

**BEFORE THE ELDORADO AREA WATER AND SANITATION DISTRICT**

**IN THE MATTER OF THE REVISION TO RATES  
PROPOSED BY THE ELDORADO AREA WATER  
AND SANITATION DISTRICT PURSUANT TO  
BOARD RESOLUTIONS NOS. 20-08-03 and 20-09-02**

**DECISION OF THE HEARING OFFICER**

This matter came before Peter J. Gould, Hearing Officer, and Assistant, Kelly D. Gould, at a public hearing conducted on September 25, 2019. The subject matter of this hearing was the rate revisions proposed by the Board of the Eldorado Area Water and Sanitation District ("EAWSO" or "District"), in Resolution Nos. 20-08-03 and 20-09-02, adopted on August 15, 2019 and September 19, 2019, respectively. Having taken the sworn testimony of the District's witnesses, reviewed the exhibits and other documentary evidence, and having heard comments from proponents and opponents of Resolutions 20-08-03 and 20-09-02, the Hearing Officer renders the following decision on the merits of the case.

**I. EAWSO'S COMPLIANCE WITH THE WATER AND SANITATION DISTRICT ACT**

1. EAWSO is a district organized under the provisions of the Water and Sanitation District Act (hereinafter "the Act"), NMSA 1978 §§ 73-21-1 *et seq.* Since the District has elected not to come under the jurisdiction of the New Mexico Public Regulation Commission ("Commission" or "NMPRC"), it is subject to the special provisions of Section 73-21-55 with respect to the September 25, 2019 rate hearing. In addition, because EAWSO is located in Santa Fe County, which is a Class A County with a population of more than one hundred twenty-five thousand and less than one hundred thirty-five thousand, it is subject to the provisions of Section 73-21-55.C of the Act.

2. Section 73-21-55.C includes the following requirements that are relevant to this Decision:

- (1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution;
- (2) at the expense of the board, the board shall appoint a hearing officer to conduct the public hearing to be chosen from a list of hearing officers provided by the commission, and shall engage a court reporter to record the hearing and produce a verbatim written record of the hearing;
- (3) the board's hearing officer shall:
  - (a) hear proponents and opponents of the proposal;
  - (b) issue a decision rejecting, amending or adopting the resolution adjusting the rates, tolls, fees or charges; and
  - (c) within thirty days following the hearing, file the decision with the board.

3. The record demonstrates that the Board complied with the thirty day notice provisions of Section 73-21-55.C(1) of the Act. On August 15, 2019, the Board formally approved Resolution No. 20-08-03 authorizing a public hearing to be held on September 25, 2019 to consider increases to EAWSD's water rates and fees. Affidavit of Steve King ("King Affidavit"), p. 4 ¶ 10 (Attachment # 1, hereto). The District's customers received the following notices of the September 25<sup>th</sup> hearing: (i) The August 2019 edition of the District's publication, *Water Notes*, contained notice of the September 25<sup>th</sup> hearing, and was mailed and emailed, as applicable, to EAWSD's customers on August 7, 2019; (ii) On August 21, 2019 an invitation to join a forum hosted by the District to discuss the proposed water rate increases was mailed to all EAWSD's customers. The invitation contained notice of the date, time and place of the September 25<sup>th</sup> hearing. This August 21<sup>st</sup> invitation was also emailed to 722 customers that had opted to receive such notices electronically. In addition, this August 21<sup>st</sup> invitation was posted on the District's website; (iii) Additional notice was provided through publication of the hearing date, time and location in the Santa Fe New Mexican on August 29, 2019. King Affidavit, Exhibit D: *Affidavit of Ana Mondragon-Metzger and Attachments*.

4. The record demonstrates that the Board complied with the provisions of Section 73-21-55.C(2) of the Act regarding selection of hearing officer, Peter J. Gould. In an email

attached as Exhibit E to the King Affidavit, NMPRC Hearing Examiner Carolyn Glick, acting on behalf of the Commission, acknowledged that the Undersigned Hearing Officer was an acceptable choice to conduct the September 25<sup>th</sup> hearing. The District also hired Court Reporter, Michelle M. Trujillo of Bean and Associates Court Reporters, to produce a verbatim transcript of the September 25<sup>th</sup> hearing. A complete copy of the hearing transcript is available on the District's website, under the bold heading, Public Rate Hearing.<sup>1</sup>

5. The hearing transcript demonstrates that the Undersigned Hearing Officer, in compliance with Section 73-21-55.C(3)(a) of the Act, conducted the required hearing on September 25, 2019 to receive evidence, and to hear proponents and opponents of the Board's proposed water rate increases and adjustments.

