

**MINUTES OF THE CITY OF LAS VEGAS SPECIAL CITY COUNCIL MEETING HELD ON  
MONDAY, FEBRUARY 29, 2016 AT 4:00 P.M. IN THE CITY COUNCIL CHAMBERS**

**MAYOR:** Alfonso E. Ortiz, Jr.

**COUNCILORS:** Vincent Howell  
Tonita Gurule-Girón  
David L. Romero  
Joey Herrera

**ALSO PRESENT:** Elmer J. Martinez – City Manager  
Casandra Fresquez – City Clerk  
Dave Romero – City Attorney  
Juan Montano – Sergeant at Arms

**CALL TO ORDER**

Mayor Ortiz, Jr. called the meeting to order at 4:00 p.m.

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Mayor Ortiz, Jr. asked for a moment of silence to acknowledge our precious lives, the many opportunities we have and to overcome challenges by working together. Mayor Ortiz, Jr. wished every candidate the best, thanked everyone from the community and added that he loved his community and that he would remain a resident of Las Vegas.

**APPROVAL OF AGENDA**



Councilor Herrera made a motion to approve the agenda as is. Councilor Romero seconded the motion. Mayor Ortiz, Jr. asked for roll call. Roll Call Vote was taken and reflected the following:

Vincent Howell	Yes	Tonita Gurule-Giroń	Yes
Joey Herrera	Yes	David L. Romero	Yes

City Clerk Fresquez re-read the motion and advised the motion carried.

City Manager Martinez informed that Public Input had been increased to five (5) minutes for this particular meeting due to the importance of the topic to be discussed.

Mayor Ortiz, Jr. added that Public Input had been extended until 4:00 p.m. due to the extent of public requesting to speak on the issue at hand and allowed two individuals to sign in for Public Input after the meeting had already begun.

#### **MAYOR'S APPOINTMENTS/REPORTS**

Mayor Ortiz, Jr. thanked the public for attending such an imperative meeting that would involve special issues.

Mayor Ortiz, Jr. introduced Attorneys at Law, Rebecca Dempsey and Art Jaramillo and acknowledged that they had been working diligently on the agreement regarding the issue of water storage with Storrie Lake Water Users for many years and added that they were familiar with the details of what should be included in the agreement.

Ms. Dempsey informed that she began working with the City of Las Vegas, Storrie Lake Water Users Association, United States and the Department of Justice regarding the water storage issue since 2005 and explained that discussions had already been taking place before she began working for the City.

Mayor Ortiz, Jr. asked Council if questions could be held until presentations from Legal Council, Financial Advisor Paul Cassidy and Public Input speakers were completed.



Ms. Dempsey advised that she specialized in Water Law issues and had been assisting the City of Las Vegas with any questions or concerns about water.

Ms. Dempsey explained that after it looked like negotiations would take place with Storrie Lake, Art Jaramillo was asked to assist the City of Las Vegas in creating a Purchase/Sale Agreement with Storrie Lake which would allow the City to acquire 2300 acre feet of water storage space in Storrie reservoir under a permanent easement and in addition to that; 1200 acre feet of bulk water.

Ms. Dempsey clarified that the agreement was created to benefit the City for what it has bargained for and added that Mr. Jaramillo was selected to assist for the reason that he was exceedingly experienced in creating this type of transaction.

Ms. Dempsey advised that the Settlement Agreement and the Purchase and Sale Agreement were the two main components of the deal with Storrie Project and the United States. Ms. Dempsey spoke briefly on the dire need of water storage space for the City's demand and informed that this agreement would increase the City's water storage space more than four times of what it is now and spoke of several benefits of the proposed agreement.

Ms. Dempsey informed that many delays had taken place involving efforts to expand Peterson Dam which came with engineering difficulties, pending U.S./Storrie Project application protests regarding Bradner Dam expansion which involved timely and expensive litigation.

Ms. Dempsey gave a presentation of the summary regarding the Settlement Agreement which was presented as follows:

### **Settlement Agreement**

- The ***Settlement Agreement*** is among the City, SPWUA and the United States.
- On Closing of the ***Purchase and Sale of a Storage Easement and Bulk Water***, once the City has received a Permit from the OSE to store 2,300 AF of City water in Storrie Lake, SPWUA and the United States will:



- Withdraw their protests to the City's Application to expand Bradner Reservoir now before the OSE
  - Withdraw their protests to the City's Application for an Aquifer Storage Recovery Project now before the OSE
  - File notice with the Court in the Las Vegas Remand that they have resolved their potential disputed issues with the City and will not be filing any additional briefing
  - Agree that the City can store up to 3,300 AF of water diverted from the Gallinas River in any storage facility available to the City and can divert up to 3,300 AF per year from the Gallinas into storage **prior to SPWUA'S diversion of water from the Gallinas**
  - Agree that the City can store reclaimed water, groundwater from the Taylor Well Field, or other water not hydrological connected to the Gallinas River
  - Agree that the City can expand its existing diversion structure from the Gallinas River from 14.2 cubic feet per second (CFS) to 40 CFS
  - Agree to limit their protests to future applications the City files to transfer irrigation rights into the City's water system
- The **Settlement Agreement** will be executed by the SPWUA Board of Directors and the Regional Director of the United States Fish and Wildlife Service and approved and ratified by SPWUA shareholders owning 83 1/3% of SPWUA

Mr. Art Jaramillo informed that he had represented many people from small New Mexico communities for forty years and explained that he assisted with contracts, property contracts and commercial litigation through his law practice in the first twenty six years of his career.



