

Las Cruces Utilities Board of Commissioners

Minutes for the Meeting on
Thursday, August 11, 2016
3:00 p.m.
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:

David Weir, Community
Development Director
Jorge Garcia, Utilities Director

Others:

Kurt Anderson, DAMDWCA
James Brockmann, Stein &
Brockmann
Suzanne Michaels, Public Outreach
Consultant
Jay Stein, Stein & Brockmann

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
Klaus Kemmer, Solid Waste Administrator
Robin Lawrence, Gas Locating and Mapping Supervisor
Fernando Ortiz, Water Rights Engineer Tech
Viola Perea, Utilities Internal Auditor
Jose Provencio, Administrative Services Administrator
Mario Puentes, Gas Business Analyst
Carolynn Rouse, Office Assistant Senior
Alma Ruiz, Office Manager Senior
Dania Soto, Office Assistant Senior
Adrienne Widmer, Water Resources Administrator

Chair Sorg called the regular meeting to order at approximately 2:58 p.m.

1. CONFLICT OF INTEREST

Chair Sorg: First item on the Agenda is the Conflict of Interest. Is there anyone on the Commission or Staff that has a known conflict of interest in any of the items on the Agenda?

There were none.

Chair Sorg: Before we go on, I want to point out that substituting for Loretta Reyes is David Weir, our Community Development Director, who is also substituting for our Interim City Manager, Daniel Avila. Welcome.

Weir: Thank you.

2. ACCEPTANCE OF AGENDA

Chair Sorg: Next is Acceptance of the Agenda.



Ericson: So moved.

Little: Second.

Chair Sorg: Moved by Commissioner Ericson, Seconded by Commissioner Little. I'll take a vote.

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

The Agenda was Unanimously Approved 7-0.

3. ACCEPTANCE OF MINUTES

a. Regular Meeting of July 14, 2016.

Minutes approved on consent.

4. PUBLIC PARTICIPATION

Chair Sorg: That leaves us with Public Participation. Any member of the public can speak for up to three minutes, maybe more, five if you really have something to say. If there is any member of the public with participation, you can come to the podium.

Seeing none, we'll move on to the Administrative Report, Dr. Garcia.

5. ADMINISTRATIVE REPORT

Dr. Garcia: We're going to start with Customer Service, Mr. Provencio.

Provencio: Good afternoon, Chairman, Commissioners. I'll brief you on activity in the Customer Service area. In preparation for the Mesa Development transfer, we'll have Customer Service Staff both at the August 18th and August 23rd meetings in announcements that Mesa Development put out. Our Customer Service Staff will be there to facilitate the application process here for our water system.

The next item here, in the past years, it's been shown to you that this is the busiest time for Customer Service, as the new school year begins. This past Monday, on the first of the month, Customer Service processed an all-time high of 197 applications, 157 of those were walk-ins. They were extremely busy that day, and I want to call them out and congratulate their effort to continue the process in terms of getting customers signed up.

Chair Sorg: Mr. Provencio, I agree. Going back to the Mesa Development Center, I got the PIO (Public Information Office) notice for that. It was all in English, and I was told you're going to have it in Spanish too. How are you going to publicize that?



Provencio: That's the internal release. What's going to go to the papers will be both in English and in Spanish, Mr. Chairman. When it goes to the papers, it will have both Spanish and English.

Chair Sorg: Okay, good. So it will be in the papers, then.

Provencio: Yes, that is correct.

Chair Sorg: Is it possible I can get a Spanish version of that to send out to those people that I have? Thank you very much.

Provencio: Okay. You're welcome.

Seeing no further questions on the Customer Service side, I'll walk you through the summary and presentation of the 4th Quarter Financial results.

Overall, when you look at the entire Utility performance, there were significant changes, both on the good side. On the Gas side, the biggest mover and the biggest driver there would be the decrease in revenues and expenditures, but this is mainly driven by the cost of gas. The cost of gas, compared to last year, has been on a decline and the performance between the 2015 and 2016 fiscal years (FY15 and FY16) reflects that eventuality.

On the Water and Wastewater side, some increases in both revenues and in some of the expenses. I'll get into the details as we go into the Utility by Utility comparison.

On Solid Waste, we see some good performance in terms of revenues as well as good management of expenses. Again, I'll cover some of the details that are driving the specifics between each one of the Utilities.

On the Gas side, if you compare the performance to what our projections were for the budget, we're well within the goals and the sights that we had for Gas Operations. Expenses were lower, as well as were revenues, again driven primarily by the lower costs of gas. We do expect that to kind of level off, as some of the markets are starting to stabilize and the price is starting to stabilize.

On the Water side, it looks like we're ahead on the revenue calculations and projections. The revenue side is driven primarily by two factors: one, this includes all the rate rider revenue that we're collecting from our Water customers; and a 2% increase in production over FY15. We're starting to see production start to go back up again. That's the main driver on the revenue side. On the expenses, projections were well within what we expected on the expense side due to expense management.

Moving next to the Wastewater Utility, a quick check on the performance and projections from the budget was presented, and is well within the budget projections. Some of the revenues reflect some of the increases in the Water side as well as good



maintenance and good practices in terms of expense management. No surprises were encountered here on the Wastewater side.

On the Solid Waste Operations, they are ahead slightly in terms of revenue from what we projected about a year ago. It's just that they're showing the full impact of the rate increase that happened about a year ago. On the expense side, it's below the projections, partially driven with lower expenses for their big trucks now that Klaus has newer vehicles on the road that require less maintenance.

On the Shared Services side, as we close out the fiscal year, we were well within the budget projections. Any differences would be attributable to the churn between vacancies and when those vacancies are filled.

With that, I'll conclude the presentation of financial performance for the 4th Quarter and stand by for any questions you may have.

Chair Sorg: Commissioner Little.

Little: Two questions. Now that it's past the end of the fiscal year, when are these books audited?

Provencio: Chairman, Commissioner, the actual auditing has begun now. That's with the Financial Department, which is starting the review for this past fiscal year. It will progress for the next two to three months, until the books are closed pending the final audit.

Little: So audited numbers are available in three months or roughly something like that?

Dr. Garcia: Mr. Chairman, by the time it's submitted and submitted to the City Council, and you have the exit conference, it's going to be probably November or December by the time we see what we can call posted, audited numbers.

Little: Thank you.

Dr. Garcia: The auditors are already here, like Mr. Provencio said, and they are starting the process, but it takes a while to get the final approval, posting, and disclosure to the City Council on what the final audit looks like.

I believe he had another question.

Little: I do.

Chair Sorg: Go ahead.

Little: But it was answered.



Provencio: Thank you.

Dr. Garcia: Time for our guests now.

