

TYRONE WATER & WASTEWATER ASSOCIATION BOARD MEETING
APRIL 11, 2023 – 6:30 P.M. – TYRONE COMMUNITY CENTER
Draft Minutes

- 1. Call to order and declare a quorum – Alan Berg-President**
 - a. Meeting was called to order. Alan Berg, Doug Gorthy, and Angie Roach were present. Alan Berg declared a quorum.
- 2. Approval/disapproval of Agenda-Deletions-A. Berg**
 - a. Alan Berg asked if there were any proposed deletions from the agenda. Hearing none, Doug Gorthy moved to approve the agenda as amended. Angie Roach seconded the motion. All members approved the agenda as amended.
- 3. Approval/disapproval of minutes of the March 15, 2023, Meeting-A. Roach**
 - a. Doug Gorthy made a motion to approve the minutes as presented. Angie Roach seconded the motion. The motion carried unanimously.
- 4. Approval/Disapproval to move into Executive Session pursuant to NMSA 1978 Section 10-15-1(H)(7) for the Discussion of matters subject to the attorney-client privilege pertaining to litigation in which the public body is or may become a participant and Section 10-15-1(H)(8) Meetings for the discussion of the purchase, acquisition, or disposal of real property or water rights by the public body.**
 - a. Alan Berg stated the need for the Board to move into Executive Session to discuss legal matters. Doug Gorthy made a motion to move into Executive Session. Angie Roach seconded the motion. The Motion carried unanimously.
 - b. While the Board was in Executive Session, Eddie Mendoza showed sample videos from the ProPipe evaluation of our sewer lines in 2021. (ProPipe was hired by NM Gas Co to ensure that gas lines had not inadvertently been placed across sewer lines). Eddie also displayed plans of Tyrone that showed the location of gas lines and other major utilities.
- 5. Reconvene public participation portion of the April 11, 2023, TWWA Board meeting from executive session.**
 - a. Action taken on Section 10-15-1(H)(7) matter discussed in executive session.**
 - i. Alan Berg stated that the Board had voted to take action on property owner who had not paid their assessment for 2 years. This is a unique case where the property is connected to our sewer line but the property is not located within Tyrone townsite (i.e. the property is on the other side of Highway 90).
 - b. Action taken on Section 10-15-1(H)(8) matter discussed in executive session.**
 - i. Alan Berg explained that the Board had decided to direct our lawyer to send letters to property owners that are in arrears on their assessments. Sample letters are included in the Attachments to these minutes.

6. Approval/disapproval of March 2023 financial report-Karen Monroe

- a. Karen Monroe highlighted details from the March 2023 Financial Statements. In particular, we are in the red (i.e. negative) \$10,779.74 for the month and negative \$3,641.14 for the year-to-date. We did receive ~\$2500 from the Town of Silver City and \$1200 from WNM Communications, but this was not enough to put us in the black.
- b. Alan Berg pointed out that we are in a precarious financial state and that this demonstrates the importance of people paying their monthly assessments.
- c. Doug Gorthy moved to approve the financial report as presented. Angie Roach seconded the motion. The motion carried unanimously.

7. New Business

- a. **Approval/disapproval of a motion to accept the resignation of Sean Geary from the TWWA Board.**
 - i. Alan Berg thanked Sean Geary for his hard work on the TWWA Board. He was one of the original members of the Board and put forth a tremendous amount of work and effort on behalf of the Community.
 - ii. Doug Gorthy moved to accept Sean Geary's resignation from the Board. Angie Roach seconded the motion. All Board Members approved the motion.
- b. **Appoint a new Board member to the TWWA**
 - i. **Presentation by-**
 - ii. **Presentation by-**
(No one volunteered.)
- c. **Approval/disapproval of Budget Adjustment Request BAR 2023-01 Authorize payment to Edwards & Feanney P.A. for fees related to the TPOA transfer of assets to the TWWA and the preparation of documents related to the Colonias Infrastructure loan. These fees were not budgeted in the current budget and must be approved by the State Auditor.**
 - i. Alan Berg stated that, as a public entity, when we exceed our budget, we must send information and a request to the State Auditor.
 - ii. Doug Gorthy read Resolution BAR 2023-01.
 - iii. Question: What does this mean? We exceeded our budget. We did not anticipate all the legal fees that would be required for transferring assets from TPOA to TWWA or for preparing the Colonias Grant documents. This Resolution is for a Budget Adjustment Request to be sent to the State of New Mexico.
 - iv. Doug Gorthy moved to approve BAR 2023-01. Angie Roach seconded the motion. A roll-call vote was taken. Alan Berg, Angie Roach and Doug Gorthy voted to approve the motion.

d. Bifurcation discussion

i. Approval/disapproval of continuing the process of determining how to cede specific parcels of TWWA owned assets to the Tyrone Community Association (TCA).

