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POPULATION 14,000

**CITY COUNCIL**  
***Special Meeting***  
**July 2, 2015**  
**9:00 a.m.**  
**AGENDA**

Call to Order/Pledge of Allegiance

1. Arizona Water Settlement Act Presentation by Interstate Stream Commission
2. Luna County Board of Commissioner's Input
3. Question and Answer Session
4. Approval/Denial of a Resolution for Participation in the Joint Powers Agreement Authorizing the City of Deming to Participate in the NM CAP Entity. (New Mexico Unit Central Arizona Project)
5. Adjourn Meeting

***The next regularly scheduled City Council meeting is Monday, July 13, 2015 commencing at 6:00 p.m.***

# SPECIAL CITY COUNCIL MEETING MINUTES July 2, 2015

**Council Present:** Benny L. Jasso, Mayor  
Joe “Butter” Milo, Councilor  
Roxana Rincon, Councilor  
David L. Sanchez, Councilor  
Dr. Victor Cruz, Councilor

**Council Absent:** None

**Staff Present:** Aaron Sera, City Administrator  
Wesley Hooper, Community Svcs. Dir.  
Jim Massengill, Public Works Director  
Laura Holguin, Treasurer  
Vicki Engle, HR Specialist  
Jim Foy, City Attorney  
Raul Mercado, Fire Chief  
Kevin Hensley, Fire Captain  
Brandon Gigante, Police Chief  
Bobby Orosco, Police Captain  
Mary Corral, Receptionist  
Erica Carlos, Admin. Secretary

**Recording Secretary:** Lila Jasso, Administrative Secretary/Asst. Deputy Clerk

Mayor Jasso called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance. He stated urgency of this meeting as a decision had to be made and reported to the Interstate Stream Commission by the following day. He noted that cards have been passed out to receive questions from the public.

## **1. Arizona Water Settlement Act (AWSA) Presentation by Interstate Stream Commission**

David Anderson, Staff Member, Craig Roepke, Bureau Chief, and Dominique Work, Staff Attorney, representing the Interstate Stream Commission (ISC) introduced themselves. Councilor Cruz asked that they clarify their role in this issue. Mr. Roepke stated that the ISC is a state agency whose role, according to State Statute, is to investigate, protect, develop, and conserve the waters of the State of New Mexico both interstate and intrastate.

Mr. Anderson opened the presentation and gave a brief background on the AWSA since there has been a change in Council, since the last presentation. He stated that as part of the State planning process, the ISC has initiated several investigations and determined that the project won't harm or dry up the Gila River, a project will provide water, and that the water is needed in the four southwestern counties of New Mexico. He stated that the affordability of the project will be left up to the NM CAP entity to determine for itself. Mr. Anderson stated that in September 2004, several months before the AWSA was signed by the President, the ISC developed its Gila Policy which is essentially to protect the Gila River ecology, while at the same time providing water to the water users. He explained the current flow of the Gila River in the proposed area of service for the project. Mr. Anderson stated that the City of Deming draws its water from the Mimbres Basin Aquifer. He stated that the Mimbres Basin runs, roughly a 30,000 acre foot per year deficit. He went on to say that the average decline in wells is three-tenths (3/10) of a foot per year. He referred to one of the monitoring well

figures and showed the historical water level decline. Mr. Anderson noted that throughout this century this well has declined and average of 1.37 feet per year.

Mr. Anderson explained the two-tiered state evaluation process that the ISC hosted. He stated that there were a number of projects proposals evaluated, not just the diversion projects on the Gila. Mr. Anderson referred a list of the final 15 projects that were evaluated and stated that the City of Deming submitted two projects, the Diversion and Storage Proposal and the Effluent Reuse Project. He stated that the ISC evaluated all projects and looked at the technical feasibility, what the alternatives would be for design, environmental impacts, socioeconomic considerations and water yield. He stated that the ISC also looked at how different projects would benefit certain areas in regards to agricultural conservation, how a diversion project would affect the wetlands of the Gila. Overall, he stated that there were in excess of 40 steps in the evaluation process.

Mr. Anderson noted that one of the concerns is if an AWSA project will dry up the Gila River. He referred to the constraints from the New Mexico Consumptive Use and Forbearance Agreement and noted the minimum monthly bypass. Mr. Anderson gave an example of the constraints formula for better understanding.