Mr. Chairman, last month Ms. Driggers informed you and gave you some pointers on what has happened with the draft report from the Special Master in the Texas v. New Mexico and Colorado. Mr. Stein and his partner are here today; in fact, they had a teleconference with the group and the Special Master, and I had the privilege to sit in for a while and learned a little bit about the case. Mr. Stein has prepared a summary, and I suggest you let him go through the summary and then he will answer questions, and he can update you on what developments have happened today. It was a brief conference, but he can give you up-to-date information.

Chair Sorg: Okay. Welcome, Mr. Stein.

Stein: Good afternoon, Commissioners. As Jorge has said, today we'll be addressing developments in the Original Action in the U.S. Supreme Court, Texas v. New Mexico and Colorado. I'll be going over the recent development of the Special Master's First Interim Report, and the issues that he decided in that, and the path forward. Jim will be addressing the issues that were discussed in the telephonic hearing that he, Jorge and I attended earlier this afternoon; and also going over perhaps in greater depth some of the comments that were filed to the Special Master's Report by the parties.

This is a case, as you probably know, that was filed by the State of Texas. The complaint was sought to be filed actually in December of 2013. It was not accepted by the Supreme Court until 2014, in which Texas brought a lawsuit against the State of New Mexico and the State of Colorado with respect to issues on the Lower Rio Grande that I'll get into. The United States was allowed to intervene, with respect to federal interests and issues which I'll discuss, and several amici have entered appearances and participated. An amicus is not a party to a case, they are a "friend of the Court" and they appear in a sort of permissive way with respect to issues that are of particular significance to them. The City of Las Cruces is an amicus, and we are granted amicus status by virtue of a Supreme Court Rule 37.4, that grants amicus status to cities and incorporated municipalities of the United States. Other amici include City of El Paso, EBID (Elephant Butte Irrigation District), El Paso Number One (EP No. 1) and Hudspeth County.

These are two maps that I put together just to give you sort of a basic idea of how the system works. The case involves the Rio Grande Compact. The Rio Grande Compact was an instrument that was signed in 1938, and divides or portions the water of the Rio Grande among three States: Colorado, New Mexico and Texas. If you look at the map on the right, the Rio Grande rises in the San Luis Valley of Colorado. There is a point there you can see on the far right: Lobatos, Colorado. The town of Lobatos on the right is the delivery point in the State of Colorado. There's a gauge there, and Colorado is required to deliver an amount of water that is a percentage or a fraction



of what is measured as inflow at Lobatos. They are required to deliver that at the State line.

New Mexico's delivery obligation is measured at Otowi, and that's a little bit to the left of Santa Fe. It's where our gauging station is located, and that's the point at which New Mexico's delivery obligation is measured. We're required to deliver a portion of the water that is recorded as inflow at Otowi, and we're required to deliver that into the Elephant Butte Reservoir.

On the map on the left, which is even more indistinct. The case does not involve the Middle Rio Grande. It really involves that part of the State which begins with Elephant Butte Reservoir and goes down to the State line. It involves allegations that Texas has not been receiving the amount of water that it is entitled to receive under the compact after it has been released from Elephant Butte Reservoir. There are other claims that the United States is making that involve groundwater usage and ownership, which I'll describe.

The case is in the United States Supreme Court, and that's because a case is automatically in the United States Supreme Court when one State sues another. The Court in Washington does not sit as a trial court, so they appoint a Jurist or a Judge or a distinguished legal figure to appear as a Special Master, to take evidence for them. In this case, they appointed an attorney in New Orleans, Gregory Grimsal. He's a commercial lawyer, a banking lawyer. He decides motions, he takes evidence, and then makes a full report to the Court.

There are two basic issues. What Texas is claiming is that the Rio Grande Compact was signed in 1938, and that requires deliveries into the reservoir that I've shown you based on the amount of water that's recorded as inflow at Otowi, but that the release that New Mexico has been making has been compromised because New Mexico has authorized a great deal of pumping, a great deal of wells in the reach below the reservoir, and those have the effect of depleting or taking out of the river water that otherwise would have reached Texas. They're claiming that post-1938 depletions of the Rio Grande are violations of the Rio Grande Compact below Elephant Butte Reservoir. The United States, for its part, was granted intervention status and it is claiming that the groundwater in the aquifers below Elephant Butte Reservoir is project supply; that it has been reserved to supply EBID and its irrigators; and is not public water of the State of New Mexico; and therefore what is required to use that water are contracts with the Department of the Interior, not permits with the State of New Mexico.

The case was accepted by the Court in 2014; the State of New Mexico filed a Motion to Dismiss. The City of Las Cruces participated in that motion; as an amicus curiae we were entitled to file a brief supporting the State and we did so. The matter pended for about two years, oral argument was held in New Orleans before the Special Master last August, we participated in that. The Special Master's report was issued on June 28th. In that report, he denied the State of New Mexico's Motion to Dismiss and said the case should go forward, and I will explain that.



There were two other motions. EBID had made a motion to intervene as a separate party, claiming that it was not represented by the State of New Mexico. In Original Actions, all of the citizens of a State are typically deemed to be represented by their State, unless they can show some compelling interest or some compelling reason why the State does not represent them. EBID attempted to do that and was denied; the same is true of EP No. 1, the Master finding that their interest was represented by their State, Texas. The City of Las Cruces has not attempted to intervene separately. We did file a motion, as I say, trying to support the State of New Mexico in its Motion to Dismiss, essentially arguing that the key issues were being decided in the State Adjudication in the District Court here in Las Cruces.

The Special Master's Report, which you've been given copies of, is very long. It's about 240 pages. The first 161 pages are facts that he's taken from his own researches, that were not presented by the parties in any formal legal or evidentiary proceeding, but instead were simply developed or discovered by him doing his own research in books such as Doug Littlefield's book on the Rio Grande, as well as other library work. That's most unusual, because in addressing a Motion to Dismiss, the federal rules require that the Judge limit himself or herself only to the facts that had been pled in a complaint.

He held that New Mexico loses control and dominion of Rio Grande Compact water that's delivered into Elephant Butte Reservoir. It's not completely clear what he means by that. It may have important questions with respect to who has administrative authority over that water after it's released from the reservoir. His holding as it stands now is that New Mexico loses control and dominion of the surface water once it is stored in Elephant Butte Reservoir. He also held that the Rio Grande Compact extends beyond Elephant Butte Reservoir to the State line. Article IV of the Rio Grande Compact actually requires New Mexico's deliveries go only as far as the reservoir, and that below the reservoir, the division of the water is made by contracts with the Bureau of Reclamation, which divide the water between EBID and EP No. 1.

Chair Sorg: When you say extends beyond, you mean beyond going north?

Stein: It goes south. He held that New Mexico's obligation does not end at the reservoir under the compact, but instead, goes all the way down to the Texas State line.

Chair Sorg: Oh, okay.

