Sanchez, Service and Pressure Foreman
Estela Saucedo, Customer Service Representative
Dania Soto, Office Assistant Senior
Adrienne Widmer, Water Resources Administrator

Chair Sorg called the regular meeting to order at approximately 2:59 p.m.

1. CONFLICT OF INTEREST

Chair Sorg: First order of business is the Conflict of Interest. Is there any member of the Commission or staff that has a known conflict of interest in any of the items on the Agenda?

There were none.

2. ACCEPTANCE OF AGENDA

Chair Sorg: The next Acceptance of the Agenda. There's one item that wants to be pulled off, Commissioner Little.

Little: Yes. First of all, I move to accept.

Baumgarn: I Second.

Chair Sorg: Okay.



Little: Chairman, I'd like to ask that item 6g be pulled from consent for discussion.

Chair Sorg: Very good.

Johnson: Which item was that?

Chair Sorg: 6g.

Little: It's the bonds.

Johnson: Okay, I agree. I had the same feeling that it needed to be pulled.

Chair Sorg: Jornada Water Company purchase.

With that item pulled from the Consent Agenda for discussion, I'll take a vote on this motion to Accept the Agenda.

Roll call: Commissioner Pedroza – Aye; Commissioner Little – Aye; Commissioner Baumgarn – Aye; Commissioner Johnson – Aye; and Chair Sorg- Aye.

The Agenda was Unanimously Approved 5-0.

3. ACCEPTANCE OF MINUTES

a. Regular Meeting of June 9, 2016.

Minutes approved on consent.

4. PUBLIC PARTICIPATION

Chair Sorg: We'll go on to the Administrative Report.

Dr. Garcia: No Public Participation, Chair?

Chair Sorg: I'm sorry.

Dr. Garcia: Just double checking, Mr. Chairman.

Chair Sorg: Very good. Is there a member from the public who would like to address the Commission?

Seeing none, then we'll go on to the Administrative Report.

5. ADMINISTRATIVE REPORT

Dr. Garcia: Mr. Provencio.

Provencio: Good afternoon, Chairman, Commissioners. I'll update you on activity on the Administrative Services side, specifically for Customer Service. Now that there's a



green light on the acquisition or transfer of Mesa Development (MDC), we are making final transfer details. Making the details known and certain between us and MDC staff, which is on the timeline for acquisition on or a little after September 1st.

On another ongoing project in terms of acquisition of other customers in another water system, we have had preliminary meetings with Jornada Water Company staff to get an understanding and scope of the customer database and database structure, and discuss contract positions for Jornada Water Company personnel that will be brought in with the completion of the transfer. I know these are somewhat early meetings, but it's prudent to get a good jump on some of this information and get some clarity as we approach these crucial transfers of these two systems.

With that, I'll stand by with any questions you may have.

Chair Sorg: Questions, Commissioner Little.

Little: On the Administrative Services, could you elaborate on today's newspaper article about postponing the implementation of the City's new finance stuff?

Provencio: That would be better addressed by Sue Cerny.

Dr. Garcia: Sue, please.

Provencio: She's on the Reimplementation Committee.

Cerny: Good afternoon Chairman and Commissioners. We've been planning to upgrade to the latest version of Munis, which is our administrative software system that we've been using for almost 10 years now and we were going to upgrade to the newest version, it was supposed to happen over the weekend. We couldn't come to agreement with Tyler personnel; it would have required us to shut down all of our Munis systems at 1:00 p.m. tomorrow afternoon; meaning that we would have no information available to serve our customers. Those that would come in to pay their bills, those that would come in to sign up or discontinue services or those that come in wanting payment arrangements for their delinquent bills, or any of that through Customer Service, Cashiering, and Billing and Collections. Yesterday afternoon the final decision was made and you [Mr. Avila, Interim City Manager] may have more information rather than I do. It was decided for the sake of the City and our residents that we wait until the next opportunity, which we hope is in September.

Chair Sorg: Mr. Avila.

Avila: Thank you Chairperson. Just to add to that, we also found out late yesterday that Tyler was not going to be available over the weekend, so Monday, everything that was described we weren't going to be able to operate on Monday either. That was going to be not only half a day, but a day and a half. Given that information we said, "Tyler



has to be available over the weekend, to make sure that we're back in operation on Monday."

Chair Sorg: Okay.

Little: Thank you.

Johnson: Mr. Chairman.

Chair Sorg: Commissioner Johnson.

Johnson: Did the vendor give you assurance that in September what you needed to have done would be done?

Avila: That is correct, and that is what we're working on. We won't schedule another date until they know for sure that they will be available over the weekend to do their testing or whatever they need to do to be ready to put us online the following week.

Johnson: First thing Monday morning, good.

Cerny: We want to do it right.

Johnson: That's admirable.

Chair Sorg: Yes, thank you.

Dr. Garcia: Marcy, you're next and then I'll add a few comments, Mr. Chairman, after Marcy.

Chair Sorg: Okay.

Driggers: The presentation in front of you is a compilation from a memorandum that Jay Stein's office has prepared for us to give us their quick take of this voluminous decision that was rendered by the Special Master last week but not received by us. Jay has provided us with the flash drive of the 250-page plus decision with attachments, and Dr. Garcia will be making a link to that recommended decision on the City's website. This is a recommended decision; they don't expect many revisions to this beyond possibly some typographical corrections if this is the gist of his final recommended decision. Once the comments are received by the parties affected by the decision by the deadline date of August the 1st, then it's uncertain as to how long the Special Master will take to render a final decision. He's been slow to issue this recommended decision, and then the time to revise it will depend on the nature of the comments from the parties. If the comments are extensive, then it may take him months to revise it. If the comments are minor, then he should be done within 30 days. As Jay has indicated in the update here and as Commissioner Pedroza well knows, in a Judicial proceeding, if you are in the middle of it and the Judge or in this instance a Special Master issues a critical decision that affects the rest of the case, you have a right in



State and Federal Court to take what's called an 'Interlocutory Appeal'. You're rarely granted permission to take one, and if you are they are rarely granted. I don't know how they characterize them in these original actions, but there is a provision for that. Once the Special Master issues his recommended report, then the parties have the right to ask that the United States Supreme Court reconsider portions of his report to enable smoother sailing for the hearing that will follow thereafter.

If you'll remember, the City was what's called an 'amicus', it's just Latin, it means friend of the Court, and we participated in support of the State of New Mexico's motions to dismiss this original action on the basis that the Stream Adjudication suit pending in State District Court was the proper place to determine the priority of groundwater rights in the State of New Mexico.

The Special Master denied the State's motion, which means that now the State will have to answer the original action and the proceeding will go forward for trial before the Special Master. We are just an amicus so we are not what's called an intervenor, we've not been allowed to join. We have no separate standing. The Special Master denied the motions of Elephant Butte Irrigation District (EBID) and its companion Irrigation District, we call it "EP Number One," it's called El Paso Irrigation District Number One (EP No. 1) to become an intervenor. The Special Master did indicate that he would give them active, whatever that means, amicus status meaning that they could be "friends of the court" and that their concerns would be specifically noted.

The article that was in yesterday's paper, Commissioner Little, alerted to me that was an AP (Associated Press) article, I was thinking it was an article by the local newspaper. The large half-page article that was buried in section A, if you'll notice in the lower right hand corner, it said paid advertisement and it was an advertisement. I will give EBID great credit, they burned the midnight oil to get that extensive op-ed piece into the paper and they spun it as best as they could, and they advocated what they called their drop program to make it sound as if that was the salvation to the parties who were adversely ruled on in this recommended decision.

Mr. Stein will be filling comments to the proposed recommended decision by the August 1st deadline. He hopes to be working with the State of New Mexico to coordinate and provide whatever assistance the City of Las Cruces can, to their objections to the recommended report. Yes, Commissioner Johnson?

Johnson: In the previous slide you talked about an indefensible term.

Driggers: That is the terminology from Mr. Stein and he believed in two aspects; first of all, he doesn't believe that the position taken by the Special Master, if it was more objectively analyzed, is legally defensible. Meaning there's just no legal basis for it under his interpretation, and the second implied position is it is not acceptable for the City or the State even if it is legally defensible because of the adverse consequences. As Dr. Garcia has indicated; it pretty much says that water below Elephant Butte is now no longer controlled by the State of New Mexico. It is now going to be controlled by



basically the Irrigation Districts and by the Federal Government. Those are the implications of the decision to the City. Once we get the comments back, it's my understanding that we're going to coordinate Mr. Stein coming to Las Cruces and making a presentation but, of course, he won't be able to come until the Board's August Utility Board meeting. Dr. Garcia, did you have any follow up?

