

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 Ordinance/Resolution# 14-181

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 5, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

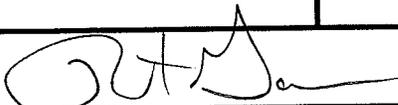
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION REPEALING RESOLUTION NO. 99-123 APPROVING A POLICY CONCERNING JOINT WATER AND WASTEWATER UTILITY SERVICE.

PURPOSE(S) OF ACTION:

Repeal a Resolution.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Marcia B. Driggers	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Council Resolution No. 99-123 approved a "Policy Concerning Joint Water and Wastewater Utility Service," which requires that the City of Las Cruces ("City") provide both water and wastewater utility service to properties within the service areas of the City's water and wastewater utilities except in the limited circumstances set forth in the Policy. Although, the Policy was intended to address concerns, which were relevant at the time of its approval in 1998, to the best of staff's knowledge, it has never been implemented and the City continues to provide wastewater service where others provide water service without being one of the itemized exceptions. Accordingly, Council Resolution No. 99-123 never has been consistent with the practices of the City.

As part of the City's wellhead protection plan, Council Resolution Number 04-05-383 authorized Camp, Dresser, McKee, Inc. ("CDM") to complete a Septic Tank Identification and Prioritization Plan to identify and prioritize land parcels served by septic tanks and to establish a plan to provide for future City sewer collection for these non-sewered areas. Utilities Board Resolution No. 07-08-043 accepted CDM's Prioritization Plan which gives top priority for septic system conversion to City sewer to existing developments with the highest potential to negatively impact groundwater supplies. Consistent with CDM's Prioritization Plan, Utility staff recommended that the City incorporate high priority conversions in upcoming state and federal funding requests. Neither the CDM Prioritization Plan nor Council or Board directives required that the City be both

(Continue on additional sheets as required)

the water and wastewater provider to any of these developments as an eligibility condition for septic tank conversions.

State Representatives Terry McMillan and Bill McCamley, in consultation with City Staff, secured a legislative appropriation in 2013 in the amount of \$321,000 to plan, design and construct sewer systems in high-priority water well protection areas in Las Cruces, specifically the Powers Drive and Wall Avenue areas where Moongate Water Company and the City of Las Cruces, respectively, provide water utility service. The 2014 New Mexico legislature appropriated approximately \$2,250,000 to plan, design and construct sewer systems in high-priority water well protection areas in Las Cruces, most of which areas are provided water utility service by private water companies. Neither the 2013 nor the 2014 legislative appropriations referenced above were conditioned on the City becoming the water provider to the lots benefitting from the septic system conversion as the Policy may require.

Staff recommends that Resolution No. 99-123 approving the Policy be repealed for the reasons set forth above and because the Policy is inconsistent with the Utilities Department's development of a regional approach for the extension of municipal wastewater service to protect groundwater.

The Utilities Board approved Board Resolution No. 13-14-036 entitled "A Resolution Recommending Council Repeal Resolution No. 99-123 Approving a Policy Concerning Joint Water and Wastewater Utility Service" on April 10, 2014 and, therefore, supports Council approval of this Resolution.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Council Resolution No. 99-123.
3. Attachment "1", Utilities Board Resolution No. 13-14-036.
4. Attachment "2", Map concerning 2013 legislative appropriation for \$321,000 to plan, design and construct sewer systems in high priority water well protection areas along Powers Drive and Wall Avenue.
5. Attachment "3", Map concerning 2014 legislative appropriation for \$2,250,000 to plan, design and construct sewer systems in other high priority water well protection areas.

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	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.	