Stein: New Mexico's position had been, which Las Cruces supported, that our obligation ends at the reservoir; and that below the reservoir, the division is based on contracts with the Bureau of Reclamation, so a District Court suit might be appropriate but an Original Action in the U.S. Supreme Court is not. He did not buy that argument. That raises questions as to the status and the role of the State in administering the surface water, and potentially the hydrologically connected groundwater below Elephant Butte Reservoir.



In an interesting part of the report concerning the United States, he concluded that the United States, that their claims that the groundwater storage below the reservoir was project supply that they regulate. He concluded that that was not a compact issue but nevertheless, the United States should be allowed to continue and to participate with those claims in the case and that the Court should exercise its discretion to allow that to happen, even though they have not stated a compact claim, which may be as far as the Supreme Court's jurisdiction goes, only as far as Texas's compact claims. It may not go as far as what he's trying to allow the United States to plead with respect to the groundwater.

With respect to the two amici, he found that EBID and EP No. 1 had no interest in the case apart from that of their respective States, but they could participate actively as amici. Essentially, he found that the real parties and interests in those Irrigation Districts were the actual irrigators, and that they were fully represented by their States of New Mexico and Texas.

Las Cruces is seeking to participate fully as an amicus, and we're doing so on two grounds. The first is rule 37.4 of the Supreme Court Rules, and that grants incorporated municipalities of the United States the right to appear as an amicus in Supreme Court proceedings. The second, of course, is that the City has an actual and direct interest that arises from the fact that we use water. The City beneficially uses some 20,000 acre feet of water for municipal supply, and has the rights to some 45,000 - 50,000 acre feet in reserve for municipal supply. One key point that we made, and we made in the conference call an hour ago, was that the City of Las Cruces has to be given the same rights to appear as an amicus as EBID or EP No. 1.

I should say that an amicus does not have the right to participate on the same basis as a party. A party to a case can make motions, introduce evidence, and call witnesses; can do all of the things that a litigant can do in a lawsuit. An amicus's role is less than that. They can file briefs, they might be able to do some questioning or do something on the evidentiary side, but that's going to be in a limited way and that's going to be up to the discretion of the trial Judge or the Special Master.

The Special Master requested comments on his report.

Chair Sorg: Can you answer a question? Commissioner Pedroza.

Pedroza: I have two questions. Is the Supreme Court bound by his recommendation?

Stein: Not at all. The Supreme Court is not, the parties can take exceptions and the matter will then be briefed and heard by the full Court in Washington.

Pedroza: Okay. I forgot my other question, I'll think about it. Thank you.

Chair Sorg: Any other question? Commissioner Ericson.



- Ericson: Mr. Stein, that was kind of where I had a question as well, because in a typical District Court case, if one of the parties believes there's an error in fact or law of the District Court Judge, whether it's State or Federal District Court, they have an appeals process. The same thing exists with the Special Master? There's an appellate process to the Supreme Court if we or one of the other parties, the State of New Mexico, Colorado or Texas, thinks that he's made an error of fact or law?
- Stein: There's an appellate process, but since you're in the highest court of the land, your appellate process remains within the Supreme Court. The Special Master will file a report with the Court, a Final Report, and then the Court will issue an order allowing the parties that think that they're aggrieved to file exceptions. Then there will be briefs and oral argument on those exceptions. The City, as an amicus, can file an amicus brief with its State, that would be New Mexico, if New Mexico chooses to file exceptions. We can't file exceptions on our own.
- Ericson: I understand that, yes.
- Stein: We can't participate in oral argument, but we can support the State of New Mexico if it files exceptions, and those would then be heard before the full court in Washington.
- Ericson: Thank you.
- Stein: Our comments were filed on August 1st together with the others. We've made a number of points going to the status of State Administration below Elephant Butte Reservoir, which we now feel have questions associated with it. We raised questions as to his use of 161 pages of facts that were researched by him, and introduced into the record without having been offered by any party. We made very clear that fact that as an amicus, we wanted to be treated on the same basis as EP No. 1 or EBID.
- Pedroza: But if they've already been denied the right to intervene, are we putting ourselves in the same position as they are, when they've already been denied, or is that still not really a real denial of their right to intervene?
- Stein: The City has not filed a motion to intervene. That's an idea that we're still playing with, but no decision has been made to intervene, and no request has been made from the attorneys to City Council or to Utilities that we should intervene.
- Pedroza: The two that were in his preliminary draft, EBID and EP No. 1, were both denied but that isn't final, is that right?
- Stein: They were denied in his preliminary draft report. Are you saying, could he change his mind by the final?
- Pedroza: Yes.



- Stein: Conceivably. It does not appear that he will. He made it very clear that he thinks EBID has no interest at all.
- Pedroza: But we're not saying that if we choose to intervene, that we're going to be in that exact same position that they are already, where they've been denied the right?
- Stein: Well, we actually have an interest, because we use water. We supply water to 105,000 customers in the City of Las Cruces. EBID does not use water, they are a Board that manages releases for the irrigators who use water. We have an interest that they are not able to establish, but we have not asked to intervene, and it would be something we might consider in the future.
- Pedroza: Okay, thank you.
- Stein: I've been summarizing the path forward. We had the telephonic hearing today, the Special Master says he will expeditiously enter his Final First Report. Aggrieved parties can then take exceptions before the Court in Washington. If New Mexico does so, we will file an amicus brief. There could be oral argument, and then whatever further proceedings will happen as the Court directs.
- Chair Sorg: I've got another question. I don't see Colorado in here, are they not interested in this case at all?
- Stein: That's a good question. They were joined because the compact has three parties, and they are one of them, but they don't have any direct interest in what's occurring in the Lower Rio Grande exactly. They were asked about that in the conference this afternoon, and Jim will be describing that in greater detail.
- Chair Sorg: This Final First Report, you say he's going to file it pretty soon. How soon is soon?
- Stein: Well, it took him two years to do this one, so what he told us was soon.
- Chair Sorg: Okay.
- Stein: He received a lot of comments. All of the major parties filed comments, the amici did, we did and EBID did.
- Chair Sorg: Okay, Commissioner Carmichael.
- Carmichael: Could you explain what a final First Report is versus a final second, third or fourth? Is that something that he would be redirected to do through the Supreme Court?
- Stein: It's called a First Report because it addressed the first series of issues; and they were New Mexico's motion to dismiss, EBID's motion to intervene, and EP No. 1's motion to intervene. Those were the first tier of issues on his plate, so he put them all together in his First Report to the Court. If there is a remand back down to him, and there are



additional motions and issues, they will then automatically fall into the second report and they're numbered chronologically from there.

Carmichael: Thank you.

Ericson: If an issue like one of the issues he's ruled on in his 161 pages of facts, if you don't file an exception to that after the First Report is filed, are you pre-empted from filing an exception later on? If you don't challenge that after his Final First Report goes through?

