



Agenda

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SANTA FE RIVER COMMISSION
Tuesday, September 18, 2012, 6:00 – 8:00 p.m.
City Councilors' Conference Room, City Hall
200 Lincoln Avenue, Santa Fe, NM
505.955.6840

1. ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES FROM AUGUST 21, 2012
4. DISCUSSION/ACTION ITEMS
 - a. Presentation and Discussion: Update regarding New Mexico Environment Department, Santa Fe River water quality classification recommendations and possible changes. (Alex Puglisi)
 - b. Discussion: Santa Fe River Fund, status and alternatives for the Voluntary River Conservation Fund (Jerry Jacobi, Brian Drypolcher)
5. MATTERS FROM COMMISSIONERS, MATTERS FROM SUB-COMMITTEES
6. MATTERS FROM STAFF
 - a. Request to change the meeting schedule of the River Commission. (Brian Drypolcher)
7. CITIZENS COMMUNICATION FROM THE FLOOR

ADJOURN

Persons with disabilities in need of accommodation, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

**Santa Fe River Commission
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September 18, 2012**

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Call To Order/Roll Call	Chair Jacobi called the meeting to order at 6:00 pm, a quorum was present.	2
Approval of Agenda Move 4a to 4b to accommodate presenter.	<i>Motion made by Mr. Ellenberg to amend agenda moving 4b before 4a, second by Ms. Romero-Pike, motion carried by unanimous voice vote.</i>	2
Approval of Minutes – August 21, 2012 Corrections: Ms. Broennan, correct name throughout minutes Page 7: Comment from Mr. Jacobi, 6 th line down – 326 - 1,000 gallon units.	<i>Mr. Ellenberg moved to approve minutes as amended, second by Ms. Romero-Pike, motion carried by unanimous voice vote.</i>	2
Discussion Items: a. Presentation and Discussion: Update regarding New Mexico Environment Department, Santa Fe River water quality classification recommendations and possible changes. (Alex Puglisi)	<i>Mr. Ellenberg moved to provide support on the city's position to NMED, second by Mr. Gerberding, motion carried by unanimous voice vote.</i>	3-11

<p>b. Discussion: Santa Fe River Fund, status and alternatives for the Voluntary River Conservation Fund (Jerry Jacobi, Brian Drypolcher)</p>	<p><i>Let me make a motion for discussion purposes:</i></p> <p><i>Mr. Mr. Ellenberg moved to;</i></p> <p><i>1) ask the city to pursue leasing some water rights on the Santa Fe River for the purpose of filing for a change of use to see if the State Engineers would approve the change of use from and to the river. That changes our legal framework if we know we can establish that. 2) We ask the council to amend the ordinance to provide that at least for future monies, the monies can be used to improve the flow of water in the Santa Fe River but not necessarily to buy it and in the meantime I want to do some research on the answer to #2. Second by Mr. Buchser. Motion withdrawn.</i></p> <p><i>MOTION: Mr. Ellenberg moved to, 1) That we ask the council to amend the ordinance to allow the fund monies to be used for anything that improves the flow of water in the Santa Fe River in a way that would enhance the echo system of water in to the Santa Fe river, 2) that we use the existing funds to acquire some water rights in a way that will allow us to support the application to use the water in the Santa Fe River as a release or change of location to</i></p>	
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	<i>determine whether or not we might lawfully use water for the benefit of the Santa Fe River, second by Ms. Romero Pike, motion carried by unanimous voice vote.</i>	
Matters from Commissioners, Matters from Sub-Committees	Informational	11-12
Matters from Staff	Informational	12
Citizens Communication from the Floor	None	12
Adjournment	Mr. Buchser moved to adjourn at 7:30 pm. Second by Mr. Ellenberg, motion carried by unanimous voice vote.	12
Signature Page		12
Exhibits		Informational - Discussion

SANTA FE RIVER COMMISSION
Meeting Minutes
Tuesday, September 18, 2012, 6:00 pm – 7:30 pm

City Councilors' Conference Room, City Hall
200 Lincoln Ave, Santa Fe, New Mexico 87501

1. ROLL CALL

The meeting of the Santa Fe River Commission was convened by the Chair at 6:00 pm, City Councilors' Conference Room, Santa Fe, New Mexico. A quorum was present at time of roll call.