1. Doug Gorthy moved to open discussion on the topic of bifurcation of TWWA and TCA assets. Alan Berg seconded the motion. All Board Members approved the motion.

ii. TCA presentation

1. Mindy Geary, President of the TCA Board, read a prepared statement presenting the TCA's position on the importance of bifurcation. A complete copy of the statement is included in the Attachments to these minutes.

iii. TWWA presentation

1. Please see Attachments for a Timeline of relevant events that was prepared by Alan Berg.
2. Alan Berg stated that, in the process of preparing documents for Colonias Grants, we discovered 1. that TPOA still owned the property of Tyrone and 2. that the assets of Tyrone had been previously used to secure the USDA loan. Alan Berg further stated that there is unquestionably a solution to bifurcating assets but that it may take time.
3. Debbie Edwards, TWWA's attorney, disagreed with TCA's interpretation that there is an "oral contract" for bifurcation. Verbal agreements can be used in discussions of division of duties and responsibilities, but property must be transferred by written agreement.
4. Questions and discussion with Community Members:
 - a. Who controls the money (i.e. from assessments)? The TWWA. The TCA gets 35% for running the townsite.
 - b. Are all of our properties tied to the loan? Is there a way to transfer property(s) and the liability to the TCA? These are things that we're still looking into. Because the property was not originally properly transferred from the TPOA to the TWWA and TCA, we're still trying to figure out which of the 9 parcels are related to the water/wastewater systems and which are recreational and also which parcels were used in the USDA loan. Note that the USDA loan uses a complex legal description not a simple plat map. We must ensure that we know which property is which. This is our path forward.

- c. Are the liens specific to the 9 parcels? What happens if we can't pay the loan? Again, this is something we're still looking into. If we want more loans in the future, we will need the appropriate properties in our possession.
 - d. Has anybody been in contact with the USDA on these topics? Yes, but the person that is our agent will not (or is unable) to commit.
 - e. Alan noted that we are just in the beginning stages of fixing our water and sewer systems. Discussion then turned to the current state of our lift station. Eddie Mendoza and Alan Berg have been dealing with the macerator for the past 3 days. If it fails, we are back to trying to survive with a single pump. A community member commented that if we are in an emergency, homeowners would not choose a ballfield over a sewer.
 - f. Can't the demands of the TCA take a back seat while we're in crisis? TCA Board members explained that they are barely maintaining the townsite with the current assessments and that they need the bifurcation to occur to allow them to do fundraising for any improvements to the facilities. They need to actually own the property in order to raise the funds.
 - 5. Alan Berg stated that he would entertain a motion to continue future discussion on the topic of bifurcation. Doug Gorthy made a motion to continue future discussions on this topic. Alan Berg seconded the motion. The motion passed unanimously.
 - e. **Approval/disapproval of Resolution 2023-11 Asset Management Plan Resolution 2023-11 attached.**
 - i. Alan Berg read Resolution 2023-11 related to the creation of an Asset Management Plan.
 - ii. Doug Gorthy moved to approve Resolution 2023-11. Angie Roach seconded the motion. A roll-call vote was taken. Alan Berg, Angie Roach and Doug Gorthy voted to approve the motion.

8. Old Business

- a. **The Colonias Infrastructure Fund loan agreement was finalized on March 31, 2023. The initial steps to set up accounting and contractual agreements with Bohannon Huston are underway.**
 - i. Alan Berg stated that Bohannon Huston has already conducted an initial site visit.
- b. **Update on lift station design and next step in the process. Richard Maynes, Stantec Consulting Engineers**
 - i. Alan Berg noted that we had received an update from Stantec. Several people had provided input on the proposed designs, and Stantec has accepted our

changes. They will be going out to bid as soon as possible; we need to get the ball rolling before a major failure of our current lift station.