Stein: That's a good question. It depends on the wording of the Court's Order once it has received the Final Report and decided how it wants to handle it. You would look carefully at the wording of that order. It may say, "Parties wishing to take exception to this Order must file exceptions within 90 days." That would then limit any party to that 90-day period and they would then waive rights to file later. It may be broader than that, it may say, "We are remanding for further findings in the following areas and reserving the parties' ability to file exceptions to this Report until the proceedings on remanded are resolved." It depends on how the Court wishes to handle it.

Pedroza: Mr. Chairman.

Chair Sorg: Commissioner Pedroza.

Pedroza: Thank you. Where the third bullet says aggrieved parties, is that actually the formal parties?

Stein: That means the formal parties. That means the United States, Colorado, New Mexico or Texas. It does not mean Las Cruces.

Pedroza: Right, because we're not a party?

Stein: We're an amicus. It does not mean the amici.

Pedroza: Okay.

Chair Sorg: We'll continue.

Stein: That's all from me. I'll have Jim talk about the conference call and some of the comments.

Brockmann: Good afternoon. I do want to make sure a couple things are clear from the questions and then I'll move into my areas. What was issued, essentially this entire notebook, was his draft report. I know you've got copies of it, but it's a total of almost 250 pages plus appendices, almost 40 appendices so it's a huge report and probably over half of that is his own research, which was what Jay described as the unusual part of it. What's typical with these Original Actions and this is what the Special Master did, he



actually issued a draft report. This is not the final report that he's going to send to the Court, so I just want to make sure that's clear. The first thing that he did is he said, "I'm going to do a draft, I'm going to give all of the parties an opportunity to comment." That's what came in on August 1st was the comments from the various parties saying, "Before you send this to the Court, here's comments that we believe should be addressed, things you should revise before you send it to the Court." Some of the comments are what I'll be addressing. He's got those comments now, and he will decide whether to revise it based on the comments or say, "Okay, I think I've already covered those matters and I'm just going to send it in essentially the same form to the Court." Then the exceptions will come in next, so we're not really at the point where the parties can file exceptions. We can file comments on a draft report.

The other procedural point that I want to make clear, and I think it is, but just to make sure, so that you've got the three States and the United States that are the parties. They are the actual litigants as Jay described. Las Cruces is just a step below that in that amicus status automatically, because of the rule. Basically, EBID and EP No. 1 tried to move above amicus status up to full party status, and the Special Master here recommended denying that to the court, and said that you can move up to Las Cruces' level and be an amicus. If the Court accepts his recommendation, in our opinion, they would have the same amicus status that the City already has. We did ask for clarification in our comments that we would all be on that same footing at that point, so I just want to make sure that's clear.

A couple of things to fill in, then, after what Mr. Stein described. In the comments that came in to the Court, as you can imagine, New Mexico and Las Cruces and, to our surprise, Colorado were more critical of the draft report; saying that the Special Master really went beyond the bounds of where he should have gone judicially by including a lot of extraneous evidence, doing his own research, and coming to some conclusions about the compact that weren't necessary to decide these very preliminary legal motions. Our comments were focused on that, the State of New Mexico's were, and Colorado's. As Mr. Stein described, Colorado is a little bit more independent because while they are a party, they don't have claims directly against them because they don't have water that's divided or used in the Lower Rio Grande below Elephant Butte, but they felt very strongly that the Master had sort of gone too far in going to the extraneous evidence and starting to go through some of the substance of the issues. Yes, sir?

Ericson: Since he's making a ruling on the issues on the compact, are there any other western States that are parties to separate compacts that may have an interest in how this proceeds, just on a procedural ground?

Brockmann: That is very possible and actually, it's an issue that Colorado raised. What Colorado said in its preliminary set of comments was, "We're concerned because we're parties to other compacts." A lot of parties look to a Master's report for guidance on not only how to view this compact, but maybe how to...



Ericson: I was thinking that if I was Wyoming, Utah or Colorado, I would be really concerned that Arizona or California are going to use this to beat more water out of them. Or even Arizona use to beat California.

Brockmann: What we don't know at this point is, this Special Master can go two ways. He can look at some of these comments and say, "You know what? I agree, I'm going to cut the size of my report in half and take a lot of the extraneous evidence out before I send it to the Court." He could do that, which would change the official document that the Court has on file. If he doesn't, and sends it in substantially the same form, it's a little bit harder to predict, but maybe New Mexico or Colorado might ask for other amici participation from other States saying, "We'd like you to participate to some extent because we don't want this precedent in how you decide Original Actions on these matters in the future." That is a possibility, just to address that point.

The comments that the City filed have a lot to do with the extraneous evidence. We did ask for the clarification of our participation as amicus on the same level as any Irrigation Districts and we're granted that by rule so I would think that that should be a fairly easy one for him to address. As Mr. Stein indicated also, to make sure that he addressed some particular cases, like a case called Hinderlider, to make sure we sent questions of administration in each of these bases that are critical. Texas basically said, "Great job, Special Master, we've got very little to say. You misspelled two words in 150 pages, so congratulations."

EBID and the El Paso districts were also critical but of some different areas, as you can imagine, because the Special Master's recommendation is to deny their intervention. If you've had an opportunity to read this draft report, you'll see that he was somewhat critical or he questioned their actual role in the administration, indicating that in his view a lot of this was going to be the water was divided between the two districts by the Federal Government; and the Federal Government would be responsible for that allocation, for administering a lot of the water supplies, and was going to take care of a lot of this. I think EBID in particular pushed back on some of this saying, "Wait a minute, you haven't understood our position. We do represent surface water users." The Special Master, I think, indicated, Jay had the actual comment but I think he indicated that they had very little interest actually in the river since the irrigators were the actual beneficial users of the water. There was some pushback from EBID on those kinds of issues.

Those were sort of the primary comments of the parties. I think the United States sort of did what Texas did, a little bit of clean-up of some of the language, but they weren't very strong in terms of major changes to the report. Now, as Mr. Stein indicated, we will wait one, two, three months, who knows what that time frame is to see what changes he makes. Then that report will be filed.