(Continue on additional sheets as required)

Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$ _____ for FY ____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE 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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will repeal Resolution No. 99-123.
2. Vote "No"; this will not repeal Resolution No. 99-123.
3. Vote to "Amend"; this could include further direction to staff.
4. Vote to "Table"; this could provide further direction to staff.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 14-181**A RESOLUTION REPEALING RESOLUTION NO. 99-123 APPROVING A POLICY CONCERNING JOINT WATER AND WASTEWATER UTILITY SERVICE.**

The City Council is informed that:

WHEREAS, Council Resolution No. 99-123 approved a “Policy Concerning Joint Water and Wastewater Utility Service,” which requires that the City of Las Cruces (“City”) provide both water and wastewater utility service to properties within the service areas of the City’s water and wastewater utilities except in the limited circumstances set forth in the Policy; and

WHEREAS, although the Policy was intended to address concerns, which were relevant at the time of its approval in 1998, to the best of staff’s knowledge, it has never been implemented and the City continues to provide wastewater service where others provide water service without being one of the itemized exceptions. As examples, since 1998 the City has extended and provided wastewater service to the Sierra Norte Heights, Monte Sombra, Tayvis Estates, Metro Verde South, Dos Lados, and Del Rey Estates subdivisions as well as Monte Vista Elementary School on Peachtree Hills Road and Mesa Middle School on North Jornada Road, and Moongate Water Company has extended and provided water service thereto. As further examples, since 1998 the City has extended and provided wastewater service to the Estados Serenos and Brittany Estates subdivisions, and Jornada Water Company has extended and provided water service thereto. Accordingly, Council Resolution No. 99-123 never has been consistent with the practices of the City; and

WHEREAS, as part of the City’s wellhead protection plan, Council Resolution Number 04-05-383 authorized Camp, Dresser, McKee, Inc. (“CDM”) to complete a Septic Tank Identification and Prioritization Plan to identify and prioritize land parcels

served by septic tanks and to establish a plan to provide for future City sewer collection for these non-sewered areas. Utilities Board Resolution No. 07-08-043 accepted CDM's Prioritization Plan which gives top priority for septic system conversion to City sewer to existing developments with the highest potential to negatively impact groundwater supplies. Those high priority developments are generally located within 1,000 feet from a City well regardless of parcel size in accordance with the New Mexico Environment Department's wellhead protection guidelines. Consistent with CDM's Prioritization Plan, Utility staff recommended that the City incorporate high priority conversions in upcoming state and federal funding requests. Neither the CDM Prioritization Plan nor Council or Board directives required that the City be both the water and wastewater provider to any of these developments as an eligibility condition for septic tank conversions; and

WHEREAS, State Representatives Terry McMillan and Bill McCamley in consultation with City Staff secured a legislative appropriation in 2013 in SFC/SB 60 and HTRC/HB 336, SAP Grant in the amount of \$321,000 to plan, design and construct sewer systems in high-priority water well protection areas in Las Cruces, specifically the Powers Drive and Wall Avenue areas where Moongate Water Company and the City of Las Cruces, respectively, provide water utility service; and

WHEREAS, the 2014 New Mexico legislature appropriated approximately \$2,250,000 to plan, design and construct sewer systems in high-priority water well protection areas in Las Cruces including Lantana Estates, Phase 2; O'Hair Drive; Salopek Boulevard; Windridge Circle and Papen Lane; Windridge Circle; Homestead Acres/Estates through Porter Drive; and Hacienda Acres, most of which areas are provided water utility service by private water companies; and

WHEREAS, neither the 2013 nor the 2014 legislative appropriations referenced above were conditioned on the City becoming the water provider to the lots benefitting from the septic system conversion as the Policy may require; and

WHEREAS, Staff recommends that Resolution No. 99-123 approving the Policy be repealed for the reasons set forth above and because the Policy is inconsistent with the Utilities Department's development of a regional approach for the extension of municipal wastewater service to protect groundwater; and

WHEREAS, the Utilities Board approved Board Resolution No. 13-14-036 on April 10, 2014 recommending that the Council repeal Resolution No. 99-123.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT Resolution No. 99-123, shown as Exhibit "A" attached hereto, which approved a Policy Concerning Joint Water and Wastewater Utility Service is hereby repealed.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

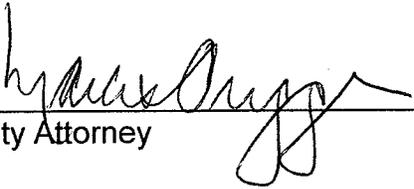
VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst 

