



# Agenda

CITY CLERK'S OFFICE

DATE 4/30/09 TIME 10:00 am

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**PUBLIC UTILITIES COMMITTEE  
MEETING  
CITY COUNCIL CHAMBERS  
WEDNESDAY, MAY 6, 2009  
5:00 PM**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FOR THE APRIL 1, 2009 PUBLIC UTILITIES COMMITTEE MEETING

**INFORMATIONAL ITEMS**

None

**CONSENT CALENDAR**

6. Update on Current Water Supply Status. (Victor Archuleta)
7. Update on Solid Waste Division. (Bill De Grande)
8. Request for Approval of Bid No. 09/32/B to Clark Truck & Equipment for a Eight Yard Side Loading Packer Body for the Solid Waste Division. (Bill DeGrande)
9. Request for Approval of Bid No. 09/31/B to High Mesa Environmental, LLC for a Top Loading Recycling Body for the Solid Waste Division. (Bill DeGrande)
10. Request for Approval of the Purchase of One (1) Ford F-56 Cab and Chassis from Bob Turner Ford Country State Purchasing Agreement for the Solid Waste Division. (Bill DeGrande)

**DISCUSSION ITEMS**

11. Request for Approval of a Budget Adjustment Request in the Amount of \$124,538.00 for the Solid Waste Division. (Maya Martinez & Bill DeGrande)

12. Request for Approval of Bill No. 2009-\_\_\_\_\_. An Ordinance Repealing Sections 14-8.11(G)(3), 14-8.13, 14-8.16 and 14-8.17 SFCC 1987 Regarding Annual Water Budget, Water Rights Transfer Requirements and Water Banking; Creating a New Section 14-8.13 SFCC 1987 Regarding Development Water Budget Requirements, a New Article 25-9 SFCC 1987 Regarding the City Water Budget, a New Article 25-10 SFCC 1987 Regarding the City Water Bank , a New Article 25-11 SFCC 1987 Regarding the Water Rights Transfer Program, and a New Article 25-12 SFCC 1987 Regarding the Water Conservation Credit Program; Making Other Related Changes as are Necessary. (Frank Katz) (Councilor Wurzbarger)
13. Request for Approval of Amendment # 3 to the Professional Services Agreement with Chavez Security for the Amount of \$335,397.01 Exclusive of NMGR and Extending the Term of the Contract. (Michael Gonzales)
14. Request for Approval of Resolution No. 2009-\_\_\_\_\_. A Resolution Adopting the Irrigation Efficiency Program Guidelines and Authorizing Rebates for the Installation/Retrofit of Efficient Irrigation Hardware. (Daniel Ransom) (Councilor Calvert)
15. Request for Approval of Resolution No. 2009-\_\_\_\_\_. A Resolution Authorizing and Approving Submission of an Executed Capital Cooperative Agreement with the New Mexico Department of Transportation (NMDOT) for the 2008 Legislative Appropriation for the Planning, Design, Engineering and Construction of a Water Line and a Sewer Line for the 2400 Block of Agua Fria in Santa Fe in Santa Fe County. (Stan Holland) (Councilor Chavez)
16. Request for Approval of Resolution No. 2009-\_\_\_\_\_. A Resolution Directing Staff to Work With the County of Santa Fe to Initiate Efforts to Create a Renewable Energy Financing District in Accordance With the Solar Energy Improvement Special Assessment Act and the Renewable Energy Financing District Act. (Nick Schiavo) (Councilor Calvert, Councilor Wurzbarger, Councilor Ortiz and Councilor Bushee)

#### **MATTERS FROM THE CITY ATTORNEY**

#### **ITEMS FROM STAFF**

#### **MATTERS FROM THE COMMITTEE**

**NEXT MEETING: WEDNESDAY, MAY 20, 2009**

#### **ADJOURN**

**PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE.**

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PUBLIC UTILITIES COMMITTEE  
May 6, 2009

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<b><u>DISCUSSION ITEMS</u></b>		
REQUEST FOR APPROVAL OF A BUDGET ADJUSTMENT REQUEST IN THE AMOUNT OF \$124,538.00, FOR THE SOLID WASTE DIVISION	Approved	3
REQUEST FOR APPROVAL OF RESOLUTION NO. 2009- ____, A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF AN EXECUTED CAPITAL COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE 2008 LEGISLATIVE APPROPRIATION FOR THE PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION OF A WATER LINE AND A SEWER LINE FOR THE 2400 BLOCK OF AGUA FRIA IN SANTA FE, IN SANTA FE COUNTY	Approved	4

**ITEM****ACTION****PAGE**

REQUEST FOR APPROVAL OF BILL NO. 2009- \_\_\_\_.  
AN ORDINANCE REPEALING SECTIONS 14-8.11(G)(3),  
14-8.13, 14-8.16 AND 14-8.17 SFCC 1987, REGARDING  
ANNUAL WATER BUDGET, WATER RIGHTS  
TRANSFER REQUIREMENTS AND WATER BANKING;  
CREATING A NEW SECTION 14-8.13 SFCC 1987,  
REGARDING DEVELOPMENT WATER BUDGET  
REQUIREMENTS, A NEW ARTICLE 25-9 SFCC 1987,  
REGARDING THE CITY WATER BUDGET, A NEW  
ARTICLE 25-10, SFCC 1987, REGARDING THE CITY  
WATER BANK, A NEW ARTICLE 25-11 SFCC 1987,  
REGARDING THE WATER RIGHTS TRANSFER  
PROGRAM, AND A NEW ARTICLE 25-12 SFCC 1987,  
REGARDING THE WATER CONSERVATION CREDIT  
PROGRAM; MAKING OTHER RELATED CHANGES  
AS ARE NECESSARY