We did hold a telephonic status conference with the Special Master and all of the parties just before this meeting began. Essentially, the Special Master, in his mind, wanted to tee up the rest of the case to go towards trial if the Court accepts his



recommendation and does not dismiss the case in its entirety. He had suggested that he came into the call expecting that New Mexico would file an answer to the complaint, and the parties would negotiate a Case Management Order which is sort of a document that guides the proceedings; who's going to do what, and in what time frames. I think he thought both of those were just going to be a fairly routine matter, but New Mexico basically objected to the procedure right off the bat saying, "There's no need for us to file an answer until we have a decision from the United States Supreme Court." Whether he might not agree with the Special Master and dismiss the entire case, or dismiss some claims and let other ones go forward, so in New Mexico's view it was premature to file an answer until we have a final ruling from the Court. Colorado joined basically in New Mexico's position. The Master, I think, going in had sort of expected that this was going to be a routine thing. He wasn't expecting New Mexico to object to that, so he just took that matter under advisement. He also indicated that, in his mind, an answer to the complaint would have to be filed before a Case Management Plan came next that's sort of the order of things. At the end of the day, he just wanted to take the matter under advisement and I guess he'll issue another order asking for another conference in another month or so, or he would just issue an order directing the parties on how to proceed. At this point, even if he doesn't answer our Case Management Plan, it was fairly clear on the conference that he expects those matters would sit on the shelf until we got an actual ruling from the Supreme Court. Procedurally, that's sort of the status of the case as of today.

Pedroza: I didn't understand the last couple of statements that you made.

Brockmann: In terms of the Case Management Plan?

Pedroza: What he expected and what he did not get, and so what happens next?

Brockmann: Basically, when it's an Original Action, State vs. State, unlike in District Court where a party will just go in and file their complaint, even in the Supreme Court you're not automatic. Even if it's a State vs. State, you can't just go in and file a complaint. You actually have to file a motion for leave to file a complaint. It's a motion to file a complaint, and the Court will look at it and decide whether or not it's serious enough, whether it's substantial enough to allow a party to proceed. At this point, a complaint hasn't even officially been lodged. I think most people are familiar in litigation with a complaint; a defendant would file an answer, or possibly counterclaims, cross-claims, for other defenses. So at this point, we only have a recommendation to accept the complaint for filing. That's as far as we've really got. What the Master is thinking is, "If the Court accepts my recommendation, I want to be ready to proceed with the full lawsuit, so I want to do as much as I can today to get this all teed up and ready to go, and if the Court accepts my recommendation, boom! We're ready to go, and we can hit the ground running. If it doesn't, we won't waste much time or effort with this and the case will be over."

Pedroza: I'm thinking of the November election. What chance is there that nothing will happen before the election?



- Brockmann:** In my view, and if Mr. Stein has a different view, he can express that too. In my view, the election won't have a lot to do with this because it's a Judicial proceeding that's run by the U.S. Supreme Court and it's State vs. State so I personally don't think the political season that we're in and the elections in November will have a lot to do with it. The only potential, because the State parties will pretty much remain the same: Texas, New Mexico, Colorado; the only potential change really comes on the United States side, because with a new President and a new Administration, there is potential for turnover in the Department of the Interior and the Departments of Justice, but mostly these cases tend to be handled by more career attorneys and individuals. I don't expect a huge change in positions then, but if you would respond differently, Jay, I don't know if you have any other thoughts?
- Stein:** It would be really interesting to see what Mr. Trump would do with this. That would be a wild card.
- Chair Sorg:** My question is, if a ninth Judge is not confirmed for the Court and you're at eight Judges, how would that affect the case if it came to that?
- Brockmann:** My best guess today would be that we will have a ninth Judge by the time this gets there, because being in the middle of August right now, and at the rate that this Master has proceeded in the past, it's going to be a while probably before we actually see his report go to the Court, and then the Court typically does not act immediately. Their next term will start in October, and if they have a report from this Master by then, then they would have to set it for oral argument and briefing. Their term runs from October through the end of June, so we would hope to get within that cycle before they take a summer recess. I would guess that by the time this matter was briefed and argued, we would be well into next year. I think my estimate had been maybe a year to two years to get this through, and I think Jay's was about a year and one-half, so we're close to the same time frame that we're thinking.
- Chair Sorg:** Okay, thank you very much. Another question? Commissioner Carmichael.
- Carmichael:** Could you just briefly discuss the issue of this First Report becoming a Summary Judgment?
- Brockmann:** It's an argument that we made, and I think it will be more fully briefed on exceptions. Keep in mind, and maybe I wasn't as explicit as I could have been. When the Special Master did this draft report, what he said was, "Please don't give me all your substantive comments. Instead, limit these to misstatements of fact, misstatements of law, or clerical errors that we've made." Each party had to make a judgement call about how much they were going to put in this first set of comments, realizing there might be more that they wanted to address on the full exceptions. The issue that we raised for the City of Las Cruces was that once a party goes outside of the pleadings, and this gets deeper into the weeds on the legal stuff, but the motion sort of transitions



or converts from what is a Motion to Dismiss based upon the pleadings into a Motion for Summary Judgement, because you've gone outside of the pleadings.

Carmichael: Okay, but it's just on those issues at hand in this First Report?

Brockmann: Yes, and it really points out the procedural difficulty that was created for the parties. It was also an issue that Colorado raised because typically, in a Motion to Dismiss, New Mexico takes a particular position and then Texas might dispute it, and it might include some appendices or affidavits that New Mexico can then respond to. In this case, rather than this new evidence coming in from one of the parties, essentially after each of the parties have a chance to brief it, then a Judge comes in or a Special Master with all of this new evidence. That was a real complaint that New Mexico, Colorado and Las Cruces made in this first draft comments, is when it comes in at that judicial level, the parties didn't present it, we didn't have a chance to examine, cross-examine or brief it; and all of a sudden the Master comes in with this extraneous evidence that none of the parties knows where he got or how he got it; it's subject to all of the evidentiary rulings and so what we pointed out is that in a normal procedural sense, that would be converted into a Motion for Summary Judgement, but that's awkward here because none of the parties could respond to the evidence.

Carmichael: Thank you.

Chair Sorg: Any other questions? Commissioner Little.

Little: First of all, who represents the U.S.? Is it the Department of Justice?

Brockmann: Yes, the United States, obviously it's a complex system. They have certain lawyers that work for the Solicitor's Office that does their Supreme Court work and will argue at that level. The Department of Justice typically does their litigation with a different set of attorneys, and then they also have a third set of attorneys that work for the Department of the Interior that do the day-to-day legal work. The Solicitor's Office officially represents them in the United States Supreme Court; they will make the arguments and sign the briefs.

Little: So they are participating now, or is it the Department of Interior lawyers?

Brockmann: They are all involved. When you start negotiations, it might be the Department of Interior lawyers that are out of Salt Lake City or Albuquerque. They are more on the ground and do the day-to-day work for the departments. Once it becomes litigation, they kick it to the Department of Justice, but the Justice attorneys typically still work with their departmental attorneys and then once it goes to the Supreme Court, they have a special division that will argue those cases and theoretically they are all three communicating.

Little: Thank you. One more, Chair?



Chair Sorg: Go ahead.

Little: I'm trying to craft the question carefully. Are there any publicly known, disclosed, acknowledged conversations about settlement?

Brockmann: I don't think it's confidential, but the parties have talked. The City is not at the table on those, but people know that the parties have talked. They have been talking and as far as we know, they continue to talk.