Mr. Roepke explained how the projects will work in regards to the stakeholders. He went on to say that under the constraints of the Settlement, it would not be allowed to take a large amount from the Gila River to cause it to dry. He stated that in high readings, water would be skimmed from the River and put in storage. He noted that at any time the River were to get low; water from storage would be released back into the River. He noted that most of the year the River would not be touched, based on the average flow. Mr. Roepke stated that there were three studies done on the Gila River, and based on the model, at most there would be a 9% decrease in yield. He went on to say that the concept of the Diversion and Storage Project would be to skim a little bit of water off the river when there is a lot of water, then store it and release it. He noted that if you can release it to the river to keep the river wet, and release to farmers it could sustain and improve the quality of life, and improve the regional economy and bring new jobs to the area.

Mr. Roepke emphasized that the Interstate Stream Commission notified that the Secretary of the Interiors that New Mexico was going to continue to pursue a New Mexico Unit. He emphasized that no project has been chosen at this time; that would be up to the New Mexico CAP Entity. Mr. Roepke noted the current alternatives; the latest costs from \$340 million to \$740 million and up to \$1 million to \$3 million in annual operating costs for the diversion project. He noted that there are additional smaller alternatives that can be looked at that he feels would provide the requisite need to the region. He stated that hopefully with the lower cost alternatives they could minimize the economic impact and noted that the costs for the alternatives could be reduced to \$200 million to \$450 million. He noted that there would be approximately \$130 million in existing federal funds to support that. Mr. Roepke gave Council a brief perspective of the water supply throughout the southwest region of the United States. He noted that in essence, people are going to be fighting for every drop of water. He also stated his concern for Federal funding being shifted to other regions of the Country due to them serving the more populated areas.

Mr. Roepke stated that the first task of the New Mexico CAP Entity is to organize and to sign an agreement with the Secretary of the Interior.

Ms. Work highlighted the Joint Powers Agreement to enter into the New Mexico CAP Entity Agreement with needs to be submitted by tomorrow. She stated that there have already been ten entities who have already voted to be part of the New Mexico CAP Entity. She referenced page 3, "Purposes" and stated that there are two purposes for the JPA: To create the New Mexico CAP Entity and to allow the New Mexico CAP Entity to exercise its authority and power to execute and implement the New Mexico Unit Agreement. She went on to say that the New Mexico Unit Agreement is a contract between the New Mexico CAP Entity and Secretary of the Interior about using the AWSA water in southwestern New Mexico.

Ms. Work referred to the next section-Representations and Warranties. She stated that the signatories to this JPA make the number of representations to everybody else who is going to participate in the Entity. She stated that, in particular, they make the representations that use of all funds or income available to the AWSA or comes available to the AWSA whether directly or indirectly, shall be used exclusively for planning, design, construction, operation, and maintenance of a New Mexico unit. She stated that is the way the ISC insures that the money is not used for anything else.

Ms. Work went on to reference section F and stated that the parties agree that they will provide financial support to the extent they are able in each party's discretion. She stated that by signing the JPA nobody is committing resources from their body; they are just agreeing that at some point their governing body will have a vote about what kind of financial participation their body will be able to provide. Another point Ms. Work discussed is that once the Entity has been formed and recognized they will have to meet to prepare and vote on by-laws to include a more detailed explanation of how the entity will function.

Mayor Pro Tem Milo asked if the federal government will fund initial studies, designs and other initial details. Ms. Work stated that the federal government provides the ISC with a little over \$9 million per year, in which that money may be use for the studies, potential designs, and other initial decisions related to this project. However, once these funds are exhausted the Entity, the governing bodies, will have to come up with others sources of funding for the project. At that point, the governing bodies of each signatory will get to vote on whether they want to participate, how much they want to participate for, and discuss and vote on all those details as the work of the Entity evolves.