Dr. Garcia: Mr. Chairman, like Marcy said, we're going to have Mr. Stein here on August 11th to brief us on what the report says, what the EBID take is, what out of that ad is true or not true, and then what are our response or objections to this report, so those three things. He will be responding with the objections by August 1st, so he's working on it right now, but also you will be provided this material. We're trying to load it up the same way you have your agenda items, you will click on the email and you'll get the report and the appendices. I printed the main report, it's 273 pages. There's some scary assertions there and I'm not an attorney, but it was pretty scary stuff in there regarding the authority of the Federal Government south of Elephant Butte.

Also the rights of users after the compact, meaning New Mexico signed that compact and you have to live by the compact now, and any waters that are south of Elephant Butte are governed by the compact, not by State Law. Plain and simple, that I can understand, that's scary. I talked to Jay and his partner this morning and I had read that correctly, that's what it really says and it's not good news. If the Supreme Court agrees with those assertions that were not part of what he was supposed to answer, it's going to be a big fight.

More to come and probably have Jay in an open session, we don't need a closed session because it's going to be public whatever we comment, but he will be briefing you in person on August 11th.

Chair Sorg: Marcy, did you explain what an active amicus is as opposed to an inactive?

Driggers: That was the spin that the EBID gave to the Special Master's note, that he would allow their active participation as amicus. You can allow amicus to say more than limited responses to a position that they support, so how that was handled right now, we're just amicus to the State's motion to dismiss. We can't go beyond supporting the State's motion to dismiss and commenting on the positions of other parties. I don't know if that means that they're going to allow the two Irrigation Districts to comment on the positions of the other parties. We need to remember we had contemplated whether to file a motion to intervene or just a motion to be an amicus, and the feeling was that generally States are deemed to represent the interest of all of their citizens and their political subdivisions, such as the City of Las Cruces; whereas irrigation districts are not political subdivisions that create the understate statute, at least EBID is but they're not a political subdivision. They can more effectively argue that the State doesn't really represent us because we're not a political subdivision and they weren't allowed in, either as an intervener, so I don't know the difference it would have been if they had been granted intervention status versus them being granted as EBID spins 'active



amicus' status. They get to say more than inactive amicus, but what the dividing line is between what they're allowed to comment on and not is uncertain to me.

Chair Sorg: Okay, thank you. Commissioner Pedroza.

Pedroza: I've heard a lot of different people talking about the operators of the wells south of the City. They're not under Las Cruces jurisdiction, so who would support their position or who would represent them? Is it EBID?

Driggers: Generally, the State Engineers Office controls groundwater pumping, which is what wells are, they pump from below the ground. Irrigation districts generally control water flowing in the river but they get overlapping because if the river has dried up, you have a right to get what's called supplemental wells to supplement the river water that you couldn't get. You can get it from the ground and that's where the jurisdiction of the irrigation or the project water rights potentially conflicts with the jurisdiction of the State Engineers Office. As you know, we're in the midst of a drought, and there's not the volume of water that water righted properties are otherwise entitled to because there's just not enough water, so they're taking it from supplemental wells.

Pedroza: Did the suggested or recommended decision address whether or not, I understand before there was kind of like a mentioning saying actually, we all knew that groundwater and surface water are connected.

Driggers: Interconnected.

Pedroza: Yes, so does that get expanded on?

Driggers: I can't say because I have not read the decision, in fact Dr. Garcia could be credited, at least he read maybe 100 pages of the decision in his spare time.

Pedroza: Okay, thank you.

Chair Sorg: Okay.

Dr. Garcia: Mr. Chairman.

Chair Sorg: Yes.

Dr. Garcia: Commissioner Pedroza, I did not find an exact tie to groundwater, but when you read the document in many places, it talks very clearly about seepage and return flows. Return flows involve our wastewater, in other words, part of our water that we produce. The next step, that's the worrisome part, is the link of surface and groundwater. The hydrology is connected, nobody's going to dispute that, but it's not explicit. Seepage and return flows are very explicit and it says this encompasses.



The second item that is of concern is priority, it pretty much implies that the most senior priority is the project, case closed. We fought that trial to avoid going from 1906 to 1903 because we have 1905, but if the project is priority, even if we survive on the 1905, nothing after that would have any priority. We have rights from the 70's and 80's, '81 I think a lot of our East Mesa, West Mesa rights. That's the other issue, the priority is thrown in there when the question that was supposed to be answered didn't have to do with priority. It almost implies that the adjudication is not needed in this particular south of them, because we know what the priority is, and the most senior is the project period. Anyway, very troublesome.

Driggers: It will be very interesting to see how Judge Wechsler rules on this because the gauntlet has been thrown by EBID's paid advertisement to Judge Wechsler saying, "Give up, you have no authority to render a decision regarding priority of project water because the draft report trumps any decision that you could render."

Chair Sorg: That was yesterday's paper, right?

Driggers: Yes, sir.

Little: Mr. Chairman.

Chair Sorg: Yes.

Little: The nature of the hydraulic interconnection between the surface water and groundwater is varied across the region, indeed across the world, and the nature and degree of that interconnection is arguable and we should not continue to think and say that that part of it is a settled issue.

Chair Sorg: Good. Should we go on, or is there any other question?

Dr. Garcia: If there's no more questions we'll go to the next item. Marcy, I think it's yours too with Mesa Development.

Driggers: We have had a staff meeting to come up with a time table for us to finalize all of the required obligations on both the City and on Mesa, as set forth in the purchasing sale agreement. We're contemplating a transfer of everything from Mesa to the City as Joe has indicated about September 1st, subject to coordination with Mesa. We owe Mesa \$425,000 for the acquisition of its water utility assets as set forth in the Purchase and Sale Agreement, they owe us monies for problems with their system that the City had to cure a number of years ago, and we just postponed any payment until they got their money from the City. Mesa also owes a substantial sum for back franchise fee payments, we all understood that that would get deferred until they got money in hand. The meter conversion is something of concern to Carl's group, because it's going to be a massive conversion of Mesa's meters replaced with City water meters, and then they will sign up for City utility service. Many of Mesa's customers are already in our system; they are either natural gas service customers having previously been with Rio



Grande Natural Gas and we inherited that service area, or they are Solid Waste customers. I'm not sure if any of them are Wastewater customers, I don't know if there's wastewater in the vicinity.

The conversion is not going to be as difficult as it would have been if none of them had been in our system. There's been tremendous work with Joe's group in coordinating addresses and getting the process set for conversion. There were problems with addresses that Mesa had their customers in that are no longer the physical address, they were established years ago. We're hoping Joe's group will be coordinating a meeting, they're trying to work out the site. Whether it's the Public Safety, the Fire Station on the East Mesa, or Oñate High School hasn't been decided, but I think they're looking for Oñate High School.

Once we actually acquire the system, then the construction for rehabbing Mesa's system, remember it's going to be a phased rehab and as the settlement agreement provides, there's no guarantee that they will have any higher level of service as far as existing pipelines initially. They will have City water so the reliability of the water will be there, but their water will be pumped through their homes through the existing Mesa infrastructure, just with new meters. It's going to be a rehab eventually of their entire system phased over time.

Chair Sorg: Any questions? Could I be notified of that meeting?

Dr. Garcia: Mr. Chairman, yes. It's tentatively August 18th and we'll send it to the whole Board if anybody wants to attend the sign-up meeting, then we'll provide information on the project update, and the meter upgrade. It's going to be not only a customer service sign-up meeting, but also project upgrade meeting or briefing. We'll look forward to getting that done.

Driggers: We will be working with Mesa but under the Purchase Agreement they're obligated to send out in a bill notice of this meeting, then we'll coordinate with them if there needs to be separate notices sent out

Chair Sorg: That's fine. Looking forward to Klaus's next topic.

Kemmer: Mr. Chairman and Commissioners. If you'll remember, we talked about starting this new service, the green grappler service, and those of you that were out on July 3rd also got to see the green grappler in the light parade. We started the service here in July and I just wanted to give you a quick update. We've only had six days of service for the grappler, but we've picked up a little bit over 7 1/12 tons at this point. I will update you again once we have a little bit more information. This material of course is being picked up on the regular grappler routes. Regular grappler drivers call in the grappler on the once a month service, this material is then taken to our Foothills Landfill where it is chipped and composted, and eventually made available to the public for compost.



Pedroza: May I ask a question?

Chair Sorg: Commissioner Pedroza.

Pedroza: Thank you. I understand that people are being told to wrap their green waste in plastic bags?

Kemmer: No, normal branches and stuff are put out just as they normally are, stacked. If you have things like leaves and grass clippings, we do ask that those get put into a clear bag so that the drivers can see them. If they're in a dark bag, which we tried to pick some up the first day, unfortunately it's mixed with trash. We asked for clear bags so that we can see them, and we will also pick those up if there's larger quantities.