Little: Has it gone beyond name-calling?

Brockmann: Our understanding is that there are substantive talks.

Little: Thank you.

Chair Sorg: Thank you very much. The only question we have now is, how is it going to be settled? We'll have to wait.

Dr. Garcia, is there more on that?

Dr. Garcia: No, if we're done with Mr. Stein and Mr. Brockman, we're going to go to the next item.

Your next item is the Acquisition of Mesa Development and I'm sure Marcy will jump in. Joe already gave you some information. Basically, one of the elements of the agreement with Mesa Development that's still in progress is the issue of any additional water rights. We're not sure exactly what the ruling of the State Engineer is regarding the existence of additional water rights beyond 107 acre feet. That part of the agreement is still set aside but in terms of the transfer of customers, the bullets that are highlighted are already in progress.

As Joe mentioned, on August 18th and the 23rd, we're going to have sign-up meetings and we will begin the actual transfer of customers effective September 1st. We're finally at the end of that line, and we will be taking over the customers. Mr. Clark is working with our engineering firm, finishing the design of the part of the rehabilitation of the system. As you know, there are some funds we have available to begin the upgrade of the system to our City standards. In the meantime, we will operate it as-is. The other element is that we are replacing the meters. Mr. Clark already has a contractor in place that will go in and put the new meters in place, so we'll initiate service with the new meters on those facilities. We did not want to transfer 300 meters where some of them aren't working well, different brands, different types, into our database so we're starting new with the system. Yes, some customers won't be ready the first day, so they may get a little water at no cost until their new meter arrives within a 30-day period and then we're going to have everybody with new meters on site. That's the status, Marcy, do you want to mention anything else? The court proceeding, everything is done?



Driggers: The court proceeding is done.

Dr. Garcia: We're ready to answer questions on August 18th and the 23rd at their offices, we're doing it twice, one reason being that the order of the PRC had the meeting at their offices. We're doing one at a larger venue, but legally we have to do per the PRC order at their offices on the 23rd. We're hoping everything will go fine. We'll have Customer Service staff, Engineering staff showing the maps and the projects that we're going to be working on and explain and answer any questions that they may have on the new service.

Chair Sorg: Yes, their office is very small.

Dr. Garcia: With that, I don't know if the Board has any questions? There was a question whether we let you know that the meeting is on the 18th, there is no need for the Board to attend but as a courtesy we told you. Councillor Sorg had expressed interest in attending, but this is not necessary for Board members to attend at all. This is just a sign-up, informational meeting for those customers.

Chair Sorg: Commissioner Little.

Little: When does the family get the money?

Dr. Garcia: That's a good question. The last day of August is when I intend to issue their check.

Little: Good, thank you. They have been waiting a long time.

Dr. Garcia: The check for the system, because there some additional funds for the water rights if and when the water rights get approved, it's \$425,000 and it's on the last day of the month.

Chair Sorg: Commissioner Ericson.

Ericson: Mr. Chairman, Dr. Garcia, are you looking at a similar process for the Jornada Water deal, assuming that goes through?

Dr. Garcia: Yes, Mr. Ericson, it will be similar. They would have to have public meetings and transition meetings.

Ericson: You would get the PRC to sign off on that and the State Engineer?

Dr. Garcia: Yes, a similar process exactly. By the way of the State Engineer side, we're currently doing the due diligence in terms of what is needed for each of the water rights. Jay's office is working on that, so that we can request that Jornada submit that as part of the agreement that we need to negotiate. The process will be similar, other than the acquisition process is different. It's through eminent domain, but the public process will be the same. One thing that is going to help is that we estimate that between 70-



80%, most likely 75%, of Jornada's customers are already our customers in terms of Wastewater or Gas. By some initial work that Joe's group is doing now with Jornada, we will try to match the databases and see which customers we will add to Water because they are already Gas and Wastewater.

Chair Sorg: Thank you.

Dr. Garcia: Any other questions? Adrienne.

Widmer: Mr. Chairman, Commissioners. I just wanted to let you know about the August 25th Water Quality Open House. As you know, the first part of July, everyone received their annual CCR Report and because we've had a lot of questions this past year on water quality, we thought it would be a perfect opportunity to go ahead and have an Open House. You all are welcome to come, we'll have quite a few booths and we would enjoy seeing you. I just wanted to let you know about it.

Chair Sorg: Very good, thank you.

Widmer: That will be August the 25th, it's a Thursday.

Chair Sorg: Any questions? Thank you very much, Adrienne.

Widmer: You're welcome.

Chair Sorg: Okay, Carl is up next.

Clark: Chairman, Commissioners. I'm here to give you the projects update for August 2016. I've selected three projects: Drilling and Developing Replacement Water Wells 29, 31 and 32; Terrace Hills Mobile Home Community Gas and Water Rehabilitation Project; and the Jacob Hands Wastewater Treatment Facility New Water Quality Lab.

The first project, the Drilling & Developing Replacement Water Wells 29, 31 and 32, I think the majority of you have attended some of the well-drilling and some of the ribbon-cutting that we've done, so you know all about this project. Rodgers & Company is the contractor, the well driller. The contract cost is approximately \$2.5 million with a contract time of 270 calendar days. We started this project December 14, 2015, and we have an estimated completion of September 17, 2016, at this time. The percent complete is 65% in regard to payment. The contractor actually has rigs on two sites, but the drilling rig is set up on Well Site 31 which is the last well to be drilled. Well 32 still has to have the pumping to be done, development pumping and the test pumping that we do to see what it will produce. Well 29 is complete and ready for its intended use; Well 32 was just recently disinfected and they'll be dropping in their pumps to begin pumping that well; and Well 31 pilot hole is completed and awaiting the casing and screen delivery. I put two pictures in there, the drill rig set up at Well Site 31 and the mud tank at Well Site 31. You've seen this same operation at Well 29 when we had it there, so this is over there west of Mayfield High School.



There's a little well site there and that's where it's located, off of Isaacks Lane. You're going to be seeing a Resolution coming forth here in a bit asking for additional time for this project.

On the Terrace Hills Mobile Home Community Gas and Water Rehab Project, the contractor is Morrow Enterprises, and the contract cost is approximately \$500,000. We had 120 working days on this contract and it started April 26, 2016. The contract completion date is October 13th. The percentage complete is 70% based on observed construction with 35% based on payment, so they're due a pay request and that will be coming through shortly. The gas main and service lines have been installed and tested, and they're ready for their tie-ins. The water services have all been installed. What's going on now is the private gas lines are being installed out to mobile homes that need to have corrections to their gas lines, and we'll be putting in meters and tying to those meters at each mobile home as soon as that private property plumbing side gets taken care of. Any questions on that one?