Present:

Jerry Jacobi
Phillip J. Bove
John R. Buchser
Melinda Romero-Pike
Sam Gerberding
Richard Ellenberg
Jim Cutropia

Not Present

Dale Doremus, Excused

Others Present:

Tim Michael, NM Environmental Department
Jonathan Phillips
Alan Hook, City of Santa Fe Water Division
Alex Puglisi, City of Santa Fe, Public Utilities
Brian Drypolcher – Staff Liaison
Nicole Lichen, Audience

2. APPROVAL OF AGENDA

Motion made by Mr. Ellenberg to amend agenda moving 4b before 4a, second by Ms. Romero-Pike, motion carried by unanimous voice vote.

3. APPROVAL OF MINUTES – August 21, 2012

*Corrections: Ms. Broennan, correct name throughout minutes
Page 7: Comment from Mr. Jacobi, 6th line down – 326 - 1,000 gallon units.*

Mr. Ellenberg moved to approve minutes as amended, second by Ms. Romero-Pike, motion carried by unanimous voice vote.

4. DISCUSSION / ACTION ITEMS

a. Presentation and Discussion: Update regarding New Mexico Environment Department, Santa Fe River water quality classification recommendations and possible changes. (Alex Mr. Puglisi)

Tim Michael, NMED and Alex Mr. Puglisi, City of Santa Fe

The Chair shared a concern with a classification break at Frenchy's field. We say that sometimes water gets to Frenchy's field and sometimes it doesn't.

How will this affect our target flow of 1,000 feet?

The Chair opened by asking why did we select the break at Frenchy's?

The original intent here is to reclassify that part of the Santa Fe River that flows through town.

We expanded it to include from Nichols to McClure – now it is expanding all the way down to Cochiti Pueblo. At the last proposal when we presented to the public at La Cienega and downtown, we had chosen San Isidro. I chose for a number of reasons not to make the break at San Isidro but at Frenchy's, to support the contact use at the river. It wasn't the best break to accomplish those objectives. They suggested that we split out the two questions: Nichols to the Waste water treatment plant. If we do what the city is proposing to be the default primary contact, than it simplifies the discussion, where we would make the aquatic break. It is not that the river isn't already protected; it is protected, Nichols and McClure are better classified as lakes vs. streams. We want to upgrade them based on what we will be able to support.

(Handout)

Mr. Ellenberg: I followed what you said but it didn't mean anything to me. Aquatic standards are higher than contact standards.

I know as we go down the river, with the standard it gives us tools. What are the implications in practice of doing this?

Mr. Puglisi: Numeric criteria and designated use. There are differences in aquatic life and e-coli bacteria; that is where the e-coli standard comes from. The cold water aquatic life would be required to protect that and they are different standards completely. The city felt that when the city water flows is being used; they don't use it when it is storm flow. We had a difference of opinion on supporting cool water. We are proposing that we draw that line at the Guadalupe intersection.

Mr. Ellenberg: Is there a threat to our standards?

Mr. Puglisi: It would probably provide more protection. I would need to reiterate that these stretches are already protected. Because of storm water runoff we are exposed to PCB's and e-coli; it would not change our current classification, the Santa Fe River is already classified and protected.

Mr. Ellenberg: I am not sure that going from a default classification to a classified is what we need to do; we should focus on getting out of the PCB standard.

Mr. Puglisi: I do not see that it will change those classifications. The PCB standard exists and we don't meet those standards. Dilution is the solution to pollution.

Mr. Puglisi: NMED has indicated point source to non-point source to ambient to meet the maximum daily load. If we exceed those permit limits we could be in an enforcement situation, it wouldn't change from the present to the future classification. I need to make it clear that under storm water we don't have a numeric – we have a basic requirement to achieve the standards.

Ms. Romero Pike: Let's assume that water is coming to the reservoir and in the event of a flash flood which closes the river and brings debris and garbage; how do you decontaminate that and run the clean water again?

Mr. Michael: Storm water is a problem. We don't talk about decontaminating a water bed. It is likely that the storm water won't meet the water quality standards. If the water doesn't meet the criteria we encourage the management of the river.

