

Final Copy
Torrance County Board of Commissioners
Special Commission Meeting
March 13, 2017

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

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

Call Meeting to Order:

Chairman Sanchez calls the meeting to order at 2:07 pm and calls for a Commission Roll Call. Commission District 1- Present, Commission District 2- Present, Commission District 3- Present. Mr. Max Cabber, resident, leads us in the pledge and Mr. Bill Williams, resident, 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

***Department Requests/Reports:**

1. Estancia Valley Solid Waste Authority Contract Discussion Ms. Annette Ortiz, Interim County Manager, speaks. In the last couple of Commission meetings, Ms. Ortiz has requested that the Commission set aside funds in order to

pay for the County's tipping fees that are currently past due to the EVSWA. These tipping fees were not figured into the County's budget. She states that Mr. Andy Miller, EVSWA Manager, has emailed a lot of information and he is available to answer any questions about this matter. Chairman Sanchez requested today's meeting with the EVSWA to have a discussion about the contract and the tipping fees. Representatives from the EVSWA are present at today's meeting to participate in this workshop/discussion.

Chairman Sanchez states that at the last Commission meeting, the question came up about whether the County was responsible for tipping fees. He states that the Commission did not see anything in our current contract with the EVSWA that specifically addressed this issue, so we decided to have a meeting in order to identify what verbiage enjoins the County to be responsible for these fees.

Chairman Sanchez asks Mr. Miller to expound on the information that he will present to the Commission today.

Mr. Miller introduces himself, along with Ms. Danette Cabber, EVSWA Office Manager; Ms. Anastasia Stevens, Legal Counsel; and Mr. Bill Williams, Chairman, EVSWA Board of Directors. He thanks the Commission for allowing him to present information. Mr. Miller presents the Commission with a handout that is included in the file for this meeting. He reads the following portion:

1. A misunderstanding of the contract between Torrance County and EVSWA: the first part of the attachment is an excerpt from the April 27, 2016 County Commissioners Meeting Minutes. There is a discussion on contract clarifications regarding payment of tipping fees. Page 17 and 18 of the minutes make it clear that the County is responsible for tipping fees.

He then reads the portion of the minutes that he is referring to, which is attached below:

...Mr. Wallin clarifies that the County was already responsible for the tipping fees; this change in wording does not change that. This was a mistake that was caught by the EVSWA attorney. The statement in the contract is basically stating that the tipping fees are the responsibility of the County and are not being dealt with in this contract. We are not assuming a responsibility that we do not already have.

Mr. Miller now refers to the following statement in the current contract:

- V. Costs for disposal or recycling of solid waste generated by the waste management system are the responsibility of the County and are not covered in this agreement.

Mr. Miller states that there may be some confusion between the County contract and collections vs disposal at the landfill. The County contract covers collections but does not address disposal at the landfill, which involves the tipping fees. Mr. Miller clarifies that there are basically two business units that the EVSWA operates: collections – wastes are collected and brought together in 8 separate locations throughout the County, and disposal at the landfill. The cost of collections per the contract is \$800,000.00 per year. Mr. Miller now explains disposal at the landfill. He states that everything that goes into the landfill drives over the scale and a record is created- a tip ticket. The tip ticket contains information about the source of the waste, the type of waste, and who generated the waste, and additional billing information. For example, County waste is billed at a rate of \$31.00 per ton for municipal solid waste and \$25.00 per ton for construction and demolition debris. He reiterates that disposal at the landfill is a separate business from collections and separate from the County contract.

Chairman Sanchez states that he does not believe that the County has ever paid its tipping fees to the EVSWA. Mr. Miller explains that the County has never paid a separate check for tipping fees before, but in the past the tipping fees were included in the contract and paid as part of the contract the County had with the EVSWA.

Chairman Sanchez states that the whole reason for the new contract must be because the EVSWA needed to get more money from the County in order to make up some kind of a shortfall. Mr. Miller states that the way he views it is that the new contract makes it more fair to all of the entities that use the services of the EVSWA. He states that everyone that uses the landfill pays their tipping fees based on what they generate at the landfill. He states that under the old contract, the County was not paying their fair share of their own tipping fees; there was an approximate \$70,000.00 a year shortfall.

Madam Commissioner DuCharme states that in 2014 there was a raise to the County customers. In 2015, the County added discounts to their customers. The County received the first invoice for tipping fees in July of 2016. Madam Commissioner DuCharme asks why there is no agreement between Torrance and the EVSWA for tipping fees. Mr. Miller states that we do have an agreement. He states that he has written agreements for tipping fees with entities outside the JPA. The ones within the JPA are controlled by the JPA. The JPA is the agreement that states that, as a member, you are charged \$31.00 per ton for municipal solid waste and \$25.00 per ton for construction and demolition debris; he believes that this verbiage is contained within the JPA. Customers outside of the JPA pay more.