Pedroza: My question was going to be, what is the City going with the clear bags once they're empty?

Kemmer: My people at the Foothills Landfill empty them, and then we throw those clear bags away because usually by that time they're torn.

Pedroza: Thank you.

Driggers: Where do we get clear bags?

Kemmer: Clear bags are available at Home Depot and at Southwest Distributing, they have clear bags. Johnson's Hardware has told me that they would look into trying to get some clear bags and make them available also but they haven't called me yet.

Pedroza: I bought a big box of them at Sam's.

Chair Sorg: Both grapplers might take the same route on the same day?

Kemmer: Yes, normally we'll have either two or three grappler trucks out. One regular white one, which picks up the trash, and then the green grappler. They'll be going to the same areas, but the white grappler which picks up the trash and stuff will call the green guy and say, "Here's a big pile, come get this, and here's another big pile." They won't get everything that's green. If it's just a little pile they might not, but we try to get the largest amount so that we can make some impacts.

Chair Sorg: The consumer or residents don't have to call it in?

Kemmer: No, no calls, it's on their normal collection day, the once a month.

Chair Sorg: Thank you.

Dr. Garcia: Adrienne.



Widmer: Mr. Chairman, Commissioners. We thought we would just update you a little bit on the Third and Picacho water line break that happened on June 15th. I think you all are in receipt of the small little booklet that we put together. Just to kind of give you a little bit of a recap, this was also shown in the paper, you all saw some stories about that. You have a copy of the initial report and we're giving you the map of the general area of it, and it has the little sign there that shows that's where the break was. Since then we've sat down and we've had conversations with Technical Support and Operations, they've gotten together, we've talked about how everything worked. Technical Support is going to do a white paper and an evaluation for us, so that if there's any issues in there that we can actually start doing to make our repair of these types of situations more efficient, that Operations can adopt them. Just thought I would answer your questions.

Chair Sorg: Any questions? Thank you Adrienne.

Widmer: Thank you.

Dr. Garcia: Projects, Carl.

Clark: Mr. Chairman, Commissioners. I'm here to give you the July 2016 Projects Update. The three projects that I choose were the Salopek/Sunrise Subdivision Sewer Improvements Phase II and the Hacienda/Homestead Acres Estates Sewer Improvements Phase I, along with the Interceptor 236 Phase II.

The Salopek/Sunrise, and I have an old slide, Phase I and Phase II. I wanted to show Phase I, Phase I is the line in blue there. That project is substantially complete, there are users already on it, we're closing out that project with a final change order, that was all that was remaining. The contractor needed to get us the release of lien so that we can close that out. We have that now and Public Works is processing that paperwork. Phase II is under construction right now, currently they're over on the Salopek or the University of Mesa area. I'm showing you the second portion of that project, the red lines there, that's over on the East Mesa Windridge Circle. The contractor still needs to move to that location and continue with the project. This slide shows Salopek Boulevard. O'Hair Drive is completed; it's been paved back. The contractor is working on Salopek Boulevard putting the asphalt back and base course, they've already installed the lines there.

There was a question from somebody in that area regarding the pavement section which is this section right in here. This is kind of an odd subdivision because there's a median that splits down the middle, and you have an entrance drive and you have an exit drive. We installed the sewer line on the exit drive, so we never touched the entrance roadway, but we're leaving it behind, which doesn't sit too well with some of the people in that area, but this is a septic project, it's not meant to be a roadway project. There are still minor cuts to these last two residents here where we're bringing water across and some sewer across, and so we patched that back. In case if anybody has any questions, I posed that question to the funding agency about replacing that



roadway and he hasn't responded back to me yet. He did mention in the paperwork that the pavement is incidental to the sewer work so that kind of lets me know it's not a pavement project, it's a sewer replacement project.

That contractor is Timberland Construction; this Phase II here is \$1.6 million worth of work. Contract time is 130 working days; the start date was November 30th with an estimated completion of September 7th. You can see that percent complete is 25 in regard to construction and payment. That contractor is having troubles right now trying to complete this job. Public Works is aware of it, we're talking to that contractor, they're talking to the contractor trying to get them back on schedule. They have some days owed back to them so they have to file through their paperwork in requesting those days, and Public Works will respond and hopefully they'll get back on track with this project.

As I stated before, the O'Hair Drive is complete. A couple of pictures, that's Salopek Boulevard there that you see where they're installing the line and then going to put the materials back in and begin the pavement works. Any questions on this project?

Moving on to the next one, the Hacienda/Homestead Acres Estates Sewer Project Phase I. That project is substantially complete right now, the roadways are paved back, everything is back too normal in those neighborhoods, people are actually calling in to tie on. Public Works is handling the final close out portion, which is release of liens and those kind of items, and then we would consider this to be complete. The contractor was Renegade Construction, local company, that project was \$309,000, 80 working days for that project which started in February. Estimated completion was May 24th. They are substantially complete already; as I've said before, they cleaned up the area.

I included a couple of photos here; one of a sewer manhole that they were installing out there on the Vargas Avenue and Cortez Drive intersection there, and then the sewer main being installed on Montezuma. We still have 20% payment to release to them after they get us through minor items that we need from them but that's moving through quickly, which is a good thing. We had a number of projects, Lantana is complete, Salopek I is complete, and now Hacienda is complete. We're going after that final one, we have to complete that one and move on.

Chair Sorg: Does that include Porter Drive course?

Clark: That includes Porter Drive.

Chair Sorg: Now the people on Jefferson can tie into the City, right?

Clark: That is correct, this line that was installed years ago with CDBG (Community Development Block Grant) funds can now be connected over here to Pecan, it is now connected so all these residents our there can tie in and send their sewer our way.



Chair Sorg: Especially the person that wanted to do it early.

Clark: Right.

Dr. Garcia: Ahead of schedule.

Chair Sorg: Okay.

Clark: I have one more project after that, that's the Sewer Line Interceptor 236. This project was paid with Impact Fees. Approximately 2,300 lineal feet of 15-inch sewer main was installed in this location to what will be a future Sonoma Ranch development. That project, like I said, is complete. The contractor was A Mountain Professional Construction. Contract cost is \$215,000 for this project, the contract time was 90 working days, they started that in November and they had a substantial completion notice in April 13th. All lines are completed as you can see from the upper right photo, they already seeded and mulched the area. That was one of the requirements from BLM for their permit. My project manager included the video camera van, that's brought in after it's been installed to ensure that there's no sags or dips in that interceptor line.

That's all I have, if there's any questions I can answer them for you all.

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

Dr. Garcia: Yes.

Chair Sorg: Okay.

6. RESOLUTIONS FOR CONSENT AGENDA. The following were approved 5-0:

[Resolution 12-13-124A](#): A Resolution Approving an Amendment to Price Agreement No. 12-13-124 for Chemical Analyses to be an Indefinite Cost, Indefinite Quantity Price Agreement to Hall Environmental Analysis Laboratory of Albuquerque, New Mexico; Midwest Laboratories of Omaha, Nebraska; and Pace Analytical Services of Salina, Kansas, for the Remainder of the Contract Term, which Expires in April 2017, Subject to Approved Budget Appropriations.

[Resolution 15-16-010A](#): A Resolution Authorizing Change Order No. Two, to Increase the Picacho Avenue 12-Inch Waterline Extension Project, Project No. 15-16-010A, to DuCross Construction, LLC, of Las Cruces, New Mexico, for a Total Contract Amount of \$515,210.07.

[Resolution 15-16-148](#): A Resolution Approving an Indefinite Cost, Indefinite Quantity Price Agreement for Water Meter Audit and Repair Services to Pure Operations LLC, DBA PureOps of Las Cruces, New Mexico, for One (1) Year with Two (2) One-Year Renewals Subject to Approved Budget Appropriations and Annual Renewals.

[Resolution 16-17-001](#): A Resolution Approving a Six Month Price Agreement with Official Payments Corporation of Norcross, Georgia.



[Resolution 16-17-LCU001](#): A Resolution Approving an Amendment to the Amended Legal Services Contract with the Stein & Brockmann, P.A., Law Firm Specializing in Water Rights and Water Litigation Matters, and Approving an Indefinite Cost, Indefinite Quantity Legal Services Contract for Professional Legal Services Under the Existing Contract as Amended for Fiscal Year 2016/2017 Subject to Approved Budget Appropriations.