Ms. Work stated that the next section, section 4, Joint Powers, is an important part of the agreement. After the outset, the powers that the New Mexico CAP entity will have are the authority and power to execute the NM Unit Agreement, the authority and power to designate fiscal agents. This is important because there will be two fiscal agents which will have the authority to handle the money. The first fiscal agent will be the ISC, which will be holding the monies that come from the federal government, and the second fiscal agent will be one of the signatories of the JPA designated by all the signatories of the JPA. She stated that that second fiscal agent can then bank other revenues that are created, donated, or

generated somehow by the entity and hold those in a special fund. Then every year the NM CAP Entity will go before the ISC to present its budget, which includes all monies, and the ISC will vote on the budget presented by the Entity. So there are a lot of safeguards to ensure that there is financial responsibility for all funds. The NM Unit does not have to be just one structure; it can be comprised of several structures to comprise the unit. Ms. Work showed a list of all entities that have already voted to be part of the NM CAP Entity. She stated that those entities will have one representative and one alternate in the NM CAP Entity, each will have only one vote.

The next section Ms. Work spoke about was the section about the budget. She reiterated that once a year the Entity will go before the ISC to have the budget approved. She stated that in order to get things going, the first order of business after the Entity is established is to designate its officers, and prepare a budget to present to the ISC for approval so the entity can start working on the project.

Mayor Pro Tem Milo asked if there are any restrictions for the representatives and alternates to the Entity. Ms. Work read the restrictions from the JPA. Councilor Cruz asked for clarification and Ms. Work explained.

Council Cruz questioned whether certain members who have already voted to be part of the NM CAP Entity will have the same financial resources to vote on financial matters. Ms. Work stated that the Entity will have to address the role each member of the participants will play. No one else can bind any entity to financially participate unless the governing body votes to do so. These details will all need to be determined in the by-laws, which will be created by the Entity. Mr. Roepke interjected and stated that, in certain cases, the liabilities in terms of cost are proportional to the amount of water the entity will be utilizing. A discussion was entertained on how the financial responsibility can be shared between all members.

Ms. Work went on to say that the second fiscal agent will be chosen by the NM CAP Entity and they will have authority over funds and the budget to be presented to the ISC for approval.

Ms. Work stated that another provision about the NM CAP Entity does not have Sovereign Immunity this does not mean that the individual members does not retain its Sovereign Immunity. She explained that this is a requirement of the Federal Act. A brief discussion was entertained regarding legal costs.

Ms. Work went on to highlight the authority and powers of the NM CAP Entity which is part of the Federal Act. Ms. Work also discussed the restrictions of ownership for the NM CAP Entity. She noted that audits of the budget will be required of the Entity.

Ms. Work then touched on the Termination and Distribution of Assets section. Mr. Sera asked if the DFA has reviewed the JPA. She said they have and the ISC has been working closely with them to make sure they will approve the JPA, once signed and submitted for approval.

Ms. Work called attention to the Withdrawal of One Party section of the agreement. She recommended that when major financial commitments are voted, there is a grace period before they become effective, to withdrawal in which members can decide if the commitment is too rich for their blood. A discussion was entertained pertaining to the withdrawal of a party. Ms. Work stated that whatever the party has committed to, will be responsible for their commitment at the time of withdrawal.

Ms. Work summarized that the JPA is merely an organizational document to start the process, once approved by the DFA then the Entity will have to create their by-laws. Ms. Work stated JPA is simply creating the NM CAP Entity that the City of Deming is not committing to any liability by simply joining the JPA order Entity and negotiating the NM Unit Agreement. Organization who do not join the Entity now can opt to join later, but will require a 2/3 approval vote by the existing members. Signatories will have the opportunity to withdrawal if they want to, when they want to.

Mr. Sera asked about the safe yield calculations in the presentation and asked if they were done by the ISC or a third party. Mr. Roepke stated that the ISC has does 3 or 4 studies and at least 8 independent studies done by engineers regarding safe yield. Their calculations were 7000 to 9000 acre feet.

Councilor Sanchez asked what is the approximate size of Bill Evans Lake. Mr. Roepke stated that it is approximately 2400 acre feet. Mr. Sera asked how many diversions are currently on the Gila River. Mr. Roepke stated that there are approximately 11 diversions on the Gila River between the Gila Hot Springs and the state border. Councilor Sanchez asked if the possibility of using Bill Evans Lake was considered as storage for the diversion to save costs. Mr. Roepke stated that they are looking into that option.

The presentation by the ISC staff was concluded.

## **2. Luna County Board of Commissioner's Input**

Mayor Jasso asked if any members from the Luna County Board of Commissioners would like to comment. There were no County Commissioners present.