City Attorney

RESOLUTION NO. 99- 123

**A RESOLUTION APPROVING A POLICY CONCERNING
JOINT WATER AND WASTEWATER UTILITY SERVICE**

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

WHEREAS, there is no present requirement that an individual City utility applicant or a developer secure both City water and wastewater utility services for real property within the City's water and wastewater utility service areas;

WHEREAS, for the reasons more specifically set forth in the "Purpose" section of the proposed Policy, the City's Utilities Division staff recommends that the City Council adopt a policy requiring that the City provide both water and wastewater utilities to property within the service areas of the City's water and wastewater utilities except in the limited circumstances set forth in the Policy.

NOW, THEREFORE, the City Council of the City of Las Cruces, New Mexico, hereby resolves as follows:

(I)

THAT the City Council hereby adopts the Policy Concerning Joint Water and Wastewater Utility Service effective as of October 6, 1998.

(II)

THAT City staff is hereby authorized to do all acts necessary to implement the intent of this Resolution and of the new policy.

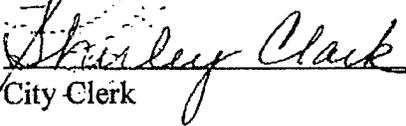
DONE AND APPROVED this 5th day of October, 1998.



Mayor

ATTEST:

City Clerk

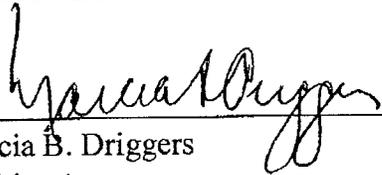


Mayor Ruben A. Smith: absent
Councillor Frietze: aye
Councillor Gustafson: aye
Councillor Valencia: absent
Councillor Stevens: aye
Councillor Tomlin: aye
Councillor Haltom: absent

Moved by: Tomlin

Seconded by: Frietze

APPROVED:



Marcia B. Driggers
Utilities Attorney

**POLICY CONCERNING JOINT WATER AND
WASTEWATER UTILITY SERVICE**

Purpose: To encourage the economical development of water and wastewater utility projects, which projects have been conjunctively master planned. The water and wastewater master plan utilizes a common utility service area, which is the basis for the development of the capital improvement program;

To discourage the expansion of the alleged service territories and customer bases of private, franchised water utility companies within the City limits thereby reducing claims for compensation that may be owed by the City to the private franchised water companies if the City decides not to renew the water company franchises when the franchises expire on January 1, 2003;

To reduce claims for off-set credits by water companies for wastewater treated by the City's wastewater system when the source of the water comes from well pumpage by water companies;

To encourage the conservation of water within the City. For example, the outdoor vegetation watering restrictions in the City's water conservation ordinance do not apply to water supplied by mutual domestic water companies or from domestic wells;

To support the collection of development impact fees for new water and wastewater connections which fees are the primary funding source for critical water and wastewater capital improvement projects;

To eliminate claims by potential annexation applicants that they are not obligated to comply with the City's water rights acquisition ordinance if the applicant is not seeking municipal water service to the annexed property;

To discourage the drilling of new domestic wells, which wells can circumvent the payment of water development fees and compliance with municipal water conservation plans, and which wells can impact City wells.

Policy: The City's Utilities Division staff shall establish procedures that require, subject to the exceptions set forth herein, that individual customer applicants for municipal water service also apply for municipal wastewater service, and that individual customer applicants for municipal wastewater service also apply for municipal water service, and that

developers be required to connect their property to the City's water utility system if they seek City wastewater utility service and be required to connect their property to the City's wastewater utility system if they seek City water utility service.

The policy shall apply to all development and new utility service applications submitted after the effective date of this policy. The policy shall not apply to property owners within the City's water and wastewater utility service territories who do not seek either City water or wastewater utility service until such time as the property owner applies to the City for either water or wastewater utility service.

