

Final Copy
Torrance County Board of Commissioners
Special Commission Meeting
March 20, 2017

Commissioners Present: **Julia DuCharme-Member**
 James Frost-Member
 Javier Sanchez- Chair

Others Present: **Annette Ortiz- Interim County Manager**
 Michelle Jones –Clerk Admin. Assist. III

Call Meeting to Order:

Chairman Sanchez calls the meeting to order at 3:34 pm and calls for a Commission Roll Call. Commission District 1- Present, Commission District 2- Present, Commission District 3- Present. Mr. Andy Miller, EVSWA Manager, leads us in the pledge and Ms. Annette Ortiz, Interim County Manager, gives the invocation.

Approval of the Meeting Agenda:

Chairman Sanchez asks for a motion to approve today's Meeting Agenda. **ACTION TAKEN:** Commissioner Frost makes a motion to approve today's meeting agenda. Madam Commissioner DuCharme seconds the motion. No further discussion. The Commissioners vote; all in favor, none opposed. **MOTION CARRIED.**

Action Items

Items to Be Considered and Acted Upon

- 1. Estancia Valley Solid Waste Authority Contract** Chairman Sanchez speaks. He states that this meeting was requested in order to try to make a determination on how we could budget for the expenditure of the County's EVSWA tipping fees.

Ms. Annette Ortiz, Interim County Manager, presents copies of the EVSWA JPA to the Commission. (A copy of the JPA is included in the file for this meeting). She states that she had a meeting with Ms. Tracy Sedillo, County Treasurer and Ms. Amanda Tenorio, Finance Director, to discuss this issue. She states that they were looking at the immediate need to pay the overdue tipping fees and a long term funding source solution. She states that, as it stands right now, the Wind PILT is the immediate option to pay the overdue tipping fees. She states that a long term funding option could include the three Hold Harmless taxes that the County could look at enacting. We could also look into raising the EVSWA fees for County customers, and/or we could look into cutting our expenditures to cover the tipping fee amounts.

Ms. Ortiz states that the Hold Harmless taxes can be enacted by County ordinance; there does not have to be an election. It would need to be published and then the ordinance would need to be adopted. 30 days after the ordinance is adopted, the taxes can be enacted; New Mexico Tax and Rev need 90 days for it to take effect. If the Commission were to decide to go forward with the Hold Harmless taxes, it would not come to fruition until January of 2018.

Ms. Ortiz reminds all that the County currently has a contract in place with the EVSWA for a yearly cost of \$800,000.00, which does not include our tipping fees. She explains that we could look at accessing our infrastructure tax to pay these tipping fees, but that would completely wipe out that fund. She does not recommend tapping into this infrastructure fund. She further states that cutting back on expenditures could be an option, but neither she, nor Ms. Tenorio or Ms. Sedillo, could say where any cuts could come from. Chairman Sanchez confirms with Ms. Ortiz that the only option for paying the overdue tipping fee amount that is currently owed is to take it from the Wind PILT fund. Chairman Sanchez continues and states that, moving forward, it appears that the only option is for the County to adopt an ordinance that would allow us to enact the Hold Harmless taxes. Ms. Ortiz explains that the Commission could enact the Hold Harmless taxes and, at each budget cycle, decide how it will be spent; the Hold Harmless taxes would not have to go towards the tipping fees exclusively. It could go towards Fire Fighter stipends, the Sheriff's Department, roads, etc.

Ms. Sedillo, County Treasurer, states that each of the Hold Harmless tax increments is a 1/8th increment and, together, would generate approximately \$750,000.00 per year for the County. It would be a gross receipts tax and it would be collected countywide; in and out of the municipalities; anywhere that business is transacted, and it can be used for general purposes. Chairman Sanchez asks how

this would affect consumers. Ms. Sedillo explains that it would not affect purchases of food or prescriptions or gasoline; it would be a 3/8th incremental gross receipts tax on all other goods and services within the County. Ms. Sedillo states that the County would be able to spend these funds whoever they see fit, as long as it is within the scope of the ordinance.

The tipping fees for the County will be approximately \$120,000.00-\$130,000.00 per year.

The next Wind PILT payment we will receive will come in November 2017 from High Lonesome and will be approximately \$140,000.00. Ms. Sedillo is not sure when our next El Cabo Wind payment will come. We currently have \$646,000.00 in the Wind PILT fund.

Mr. Miller, EVSWA Manager, states that the tipping fees for the County were estimated at approximately \$12,000.00 per month, but have actually been approximately \$10,000.00 per month. Ms. Ortiz asks if the Dog Head Fire impacted these numbers. Mr. Miller replies no.