Mr. Jaramillo explained how the details of this contract for the Storage Easement in Perpetuity were created to ensure the survival of legal challenge for generations to come. Mr. Jaramillo discussed various aspects of what was involved in creating the Purchase/Sale Agreement which included understanding ownership of Storrie Lake Reservoir. Mr. Jaramillo advised that he read historic documents, by-laws and articles of incorporation of the Storrie Project Association and to understand who had the authority to convey a storage easement in Storrie Reservoir.

Mr. Jaramillo informed that negotiations of the agreement came with many challenges regarding individual conveyance disagreements although collaboration among the attorneys involved, reached an agreement of a Fundamental Agreement which consisted of acquiring a Permanent Storage Easement. Mr. Jaramillo explained that instead of asking for a conveyance of interest in real property, which meant not buying the storage capacity, but acquiring the right to use the storage capacity on a permanent bases.

Mr. Jaramillo gave an overview of the summary regarding the Purchase and Sale Agreement which was presented as follows:

### **Purchase and Sale Agreement**

- The City will purchase a “Storage Easement” in Storrie Reservoir consisting of 2300 acre feet of water storage capacity.
- Purchase price is \$12 Million.
- The money is **payable only upon issuance** to the City of a final Storage Permit for Storrie Reservoir by the Office of State Engineer (OSE), in a form acceptable to the City.
- The City’s Storage Easement:
  - Is a **permanent interest in real property**.
  - Storage Easement will be recorded in the county land records upon conveyance.
  - Storage Easement will “run with the land” as **an encumbrance** on Storrie Reservoir.
  - Will be located **above the elevation of the dead pool**; that is, above the outlet works where the City’s water can be released by positive gravity flow.



- City may store water from any combination of the City's water rights and water owned or leased by the City.
- City may **fill and refill** and carry over storage from year to year limited to 2300 acre feet at any one time.
- City may **release water** at its **discretion** with 2-days notice.
- The City to also purchase 1200 acre feet of Bulk Water in Storrie Reservoir
  - Will allow **prompt use and benefit** of the City's Storage capacity
  - One-time Purchase Price of Bulk Water is \$360,000.00
  - Money is payable **only upon issuance** of either a Temporary or Final Bulk Water Permit from OSE in form acceptable to the City
  - Pending the closing of Storage Easement **only**, temporary storage costs for Bulk Water \$5,217.39 monthly
  - Favorable temporary storage cost compared with cost of prior leases
  - This cost to be paid exclusively from funds derived from City's water service operations.
- **Authority of SPWUA to Grant Storage Easement**
  - **Unanimous** vote of Board of Directors Required plus
  - Affirmative vote of **83 1/3<sup>rd</sup> Percent of SPWUA Shareholders** who must sign Corporate Resolution in their representative and **individual capacities**, to authorize, ratify and consent to the Settlement Agreement, the Purchase Agreement, and the Storage Easement.
  - Storage Easement to be conveyed to City free and clear of any title issue or encumbrance as confirmed by Title Report
- **SPWUA's Standards of Operation of the Reservoir**
  - SPWUA has a duty to operate the Reservoir in a safe and effective manner and to work cooperatively and in good faith to ensure that the City can recover its stored water.
  - SPWUA is under a duty of good faith and reasonable care to **prevent** causing the City's water from **dropping into the "dead pool"**.
  - If that should occur, SPWUA agrees to fill the Reservoir to the volume of water the City is entitled to have based upon its water storage account plus the estimated volume of the "dead pool."
  - **Evaporation losses** are assessed to the City at an annual rate of 2.83 acre feet according to a monthly distribution formula.
  - SPWUA to comply with all dam safety regulations and certifications.
  - SPWUA to maintain comprehensive liability insurance.