Procedures:

All customer applicants for City water utility service shall apply for City wastewater utility service and all customer applicants for City wastewater utility service shall apply for City water utility service. The City shall not provide water utility service to a customer unless it also provides wastewater service, and the City shall not provide wastewater utility service unless it also provides water utility service except as set forth below.

A developer who seeks to develop real property within the service areas of the City's water and wastewater utilities shall connect the property to both the City's water and wastewater utilities except as set forth below.

A. Exceptions to Water Service:

An individual customer applicant or a developer who seeks City wastewater utility service shall not be required to secure City water utility service in the following circumstances:

1. The City annexes real property which is actually fully served by a water company or by private domestic wells at the time of annexation. Merely being within the alleged service territory of a water company, whether profit or non-profit, does not constitute "actual service."
2. The City is unable to timely provide water utility service to either the individual applicant's or the developer's property in

accordance with development plans as verified by City Utilities Division staff.

3. The individual customer applicant or the developer secures City Council approval for a waiver of the policy. Economic hardship shall be a basis for the policy waiver for an individual customer applicant, but economic hardship shall not be a basis for the policy waiver for a developer.

B. Exceptions to Wastewater Service:

An individual customer applicant or a developer who seeks City water utility service shall not be required to secure City wastewater utility service in the following circumstances:

1. The City annexes real property which is actually fully served by approved and functioning septic systems or on-site waste disposal systems at the time of annexation.
2. The City is unable to timely provide the wastewater utility service to either the individual customer applicant's or the developer's property in accordance with development plans as verified the City Utilities Division staff.
3. The individual customer applicant or the developer secures City Council approval for a waiver for the policy. Economic hardship shall be a basis for the policy waiver for an individual customer applicant but economic hardship shall not be a basis for the policy waiver for a developer.

Effective Date of Policy: October 6, 1998

**CITY OF LAS CRUCES
COUNCIL ACTION FORM**

FOR MEETING OF OCTOBER 5, 1998

AGENDA ITEM TITLE:

**A RESOLUTION APPROVING A POLICY CONCERNING
JOINT WATER AND WASTEWATER UTILITY SERVICE**

BACKGROUND, SUPPORT INFORMATION, AND COUNCIL OPTIONS (in order):

There is no present requirement that an individual City utility applicant or a developer secure both City water and wastewater utility service for real property within the City's water and wastewater utility service areas.

The City's Utilities Division staff believes that there are substantial reasons for adopting a policy requiring that the City provide both water and wastewater utilities to property within the service areas of the City's water and wastewater utilities except in limited circumstances set forth in detail in the proposed Policy. The purposes for adopting the Policy are specifically set forth in detail in the "Purpose" section of the Policy.

The proposed Policy makes provision for granting exceptions to the Policy with separate exceptions for water and wastewater.

SUPPORT INFORMATION:

1. Resolution;
2. Policy Concerning Joint Water and Wastewater Utility Service.

(CONTINUED)

Name of Drafter: MARCIA B. DRIGGERS	Department/Division: LEGAL/ADMIN	Phone: 541-2128
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STAFF COORDINATION

Division/Department	Signature	Phone
FIRE		
POLICE		
FINANCE	<i>[Signature]</i>	
UTILITIES	<i>[Signature]</i>	3509
COMM FACIL		
DEVEL SVCS		

Division/Department	Signature	Phone
ADMIN		
LEGAL	<i>[Signature]</i>	541-2128
BUDGET	<i>[Signature]</i>	7107
ASST CITY MGR		
CITY MANAGER	<i>[Signature]</i>	

**COUNCIL ACTION FORM
OCTOBER 5, 1998
PAGE 2**

BACKGROUND, SUPPORT INFORMATION, AND COUNCIL OPTIONS (in order): (Continued)

COUNCIL OPTIONS:

1. Adopt the Policy Concerning Joint Water and Wastewater Utility Service as drafted;
2. Modify the Policy by increasing the exceptions or as the Council otherwise deems appropriate;
3. Not approve the Policy and provide direction to staff as to better methods for addressing some of the actual and potential problems set forth in the "Purpose" section of the Policy.