The final project is the Jacob Hands Wastewater Treatment Facility New Water Quality Lab. As you all recall, the designer is ASA Architects, they're a local firm. The design phase for this project is approximately \$358,000. It's at about 30% design right now. We had the 30% submittal come in about a week and one-half ago, we're sending our comments back, and then it can move forward to the 60%. Everything you see there is how it's going, the only difference is we're arranging the building a little differently to get more lead points for solar gain and things like that, so that building will be re-arranged slightly and hopefully we'll get an updated version of this so you can see that arrangement. It's pretty interesting how they're trying to gain us some lead points on that as well. Are there any questions?

Chair Sorg: Any questions? Seeing none.

Clark: Thank you very much.

Dr. Garcia: We're ready for Resolutions, Mr. Chairman.

Chair Sorg: Thank you, Dr. Garcia.

6. RESOLUTIONS FOR CONSENT AGENDA. The following were approved 7-0:

Resolution 16-17-040: A Resolution Approving a Sole Source, Indefinite Cost, Indefinite Quantity Contract with Southwest Envirotec of Las Cruces, New Mexico, for Transport and Disposal of Liquid and Dry Municipal Bio Solids Generated by the City of Las Cruces Utilities, for a Term of One (1) Year with the Option to Extend for Two (2) Additional Years Subject to Annual Renewals and Approved Budget Appropriations

Resolution 16-17-040 was Approved on Consent.

7. RESOLUTIONS FOR DISCUSSION



Chair Sorg: First Resolution for discussion is **Resolution 15-16-036A**. A Resolution Authorizing Change Order No. 1 to Increase the Contract Time a Total of 35 Calendar Days to Rodgers & Co., Inc., of Albuquerque, New Mexico, for the Drilling and Developing Replacement Water Wells 29, 31 and 32, Project No. 15-16-036, (SAP: 14-1737-STB).

This project, you just explained.

Clark: Yes, I just explained the project altogether.

Chair Sorg: When I looked at the Agenda, I didn't know what you just told us, so unless there are some questions, we can go straight to vote on that.

Ericson: Move approval, Mr. Chairman.

Chair Sorg: Moved for approval by Commissioner Ericson.

Johnson: Second.

Chair Sorg: Seconded by Commissioner Johnson. Any questions? All right, I'll take a vote.

Called for the roll on the Motion to Approve **Resolution 15-16-036A**. Commissioner Ericson - Aye; Commissioner Johnson - Aye; Commissioner Baumgarn - Aye; Commissioner Little - Aye; Commissioner Pedroza - Aye; Commissioner Carmichael - Aye; and Chair Sorg - Aye.

Chair Sorg: Next Resolution is **16-17-LCU004**. A Resolution (i) Rescinding Resolution No. 12-13-014; (ii) Authorizing the Execution of a Gas Supply Contract ("Contract") With the Public Energy Authority of Kentucky ("PEAK") for the Purchase of Natural Gas from PEAK; (iii) Acknowledging that PEAK Will Issue its Gas Supply Revenue Bonds to Fund the Purchase of a Supply of Natural Gas from Morgan Stanley Capital Group, Inc. ("MSCG"), which Gas Will Be Used to Make Deliveries Under the Contract; and (iv) for Other Purposes.

Little: Move to approve.

Chair Sorg: We have a move to approve by Commissioner Little.

Baumgarn: Second.

Chair Sorg: Commissioner Baumgarn seconds it. Explain this one.

Puentes: Mr. Chairman, Commissioners, good afternoon. It's been four years since the last time that PEAK proposed a pre-paid natural gas contract. Given that passage of time has occurred, I thought we could just briefly go over some of the basics of these types of transactions.



Number one, you have to have a taxable entity that can provide the natural gas, but that is willing to accept a lump sum payment of this magnitude. Its Financing Department, its Treasury also must determine that the cost of this lump sum payment, cost of these funds, is less by using this method than by utilizing its alternative financing methods – bonds, stocks, or other financing alternatives that it has; and that the spread between using issuance of tax-exempt bonds versus its other alternatives. It creates enough of a spread to be able to carve out a discount so that it can incentivize gas purchasers to participate in the transaction. The residual of the spread also has to satisfy its corporate objectives. At this point here, the market is kind of providing that for this particular entity of Morgan Stanley.

Point number two is that PEAK will then issue tax-exempt bonds, and utilize those proceeds to pay Morgan Stanley for the 30-year supply. The transaction is expected to close sometime after September 1st, so PEAK has requested that the participants obtain the required authorizations by September 1st. That's why we're here at this particular meeting, Mr. Chairman. A month ago, we didn't think that we would be here at this stage. We thought today we would brief you that it was coming, but it has moved very quickly in the last couple of weeks. The bond issue size is expected to be between \$750 million and \$1 billion. It is my understanding that Morgan Stanley has capped it at \$1 billion.

The points to the transaction are, number one, that the prepaid gas supplier is Morgan Stanley. PEAK is the bond issuer and if this transaction goes to close, then PEAK will become the gas supplier to the City. There are 19 participants including Las Cruces in this particular transaction. This six up here on the slide, Mr. Chairman, were part of the 2012 deal that didn't close, so these particular entities are also part of the 2016 deal and they've added 13 more. The States represented by the participants are South Carolina, Kentucky, Alabama, Tennessee, Minnesota, Nebraska, Florida, and of course New Mexico.

I wanted to highlight just a few differences between this transaction and what we were contemplating four years ago. There are much more similarities than there are differences.

The first one is of course the discount. The discount we're looking at right now is in the \$0.20 range, where it was in the \$0.30 range four years ago, but that never occurred so I'm not sure how real the \$0.30 was.

The second point is that every five years or so, the discount will be reset based on market conditions. Basically, Morgan Stanley and PEAK will huddle up every five years and analyze what the market looks like, and come up with an available discount for the succeeding five years. I have listed here under minimum discount versus available discount. The minimum discount is a defined term in the participants' agreement with PEAK. The definition says minimum discount equals \$0.20 per MMBtu, so what will happen five years from now is that they will calculate that



available discount, compared to the minimum discount of \$0.20. If that available discount is equal to or greater than the \$0.20, then the participant is obligated to continue in the transaction. If it is less than the minimum discount, then the participant has the option to walk away without any added cost for walking away. That is what we have now under NMMEA (New Mexico Municipal Energy Acquisition Authority). The NMMEA RBC deal, I don't know if you recall, but in 2014 we restructured that transaction and part of that had to do with that feature, that RBC and these big companies are saying, "Let's take a look at it in increments of five years."

The last difference, Mr. Chairman, that I wanted to point out is that the gas volume or the gas quantity that is purchased by the participants will escalate every five years by about 6%, so at the beginning of the year 26 to 30 it will be about 35% higher than the years one through five.