[Resolution 16-17-LCU002](#): A Resolution Approving Professional Legal Services with Keleher & McLeod, P.A., Law Firm, in Matters related to the El Paso Electric Rate Case Intervention Process and in Addition Any Other El Paso Electric Matters as Authorized by Management, and Authorize an Indefinite Cost, Indefinite Quantity for Fiscal Year 2016/2017, Effective July 1, 2016, Subject to Approved Budget Appropriations.

[Resolution 16-17-LCU007](#): A Resolution Authorizing Funding for Professional Legal Services Under the Existing Assigned Contract Approved in Utilities Resolution 13-14-033 with McCarter & English, LLP Specializing in the Energy and Natural Gas Industry in an Estimated Amount Up to \$75,000.00 for Fiscal Year 2016/2017.

[Resolution 16-17-LCU008](#): A Resolution Authorizing Las Cruces Utilities Staff to Make Administrative Revisions to the Water Tariff.

[Resolution 16-17-LCU009](#): A Resolution Authorizing Las Cruces Utilities Staff to Make Administrative Revisions to the Wastewater Tariff.

[Resolution 16-17-LCU010](#): A Resolution Authorizing Las Cruces Utilities Staff to Make Administrative Revisions to the Gas Tariff.

[Resolution 16-17-LCU011](#): A Resolution Authorizing Joint Funding Agreement No. 16CRNM000000024 in the Amount of \$22,00.00 Between the City of Las Cruces and the United States Geological Survey for Fiscal Year 2016/2017.

[Resolution 16-17-017](#): A Resolution Approving an Extension of an Indefinite Cost, Indefinite Quantity Price Agreement for Collection Services with Automated Recovery Systems of New Mexico, to Run Concurrently with the City of Aztec, New Mexico, Agreement Dated August 25, 2014, Conditional Upon Annual Renewals and Approved Budget Appropriations.

[Resolution 16-17-019](#): A Resolution Awarding a Contract for Project No. 16-17-019, for the Las Cruces Utilities Facility Buildings Roof Repairs to Commercial Roofing, LLC, of Albuquerque, New Mexico, for a Total Award Amount of \$102,336.85.

[Resolution 16-17-024](#): A Resolution Awarding a Contract for the New Mexico Department of Transportation Valley Drive Construction Phase II, Project No. 16-17-024, to Molzen Corbin of Las Cruces, New Mexico, for a Total Award Amount of \$130,422.69.

7. RESOLUTIONS FOR DISCUSSION

Chair Sorg: First Resolution for Discussion and approval is **Resolution 16-17-LCU005**. A Resolution Recommending to the City Council the Issuance of New 2016 Series Utility Revenue Bonds for the Purchase of the Jornada Water Company Assets for a Tentative Purchase Amount of \$16,400,000.

Is there a motion to approve?



Baumgarn: So moved.

Little: Second.

Chair Sorg: Moved by Commissioner Baumgarn, Seconded by Commissioner Little. Could Dr. Garcia explain?

Dr. Garcia: Mr. Chairman, I gave you a briefing at the prior meeting, there was no action. Subsequent to that, we had an action from City Council on the first step or the initial step of the process, which is the acquisition via eminent domain. That was one of the elements of this transaction that was critical, and that is one of the reasons why you didn't follow traditional process that we did follow with Picacho water utility Purchase Agreement. It was from receivership, and it was well known that it was for sale. In this case, confidentiality was requested until such time that the acquisition process was agreed upon, so that's why we couldn't meet in closed session with you all before we went to Council and did that.

In many ways, this process is going to be very similar to what we follow with Mesa Development. Years ago, actually exactly 2005, City Council then gave direction to issue bonds and acquire the company. The details as to how we do that in the actual agreement fell on your responsibility after that, many, many years afterwards and now it's done. I anticipate this is just another step, now why do we need the Utility Board to recommend or not recommend? Procedurally and legally, there's nothing that requires that you all recommend or not recommend the bond issuance, only City Council can issue debt. However, ever since we established the Utility Board, the Utility Board has made recommendations based on our briefing to you of bond refunding, of acquisition of Mesa Development agreements, and things like that. Issuance of debt, you all have recommended it.

That plays a critical role, in my opinion, in the bond rating. I've answered questions from bond raters as to whether the Operating Board is the Utility Board, "What do they think about it?" Even though the actual sale of the bonds does not require your consent, your recommendation is a good sign on the bond rating with Moody's, and that's where I've shown the Resolutions and your recommendation, and also provides the understanding that the Operating Board will be inheriting this action and doing something with it, which is operating and eventually approving the agreement with the company.

For those of you who are Council members, you've seen this already last Monday, but I will show it to the whole Board with you, but I added some of the steps that we're going to follow because we will see this again once we have a final Purchase Agreement with the company just like you did with Mesa Development.

In order to use Eminent Domain, there has to be a Public Purpose, and some of the Public Purpose that we recommended to the Council and showed that there is a Public



Purpose is basically this action allows the City Utility owned by the City Government to provide water utility service to current areas where we currently plan to serve wastewater in the future; meaning we have wastewater service incoming. This action will bring some of those customers that are sewer customers that also could be water customers, similar with gas. For many years, we've served gas in many of the areas where Jornada Water serves. This action will bring water service to those areas where we have natural gas service in future areas as outlined in our High Pressure Natural Gas Master Plan, which you all accepted.

I think Commissioner Pedroza asked the question, and maybe we didn't answer earlier on when we were talking about water rights. I will guess that some of the impetus and the incentive to also sell a company that has quite a few water rights beyond what they're using today is the ability to defend those in the future. The City is better poised to defend and preserve those rights in the valley. A small family-owned company would lose them very quickly to any action by the Federal Government or anyone else. Particularly with the Mesilla Bolson more so than the Jornada Bolson, because that's where the controversy is with the Federal Government, and we'll learn more about that in August. We're better poised to defend those rights and preserve them in the valley for Municipal use. Otherwise, those may disappear from the radar and be no longer available for Municipal use.

Another element that is critical in this proposed acquisition is that it is a system that can be effectively incorporated into the Jornada Infrastructure into our system, meaning the East Mesa now transitions to the next map. If you look at the Hacienda Acres area that we just talked about, we're building sewer, that is a water service from Jornada. Some of those areas can be immediately converted to the City system and not be operating as an island, because we have the transmission capacity north on Holman Road that potentially we can serve these areas very quickly.

That in tandem with the Natural Gas Service that we already serve and the sewer systems that we're building it would give us all the utilities in that area which is already inside City limits. We've updated the map from the last time you saw this to better depict some of the most interesting areas, which is the LRG-50, place of use of the water rights in the areas that are currently served, approximately that that are currently served, are shown in red. The LRG-50 water rights provide a tremendous amount of growth and potential in areas east of I-10, especially because if some of you already know, there's plans of connecting Sonoma Ranch Boulevard across the University property to this area eventually. That may be 15 years down the road, but it is going to happen and all of those areas are within this LRG-50 service area, so a lot of potential here.

Areas are served inside and outside City limits; East Mesa, Mesilla Park, South Valley and Las Alturas. The approximate number of customers is the 3,500; 1,484 (42%) are already citizens meaning inside City limits. There's residential and commercial, there's four schools: Oñate, Tombaugh, Cesar Chavez, and Sunrise. In terms of water rights, 5,961 acre feet, 2,486 have been perfected, and there's about a use of about 1,900 in



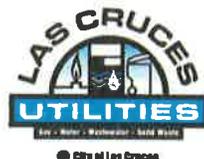
2015. Just like in our system, people are conserving more water and using less water. Therefore, those that peak at some time I believe in this company, depending on the systems, in 2009, there was a peak in 2011, and then they decreased the use. Uniformly, in 2015 was the lowest use, gone back down to 2,000 acre feet. There's about 3,475 acre feet available for use for the future.

Just a list of some of the inventory of the system infrastructure. What is important here is that there's about 90 miles of water lines, and the acquisition will include associated land and easements. Meaning that any well-site or pump station site or tank site is plotted and described and has to be turned over to the City. Part of that agreement is inventorying of all of the sites and hopefully, and they know of our experience with Mesa Development, we told them, "You better not have a site that we have to go and condemn and split the legal subdivision," because we need that like we did with Mesa. All of those descriptions, that's part of the due diligence that we have to do during this process.

In terms of the revenue and financing I mentioned to you last time, the approximate revenue with the company rates, and I'll talk about rates in a minutes because at least one or two of you brought up that question last time when we were just briefing, about a million and a half a year at their rates. The idea is to issue bonds; you will notice that the bond amount in the Ordinance that will go to Council August 1st is quite a bit higher than the net amount needed for us for the system, or the pay them amount and I will describe each amount.