A RESOLUTION RECOMMENDING COUNCIL REPEAL RESOLUTION NO. 99-123 APPROVING A POLICY CONCERNING JOINT WATER AND WASTEWATER UTILITY SERVICE.

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, Council Resolution No. 99-123 approved a "Policy Concerning Joint Water and Wastewater Utility Service," which requires that the City provide both water and wastewater utility service to properties within the service areas of the City's water and wastewater utilities except in the limited circumstances set forth in the Policy; and

WHEREAS, although the Policy was intended to address concerns, which were relevant at the time of its approval in 1998, to the best of staff's knowledge, it has never been implemented and the City continues to provide wastewater service where others provide water service without being one of the itemized exceptions. As examples, since 1998 the City has extended and provided wastewater service to the Sierra Norte Heights, Monte Sombra, Tayvis Estates, Metro Verde South, Dos Lados, and Del Rey Estates subdivisions as well as Monte Vista Elementary School on Peachtree Hills Road and Mesa Middle School on North Jornada Road; and Moongate Water Company has extended and provided water service thereto. As further examples, since 1998 the City has extended and provided wastewater service to the Estados Serenos and Brittany Estates subdivisions; and Jornada Water Company has extended and provided water service thereto. Accordingly, Council Resolution No. 99-123 never has been consistent with the practices of the City; and

WHEREAS, as part of the City's wellhead protection plan, Council Resolution Number 04-05-383 authorized Camp, Dresser, McKee, Inc. ("CDM") to complete a Septic Tank Identification and Prioritization Plan to identify and prioritize land parcels served by

septic tanks and to establish a plan to provide for future City sewer collection for these non-sewered areas. Utilities Board Resolution No. 07-08-043 accepted CDM's Prioritization Plan, which gives top priority for septic system conversion to City sewer to existing developments with the highest potential to negatively impact groundwater supplies. Those high priority developments are generally located within 1,000 feet from a City well regardless of parcel size in accordance with the New Mexico Environment Department's wellhead protection guidelines. Consistent with CDM's Prioritization Plan, Utility staff recommended that the City incorporate high priority conversions in upcoming state and federal funding requests. Neither the CDM Prioritization Plan nor Council or Board directives required that the City be both the water and wastewater provider to any of these developments as an eligibility condition for septic tank conversions; and

WHEREAS, State Representatives Terry McMillan and Bill McCamley in consultation with City Staff secured a legislative appropriation in 2013 in SFC/SB 60 and HTRC/HB 336, SAP Grant in the amount of \$321,000 to plan, design, and construct sewer systems in high-priority water well protection areas in Las Cruces, specifically the Powers Drive and Wall Avenue areas where Moongate Water Company and Jornada Water Company, respectively, provide water utility service; and

WHEREAS, the 2014 New Mexico legislature appropriated approximately \$2,250,000 to plan, design, and construct sewer systems in high-priority water well protection areas in Las Cruces including Lantana Estates, Phase 2; O'Hair Drive; Salopek Boulevard; Windridge Circle; Papen Lane; Windridge Circle; Homestead Acres/Estates through Porter Drive; and Hacienda Acres, most of which areas are provided water utility service by private water companies; and

WHEREAS, neither the 2013 nor the 2014 legislative appropriations referenced

above were conditioned on the City becoming the water provider to the lots benefitting from the septic system conversion as the Policy may require; and

WHEREAS, Staff recommends that Resolution No. 99-123 approving the Policy be repealed for the reasons set forth above and because the Policy is inconsistent with the Utilities Department's development of a regional approach for the extension of municipal wastewater service to protect groundwater.

NOW, THEREFORE, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

(I)

THAT the Board recommends that the City Council repeal Resolution No. 99-123, which approved a Policy Concerning Joint Water and Wastewater Utility Service.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 10th day of April 2014.