Mr. Gerberding: Is there an advantage from the classification, management practices, if we are classified with EPA, is there funding that can assist the burden on the city?

Mr. Michael: For EPA to fund; there has to be standards in place and documentation. If the river does not continue to meet the storm water criteria, then it is more likely that the funds would be free for storm water improvements.

Mr. Puglisi: In talking with the NM Environmental Department, our chances of getting 319 funding for unclassified classification could lead to TMDL's,

Mr. Gerberding: Would it give potential help for the river?

Mr. Puglisi – It gives us more funding for storm water funding. In addition, staff was sensitive to what the PUC and city council have said that the council wanted to see the river be a living river for everybody. We want to protect the river for living contact. The cold water aquatic life is totally different,

hydrology from upstream Guadalupe to downstream. To have the aquatic life you need to have flow and we didn't disagree that the foot bridge at Frenchy's park could receive flows at that time. We feel that it is at Guadalupe more frequent. NMED listened to all of our concerns. Our plan is to present this to the city council and NMED is willing to work with us.

Mr. Michael: We would like to have comments from the city by 9/28/12. Comments and suggestions from this committee would be easier to support at the public hearing on December 11th. A complete proposal is to be done by November 5th.

Mr. Ellenberg moved to provide support on the city's position to NMED, second by Mr. Gerberding, motion carried by unanimous voice vote.

Mr. Buchser asked the question on why some places in the Guadalupe to St. Francis to the Wastewater treatment plant are dry. It seems like there are three classifications, not knowing all of the rules that apply to downtown, to the waste water treatment plant, does it make sense...

Mr. Michael: EPA – Right now the unclassified portion is classified from warm water to cool water. We can do an upgrade to a stream course; our intent is to upgrade the stream course from Guadalupe to Nichols to cool water. The problem is that the break is classified as warm water and won't support the aquatic life. To downgrade a stream force we have to go through a use sustainability analysis.

Mr. Ellenberg: What is a cool water standard?

Mr. Michael: It is warm water and cool water right now? We will change it to cool water? We are proposing – that stretch is primary contact is actually secondary contact. It does not meet the goals of primary contact. In general the wastewater treatment plan will not have a problem meeting those criteria.

Nicole Lichen: storm water

Mr. Puglisi: Even right now are storm water discharges should meet the – we don't so this would reaffirm that primary contact, if snow melt results in a flow just once in a year for primary contact, that is an existing use. The goal is to make streams fishable, swimmable, and we can't say that we meet that standard now.

NMED talked to the Mayor about the burden of costs and that are justifiable.

b. Discussion: Santa Fe River Fund, status and alternatives for the Voluntary River Conservation Fund (Jerry Jacobi, Brian Drypolcher)

(First order of business)

The Chair opened by clarifying that at last meeting there were Q&A reviewed by Marcus Martinez. What are we going to do with the river funds, there were various questions; is it possible to spend on river related activities such as habitat. Marcus said, no. The Chair explained the council's views on all future collections. Where we are now, we could still use the funds to try to buy water rights. We can't redirect the funds for other purposes, we can't refund the money. If you remember, the Chair said he talked about using this money to buy water from the city because it says to acquire water for the benefit of the Santa Fe River. We did that on the 21st of August and shortly after that Brian and Claudia got a directive from Councilor Calvert and the PUC to come up with what could do with the river funds. How can this be addressed? For the September 5th meeting, Claudia and Brian presented a position paper with suggested alternatives. Low and behold the Chair said his suggestions were in there as one of the alternatives. The Chair asked Brian to continue the discussion. The commission was provided with a copy of the memo that Brian presented to the PUC.

Mr. Drypolcher: The request that came from Councilor Calvert through the Water Division, the memo was organized in a way to respond to the specific questions that were asked. The first one was to review the purpose of what the fund is about. That is what the memo does, it starts out by quoting or citing from the ordinance and from the city code about how the conservation run was set up and its' purpose and then there was a question about what is the current status. We included some language about what challenges have been to date and actually spending the fund and going shopping for water rights and what those challenges have been. Basically saying why there hasn't been any activity or expenditure of the fund to acquire water rights for in stream flow. There was a request for a financial summary that is in the memo by year from 2008 thru 2012, how funds have accrued over time based on donations in to the fund and the Water Divisions match to the fund. We are up to \$222,000 in the fund. There was a question as to the role of the Santa Fe River Commission and the position of the River Commission and options to be presented by staff on the disposition of funds moving forward. Staff reviewed the minutes from prior meetings and a memorandum from Claudia Borchert that had been presented to the committee and comments were integrated in to the response to the PUC. The PUC ended up saying, "we really ought to do something with and about the river fund". Comment from Councilor Calvert was saying that the River Commission should come up with something soon or the council would take action.