Commissioner Frost advocates for paying the immediate overdue tipping fees balance to the EVSWA from the Wind PILT fund. He also advocates for enacting the Hold Harmless taxes.

Madam Commissioner DuCharme asks Mr. Miller to point out where in the JPA it states that the County must pay tipping fees. Mr. Miller refers to page 3 of the

AMENDED JOINT POWERS AGREEMENT REORGANIZING THE ESTANCIA VALLEY SOLID WASTE AUTHORITY:

3. POWERS AND DUTIES DELEGATED TO THE EVSWA. The Parties hereby delegate to the EVSWA the powers and duties necessary to fulfill its purpose, including but not limited to the following:

k. To adopt a policy regarding fees, and to set rates and charges for use of the said system and found necessary for the adequate financial operation of the Authority;

Mr. Miller now refers to page 7 of the same document:

8. FINANCES AND CONTRIBUTIONS. For the duration of this agreement, each party shall contribute its respective Environmental Services Gross Receipts Tax ("ESGRT") revenue to the Authority for the development and operation of the solid waste system.

e. Each Party's respective contributions specified herein shall defray the costs of each

Party's use of the Authority's services and facilities, thereby entitling each Party and its residents to reduced fees for said use.

Mr. Miller states that this means that each member of the JPA contributes to the operations of the solid waste system. Because Torrance County is a member of the JPA, it is entitled to the discount, which Torrance County is receiving, of \$31.00 per ton. The non-member full rate is \$47.00 per ton.

Mr. Miller states that, per the JPA, the EVSWA sets the fees. On May 19, 2011, the fees were set for municipal solid waste, for member entities such as Torrance County, and for non-member entities.

There are currently 7 JPA member entities. All are current on their tipping fees except for Torrance County. Chairman Sanchez asks what the other members pay per month in tipping fees. Ms. Danette Cabber, EVSWA Office Manager, replies that Torrance County pays the highest at approximately \$9,000.00 per month; the City of Moriarty pays approximately \$5,000.00-\$6,000.00 per month; Estancia and Mountainair pay approximately \$2,000.00-\$3,000.00; and the villages pay approximately \$200.00-\$400.00.

Chairman Sanchez asks how the municipalities budget for this. Mayor of Estancia, Ms. Sylvia Chavez, replies that the town budgets for this debt each year. The funds to pay this come from the residents; the residents in the town are billed for their water, sewer, and solid waste each month. Mr. Miller states that all of the JPA members have also agreed to give their environmental services GRT to the EVSWA.

There are approximately 4,100 County EVSWA customers. There is discussion about the different categories of County customers the EVSWA has. For example, regular quarterly, low income, vacant land, age 65 and older, private hauler and the discounts that might apply to each category.

Chairman Sanchez surmises that in order for the County to use the same strategies as the municipalities, we would have to raise our rates by \$3.00 per month for each customer, across the board; this would constitute a 5% increase. Mr. Miller interjects that there are approximately 1000 County customers that do not pay. Chairman Sanchez asks if the municipalities have this same problem with customers refusing to pay. Mayor Chavez replies that her residents pay their solid waste bill as part of their total utility bill; a municipal customer cannot say that they are only going to pay their sewer or water and not their solid waste.

On the topic of budgeting to pay these fees, Mr. Miller states that, at the beginning of every fiscal year, the County of Bernalillo gives him a purchase order for \$140,000.00. Throughout the year, Mr. Miller stays in contact with Bernalillo about how much they are paying monthly. As the end of the fiscal year approaches, if Bernalillo is out of money, they don't bring a truck.

There is discussion about why County customers may or may not pay their EVSWA bill.

Madam Commissioner DuCharme states that the EVSWA received \$550,000.00 through the County for the development of a new cell. The County also gave the EVSWA \$48,000.00 at one time and another \$16,000.00 at another time. The EVSWA also receives \$800,000.00 per year from the County per their contract. She states that the idea that the County doesn't pay its fair share when the County pays many, many times more than any municipality is very inaccurate to her and very irritating and troubling. Mr. Miller replies that the \$550,000.00 was grant money and he cannot speak to the other payments. He reminds the Commission that, as a major contributor to the EVSWA, the County has three voting members on the board. He states that Bernalillo County has put in as much or more money and they are no longer a member of the JPA. He states that it appears that the County has contributed a lot of money, but those dollars were Federal dollars that did not come from the County's budget. Ms. Ortiz asks why it matters if the dollars come from the Federal Government or from the County budget, as long as the EVSWA is getting those dollars. Mr. Miller replies that it doesn't matter; we need the money to operate; we need the money to keep the landfill open.