Approved [amended]

4-17

REQUEST FOR APPROVAL OF AMENDMENT #3 TO  
THE PROFESSIONAL SERVICES AGREEMENT WITH  
CHAVEZ SECURITY FOR THE AMOUNT OF  
\$335,397.10, EXCLUSIVE OF NMGR AND  
EXTENDING THE TERM OF THE CONTRACT

Approved

17-18

REQUEST FOR APPROVAL OF RESOLUTION  
NO. 2009- \_\_\_\_\_. A RESOLUTION ADOPTING THE  
IRRIGATION EFFICIENCY PROGRAM GUIDELINES  
AND AUTHORIZING REBATES FOR THE  
INSTALLATION/RETROFIT OF EFFICIENT  
IRRIGATION HARDWARE

Approved

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REQUEST FOR APPROVAL OF RESOLUTION  
NO. 2009- \_\_\_\_\_. A RESOLUTION DIRECTING  
STAFF TO WORK WITH THE COUNTY OF  
SANTA FE TO INITIATE EFFORTS TO CREATE  
A RENEWABLE ENERGY FINANCING DISTRICT  
IN ACCORDANCE WITH THE SOLAR ENERGY  
IMPROVEMENT SPECIAL ASSESSMENT ACT  
AND THE RENEWABLE ENERGY FINANCING  
DISTRICT ACT

Approved

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<b><u>ITEM</u></b>	<b><u>ACTION</u></b>	<b><u>PAGE</u></b>
<b>MATTERS FROM THE CITY ATTORNEY</b>	<b>None</b>	<b>19</b>
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**MINUTES OF THE  
CITY OF SANTA FE  
PUBLIC UTILITIES COMMITTEE  
Wednesday, May 6, 2009**

**1. CALL TO ORDER**

A meeting of the Public Utilities Committee was called to order by Councilor Rebecca Wurzburger, Chair, at approximately 5:00 p.m., on May 6, 2009, in the Council Chambers, City Hall, Santa Fe, New Mexico.

**2. ROLL CALL**

**MEMBERS PRESENT:**

Councilor Rebecca Wurzburger, Chair  
Councilor Christopher Calvert  
Councilor Rosemary Romero

**MEMBERS EXCUSED:**

Councilor Matthew E. Ortiz  
Councilor Ronald S. Trujillo

**OTHERS PRESENT:**

Galen Buller, Public Utilities Director  
Stephanie Lopez, Public Utilities  
Marcus Martinez, Assistant City Attorney  
Melessia Helberg, Stenographer

There was a quorum of the membership present for conducting official business.

**NOTE:** All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference. The original Committee packet is on file in the Public Utilities Department.

**3. APPROVAL OF AGENDA**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the Agenda as published.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **4. APPROVAL OF CONSENT AGENDA**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the following Consent Calendar, as presented.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **CONSENT CALENDAR**

- 6. UPDATE ON CURRENT WATER SUPPLY STATUS. (VICTOR ARCHULETA)**  
A copy of "Weekly Water Report, Week of May 3, 2009, is incorporated herewith to these minutes as Exhibit "1."
- 7. UPDATE ON SOLID WASTE DIVISION. (BILL DeGRANDE)**
- 8. REQUEST FOR APPROVAL OF BID NO. 09/32/B TO CLARK TRUCK & EQUIPMENT FOR AN EIGHT YARD SIDE LOADING PACKER BODY FOR THE SOLID WASTE DIVISION. (BILL DeGRANDE)**
- 9. REQUEST FOR APPROVAL OF BID NO. 09/31/B TO HIGH MESA ENVIRONMENTAL, LLC, FOR A TOP LOADING RECYCLING BODY FOR THE SOLID WASTE DIVISION. (BILL DeGRANDE)**
- 10. REQUEST FOR APPROVAL OF THE PURCHASE OF ONE (1) FORD F-56 CAB AND CHASSIS FROM BOB TURNER FORD COUNTRY STATE PURCHASING AGREEMENT FOR THE SOLID WASTE DIVISION. (BILL DeGRANDE)**
- 5. APPROVAL OF MINUTES FOR THE APRIL 1, 2009 PUBLIC UTILITIES COMMITTEE MEETING.**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the minutes of the meeting of April 1, 2009, as submitted.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **INFORMATIONAL ITEMS**

There were no informational items.

## **DISCUSSION ITEMS**

### **11. REQUEST FOR APPROVAL OF A BUDGET ADJUSTMENT REQUEST IN THE AMOUNT OF \$124,538.00, FOR THE SOLID WASTE DIVISION. (MAYA MARTINEZ & BILL DeGRANDE)**

Maya Martinez presented information regarding this matter from the Memorandum of April 22, 2009, which is in the Committee packet.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

**DISCUSSION:** Chair Wurzburger asked Mr. DeGrande if this is an unusual level of repairs, if he is confident that we won't face this situation in the future, and asked him to give an overview of the repairs.

Mr. DeGrande said this is unusual. He said there were some really big repairs. He said a truck was rolled which is a big chunk of the cost. He said over the past month, he has really tightened maintenance and the pre and post check of the trucks. He said two weeks ago they locked out 21 trucks on Friday, and last week they locked out only 2. He said he is trying to get the works to be totally responsible for their vehicles. He said there were some extraordinary events regarding these repairs.