APPROVED:

By William M Little
Board Chair

ATTEST:

George R. Johnson
Secretary

Moved by JOHNSON

Seconded by PEDROZA

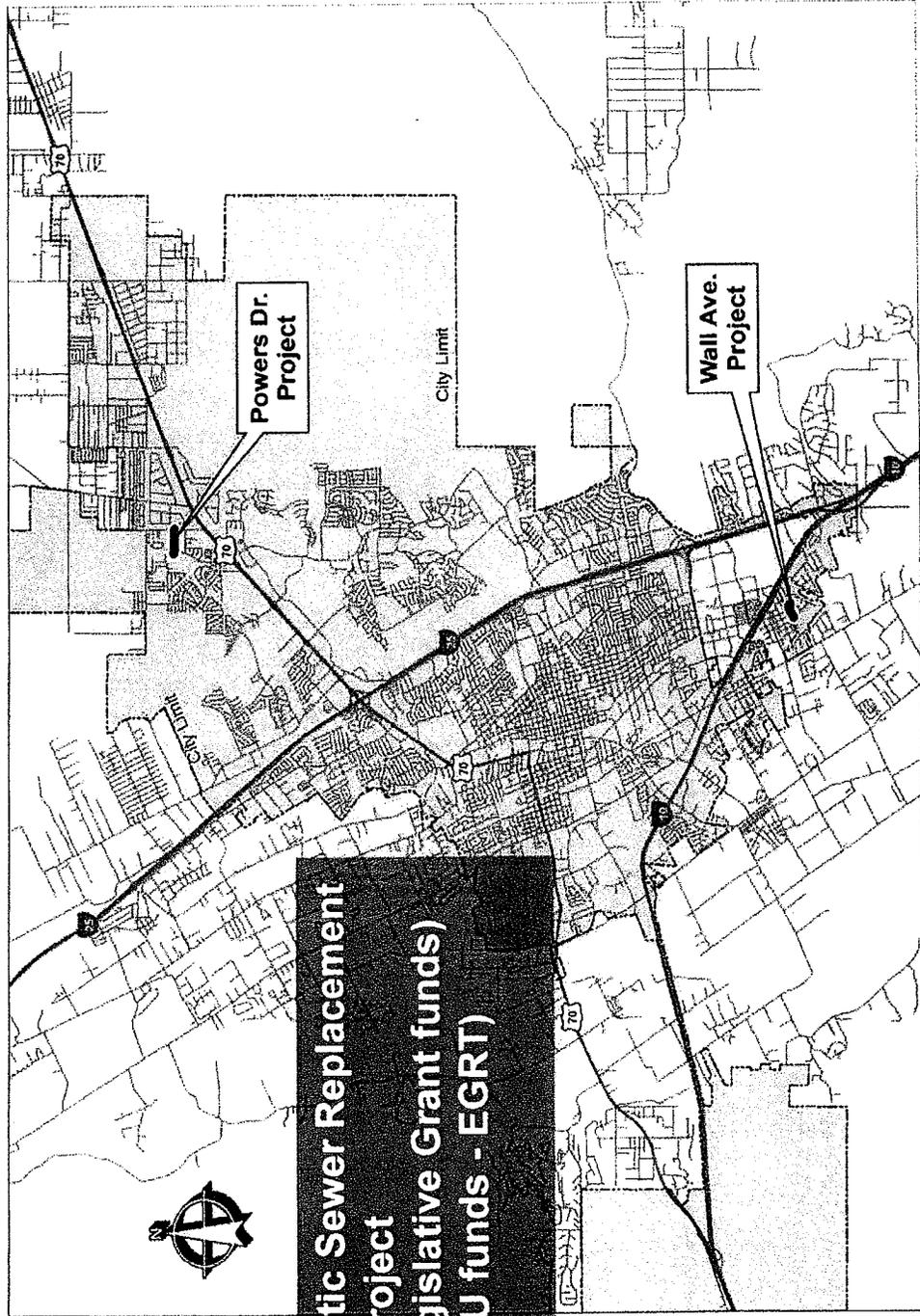
VOTE:

Chair Little:	<u>AYE</u>
Vice-Chair Sorg:	<u>AYE</u>
Commissioner Baumgardner:	<u>AYE</u>
Commissioner Carmichael:	<u>AYE</u>
Commissioner Ericson:	<u>ABSENT</u>
Commissioner Johnson:	<u>AYE</u>
Commissioner Pedroza:	<u>AYE</u>