We have seen this slide a few times in different colors and shapes before, Mr. Chairman, so there's a few things I wanted to comment on. Number one is the jagged line that represents the demand profile of our system. That is what the customers use on a daily basis and basically, this is a picture of the gas flows in calendar year 2015. The area in blue on the very bottom is the component of what NMMEA is contributing to meet that demand. The area in red is what we think the volumes will be for PEAK at the beginning of the transaction. The area in green is where we will be with PEAK in the years 26 to 30. A couple of take-aways from that is that we are trying to structure these prepaid contracts to reflect the demand profile of the system, and also to ensure that we are not committing too much gas so that we burn all the molecules that we are contracted for under this long-term contract. Additionally, that we leave room in case there are other transactions that the market will offer in the future, so we can take advantage of those. I just wanted to also point out, Mr. Chairman, that I did not grow the demand profile, so that jagged line is what we were using in 2015. In the years 20 to 30 it should be higher, so it will still allow room as the system grows for whatever the market offers.

A couple of last points, Mr. Chairman. Since 2009, the NMMEA contract that we have has provided \$760,000 in savings to our customers. The PEAK contract that we had from 2008 to 2012 provided \$1.02 million in savings, plus PEAK issued a check to the City for \$697,000 because of the nature of terminating early. We walked away pretty nicely, and we rolled that check into reducing our cost of gas so that the cost was not passed on to customers. A couple more points are that the Utilities Attorney is already reviewing this and so far, we have not found any issues with the contract that we can't get past. There might be some minor adjustments as we go forward.

Then lastly, Mr. Chairman, is that we worded the Resolution so that it is the Utilities Director that signs off on the final documents. I just would recall a few years ago that the final documents came in at rapid-fire pace and were requested to be turned around pretty quickly, and so that is the reason for this.

Chair Sorg: Okay, thank you, very good. Any questions by the Commission? We'll take a vote.



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

The motion was Unanimously Approved 7-0.

8. OLD BUSINESS

Chair Sorg: Next is Old Business. Is there any Old Business?

Dr. Garcia: The staff has a few items, Mr. Chairman. Earlier in the meeting, you asked about the 40-Year Water Plan. We were supposed to have a Work Session. I anticipate a Work Session to be next month, and I am confirming with the consultant. They have addressed some of the comments that Commissioner Little submitted after the last review, so I anticipate being able to have a Work Session, probably an hour long, at your September 8th meeting. We will put it in your calendar once I can confirm with the consultant, that would be the next review of the 40-Year Water Plan and then we'll take additional input from the Board and move toward completion of the plan before we go out to the public. If you recall, we want to have your input twice, and once we have a document that you say is good enough for the public, then we'll go and have public meetings, get additional input, and then you approve the final document.

The 2016 Bond Sale for Acquisition of Jornada Water is August 24th. City Council has a Special Meeting to approve that. City Council approved on August 1st, the first read of the Ordinance, so on the morning of the 24th there is a public sale of the bonds, and immediately after that at 1:30 p.m. the City Council has a short meeting approving that. It has to be a very quick turnaround, because we get the bids in the morning and then the Council considers it immediately after that. We need approval of six Councillors in a supermajority for it to go through.

You approved the New Rate Setting process to begin, and so we are working on the request for proposals right now, the staff is. We're also taking a Resolution to the City Council setting the Utility Customer Advisory Group (UCAG), the Ad-Hoc group, so that's going to Council on September 6th. We are proceeding with the process and as you recall, we will begin with the Water Utility. The Committee, the UCAG as we call it, is a Committee and Ad-Hoc Board really. We're wording the Resolution in a way that they stay through all of the Utilities. Granted, some members may decide to leave in between, but we wanted to go through all the Utilities in a four- or five-year period, whatever it takes to do that.

On August 1st, we did have a rating conference with Moody's for those 2016 bonds, and we haven't heard if we're going to keep our bond rating. We hope we do, but if you recall, there were some concerns about reduced revenue because they do realize we haven't adjusted rates since 2009 in the Water Utility and that shows lower income. The good news is that we have plenty of cash because of all the bond issuances, so



we're using a lot of the bond money to be able to build all the projects, and not rate money. That sort of counteracts the fact that the revenues are not growing. Our expenditures have gone up, and our revenues, as you know, with the exception of this 2% this year of a little higher water sales, the prior years it was lower than in previous years, so you have less revenue in general. We'll see what the rating comes through as. I think it's supposed to be due tomorrow or Monday, the submittal from Moody's as to what the bond rating is for these 2016 Bonds. We'll brief you on that at the next meeting. That's all for staff for Old Business.

Chair Sorg: Any others?

Little: Question.

Chair Sorg: Commissioner Little.

Little: Is the Rate Setting training still scheduled?

Dr. Garcia: Did you put it in the calendar, Alma? It said for the [October] 21st?

Ruiz: The 21st all day and then the 28th half a day, if needed.

Dr. Garcia: That's the back-up time for additional. October, yes. We set it all for one day with Dr. Gegax and Dr. Blank. It will be open to the Board, Staff, and the UCAG members that will be appointed by then. As you know, it's a legislative process, so we can all talk about it. There's no problem of what data we use on it, it's just a training session. There were concerns in the past that they may have been using some data that was in the filing. That was a concern, but since this is not a quasi-judicial process, we can all talk about it, discuss the data and things like that. That's the plan and they are already contracted to do that?

Ruiz: Correct. They are approved vendors, Dr. Gegax and his consulting company submitted the paperwork and it just got approved yesterday by Disbursements. We will cut a PO to them and guarantee it.

Dr. Garcia: Alma, you're going to put it on their calendar?

Ruiz: Yes, sir. We'll send it out today.

Ericson: The 21st?

Dr. Garcia: The 21st and half a day on the 28th. We booked that so that in case if you want to follow-up, or you have additional questions, they can come back half a day the following Friday to iron out any additional concerns. That's all we have, Mr. Chairman.

9. NEW BUSINESS

Chair Sorg: Any New Business?



Dr. Garcia: Not from staff.

Chair Sorg: Seeing none from the Commission.

10. BOARD GENERAL DISCUSSION

Chair Sorg: General Discussion? Commissioner Pedroza.

Pedroza: I just want to thank the Utilities for very prompt action on the constituents' concerns. Thank you.

Chair Sorg: Very good. Any other discussion?

11. ADJOURNMENT

Chair Sorg: Seeing none, I'll entertain a motion to adjourn.

Baumgarn: So moved.

Little: Second.

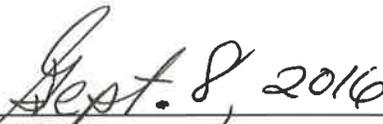
Chair Sorg: Moved by Commissioner Baumgarn, Seconded by Commissioner Little. All those in favor, say "Aye".

The motion to adjourn was Unanimous 7-0.

Meeting adjourned at approximately 4:24 p.m.



Gill Sorg
Las Cruces Utilities Board Chair



Date