Reports by Officers and Committees

c. President's Report-Alan Berg

i. lift station incident on March 28 430 AM

1. There was another failure at the lift station on March 28th; it's currently running again. Alan Berg and Eddie Mendoza are still attempting to resolve the issues related to it (see Item 8h).

ii. 2023-2024 Draft budget due to State Auditor on June 1, 2023

1. Alan Berg stated that we need to prepare a draft budget by June 1. We are in discussion with the TCA Board of Directors on the preparation of budgets for both entities.

iii. Resident at 45 McKinney Road in arrears on sewage payments

1. This was resolved in today's Executive Session (see item 5a).

d. Vice President's Report-vacant

- i. Position is vacant.

e. Secretary's Report-Angie Roach

- i. Nothing to report.

f. Treasurer's Report-vacant

- i. Position is vacant.

g. Water Operator - Eddie Mendoza-macerator issues and remedies

- i. Eddie Mendoza reported that we are now having issues the macerator (grinder pump) that is part of the old system. It was absolutely plugged with rags. This caused issues with the mechanical seal, and the oil was lost. This pump will not last much longer, and we are trying to get parts. We may have to move the old pump from the other side, so that we can take this one out to get repaired. If this fails, we will have to pay to run the emergency pump full-time!
- ii. Please do not put wipes down your toilet – even if they claim to be flushable. Additionally, please do not put plastic or anything else down the toilets or drains.
- iii. Also, if you have questions about the state of your sewer line, please contact Eddie to see if he has located it on the ProPipe video yet.
- iv. Community comment: Recommends removing Chinese Elms from you yard; their roots can get into our clay sewer pipes. Recommend removing the tree and killing the roots (but don't dig them out as they may be entangled in your sewer line).

h. Member at Large-Doug Gorthy

- i. We met with Bohannan Huston regarding the design for replacement of our water lines.
- ii. In the course of their work, Bohannan Huston took a cursory look at Stantec's new lift station design and stated that it is a basic, boiler plate design.
- iii. Many thanks to Eddie Mendoza for all his hard work.

9. Public Input (limited to 3 minutes/person)

- a. Barbara Massey-Nino read a proposal to request that Freeport-McMoRan take over the administration of the town again. (Secretary's note: This is not a viable option.) She also encourages everyone to come to both the TCA and TWWA's Annual Meetings as it's the best way to get information on what's going on.

10. Adjournment-A. Berg

- a. Doug Gorthy made a motion to adjourn the Board Meeting. Alan Berg seconded the motion. The motion carried unanimously

Attachments

Jonathan Diener Attorney-at-Law

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MAILING ADDRESS:

P.O. Box 27
Mule Creek, NM 88051

OFFICE ADDRESS:

301 W. College Ave, 12
Silver City, NM

I represent the Tyrone Wastewater Association. I am writing to you because of your failure to pay property owners' assessments. Failure to pay such assessments results in a lien on your property. Your property has a lien on record with the County Recorder as a result of non-payment.

The Association has been patient up until now. However, your lack of payment forces our hand which is at this point to file a lawsuit in Magistrate Court. The Association will be asking the court for back payments of fees, late fees, and court costs. The hearing may result in garnishment of your wages or the establishment of a payment plan to the Association.

The Association is willing to drop all late fees and penalties if you pay off your lien now and establish automatic payments with the Automated Clearing House (ACH) program. The monthly assessment of \$93.17 will automatically be deducted from your bank account.

This offer will not remain open for longer than sixty days from this letter's date. We will also give you sixty days to come up with your payment or a payment plan that you propose to the Board and they approve. Thank you for your hoped for cooperation.

Sincerely,

/s/ Jonathan Diener

Jonathan Diener

Jonathan Diener

Attorney-at-Law

(575) 388-1754

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I represent the Tyrone Wastewater Association. I am writing to you because of your failure to pay property owners' assessments. Failure to pay such assessments results in a lien on your property. Many of you already have liens on record with the County Recorder as a result of non-payment.

The Association has been patient up until now. However, your lack of payment forces our hand which is at this point to file a lawsuit to foreclose on your property, meaning that there is a judicial sale of the property to pay off your lien. This is permitted by law including the Homeowners' Association Act Section 47-16-6(B) which says:

"B. The association shall have a lien on a lot for any assessment levied against that lot or for fines imposed against that lot's owner from the time the assessment or fine becomes due. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate."

