

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
7:00 P.M., COMMISSION CHAMBERS  
JULY 8, 2014**

**SUSIE GALEA, MAYOR  
JASON BALDWIN, COMMISSIONER  
NADIA SIKES, COMMISSIONER  
JENNY TURNBULL, COMMISSIONER  
AL HERNANDEZ, COMMISSIONER**

**ROBERT RENTSCHLER, MAYOR PRO-TEM  
DR. GEORGE STRAFACE, COMMISSIONER  
JIM STAHLE, CITY MANAGER  
STEPHEN THIES, CITY ATTORNEY  
RENEE CANTIN, CITY CLERK**

**CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE**

Mayor Galea called the meeting to order at 7:00 p.m. Roll Call was taken by the City Clerk. Commissioner Straface was absent. Clerk Cantin announced there was a quorum present. Invocation was given by Pastor Vaden Gilloth and the Pledge of Allegiance was led by Commissioner Turnbull.

**APPROVAL OF AGENDA**

**Commissioner Hernandez moved to approve adding the Addendum items to the agenda. Commissioner Baldwin seconded the motion. Motion carried with a vote of 6-0-0.**

**Mayor Pro-Tem Rentschler moved to approve the agenda. Commissioner Turnbull seconded the motion. Motion carried with a vote of 6-0-0.**

**PRESENTATIONS**

- 1. Presentation by the Mayor's Committee on Aging related to some upcoming events at the Alamo Senior Center. (*Jesse Carr, Chairman*)**

Jesse Carr, Chair of the Mayor's Committee on Aging gave his presentation. He told the commission he was here to announce upcoming events and to bring to their attention the things happening at the Senior Center. He was very proud of all the things going on there and of the staff. He pointed out the packet they had received is what is given to any new member. Mr. Carr noted the services offered at the center such as help with insurance, Medicare, Medicaid; flu shots, immunizations and health checks performed by nursing students; personal services such as barber services; and many social activities. Live music is offered each day before meals to create a wonderful atmosphere. They also have many arts and crafts activities and many social activities such as bridge, pinochle, puzzles, pool tables and board games. New Mexico ranks second in the nation in senior hunger. The Senior Center offers meals in a congregate setting as well as meals delivered to the homebound – Meals on Wheels. He remarked volunteers are needed to help with this program, and 325 meals are served daily to the homebound. Mr. Carr stated the Alamogordo Senior Center is one of, if not the best Senior Center in the state.

City Manager Stahle asked Veronica Ortega, Senior Center Manager, to stand up and take a bow. He said she operates the facility and does a great job. (Applause)

Mayor Galea remarked that the pool tables at the Senior Center were refurbished by civic organizations in the community and mentioned the Lions Club. She said HAFB helps with the Meals on Wheels program, but remarked we need to get the word out that volunteers are still needed.

**A-1. Presentation by the New Mexico Cattlemen's Association related to the Water rights on the Lincoln National Forest. (Gary Stone, Presenter)**

Mayor Pro-Tem Rentschler said he had been approached by Mr. Gary Stone to speak to the City Commission.

Mr. Gary Stone, President of the Otero County Cattlemen's Association and Director of the New Mexico Cattle Growers Association thanked the Commission for Resolution No. 2014-27. He said he was a fourth generation rancher in the Sacramento Mountain area. He introduced Mr. Angus McIntosh, PhD as the speaker tonight. Mr. Stone said the Association was convinced his presentation would bring support and strengthen Resolution 2014-27.

Mr. Angus McIntosh, PhD stated this is a presentation he has done for the last 14 years. He noted he had worked 16 years for the federal government with most of those years in the Forest Service, so he was not considered as anti-Forest Service. He had also worked with NMSU as a college associate professor in the Extension Department; he is an expert witness in federal and district court concerning range management and ranch evaluation in Colorado, Nevada, Arizona, US Federal Court of Claims and the Interior Board of Land Appeals. A lot of his research and things he has learned over the years were actually learned while employed by the Forest Service (USFS). He was disturbed by their attitudes towards ranchers and others in general who had property rights on federally reserved land. Many people don't understand there is such a thing; it is not a seamless fabric of federal ownership. One hundred years ago, no rancher would have come out and spent all his years, wealth, energy and time trying to establish a ranch if he knew he had no right to it and the government could come at any time and take it away. It is thought the only way you can obtain property rights on federal land is by some homestead law or through the mining laws, but the fact is the US Congress passed over 300 different easement and right-of-way laws. The Supreme Court has said when it comes to water rights, the federal government has always deferred to state and territorial law. There is an important case here in New Mexico - US vs. NM - that is well worth reading. It describes in detail what the original purposes were of the National Forest. National forests were established for two purposes according to the US Supreme Court - 1) to provide a continuous supply of timber to meet the needs and necessities of the settlers of the arid west, 2) to enhance water yield in order to make that water available for appropriation by private citizens, which included communities, mining companies, etc. under state law. The whole question in this case is who owns water rights on national forest lands, and the US Supreme Court was unanimous in regard to stock water rights. He said there was a dissent, but it was on some recreational and wildlife water rights. On the issue of who owns the stock water in the national forest, it was a unanimous decision; in the very first paragraph, the dissenters agreed with the majority that the ranchers own the stock water rights. It was clear the ranchers own the stock water rights and the federal government does not. That same decision has been cited by the Ninth Circuit Court, the most liberal saying it also applies to BLM lands. Dr. McIntosh asked why that is important to the City of Alamogordo or anyone else who has nothing to do with cows. He hoped to show that in this presentation.