- **City's Share** of Capital Improvements, Ordinary and Necessary Maintenance and Repair Costs
  - Limited to City's proportional share (10.72%) based on City's storage capacity (2300 acre feet) compared to total active volume of storage (21,447 acre feet)
  - These costs to be paid exclusively from funds derived from City's water service operations.
- Purchase Agreement **will terminate** if certain conditions do not occur:
  - Issuance of final Storrie Storage Permit by OSE in acceptable form by December 31, 2017 unless date is extended by written mutual agreement.
  - Funding approvals for Acquisition of Storage Easement must be given as required by law.
  - Tax Certification Opinion by SPWUA'S tax specialist.
  - Amendment of SPWUA Article of Incorporation making SPWUA a perpetual corporation
- **Purchase Price Escalation** if Closing does not occur by **September 30, 2016**
  - Purchase price for Storage Easement (\$12 Million) increases by 1% per annum (approximately the CPI) prorated monthly after September 30, 2016 until Closing of the Storage Easement purchase.
  - Purchase price for Bulk Water (\$360,000.00) increases by 1% per annum (approximately the CPI) prorated monthly after September 30, 2016 until Closing of Bulk Water purchase.
- **SPWUA's temporary use of the City's unused storage space until needed by the City**
  - SPWUA may temporarily use that portion of City's 2300 acre feet of storage space **that is not being used by the City** until the City needs that storage capacity.
  - SPWUA's temporary use shall not affect the amount of water the City has in storage or the right of the City to store 2300 acre feet of water at any time.

Mr. Jaramillo advised that all the attorneys negotiated firmly and that it was an immense challenge and stated that in his opinion the City had a solid agreement for a permanent easement that was enforceable long into the future.



RBC Capital Markets Representative Paul Cassidy advised that he worked previously with the City of Las Vegas Utilities Water Department as a Financial Consultant on various water projects.

Mr. Cassidy advised that the Purchase and Sale Agreement of the Storage Easement for 2,300 acre feet (AF) in Storrie Lake was for \$12 million and the purchase of Bulk Water was at \$360,000.00.

Mr. Cassidy informed that the New Mexico Finance Authority would be the lender for the City to acquire the \$12 million permanent storage easement and advised that funds from the Water Enterprise Fund would be used to pay off the loan and the amount of \$360,000.00 for bulk water would be paid out with built up cash accumulated from the rate increase that had already been in place.

Mr. Cassidy explained that the City Council had adopted a Bond Ordinance last year which would allow the City to borrow up to \$20 million for water projects, and added that it was still in effect for another year. Mr. Cassidy informed that if Council would approve this agreement that closing could take place within the next 60 -90 days after permits were received and financing would then be locked in.

## **PUBLIC INPUT**

Mr. Bruce McAllister advised that this was the closest that the City had been to resolving the water storage issue and stated that he was in support of the proposed agreement. Mr. McAllister praised the community's water conservation and added that thanks to the rate increase, the City is able to move forward.

Mr. Bob Wessely spoke of the importance of the increased water storage and reliable water for economic development and the improved quality of life for the community as well as the Acequia users. Mr. Wessely thanked everyone involved for their tireless efforts and advised that the Governing Body's affirmative decision would allow the new Administration and Council to focus on other problem areas that affect the City's quality of life.

Ms. Anita Roy stated that she believed she did not need to add anything at that time.



Mr. Manuel Martinez advised that he was opposed to the proposed agreement due to the community not being able to afford to pay off another loan for many years to come and it was time to reason with the community and not just a handful of individuals that could afford it and advised there were other avenues to take regarding water storage to avoid added costs.

Mr. Martinez added that he represented the Hispano Chamber of Commerce and stated that many businesses were against the proposed agreement and hoped that the Governing Body would study the agreement for the reason that it would significantly affect the community.

Las Vegas National Wildlife Refuge Manager Mr. Robert Laranaga thanked the Governing Body for their diligence in the finalization of the water storage negotiations throughout several years. Mr. Laranaga informed that the SPWUA was comprised of 50 users and added that Las Vegas National Wildlife Refuge owned 61% percent and explained as the primary shareholder they had significantly reviewed the agreement to protect all interests and all parties who took part in the negotiation.

Mr. Alex Aragon advised that the critical decision of the water storage agreement should have included the community and stated that information should be more available to the citizens of Las Vegas. Mr. Aragon spoke of many costly issues when it came to making decisions regarding water issues and felt that the Governing Body should be more willing to work with the community to benefit the City of Las Vegas. Mr. Aragon thanked Mayor Ortiz, Jr. for his years of service.

Mr. William Gonzales advised that he was a member of the Acequia Association and had been involved in the water litigations for about 23 years and advised that the issue of sharing water was still in litigation. Mr. Gonzales advised that on many occasions the City has asked for funding without having shovel-ready projects regarding Bradner and Peterson Dams. Mr. Gonzales suggested that the City should withdraw permits and applications until ready to move forward with shovel ready projects and added that it would eliminate protests. Mr. Gonzales disagreed with the decision of rushing into the proposed agreement and expressed his concern about the proposed agreement allowing Storrie Project to use the community's storage space until the City needed it and asked if that might be a violation of the Anti- Donation Clause. Mr. Gonzales asked the Governing



Body to consider involving all parties and to come up with a solution that can benefit the entire community.

Mr. Lorenzo Flores stated that he felt the Attorneys and Financial Consultants hired by the City were not knowledgeable about the Treaty of Guadalupe Hidalgo which stated certain Water and Pueblo Rights under that treaty. Mr. Flores expressed his opinion regarding the agendas of the Attorneys, Consultants and the Governing Body and felt that helping the community was not in their best interests. Mr. Flores felt that there was no need to pay for water storage when there was no water and was strongly opposed to the proposed agreement.