Chairman Sanchez asks Mr. Wallin if the County's commitment to paying tipping fees is clear. Mr. Wallin reiterates that the current contract was not meant to cover the tipping fees; the tipping fees are covered by the JPA and Board action. He reiterates that it has never been a question that the County owes tipping fees; that every member owes fees for how much garbage they put into the landfill. This came up a few years ago when there were complaints from some of the other JPA members that the EVSWA was subsidizing the County in the County's tipping fees and it was causing an issue. There was a public meeting held in order to try and get the JPA amended and bring some other entities in and to clarify some of these things. What complicated matters further was the discussion that the EVSWA might be willing to either forgive or defer the tipping fee payments if the County would help the EVSWA acquire CDBG funds to develop a new cell. Mr. Wallin states that we were pursuing this and had a meeting in September about it and talked about creating an MOU to paper it. Mr. Wallin states that he prepared the MOU and sent it to the County Manager's office. He states that he thinks the County was operating under the assumption that we could work on the CDBG grant and get at least that amount forgiven. He states that he was told last fall by the Manager's office that they didn't have anyone at that time that could work on the grant and they missed the deadline so the MOU was put on hold. Mr. Wallin states that, in his view, there has never been any question that the members of the JPA owe tipping fees, we just weren't always charged for them or they may have been charged in a different fashion. He reiterates that he remembers that the issue was that the other JPA member entities were upset that the County's tipping fees were being subsidized.

There is further discussion about the separation of the fees. Chairman Sanchez states that the benefit to the County has not changed, what has changed is the addition of a new bill. Mr. Miller states that what has changed is that the County is now being asked to pay their fair share.

Chairman Sanchez asks Mr. Miller how it came to be that the County was allowed to pay less than their fair share. Ms. Danette Cabber explains that the tipping fee was incorporated into the County contract and the EVSWA subsidized the fee. No one present knows exactly how this came to be. The County did provide CDBG funds in the past which could have something to do with it, but no one knows for sure. Ms. Michelle Jones (myself) suggests going back and researching the minutes from past meetings to find out what happened.

There is discussion that the landfill is currently making a profit. Mr. Miller states that they are banking the profit in anticipation of paying for a new landfill cell and new equipment.

Chairman Sanchez refers to page 2, Section 5 of the current contract:

- V. Costs for disposal or recycling of solid waste generated by the waste management system are the responsibility of the County and are not covered by this agreement.

Chairman Sanchez asks what constitutes the “waste management system”. Mr. Miller replies it is the 8 collection stations, manning the stations, transportation of the waste, and administrative duties including billing. Ms. Cabber states that they have created a ‘scope of work’ for their administrative duties that she can provide to the Commission.

Chairman Sanchez asks why the County has not made one payment for the tipping fees since July 2016, when the new contract went into effect. Ms. Cabber states that the EVSWA has been invoicing the County for the tipping fees every month since July; the invoices were being sent to the County Manager. Mr. Wallin states that the County Manager’s office was operating under the belief that we were going to assist the EVSWA with a CDBG grant. At the end of 2016, then County Manager, Joy Ansley, tendered her resignation and things did not progress. Commissioner Frost states that we can still move forward with applying for a CDBG grant, but in the meantime we owe the EVSWA. Commissioner Frost suggests that the County pay the bill and move forward.

There is discussion about the fees that different residents pay and who does the billing: persons within the municipalities, persons outside the municipalities, persons with a private hauler, etc. There is discussion about how the County came to have a solid waste management system and the rules and regulations associated with it. Commissioner Frost asks about the repercussions of not following these rules and regulations. Mr. Miller states that he is currently working with a town that did not follow the regulations and they were hit with an approximately \$250,000.00 fine, plus a consent order to close out their old landfill; their unpermitted, unlined landfill. The cost estimate for closing out this landfill is approximately \$350,000.00. Mr. Wallin states that we have had several dumps here in Torrance County in the past. There was one in between Moriarty and Edgewood. When the Federal Drinking Water Act and the Clean Air Act, etc. went into place, many of those dumps had to go through the close out procedures. He states that

these are very complicated issues. He states that the County has already dealt with the Attorney General about our fees. Mr. Wallin states that he submitted a legal opinion to the Commission back in 2016 concerning our fees; Madam Commissioner DuCharme and Commissioner Frost received a copy of this opinion. He states that Mr. Romero, resident, asked the Attorney General for an opinion and the Attorney General adopted his (Mr. Wallin's) opinion and said this is the law. Mr. Wallin offers to provide a copy of his opinion again. He states that, in his opinion, what really needs to happen now is we need to get on board to get the new cell done, we need to apply for CDBG funds, and we need to help the EVSWA get that done and the benefit to the County could be that we get some abatement or forgiveness of some of these tipping fees.