Chairman Sanchez asks Ms. Sedillo, Treasurer, to discuss what the County has paid to the EVSWA over the years. Ms. Sedillo states that when the solid waste authority was formed, the County ran it as part of the Road Department. We had some transfer stations and we had the landfill. All of those items were given over to the EVSWA at the time it was formed, along with the Environmental GRT. There was a revenue bond at that time that was refinanced and the EVSWA took that because some of the equipment that we had was financed into that bond. Some of the transfer stations were deeded over and some we retained. That was our buy-in. Ms. Sedillo states that the Environmental GRT paid to the EVSWA from the County to-date for this fiscal year has been \$111,236.96. Mr. Miller reiterates that paying this GRT to the EVSWA is part of being in the JPA and in return, the County gets votes on the EVSWA Board. There is discussion about whether Torrance County actually owned the landfill before it became part of the EVSWA.

Mr. Miller states that in the late 1980s, the types of landfills that were in Torrance County were outlawed. Those types of landfills were unlined, unregulated, and uncontrolled. Those landfills went away along with open burning. Every municipality had to find a different way to get rid of their trash, and that way was a lined landfill. Torrance County had to do the same thing.

Ms. Ortiz asks Mr. Miller about the fees for Bernalillo County when they left the JPA. Mr. Miller replied that the rates went up slightly when they left the JPA. Bernalillo County's rates are currently \$33.00 per ton for municipal solid waste and \$30.00 per ton for construction and demolition.

Mr. Nick Sedillo, Estancia resident, states that he pays monthly for curbside pickup, and when he has to take larger pieces of trash to a collection station, he has to pay a tipping fee. He doesn't understand why he is having to pay twice. Ms. Cabber states that the collection stations are primarily for the rural County customers, not the municipal customers. Mr. Miller states that Mr. Sedillo's tipping fee at the collection station would go to the landfill.

There is discussion about the possible incidents of items incurring tipping fees twice. The example discussed was a couch that, if dropped off at a collection station by a municipal resident, would incur a tipping fee at the collection station and then again at the landfill. Mr. Miller states that this is a shortcoming of their system and it just came to his attention a week ago, and it's a minor amount of material that the landfill gets the revenue for and also the County gets charged for. He states that over the next few months he is going to get this figured out. He states that they have records of it all.

Madam Commissioner DuCharme asks Mr. Miller to read the following portion of the JPA into the record:

8. FINANCES AND CONTRIBUTIONS. For the duration of this agreement, each Party shall contribute its respective Environmental Services Gross Receipts Tax ("ESGRT") revenue to the Authority for the development and operation of the solid waste system.
 - a. The Parties may authorize and execute intercept agreements for their respective ESGRT revenues with third parties, such as the New Mexico Finance Authority ("NMFA"), provided the purpose of said intercept agreements is to finance loans for the benefit of the Authority. Such ESGRT intercept agreements shall be deemed to satisfy a Party's contribution as required under Section 8 above. Upon the termination of any such ESGRT existing intercept agreement, unless another intercept agreement is executed for the benefit of the Authority, a Party shall contribute its respective ESGRT revenue directly to the Authority.

- b. The Town of Vaughn, not previously being a Party to a joint powers agreement for the Authority and not having previously contributed to the development or operation of the Authority's solid waste management system, shall, in addition to its recurring ESGRT contribution, make an initial one-time contribution of its Caterpillar 826 Compactor ("Caterpillar") to the Authority. The Town of Vaughn shall transfer good and clear title of the Caterpillar to the Authority and make delivery of the Caterpillar to the Authority within 5 days of the effective date of this Agreement.
- c. The Authority shall provide for and be responsible for any debts incurred for capital improvements with no additional recourse to the respective Parties other than as specified in this Agreement. It shall be the duty of the Authority to ensure that the equipment, facilities and capital improvements reasonably necessary for the normal and businesslike operation of the Authority are provided in a timely manner.
- d. The Authority may generate funds generated by revenue bonds, loans, collection and tipping fees and such other revenues as may, from time to time, be identified

by the Authority, except that the authority shall have no independent authority to levy and collect taxes separate and apart from the authority existing within the Parties.