The Bond Council and the Financial Advisors recommend, that since this process once the Council issues the notice goes public, if we were short \$100,000, everything collapses, so one of the things they want to prevent is just in case. I don't think they're going to need that in order to get a good rate. In case we need to include in the loan the Debt Service Reserve that goes into an account, plus the issuance costs, that would be about \$2 million over what we need. It is not money that we spend, it's money that we put in reserve, and therefore since we we're reserving some of that money then we get a better rate. They don't think we'll need that, but this is Bond Council and Financial Advisors who recommended that, and we always refer to them on that number.

The number that we need is the \$16.7 million. I think it was Commissioner Carmichael last time that asked, "You're going to only borrow \$16.4 million, what if you need more?", and I said, "No, we need to borrow more, because one of our plans is to retrofit the computer control system immediately." We will be borrowing to retrofit the supervisory control system tank levels, well-type of pump pressures, etcetera, etcetera; very quickly, immediately all at one time and bring it in here. We have a level of service and such that we need to know what our tank levels are, with Dispatch here 24/7, 365, alarms, etcetera., etcetera. Their system is not that sophisticated, they do have some telemetry, but it is not what we have, so we'll go and put that upfront in the system and that's why the additional \$300,000.



The approximate amount of \$16.4 million, that is subject to due diligence of the water rights. There's about \$7.2 million of that is the water rights, and Mr. Stein's firm is doing due diligence of each of the rights. Do we have all the paper work? Do we have the fillings from the adjudication? All of those things, the inventory of all of the rights. That is part of the due diligence, if we find that there's a problem with one of the rights, we need to adjust the amount down. At first glance I reviewed those, my staff reviewed those, we didn't find anything but there's some questions that we need answered from the attorneys and to make sure we have all the paper work on those, so due diligence is underway right now.

The approximate Debt Service is \$1.2 million over a 25-year period, that's if we borrow \$18.7, we don't think we're going to borrow \$18.7. Even under the worst case scenario we can cover with System Revenue the Debt Service. Some of it will come from the Water Rights Acquisition Fund. We haven't been acquiring water rights in a long time, so since we're acquiring a little less than half of the purchase price as additional water rights, we're dedicating between \$0.02 or \$0.25 million from that fund to pay for the Debt Service.

We're very comfortable with the Debt Service, in talking to the Financial Advisors, they think that the actual debt service will be a little under a million dollars. There's no anticipation of having to make up the Debt Service amount with our riders. We feel confident in discussions with the Bond Council and Financial Advisors that the market it still in good condition to issue these bonds. They may not be as good as the 2017 bonds that we got, but I think they're still in good conditions out there for us to get a good price.

Water Rates, you asked the question, Jornada has higher access charge meaning the fixed charge is higher. I show there what the numbers are, \$12.89, volume charge \$1.33 and there's some power charge that they apply, similar to our surcharge. Ours has various surcharges, we have a small block of \$.70 initially even though our access charge is about half, and then we have a summer level of \$2.08 and the winter number and non-summer of \$1.89, and then we have the riders. The water bills are comparable anywhere between 8,000 and 9,000 gallons. However, users that use more than the average, they will be paying more under our system. A big user will pay more, because our system, the access charge is lower, the volumetric charge is higher.

You asked about commercial, the schools, we're still analyzing that, but it's very likely that those schools that are on the large commercial they will be paying more with us or similar to schools that are already in our system, because Jornada does not have large commercial or small commercial rates. If you think about it, they're applying the residential rate to a big user that is irrigating large fields, so that's probably a bargain for some of those right now. We'll have more detail analysis.

If there are concerns that the Board has on those four schools, particularly on the large commercial, I don't think the small commercial billing accounts should not be a big



difference but the large commercial, we would have to address any changes when we deal with the rate review. One of the Resolutions today is to kick off the rate review. If you recall, Joe and I have been talking, when we were trying to settle the water case and of course it got very contentious but we did apply the off-peak use for parks and golf courses and we forgot about schools that also run as parks. Some of the school large fields act as parks. In the future rate review, we can look at that and say, "If you have large users, that shouldn't be probably large commercial, maybe they can take advantage of the off-peak, if they water on the off-peak time." Which is what the off-peak rate is, interruptible off-peak rate. There's opportunities there if we have concerns about particularly the two of the schools that have large fields, because those may have a larger volumetric impact because of the design of our rates. Our rates are more volumetric oriented rather than access charge. More can come on that and I'm sure we'll have interesting discussions.

Let's talk about the process, Council approved the eminent domain action. The next step is the bond issuance, and the benefit of having the Utility Board have this discussion is more for the bond rating than the actual sale of the bonds. There's no requirement on bond buyers that the Utility Board approve that. However, the bond rating, which gives us the price of those bonds and helps us sell the bonds, they've asked the question and they've gotten copies of action and discussion on the Board on the different bond issuances. If you're wondering why we're addressing this at this time in our recommendation form on the money, it's because it's used in the bond rating because you all will be operating this later. You will approve the Operating Sale Agreement and then you will be responsible as an Operational Board for the operation of these additional 3,500 customers and in future incorporation of this into the City system by amending the master plan, and so on and so forth. That's your role, in case if you are wondering.

Council approval of issuance of Utility Revenue Bonds, like I said before, the Board has no authority to sell debt, so only the Council can do that, and then the attorneys take over with the petition for condemnation, answer the petition, bond sale, etcetera., etcetera. There's going to be a court order eventually but then we will come back to you, we need to bring you a final Purchase Sale Agreement with a lot of more detail. After that, Purchase Sale Agreement is finalized, then it becomes an Administrative Process where we will need to look at our staffing. As we said to Council publicly, and we've said it publicly in the paper, no one is going to be out of a job. There's four individuals that'll come work for us. The eminent domain action is not leaving anybody without a paycheck because, number one, we need the historical knowledge and the expertise of the three operators and the one office manager to incorporate those customers into our system.

Chair Sorg: Didn't you say the owner did a lot of the operational?

Dr. Garcia: One of the owners is the business man, the other owner runs the tractor or the backhoe, but the other operators do a lot of the system work but they also read meters.



Even though we've located the meters with the GPS system already, we shadowed them on the meter reading.

Chair Sorg: I'm just wondering if you plan to hire the former owner.

Dr. Garcia: No, I think he wants to retire very quickly. The family wants to go out of business, their kids are in other business, they're professionals and there's no one to take over the company.

Chair Sorg: Okay.

Dr. Garcia: That's, I believe, one of the main reasons why they approached us. They want to be proactive and do this. They're also very worried, in private conversations, about the future of water rights and all of the litigation in this area, it's clear. Smart people, I would do the same thing if I had a company that has water rights and I had to spend money defending it or they're going to be gone, it's probably a wise move. It wouldn't surprise that you'll see more of this on the small companies up and down the valley, we have mutual domestics and small pumpers that have wells. How are they going to defend their stake on the groundwater in the areas?

Chair Sorg: Is there any more questions or discussion on this?

Dr. Garcia: So that's my presentation and I'm ready for questions on this matter.

Chair Sorg: Commissioner Johnson.

Jonson: Does the acquisition of Jornada put some more pressure on us to also look to provide wastewater service to the same locations? I know that in the June meeting, you said that we had a majority of the gas hookups already in the area that we are going to acquire, and I assume we have some of them where there's already sewage or our wastewater, but do you see any impact on this acquisition that in the future it would require some more activity in the wastewater system expansion?

Dr. Garcia: Mr. Chairman, Commissioner Johnson. That's a very good question, I think legally, in terms of commitments, there's no pressure to do that. However, I think that you will see more interests in probably some subdivisions if they're close to sewer and now they're water City customers getting together. We do special assessments but you have to remember, none of those sewer extensions, other than various small amounts of money, which we disclosed to you, use utility revenue money. They are state monies or Environmental Gross Receipts Tax monies. From the pressure in terms of some customers getting together in some of those streets paying sewer rates a quarter mile down the street, let's get together now that we are City water customers and why not let's try to talk to the City about a special assessment district. That you may see because people are interested in our sewer.



We get calls now, in fact we have some state monies, \$540,000 in this area in the South Valley, Rios Encantados right off Carver Road. A lot of it has already our sewer but the first phase was built without sewer. Guess what, they went to the legislature, we supported their project, we gave them the numbers and they got \$540,000 and we're doing the project for them and those are Jornada Water customers but they will be our wastewater customers very soon. That type of pressure in the sense of getting together and asking for interest, I can see that, but commitment wise on the acquisition, either legally or through the agreement no there isn't. You're not legally bound to extend sewer to anybody, because we don't have monies in the Wastewater Utility to do extensions.

Johnson: Not even any of the locations actually inside the City limits already?