APPROVED AS TO FORM:

Wanda Orzoff
Utilities Attorney

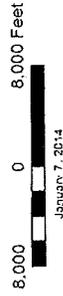
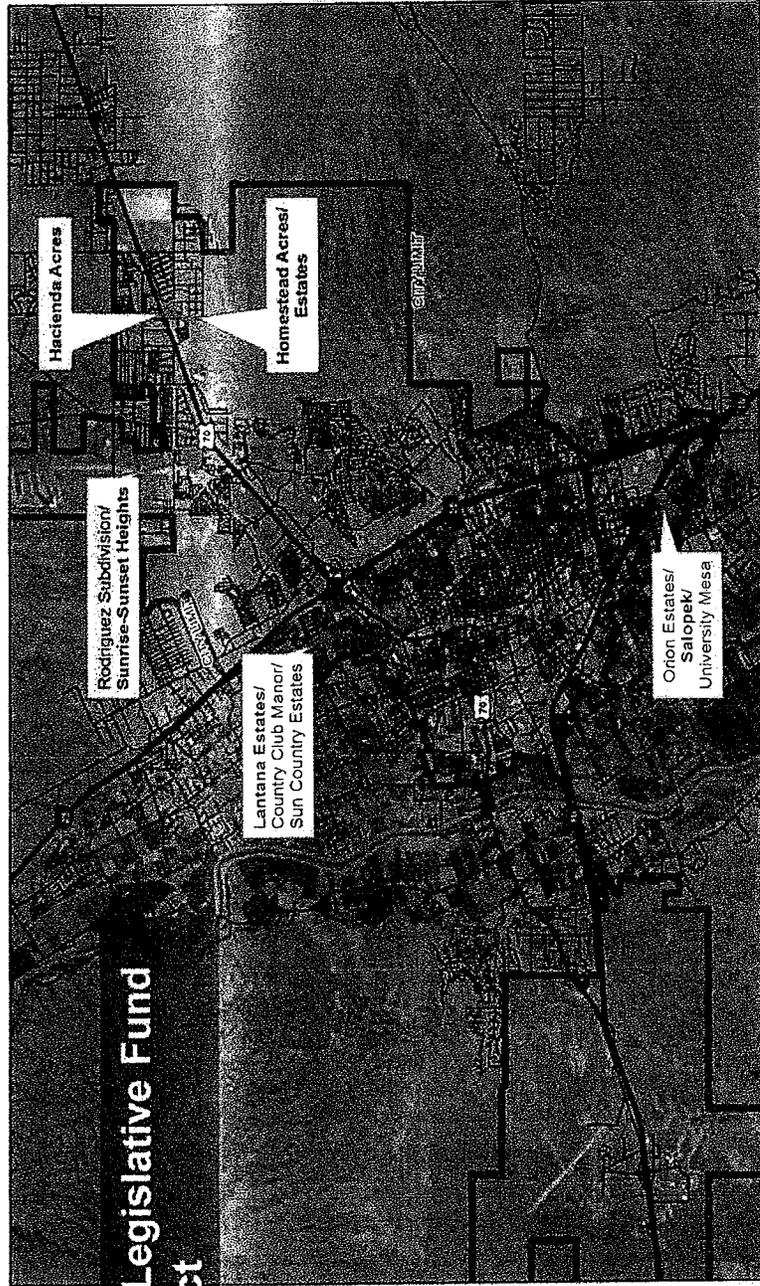
Plan, Design and Construct Sewer Systems High-Priority Water Well Projects



**\$451,029 Septic Sewer Replacement
FY14-FY15 Project
\$321,000 (Legislative Grant funds)
\$130,029 (LCU funds - EGRT)**

Plan, Design and Construct Sewer Systems High-Priority Water Well Projects

**\$2,250,000 State Legislative Fund
FY14-FY15 Project**



**High-Priority Water Well
Protection Areas Projects**