Dr. McIntosh noted a quote from Albert Einstein: 'Insanity is doing the same thing over and over and over again and expecting different results.' He said that is what has been going on for the last 100 years; we as citizens have dealt with agencies and bureaucracies like the USFS and BLM. We go into their arena and follow their rules, and we are losing ground all the time. Real estate is defined as an area of land; real property is an interest in real estate; a split estate typically has surface and mineral interests, but can be any fractional or undivided interests. He gave the example of the Mayor owning 100 acres and he has an easement across that acreage for a road; there could be a right-of-way for a power line, an easement for a city sidewalk or street. On the tax records it shows she owns to the middle of the street, but in reality there is a right-of-way. She could not legally block off the road and say she owns the land and would stop anyone from using it. A real property interest could be a mineral right such as oil/gas or water. If a creek runs through the land there could be ten who own a water right on that creek, so even though it crosses the Mayor's land she does not have a right to block the creek and divert the water for her own use. That is an example of a split estate. Congress in the 1880's, recognized that in order to encourage citizens to go west to settle there had to be some

kind of protection for these types of rights. They knew it took more than 160, 320, or 640 acres to make a living in the stock raising business in the west, but they did not want to give away 10,000 acres to a rancher only interested in raising cows but not interested in developing the minerals or timber or anything that could contribute to the economy.

There is some debate between government agencies, anti-grazing groups, and ranchers as to the exact nature of property rights the ranchers have on their grazing allotments. From a property appraisal perspective, it is important to identify and quantify property interests in rangeland resources in order to rationally address current and future conflicts which we are facing now in New Mexico and throughout the west. He noted he has presented this to groups in all the western states except for two, so this is not a new issue and is not only here. Having worked for these federal agencies, Dr. McIntosh said these people aren't bad people, but they have bad information of which some is contrived. He said Dave Stewart, now retired, who was the head of Grazing for Region III which is Arizona and New Mexico, told him the USFS didn't agree with the Supreme Court. His opinion was that the government should own everything. So, there are people in these agencies who have their own agendas, and we would be foolish to think a person's personal desires don't always bleed over, especially when they are in a policy making position. With that said, most of the people working for these agencies are just good people trying to do their job, but when someone tells their subordinates they need to do something that will result in infringing on someone's property rights, they usually are not even aware that property rights exist. A lot are told this is a seamless fabric of federal government ownership and these ranchers only graze there by our good graces; that is not the case at all. We need to understand there is a difference and this is something your city attorney can verify or you can verify yourself. In every law library you can look up the term 'public lands' that is the term agencies like to use. The legal definition is 'land that is open to entry and settlement upon which there are no rights or claims'. These aren't public lands and there are private property rights. Beginning with the Act of July 26, 1866, for example, Congress made a general grant of right-of-ways; RS2477. That is where every county road and state highway that crosses federal land gets its authority. There is not a written grant from the federal government that says a particular highway or county road has an easement; it was a statutory grant. The courts have said these types of grants are interpreted in light of the understanding and intent of Congress at the time. In 1866, there were no paved roads, automobiles or a transcontinental railroad; if you look up the definition of a highway at that time, it is 'a place for driving cattle'. These were livestock right-of-ways.

He went on to speak about water rights. Congress granted a number of various types of ditch and pipeline right-of-ways. The City of Tombstone has been in a battle with the USFS because they are trying to prevent them from using their right-of-way for a pipeline to bring their municipal water supply to that city. Dr. McIntosh said he understood the City of Alamogordo has a similar situation where there is water coming down to the City's water supply. These are issues that don't just affect ranchers; they affect a lot of people. If a rancher has a water right on a spring that may be 20 miles away from the City with a two track road going up to that spring, and if the USFS/BLM makes life so miserable for the rancher trying to hold on to their property that they just walk away and abandon that water, the property right is now gone. Because the rancher has the water right, there is a statutory grant from the Act of 1866 plus the Act of January 13, 1897 where Congress granted a 160 acre easement around every stock water location. If you have a large desert ranch of 200 square miles, there might be 100 different stock water locations, whether ponds, springs or wells, because the Supreme Court said even ground water under federal land was open to appropriation; that was in that same US vs. NM case. Those waters provide water for wild life and that might be someone's personal hunting spot. If the rancher is driven off and that property right extinguished, the easement providing access is extinguished and all the USFS has to do is lock the gate. As long as that rancher is there and has the property right, or as long as that isolated parcel of private land is out there then the easements, county roads and undesignated county roads that lead to these various scattered areas, whether a mining claim, stock water location or a parcel of private land, provide access; they cannot legally be shut off. That is the only thing guaranteeing public access to all these state lands. When he worked for the USFS, he saw that once the property rights were extinguished and the gates were locked, you are totally at the whim of what the local bureaucrat decided. Therefore, you no longer have access to your favorite hunting spot. The fact these property rights exist is what

guarantees public access to federal lands. There are bureaucrats who would lock the gates to keep people out simply to make their job easier. These property rights are important and the same rights under which the City has pipeline right-of-ways are the same as the rancher's right-of-ways and easements to their stock water.