Chair Wurzburger noted she wanted Mr. DeGrande's response for the record.

Councilor Calvert said at the Transit Advisory Board meeting there was a discussion about some of the Rodeos they've had for the transit drivers. He said they suggested broadening that program in the City for participation by other City workers who operate motor vehicles who could benefit from those kinds of events. He said it is about driving and competing, but it is also about being critiqued on driving, and being advised of things to watch for which could help safety records and the Risk Management division as well.

Mr. DeGrande said once a year the Solid Waste Association of North America sponsors a Solid Waste Rodeo for all the solid waste vehicles, including landfill equipment. The participation by our drivers is volunteer, and some participate and some don't. He said he would love to join a city-wide program.

Councilor Calvert said the Transit Division participated in the state-wide rodeo, but we also have our own. He said people film them and then afterward critique their performance to give feedback so they can improve their driving skills.

**VOTE:** The motion was approved unanimously on a voice vote.

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**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to amend the agenda to hear Item #15 at this time, and to approve the agenda as amended.

**VOTE:** The motion was approved unanimously on a voice vote.

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15. **REQUEST FOR APPROVAL OF RESOLUTION NO. 2009- \_\_\_, A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF AN EXECUTED CAPITAL COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE 2008 LEGISLATIVE APPROPRIATION FOR THE PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION OF A WATER LINE AND A SEWER LINE FOR THE 2400 BLOCK OF AGUA FRIA IN SANTA FE, IN SANTA FE COUNTY (COUNCILOR CHAVEZ). (STAN HOLLAND)**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

**VOTE:** The motion was approved unanimously on a voice vote.

12. **REQUEST FOR APPROVAL OF BILL NO. 2009- \_\_\_. AN ORDINANCE REPEALING SECTIONS 14-8.11(G)(3), 14-8.13, 14-8.16 AND 14-8.17 SFCC 1987, REGARDING ANNUAL WATER BUDGET, WATER RIGHTS TRANSFER REQUIREMENTS AND WATER BANKING; CREATING A NEW SECTION 14-8.13 SFCC 1987, REGARDING DEVELOPMENT WATER BUDGET REQUIREMENTS, A NEW ARTICLE 25-9 SFCC 1987, REGARDING THE CITY WATER BUDGET, A NEW ARTICLE 25-10, SFCC 1987, REGARDING THE CITY WATER BANK, A NEW ARTICLE 25-11 SFCC 1987, REGARDING THE WATER RIGHTS TRANSFER PROGRAM, AND A NEW ARTICLE 25-12 SFCC 1987, REGARDING THE WATER CONSERVATION CREDIT PROGRAM; MAKING OTHER RELATED CHANGES AS ARE NECESSARY (COUNCILOR WURZBURGER). (FRANK KATZ)**

For the record, Chair Wurzburger said she appreciates the hard work done by Frank Katz, Marcus Martinez, Claudia Borchert, Dale Lyons and other staff on this ordinance change.

Frank Katz presented information on each item regarding this matter from his Memorandum of April 29, 2009, which is in the Committee packet. He said much of this is a reorganization and putting things in the logical place, noting the development water remains in Chapter 13. He said it would be helpful for the Committee to follow his presentation using the matrix immediately following page 38 of the Committee Packet.

*Chair Wurzburger suggested that Mr. Katz review, and the Committee discuss and approve, Mr. Katz's recommendations item by item, and it was the consensus among the Committee to proceed as recommended by the Chair.*

## **DEVELOPMENT OF WATER BUDGET**

Mr. Katz reviewed this section of his Memorandum and the Committee commented, asked questions and took action as follows:

Councilor Calvert said, regarding #3, we seem to be going in circles on this. He said a year ago this Committee discussed Plan B, how to monitor and get compliance, and we were concerned that there

wouldn't be compliance until after two years. He is concerned as to why we want to change that. He believes a year should have provided enough experience, and believes two years gives too much leeway. He asked why we would want to go another year before we do anything other than asking them to pay for the water. He said this is okay, but it is sort of a fee in lieu, and although we get money, we don't have the water

Mr. Katz said they went to the second year out of consideration for staff and the administrative burden of monitoring it monthly. He said the customer knows they have a limit, and they are billed monthly, and should be conscious of whether they are exceeding. He said we are getting a 50% surcharge on the exceedence, but we want them to come into compliance.

Councilor Calvert understands the staff's concern. However, he would rather catch the problem sooner, than later, and would like to leave the bill as introduced on that part of the monitoring.

Councilor Romero said she is hearing the issues around staff, and given budgetary constraints, she is even more cognizant of how much we are putting on staff without the resources. She agrees that we are giving a bit of a break in going longer. However, she said she is okay in going with what was originally proposed.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to accept the Development of Water Budget section of the ordinance as written, including Amendments #1 and #2 proposed by the Planning Commission, but maintaining Item #3 as introduced.

**DISCUSSION:** Mr. Katz said Mr. Lyons reminded him that this was something the developers wanted, and felt it was unfair because it is an annual budget, and the four months could be during the summer.

Chair Wurzbarger said she recalls that discussion.

**VOTE:** The motion was approved unanimously on a voice vote.

## **CITY WATER BUDGET**

Mr. Katz reviewed this section of his Memorandum and the Committee commented, asked questions and took action as follows:

A copy of a proposed amendment sheet, containing six amendments as proposed by staff, is incorporated herewith to these minutes as Exhibit "2."