Mr. Lee Einer advised that he had procedural objections to the proposed agreement and felt that voting on this issue right before the Mayoral Election was wrong. Mr. Einer added that the meeting was not being broadcast over Comcast and asked City Manager Martinez what the reason was for not broadcasting.

City Clerk Fresquez informed that the broadcasting agreement with Highlands University was for two meetings a month which included the Work Session and Regular Meeting held every month.

Mr. Einer felt that it was a perfect opportunity for the community not to be informed about the issue that would be discussed and voted on and stated that it would be the last chance in wrong doing by the Governing Body. Mr. Einer felt that the Governing Body should do the right thing and table this issue for two days and felt that people, who knew most about the water which were members of the Acequia Association and farmers, were not at the table to help in the decisions of the proposal.

Mr. Gabe Estrada advised that he was one of the protestors of the proposed agreement and was disappointed that a list of protestors was not included in the nine page read-out provided. Mr. Estrada stated that his reason to protest was due to not having permits in order to move ahead with a shovel-ready project and added that he felt there were too many unanswered questions. Mr. Estrada felt that dividing the water was a very important issue that would have to be resolved and hoped that more time would have been taken to make the decision on the proposed agreement and wished the best to those running for office.



Mr. Mike Estrada expressed his concerns of the timely issues regarding the sharing of water and spoke of the importance of the accountability of tax payer money being spent with no resolve. Mr. Estrada added that the previous utility rate increase implemented to match funds for restoration of Brander Dam was a waste. Mr. Estrada spoke of how critical it was for the Governing Body to work together with the community in order to come to a resolution. Mr. Estrada also stated that he had concerns regarding the diversion and who had the authorization to ask Storrie Project to increase the inlet from 12 to 40.

Mr. Richard Cozens stated that he represented the RGAA and was the Mayordomo of the Romero Ditch. Mr. Cozens advised that he had concerns in relation to inconsistencies in the proposed agreement regarding evaporation losses and stated that there should be shared evaporative loss between the City and Storage Project. Mr. Cozens questioned the awareness of the Governing Body of the inconsistencies and added that he was also concerned about the City retrieving water back out of the lake below the dead pool and refilling it with river water, as it had in the past when storing water at Storrie Lake. Mr. Cozens expressed that he thought that the Governing Body was not fully informed about the issues he discussed.

Mr. Steve Reichert advised that he supported the proposed agreement and the Las Vegas National Wildlife Refuge. Mr. Reichert stated that some issues discussed needed to be addressed although he thought the proposed agreement would be a great benefit and would be a reliable source for the Acequias, the stream and the community. Mr. Reichert explained that the proposed agreement would also benefit the City in the event of a storm coming through and added that additional water in the lake would be available for the State Park, to avoid animal wildlife extinction and benefit all people in the community.

Mr. Michael Montoya advised that he had formerly served as a Council member, that he owed no one favors and that he was there on his own free will and stated that it took a lot of courage to make a decision regarding the proposed agreement that would affect the community for many years to come and asked Council not to base their decision on the election and to do the right thing. Mr. Montoya spoke of the many challenges regarding the issue of water for many years and added that he felt that honoring the agreement would improve the quality of life



and growth in the community. Mr. Montoya stated that this issue was finally coming to an end and this was the last opportunity for the City to move ahead and asked Council to make it right and support the proposed agreement.

City Clerk Fresquez read a letter from Owner/Water User of SPWUA 2- Southwest Capital President Mike Melton stating that as ranchers, he and his family were the 4<sup>th</sup> largest water users in SPWUA for many years, and was in support of the proposed agreement with Storrie Project. Mr. Melton also stated in his letter that the proposed project would improve the quality of life for the community, business community, housing opportunity, agriculture, recreational activities and would also generate GRT and Lodger's Tax revenue from out of town visitors. Mr. Melton added that SPWUA users would have a more efficient water delivery system allowing enjoying the agricultural way of life and advised that Southwest Capital was in support making the community an overall better place to live and work. Mr. Melton also stated that he was thankful to local leaders for working together for the greater good of the community.

City Attorney David Romero informed that he had been handed a petition for a temporary order of injunction which was requesting from the court that any actions from the Council would be postponed and advised that the petition at the present time had absolutely no impact on decisions or procedures during the meeting. City Attorney advised that there was no court order, a hearing had not been held and added that simply filing a motion with the court could not stop the process, the notice, the hearing and the consideration that would take place. City Attorney Romero advised Council that they would be able to continue with deliberation.

## **BUSINESS ITEMS**

### **1. Approval/Disapproval of Resolution No. 16-09**

Utilities Director Ken Garcia advised that the City has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage, purchase of bulk water and settling long-standing protest to the City's water storage applications before the Office of the State Engineer. Both parties have tentatively



reached an agreement for permanent perpetual water storage, purchase of bulk water and settlement of protests.

