



New Mexico Water & Natural Resources Committee

The Challenges of being a Member of a Mutual Domestic Water Consumers Association

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Robert Crowley

Andy Philo

James Hayhoe

Objective

- Our presentation is to illustrate the difficulty and issues of belonging to a Mutual Domestic Water Consumers Association - which has minimal oversight by the State
- We will discuss
 - The current structure of Mutual Domestics
 - The environment that created the difficulty
 - Our plight
- Our conclusion will include a specific recommended action for the State Legislature



Background – Mutual Domestic

- The Sanitary Projects Act (SPA) was enacted in 1978, amended in 2006, to address health impacts due to inadequate water supplies in rural New Mexico and enabled the creation of Mutual Domestic Water Consumers Associations
- The Act provided for the establishment and maintenance of a political subdivision (quasi-governmental) of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities.....
- There are currently over 200 Mutual Domestic in the State of NM
 - Each have their own By-Laws/Member definition/etc
 - Almost all grew from small (<100 members) rural environments
 - Now, through acquisition & merger many are now large (over 1,000 members)
 - Many now governed by Boards inadequately staffed/trained to operate a big business
- The NMED has cognizance over water/wastewater purity
- The Attorney General has cognizance over adherence to State law
- The NMFA has cognizance for State loans and grants
- The PRC receives financial reports but has no responsibility/authority to act

There is no single governmental organization that provides the much needed direct governance oversight to a Mutual Domestic



Background – Picacho Hills Consumers

- Dona Ana Mutual Domestic Water Consumers Association (DAMDWCA) acquired the assets of Picacho Hills Utility Company (PHUC) in Dec 2013
 - PHUC had a long legal battle with the PRC
 - Result was the State takeover and forced sale of PHUC to DAMDWCA
- Presently there are approximately 750 consumers in Picacho Hills of the total 4,000 DAMDWCA customers
- DAMDWCA began the acquisition process in late 2012
 - Just prior to acquisition they violated the Open Meetings Act for a Special Meeting to limit Picacho Hills influence on the Board
 - Since acquisition there has been an ongoing list of issues not acted upon – see chart 9 for details
- We have filed with the Attorney General regarding multiple violations of the Open Meeting Act
- We have filed several formal complaints with NMED regarding lack of Board Governance

**We are now appealing to you
for Legislative relief**



Issue 1 – Member Definition

- DAMDWCA has narrowly defined who is eligible to be a bill paying member in contravention of the Sanitary Projects Act and the Association's own By-Laws, with the effect of excluding eligible members not only from voting for Directors but also from being able to continue to receive water and sewer services.
- Result
 - In January Board election only 250 of 750 customers in Picacho Hills were eligible to vote for representation
 - In September 40+ bill-paying Picacho Hills customers were threatened repeatedly with termination of service

A last-minute Legal Opinion halted that termination

Issue 2 – By-Laws violations

- DAMDWCA improperly interpreted their By-Laws conducting the January, 2014 election of 2 Board of Director positions so as to prevent approximately 60% member/owners from being eligible to vote.
- Result
 - Members were denied the right to be represented by a candidate of their choice, or even to vote



Issue 3 – Customer Service and Billing Practices

- Poor customer service, and billing practices such as a 15-day billing cycle, of DAMDWCA make it extremely difficult for members to make timely bill payments resulting in onerous 10% per month late fees and significant shut off fees.
- Result
 - The “Customer is Always Wrong” attitude
 - Outdated billing processes have high error rate

DAMDWCA assumes NO responsibility for a customer not receiving a bill

Issue 4 – Lack of Member Voice

- Dona Ana Water does not permit and has no procedure to enable Member/owners to place issues on the agenda to be voted on at the Annual Meeting of the Members.
- Result
 - the exclusion of all 4,000 Dona Ana Water member/owners from introducing By-Laws revisions and other significant corporate actions

No Treasurers/Financial Report has been presented at last 2 Annual Member Meetings



Issue 5 – Other Issues

- Lack of Financial Reporting
- Lack of Fire Hydrant testing
- Inconsistent or non-existent Policies & Procedures
- Notification timelines
- Election irregularities
- Excessive billing charges
- Abusive/Hostile Board Meeting Environment
- Result
 - Lack of trust in our water/wastewater provider

Issue 6 - Rates

Dona Ana Mutual	San Pablo Mutual	Leesburg Mutual	Picacho Mutual	West Mesa Mutual	City of Las Cruces	Moongate	Jornado	PHUC	
\$27.60	\$26.00	\$22.60	\$26.85	\$12.05	\$13.06	\$13.33	\$21.51	\$15.50	5,000 gallons
\$44.57	\$36.35	\$31.60	\$44.40	\$17.30	\$23.48	\$24.18	\$30.40	\$22.00	10,000 gallons
\$17.30	\$21.86 *	\$19.00 *	\$12.00 *	\$11.00 *	\$6.62	\$2.48	\$12.62	\$9.00	Customer Charge
									* Includes 1 st 3,000 gallons

- DAMDWCA has the highest rates in almost all categories, despite being the largest Mutual Domestic in the State
- DAMDWCA ‘Rounds Up’ to the next higher 1,000 gallons (generates an additional \$50K/year revenue for no additional service provided)
 - 5 Other Mutual Domestics in the County do not round up
 - Moongate Water rounds up or down based on actual reading
 - City of Las Cruces rounds up or down based on actual reading



Conclusion & Recommendation

- Public, Private, & several Municipal Water/Waste Water utilities across the State are regulated by the PRC
 - No Mutual Domestic receives similar regulation
 - Mutual Domestic “quasi-governmental” status creates opportunities for fraud/waste/abuse/mis-management
 - Small Mutual Domestics probably need existing flexibility
 - But, when a Mutual Domestic becomes Big Business more oversight is required
- We recommend
 - that the 2015 State Legislature amend the SPA bringing Mutual Domestics that have over 1,000 customers under the regulation of the PRC (Attachment contains recommended language)
 - A Review Committee be formed to determine if the SPA needs to be updated to reflect current Mutual Domestic conditions

Comprehensive Oversight needed where none currently exists



Attachment 1 – Suggested amending of the Sanitary Projects Act

- **PRC Has Primary Responsibility** - Define levels of PRC oversight depending on size of Mutual Domestic (\$ or members)
 - Oversees:
 - Rates
 - Corporate Governance (By-Laws, State law compliance)
 - Business practices
 - Grants & loans

OR

- **NMED Has Primary Responsibility** - NMED retain oversight of water quality
 - Better define NMED authority under SPA over Mutual Domestic to include
 - Rates
 - Corporate Governance (By-Laws, State law compliance)
 - Business practices
 - Grants & loans