At the request of the Chair, Mr. Katz explained the proposed amendments from staff. Please see Exhibit "2" for the text of these amendments.

Mr. Katz said the two amendments which are relevant to this discussion are Amendments #3 and

#4. He said Amendment #3 adds language on page 18, regarding water held for affordable housing, water held to meet the anticipated surface water supply gap resulting from water right permit offset requirements. He said Amendment \$4 adds language on page 20, line 4, concerning the priority of what the Governing Body would do with any excess water and adds another priority as (d) which is the water right permit offset requirements.

**PROPOSED AMENDMENT:** Councilor Calvert suggested amending Item #3 as follows: "... and water held to meet the anticipated surface water long range supply gap..."

Councilor Calvert said Amendment #4 doesn't capture all of what was discussed. He said part of our struggle is with some of the legal constraints with regard to what we can dedicate water. He asked Mr. Katz if he had an executive session with the River Commission on this topic.

Mr. Katz said the issue is the concern that water dedicated permanently to the river may or may not be considered to be a beneficial use. He said we have an opinion from the Attorney General saying it is, but there is no case law on the subject, nor ruling from the State Engineer. The concern is that if we were to dedicate 1,000 afy water to the Santa Fe River from our 5,040 afy allotment, which would just remain in the River, someone could raise the issue, perhaps an acequia, that the City has abandoned the use of that water. So, there is a reluctance to go that route and actually allow a dedication of any particular amount to the River.

Chair Wurzbarger said point "a" does indicate that this can be a priority, so we're mentioning it, but we're not giving a specific amount. It is the opinion of staff, as she understands it, that that covers the issue in terms of possible annual or monthly allocation, etc.

Mr. Katz said it gives the authority to do it, but it doesn't actually commit us to doing it, commenting that the law may become clear on the subject. He said last week the Council adopted the Resolution to allow the pass through which we think protects us, and we're hoping it will be 700 afy. He has been sufficiently persuaded that it should apply to residential customers. This is to be the way the residential customer can conserve and direct those savings to the River. In response to the issue raised by Mr. Martinez, Mr. Katz said he is suggesting the possibility of allowing a water customer to pay an additional amount each month on their bill and request delivering the water to the River.

Responding to the Chair, Mr. Katz said he is pushing this out of order, because it seemed relevant to Councilor Calvert's question, and he will discuss it more later in this discussion.

Councilor Romero asked what kicks in the determination of beneficial use.

Mr. Katz said a challenge from some is likely what would do that.

Councilor Calvert suggested further amending Item #3 on page 18, as follows: "... water held for affordable housing and second tier of community projects, such as the Santa Fe River.

Mr. Martinez said this is included in item "a."

Councilor Calvert said he is looking at the 4/29/09 version of the ordinance, because he thought this was the most current version.

Mr. Katz that is a mock-up of the ordinance adding all of the amendments, and that language is included on page 20.

Chair Wurzburger suggested everyone work with the 4/29/09 version.

Councilor Calvert said he wants to be sure that the words "current sustainable supply" is in the ordinance, and Mr. Katz said it is.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the version of the Annual City Water Budget Section of the ordinance as introduced, with the addition of amendments #3 and #4 noted in the Staff Memorandum.

**VOTE:** The motion was approved unanimously on a voice vote.

## **CITY WATER BANK**

Mr. Katz reviewed this section of his Memorandum and the Committee commented, asked questions and took action as follows:

Chair Wurzburger said the matrix is unclear, and asked if the Planning Commission adopted an amendment that would allow developers to continue to hold rights, and you're pointing out a point of disagreement. She asked if there is a sheet with the Planning Commission amendments.

Mr. Katz said if those amendments are on a sheet entitled "Title Transfer Issue," which has 14 amendments which clarifies that what the developer would hold in the bank are water credits.

Chair Wurzburger said this would be what we would adopt as an amendment.

Responding to Chair Wurzburger, Mr. Katz said it is the only sheet of 14 amendments dealing with pages 14 through, dealing with "water credit." Mr. Katz said at this amendment sheet is titled "Title Transfer Issue," with the first amendment beginning on page 14.

Chair Wurzburger asked if this is the only page of amendments which are relevant to the water bank.

Mr. Katz said he believes so. He tried to do these separate amendment sheets and this one covers this issue, and believes it covers all of the water bank, but he isn't 100% sure. He would like for the Committee to adopt each of the amendment sheets.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the Water Bank portion of the ordinance as introduced, with the 14 amendments entitled "Title Transfer Issue."

**VOTE:** The motion was approved unanimously on a voice vote.

## **THE WATER CONSERVATION PROGRAM**

Mr. Katz reviewed this section of his Memorandum and the Committee commented, asked questions and took action as follows:

### **Retrofit Rebate**

Chair Wurzburger said then the rebate would be tied to some kind of assessment as to the cost of the water, and Mr. Katz said this is correct.

Councilor Calvert said Mr. Katz's Memorandum says, "The City will use those credits, first, to sell to developers to fulfill development water budgets for small developments, again replicating how the toilet retrofits credits were used." He is unsure he agrees with this language, commenting he can say this is one use, and asked if it should always be the priority use, noting this is the implication of the Memorandum. He doesn't know what the ordinance actually provides, and asked for clarification.

Mr. Katz said that hasn't changed, and the thinking was that the retrofit rebates would mirror what toilet rebates do now, which is to provide a pool of water for the small developers.

Chair Wurzburger clarified that "small developer" also includes the person who wants to do their bathroom, the homeowner.

