

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 15-139

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of February 3, 2015
(Adoption Date)

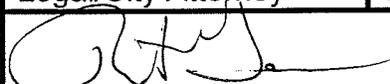
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION RESCINDING RESOLUTION NO. 11-032 AUTHORIZING THE CONDEMNATION OF MOONGATE WATER COMPANY.

PURPOSE(S) OF ACTION:

To rescind a resolution.

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

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, employed for a public purpose where, by resolution, the City Council determines that such condemnation will serve the public interest. In order to comply with Section 1.03(c) of the City Charter, the City Council approved Resolution No. 11-032 which determined that the condemnation of Moongate Water Company's ("Moongate") private property, real and personal, in and outside of the City limits, which is employed for a public purpose would have served the public interest for the reasons set forth in the Resolution, and thereby authorized the condemnation of Moongate.

As part of a court-ordered settlement facilitation in Third Judicial Court Case No. CV-2006-1289, an anti-trust case filed by Moongate claiming that certain actions of the City were anti-competitive and violated provisions on the New Mexico Antitrust Act, the parties with the assistance of a court appointed facilitator entered into a Term Sheet Agreement which set forth the general provisions of a settlement agreement. The Settlement Agreement will be submitted to the Court for approval after the City Council rescinds Resolution No. 11-032 among other City obligations. If the City fails to rescind Resolution No. 11-032, the Settlement Agreement will be of no effect, and potentially the City and Moongate will proceed to trial in the above referenced anti-trust case, which trial is set on a trailing docket between May 18, 2015 and June 19, 2015.

City staff and the City's attorneys support the rescission of Resolution No. 11-032 to enable the City to enter into the formal Settlement Agreement to be approved by the City Manager on behalf of the City.

SUPPORT INFORMATION:

1. Resolution.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	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.
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 rescind Resolution No. 11-032.
2. Vote "No"; this will not rescind Resolution No. 11-032 and will not allow the City to finalize the proposed Settlement Agreement with Moongate.
3. Vote to "Amend"; this could allow the City Council to add conditions to the rescission, which conditions would have to be approved by Moongate.
4. Vote to "Table"; this could allow the City Council to table or postpone consideration of the resolution and to direct staff accordingly.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

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

1. Resolution No. 11-032.

RESOLUTION NO. 15-139**A RESOLUTION RESCINDING RESOLUTION NO. 11-032 AUTHORIZING THE CONDEMNATION OF MOONGATE WATER COMPANY.**

The City Council 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, employed for a public purpose where, by resolution, the City Council determines that such condemnation will serve the public interest; and

WHEREAS, in order to comply with Section 1.03(c) of the City Charter, the City Council approved Resolution No. 11-032 which determined that the condemnation of Moongate Water Company's ("Moongate") private property, real and personal, in and outside of the City limits, which is employed for a public purpose would have served the public interest for the reasons set forth in the Resolution, and thereby authorized the condemnation of Moongate; and

WHEREAS, as part of a court-ordered settlement facilitation in Third Judicial Court Case No. CV-2006-1289, which is an anti-trust case filed by Moongate claiming that certain actions of the City were anti-competitive and violated provisions on the New Mexico Antitrust Act, the parties with the assistance of a court appointed facilitator entered into a Term Sheet Agreement which set forth the general provisions of a settlement agreement of that lawsuit and other administrative matters pending before the Office of the State Engineer and the Public Regulation Commission, which Term Sheet Agreement will be finalized as a formal Settlement Agreement and submitted to the Court for approval after the City Council rescinds Resolution No. 11-032 among other City obligations; and

WHEREAS, if the City fails to rescind Resolution No. 11-032, the Settlement Agreement will be of no effect, and potentially the City and Moongate will proceed to trial in the above referenced anti-trust case, which trial is set on a trailing docket between May 18, 2015 and June 19, 2015; and

WHEREAS, City staff and the City's attorneys support the rescission of Resolution No. 11-032 to enable the City to enter into the formal Settlement Agreement to be approved by the City Manager on behalf of the City.

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

(I)

THAT Resolution No. 11-032, which authorized the condemnation of Moongate, is hereby rescinded.

(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 _____, 2015.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

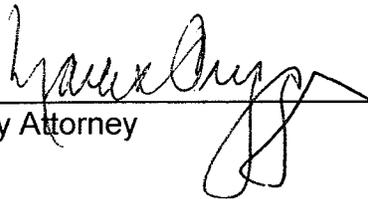
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Levatino: _____

APPROVED AS TO FORM:

ASST:  _____
City Attorney