Mr. Ellenberg: There is nothing for the Santa Fe River but there are several options on the Rio Grande. It would entail an application to change where it is going to be used and to use it for this purpose. Mr. Mr. Ellenberg stated that there is probably water in Acequia de Llano that could probably be leased that is on the Santa Fe River but would require an application to change the purpose. I know that Denise Fort and other lawyers that think that would probably be approved by the Engineer's office and I know Marcus doesn't. I have serious problems with his answers to #2, I think it is wrong and I would like to talk to a couple of other lawyers who do the work in that. I think that a modification in the purpose to use for the same goal is not a change in use and should not be prohibited by the nature of the fund as we have done that several times in the City. In my opinion he is clearly wrong in #2 that we can't modify the use of the fund to increase that amount of water in the river by techniques other than buying water. That is certainly feasible, we could buy from one of the acequias, the Santa Fe River, and draw an application to change it and I would recommend we use outside counsel. If we use counsel that doesn't believe it is going to be successful we won't be successful. Or we can buy water rights from the city or participate as we were going to a couple of years ago in buying water with a purchase with the city and file the applicable changes and see what happens. That is doable.

Ms. Romero-Pike: Commented that in the San Isidro church bulletin there is an ad that talks about water rights for sale in La Cienega. And that is a part of the Santa Fe River, right? I don't know if it is Cieneguilla but it says Cienega.

There was some conversation that a possibility might exist to lease water rights from the Jicarilla's. A response has not been returned to Mr. Drypolcher.

Mr. Ellenberg: Another suggestion is the fund buys water on the Rio Grande, gives that to the city and the city agrees to release the amount it by-passes in which case; what you would not accomplish is the water wouldn't be there in low years. You might have more water in rich years. I am not sure that is what we want to do.

Mr. Drypolcher: I am not an expert in water rights and I am not a Commissioner but I would like to comment that if we did the math on the \$222,000 and none of that was spent on administrative fees, some expert analysis that is required for the acquisition and transfer of water rights, none of that was spent on legal fees for the acquisition and transfer, all of which I do think would be expenditures that would have to be made. There is going to be the cost of the water right but there are going to be other costs associated with making it all happen. Let's just assume that all of the \$222,000 was available to acquire water rights and look at the range and cost of the water rights within our part of the world. You end up being able to purchase water rights if you had all of that money, at the best case scenario you would put 7 cubic feet per second in the river for one day. So my personal editorial comment on this whole thing

is that this is not a very good mechanism to put water in the river. We have another mechanism to my way of thinking that has been very successful, here we had a very dry year and we had 4 weeks of water in the river getting past Frenchy's field through the target flow ordinance. We have something that is working pretty well and then we have this other thing, I don't see how it is going to work in a way that is very satisfying for real water in the river. It is up to you as Commissioners to weigh in on what you think. My own feeling is; go busy some water rights, get the \$222,000 off the books and put a focus on repurposing the river fund for something that can be more satisfying and more meaningful for the river. Actually, one of the good uses as mentioned about the water in La Cienega, maybe that is where the water rights are and maybe that is where the water rights ought to stay and it is in the Santa Fe River and it does benefit the lower river and as people who care about the river we need not only think about what is up here but also think about what is down there and that may be a great place to secure some water rights for in stream flow. I may be out of order speaking as staff.

Mr. Ellenberg: Does the ordinance restrict us to the city.

Mr. Drypolcher: No it is Santa Fe River and in fact if you recall it says Santa Fe River or the Rio Grande.