Dr. Garcia: No. We're doing all of that and Carl showed the East Mesa, that's all inside City limits and it's been there for a long time since '85 an extension, Hacienda Acres. We're extending sewer with \$2.25 million from the legislature. It's not utility rate payer money, our revenues will go to the wastewater utility. So that's an example, we either do it through legislative monies or we'll do it through a special assessment districts that you all have to approve. A street is there, we upfront \$200,000, they pay back over 20-years with some interests, and they're our customers upfront. You've approved a couple of those agreements, small assessment districts. We are doing one for water down here off Mesa Drive, we did the first Lantana project like that approved by you. Small extensions like that might generate more interest but legal commitment or commitments from us to those customers, no, because we don't have those monies.

However, in Gas they do have a line extension policy that we approved from Talavera, so you may see also some interests in any of those areas. A lot of them already have gas but some of those don't have gas, you'll see some interests in using our existing policy for extensions and the gas utility does have money for line extensions. In fact, we're matching up to \$1,400 for extension based on the line extension policy that you approved.

Chair Sorg: Just a little quick question about the sewer projects on the East Mesa. Any of that waste go to the recycle plant on the East Mesa? That'll all come down here?

Dr. Garcia: Yes, Mr. Chairman. At one time the plan was to bring some wastewater across Highway 70, however, we think that with the development that we are currently anticipating just south of Highway 70. In fact, Carl showed you the extension of a sewer line, Interceptor 236, that's going to bring a huge subdivision back into the system and back into the reclamation facility. The remaining capacity that we have will probably be fulfilled very quickly with the area south of Highway 70, more so the lower half of the Sonoma Ranch area. We're already at about at peak about 700,000 gallons per day and we only have a million-gallon capacity.

Chair Sorg: I'm just curious. There's a motion on the floor here.



Little: Question.

Chair Sorg: Question, yes.

Little: You answered my concerns before but this doesn't disturb the purple pipe that's going to Oñate High School, right?

Dr. Garcia: Mr. Chairman, the purple pipe that we have is to Centennial High School.

Little: I'm sorry, never mind.

Dr. Garcia: It's on the south side. There's not anticipation to run purple pipe that far north, because I think we can sell it all on the south side.

Little: That's fine, I just forgot where the service is.

Chair Sorg: If there's no further questions then we'll vote on this Resolution.

Called for the roll on the Motion to Approve **Resolution 16-17-LCU005**.
Commissioner Johnson-Aye; Commissioner Baumgarn-Aye; Commissioner Little-Aye; Commissioner Pedroza-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

Chair Sorg: Next Resolution is **Resolution 16-17-LCU003**: A Resolution Approving Year One (1) of a Three (3) One-Year (1) Renewal of a Sole Source Indefinite Cost, Indefinite Quantity Price Agreement Subject to Approved Budget Appropriations and Annual Renewals with and Effective Date of July 1, 2016, for Fiscal Year 2016/2017 to Comeau, Maldegen, Templeman & Indall, LLP., of Santa Fe, New Mexico, in Matters Related to Legal Services for Insurance Recovery on Behalf of the Joint Superfund Project Consisting of the City of Las Cruces and Dona Ana Against Multiple Insurance Companies.

Johnson: Move to approve.

Little: Second.

Chair Sorg: Moved by Commissioner Johnson, Seconded by Commissioner Little. The only question here is whether or not this is just an extension of an existing contract or not?

Widmer: Mr. Chairman, Commissioners. This is a new PO for the next Fiscal Year (FY).

Chair Sorg: Okay.

Widmer: It just keeps going.



Chair Sorg: What was that again?

Widmer: It just keeps going.

Chair Sorg: It just keeps going. Are there any questions by the Commission on this one?

Widmer: Mr. Chairman, Commissioners. This is just an extension, essentially for us to continue being the financial agent when it comes to work with the Joint Superfund Project. It is both the City of Las Cruces and Doña Ana County, and we're working through this particular firm so that we can do any kind of mediation or legal proceedings with the insurance companies that we believe that we have claims with to help with the Superfund Project. That's kind of what this is, at this point right now based on their work our total recovery is almost \$1.5 million.

Chair Sorg: So far?

Widmer: So far. I usually am the one that gets sent out when they do the mediations, myself and someone from the County.

Chair Sorg: This is still an active situation? There's still something going on?

Widmer: Chairman and Commissioners, yes. There's some that might have really good stuff.

Chair Sorg: Commissioner Little.

Little: May I propose to this that it would be appropriate from time to time to tell us as part of the Administrative Report how we stand with any recovery, and whether or not this has anything to do with still going after the National Guard.

Widmer: Mr. Chairman, Commissioners. This doesn't have anything to do with going after the Guard. This has to do with mediating with insurance companies that the City and the County had insurance coverage during the time of incidents that resulted in environmental contamination.

Little: Thank you.

Dr. Garcia: Mr. Chairman, Commissioner Little. We can brief you some more, the attorneys are in the middle of negotiations with the Consent Decree and that's why we are sort of unable to disclose all of the details, but at some point we need to bring you the other track, which is really the negotiations of the Consent Decree with EPA (Environmental Protection Agency), which includes some contributions not large enough for us from the federal guard. That's on the way because we want to recover the monies that we've spent today, or at least a pro rata share of that, and that's part of the Consent Decree so that's a track of negotiations with EPA.



On the other end we're trying to recover insurance money that helps us pay for the attorneys to try to get some insurance coverage so that we can minimize the impact.

There's two tracks on this and the third track is really operating on day-to-day. We'll bring at some point, maybe next month or next couple of months, we can find from the attorneys what we can disclose as to where we are more or less on the Consent Decree. I know Marcy and the County attorney are involved with another attorney paid by the other insurance firm that is helping us negotiate that with EPA.

Little: Okay, at some point in time?

Dr. Garcia: Yes.

Little: Whenever it's appropriate.

Dr. Garcia: We need to do that, yes.

Chair Sorg: Any other questions? If not, we'll take a vote on this then.

Called for the roll on the Motion to Approve **Resolution 16-17-LCU003**.
Commissioner Pedroza-Aye; Commissioner Little-Aye; Commissioner Baumgarn-Aye; Commissioner Johnson-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

Chair Sorg: The next Resolution is **Resolution 16-17-LCU006**: A Resolution Approving a Rate Review for the Water Utility of the Las Cruces Utilities Department.

Is there a motion?

Baumgarn: So moved.

Little: Second.

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

Dr. Garcia: Mr. Chairman, we briefed you last time on this but we need a formal action according to the new process that the City Council approved. On May 16, the Council approved the recommended legislative process. We moved away from the quasi-judicial process that none of us like, it was very expensive. We think we preserved the best elements of that process.

In this slide, if you recall, you see I am paraphrasing what the procedures say are the next steps. Establish the requirements for rate review. We submit a request to you and you have to have concurrence and in one way you concur that we need to begin



the process so we can show a formal Resolution that you are determining that we do this action.

Just as a recap, the FY17 Budget does not require a rate review or the results of a rate review. We've had some increases in FY17 budget in terms of personnel, but we've had some decreases in some of the operating costs and we've adjusted some of the riders. I want to clarify that our rate review is not required to meet the needs of the FY17 budget. However, as we move into FY18 budget, we need to have a complete rate review.

I showed you last time some of the fund balances, particularly in the water utility, not only the Operation Fund Balance but the Equipment Reserved Fund Balance does not meet the criteria we just adopted, so now we need to look at the criteria and see what we need to do.

If you recall, the last time we looked at our rates was in 2009. The process calls for your evaluating the need, if you concur then this Resolution will provide a formal direction to start the process. The next step would be to do the Consultant selection, but before we do that we would ask the Council to appoint members of the Utility Customer Advisory Group, the Ad-hoc Board, because they will have a membership and a say-so on the procurement of the one consultant. If you remember, we are going to one consultant, and if anybody has legal questions the City attorney's office will answer those. It's not having two consultants and two attorneys. As part of a compromise in the info that you got from the present RAC (Rate Advisory Committee) members was they wanted to have input on the consultant selection. That can be done through the standard City Procurement Process.

This action basically kicks off the process and if you approve we will move quickly to do the RFP, the Request for Proposals. Marcy and I will be working on the Resolution for the Mayor to appoint, with the advice and consent of the Council, Ad-hoc Board members that could serve in the case. I shouldn't call it case, in the process.

Chair Sorg: Commissioner Johnson.

Johnson: Having slept since we last discussed this, I'll have to do a memory refresher here. My recollection was that once you put together the proposed statement of work, if you will, for the consultant selection, that was to come back to us and see if there were other things we wanted in there?

Dr. Garcia: Yes, Mr. Chairman, Commissioner Johnson. Yes, I do not believe it would even be a formal action but I'll bring it through the Administrative Report and get input on the draft RFP before it goes out.