6. This written Decision of the Hearing Officer is being provided to the Board on October 23, 2019 in compliance with the thirty day requirement of Sections 73-21-55.C(3)(b) & (c) of the Act.

For all these reasons, the record demonstrates the EAWSD has complied with the relevant provisions of the Water and Sanitation District Act.

## **II. ANALYSIS OF THE RECORD EVIDENCE**

7. As is discussed in detail in the remainder of this Decision of the Hearing Officer, the District's proposed increases and other adjustments to EAWSD's water rates and fees are approved as proposed.

8. As noted above, on August 15, 2019, the Board approved Resolution No. 20-08-03. King Affidavit, Exhibit A. Included in the Agenda of that meeting was a presentation of

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<sup>1</sup> <https://www.eawsd.org>.

new proposed rates and fee adjustments as recommended by the District's Communications and Customer Service Advisory Committee. King Affidavit, p. 4, ¶ 10.

9. On September 19, 2019, the Board adopted Resolution No. 20-09-02. King Affidavit, p. 5, ¶ 11; *see also* King Affidavit, Exhibit B. Resolution No. 20-09-02 recommended the approval of a comprehensive schedule of rates, fees and charges. *See* Exhibit A to Resolution No. 20-09-02. This comprehensive rate schedule was the end result of a process that started in December 2017 when the Board retained consultant, Nelisa Heddin, of Nelisa Heddin Consulting, to perform rate design and cost of service analysis. In February 2018, a Rate Study Advisory Committee was appointed to work with Ms. Heddin to evaluate various rate options. This process included presentations of various options to the Board by the Committee and Ms. Heddin on July 25, 2019 and August 15, 2019. A public forum was held on August 27, 2019 to present the findings of the rate studies and to gather input from the EAWSD ratepayers. The process culminated with the adoption of a definitive rate proposal in Resolution No. 20-09-02. The full history of this process is detailed in Mr. King's Affidavit on pages 2-5.

10. The central feature of Resolution No. 20-09-02 is the five (5) year rate plan in Table 1, below. King Affidavit, Exhibit B.

**TABLE 1: RESIDENTIAL, COMMERCIAL, PUBLIC AUTHORITY RATES**

<b>MONTHLY RATES</b>	<b>CURRENT 2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>Base Rates</b>						
In-District	\$24.58	\$25.56	\$26.59	\$27.65	\$28.76	\$29.91
Out-of-District	\$56.38	\$57.36	\$58.39	\$59.45	\$60.56	\$61.71
<b>Volumetric Rates</b>						
3,000 gallons or less	\$11.40	\$11.40	\$11.40	\$11.86	\$12.33	\$12.82
3,001 – 6,000 gallons	\$14.25	\$14.25	\$14.25	\$14.82	\$15.41	\$16.03
6,001 – 10,000 gallons	\$17.81	\$17.81	\$17.81	\$19.06	\$20.39	\$21.82
10,001 – 20,000 gallons	\$26.71	\$28.58	\$30.58	\$32.72	\$35.01	\$37.46
20,001 – 30,000 gallons	\$40.07	\$44.08	\$48.48	\$53.33	\$58.67	\$64.53
Over 30,000 gallons	\$60.11	\$66.12	\$72.73	\$80.01	\$88.01	\$96.81

11. Proposed Base Rates. The proposed Base Rates in Table 1 incorporate a difference of about \$30 per month between In-District and Out-of-District customers. This rate differential is justified by the fact that the District collects a large portion of its revenues from property taxes, which are not paid by Out-of-District customers. Hearing Transcript, pp. 30-31 (King testimony). In Fiscal Year 2020, these property tax revenues are projected to be approximately \$1.27 million dollars, or about 30% of the District's revenues. King Affidavit, Exhibit C: *Cost of Service and Rate Design Study, Final Report of Nelisa Heddin Consulting, dated September 6, 2019 ("Heddin Report")*, p. 15, Table 10. Therefore, it is reasonable for the Out-of-District customers to pay a higher Base Rate for the water service they receive from the District. Table 1 shows that the proposed Base Rate increase is a very modest increase of about \$1.00 per month per year for both In and Out-of-District customers in each of the five years in the rate proposal.