Councilor Calvert said he understands this, pointing out that we are using the City's money to purchase these credits. He is trying to represent the residents of the whole City who don't necessarily want their money spent to further more development, at least not as the developer's priority as opposed to allocating it across uses and not always giving development first priority.

Mr. Katz said, although the City would front the money for the rebate, when a person wants to buy a credit to add a bathroom, or to build three homes, they would pay the City at a slight premium over what the City paid for that, so it won't cost the City anything. He said this is the reason we had the conservation contract available for residents to allocate to a purpose of their choice. However, he said this provision has been "shot down."

Councilor Calvert said we might not get the participation we would like if people know their water is going just for development

Mr. Katz said this is the way the ordinance is written, and that may or may not be satisfactory to the Committee. He asked the Committee at this time to look at the "Water in River" amendment sheet [Exhibit "2"]. He said amendment #1 adds a new section to allow the person conserving water to allocate the savings to the River.

Mr. Katz said, currently, there is a checkoff program to put money in a fund to purchase water rates. He said there are no water rights available for purchase on the Santa Fe River, which is problem number one. The second problem is, if the rights are dedicated to be used in the River, there is the same issue of whether that is a beneficial use. Responding to Councilor Calvert, Mr. Katz said this adds a section to the provision for the checkoff, as an alternative to the checkoff as a direct delivery to the River.

Mr. Katz said amendments #5 and #6 on the amendment sheet [Exhibit "2"] eliminate the residential customers.

Councilor Calvert said then we want strategies to bridge the long term supply gap, and Mr. Katz indicated this is correct. Councilor Calvert asked what is the motivation for the ordinary residential customer to do that. He said the three strategies for increasing our water supply: (1) buying water rights; (2) return flow credits; and (3) conservation.

Chair Wurzbarger said, for example, if an individual wants to add a toilet to their house needed water, they would appreciate having this. She said we have laid out a multi-level strategy that doesn't say it's all developer or all conservation, but the three things together should result in provide the water we need for the community. She believes it's a false dichotomy to argue it the other way.

Councilor Calvert disagreed, respectfully, saying we're trying to get people to install certain things for a rebate.

Chair Wurzbarger said one of the reasons people might do this is that they would have a lower water bill, which is a motivation. She knows there are people who wouldn't do this because the water might go to a developer. She said this is a broad spectrum of solutions, and really wants to see this as a continuum of options which aren't necessarily tied to development.

### **Water Conservation Contract**

Councilor Calvert noted there is a Memorandum in the packet from the Water Division with some suggested language to change things.

Mr. Lyons said, with regard to the Water Conservation Contract Program, the Water Division suggested changing the program to make it for commercial only.

Councilor Calvert quoted from Mr. Lyons Memorandum of April 3, 2009, "Because conservation under the CCP may be obtained in a manner inconsistent with other community values (e.g. removal of outdoor landscaping and replacement with parking lot or gravel), the group recommends that the following, or equivalent, language be included in 25-11.3(l), "Conservation measures must be shown to consist of either a change in the nature of the business, a change in commercial process, retrofit of older commercial appliances or fixtures with newer more water efficient units, or installation of new water conservation technology." He said this addresses the problem of situations, such as Luna Laundry, commenting that it couldn't take advantage of this opportunity if they move location, and he believes this might help clarify that. He asked if this would cover those kinds of circumstances.

Mr. Katz said the conservation contract would address that. He said the language he is talking about is wanting to make sure that a business doesn't gain saved water by taking out their landscaping and paving everything. He said there are landscaping requirements, to the extent they are included in a development contract, or not, and asked if we want to tell people how much landscaping they have to do.

Councilor Calvert said the explanatory paragraph says, "While ensuring beneficial conservation, this language accommodates an important CCP objective of allowing commercial property owners to restrict water use at one property by changing the nature of the business (e.g. from laundry to office space), then transfer the "conserved" water use to another location."

Mr. Katz said this is what it does now, and the whole object of it, and we weren't able to do this before.

Chair Wurzbarger asked if this language is included in the current bill, and if he took a staff recommendation which wasn't approved by the Planning Commission and put it in the bill.

Mr. Katz said it was already in the bill.

Chair Wurzbarger asked why we have a memo on it.

Mr. Katz said the concern is that the contract credit might be obtained in a manner inconsistent with other community values, such as removing landscaping and replacing it with a parking lot, and staff wanted to add that single sentence to say you can't do that, it has to be whatever is in the quoted section. This hasn't been added, and if you can vote to add it.

Responding to Councilor Calvert, Mr. Katz said that sentence isn't in the bill, but the section you were reading is in the bill.

Councilor Calvert would like to add this to the bill, because it better clarifies the purpose, and argues against unintended consequences.

Chair Wurzbarger said then one of the proposed amendments to the bill, as introduced, would be the staff amendment in the second bullet reflected in the April 3, 2009 Memorandum to Frank Katz from Dale Lyons.

Responding to Councilor Calvert, Chair Wurzbarger said there is no private market option in the ordinance.

Councilor Calvert asked Mr. Katz to comment on this.

Mr. Katz said his concern is that a business or a laundry using 100 afy is going to move and it's going to be more efficient, but what is going where the business was previously is going to be a normal office building which will use only 1 afy. Therefore, there will be an excess, and they need to sell it to somebody. He said the Water Bank is a market and it is intended to be a market, and this would be marketable.

Councilor Calvert said it is controlled by the City, and these could be individual transactions on those particular left-over credits he was talking about.