Getting back to the subject being discussed today, Mr. Miller states that yes, the EVSWA would consider entering into an MOU with the County. He states that the way he views the MOU is that the County would apply for CDBG funds for the landfill. He states that the application would have to be made, the funding would have to be awarded, those funds spent on the landfill, and then going forward, the EVSWA would start to credit the County their tipping fees. He states that there are a number of steps here that have not yet been taken, and we don't know what the actual amount of CDBG funding we would ultimately receive. Mr. Miller informs the Commission that he has made the same CDBG offer to his other member entities, because they are also eligible for CDBG funds; this is not an exclusive offer to Torrance County.

Madam Commissioner DuCharme comments that the Attorney General's Office addressed different kinds of fees, not tipping fees. She asks Mr. Wallin if this is correct. Mr. Wallin replies that the discussion was about fees in general under the Solid Waste provisions of New Mexico Statutes.

Mr. Wallin states that Ms. Ortiz reminded him that part of the issue of going forward with the original MOU that he had provided to the Manager's office was an issue with the billing. At that time, then County Manager Ansley was looking into the option of the County taking over the solid waste billing process.

Madam Commissioner DuCharme questions why the invoices from the EVSWA were addressed to Ms. Ortiz. Mr. Miller explains that he requested copies of these invoices to present to the Commission today and because their software is fairly simple and Ms. Ortiz is listed as the contact person today, all the invoices came in her name. At the time of the actual billing, the invoices were going to Ms. Joy Ansley.

There is discussion again about why the County had not budgeted for or paid the tipping fees that they were being billed for. It is reiterated again that the assumption is that there was an understanding that the County was going to apply for a CDBG grant to obtain funds for a new cell and that these funds would either abate, forgive, or pay the tipping fees.

Madam Commissioner DuCharme reminds the Commission that at the time that the new contract with the EVSWA was signed, a committee to help write an RFP was formed. That committee fulfilled its obligations and our Procurement Officer has the copy of the proposed RFP draft. She states that she thinks that the formation of that committee shows the feelings or uncertainty of the previous committee about this new contract with the EVSWA. She states that she wants to remind the Commission that we have another option; to go for an RFP. Mr. Wallin reminds all that this proposed RFP draft is for collection service and has nothing to do with the landfill or tipping fees.

Commissioner Frost talks about how things were in the County before the EVSWA. He states that he is so happy to see how clean our County is now and he knows that it is a testimony to what the EVSWA has done.

Chairman Sanchez asks how we are going to make these payments sustainable. Ms. Sedillo, County Treasurer, states that it is not available in the General Fund currently. She states that the County would have to either raise taxes somehow or charge County customers more. She states that she does not believe that the County could use capital outlay or infrastructure taxes to pay for something like this. Ms. Sedillo states that the County has funds in the Wind PILT, but that won't be available forever.

Chairman Sanchez states that he thinks that the County needs to identify strategies that will enable the County to make these payments sustainable. Commissioner Frost states that he agrees, but in the meantime, we need to pay our bill. Commissioner Frost makes a motion to pay what we currently owe to the EVSWA and if it has to come from the Wind PILT, then we have to do it and every single person in the County will benefit from it. Mr. Wallin states that he appreciates the motion, but we put this item on the agenda as a discussion item only. This item will be placed on the next regular Commission meeting agenda for action.

Chairman Sanchez asks the Manager's Office to facilitate the scheduling of a meeting early next week so we can figure out how to move forward with this in terms of budgeting.

Mr. Miller extends an invitation to any member of the Commission and the County to come and see him with any questions they may have.

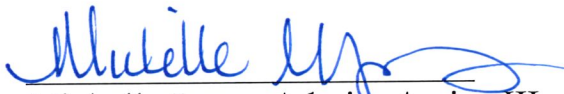
The Commission will have a Special Meeting on Monday, March 20, 2017 @ 2:00 pm. Chairman Sanchez requests the attendance of the Manager's Office and the Treasurer's Office and states that they will probably go into closed session for a portion of the meeting.

***Adjourn**

ACTION TAKEN: Chairman Sanchez makes a motion to adjourn the March 13, 2017 Commission Meeting. Madam Commissioner DuCharme seconds the motion. No further discussion. The Commissioners vote; all in favor, none opposed.
MOTION CARRIED.

Meeting adjourned at 4:09 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.