12. Volumetric Rates. Table 1 also shows that the largest rate increases are assigned to the highest water users. These increases are intended to encourage water conservation and efficient use of the District's limited water resources. Hearing Transcript, pp. 45-46 (Heddin testimony). In addition, these increases are intended to better reflect the costs that large users impose on the system. *Id.* As Ms. Heddin's hearing testimony demonstrated, only about 5% of the District's monthly bills are for usage above 10,000 gallons. However, these high usage customers consume about 20% of the water produced on the system. Heddin Consulting, Hearing Slides, Slide # 12 (Attachment # 2, hereto).

13. Projected Revenues. The District projects that its 2019 revenues from all sources will be approximately \$4.04 million. Heddin Consulting, Hearing Slides, Slide # 9. The District projects that its revenue requirements for the coming years will be as follows: \$4,232,465 in

2020, \$4,422,790 in 2021, \$4,702,171 in 2022, \$4,975,002 in 2024 and \$5,058,563 in 2024.

Heddin Consulting, Hearing Slides, Slide # 7. Even with the proposed rate increases, the District projects that it will have the potential revenue shortfalls of \$77,715 in 2021, \$197,343 in 2022, \$303,011 in 2023 and \$789,831 in 2024. Heddin Report, p. 21. Rather than propose rate increases at the present time to cover these potential shortfalls, the District has committed to continually monitoring its operations over the coming years to ensure that it is being as cost-efficient as possible. In addition, the District will pursue grant funding for capital projects, and adjust the scheduling of its capital projects to ensure that it stays within its budget. If no other options are available, the District will consider raising property taxes to cover any shortfalls. King Affidavit, pp. 3-4, ¶ 9; *see also* Heddin Report, p. 21. The record shows that these cost-containment strategies have been successful for the District in past years. For instance, in 2018 and 2019, the District received a total of \$1,225,755 in financial assistance through a combination of loan forgiveness and Legislative grants and other grants. Steve King, Hearing Slides, Slide # 11 (Attachment # 3, hereto). In the same time period, the District achieved over \$1,350,000 in savings in its capital projects through diligent cost management practices. *Id.*

14. Joint Regional Water System Actions. In addition to other cost saving efforts, the District has signed a Memorandum of Understanding with Santa Fe County to design and implement a regional water plan. Under this plan, the EAWSD system would be linked to the Santa Fe County water system so that customers can receive a portion of their water supply from surface water from the Buckman Diversion rather than relying on the District's wells. Hearing Transcript, pp. 27-28 (King testimony). Design of this regional system is already underway.

15. Need for the Proposed Rate Increases. Mr. King testified that revenues from current rates cover the debt service on the original purchase bonds, current capital project debt

obligations, \$150,000 to \$200,000 in annual system maintenance and repair costs, and current operating and administrative costs. King, Hearing Slides, Slide # 5. However, there are three major categories of expenses that are driving the District's need for increased revenues. The first is the need for additional funds to repair and replace existing facilities over the next five years. Rehabilitation and repair of the ageing EAWSD system is expected to cost \$600,000 per year for the next five years. Replacement of existing infrastructure is expected to cost an additional \$13 million over this same period. The second driver is rising operations and maintenance costs due to inflation. The third driver is the increased costs of data management due to technology upgrades and cybersecurity measures. King, Hearing Slides, Slide # 6; *see also* Hearing Transcript, pp. 19-27 (King testimony).