Dr. McIntosh next spoke of the two different sets of laws according to Justice Rehnquist. West of the 100<sup>th</sup> Meridian, what's called the Prior Appropriation Water Doctrine is law. The 30" rainfall belt falls right along the 100<sup>th</sup> Meridian so Congress named it as the division line. East of that is what is called the Riparian Doctrine. These are just some of the laws dealing with water rights, particularly in New Mexico. As early as 1846 in Kearney's Code, which is still New Mexico state law, it says all the laws heretofore in force concerning stock marks, brands, horses, commons, water courses and enclosures shall continue in affect. So, all the laws existing under Mexican rule in Kearney's Code, which the Supreme Court on at least three different occasions said was as valid as any act of Congress, still continue in affect. The law that was in affect, according to the Supreme Court decision in Gutierrez vs. Albuquerque, was the law of prior appropriation. Whoever put the water to beneficial use first had the senior water right, property rights. The government cannot just take property without paying compensation. This doesn't mean he is opposed to the government saying we need this ranch to protect a jumping mouse, or whatever it may be. The law and constitution requires that if private property is taken for public use, there has to be due process and just compensation. This doesn't mean a bureaucrat can put up a fence and lock a gate to keep you away from your property. That person has to first have their day in court in order to show whether or not that is an appropriate action. The Constitution requires due-process and just compensation. It is not enough to throw money at someone and tell them you are taking their property; they have to have their day in court. When a federal agent acts arbitrarily, it is no different from someone working at the Post Office coming into your house and saying they are taking your refrigerator. Just because they are working for the federal government doesn't give them the authority to do that, especially when we are talking about property rights.

Dr. McIntosh illustrated with a Power Point slide showing 160 acres with some creeks and springs. The rancher puts the water to beneficial use by stocking it or building a ditch to bring the water to the patented land. Then he irrigates in order to put the water to beneficial use and acquires the water right. The ditch itself is an easement/right-of-way; the term right-of-way is an easement. The dimensional limits of that ditch right-of-way, according to the US Court of Claims decision is one quarter of a mile. That is a significant right-of-way. If someone were to put a series of pipelines and waterers out there, they would acquire water rights. He said his family used to own a desert ranch in Arizona of 235 square miles, and there were about 80 different stock water locations. Every single one was put there by his family and when his wife's great-grandfather first came, there was one spring and all the rest of the water was developed by the rancher. It is one of the best deer hunting areas in Arizona at this time because of the water. The ranchers have developed the waters, which were guaranteed under the Act of July 26, 1866, as water rights under the Prior Appropriation Water Doctrine. He continued his illustration saying every one of those stock waters are connected by a road or trail, and when he began researching this twenty years ago, he didn't think he would find a law that says there is a right-of-way for a stock trail, but he was wrong. In 1916, in Section Ten of the Stock Raising Homestead Act, Congress identified conditions for establishing stock trails in the dimensional limits of such. In at least one Supreme Court case it was a quarter mile in width, and this was sited recently in a Nevada federal district court case. Just going from one stock water location to another there are overlapping easements and right-of-ways. The Act of January 13, 1897, granted a 160 acre easement around every stock water location. If you have a really big desert ranch with 100 stock water locations, that would be 16,000 acres of easements just with the 160 acre grant of an easement around every stock watering location. The National Forest Management Act granted ranchers the right to construct improvements necessary to utilize their property, so they started building fences. You have various real property interests that are compensable and have case law backing them up. These easements are compensable property rights, stock water locations and rights themselves or property rights. The courts have said the forage on these easements belong to the person owning the easement. If I had a right-of-way across the Mayor's 100 acres and there were trees blocking my right-of-way, I have the right to cut them down as long as they are within the scope

of that easement. The courts have said grazing is within the scope of an easement granted for stock water, and they also own the forage on these overlapping easements. The way these ranches are set up is a system of overlapping, interconnected easements. There may be spaces where the rancher doesn't have an easement, but it is irrelevant because a cow isn't going to wander two or three miles away from water; they will be grazing close to water and in between. That isn't an area used by the rancher's livestock. Because all these laws existed, in 1906 Congress passed another law that allowed ranchers to actually acquire an allotment. This is where the definition of terms becomes important. In reality, there is very little public land in the West. Everyone has their own definition of public land; courts don't go by our own definitions and they make decisions based on what the law says. The law says public land is 'land open to entry and settlement upon which there are no prior rights or claims'. He said you cannot homestead on BLM or USFS land because essentially that is over with; you might be able to get a mining claim or an oil and gas lease. If there are private rights and claims, they negate the definition of calling these 'public land'. They are split estate lands and not a seamless fabric of federal ownership. When he was a USFS employee, some people said if the ranchers owned the easements, where was their patent or deed. The US Supreme Court answered when Congress chooses to pass a law making a statutory grant, then that grant is effective immediately. There is not a requirement in the law stating you have to get a patent or a deed. In one case, a man went to the Secretary of the Interior and said he wanted a patent for a piece of land granted to him by Congress, and the Supreme Court said you can't get one. Congress has the sole power to dispose of and make all needful rules and regulations for the territory and other property belonging to the United States. If they pass a law saying it is your land, then it is your land and it doesn't matter if a patent or deed is ever issued; the statute is what grants the right. All of these stock water rights under the Act of July 26, 1866, took immediate effect upon the establishment of the easement. It was the same thing with the Act of January 13, 1897, the Livestock Reservoir Site Act. The only thing required by that was the person submitting the claim had to also submit a map showing the location of the stock water. If you look on any USFS, BLM or USGS map, you will see every one of these stock water locations, and that USGS map is the prima facie evidence of the existence of the grant. Just like every county road and every state highway, there is not a deed, patent or instrument granted by the federal government for any of those roads, but every one of them is a federal grant under the Act of 1866.