This is a serious matter that you cannot afford to ignore. The Homeowners' Association Act also provides that if there is a lawsuit between an association and a homeowner, the prevailing party is entitled to attorney's fees. The point here is that if you wait until you get served with the lawsuit to deal with this, the cost to you will be higher.

The Association is willing to drop all late fees and penalties if you pay off your lien now. This offer will not remain open for longer than sixty date from this letter's date. We will also give you sixty days to come up with your payment or a payment plan that you propose to the Board and they approve. Thank you for your hoped for cooperation.

Sincerely,

/s/ Jonathan Diener

Jonathan Diener

TCA Presentation for TWWA Meeting

4-11-23

Last week we mailed to the Tyrone Members a letter that explained some important points with respect to bifurcation of Tyrone assets, income and expenses. We will now summarize the importance of bifurcation, and the year-long agreement by the TWWA and the TCA to complete that process.

First, it is important to know this critical truth: The verbal discussions regarding bifurcation that were had by the board members of both entities, together with emails, statements made in public meetings for which there are minutes, other communications to Tyrone property owners, and the reliance by both entities upon the oral agreement to bifurcate and how to do so, cemented that agreement as an oral contract, enforceable by law. There existed no inherent conflicts of interest between the two entities that could have voided such a contract, and this is all verified by an attorney who specializes in contract litigation.

Here is a brief recap:

In January 2022, the TPOA (the former HOA for Tyrone) was reorganized into the TWWA – meaning, the TPOA naturally dissolved as it was re-established as a mutual domestic. That is what we were told at the initial meeting of the TWWA. At that same meeting, we were all told that the new mutual domestic association could not/would not be able to handle any of the non-water and wastewater related business of Tyrone. It was also then stated that a separate entity would have to be created to handle “all that other stuff.”

In March of 2022, all property owners were invited to a round table meeting to discuss and create this separate entity, and by April the Board had been elected, the Bylaws written, and the Articles of Incorporation for the Tyrone Community Association submitted to the State. The filing was finalized on May 6, 2022.

The TWWA got busy very quickly and secured a grant of approximately \$1.9 million from the emergency fund of the New Mexico State Board of Finance in early April, 2022. That money was, and continues to be, earmarked for the design and construction of the new wastewater lift station in Tyrone.

It was very clear from the beginning that the TWWA would handle all water and wastewater related issues for Tyrone and the TCA would handle everything else (i.e., compliance matters, townsite maintenance, community center rentals, special events, property owner concerns and conflicts, building an improvement reserve, etc.). The two Boards immediately began discussing finances and responsibilities. We can give you the whole breakdown of what was discussed, by whom, and when. We have emails, meeting minutes, and communication to property owners if anyone wants clarification for how far back this understanding goes. I don't think anyone is arguing that point.

I want to read something From the December 21, 2022 TWWA Meeting Minutes- “Alan Berg discussed this ongoing work. In the course of work related to our Colonias Grant, we realized that the TWWA (as successor entity to TPOA) now owns all the community property in Tyrone. However, TWWA should only own the properties related to water and sewer system; other property (like the fields and Community Hall) should belong to the TCA. However, there is an anti-donation clause in New Mexico law which prohibits a public entity from donating property to a non-profit. The New Mexico Ethics Committee ruled that the anti-donation clause does not apply in our case. We will continue working with the TCA on the transfer of appropriate property to them.”

Both entities agreed to a split of income and a split of expenses. Multiple meetings between TCA and TWWA board members included a review of assets and a determination of what went to which entity. By this understanding, the TCA agreed in good faith to immediately handle all the expenses (taxes, utilities, maintenance) for the nine recreational parcels that were being deeded to the TCA, as well as up-keep and maintenance of the assets designated for TCA. All related utilities were transferred by mid-August of 2022 (and TCA paid past due bills for water and gas, as well). The 2022 Tax bills on those properties were paid by the TCA. And all maintenance on those properties is being paid for and managed by the TCA, from its 35% of all assessment receipts.

Now, the TWWA finally has clear title to the TPOA assets (and getting that was a whole different can of worms), but they are suddenly holding back on the passing over of the assets that should be under the ownership of the TCA.