Mr. Katz said no. He clarified that there are water rights in the water bank that a developer, or anyone can bring, and they would have credits which could be sold to developers. He said the commercial customer who is going to get a conservation credit would have a credit they could then market if they didn't need them.

Chair Wurzbarger said she needs specific recommendations for an amendment, although she is unsure she would agree to this.

Mr. Lyons said staff was trying to avoid the problems experienced by the Retrofit Program with the private market. He said the proposed ordinance, as currently worded, allows people who conserve water under the Conservation program to market the water rights when they move their business. Staff believes it is fine if they put their conserved water in the bank for use in the new location, but not to sell those rights. He noted he didn't suggest any language.

Councilor Calvert suggested staff confer with Frank to develop any language for the ordinance as it moves forward.

Mr. Katz said this is a policy issue to be decided by the Committee. He said the bill, as structured, creates and furthers a market in water credits.

Chair Wurzbarger said it does create a very small market in commercial, and there are several options, one of which would be to include language as suggested by Mr. Lyons. She said if we can't resolve this quickly, she will ask staff to provide those options to bring forward. The first option is language as expressed by staff. The second, is an option where people can put them in the water bank and receive



something from the City for them, which avoids the problem of the "black market." She asked if there is consensus on the options.

Chair Wurzburger would like those options to be developed and brought to Council when this ordinance goes to Council.

Mr. Katz said he will prepare a memorandum outlining the three options: (1) you lose them; (2) you sell them to the City at the price set by the City; or (3) sell them to the highest bidder.

Chair Wurzburger said she would like to eliminate Option 3 for consideration, and asked staff to come back with information on the two options.

Councilor Calvert said this would accept staff's recommendation.

Chair Wurzburger said staff had no recommendation in the memo and were very clear about that.

Mr. Katz said his concern is that if you don't like Option 3, then we have to completely revise how we deal with the water bank, and we don't want to let people who put credits in the water bank to sell them. and people can't sell them.

Chair Wurzburger asked staff to bring back pros and cons of the three options.

Councilor Calvert said the fourth point is covered, because if we eliminate commercial, then it's not our problem.

Mr. Katz said yes. He said we need to get rid of the proposed amendments for the Water Conservation Program, because we aren't going to let residential do contracts, so Option B couldn't do contracts either.

Chair Wurzburger said it says, "Make conservation contracts available to Option B customers," and asked why we wouldn't do that.

Mr. Katz said because you don't want them to be residential, and we can revise that to make it only for commercial.

Chair Wurzburger said we have the bill as introduced, and we have consensus on one option which is the staff amendment which is Bullet #2 on the April 3<sup>rd</sup> Memorandum.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the Water Conservation Credit Program section of the bill, Section 25-11, as introduced, with one amendment which is the second bullet point from the April 3, 2009 Memorandum, to Frank from Dale Lyons, et al, "Conservation measures must be shown to consist of either a change in the nature of the business, a change in commercial process, retrofit of older commercial appliances or fixtures with newer more water efficient units, or installation of new water conservation technology."

**FRIENDLY AMENDMENT:** Councilor Calvert would like to add amendment #5 from the amendment sheet titled Water in River [Exhibit "2]. **The amendment was friendly to the maker and second, and there were no objections by the other Committee members.**

**FRIENDLY AMENDMENT:** Mr. Katz said we need to insert Amendments #18 and #19 from the amendment sheet entitled "Developers & Staff." **The amendment was friendly to the maker and second, and there were no objections by the other Committee members.**

Chair Wurzbarger directed staff, as this bill moves forward, to correlate the amendments matrix so there is a page number for each of the amendment sheets, and Mr. Katz said he will do that.

**VOTE:** The motion, as amended, was approved unanimously on a voice vote.

## **WATER RIGHTS TRANSFER PROGRAM**

The Committee commented, asked questions and took action as follows:

Councilor Calvert asked, as introduced, if the applicant can pay a flat fee of \$1,000 fee to the City, and Mr. Katz said this is correct. Councilor Calvert said the applicant also pays for legal review, but it doesn't specify whether this is ours or someone else's, pays all costs for hydrologic review, OSE application and notice. He asked if we removed the \$1,000.

Mr. Katz yes, that is his suggestion.

Councilor Calvert asked what the \$1,000 was to cover, besides the things which are mentioned specifically, and Mr. Katz said that is for Marcus Martinez's time for doing the legal review.

Responding to Councilor Calvert, Mr. Katz said this for external legal review.

Councilor Calvert said he would like the bill to say this. He said we wouldn't be doing this on our own, and the reason he has a problem with that, and asked the rationale.

Mr. Katz said this is product of discussions with the developers, noting the developers aren't happy with this, and want the City to split costs. He said for our own purposes we want to be sure these are good

rights going forward, but they should pay for everything else. The argument could be made that even the in house review should be paid by the applicant.

Chair Wurzbarger said this is a specious argument. She understands we will be ahead, money wise, in this process in terms of actual expenses and this is the reason the developers aren't happy about this. She asked Mr. Martinez to comment.

Marcus Martinez pointed out that this is the way it is done currently under the existing water banking ordinance. He said the developers pay for their own attorneys, our hydrologic review and they have the burden to get it through the OSE process which can take 18 months to two years. He said we are facing two procedures. He said previously his work was done at an external firm, and that was paid by the funds received by the City. Now that he is on staff, the work is done by the City, and the City potentially now has the burden to share the cost a developer may have with their external attorney through one of these administrative hearings.