Johnson: Because one of the questions I had, and it's still in my mind, is do we put in there something that says we want a rate that will last for X number of years and not have to be changed?



Dr. Garcia: Yes, and in fact one of the things that I was talking to my staff we may put in the RFP, also that something that also Commissioner Carmichael had brought up, that you don't want to be locked at one step. You're given a set of numbers and then we have to pay to pay extra or the consultant says, "Well, I'm done," he brought up that case. We want to make sure we know what we're sending up to Council and it may take two or three revisions or a phasing process so we'll have all those options and then you can add or subtract to that. I do not believe, Marcy, that we need a formal action, normally we don't do that because RFP's are prepared by staff. Sometimes the Council tells us direct through the Manager to do something on an RFP, but there's no formal Resolution approving the form of the RFP. We'll get your input through the Administrative Report process before we go on, yes.

Johnson: Okay.

Chair Sorg: Seeing no further discussion. I'll take a vote.

Called for the roll on the Motion to Approve **Resolution 16-17-LCU006**.
Commissioner Johnson-Aye; Commissioner Baumgarn-Aye; Commissioner Little-Aye; Commissioner Pedroza-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

Chair Sorg: The next Resolution on the Agenda is **Resolution 16-17-LCU012**: A Resolution Authorizing Las Cruces Utilities Staff to Make Administrative Revisions to the Bill Adjustments Schedule, which is Part of the Las Cruces Utilities Billing and Service Regulations Tariff.

Is there a motion to approve?

Little: So moved.

Johnson: Second.

Chair Sorg: Motion approved by Commissioner Little, Seconded by Commissioner Johnson. Did I have a question on this?

Dr. Garcia: You had a question, Mr. Chairman, and you have a briefing from Joe. We didn't have a slide for that but Joe will tell you exactly what we're doing.

Provencio: Chairman, Commissioners. Resolution 16-17-LCU012, is administrative language clarification addition and to address three areas: 1) damages to, now that we're going with AMR (Automatic Meter Reading), damages to AMR equipment also applies to meter tampering, 2) aligning certain sites to the Municipal Code that was revised a while back so that we're in sync with our references to the Municipal Code, and 3)



setting of threshold as to when we apply our request to recovery of undercharges for our meter failures or inquires.

Chair Sorg: This attracted me because of a break in the pipeline.

Provencio: I'm sorry?

Chair Sorg: This covers those waters that are lost when a pipe is broken, right? Am I not talking about the right...

Provencio: Chairman, this is more when a water meter or a meter is damaged under registers what we should be billed. This is from earlier, where do you draw the lines to when we start the process to recover that undercharging for that type of a failure. The threshold is that any above \$100.00 we will process a new request for...

Chair Sorg: I think I read language in there where if you have a big leak and you show you repaired it, you will make an adjustment to the bill?

Provencio: Yes, correct.

Chair Sorg: That's what I was talking about.

Provencio: That's correct.

Chair Sorg: Is there any questions by the Commission? We'll have a vote then.

Called for the roll on the Motion to Approve **Resolution 16-17-LCU012**.
Commissioner Pedroza-Aye; Commissioner Little-Aye; Commissioner Baumgarn-Aye; Commissioner Johnson-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

Chair Sorg: Next Resolution for discussion is **Resolution 16-17-023**: A Resolution Awarding an Engineering Services Contract for the Jacob A. Hands Wastewater Treatment Facility Reinvestment Plan Phase I, Project No. 16-17-023, to CH2M Hill Engineers, Inc. of Albuquerque, New Mexico, for a Total Contract Amount of \$276.709.13.

Is there a motion to approve?

Johnson: Move to approve.

Chair Sorg: Moved by Commissioner Johnson.

Little: Second.

Chair Sorg: Seconded by Commissioner Little. Carl.



Clark: Mr. Chairman, the reinvestment project was originally brought to you with Dr. Garcia when he presented the budget. There were 22 identified improvements needed at the Jacob Hands totaling about approximately \$5 million. For the design of Phase I, this one here is approximately \$2.4 million in improvements that we're going to be doing out at the treatment plant. Some of the items that were identified you can see there, Headworks Gate, there's quite a few gates, Equalization Basin Influent Gate, and Disinfection controls that need to be updated along with the alarms and some major work in the Roughing Filter Building: inlet valves, pedestals, pumps that need to be rehabbed and replaced. We also have some gates in the East end West Aeration Basin. This Resolution is for CH2M Hill to move forward with the design and efforts on this project, they'll be performing design services, bidding phase services, construction phase services, and construction oversight services for us on this project. That's all I really have there.

Chair Sorg: Okay.

Dr. Garcia: Do you have a slide to show?

Clark: Actually I do have another photo set here. These are all the items here that I just discussed CH2M Hill will be looking at but this shows all of the different gates and the different locations within the Jacob Hands Facility.

Chair Sorg: Is there any questions on this Resolution? Dr. Garcia.

Dr. Garcia: Thank you, Mr. Chairman I just wanted to add something because Carl went very fast. If you recall the theme of the CIP, when we brought it to you last spring, was we built a lot of capacity. We need to reinvest money of put money into the old stuff and we identified \$5 million dollars' worth of work at the plant. This is the first of those projects, you'll see this in FY17, we need to do more of those. There's more coming so that we can upgrade, we upgraded the capacity to the plant but we need to upgrade now some of the older infrastructures so that it matches. This part of that bigger plan of reinvesting into our system.

Chair Sorg: Is this in the nature of increasing the capacity of the Wastewater Treatment Plant, or rather just replacing old worn-out parts?

Dr. Garcia: We already expanded the capacity for many, many years. Now we need to take care of the old stuff so that it is compatible and can handle that capacity as it grows. It's reinvesting into the older infrastructure or pieces of the plant that need upgrade so that it matches what we just built.

Chair Sorg: Okay, is there any other questions? Commissioner Little.



Little: This is \$250,000; we had identified \$5 million dollars' worth of work that needed to be done. What's the engineers' estimate for the amount of work covered by this design and oversight effort?

Clark: Chairman, Commissioner. The original estimate that was put together with the technical memorandum was approximately \$2.4 million dollars. What we borrowed more or less with design funds included so that's what was the total amount of those first six projects.

Little: Thank you.

Chair Sorg: Any others? We'll vote on this Resolution.

Called for the roll on the Motion to Approve **Resolution 16-17-023**. Commissioner Pedroza-Aye; Commissioner Little-Aye; Commissioner Baumgarn-Aye; Commissioner Johnson-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

Chair Sorg: Next Resolution on the Agenda is **Resolution 16-17-025**: A Resolution Approving the Utility Cooperative Agreement Between the Las Cruces Utilities as the Utility Owner and the New Mexico Department of Transportation for the North Main Street Phase II Project.

I wanted to see this map. I can't imagine what this intersection is going to look like.

Ruiz: Motion?

Chair Sorg: We need a motion

Baumgarn: So moved.

Little: Second.

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

Clark: Chairman, Commissioners. I wanted to show this map because I travel through that area too, and it is going to be months of hectic construction going on there. We have quite a bit of construction in there. There's approximately 800 lineal feet of 12-inch sewer line that's going to be installed. Most of our work is up here near the Spitz area and Three Crosses Avenue, that's the majority of our work with the exception of some water line back up in North Main. About 2,300 lineal feet of 2-inch low pressure gas and 1,100 lineal feet of 4-inch high intermediate pressure gas, and approximately 3,000 lineal feet of water line that we're going to be installing as part of this project.



We're going to get all utilities in there first, I haven't got to see the phasing, the sequencing of this project, it's going to be interesting to keep traffic moving through that area. You are going to get calls, those on the Council, you will get calls in regard to this. I can get you the direct hotline for the NMDOT (New Mexico Department of Transportation) guy, if you need that, because I won't be able to answer those questions.

Chair Sorg: I just meant that this could have been a round-about traffic circle, it's perfect for it.

Clark: I'm sure they explored every avenue there and I even heard at one time they were looking at a fly-over on Main St. but it didn't happen, I was hoping for that but I didn't happen.

Chair Sorg: I think I remember that comment too, but anyway, we'll go ahead and vote on this then.

Called for the roll on the Motion to Approve **Resolution 16-17-025**. Commissioner Johnson-Aye; Commissioner Baumgarn-Aye; Commissioner Little-Aye; Commissioner Pedroza-Aye; and Chair Sorg-Aye.

The motion was Unanimously Approved 5-0.

8. OLD BUSINESS

Chair Sorg: Next item is Old Business.