Utilities Director Garcia read Resolution #16-09 in its entirety.

Utilities Director Garcia advised that any questions or concerns should be directed to the City's Attorneys and Water Rights Consultants.

Councilor Herrera stated that some information discussed earlier had contradicted itself and added that Resolution 13-15 had been mentioned regarding the joint effort between the City and Storrie Project.

City Manager Martinez clarified that Resolution 13-15 referenced to promote water efficiency, water conservation and to improve water storage and conveyance.

Councilor Herrera questioned if there was a unanimous vote at the time of approval of Resolution 13-15.

City Clerk Fresquez advised that she would have to obtain the information from Council Meeting Minutes for that particular time.

Utilities Director Garcia read Resolution #13-15 approved on March 20, 2013 in its entirety.

Councilor Herrera wanted to clarify if the Governing Body voted unanimously on Resolution 13-15 for negotiations with Storrie Project and thought that it meant to come to a conclusion and should be completed with the direction given by Council back in 2013.

City Manager Martinez agreed that it meant that direction was given by Council to work with Storrie Lake.

Councilor Howell had a question regarding the lake and how would it be filled by Storrie Lake should the water fall below the dead pool.



Utilities Director Garcia clarified that City's plan was to have 300 acre feet in addition to the dead pool, which belonged to Storrie Lake and added that they agreed to keep that water above the dead pool, in addition to the City's 2300 acre feet.

Utilities Director Garcia explained that the dead pool was only 300 acre feet and that 2600 acre feet would remain above.

Utilities Director Garcia added that the evaporation process happens in an extended period of time therefore it would give the City a chance to work with Storrie Lake to physically pump the water and described it as an extreme scenario. Utilities Director Garcia informed that Storrie Lake now had an explicit responsibility in this agreement of keeping the water above the dead pool.

Councilor Howell asked if the City had ever reached the dead pool.

City Manager Martinez informed that the City had reached the dead pool in the early 2000's and advised the City was rushing to obtain floating pumps to try and get water from the dead pool.

Councilor Howell asked who was responsible for maintaining the canal gate in reference to the canal gate collapsing at the time of the previous storm.

Utilities Director Garcia advised that it was a combined responsibility between Storrie Lake Project Association and the New Mexico State Engineers Office and added that they are also responsible for the diversion gate as well but advised that he would not be able to speak for those entities.

Utilities Director Garcia added that one of the City's provisions during a significant flood event is the capability to divert through its diversion, into the City's reservoirs during peak flooding times.

Councilor Howell asked if damage to the canal gate would happen again, how long it would take to repair it and asked with storm damage would the City still be able to get their portion of City water.



Utilities Director Garcia explained that the City's diversion facilities were completely separate from Storrie Lakes' diversion facilities. It would not affect the City, from a diversion perspective.

Councilor Howell asked a question regarding the limit of protests.

City Water Rights Attorney Dempsey advised that there were no limits to filing protests and added that other Water Rights Users would be able to protest any application submitted by the City to the New Mexico State Engineer's Office for water storage or to transfer water rights into the City's system. Ms. Dempsey added that with this agreement it would limit protests from Storrie Lake Project Water Users Association/US and added that there were certain things that they could not protest at all and would resolve all Bradner Dam protests by SPWUA/US.

Councilor Howell had concerns regarding contamination of the lake.

Utilities Director Garcia advised that the agreement places Storrie Project and the New Mexico State Parks responsible for maintaining the uses of lake and the water quality of the lake.

Mr. Art Trujillo informed that the proposed agreement placed Storrie Project to retain sole responsibility for operation and management of the reservoir which included operating it in a safe and effective manner in accordance with Dam Safety Regulations. Mr. Trujillo added that the City's responsibility would involve moving water back and forth, particularly with reclaimed water and that it would meet water quality standards.

Councilor Howell had questions regarding the 2.83 acre feet of evaporation stated in the provided documents.

City Manager Martinez advised that part of the negotiations process included the evaluation of evaporation based on the surface of the lake.

Utilities Director Garcia stated that contrary to what was said earlier he wanted to clarify that there was shared evaporation between the City and Storrie Project and added that the topic of evaporation was greatly discussed as part of the



agreement. Utilities Director Garcia added that the City's Hydrologist worked with US Fish and Wildlife Hydrologists and they came up with an agreeable solution by both parties and added that it would not be a liability to the City.

Mr. Mustafa Chudnoff explained that the 2.83 acre ft per acre was unit rate of evaporation and added that the increase in the surface area of Storrie Lake that is induced by the City's introduction of its water and that the evaporation rate is only applied to the extra expansion of the surface area.

Mr. Chudnoff advised that the City's liability is very small and the evaporation rate was favorable to the City and added that he took Hydrologic calculations that determined with the 2.83 evaporation rate applied to the City's storage, the City would be able to fill and refill and gain storage for sufficient reserve.

