



Kerry Howe, *Chair*  
Russell Pederson, *Vice-Chair*  
Suzanne Busch  
Julia Maccini  
Roland Penttila

John Pietz  
Roberto Roibal  
Caroline Scruggs  
Jennifer Thacher

**Water Protection Advisory Board**  
**c/o ABCWUA**  
*P.O. Box 568*  
*Albuquerque, NM 87103*

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Minutes: November 30, 2018  
Location: Bernalillo County Public Works Division, 2400 Broadway SE, Bldg. N Conf. Room  
Time: 8:30 to 10:30 a.m.

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**Board Members Present:** Chair Kerry Howe, Julia Maccini, Roland Penttila, John Pietz, and Jennifer Thacher

**Board Members Absent (excused):** Vice Chair Russell Pederson, Steve Glass, Suzanne Busch, and Roberto Roibal.

**PIC Members Present:** Dan McGregor, Bart Faris, Kathleen Verhage, Kali Bronson, Ken Ziegler, Diane Agnew, and Kate Mendoza.

**Guests:** Mo Hobbs (ABCWUA), Tom Heller (ABCWUA), Paul Olson (City of Albuquerque)

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**I. Call to Order**

Chair Dr. Kerry Howe called the meeting to order at 8:38 a.m.

**II. Approval of Agenda**

Chair Howe requested a motion to approve the agenda. Mr. Roland Penttila motioned to approve the agenda and Ms. Julia Maccini seconded the motion. Motion to approve the agenda carried unanimously.

**III. Approval of August Minutes**

Chair Howe asked board members if there were any comments on the November meeting minutes. Mr. Penttila and Dr. Jennifer Thacher asked for their names to be spelled correctly and Ms. Kate Mendoza said she would make those changes. Dr. Thacher motioned to approve November minutes with the discussed changes and Mr. Penttila seconded the motion. Motion to approve the November 30, 2018 meeting minutes carried unanimously.

**IV. Board Business**

**a. Letter to Mayor Keller**

Prior to starting the discussion, Mr. Bart Faris, PIC member, wanted to discuss his concerns about editing letters and complying with the Open Meetings Act. Mr. Faris said he is concerned that editing a draft letter via email with board members may form a rolling quorum which would violate the Open Meetings Act. He told board members that he and his staff reviewed a bulletin posted by the New Mexico Attorney General about compliance with the Open Meetings Act and said that draft letters should not have edits sent via email among the board for approval as it meets the definition of a rolling quorum. Ms. Maccini told Mr. Faris that she understands the rolling quorum concept and how that may have been applied in this situation, but she asked to review the bulletin for further understanding. Chair Howe asked what the appropriate procedure would be for moving forward and Mr. Faris suggested that each board member do their own edits to draft letters and bring all edits and comments to the meeting to finalize a letter so the process is open to the public. Mr. Ken Ziegler, PIC member, added that the internet is a closed forum and not officially an open meeting. There were questions about creating a sub-committee to draft the letter to avoid the rolling quorum and Mr. Faris suggested that a sub-committee could bring the letter back to the main board for approval to be compliant with the Open Meetings Act. Chair Howe said the main point is that the public has visibility into the letter development while there is a quorum. Ms. Diane Agnew, PIC member, offered to discuss the issue with the Albuquerque Bernalillo County Water Utility Authority (Water Authority) general counsel to determine the best approach moving forward. Chair Howe shared his concern about completing letters in a timely matter and reiterated that complying with the Open Meetings Act is important to the Board.

Chair Howe asked board members for any questions about the letter. Dr. Thacher thanked Mr. Penttila for drafting the detailed letter and suggested making the letter more concise. Dr. Thacher also suggested adding a brief explanation of the Water Protection Advisory Board (WPAB) and moving the main points to the beginning of the letter. She said that WPAB tracks many water quality issues that have a long history as well as tracking how the community has addressed the issue. She suggested that the letter should focus on preventing contamination because it could be a concern sooner rather than later.

Mr. Faris interjected that the issue is larger than the General Obligation (GO) bond issue. He cautioned board members about moving forward with the letter without prior communication from the City of Albuquerque's (City) Department of Municipal Development (DMD) or Mayor's office. Mr. Faris said that the Environmental Planning Commission (EPC) asks questions of all the City departments during the development of the GO bonds proposal each year. Mr. Penttila said that the EPC always meets to discuss the GO bonds and added that most City department directors, including the DMD, tend not to put up a fight against the GO bonds proposals because it goes against the Mayor, which they don't want to do. Mr. Penttila suggested asking the Mayor's office why the funding was cut more than in the past.