Dr. Garcia: Mr. Chairman, a couple of items from staff. We will put in your calendar on a tentative basis, hopefully your schedules permit, the August 11th I already talked about Jay coming in on the Administrative Report. However, we may need a short Work Session if I get the next version of the 40-Year Water Plan. I don't know that yet, I haven't received it. If we receive it shortly we'll put it in your calendars to have a Work Session, maybe just an hour starting at 2:00 p.m. for the Work Session for the 40-Year Water Plan next steps. That's one that may be coming and if you see it on the calendar, it's because then we received something to present to you. If not, I'm sure we'll have it for the September meeting.

The rest of what I have is in the New Business.

Ruiz: Can I just do one really quick?

Chair Sorg: Sure.

Dr. Garcia: Yes, you have one.

Ruiz: Of course, we cancelled today's group photo.

Dr. Garcia: The picture, yes go ahead.



Ruiz: Picture of the Commissioners so we're going to try again with our fingers crossed and shoot for August.

Chair Sorg: August.

Ruiz: August 11th. If you do have a Work Session, it'll be 30 minutes prior to that or if you want it after, whatever works.

Dr. Garcia: Either way or in between, you could have a break.

Little: In between

Chair Sorg: Yes.

Ruiz: In between?

Dr. Garcia: Yes, maybe better in between.

Chair Sorg: Commissioner Little.

Little: Would you please include that opportunity in the notice so that we show up with our hair combed?

Ruiz: Thank you, I appreciate that, I will.

Dr. Garcia: Thanks, Alma. That's all for Old Business.

Chair Sorg: Any other Old Business by the Commission?

9. NEW BUSINESS

Chair Sorg: New Business?

Dr. Garcia: Staff has a few items. As you know, the Consumer Confidence Report got posted and mailed to customers. Unfortunately, we have a small typo that we're correcting that someone pointed out, and it will be updated on the web page. We are planning on having a Water Quality or CCR Open House here on August 25th; probably from 5-7 p.m. If the public has questions, because we still continue to get questions and confusion of red water versus lead. "Do we have the same problem as Michigan?" That's not stopping. In fact, Councillor Eakman, the new district Councillor District 4, had a District meeting where he was bombarded by water quality issues in this Tierra Verde subdivision, so I'm assuming those customers would be invited to come here and we can answer questions as to what is Red Water.

We got questions, I think the Manager and I, two Saturdays ago on the fluoride. Some were concerned about the fluoride. It is all over the place, I think we will have



pamphlets and information, and staff, and some water refreshments for people to come and spend time asking questions. That's coming August 25, 2016, we will put it on your calendars if you want to show up, it's up to you. City Council will be informed so they can send information to their districts.

Pedroza: Will it be here, Dr. Garcia?

Dr. Garcia: Yes. I like to do it here because some of the concerns were also on the Tierra Verde down the road, down 292, so it's going to be closer to the area that has recently had some issues or complaints.

Remember, you just voted on the rate process, so I need to schedule a training. Commissioner Pedroza asked for training, we need a refresher on the methodologies and all of that, unfortunately we cannot do it this summer. I already met with Dr. Gegax and he'll bring also Dr. Blank, they can do it in their schedule on two dates in October, so we will be booking your calendar for October 21, 2016, which is a Friday. The following Friday, in case you all want another half day or so, it will be on your calendars for a day and a half. That's tentatively set up with Dr. Gegax and Dr. Blank to go over all of the different methodologies. You'll recall the cash basis, utility basis etc.

The timing doesn't work very well with the RFP so when we bring you the RFP, we'll make sure we have enough flexibility to tell the consultant later, "We'd rather explore this way or this other way." I don't want to bind ourselves from saying we're going to do a utility basis, and then after your training you decide you like better to set up just a cash basis because that meets the criteria that we adopted better. We'll have to figure that out, I was hoping to do this training this summer but they are not available.

Little: You said October 26th?

Dr. Garcia: 21st and 28th. It will be on your calendar; Alma will send it very quickly saying reserve the date for this training. Commissioner Little sent us a reminder of the Water Conference, that's the week of the 5th of October. Alma will send that out to everybody else, and if you are planning on attending the conference in Silver City at the Water Resource Research Institute, please let us know in advance, as you know we pay for your attendance and expenditures for the conference. That's coming out also as New Business.

That's all we have from staff.

Little: Question.

Chair Sorg: Yes, Commissioner Little.

Little: The training, will the non-RAC [UCAG] be on board by then?



Dr. Garcia: Yes, I'm hoping that they'll be and they'll be invited. Staff will be invited, the UCAG (the non-RAC) will be invited. That's a very quick appointment. Marcy does a Resolution, we will advertise and some of the older members want to participate from what I understand, so we will be working on that and we should have people on board hopefully for that training towards the end of October or so. Because they have to be invited to hear the same things you're hearing and staff will be there as well. If you recall, with this process, we can all talk openly about everything. There's no issue of quasi-judicial that we shouldn't be discussing with the numbers because they'll be using some real numbers to do the training, there's nothing wrong with this new process to use real numbers to do the training. Before, an issue was brought up, if you recall, using the real numbers that were filled in the training. There were allegations that we were skewing the Board to act a certain way, because the numbers were real numbers that were part of filing. That's no longer a problem under this new system, we can now talk openly about anything at any time.

Thanks for that question.

11. BOARD GENERAL DISCUSSION

Chair Sorg: Any other discussion by the Commission? I have one last thing to ask staff about and that is easements.

Dr. Garcia: Carl, we have an answer for you, sir.

Chair Sorg: Good. The question is, can we make easements be universal for all utilities, or do they have to be for single utilities such as water or natural gas or wastewater lines, so on and so forth?

Clark: Chairman, this question came about with one of my staff members from my Operations Engineers. She had answered, Mr. Curry had a question, in regard to that new developing subdivision just behind the Cattlemen's Steakhouse on Highway 70. He wanted to put sewer in place, and he was looking for options because there's a private property owner to the north of him, Mr. Binns, who we've had to negotiate with. We currently have a waterline easement, which will be future Rinconada Roadway, we have a 60 ft. specific waterline easement and that was given to us by Mr. Binns. He was very sharp when he wrote that, that's what he intended for and that was it. The policy now is, we always try and ask for a utility easement for our water, sewer, gas. That's in the negotiation process, I believe, when we're looking at subdivisions. It may or may not happen, but that's what staff is supposed to be doing, so I'm sure Mr. Binns intended this to be a water line easement from day one.

Chair Sorg: So in other words, you can allow wastewater line to go on a water easement?

Clark: You cannot allow a wastewater line to go in a specific waterline easement, without going back to that person who gave us that easement, and in this case he probably has already approached Mr. Binns.



Chair Sorg: Yes, he has, I know for a fact.

Clark: And he has been given the answer.

Dr. Garcia: If I may, Mr. Chairman, to answer your question specifically. Prospectively, yes, and that's what we're trying to do because otherwise you go back and you never know if you're going to need to put the sewer or the gas later on, even though the project may entail only water. That's a negotiation process in this particular case, that easement is specific for water, so only the developer has to go to the property owner if he wants to go in that alignment or find another alignment. Retroactively is harder, you have to go to the owner of the land, because the purpose of an easement is very specific unless we say utility for Las Cruces Utilities and we'll argue we can put all three of our lines.

Chair Sorg: Yes, very good.

Dr. Garcia: To answer the second part of your question. We're still negotiating with Mr. Binns.

Chair Sorg: We don't have the interceptor now.

Dr. Garcia: We have an interceptor; we need to upgrade. That's something that we are evaluating our legal options. You are asking about the Sandhill Interceptor?

Chair Sorg: Yes.

Dr. Garcia: We're still dealing with him on the additional easement to put the higher capacity that parallels the interceptor, because we need to put additional capacity and that's a project that's been going on for some time. We're discussing our legal options to go in there, because there's only so much negotiations you can do. The utility needs to put the sewer line in that Arroyo.

Chair Sorg: It's 10-inch now and you want to put what in there?

Dr. Garcia: What is it, Carl.

Clark: I think it's a 15-inch that we're going...

Chair Sorg: He has is down as 10-inch.

Dr. Garcia: The future one is 15-inch.

Clark: Right.

Chair Sorg: Very good. Thank you for that information, that was really good. If there's no further business.



Dr. Garcia: Not from staff Mr. Chairman.

12. ADJOURNMENT

Chair Sorg: Then I'll accept a motion to adjourn.

Little: So Moved.

Pedroza: Second.

Chair Sorg: Moved by Commissioner Little, Seconded by Commissioner Pedroza. All those in favor say aye. Meeting is adjourned.

The motion to adjourn was Unanimous 5-0.

Meeting adjourned at approximately 4:39 p.m.



Gill Sorg
Las Cruces Utilities Board Chair



Date