Responding to Councilor Calvert, Mr. Martinez said currently there is more burden on the developer, and we are faced with the possibility that we may have to pay half of the fee for the administrative hearing under the current law. If it is changed, the developer would pay for their own experts.

Councilor Calvert presumes part of the legal fees would be to address some of the concerns Mr. Martinez would have when he reviews it in house, or if this is just for the OSE.

Mr. Martinez said, "I think it's to have one process, one consistent procedure. I still do the review that I do, because I think it's my diligence to review what they submit. But, I think the developer actually will be carrying more of a burden this way.

Councilor Calvert suggested setting a cap.

Mr. Katz asked Mr. Martinez if it really looks messy, if we can say we don't want the water rights.

Mr. Martinez said yes.

Councilor Calvert asked when we will know this, or will it become clear after we have spent a lot of time.

Mr. Martinez said we should have an idea during the hydrologic review which will flag problems with the water rights.

Councilor Romero said she is uncomfortable with the cap. She is comfortable with leaving it more open-ended. She asked if staff has a suggestion for a cap.

Mr. Martinez said his role would be limited. He said developers are hiring their own attorneys to take this through an administrative hearing, and currently we pay ½ of the legal or expert fees. If we adopt the proposed change, the developers will pay for their own attorneys. His role is to monitor the hearing process which could take more or less time, but he doesn't know how to calculate that, keep track and bill the developer, commenting that this would create a new, administrative difficulty.

Responding to the Chair, Mr. Katz said this is reflected in the amendment sheet, entitled "Costs," and it gets rid of the \$1,000 fee, makes it clear that they pay all the costs for hydrological and legal review, and that they pay for all the appeals, although there is further discussion to be had on that issue when you are ready.

Mr. Katz said the amendments were put in amendment sheet that affected the whole bill. There were technical amendments, Planning Commission amendments, amendments agreed upon between staff and the developer, amendments dealing with the title transfer and this amendment dealing with cost. All of these were adopted by the Planning Commission. We have done it differently and you have adopted some but not all. He said Councilor Ortiz wanted staff to do it this way and to see the amendment sheets so he would know who changed what.

Chair Wurzburger said this is good, because this bill has taken so long to move forward. She said the bill as introduced, Section 25-12, needs to be modified if we address all amendments under cost, and asked if this will cover everything.

Mr. Katz said it will cover almost everything, but there have been subsequent suggestions by the developers.

Chair Wurzburger doesn't want to do those now, and wants to try to do those we think we've done. She said the bill, as introduced, with the acceptance of the amendment sheet entitled "cost," would cover all of the Planning Commission, staff and developer ideas to date. Mr. Katz said yes.

**MOTION:** Councilor Romero moved, seconded by Councilor Calvert, to approve the Water Rights Transfer Program portion of the bill, as introduced, with the amendments on the amendment sheet entitled "Title Transfer Issue."

**DISCUSSION:** Councilor Calvert quoted from page 5 of Mr. Katz's Memorandum dated April 29, 2009, "...Office of the State Engineer's getting a transfer accomplished have been clarified and gives the transferor the opportunity to provide the City other water rights if the OSE does not approve the transfer of all water rights were inspected." He asked what happens if the person can't come up with these water rights.

Mr. Katz said Councilor Calvert is referencing the escrow provisions, and described how that works, observing that the person can post a bond of 150% of the value of the water rights. If the water rights aren't approved in total, the City would keep the approved rights and return the portion which wasn't approved, and the bond acts as a fee in lieu. The City would then purchase those water rights.

Councilor Calvert asked if we will asked them to supplant the portion which wasn't approved.

Mr. Katz said no, but we will allow them to do that. Responding to Councilor Calvert, Mr. Katz said we are giving that as an option.

**VOTE:** The motion was approved unanimously on a voice vote.

Chair Wurzburger asked Mr. Katz about the two new ideas.

## **TWO NEW IDEAS**

Mr. Katz said it concerns the decision-making about the application to OSE, noting current law provides the City gets to decide and the developer has no say. The developers said we should agree on the application to the OSE, and he agrees. The second choice is whether to appeal denied water rights , which will be paid by the developer.

Mr. Katz said if the OSE imposes a condition on the water rights on one of our permits, the City can decide whether to accept those conditions and decide not to accept the rights. If the City decides to appeal this decision, the City would pay for it. He said this is in amendments #11 and #12 on the amendment sheet entitled "2<sup>nd</sup> Round from Developers & Staff."

Responding to the Chair, Mr. Katz said most of the amendments are clarifications, but amendment #6 is a substantive change, and the bill is significantly clear with these amendments.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the adopt all twelve of the amendments from the amendment sheet entitled "2<sup>nd</sup> Round from Developers & Staff."

**VOTE:** The motion was approved unanimously on a voice vote.

## **OTHER**

Councilor Calvert referenced page 2 of the 04/29/09 bill, which provides what will be included, not including water to be used during and for construction.

Mr. Katz said this is excluded because it isn't a recurring thing.

Councilor Calvert asked if we account for construction somehow.

Mr. Katz said they pay for the water.

Mr. Buller said there are prohibitions, and you can't use the metered water from a fire hydrant for all construction purposes.

Chair Wurzburger directed staff to give thought to this as it moves through the process.

Responding to Councilor Calvert, Mr. Katz said the other entities referenced on page 6, Item #9, are excepted from the requirement to do a water budget under the bill.

Councilor Calvert asked if this is what we want to do.