Mr. Dan McGregor, PIC member, suggested inviting the Mayor's office and others to meet with the board prior to sending the letter. Ms. Kathy Verhage, PIC member, said that she hoped the City engineer director could have been present at the meeting but was not able to attend. Ms. Verhage seconded Mr. McGregor's call for inviting the Mayor's office and others to meet with the WPAB because it may be helpful for all parties to understand where the funding comes from and how it gets used.

Ms. Verhage said the DMD requests \$2.5 million for National Pollutant Discharge Elimination System (NPDES) compliance but the DMD only received \$1 million. She then stated that \$3 million comes to the DMD from the GO bonds where \$1 million is allotted for the NPDES and the other \$2 million is allotted to stormwater drainage infrastructure. Ms. Verhage said the City requires additional funds, on top of the allotted amount, for Tijeras Arroyo sampling and other stormwater projects. Ms. Verhage said other City employees felt the letter was timely for educational purposes but suggested that Mayor Keller's office should still come to the Board and explain where funds come from and how they are dispersed. Chair Howe interjected that the letter does have a call to action with necessary background and could still serve as an educational tool for Mayor Keller's office.

Chair Howe asked Ms. Agnew if the Water Authority had any concerns about the letter. Mr. Agnew stated that the Water Authority would have concerns about including dollar amounts and advising the City on how to appropriate funding. Chair Howe stated that including proposed funding amounts could lead to people focusing on numbers rather than content in the letter. Ms. Kali Bronson, PIC member, suggested that the letter define the mission of the Board. Ms. Maccini agreed and said the letter should be more concise. Dr. Thacher stated that the first paragraph should have the Board's main message and the purpose of the board. Mr. McGregor suggested that the language in the letter be softened. Mr. Penttila said that the objective of the letter is to express the impact of the proposed budget cut on the City's ability to comply with stormwater permits. Mr. McGregor recommended the letter contain a statement that expresses the potential impacts on water quality, because that is within the Board's purview.

Chair Howe asked the Board and PIC members what adverse impacts would fall on cooperating agencies. Ms. Bronson stated that the City would not be able to put enough money into programs like education outreach that may cause the City to fail to meet various stormwater program requirements. Chair Howe said that those impacts were too broad. Mr. Faris said that the impact would be falling out of permit compliance. It was asked if the various permit partners have a financial incentive to work together. Ms. Bronson recommended to the Board that the letter include something about cost sharing abilities and the impacts to the stormwater program.

Mr. Penttila stated that floods are not within the purview of the Board and statements pertaining to floods should be omitted from the letter. Chair Howe noted that the Board does include all water protection. Mr. Faris said that the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) had already made a strong statement to the EPC. Mr. Penttila said that floods should remain under AMAFCA's expressed concerns, and the Board will focus on other issues like water quality. Ms. Verhage suggested to the Board that they do overlap and are intertwined.

Mr. Penttila asked other Board members if the letter should focus on the 5-year funding plan or meeting permit requirements. All board members were in favor of focusing on permit compliance and water quality.

Ms. Agnew asked Ms. Bronson if impairment of cooperative agreements would result in a fine or a change in scale (e.g., the education and outreach program). Ms. Bronson said that

it would mostly impact scale but could result in fines. Ms. Verhage added that if the City is no longer able to provide cooperative funding, the City will no longer be able to comply with ordinances.

Ms. Agnew asked the Board if this letter is intended to educate the Mayor's office, and if so, what are the big things they want the letter to educate the Mayor's office on? Mr. John Pietz, Board member, asked Ms. Verhage if the City failed to meet obligations, would they be fined? Ms. Verhage stated that the City has been fined in the past.

Dr. Thacher asked if the letter should be broken down into a cover letter, followed by additional information. All agreed to cut down the letter to less than two pages, and should not include additional attachments.

Mr. Penttila asked if all 18 co-permittees should get together to sign the letter. Ms. Bronson said that most of the partners were meeting December 13, 2018, but the tribes and the state fair partners would not be attending. It was mentioned that it would take too long to get all signatures from all the partners and in the interest of time, the Board should send the letter without signatures from the cooperating partners.

Chair Howe asked the Board how they keep the format of the letter educational, especially considering the Board generally does not educate but rather seeks out education. It was suggested to offer to have Chair Howe and supporting PIC members meet with the City to provide additional information about the stormwater program. Mr. Penttila said they could offer the Board's time rather than requesting the City come to the Board. Dr. Thacher asked the Board if they should extend that same offer to the City's Green Team. Ms. Agnew told the Board that the Green Team is tentatively scheduled to present at the February 2019 meeting.

