

Challenges When Combining Mutual Domestic Organizations to Meet Community and Colonias Water Needs

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Thank you and good morning. I am Martin Lopez, the general manager with the Lower Rio Grande Public Water Works Authority. I am new in that capacity as of November 3. The mutual domestics that created the Lower Rio Grande Public Water Works Authority consist of five different water systems serving 8,000 people: Berino, Desert Sands, La Mesa, Mesquite, and Vado. Mesquite is located closest to Las Cruces, about 15 miles south of Las Cruces, and the furthest is Desert Sands, located at the Anthony, NM boundary. These five water systems serve nine colonias and have been in existence since the mid to early 60s and 70s.

Some of the common problems facing the authority include: increased regulations such as arsenic restrictions; high operating costs; aged and undersized infrastructure; limited water rights; lack of volunteer board members; and many others. Our biggest hurdle has been with the two systems located close to Anthony that have arsenic issues. We have looked at the cost of dealing with arsenic and have tried to figure out other avenues to address the drinking water standard.

We have high operating costs, mostly associated with meeting requirements to employ certified drinking water operators, of which there is a shortage. Anybody knowledgeable about water operations understands the economies of scale, and any time that you have a larger entity in the vicinity, that entity will recruit and hire the area's

available operators. The Authority doesn't have the funds to provide a lot of the benefits available from larger entities so we kept losing operators, not only to El Paso and Las Cruces, but to other systems as well.

Another issue has to do with our aged infrastructure and lining, some of which was installed in the 1960s. USDA funding for the colonias provided drinking water to the communities; it did not provide funds to address fire flow or anything along those lines. Out of the five systems, we have many areas with very aged or undersized lines. The corridor from Las Cruces to El Paso has grown substantially and new development has taken place, along with new fire-flow requirements by Doña Ana County. Much needs to be upgraded and individual systems cannot afford to make upgrades on their own.

Another issue has been limited water rights. One of our systems, due to nitrate contamination in the 1980s and a failure to transfer their point of diversion to another system or another well, had their water rights not necessarily lost, but the rights are no longer recognized. The two southern systems with arsenic problems have abundant water rights declared, while the Mesquite and La Mesa systems are nearing their capacity with declared water rights. So we face limitations with our water rights.

The biggest hurdle was appointing a board of directors, who serve for life. It is very difficult to find folks to volunteer to serve on the board with no pay while they'll often receive criticism. I've been a general manager and operator for several of these systems for many years and quite frankly, I tell board members that I would not put myself in their position.

There were many other hurdles as well. For example, we have some operators who have never taken a day off because the system cannot afford to pay a backup operator. And there are issues with outages and emergency situations.

The five individual mutuals started looking into coming together and today in the audience is one of the responsible parties, County Commissioner Oscar Butler, who helped the mutuals look into options. There is a territorial element to the mutuals, but when you have commissioners and other elected officials including state legislators saying that they cannot afford to fund all of you individually, you look toward a regional solution. What evolved was an alliance of water and wastewater providers in Doña Ana County. The group spun off into systems both north and south of Las Cruces.

One of the biggest issues with mutual domestics was that they could not declare a service area. Our only protection from encroachment was federal indebtedness, so we actually took on loans from the federal government to make sure we could protect our service areas. Legislation pertaining to the Lower Rio Grande Public Water Works Authority now includes a declared service area.

At first, we did not have the funding ability to float bonds; we had our hand out requesting grants and loans with repayment coming from user fees. We were even limited to charging impact fees under some of the regulations given to us by the Department of Finance and Administration. Another hurdle that we had was how to retain autonomy for each of these communities. The mutual domestics have been in place for 30 to 50 years and community recognition was important.

During the 2009 legislative session, House Bill 185 was passed unanimously through both houses and signed by then Governor Bill Richardson. We nearly camped out at the round house during the session and it is an eye-opening experience for small rural communities that don't really understand the legislative game. We spent many days during the session thinking everything was

fine, but also a few days in which we encountered some opposition and were called back to testify. The Governor signed the legislation on April 6, 2009 that merged the five mutual domestics into the Authority and gave it legal standing.