Dr. McIntosh noted his time was over and this had only been a synopsis. An analysis of federal statutes reveals five distinct federally granted split estate property values on western ranches: 1) Water Rights; 2) Easements/ROWs; 3) Forage/Grazing allotments; 4) Improvements, and 5) Patented Parcels. He addressed Grazing Allotments and said that in the early 1900's, Congress passed the Stock Raising Homestead Act and it was the only livestock homestead law ever passed by Congress. The debate was over how they would dispose of land and half the congressmen wanted to lease it while half of them stated the rights already exist, so we can't lease to someone who has a right to be there. That is why this act was passed. It validated the rights already existing under all the other laws. The USFS was ordered by two acts passed consecutively in 1910 and 1912 in the Appropriations bill. The Secretary of Interior was ordered to dispose of all the land within the National Forest that was valuable for agriculture/stock raising. Compare the term Grazing Allotment to the term Public Land and you will see they are two completely different things. What these ranchers own is the grazing allotment. No one argues that the federal government certainly owns the legal title to the land. If the Mayor owns 100 acres and there are 10 other people who own property interests that overlay that 100 acres, she cannot control the use of their private property interests. The water rights and easements are theirs. A fence cannot be built to block an easement simply because you don't like the guy who has an easement crossing your property. These are good reasons why the City needs to support the actions of the County Commission, because they recognize that these rights affect every citizen. A federal agency can eliminate all these property rights by making the people miserable and forcing them out, and under New Mexico law if you don't use water for a certain period of time by your own choice, you are considered to have abandoned the water rights. If the water right ceases to exist, the easement ceases to exist and the improvements are worthless. That is why water is the biggest target. He said there is logic behind everything done by these people that have their own agenda within these federal agencies.

The USFS and the BLM don't have these issues in every single district in the West. Unfortunately, a lot of latitude is given to individuals and he has experienced that whenever someone acquires a little bit of power, they immediately begin to exercise an unrighteous dominion over others. He said, of course, this commission is accepted from that rule. Not every bureaucratic employee is like that, but you will find some who are. It is important to start holding them individually accountable when they make a decision that takes someone's property rights. Dr. McIntosh said he was involved in a case in Nevada where this same type of thing had happened to a rancher. He was harassed for years by the USFS District Ranger and BLM Area Manager who conspired together to try and put him out of business. The rancher took it to court and the chief judge of the Nevada Federal District heard the case. That judge looked at the USFS and BLM guys and told them to be back tomorrow with their lawyer and their checkbook, because he was fining them each \$34,000.00. The only reason he did not fine them more was because that was the maximum allowed under law. He then ordered the US Attorney to conduct a criminal investigation under the Racketeering and Criminal Organization Act against the USFS and BLM, and he told them to get a US Attorney from a different district than Washington, D.C., because he felt that district attorney was part of the racketeering to deprive this rancher of his property rights. That is an ongoing criminal investigation. These men would have got away with it except this rancher understood he had property rights, and when he brought it to the judge and the judge heard all the arguments, he saw the law was clear. Most ranchers are not lawyers and don't understand their rights; they assume our federal employees will be honest in their dealings. When you have a few individuals who go outside the scope of their authority to exercise this unrighteous dominion over others, then you have a problem; all of our liberties are in trouble. Dr. McIntosh said Tombstone, Arizona is fighting for their water rights right now, and if someone in the USFS decides they want to make life miserable for Alamogordo, they can do the same thing. We should hold these people accountable and recognize that ranchers do have property rights which are the same rights the general public relies on. If all those property rights were gone, that is the only thing guaranteeing our access to all the state and federal lands. There is some private in-holding out there with a road going 40 miles out so the public can drive out there and enjoy the use of split estate lands, because that piece of property, or that water right, or that mining claim exists. The right-of-way no longer exists if they can force those people out. He thanked the commission for their time.

Commissioner Hernandez commented that he had been googling the information Dr. McIntosh had presented and found it all accurate. He found it very interesting.

Mayor Pro-Tem Rentschler thanked Dr. McIntosh for being here. He learned things tonight he had not known and that it applies to us and the springs the City has. We are fairly vicious about our water rights and don't give them up readily. It is good to know the easements for the acequias are all there and patent law. He also thanked Mr. Gary Stone for bringing Dr. McIntosh, and all who support Otero County and Alamogordo.

Commissioner Sikes asked if this was what he would be presenting tomorrow evening at the Fairgrounds, and he told her this had been a short synopsis. He said there is a lot more information out there that people just don't know. The grazing fees ranchers pay is not a rent but a fee, like a tax. It was passed in 1908 and 25% of what the ranchers pay is required to come back to the state and county of origin for roads and schools. The fewer cattle out there, the less revenue to the state and county. Fifty percent of the money they pay in by law is supposed to be used to build range improvements that benefit livestock and wildlife because it provides more water. He will also go into how these property rights are appraised, how you put a value on them, and the standard procedure under the Uniform Standards of Professional Appraisal Practice that every appraiser uses when appraising these types of property rights. This is a method he first used in the US Court of Claims and it has been accepted by them as the appropriate manner to value these types of property rights. For years these agencies have been able to bully people to the point where he has seen ranchers literally walk away from their allotments. It became economically unfeasible for them to continue using their allotments, and they didn't realize what property rights they had. Dr. McIntosh said that when he was working for the USFS he would ask himself that if these ranchers did not have any property rights at all, would they be there today. He didn't think they would be.

Commissioner Sikes asked if that meeting was open to the public, and Dr. McIntosh said it would be. Commissioner Sikes encouraged anyone who wanted to know more to be there.

Mayor Galea asked City Manager Stahle to have Jim Brockman, the City of Alamogordo water attorney to come to the next commission meeting. She said there had been a number of questions raised by this presentation regarding our ability to maintain our water rights. She understood that the 1978 NM vs. US case separated water rights from land rights, and the City owns a lot of water rights through the reservoirs, streams and pipelines, but we don't necessarily have land rights. She gave the example of the National Environmental Protection Act (NEPA), and if we found an endangered species we would have to find a way around it for that pipeline.