Let me make a motion for discussion purposes:

Mr. Mr. Ellenberg moved to; 1) ask the city to pursue leasing some water rights on the Santa Fe River for the purpose of filing for a change of use to see if the State Engineers would approve the change of use from and to the river. That changes our legal framework if we know we can establish that. 2) We ask the council to amend the ordinance to provide that at least for future monies, the monies can be used to improve the flow of water in the Santa Fe River but not necessarily to buy it and in the meantime I want to do some research on the answer to #2. Second by Mr. Buchser. Motion withdrawn.

Discussion:

Mr. Ellenberg: That for future monies going in to the ordinance, that they be authorized to be used for anything that will improve the flow of water in the Santa Fe River. That could be acquisition of water rights or it could be arroyo improvements or whatever improves the river. That would allow us to both do legal tests that we need to know if it is always going to be bound by the by-pass theory and if we could later participate in the city's acquisition of water rights and maybe transfer some of it and it would allow us to in the future move the monies to where we could make more impact, as Brian has pointed out, then spending this limited money on buying and transferring water rights.

Chair Jacobi: You weren't here the last time and as noted in the minutes; one of my considerations was to buy water from the city and let it out for certain

periods, say we wanted to really push the river festival to buy say 20 ac. feet. It would cost you \$30,000.

Mr. Ellenberg: From the river that is already in the reservoir?

Chair Jacobi: Yes, from the water that is already in the reservoir.

Mr. Ellenberg: The problem with that is until we test it; what we have to do to do that, I think, is get past the by-pass theory so that if the water is not coming in to the reservoir, the city feels like it would jeopardize its license it releases more water than is coming in. So we need, somehow to do the test and it can be buying water from the city or leasing it from the Acequia. We can buy 10 gallons from the city and apply for the right to use it in the river and that would get us past the constraints of the by-pass theory. If I understand the law right we have to get the State Engineer to say whether or not they will approve a change of use in the water that is in the reservoir to be used for the river otherwise the city is not going to release it in low flow years because they are afraid of its license.

Ms. Romero-Pike: In reference to your two points, this would also at the same time continue collecting from the customers of the water to continue contributing whatever they are committed to contribute to the fund. That is not going to be deleted.

Mr. Ellenberg: Yes. At some time they would be notified that there has been a change and the purpose of the fund and anybody can withdraw their commitment or add to it at anytime they want to. I am not proposing any change in this understanding.

Mr. Buchser: You hit on the general area which I think is important for us to deal with which is to establish a legal precedence. There is water that possibly leasing from Acequia del Llano and that involves the State Engineer; there may be some water from the Jicarilla Apache or other willing sellers have that is native to the Rio Grande system but not to this particular stream. There may be water in La Cienega, I think that is probably the most sensitive issue culturally actually transferring it up here. I would like to see pieces of money used for different purposes because we would essentially start the clock ticking on the legal precedence for different variety. For instance, they may say that all of them are fine or one of them is fine or none of them are fine, but at least we would know then, we wouldn't be going from strategy to strategy over the next decade or two dealing with the State Engineer trying to feel this out.

Mr. Ellenberg: If I understand it right, the big question is the ability to have water in the reservoir that gives release rather than by-pass for the purpose of having water in the river. If we overcome that hurdle, then I think then all those flavors fit in that same ice cream cone. The Rio Grande would have an

additional change of location of uses of water from the Rio Grande to the Santa Fe River but everything else in the Santa Fe River, the question still comes back to, can the city legally release it or with that release more than coming in risk their license?

Mr. Buchser: Here is just an example of where it might not fit. If we were to acquire rights in the Rio Grande and pump water to some point within the river, we are not release water outside of the reservoir and you do potentially obtain a flow in the river. I have an interest in pursuing that as well because it may not be viable to pump it all the way up to the top of the reservoir but it may be viable to pump it to a lower point so it is flowing from Frenchy's field down or some lower segment of the river. That would be a twist on that; personally I am interested in that as an option.

Mr. Ellenberg: I would like to talk to John Uptown, Water Lawyer – question on releasing it in to the river and see if it is a permitted use. I would want to word the motion in a way that it includes that kind of question. It might be the same legal question.

Mr. Buchser: If we can entail as many variations in this theme in the language we may get an answer that we want.