We've been told this has to do with the Colonias funding, and if that's the case, we are willing to negotiate on the timing. We are all in this together and by no means does the TCA want to jeopardize the work that the TWWA is doing. However, we have not seen the paperwork that was submitted with the Colonias application. We would like to, as that would really help in our understanding of where things stand now.

It has also been stated that the loan with the USDA held by the TWWA requires all of the Tyrone parcels as security. And another argument is that there are pipes that run underneath certain recreational lots so those lots must remain in title with the TWWA. Neither of these arguments "hold water", pun intended, as they can both be addressed through loan amendments, utility easement agreements, and other solid documentation and written agreements to protect both involved entities.

CRUX: As was mentioned in our letter last week, the Tyrone Community Association cannot fulfill its purpose without having clear title to the properties it is entrusted to manage/maintain/improve. The TCA cannot raise outside funds for property improvements, cannot insure, and cannot even be listed on the tax rolls, for property it does not own. The TWWA's refusal to fulfill the bifurcation agreement between the two entities would have the effect of rendering the TCA essentially useless.

Owning all the property is certainly advantageous to the TWWA, but it is NOT advantageous to Tyrone. It's a complete abuse of power and it concerns us greatly that the TWWA is even considering not moving forward with its agreement. The nine recreational parcels should NOT be the property of the TWWA. Those parcels have nothing to do with water and wastewater, and the management and improvement of those properties falls outside of the purview of the TWWA. The TWWA is not "divesting assets" by keeping its bifurcation agreement with the TCA; it is relinquishing control of assets that should not have been under TWWA control in the first place. For the sake of the townsite, the two entities need to work together but must remain completely separate. This bifurcation plan must move forward.

In closing, I would like to make one last comment: None of this conflict is even remotely necessary. There is an agreement in place and both entities simply have a responsibility to act on that agreement. Assuming that both entities have maintained and produced clear, honest records, and have maintained the transparency each entity must employ on behalf of its Members, then there exists no roadblock to both entities doing the job each was created to do. There should never be a choice between flushing toilets and enjoying a day at the park – both are important and completely supportable by the good work of the two entities.

TPOA/TWWA/TCA Timeline

Short summary of the central background issues that have faced the Tyrone townsite since 2010.

Since the townsite was constructed in the late 1960s, Tyrone wastewater discharges were regulated by the New Mexico Environment Department (NMED) under discharge permit, DP-28. At some point around 2010, periodic groundwater sampling resulted in the detection of nitrates in the groundwater downgradient from the Tyrone settling ponds. The groundwater also flows under the regional landfill just east of the Tyrone ponds. It was determined through testing and probing the bottom of the ponds that the ponds were leaking due to failures in the bottom surfaces.

A lift station was constructed in 2012 to replace the settlement ponds and the discharge permit was closed out. The new lift station and lining of the clay sewer mains in the townsite were done in collaboration with the Town of Silver City, NMED, and USDA/Rural Development. The Southwest New Mexico Council of Governments also played a key role in getting the pieces of the puzzle together. Engineers Inc., now Stantec Engineering, were the engineers for the project.

The lift station loan payments began in March 2013, and it has been reported that problems with the pumps began shortly after that. During 2018, the TPOA board work sessions contained cryptic references to the ongoing problems with the macerators and pumps.

This reached a crisis level in the 2020-2021 timeframe, when the whole Vogelsang system failed. Moyno progressive cavity pumps were installed to replace the Vogelsang pumps, but they also failed due to the intake of debris into the pump mechanisms and other operational and maintenance issues.

Costs for the daily care and maintenance of the system were excessive due to the prohibitive costs of transporting untreated wastewater to Silver City or Deming by truck. When costs exceeded \$600,000 and TPOA reserves were heading towards being exhausted, the TPOA board decided to become a mutual domestic water and wastewater system which would make Tyrone eligible for state and local grants and loans.

TPOA was a homeowner's association and was not eligible for state or federal loans. The USDA loan/grant program used to build the lift station was not available to fund this problem due to a change in eligibility requirements.

2020-TPOA discussions with Grant County were held regarding financial assistance for new infrastructure in Tyrone. The anti-donation clause in the State Constitution prohibited a unit of government from giving assets to private entities such as the TPOA. This conclusion was captured in TPOA board work session minutes.