Dr. McIntosh said he was very familiar with the US vs. NM case and it doesn't talk about land rights at all. In the Diamond Bar case, the Laney's brought up they own stock water rights. When the judge said that for the sake of argument it would be assumed they own water rights, what gave them the right to cross over federal land in order to make use of those water rights? The attorney in that case was totally unprepared to answer that question. On the other hand, there are over 300 different federal easement laws, very important easement laws. The same right-of-way you were granted for you pipeline under the Act of July 26, 1866, is applied to every stock water location that every rancher, farmer, miner and anyone who puts the water to beneficial use that comes from the forest reserves, that is where those property rights come from. The land use right is an easement right and isn't titled to the land, although it is a real property right that the Supreme Court said is compensable. If the other side fails to bring up a relevant point then that is good for your side. The USFS might say US vs. NM doesn't talk about land rights and I agree, but Curtin vs. Benson is a US Supreme Court case from 1911, recently cited in the Hage vs. US case in which the Supreme Court unanimously ruled that stock trails are right-of-ways. Requiring the person to obtain a permit against their own interests was a taking under the Fifth Amendment of the Constitution; therefore, the federal government could not require JP Curtin (the plaintiff) to get a permit before grazing on federal land. He claimed he had right-of-ways and the Court distinguished that. The cases the USFS like to quote are Light vs. US and US vs. Gramont (?). In every single trespass case they cited those two cases. Those two individuals did not have property rights; one was a man whose ranch was far from the forest reserve, but his cows would work their way into the reserve. He never claimed he had water rights and said it was federal land and anyone who wants to can graze there; he was told no. There was a tramp sheep herder in the other case who let his sheep graze on the reserve, and he did not claim any property rights either. The same Supreme Court ruled against these two, and less than six months later ruled in favor of J.P. Curtin. The only difference was that Curtin said he had property rights, right-of-ways and easements, and he owned the water rights. The Court ruled in favor of Mr. Curtin because the difference was his claim of property rights. Of course, they like to cite those cases to say they don't have land use rights, but that is not the case. Ranchers aren't lawyers, and when Dr. McIntosh worked for the USFS he noted they weren't going to share this information with anyone.

Mayor Galea stated Dr. McIntosh had said the USGS showed water that was owned, and he had talked about the federal government not owning water rights. She said that in New Mexico, the State Engineer recognized water rights. She gave the example of Otero County having over 66 water entities. She asked how the USGS had statutory authority over the New Mexico State Engineer. Dr. McIntosh said they don't; they map all the stock water locations. In US vs. NM the Supreme Court said the United States can obtain water rights, but only for the purposes for which national forests were established, which are essentially administrative uses. A small water right for a spring to water stock used by the USFS would be a legitimate claim of water rights. They specifically rejected the huge claims the USFS is trying to make saying they own all the stock water. The person who puts the water to beneficial use is the one who perfects the water right, and in the case of national forest it was the ranchers. It was always the intent of Congress that stock water rights in the national forest should be appropriated in accordance with state law to the individual stock waters.

There were no other questions or comments and the Mayor thanked him for his presentation.

**PUBLIC COMMENT**

None.

**CONSENT AGENDA** (Roll Call Vote Required for item No. 4)

2. **Approve Minutes of the May 5, 6, 7, & 12, 2014 Special Budget Workshop Minutes and the June 24, 2014 Regular Meeting of the Alamogordo City Commission.** (*Renee Cantin, City Clerk*)
3. **Approve statement related to the Executive Session of June 24, 2014.** (*Renee Cantin, City Clerk*)
4. **Approve Resolution No. 2014-32 accepting the Assistance to Firefighter Operations and Safety Grant Award from the US Department of Homeland Security - Federal Emergency Agency, in the amount of \$93,436, including a local match of \$9,343.60. [Roll call vote required]** (*Mikel Ward, Fire Chief and Ruben Segura, Grants Coordinator*)
5. **Approve a memorandum of understanding between the City of Alamogordo and the Alamogordo Public Safety Officers Association (APSOA).** (*Stephen Thies, City Attorney*)
6. **Approve the Agreements with the NCNMEDD Non-Metro Area Agency on Aging Grant for the Senior Center Programs for Congregate Meals, Home Delivered Meals, Transportation, Homemaker and Physical Fitness/Exercise Programs in a combined total of \$345,543.00.** (*Matt McNeile, Assistant City Manager*)
7. **Approve the Agreement with the NM Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Nutrition Service Incentive Program (NSIP) in the amount of \$51,625.00.** (*Matt McNeile, Assistant City Manager*)

Item # 8 was removed from the consent calendar by Mayor Pro-Tem Rentschler.

Commissioner Hernandez moved to approve items # 2, 3, 4, 5, 6, 7 of the consent calendar. Mayor Pro-Tem Rentschler seconded the motion. Roll call was taken for item #4. Motion carried with a vote of 6-0-0.

**ITEMS REMOVED FROM CONSENT AGENDA**

8. **Approve a Memorandum of Agreement between the New Mexico Department of Transportation and the City of Alamogordo for federal assistance under the Federal Highway Administration - Recreational Trails Program in the amount of \$57,618.38 for the Washington Avenue Trail Project.** (*Matt McNeile, Assistant City Manager and Ruben Segura, Grants Coordinator*)

Mayor Pro-Tem Rentschler said he removed this item because he wanted some more information. He said he had received a lot of comments concerning the current work on Washington Street right now and how the top of the ditch had been flattened out. He said there are a lot of happy people, and it is really looking good. He asked for more information.

Assistant City Manager McNeile told him this will be a non-motorized multi-purpose trail that will be laid on that flat area from 10<sup>th</sup> Street to Indian Wells.

Mayor Pro-Tem Rentschler asked about the fence on the west side, whether it was part of this project. Assistant City Manager McNeile said it was part of the initial project but not part of this trail project.