Councilor Howell asked how long it would take to get the 2300 acre feet in Storrie Lake.

Utilities Director Garcia advised that it was too hard to predict and depended on a number of factors and added that Mr. Chudnoff went through historical records of river water flow and modeled to see the pattern of the flow and with the conclusion of that study, was able to inform that the City will be able to fill the reservoir.

Councilor Howell asked if the permit process required Governing Body approval.

Utilities Director Garcia advised that any permit would require the authority of the City and explained that the State Engineer's Office required a certain number of things before they would take action on any permit request and added that the City would need a co-applicant, which would be Storrie Project to request a permit.

Councilor Howell asked if that was the reason we didn't have permits and if the proposed agreement would facilitate the permit process.

Utilities Director Garcia advised that it was essential to include Storrie Project to make the request.



Councilor Howell asked how the agreement would affect the Acequias if it was approved.

Utilities Director Garcia advised that the City had worked with the City's hydrologist and the State Engineer's own independent modeling with results that say that the additional storage would help the Acequias and would take the City off the river for extended periods of time which would benefit the Acequias and stated that a report was available to Mayor and Council with the information.

Councilor Howell asked what would be the deterrent in postponing this agreement.

Utilities Director Garcia advised that the City of Las Vegas was a divided community and that there were so many different possible outcomes and that it would take a while to understand these issues and clarified that he was not condescending the new administration. Utilities Director Garcia added that he thought it would not be fair to turn this over to the new Administration to make the decision.

Discussion took place of the unanimous vote taken regarding Resolution 13-15.

Councilor Howell advised that he had Administration research the ties that the Mayor had to break and advised that it was not numerous.

Councilor Gurule-Giroń stated that she was not opposed to the agreement but thought that all parties were not represented and asked Mayor Ortiz, Jr., City Manager Martinez and Utilities Director Garcia to withdraw the application regarding the 2300 acre feet reservoir which more than likely would not come to fruition because of the Bradner agreement from the Morada. Councilor Gurule-Giroń added that the City needed a buy-in from other parties not by a selected minority.

Councilor Gurule-Giroń stated that in the past Mayor Ortiz, Jr. and Utilities Director had asked Council not to confirm the agreement when it was close to a final agreement. Councilor Gurule-Giroń agreed that the City needed to move forward but didn't agree with having to make this decision at the 11<sup>th</sup> hour and



added that the Acequias were omitted, which was not fair and that they needed to support livestock and agriculture.

Councilor Gurule-Giroń apologized to the all parties not included in the agreement and recommended that Council table this item for further review, to include Acequia members. Councilor Gurule-Giroń informed that Councilor Herrera openly stated that he would support to table the item if all partnerships were not represented and stated that she would hold him to that. Councilor Gurule-Giroń stated that she disagreed with Utilities Director Garcia on the fact that the new administration would not continue to work on a partnership and growth with Storrie Lake and the Acequias.

Mayor Ortiz, Jr. stated that he never said that to Councilor Gurule-Giroń and added that she might have been referring to the meeting held on March 30, 2015 when there were some changes at the last minute that they didn't agree with and advised that it was a recommendation.

Utilities Director Garcia stated that it was not appropriate to bring up what is discussed in Executive Session and on behalf of the city manager stated that staff had given Council their opinion but have never told them how to vote.

Mayor Ortiz, Jr. advised that he felt that attorneys for the Department of Interior have given him the clear message that the negotiations were final and that his fear was that they would probably not consider opening it up again. Mayor Ortiz, Jr. stated that he would feel irresponsible to postpone this decision for someone else to take on the responsibility that did not have the background and start from scratch and run into problems.

Utilities Director Garcia advised that he felt that Storrie Lake, the Acequias and the City all had their own interests and wanted everyone to succeed and stated as far as the Acequias not being included in the negotiations, that they were not Protestants to the Bradner application.

Utilities Director Garcia added that Gabe Estrada was protesting as a member of Storrie Lake and not representing the Acequias and that he did not take the opportunity to express himself at the time of mediation that occurred at the Office of the State Engineer. Utilities Director Garcia stated that he did not agree



with recommendation to include the Acequias and it would not be in the City's best interest to do so.

Councilor Gurule-Giroń advised that she disagreed with Mr. Garcia and stated that she believed that Mr. Estrada did file the protest on behalf of the Acequias. Councilor Gurule-Giroń added the agreement needed to be postponed due to lack of permits, the project not being feasible and that there were too many protests on the table.

Utilities Director Garcia explained that the agreement between SPWUA/US and the City had no protests and suggested that there may be confusion with other protests regarding to Bradner.

Discussion took place regarding if there were any protests against the Storrie Project agreement with the City.

Mr. William Gonzales mentioned that there was a protest by the Acequias regarding the aquifer storage and recovery.

Utilities Director Garcia clarified that the agreement with Storrie Project was separate and had nothing to do with the aquifer storage and recovery and added that the Acequias could continue to protest.