Chair Howe asked Ms. Agnew if the revised letter might raise any concerns with John Stomp, the Water Authority's Chief Operating Officer. Ms. Agnew said Mr. Stomp would prefer holding a meeting prior to sending a letter, but she is aware of the time constraints. Ms. Agnew said she is concerned about the Board advising the City on budgets, considering the Board's mission is water quality. Chair Howe said they could change the language to not include budgets and funding, but rather request the City to consider water quality and water resource protection. Mr. McGregor proposed to the Board that the letter include a statement about advising, because the Board does have the authority to advise. Ms. Bronson said she felt that would keep it open and flexible, without discussing financial aspects.

After open revision of the letter during the meeting, Chair Howe requested a motion to approve the revised letter. Mr. Penttila motioned to approve the revised letter and Mr. Pietz seconded. Motion to approve the letter carried unanimously.

## **b. PIC Agency Updates**

Ms. Agnew provided an update on the status of board members appointments. Ms. Agnew stated that Dr. Caroline Scruggs' term expired in November 2018 and Mr. Steve Glass will be filling Dr. Scruggs' seat and will be present at the next meeting. Ms. Agnew told the Board that Dr. Thatcher's term was up and the Water Authority will be appointing Dr. Scruggs at their next governing board meeting. Ms. Agnew then told the Board that Mr. Russ Pederson's term will expire in December 2018 and the City council will be appointing a new member soon.

## **V. Other Board Business**

Ms. Agnew told the Board she is preparing the 2019 Work Plan and that if she could get the Work Plan approved at this meeting, she could get a jump start on the annual report and facilitate a smooth transition into the 2019 calendar year. Ms. Agnew informed the Board that the 2019 Work Plan was similar to the 2018 Work Plan.

Chair Howe asked if the Water Authority could give a presentation on how they address arsenic (well washing, blending, etc.). Ms. Agnew said the Water Authority would be happy to present and Ms. Mendoza said this could be added under the groundwater quality bullet. Mr. Penttila asked the Board if they were ready to move in favor of the 2019 Work Plan. Then, Mr. Pietz asked if the other Board members should be present and Dr. Thatcher pointed out that the Work Plan list has remained very similar over the years. Chair Howe stated that before they vote, he wanted to know how the last bullet on public outreach fits in to section VII. Ms. Agnew said it was an outlier, but it is part of the Board's policy and within the Board's purview. Ms. Agnew then said that the work plan and public presentations at Board meetings falls under public outreach. Mr. Penttila asked if public outreach was one of the Board's requirements, then should the letter to Mayor Keller be shared with the public? Ms. Agnew told the Board that it will be accessible on the public portal, and will be associated with the November 30, 2018 meeting minutes. Mr. Penttila asked if there was a way to track the number of clicks on the public portal. Ms. Agnew said she was unsure but could ask. Chair Howe then asked if the other Board members were comfortable with the public outreach bullet remaining under section VII. All agreed it was fine.

Ms. Bronson asked the Board if they wanted to discuss the possibility of AMAFCA joining the Board. Mr. Penttila asked how this would work with maintaining an odd number of Board members for voting purposes. Chair Howe asked what the current breakdown of Board members was. Ms. Agnew said there were three appointed by the City, three from the County, two from the Water Authority, and one joint City-County appointment. Mr. McGregor told the Board that they would require new ordinances to invite AMAFCA to join. Mr. Agnew suggested to the Board that they could make a recommendation to AMAFCA to join. Mr. Penttila said it may be more difficult to amend ordinances than having 10 members. Ms. Bronson said she thinks that if PIC members want AMAFCA to join, PIC members could deal with that internally. Chair Howe stated that the Board was formed to hold an advisory role and that it is not within the Board's purview to decide who the members are. Chair Howe said that it is fine if AMAFCA approached agencies and changes ordinances, but the Board is currently tasked to represent the City, County, and Water Authority. Mr. Penttila stated he felt AMAFCA would be a beneficial member of the Board, but agrees it is best to passively wait for them to join.

Mr. Penttila asked when the January meeting would take place. Ms. Mendoza replied on January 11, 2019. Ms. Agnew said she would send out an invite for the next 3 months.

**VI. Public Comment Period**

No one signed up for public comment.

**VII. Adjourn**

Chair Howe asked for a motion to adjourn. Dr. Thacher motioned to adjourn the meeting and Mr. Pietz seconded the motion. Motion to adjourn the meeting passes unanimously. The meeting was adjourned at 11:07 a.m.