Consideration of forming a mutual domestic water/wastewater system has been introduced at numerous TPOA board meetings and work sessions over the past 5 years. There have been discussions among board members about the nonprofit status of the TPOA and if there would be an advantage to have a different corporate status.

2021

Priscilla Lucero sent an email to Raul Mazon and Alan Berg on November 13, 2021, relating to the phone call from the State Board of Finance (SBOF) about providing funding to the TPOA. The SBOF will not be able to assist in financing Tyrone projects due to the anti-donation clause in the State Constitution.

TPOA/TWWA/TCA Timeline

Priscilla recommended that the TPOA become a public system under the Sanitary Projects Act. She also suggested that the TPOA work with Olga Morales of the Rural Communities Assistance Corporation (RCAC), rcac.org to put the necessary elements together to become a public entity.

2022

There was a flurry of activity involving Priscilla's office, RCAC, TPOA board members, members of the community, TPOA office staff, between November 2021 and January 17, 2022, when the property owners voted to become the Tyrone Water and Wastewater Association (TWWA).

TWWA received a 100% grant of \$1,915,022 from the State of New Mexico State Board of Finance on April 4, 2022, for the design and construction of a new wastewater lift station in Tyrone. The grant is administered by the Southwest New Mexico Council of Governments (SWNMCOG). Priscilla Lucero is the fiscal agent for the project. The State acknowledged Tyrone's need for the funds, but because the TWWA was such a new entity, the State wanted a known organization to manage the money.

In May 2022, TWWA and Stantec Engineering made a presentation to the Colonias Infrastructure Board (CIB) for a requested grant of \$382,320 for potable water system design services. The TWWA was awarded the grant in April 2022, but the mechanics of finalizing the grant did not take place until March 31, 2023. During the process of completing the documentation for TWWA to get the loan, it was discovered that the TPOA did not sell/deed/or otherwise transfer the assets and liabilities of the TPOA to the TWWA.

During this period, all of the original board members, except Alan Berg, who signed the incorporation papers to create the TWWA resigned. In May 2022, the office records and the office computer were destroyed by persons unknown. The investigation by the Sheriff's Department was inconclusive on the perpetrator or perpetrators.

After several months of negotiations between the TWWA and the TCA regarding the split of funds, Mindy Geary the President of the TCA sent a letter to Alan Berg on June 13, 2022, outlining the agreed upon parameters of the relationship. The letter also discussed the bifurcation of duties and responsibilities. This letter did not discuss the separation of physical assets. It was discussed in the meetings leading up to the referenced letter that nine of the 12 parcels in Tyrone would be transferred to the TCA at some point. The goal was to complete the bifurcation process by July 1, 2023, which is the start of the new 2023-2024 fiscal year.

Numerous documents related to the creation of the TPOA, Phelps Dodge's transfer agreements, the details of the USDA/RD loan/grant were identified and presented to the Sutin Law Firm, the attorneys contracted by the State of New Mexico to manage the details of the loan to the TWWA.

Three significant details that may cloud the bifurcation of parcels have emerged in recent months. Although the State of New Mexico Ethics Commission has rendered an informal advisory opinion that there are no constraints in separating the TWWA from the nine parcels, from the anti-donation clause, there may be contractual barriers in the agreements between the USDA/RD and the Colonias Infrastructure Fund and the TWWA. The nuances between the Tyrone townsite being collateral, or having a lien are semantics, the essence of the matter is that the agencies see the Tyrone townsite and the TWWA's assets as inextricably linked to the loans.

TPOA/TWWA/TCA Timeline

It is the opinion of our attorney, Debbie Edwards, that the TWWA should not part with the nine parcels as their separation does not provide the TWWA with any advantages going forward if we are to acquire additional debt as we consider replacing all the aging infrastructure in Tyrone.

So, at this point, it is not clear or otherwise advantageous for the TWWA to dispense with the planned bifurcation of the Tyrone townsite. That is not to say that in the future, the path will be clearer to divest the assets.

end

The following is an explanation of the TWWA and TCA responsibilities that were communicated to the Mahoney Group in an email in April 2022. The purpose of the explanation was for the Mahoney Group to understand the insurance needs of each entity. TWWA purchased property liability, pollution liability, and directors' and officers' liability insurance through the Mahoney Group. This agency has represented the TPOA for insurance matters for several years.