Mr. Ellenberg withdrew his first motion

Discussion:

Mr. Drypolcher: One thought is the phrase “improves the flow” and I wonder if we should have something broader that has to do with; and I am not sure what the language should be but if they only focus on flow, there are other river system improvements that could take place that aren't necessarily about flow. When we think of the living river initiative there are components of the living river initiative that aren't only about flow or water but do present significant improvements to the riparian system, the river system, the health of the river; so I am wondering about that phrase “improves the flow”. It could be a way to broaden what the improvements might be. Also, in terms of the language, we are going to have people looking at their water bill each month and for them to decide to check off on it or not so there should be something in the language that is really appealing to people who are ready to check that off. There is a marketing component here that the Commission may want to consider in the language that people can get excited about and make that check and make that donation.

Mr. Gerberding: I don't understand all the legal language but it seems to me that the idea Mr. Jacobi had at the previous meeting doing the math taking a part of money to fund the water for the Fishing Derby. To me that is something

that I walked away with as a citizen in this case thing that would be great. I would want to check that box off. I think what you are talking about Richard, is that, you question the second option which I think if I understand everything right; it kind of prohibits us from going down that road by looking at whether the water can be used in such a loose action, if you will. The Chair's idea was really out of the box to buy water from the city to run down the river so we can have the water derby events. I think that is the part you are saying you don't like the response to and perhaps we could pursue.

Mr. Ellenberg: I don't like their statement that we can't amend the ordinance purpose to cover the existing monies to this limited extent. I chose language that if we could legally establish the right to buy and release more water for the Water Derby that it would be permissible use of the fund. It is in years of low flow that the city reduces the flow because there are not enough waters coming in that we have to get past the by-pass theory if we are going to be able to accomplish that purpose.

Chair Jacobi: You are concerned with that second item that says; "to repeal the current ordinance and enact a new ordinance", you want to say amend, is that correct?

Mr. Ellenberg: I think one could amend the purpose of an existing fund in a way that better accomplishes its intent without having somehow breached the law that limits how the funds are going to be spent. I know we have had in the last couple of year's lots of battles with the city moving funds around. I think that the city has a lot more flexibility than the answer in number 2 gives it. I worded the ordinance in a way not to say retroactively or not. I don't want to touch that in what we do today because I don't know enough.

Chair asked for the question.

MOTION: Mr. Ellenberg moved to, 1) That we ask the council to amend the ordinance to allow the fund monies to be used for anything that improves the flow of water in the Santa Fe River in a way that would enhance the echo system of water in to the Santa Fe river, 2) that we use the existing funds to acquire some water rights in a way that will allow us to support the application to use the water in the Santa Fe River as a release or change of location to determine whether or not we might lawfully use water for the benefit of the Santa Fe River, second by Ms. Romero Pike, motion carried by unanimous voice vote.

5. MATTERS FROM COMMISSIONERS, MATTERS FROM SUB-COMMITTEES

Chair Jacobi commented on his recent visit to the 2 mile dam site – base flow was not very high at the crossing by Audubon. He went up there before this meeting and there was about 1 CFS flowing.

Mr. Buchser: Update on the elimination of parking. I wrote to Councilors Bushee and Calvert and I received a response from Councilor Bushee that she would look in to it. Letter will be sent out to the remainder of the commission members for review.

Allan: 20 ac. feet for the fishing derby –two weeks in April we had about 130 ac. ft – so the fishing derby to have a flow before and after – when we didn't have as much water – I talked to Game and Fish – their sweep is about 5 cfs coming out of Nichols which translates to 9 ac. feet a day. It is about 5 x's more. The Chair said that was an example.

Melinda Romero-Pike: We are supposed to have a very wet winter.

6. MATTERS FROM STAFF

- a. Request to change the meeting schedule of the River Commission. (Brian Drypolcher)

Commission agreed to the 2nd Thursday, October 11th. – New meeting date. November – no meeting.

7. CITIZENS COMMUNICATION FROM THE FLOOR

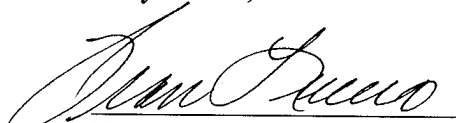
None

8. ADJOURN

Mr. Buchser moved to adjourn at 7:30 pm. Second by Mr. Ellenberg, motion carried by unanimous voice vote.

Signature page:

Jerry Jacobi, Chair



Fran Lucero, Stenographer