City Manager Martinez stated that this agreement was the result of an order by the State Engineers to mediate the Bradner protest to enter into negotiations and added that without an agreement you cannot obtain any permits.

Councilor Howell stated that in the past the Governing Body had extended an invitation to the Acequias to meet, but advised that they never replied.

Ms. Dempsey advised that negotiations with the Acequias had been attempted for several years and added that the courts' Special Master thought that not enough progress was being made with the litigation, therefore he called a halt. Ms. Dempsey added that the Acequias did not want to work with the mediator appointed by the court. Ms. Dempsey informed that the Special Master later encouraged the parties to mediate and explained that the last communication



was when the City made an offer and did not receive a counter offer from the Acequias.

Discussion took place of possibly taking the opportunity to have discussions with the Acequia members.

Councilor Herrera made a motion to approve Resolution #16-09 Authorizing the Mayor and City Manager to settle protest and enter into an agreement with the Storrie Project Water User Association. Councilor Howell seconded the motion.

Resolution 16-09 was presented as follows:

CITY OF LAS VEGAS  
RESOLUTION NO. 16-09

A CITY RESOLUTION AUTHORIZING THE MAYOR AND THE CITY  
MANAGER TO SETTLE PROTESTS AND ENTER INTO AN AGREEMENT  
WITH THE STORRIE PROJECT WATER USERS ASSOCIATION TO  
PURCHASE 2300 ACRE FEET OF PERMANENT WATER STORAGE AND 1200  
ACRE FEET OF BULK WATER.

WHEREAS, on July 25, 1989, the City of Las Vegas (City) entered into an agreement (#0175-A) with the Storrie Project Water Users Association (SPWUA) to lease 500 acre feet of water storage capacity at a rate of \$37,500.00 (\$75.00/AF) adjusted for CPI annually; and

WHEREAS, agreement #0175-A was for a period of twenty years and expired on December 31, 2009 at a final rate of \$61,760.44 (\$123.00/AF); and

WHEREAS, both parties extended the lease agreement effective January 1, 2010 for a one year period with a one-time cash sum of \$100,000 (\$200.00/AF); and

WHEREAS, a second extension to the lease agreement went into effect January 2, 2011 for a term of 3 years payable at \$100,000 the first year, \$125,000 (\$250.00/AF) the second year and \$150,000 (\$300.00/AF) the third year totaling \$375,000; and

WHEREAS, on March 20, 2013 the Governing Body adopted Resolution No. 13-15 as a joint effort between the SPWUA and the City to promote water efficiency and water conservation and to improve water storage and conveyance; and

WHEREAS, the City and the SPWUA have been in negotiations since that March 20, 2013 to draft an agreement that is mutually beneficial to both parties; and



WHEREAS, the City, SPWUA and the United States Fish and Wildlife Service have generally agreed to settle ongoing protests to various water storage applications by the City and the City has agreed generally to the following terms and conditions with SPWUA:

1. Purchase by the City of a perpetual and permanent water storage easement for 2300 acre feet of storage capacity at Storrie Reservoir commencing at the level where the water stored by the City can be released by gravity through the City's outlet works.
2. The payment of twelve million dollars (\$12,000,000 or, \$5,217.39/AF) to be paid at closing of the storage easement contingent upon the approval of a joint storage permit application by the Office of the State Engineer.
3. Purchase by the City of 1200 acre feet of bulk water in Storrie Reservoir for the purchase price of three hundred sixty thousand dollars (\$360,000), together with interim storage for the bulk water at the rate of five thousand two hundred seventeen dollars and thirty nine cents (\$5,217.39) per month pending closing of the City's storage easement.
4. Closing of the bulk water agreement will occur upon approval of a joint temporary bulk water permit application or final bulk water permit application by the Office of the State Engineer.
5. The purchase price for the storage easement and the bulk water purchase shall escalate at the rate of 1% per annum commencing after September 30, 2016 until closing of each of these purchase transactions.
6. Authorization and consent by 83 1/3<sup>rd</sup> percent of SPWUA shareholders to these transactions.

WHEREAS, Ordinance No. 14-10 for Bond Water System Improvements was adopted on February 18, 2015 and will allow the City to finance the acquisition of storage with debt capacity; and

WHEREAS, the City will submit an application to the New Mexico Finance Authority for financing under the Public Project Revolving Fund and/or seek financing through the open bond market; and

WHEREAS, the City will use water fund cash to purchase the bulk water and the interim storage costs for the bulk water. Such funds are included in the City's FY 16 budget.

WHEREAS, the City will finance the transactions through existing water rates.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the City of Las Vegas that the Mayor and the City Manager are authorized to settle ongoing protests to the City's various storage applications and to enter in to an agreement with the Storrie Project Water Users Association for 2300 acre feet of storage for the amount of \$12,000,000.00 and 1200 acre feet of bulk water for \$360,000, with temporary storage costs as provided above.