## **3. Question and Answer Session**

The following questions were presented:

- How much water will be lost to seepage and evaporation? Mr. Anderson addressed the questions. He stated that it cannot be determined at this time due to the location of the storage not known at this time. Mr. Roepke stated that on average, state-wide, the average lost to evaporation is approximately 20 percent.
- There were a couple of questions regarding waiting to join the NM CAP Entity. Ms. Work stated that right now it is easy to join but it may be challenging once the entity is formed and a 2/3 vote will be required by the existing members to allow new-comers .
- Is there any financial obligation if the City joins the NM CAP Entity? Mayor Jasso stated that Ms. Work had addressed this and he reiterated that there is no financial obligation to join.

- Are there any conservation projects for the Mimbres Basin in lieu of the diversion project? Ms. Work stated that the issue for the NM Unit of the CAP is that it is a diversion and storage project, which does not mean it does not have conservation components. She stated that the primary objective is to divert some water from the Gila store it and divert it to the communities that need it. Mr. Anderson stated that there were other proposals submitted in which funding has been set aside for water conservation. However, conservation alone will not make up the deficit.
- How much of the water diversion will go to the mining interest in Grant County? Mr. Anderson stated that the JPA can only be joined by political subdivisions, governmental entities. He stated that Freeport McMoran already has an excess of water rights and are fully satisfied as long as there is water in the aquifer, and at this point does not see a need for them from the AWSA water. Ms. Work stated that in the future if the Entity decides to lease the water to another entity it would have to be under the restriction of beneficial use.

Mr. Sera asked about the Record of Decision which has to be issues by the Secretary of the Interior. Mr. Roepke stated that the Record of Decision has to be issued by the Secretary of the Interior by 2019. In the NEPA you are required to look at different alternatives. Ms. Work stated that the NEPA process can begin as soon as the NM Unit Agreement is signed, so at the latest November of this year; and the Record of Decision must be achieved by December 31, 2019. She stated that the NEPA process looks at ideas already on the table and look at other ideas which consider economic and environmental impacts. The ISC is joint lead in this effort with the Bureau of Reclamation and they will review all the information, consider all the options and hold the discussions, together. The NM CAP Entity will be a cooperating agency in the NEPA process and will most likely be involved in the process for the design and results that are desired for this project. Mr. Anderson explained that NEPA is the National Environmental Policy Act. It is a federal requirement of the AWSA and requires and analysis of the proposed projects which also includes a no action alternative. Mr. Sera asked if the Secretary of the Interior looks at the project and decides that the impacts are unreasonable, it is at the Secretary's discretion to choose the no action decision.

Mr. Sera asked City Attorney, Jim Foy, if he could read his opinion memo to Council. Mr. Foy stated that he was tasked to answer two questions; whether the document was legally sufficient and whether the City of Deming has liability at this time if it enters into the agreement. Mr. Foy stated that the document is legally sufficient and that the City is not liable at this time. He stated that this is a starting point for the project and it is within JPA for the entity to withdrawal if they feel they do not wish to go forward. He reiterated that this is the first start of the process to go forward.

Mayor Pro Tem Milo stated that this is merely a starting point and is not binding the City to any financial liability. He stated that the City cannot afford to shut the door to this opportunity.

Councilor Cruz commented that his main concern was to remain prudent with the City's resources in regards to law suits. He stated that it is very possible that if the City does not join at this time, they may not get in later.

Councilor Rincon stated that her concerns were financial and environmental and both those concerns were well addressed.

Councilor Sanchez commented that the right to pump water is one thing, however, the availability to have the water to pump is another issue. His concern is whether how water is used and how we utilize and protect the water we do have. He stated that by not entering into this JPA we will cut out opportunities for the future.

Mr. Sera stated that the due diligence, as City Administrator and City Council, is figuring how to get the water here affordably. If that cannot be done, then we will withdrawal.

Mayor Jasso stated that his concern was what are we obligating ourselves to? He stated that at this point the only obligation is becoming part of the NM CAP Entity and having a say in what is going to happen. He went on to say that once we are in, if we feel it is not the best interest of the citizens and City of Deming, then we can withdrawal.

**4. Approval/Denial of a Resolution for Participation in the Joint Powers Agreement Authorizing the City of Deming to Participate in the NM CAP Entity. (New Mexico Unit Central Arizona Project)**

Mayor Jasso presented this item to Council.