The legislation allowed the Authority to file a service area and we partnered with the Office of the State Engineer to rectify the "Point of Use" for individual mutuals. Many of the mutuals had grown beyond their recognized service areas (some areas were declared in locations without a service area), there were gaps between the five systems, and so on. We made sure in the legislation that we did not have to be contiguous so we wouldn't need a physical interconnect between systems. This allowed us to jump around the area when a new entity chooses to join us. The other big issue concerns the water rights themselves; would we lose any by combining and commingling? Unfortunately, that has not been answered so challenges remain.

We wanted to make sure we merged properly. Typically, the state provides \$50,000 Community Development Block Grants and we knew that amount would not cover attorneys, engineers, and other required professionals. We requested \$100,000 and were provided that funding. I think state agencies realized that predetermined amounts for these planning grants will not always work. Larger grants are sometimes needed as there are many hurdles that aren't anticipated.

The planning grant created a governance structure. The legislation authorized the Authority but we needed planning and governance guidelines. The documents spelled out why we were organized, our authority, instructions for the board of directors, guidelines for growth, and strategies for administration and management.

We were dealing with five very different systems; one of the smaller systems had 180 connections, the largest had 1,500, some had several levels of management, for example Mesquite had a general manager, while Vado contracted out operations. We had to develop the administrative and management guidelines that would meet a wide spectrum of needs. Then we had to look at operational and implementation strategies. Operations were do-able, operating five systems is pretty standard. But when the Environment Department recognizes you as one large system, things change. At what point do we eliminate our public water system ID numbers? When do we

switch from being recognized by the Environment Department as smaller entities to one authority? A whole process emerged that we had never envisioned.

The process was completed in September 2010. Some challenges remain and we have to redo some of the documents. The Rural Community Assistance Corporation (RCAC) had a technical systems provider that was contracted, and as we started to implement their proposed strategies, many did not apply. So we have to redo things even as basic and minute as job descriptions for some employees.

In an effort to try and harness some of the money that was being thrown at regional groups, we created an interim association, the Lower Rio Grande Mutual Domestic Association. Our previous contract was with the RCAC board and now we had a new authority board that didn't always accept our recommendations. We had to acquire a Duns Number, which is a tracking number required to access federal funding. But there was a catch. To get a Duns Number, you need to have a federal tax ID number, and to get a federal tax ID number, you need a State CRS Number from Taxation and Revenue, and to get that number, we had to establish a permanent address and bank account, which was difficult as all the funds still sat with the individual mutuals.

Our first legal task was to develop a mechanism to establish a board of directors. Legislation spelled out the board's composition: one member from each of the five mutual domestics, and that group would be part of the initial board until we could hold general elections. Among the five entities, there were 25 elected officials; the legislation called for a board of 5-7 elected officials so we asked each of the five entities to decide on their representatives. The easy way out for some of the entities was to appoint staff. However, our attorney recommended that we not have staff employees on the Authority's board, as there could be conflicts of interest. At least three individuals had to resign from the Authority's board, and the mutual domestics had to reappoint their replacements.

Another hurdle dealt with the transfer of water rights ownership from individual mutuals to the Authority. After sitting down with the local staff and staff from the Office of the State Engineer (OSE), the process was actually quite easy compared to everything else we had encountered. In August 2010, we completed the transfer of water

rights to the Authority. The process did require an attorney who was familiar with the process. Four of the five mutuals had engineering firms on their boards so we had to coordinate their data. Also, not all individual mutuals had all the required information, so we had to rely in some instances on the data archived with the OSE.

We submitted a "Transfer of Ownership" to the OSE. However, wells still belonged to the mutuals so we had to pass resolutions authorizing the use of that water back to the mutuals; we have not received approval and a lot of discussion back and forth resulted in a couple months delay. One accomplishment since August has been the transfer of real property to the Authority.

A big piece of the legislation is the combining and commingling of water rights. This contains a fear factor with the potential that some water rights might not be recognized. We are looking at guidelines and working with OSE staff. We want to make sure we maximize all of the water rights available to us. One positive aspect of working with the OSE was that we discovered some water rights that had been lost in one of the systems, and they were recognized again. We now need to remove those water rights from their abandoned well site to another recognized well.

The RCAC governance documents were also completed in September. We had a legal review and some documents were approved as strategic and operational plans. The governance documents, charters, and bylaws for mutual domestics or co-ops are essentially set in stone so we needed to make sure that those were properly developed. We didn't want to have to go back and change the legislation. This required a thorough review by our attorney and some of the documents have been approved. The key to our existence is the governance document and it is now in place.