Mr. Katz said there has been no discussion about this, so he isn't entirely sure.

Chair Wurzburger said we need clarification on this point and we won't get that this evening, but her recollection is that over time we did want them to be required to provide water, and we should require them to do so.

Councilor Calvert questioned why the City would exempt itself.

Mr. Katz said he was mistaken, and the entities are required to do this.

Councilor Calvert asked if we can enforce this, and if we will get cooperation or a lawsuit.

Mr. Katz said, "Yes."

#### **APPROVAL OF THE PROPOSED ORDINANCE, WITH AMENDMENTS AS APPROVED**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve the entire water budget ordinance, as drafted with all of the amendments approved by this Committee this evening.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **13. REQUEST FOR APPROVAL OF AMENDMENT #3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CHAVEZ SECURITY FOR THE AMOUNT OF \$335,397.10, EXCLUSIVE OF NMGR AND EXTENDING THE TERM OF THE CONTRACT. (MICHAEL GONZALES)**

Michael Gonzales presented information regarding this matter from his Memorandum of April 14, 2009, which is in the Committee packet.

Responding to Councilor Calvert, Mr. Gonzales said this amendment extends the contract for another year, Chavez has had this contract for three years, we are in the 8-9th year of contracting with this entity, and the last amendment was requested to get on track with the fiscal year for a two month period.

Councilor Calvert expressed concern that we don't want to give the appearance that this is locked-up by one group.

Responding to the Chair, Mr. Gonzales said the RFP went out on March 26, 2007, there were only two bidders, the team unanimously awarded the bid to Chavez, and the next RFP will be done in 2010

Councilor Romero pointed out this only goes to 2010, and since there were only two bidders, it may be best to let it run its course and then put it out to bid again.

Chair Wurzburger why this is on the BDD agenda meeting tomorrow.

Mr. Gonzales said there was discussion regarding vandalism and contractors who were reporting.

Chair Wurzburger said, given where we are in the economy, she is extremely concerned that we continue to have a monopoly relationship with Chavez, whether for the water projects, the GCC and the Convention Center. She said there is a new economic environment, and she has heard about another company who is interested. She spoke with Commissioner Vigil today about new technology to monitor tourism, but we don't have this capacity with the kinds of security we have had in the past. She wants to be sure we are up to date in terms of what we want, commenting we can wait until 201. However she isn't comfortable with that and she will be talking with the Committee between now the Council meeting.

It was pointed out that Chavez is a local contractor.

Responding to Councilor Calvert, Jay Horany, Chavez Security, said 90% of Chavez's employees live in Santa Fe, although some live in Espanola.

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

**VOTE:** The motion was approved unanimously on a voice vote.

**14. REQUEST FOR APPROVAL OF RESOLUTION NO. 2009- \_\_\_\_\_. A RESOLUTION ADOPTING THE IRRIGATION EFFICIENCY PROGRAM GUIDELINES AND AUTHORIZING REBATES FOR THE INSTALLATION/RETROFIT OF EFFICIENT IRRIGATION HARDWARE (COUNCILOR CALVERT). (DANIEL RANSOM)**

**MOTION:** Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

**VOTE:** The motion was approved unanimously on a voice vote.

16. **REQUEST FOR APPROVAL OF RESOLUTION NO. 2009- \_\_\_\_\_. A RESOLUTION DIRECTING STAFF TO WORK WITH THE COUNTY OF SANTA FE TO INITIATE EFFORTS TO CREATE A RENEWABLE ENERGY FINANCING DISTRICT IN ACCORDANCE WITH THE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT AND THE RENEWABLE ENERGY FINANCING DISTRICT ACT (COUNCILOR CALVERT, COUNCILOR WURZBURGER, COUNCILOR ORTIZ AND COUNCILOR BUSHEE). (NICK SCHIAVO)**

Councilor Calvert asked if Mr. Schiavo has an update on the progress the County might be making to date.

Mr. Schiavo said he will be meeting with the County Manager on Monday. He said the County's newly-hired Energy Specialist is reading through the House and Senate bills Mr. Schiavo provided to him. Mr. Schiavo said he will know more about the status next week. He understands the County probably will contract for most of this work.

Councilor Romero asked to be added as a cosponsor.

Councilor Calvert said Councilor Dominguez would like to be added as a cosponsor as well.

**MOTION:** Councilor Romero moved, seconded by Councilor Calvert, to approve this request.

**DISCUSSION:** Councilor Romero would like to look for opportunities to partner with the County on various issues, including this kind of work around renewable energy, to reinforce what Chair Wurzbarger and Commissioner Vigil said at the RPA.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **MATTERS FROM THE CITY ATTORNEY**

There were no matters from the City Attorney.

#### **ITEMS FROM STAFF**

There were no items from staff.

#### **MATTERS FROM THE COMMITTEE**

There were no matters from the Committee.



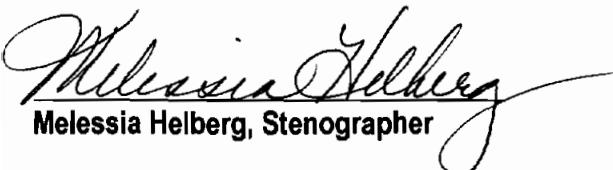
**NEXT MEETING: WEDNESDAY, MAY 20, 2009.**

**ADJOURN**

There was no further business to come before the Committee, and the meeting was adjourned at 6:45 p.m.

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**Rebecca Wurzburger, Chair**

  
**Melessia Helberg, Stenographer**