16. Rate Impact. The average customer on the EAWSD system uses approximately 4000 gallons per month. In his Affidavit, Mr. King projected the following five year bill impacts for an average customer if the rates in Table 1 are approved (King Affidavit, p. 4):

2019 Monthly Bill: \$73.02

2020 Monthly Bill: \$74.01

2021 Monthly Bill: \$75.04

2022 Monthly Bill: \$79.29

2023 Monthly Bill: \$81.61

2024 Monthly Bill: \$83.27

17. Other Rate Impacts. In addition to the rates in Table 1, Resolution Nos. 20-08-03 and 20-09-02 include the following proposed rate adjustments: (i) an increase in the Meter Testing Charges from \$200 for all meters to \$250 for 3/4 inch meters and \$600 for meters of 1 inch or greater; (ii) an increase of \$200 in the deposit for a hydrant meter rental from \$1000 to

\$1200; and (iii) a decrease in the returned check charge from \$45 to \$25. All other rates would remain unchanged. King Affidavit, p. 4, ¶ 10.

18. September 25<sup>th</sup> Hearing Testimony and Comments. At the September 25<sup>th</sup> hearing, Mr. King described the history of the EAWSD system and the drivers for the rate increase proposal. He also discussed the input received at the August Public Forum, and detailed the District's efforts at cost containment. In addition, Mr. King formally adopted his Affidavit (Attachment # 1) and his Hearing Slides (Attachment # 3). See Hearing Transcript, pp. 13-34. Ms. Heddin explained the rate design and cost allocation principles that were incorporated into the five year rate plan in Resolution No. 20-09-02. She discussed the District's revenue needs and projections, and described the customer rate impact at various levels of usage. She also formally adopted her September 6<sup>th</sup> Final Report (Attachment # 1, Exhibit C) and her Hearing Slides (Attachment # 2). Hearing Transcript pp. 34-51. The September 25<sup>th</sup> hearing also included testimony and comments in favor of the District's rate proposals from Joseph Loewy. Hearing Transcript, pp. 53-54. Another District ratepayer, Mr. Dominic McBride, commented that he did not object to the rate increase, but did object that the rate review process no longer included the Public Regulation Commission as it had in former years. Hearing Transcript, pp. 55-57. Other comments received at the August Public Forum and online were generally in favor of the rate proposal and the District's efforts to control costs. Public Forum, Final Minutes (Attachment # 4, hereto).

19. Approval of Resolution Nos. 20-08-03 and 20-09-02. The evidence on the record demonstrates that the rate increases and other rate adjustments in Resolution Nos. 20-08-03 and 20-09-02 are reasonable and prudent. These rate increases ensure that the District will have sufficient revenues in 2020 and 2021 to fund ongoing operations, and meet increased needs for



system repair and infrastructure replacement. Heddin Report, p. 21. Under current projections, the District will experience a significant revenue shortfall of approximately \$200,000 in 2022.

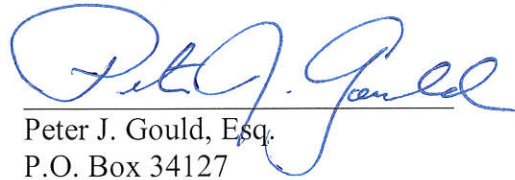
*Id.* However, the District has proposed a reasonable way of managing this potential shortfall by pursuing additional grants, reducing costs through cooperation with Santa Fe County, keeping a close eye on other costs, and proposing property tax increases if all other cost containment strategies are not sufficient. King Affidavit, pp. 3-4, ¶ 9. The shifting of costs to large users on the EAWSD system is consistent with the sound public policy of promoting water conservation and efficient use of the District's limited water resources. This cost shifting is also consistent with traditional rate design principles which allocate costs based on a cost-causation basis.

### **III. FINDINGS AND CONCLUSIONS**

Based on the case record, the Hearing Officer provides the following FINDINGS AND CONCLUSIONS in this matter:

- A. The Board has provided legally proper and adequate notice of the September 25, 2019 hearing and its proposed rate increases contained in its Resolution Nos. 20-08-03 and 20-09-02.
- B. The Board has met all the other requirements of Section 73-21-55(C) for the reasons stated in the body of this decision.
- C. The record in this matter, viewed in its entirety, supports the adoption of the five (5) year rate plan set forth in Resolution Nos. 20-08-03 and 20-09-02.
- D. The Hearing Officer supports approval of Resolution Nos. 20-08-03 and 20-09-02, with the understanding that the Board will closely monitor future revenue requirements to ensure that revenues are sufficient to meet the District's needs and to further ensure that the District provides safe, efficient and reliable water service to its customers.

Respectfully submitted, this 23<sup>rd</sup> day of October 2019 by



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