Mayor Pro-Tem Rentschler has had comments from citizens hoping for more access into the middle of the fields. Assistant City Manager McNeile said the City had also heard that question and will be looking at providing additional access.

Mayor Pro-Tem Rentschler asked about the old trail on the east side of the ditch; whether it would be coming out. Assistant City Manager McNeile said that trail had some issues but they were going to try and repair it as best they could. It will be left in, as well.

Mayor Pro-Tem Rentschler said bicyclers were telling him there were places that had eroded and had a sudden drop-off. He asked if this would be taken care of, and the Assistant City Manager said this would be taken care of.

**Mayor Pro-Tem Rentschler moved to approve a Memorandum of Agreement between the New Mexico Department of Transportation and the City of Alamogordo for federal assistance under the Federal Highway Administration - Recreational Trails Program in the amount of \$57,618.38 for the Washington Avenue Trail Project. Commissioner Baldwin seconded the motion. Motion carried with a vote of 6-0-0.**

### **NEW BUSINESS**

9. **Consider, and act upon, a waiver for El Zarape Restaurant related to their distance from a church for an application to obtain a Beer & Wine Restaurant License. (Renee Cantin, City Clerk)**

City Clerk Cantin told the commission the owner of El Zarape Restaurant was in attendance. She noted the state statute requires an applicant to obtain a waiver from the city commission should the business be within 300 feet of a church or school. The restaurant building is on 10<sup>th</sup> Street and is within 300 feet of the Peace Tabernacle Church which is directly behind the restaurant on Jefferson Avenue. The applicant is coming before this commission before completing and paying for the application and the owner could answer any questions they might have if necessary.

Mayor Galea asked if a representative from the Peace Tabernacle was in attendance. City Clerk Cantin said they were not. She had left a message with them today and not received a response.

Commissioner Baldwin asked the city clerk if the Church was aware of this. She asked the owner of the restaurant and he said he had not been in contact with the Church.

Commissioner Baldwin asked what other precedence we had to start this process and wondered how many times this had been done in Alamogordo. City Clerk Cantin said we had done it once since she had been here and that was at the Civic Center with Sacramento Elementary School. It is right across the street from the Civic Center, but the building is a lot further back and we had done a waiver for that one. Other than that, she could not recall any other.

Mayor Pro-Tem Rentschler asked the Clerk what the process was for this. Will we notify everyone else within that radius? City Clerk Cantin said with the Civic Center we did notify the schools, but if you wish, we could table this so the restaurant can contact the Peace Tabernacle and have them here. Other than that, generally the waiver isn't done before the application; they just didn't want to go through that process in case the commission didn't approve the waiver.

Commissioner Hernandez said the staff is recommending this and he wondered what staff that was.

City Manager Stahle said he would recommend this. He noted he had not written this staff report, but there were a couple of things that came to his mind. Commissioner Hernandez interrupted asking to finish his comments first, and the city manager agreed.

Commissioner Hernandez said his second comment was there were actually two churches, and a wall separates one of them from the restaurant. The church is at 1502 and El Zarape is at 1504. He was concerned with a wall being the only separation between the church and restaurant, and he wanted to be sure they were notified, also. The other concern was there was quite a bit of precedence with one in particular being Alfredo's. It was kind of a war back several years ago when they tried to get a license. They were across the street from a church, and it was not granted.

City Manager Stahle said he had a couple of concerns; first and foremost was the nature of 10<sup>th</sup> Street. It is one of our commercial corridors and it is no surprise that a Mexican food restaurant wants a beer and wine license. What surprised him more were churches going into locations that are otherwise ideal for retail and/or other types of establishments. He felt that needed to be part of the commission's consideration. He reminded them that the State is the one who issues the liquor license and not the City; you make the recommendation. He asked if this circumstanced justifying concern; of course it did. Is it something either church might object too; we don't know. We can get in touch with them to make sure they are aware of it and then it goes to the State for action. He felt it was important to recognize there is a significant filing fee to get a license, and it is a hassle. The commission has to weigh in on that and this is your opportunity to do so, before the applicant has to put money down at the state level. He recommended the license, but noted he was unaware of prior wars that had occurred on these applications. He was familiar with similar circumstances in other areas and recognized it was a difficult decision to make. Churches and schools have a little more flexibility on their location than a restaurant for the obvious reason of visibility and access. He encouraged the commission to consider those points.

Commissioner Hernandez said he agreed with the city manager and would like to change the process, but he wanted to make sure we hear from the churches. In the past, Alamogordo was part of the Bible Belt and we had more churches than attorneys. City Manager Stahle thought that hadn't changed, and Commissioner Hernandez said it hasn't. That's his concern, but he agreed a restaurant serving Mexican food should be able to serve liquor, and the problem is what has been allowed. He said we can change that, but he wanted to be sure the process was followed and we hear from anyone concerned.

Mayor Pro-Tem Rentschler added he was inclined to grant this waiver, but not if the church has not had a couple of weeks in which to respond.

Mayor Galea told the owners of El Zarape they were welcome to make a presentation if they cared to. They did not make a presentation. She said they could come to a future meeting when it is discussed. She told them it would be on the fourth Tuesday of July. She hoped the churches would also be available to make a presentation.

