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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

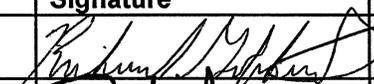
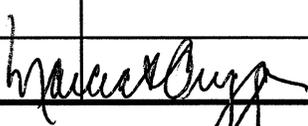
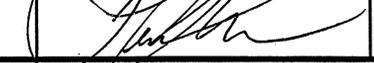
**Council Action and Executive Summary**

Item # 10 Ordinance/Resolution# 11-032 Council District:     

For Meeting of August 2, 2010  
 (Adoption Date)

**A RESOLUTION AUTHORIZING THE CONDEMNATION OF MOONGATE WATER COMPANY.**

**PURPOSE(S) OF ACTION:** To authorize the condemnation of Moongate Water Company.

<b>Drafter and Staff Contact:</b> Marcia B. Driggers		<b>Department:</b> Legal		<b>Phone:</b> 541-2128	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Department Director			Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** Section 1.03(c) of the City Charter authorizes the City to exercise its power of eminent domain to condemn private property, real and personal, which is employed for a public purpose where by resolution the City Council determines that such condemnation will serve the public interest.

The City needs to acquire Moongate's perfected, unperfected, and applied for water rights for public health or safety purposes to more expeditiously accomplish the City's goal of preserving the Jornada Sub-Basin on the East Mesa as a drought reserve, and to serve the public interest for the reasons set forth below.

Multiple reasons exist for determining that the condemnation of Moongate Water Company will serve the public interest. Those reasons include but are not limited to the following:

- reduces expensive and time consuming litigation with Moongate thereby enabling that money to be used more productively to acquire water rights for future surface water treatment;
- promotes sustainability and conservation in water planning with a goal of preserving the Jornada Sub-Basin on the East Mesa as a drought reserve thus promoting public health or safety;
- provides water utility rate consistency within the City limits;
- assures a level of service consistent with the City's water utility system;

(Continue on additional sheets as required)

- provides greater fire protection for retail and industrial development thereby potentially encouraging economic development;
- promotes regional water planning and coordination to meet compact and treaty obligations;
- allows for regional water utility service opportunities;
- encourages water conservation through uniform inclining water rates and City mandated water conservation goals;
- simplifies joint planning between City departments;
- provides for a stricter set of engineering standards and rate development standards than is required of water utility companies regulated by the New Mexico Public Regulation Commission;
- eliminates the risk however remote that the City may have to “rescue” Moongate customers in the future at higher expense should the company develop operational difficulties; and
- reduces the risk of well impairment from Moongate’s non-sustainable applications in the Jornada Sub-Basin.

**SUPPORT INFORMATION:**

1. Resolution.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	<i>N/A</i>	
	Yes	<input type="checkbox"/> See fund summary below
	No	<input type="checkbox"/> If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/> Expense reallocated from: _____
		<input type="checkbox"/> Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/> Proposed funding is from fund balance in the _____ Fund.	
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/> Funds will be deposited into this fund: _____
	No	<input checked="" type="checkbox"/> There is no new revenue generated by this action.

(Continue on additional sheets as required)

**FUND SUMMARY:\***

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

\*Funding for attorney fees and litigation expenses will come from budgeted funds in the Utilities Department water litigation fund.

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this authorizes the condemnation of Moongate Water Company.
2. Vote "No"; this will not allow the condemnation of Moongate Water Company.
3. Vote to "Amend"; this could add or delete reasons for authorizing the condemnation of Moongate Water Company.
4. Vote to "Table"; this would postpone consideration of the Resolution.

**REFERENCE INFORMATION**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A.

(Continue on additional sheets as required)

**RESOLUTION NO. 11- 032****A RESOLUTION AUTHORIZING THE CONDEMNATION OF MOONGATE WATER COMPANY.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Section 1.03(c) of the City Charter authorizes the City to exercise its power of eminent domain to condemn private property, real and personal, which is employed for a public purpose where by resolution the City Council determines that such condemnation will serve the public interest; and

**WHEREAS**, the City needs to acquire Moongate's perfected, unperfected, and applied for water rights for public health or safety purposes to more expeditiously accomplish the City's goal of preserving the Jornada Sub-Basin on the East Mesa as a drought reserve, and to serve the public interest for the reasons set forth below; and

**WHEREAS**, multiple reasons exist for determining that the condemnation of Moongate Water Company will serve the public interest. Those reasons include but are not limited to the following:

- reduces expensive and time consuming litigation with Moongate thereby enabling that money to be used more productively to acquire water rights for future surface water treatment;
- promotes sustainability and conservation in water planning with a goal of preserving the Jornada Sub-Basin on the East Mesa as a drought reserve thus promoting public health or safety;
- provides water utility rate consistency within the City limits;
- assures a level of service consistent with the City's water utility system;

- provides greater fire protection for retail and industrial development thereby potentially encouraging economic development;
- promotes regional water planning and coordination to meet compact and treaty obligations;
- allows for regional water utility service opportunities;
- encourages water conservation through uniform inclining water rates and City mandated water conservation goals;
- simplifies joint planning between City departments;
- provides for a stricter set of engineering standards and rate development standards than is required of water utility companies regulated by the New Mexico Public Regulation Commission;
- eliminates the risk however remote that the City may have to “rescue” Moongate customers in the future at higher expense should the company develop operational difficulties; and
- reduces the risk of impairment from Moongate’s non-sustainable applications in the Jornada Sub-Basin.

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

**(I)**

**THAT** the City Council further determines that the acquisition of Moongate’s perfected, unperfected, and applied for water rights is needed for public health or safety purposes.

(II)

THAT the City Council determines that the condemnation of Moongate Water Company's private property, real and personal, in and outside of the City limits, which is employed for a public purpose will serve the public interest.

(III)

THAT City staff is hereby authorized to do all deeds necessary to accomplish the intent of this resolution.

DONE AND APPROVED on this 2<sup>nd</sup> day of August, 2010.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Marsia B. Driggers  
 Senior Assistant City Attorney