- e. Each Party's respective contributions specified herein shall defray the costs of each Party's use of the Authority's services and facilities, thereby entitling each Party and its residents to reduced fees for said use.
- f. The Authority is hereby designated as the operational manager of the solid waste management system and shall be responsible for any deficits incurred in the operation of the solid waste system in compliance with the law and sound fiscal practices. The Authority shall have the right of control over its own operational budget, subject to policy direction from the Board.
- g. The Parties shall not be obligated or incur any liability for payment of deficits incurred by the Authority. Anticipated deficits shall be identified and included in the annual budget and necessary corrective action identified and implemented so as to make up any anticipated deficits in the same year in which they are incurred.
- h. It is the intent of the Parties that the Authority become self-sufficient and that no Party be required to contribute funds from its respective budget or taxing authority other than its respective ESGRT or as otherwise specified herein.

Madam Commissioner DuCharme refers to subsection d. **The Authority may generate funds generated by revenue bonds, loans, collection and tipping fees and such other revenues as may, from time to time, be identified by the Authority, etc.**

Madam Commissioner DuCharme asks where the tipping fees are 'identified by the Authority'. Mr. Miller replies that they are identified in the meeting minutes from their Board of Directors, which have the authority to set tipping fees for the landfill. He clarifies that the EVSWA Board does not have the authority to set the fees that the County charges County residents. He states that the fees that County

residents pay is covered in the County ordinance. The tipping fees are the responsibility of the EVSWA Board of Directors.

Ms. Ortiz refers to subsection h. **It is the intent of the parties that the Authority become self-sufficient, etc.**

Ms. Ortiz asks if Mr. Miller believes that the Authority is self-sufficient and, if so, how. Mr. Miller replies yes, they are self-sufficient. He states that he has only looked at their budget for the last few years but they have always had a positive cash flow and their reserve accounts and their capital improvement accounts increase and, obviously, decrease when they purchase a capital asset. He summarizes that yes, the Authority is existing on the fees that it charges its customers.

Ms. Ortiz refers to the rest of subsection h. **...and that no Party be required to contribute funds from its respective budget or taxing authority other than its respective ESGRT or as otherwise specified herein.**

She asks Mr. Miller what steps they are taking to become more self-sufficient in the future. Mr. Miller replies that they will build a new landfill cell so they can continue their operation. He states that it is going to cost \$1.5 million dollars to build the new cell and remain in operation.

Ms. Ortiz asks Mr. Miller to explain to the Commission about what happens when other entities want to join the JPA. Mr. Miller explains that in 2014-2015, the City of Las Vegas, Santa Rosa and Guadalupe County wanted to become members of the JPA. In so doing, they would have contributed their ESGRT and would have given some sort of a buy-in to the EVSWA, somewhere in the area of \$300,000.00. They would have been given the member discount of \$31.00 per ton for municipal solid waste. For a new member to be added, there must be a unanimous vote of approval from the existing members; there was not. But, the landfill still wanted the trash and they still wanted to bring it. So, the EVSWA Board of Directors gave these three entities a discounted rate of \$33.00 per ton for municipal waste.

CLOSED SESSION:

ACTION TAKEN: Chairman Sanchez makes a motion to go into Closed Session. Madam Commissioner DuCharme seconds the motion. Roll Call Vote: District 1- Yes, District 2-Yes, District 3-Yes. **MOTION CARRIED**

Closed Session begins at 5:33 PM

RECONVENE FROM CLOSED SESSION

ACTION TAKEN: Chairman Sanchez makes a motion to reconvene from Closed Session. Commissioner Frost seconds the motion. Chairman Sanchez states that, in Closed Session, the Commission reviewed the EVSWA contract. No further discussion. The Commissioners vote; all in favor, none opposed. **MOTION CARRIED.**

Regular Session reconvened at 6:40 pm.

***Adjourn**

ACTION TAKEN: Chairman Sanchez makes a motion to adjourn the March 20, 2017 Special Commission Meeting. Madam Commissioner DuCharme seconds the motion.

Mr. Miller brings the Commission's attention to their EVSWA Board meeting minutes of May 17, 2007, in which the JPA members authorized a late fee of 20% be imposed on any past due amounts. He states that past due is anything more than 30 day (past due). He states that, "we have not yet imposed that late fee, but I just want to bring that to the Commissioner's attention."

Chairman Frost states that the Commission will hold a regular meeting in two days, on Wednesday, March 22.

No further discussion. The Commissioners vote; all in favor, none opposed. **MOTION CARRIED.**

Meeting adjourned at 6:43 pm


Chairman Sanchez


Michelle Jones, Admin. Assist. III

4/12/17
Date

The video of this meeting can be viewed in its entirety on the Torrance County NM Website. Audio discs of this meeting can be purchased in the Torrance County Clerk's Office and the audio of this meeting will be aired on our local radio station KXNM.