**Mayor Pro-Tem Rentschler moved to table this item to the next meeting. Commissioner Turnbull seconded the motion. Motion carried with a vote of 6-0-0.**

**10. Consider, and act upon, a request for authority to commence foreclosure proceedings on unpaid liens. (Stephen Thies, City Attorney)**

City Attorney Thies gave an overview of this item. He told the commission it had been a number of months since he had brought any of these liens to them in order to request permission to commence foreclosure proceedings. There are a total of eleven different properties, but there is one he asked them to remove from the list; 1300 Mobile Court. An issue has arisen with that one regarding some communications, so that property will come back to you at a future meeting. The total amount of the remaining liens is roughly \$10,000. Four years after filing a lien, we can no longer enforce it and if we sit on it we essentially give up the right to recover the money. A property owner could force us to release the lien after the four years. The process we will use, if you approve, is send a notice to the property owner and make efforts to find out if anyone else has an interest in the property. We will send them notice thus giving everyone one last chance to pay off the liens. If we do not hear from

them or they fail to set up some kind of an arrangement to pay, we will then start the foreclosure process. City Attorney Thies said so far all the different properties with which we started this process have not had to go through the foreclosure process. They have all been willing to set up payments or pay it all off at once. He requested the commission give permission to commence foreclosures on the ten different properties.

**Mayor Pro-Tem Rentschler moved to approve authority to commence foreclosure proceedings on unpaid liens. Commissioner Hernandez seconded the motion.**

Commissioner Hernandez asked for Discussion. He asked about contractor prices, saying one of these properties is right across his alley and is one third the size of his lot. The liens are \$475.00, \$361.16 and \$446.46, and that is high for that size of lot. He realized some of those have been really bad and he had called Code Enforcement on one of them. It may now be close to that because they have been dumping trash there. He asked if we were getting good bids on these.

City Manager Stahle said they have set up new arrangements since these took effect, and none of these would be affected. He said we are trying to minimize the cost to the property owners when we have to do the weed abatement ourselves. He asked Fire Chief Ward to confirm and he did so.

Commissioner Hernandez said one other thing. A couple of these liens are for water and he wasn't sure why the bills were that high. Maybe we need to make sure these residents know about how we can help them, since some of them were probably leaks. He didn't like to see water liens on the list if we could have helped them out. He didn't have a problem with the weed liens.

Mayor Galea asked Commissioner Hernandez what would be the best way for the staff to inform water users that they have a water leak, and how they can remedy that. Commissioner Hernandez thought we have that now with the new process going in with the meters. Once the meter shows overuse, it will notify the property owner with a letter stating that there may be a leak. That way time will be shortened and bills may be lowered.

Mayor Galea agreed and said we know if you spend \$10 to fix a leak and have proof of that repair, basically the overcharges will be forgiven. She didn't know the best way to notify anyone other than the staff sending out letters.

Commissioner Hernandez felt we had it taken care of now with the new water meter program. He said some of the liens were from 2010 and he hoped they wouldn't go so long from now on.

**Motion carried with a vote of 6-0-0.**

**11. Appointments to Boards & Committees. (Susie Galea, Mayor)**

Mayor Galea announced the Boards and Committees with current vacancies and appointed Enrich Wuersching to the Airport Advisory Board. Mayor Venable from Cloudcroft had sent a letter of recommendation for Mr. Wuersching. Mr. Wuersching had met with Neptune in Montana to discuss expansion opportunities here. She knew Manny Gonzalez had applied for this Board, also, but didn't see his application in their packets. Mayor Pro-Tem Rentschler said that application had just been received yesterday, so that is why it wasn't here. Mayor Pro-Tem Rentschler had received a phone call from Mr. Gonzalez saying he was very interested in serving on the Airport Advisory Board. Mayor Pro-Tem Rentschler said we had appointed him earlier until we found his home was in the county.

Mayor Galea asked the city clerk if Manny Gonzalez could be appointed tonight since the Airport Board was meeting tomorrow. City Clerk Cantin asked if he lived within the city limits at this time, because we had to really look into whether Mr. Wuersching was eligible. Although we had revised the Airport Advisory Board ordinance, it only allows for two who don't own property or reside in the city limits. She asked for more time to look into it.

The Mayor agreed and hoped we would have more information on the residence of Manny Gonzalez at the next meeting. She asked the commissioners to communicate to their constituents that more members are needed on various boards.

### **PUBLIC COMMENT**

#### **A. Amy Bell commented on the following:**

1) She commented on Dr. McIntosh's presentation. She wanted to bring to light a few issues the City of Alamogordo is currently facing that the commission might not be aware of. She applauded Mayor Pro-Tem Rentschler's comments that they are engaged in protecting the City's water rights, and so she wanted to bring out that the city manager had recently signed an MOU with USFS in order to let the Forest Service tap into water rights; this is in the case of the Sacramento Grazing Allotment vs. USFS. Right now the Forest Service is tapped into the City line and as she understands it, there are six or seven others who own a vested water right in that line. None of those six or seven signed an agreement for that water to be used. Another issue is that in order for that water to get to Alamogordo and for that pipeline to be worked on, there are permits that have to be issued. As she understood it now, there are repairs that need to be made and the Forest Service hasn't granted permits for the line to be worked on. So, the City of Alamogordo is actually getting less water than they could be. This could give the Forest Service a water right, in a sense. She felt it was important to look into since water rights in the city and within the state are extremely important to protect.

City Manager Stahle said he would be happy to provide a copy of the correspondence and what led up to it for Ms. Bell.

Mayor Galea said it was being redirected for a beneficial use. City Manager Stahle said we are simply trying to maintain our beneficial use.

### **CITY MANAGER'S REPORT**

1) City Manager Stahle said this Thursday at 7:00 p.m. at the Civic Center will be an Open House for those interested in considering the Infrastructure Capital Improvement Programs (ICIP) for the next five years. He reminded everyone the commission will actually act on that list of ICIP issues at their next meeting. The reality is the commission has to narrow the list to the top five. The reason for that is that the State Legislature has an opportunity to authorize funding on certain projects, and the commission will be asked to identify those for legislative action. He encouraged everyone to attend.