The Tyrone Property Owners Association (TPOA) has been dissolved, effective January 25, 2022, and is now the Tyrone Water & Wastewater Association (TWWA), a mutual domestic under the Sanitary Projects Act. The TWWA is responsible for the repair, maintenance, and operation of the water and wastewater infrastructure in the Tyrone townsite.

Community property owners have formed the Tyrone Community Association (TCA) the successor of the TPOA. Incorporation papers have been filed with the Secretary of State and they are anticipating approval in the near future.

The TWWA, has no relationship with the TCA other than both entities are Tyrone townsite based. Going forward, the TWWA will work with various agencies to solicit and receive funds for potable water and wastewater improvements and replacements. Currently, the State of New Mexico has granted \$1,910,000 to the TWWA for a replacement lift station. It will likely take 9 months to a year to get this replacement system designed, bid, awarded, and constructed. The TWWA is also applying for Colonias Infrastructure Fund through the New Mexico Finance Authority for the potable water system replacement.

The purpose of this inquiry to the Mahoney Group is to understand how to insure the TWWA going forward. To that end, this communication will try to differentiate the roles and tasks of the TWWA and the TCA. The major tasks and duties of the TWWA are:

1. Maintain the subgrade potable water and wastewater lines within the Townsite and along the approximate three-mile pipeline corridor from the townsite to the lift station and discharging into the Town of Silver City wastewater line near the County jail on Ridge Drive.
2. Daily operation and repair of the lift station and appurtenances. This includes cleaning out a debris basket; monitoring macerator and pump lubrication levels and pressures; and monitoring discharge volumes of effluent. Currently, J&S Plumbing, a Silver City based plumbing company, performs the majority of the maintenance on a two to three times a week cycle. TWWA has contracted with Eddie Mendoza, a Silver City Water Department employee, as our certified water/wastewater operator. Mr. Mendoza also performs the maintenance duties as needed. He is also responsible for directing water

TPOA/TWWA/TCA Timeline

meter repair, replacement, and shut offs within the Tyrone townsite as needed. If Mr. Mendoza is needed to perform additional work in addition to his duties as our water/wastewater operator, he is paid an hourly rate.

3. TWWA does not have any employees or capabilities at this time to do any repair, replacement, or upgrades to the water or wastewater systems, including the 200,000-gallon elevated water tank that was constructed in 1967 by Phelps Dodge, the developer of the original Tyrone townsite. TWWA will contract with either J&S Plumbing or other local contractors if subgrade repairs or water tower repairs are needed.

4. Currently, the TWWA collects \$93.17 per property per month and, controls all of the funds. The TCA at some point, will control a percentage of the monthly assessments.

5. The TWWA will have at least one all-terrain vehicle (ATV) to patrol the subgrade wastewater lines from the townsite to the discharge point near the County jail. The TWWA may purchase a ½ ton pickup truck for the operation of the potable and wastewater systems. The Ford 150 pickup that is owned by the TWWA, is currently inoperable.

6. The TWWA is in the process of developing the 2022-2023 budget for submittal to the State of New Mexico. During this process, the number of persons, either employees, or contract employees will be determined during the budget development process. The roles and duties of these undefined persons will include

- a. Daily monitoring of the water and wastewater systems, including reading meters, checking flows, etc.
- b. The collection of assessment fees
- c. Patrolling the buried lines with the ATV
- d. Coordinating emergency repairs with contractors
- e. Monitoring the water tower connections, valves, and meters

7. Once a month, the TWWA will hold a meeting at the Tyrone Community Center and on occasion will hold special meetings at this venue.

8. The TWWA may occupy an office in the Community Center to maintain some separation between the TWWA and the TCA related to business matters and operations.

The TCA will be responsible for the following as well as other items to be determined by the TCA

- Maintenance of the TCA owned open spaces, common areas, and baseball diamonds, tennis courts, playground area and playground equipment
- Maintenance of the Community Center building, and the former concessions stand by the ball fields.
- Mowing common areas and watering grass around the Community Center and park
- Coordination with homeowners, residents, and others who rent the Community Center for events
- Architectural review committee to approve fencing, paint colors, roofing, remodeling, etc.
- Townsite surveys to determine compliance with CC&Rs, which are under development by the TCA
- Responding to complaints by residents
- TCA will have either employees or contractors performing the common area maintenance