BE IT FURTHER RESOLVED that the agreement shall be deemed ratified by the governing body upon execution by the Mayor.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_



Mayor Alfonso E. Ortiz, Jr.

Attest:

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Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

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Dave Romero Jr., City Attorney

Mayor Ortiz, Jr. asked for roll call. Roll Call Vote was taken and reflected the following:

Joey Herrera	Yes	David L. Romero	No
Vincent Howell	Yes	Tonita Gurule-Giron	No

City Clerk Fresquez re-read the motion and advised that there was a tie.

Mayor Ortiz, Jr. stated that before he would make his ruling, he would ask the opinions of City Manager Martinez and Utilities Director Garcia regarding their recommendations on the issue.

City Manager Martinez replied that based on his experience in working in the Community Development Department, he had many projects being turned down due to drought, water availability and stated that it impacted economic growth. City Manager Martinez added that based on the negotiation processes and the comprehensiveness of the proposed agreement with Storrie Project, his recommendation was to move forward with the agreement.

Utilities Director Garcia advised that in any negotiations it takes a lot of give and take and added that negotiations are a difficult and timely process. Utilities Director Garcia thought this was a step forward to settle the issues that had plagued the community and supported the approval of the agreement.

Mayor Ortiz, Jr. voted yes on the motion, to break the tie.

Councilor Howell advised that he strongly recommended on setting a meeting with the Acequias for discussion, and asked if there were any objections from Council.



There were no objections from Council regarding to set up a meeting with the Acequias for discussion.

## 2. Approval/Disapproval of Resolution No. 16-10.

RBC Capital Markets Financial Advisor Cassidy advised that the New Mexico Finance Authority had a program allowing submission of an application to include borrowing funds and /or issuing bonds for assistance to finance projects from the public project revolving fund. The city has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage. Both parties have tentatively reached an agreement for permanent perpetual water storage. The city intends to cash purchase bulk water. The City will acquire permanent water storage for the municipal water system under this NMFA program.

Councilor Herrera made a motion to approve of Resolution 16-10 authorizing and approving the submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority. Councilor Howell seconded the motion.

Resolution 16-10 was presented as follows:

CITY OF LAS VEGAS

RESOLUTION NO. 16-10

AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE

NEW MEXICO FINANCE AUTHORITY.

WHEREAS, the City of Las Vegas, New Mexico ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Council of the City of Las Vegas ("Governing Body") is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Authority") has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an application ("Application") for financial assistance from the Authority for public projects; and



WHEREAS, the Governing Body intends to purchase a perpetual and permanent water storage easement for up to 2,300 acre feet of storage capacity at Storrie Reservoir for the City's municipal water system("Project") for the benefit of the Governmental unit and its citizens; and

WHEREAS, the Governing Body has approved Resolution #16-09 authorizing the Mayor and the City Manager to enter into an agreement with the Storrie Project Water Users Association (SPWUA) to purchase up to 2300 acre feet of permanent water storage; and

WHEREAS, the application prescribed by the Authority has been completed and submitted to the Governing Body and this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS:

Section 1. That all action (not inconsistent with the provision hereof) heretofore taken by the Governing body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body, be and the same is hereby approved and confirmed.

Section 3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Authority for its review, and are further authorized to take such other action as may be requested by the Authority in its consideration and review of the Application and to further proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled and repealed.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

Mayor Alfonso E. Ortiz, Jr.

Attest: \_\_\_\_\_

Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

\_\_\_\_\_

Dave Romero Jr., City Attorney



Mayor Ortiz, Jr. asked for roll call. Roll Call Vote was taken and reflected the following:

Joey Herrera	Yes
David L. Romero	No

Vincent Howell	Yes
Tonita Gurule-Giroń	No

City Clerk Fresquez re-read the motion and advised that there was a tie.

Mayor Ortiz, Jr. voted yes on the motion, to break the tie.

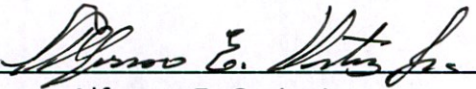
### ADJOURN

Councilor Gurule-Giroń made a motion to adjourn. Councilor Herrera seconded the motion. Mayor Ortiz, Jr. asked for roll call. Roll Call Votes was taken and reflected the following:

Vincent Howell	Yes
Joey Herrera	Yes

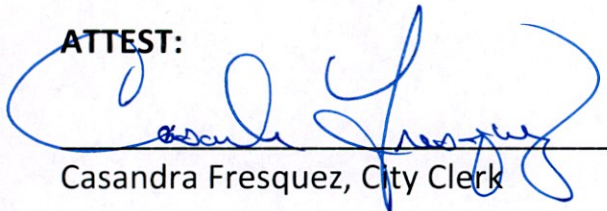
Tonita Gurule-Giroń	Yes
David L. Romero	Yes

City Clerk Fresquez re-read the motion and advised the motion carried.



Mayor Alfonso E. Ortiz, Jr.

**ATTEST:**



Casandra Fresquez, City Clerk