### **REMARKS AND INQUIRIES BY THE CITY COMMISSION**

#### **Mayor Pro-tem Rentschler commented on the following:**

1) Mayor Pro-Tem Rentschler said he and the Mayor had attended the Fourth of July Fireworks show at the Space Hall Museum and it was an outstanding event. He had an opportunity to have an in-depth discussion with Chris Orwoll, the museum director. Mr. Rentschler said he has had a vision for a convention center for Alamogordo costing about \$30 million dollars for a long time. The Tays family had indicated at one time that they would be amenable to letting the City have 20 acres of land. This is on the right hand side of the Space Museum where there is a flow that comes down and is a beautiful place. He remarked that he and the museum director had similar ideas about this, and if Alamogordo could put something together like that it would need to be a lot of glass so that you could see the entire valley, the Space Hall and the Sacramento Mountains. It is an incredible place. Susan Flores has indicated she would be willing to consider this. This had been started a long time ago by State Senator Griggs and we could probably bring on the other elected officials in Otero County. It is something for us to pay attention to and this would be an outstanding addition to Alamogordo.

2) He had questions about the acequia from the last commission meeting that he had not heard back on. He has been driving up and back a lot and it doesn't look like it is being maintained.

Public Works Director Cesar responded to his questions. He said they have an agreement with the North Fork Fresno Acequia Association and work in concert with them to maintain the area he is talking about. There has been a little activity with the Acequia, shifting of board members and people dropping out. The City is the only group maintaining it right now.

Mayor Pro-Tem Rentschler asked if James Cadwallader had dropped out, and Mr. Cesar said he has been somewhat active. Mayor Pro-Tem Rentschler said he has been our primary mover up there.

Public Works Director Cesar said we are continuing to work with those groups up there to continue with the mowing and everything we have done. Since they haven't resolved all their issues we haven't been able to get that work performed. If they do not resolve their issues, it will fall back on the City as to whether we want to maintain areas that do benefit us, but are not our property.

Mayor Pro-Tem Rentschler remarked that since we have the water rights we certainly have the access rights, and the Public Works Director agreed.

Public Works Director Cesar said we have limited man-power and equipment, and since the rains have started, our equipment is in the various ditches in Alamogordo. It is somewhat of a balancing act to mow grass in the High Rolls area and also in Alamogordo. Mayor Pro-Tem Rentschler said he would hate to see it get back to the condition it was in for the last 30 years. Public Works Director Cesar said we will not let it get back to that condition. Our crews performed that work last year at this time and it may be done later in the season this year; it will be done.

Mayor Pro-Tem Rentschler asked if he had any news for them concerning the North Fork of the Acequia. Public Works Director Cesar said those monies had not been released yet so they had not started that project. Mayor Pro-Tem Rentschler asked the city attorney if we had been gently contacting the property owners about our crews coming in to clean it up. Public Works Director Cesar said James Cadwallader and the North Fork Fresno Acequia Assoc. have started talking to property owners in that area and we have sent our personnel, also. Mayor Pro-Tem Rentschler corrected himself by saying the South Fork, not the North.

**Mayor Galea commented on the following:**

1) She told Mayor Pro-Tem Rentschler that his idea for a convention center by the Space Museum was brilliant, and thought it was great he had that conversation with the county. She would like to see the city and county work together and she had looked at ways to fund this. It is a lot to ask from the State, and it is possible to do it three ways – state, city, county, and include Lodger's Taxes. She thought it would nice to have a museum of some kind, like a US Military Museum, on the first floor. This would take a lot of outreach by someone from the City.

2) She had attended General Timothy Coffin's assumption of command at White Sands Missile Range (WSMR), and she thought he would be an asset to the entire region. She said we will be welcoming the new commander to Holloman Air Force Base (HAFB) next week, and she looked forward to having everyone meet these incoming commanders.

3) She attended the CDBG Hearings to support the COPE Project to expand their building. They are currently operating with only about 100 square feet per person. She asked Commissioner Sikes to report on that.

4) The Mayor remarked that the July Fourth Parade was very well organized and attended, and she thanked the City Staff, specifically Jason Richards.

**Commissioner Sikes commented on the following:**

1) She told the commission she and the mayor had gone to Albuquerque and were one of 22 presentations to a governor appointed board for the CDBG. They were told their presentation was possibly one of the best ones, but all of them were good. She thanked Grants Coordinator Segura for all his hard work. They will go back next week on the 15<sup>th</sup> to do it all again, and we will learn on that

day if we get the \$500,000. She hoped they would be coming back with a \$500,000 check for COPE. Mayor Galea added our State Representative Herrell and State Senator Burt had offered letters of support for this project.

**EXECUTIVE SESSION** (Roll Call Vote Required)

*Adjourn into Closed Session in compliance with Section 10-15-1.H, NMSA 1978 (2010 Cumulative Supplement), to discuss:*

- A-2. Sale, Acquisition, or Disposal of Real Property (Washington Extension to Ocotillo)
- A-3. Threatened & Pending Litigation (City of Alamogordo vs. Alvillar)

Mayor Pro-Tem Rentschler moved to adjourn into Executive Session to discuss Sale, Acquisition, or Disposal of Real Property (Washington Extension to Ocotillo) and Threatened and Pending Litigation (City of Alamogordo vs. Alvillar) at 8:45 p.m. Commissioner Turnbull seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.

**ADJOURNMENT**



ATTEST:  
  
\_\_\_\_\_  
City Clerk Renee L. Cantin

  
\_\_\_\_\_  
Mayor Susie Galea

*(Prepared by Nancy Jacobs, Deputy Clerk)  
Approved at the Regular Meeting held on July 22, 2014.*