Councilor Sanchez moved to approve the resolution for participation in the Joint Powers Agreement Authorizing the City of Deming to participate in the NM CAP Entity (New Mexico Unit Central Arizona Project). Mayor Jasso asked if there was any discussion before a vote is taken. Mr. Sera pointed out that the resolution states that the Mayor will be authorized to execute the Joint Powers Agreement and designates Mr. Sera as the representative and Mr. Massengill as the alternate. However, Mr. Sera stated that Council can change this designation as they see fit. No friendly amendment is necessary as this is stated in the resolution.

Councilor Cruz asked for the legal explanation of "beneficial use". Ms. Work and Mr. Anderson clarified this term.

Mayor Jasso asked for a roll call vote for this item.

**ROLL CALL VOTE**

Councilor Sanchez	Aye
Councilor Rincon	Aye
Mayor Pro Tem Milo	Aye
Councilor Cruz	Aye

The motion carried unanimously.

**5. Adjourn Meeting**

With no further business to discuss, Councilor Sanchez moved to adjourn the meeting.  
Mayor Pro Tem Milo seconded the motion; motion carried unanimously. Meeting adjourned  
at 10:49 a.m.



  
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Aaron Sera, Clerk

**CITY OF DEMING, NEW MEXICO**

  
\_\_\_\_\_  
Benny L. Jasso, Mayor

**CITY OF DEMING, NEW MEXICO**  
**RESOLUTION NO. 15-20**

**RESOLUTION APPROVING THE CITY'S INTENTION TO PARTICIPATE IN THE NEW MEXICO CAP ENTITY JOINT POWERS AGREEMENT**

**WHEREAS**, on December 10, 2004, the President of the United States signed into law the Arizona Water Settlements Act (AWSA), Public Law 108-451; and

**WHEREAS**, on November 24, 2014, the State of New Mexico, acting through its Interstate Stream Commission, gave notice to the United States Secretary of the Interior that it intends to construct the New Mexico Unit of the Central Arizona Project (CAP) pursuant to the AWSA; and

**WHEREAS**, the AWSA provides for a New Mexico CAP Entity to be formed or designated by the State of New Mexico, acting through its Interstate Stream Commission, to enter into the New Mexico Unit Agreement with the United States Secretary of the Interior; and

**WHEREAS**, the Joint Powers Agreements Act, New Mexico Statutes Annotated 1978, Section 11-1-3, authorizes public agencies to enter into agreements to jointly exercise powers that are common to the contracting parties; and

**WHEREAS**, Interstate Stream Commission staff prepared a Joint Powers Agreement creating the New Mexico CAP Entity (Joint Powers Agreement); and

**WHEREAS**, the City of Deming reviewed the Joint Powers Agreement; and,

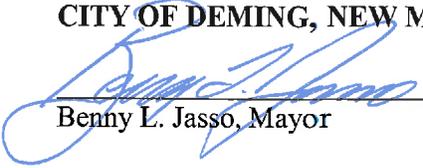
**WHEREAS**, in accordance with the terms of the Joint Powers Agreement, each party to the Agreement must adopt a resolution of its governing body identifying its signatory and representing that the governing body supports that party's commitment to beneficial use of AWSA water;

**NOW THEREFORE, BE IT RESOLVED** that the City of Deming's governing body authorizes Mayor Benny L. Jasso to execute the Joint Powers Agreement, contingent upon the approval from the New Mexico Department of Finance, which authorizes the City of Deming to participate as a party to the NM CAP Entity and designating Aaron Sera as primary representative and Jim Massengill as the alternate;

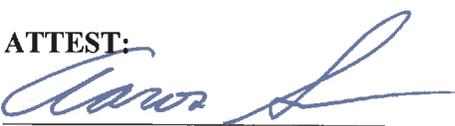
**BE IT FURTHER RESOLVED** that the Mayor's signature on the Joint Powers Agreement represents the City's commitment to beneficial use of AWSA water.

**PASSED, ADOPTED, AND APPROVED** this 2<sup>nd</sup> day of July, 2015.

**CITY OF DEMING, NEW MEXICO**

  
\_\_\_\_\_  
Benny L. Jasso, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Aaron Sera, City Clerk