The biggest hurdle for our customers is financial. RCAC was charged with doing a rate analysis, basically taking five existing water rates and incorporating them into one. It may sound easy to look at expenses, divide them among users, and come up with a rate structure that is satisfactory. The twist in this case is that the individual mutuals and the Lower Rio Grande Mutual Domestics have about \$12 million worth of ongoing infrastructure projects, so we had to incorporate all the different project budgets into these rates and had to be able to justify those proposed rates the funding agencies. Then we had to submit this not only

to USDA, but to the Department of Finance and Administration for their approval. That, in itself, was a year-long process and in the end, the water rates will decrease for four of the five water systems. The fifth system, Mesquite, is the largest, and the rates will increase. So right off the bat, the economies of scale are going to pay off for us.

Another aspect of the legislation is our 40-Year Water Plan. Coordination with the state engineer is critical. A priority is the need to address return flow credits. A portion of Mesquite is "sewered" by our own facility, and 70 percent of our remaining customers are connected to the county's wastewater facility. We have a partnership with Doña Ana County to recover the return flow credits back to the Authority. Initial agreements between the state engineer and Doña Ana County had those return flow credits going to the individual mutuals. The 40-Year Water Plan has evolved but the board has not adopted it yet, but perhaps it will be adopted by January 2011. When water rights for Vado were recognized again, we had to re-edit the document and that has taken some time.

We worked with the Environment Department to obtain a Public Water System ID Number. The process wasn't simple because of the data collection method. The EPA and Environment Department track violations and operation based on a history of data collected from all five of the mutuals and there was an internal computer problem transferring that data into the single entity. Ironically, about a month ago, I got a call from the Environment Department asking if I remembered the number they had given the Authority.

A key to our operations was the hiring of staff. We were able to provide higher salaries and benefits to our employees, and the mutuals were no longer held hostage if an operator decided to take leave or move on. We were able to standardize our hours so that operators don't have to work weekends and overtime as they often did when they worked for the individual mutuals. Because most of our customers are from the Las Cruces and El Paso area and may want to pay their bill when they get off work, we have implemented on-call and after-hours operators to access staff.

Responsibilities accompany money. A small system like Vado had gross revenue in 2009 of about \$10,000. Currently, combined revenue for all five systems is in excess of \$1.5 million, and that is just from the water rate structure that we generated. To protect our customers, we have

put in place policies and procedures for outside bookkeeping, internal bookkeeping, and internal controls and transparency. We have discovered that even our legislators want to know what is going on. You need to have balance sheets and income statements readily available. It was critical that we establish bank accounts for all monies. When I was with the Mesquite system, I was authorized to sign checks up to a certain dollar amount. Now I want to make sure there is a counter signer on checks and bank accounts. We are now recognized as a subdivision of state so we adhere to state procurement requirements. And we had to make sure that everybody paid their taxes; some of the mutuals had not been paying taxes, so we had to research whether we would inherit those taxes and we did. Some systems did not have enough insurance; some mutuals had made facility upgrades but did not include those upgrades in their insurance policy because they didn't want to pay higher premiums.

When we consider rates and fees, we look at the total cost of a project. Can we support our own infrastructure? We developed uniform rates making sure we didn't discriminate against any single user. We standardized all policies. The five systems had five different disconnect policies and five different late charge fees. In the small systems, staff knew everyone in the community and they didn't want to shut off their uncle's or aunt's water. We considered this when we developed transparency into our operations and policies.

Currently, one of our biggest hurdles concerns existing debt. We received a letter from USDA Rural Development indicating they no longer recognize any of the mutual domestics; they only recognize the Authority. In my opinion, this was premature because they wanted loans to be paid by the Authority but that couldn't be done because the money was still with the individual mutuals. But they no longer recognized the mutuals. Thus, a two-month battle started that involved U.S. Congressmen and Senators explaining that yes, legislation created the Authority, but it did not disband the mutuals. Eventually the mutuals will be disbanded but not yet. We had to look at how to get out from under the federal government for this purpose. We are working with the State to refinance already existing loans into the Authority. When we began this process, the Authority had no revenue base, the mutuals did, but not the Authority.

With the transfer and refinancing, we eliminated the need to have a large reserve. Previously, we had

to have at least one annual loan payment set aside for each debt, which created a large reserve. That triggered customers to ask why we have so much money set aside and why we can't we use that money instead of increasing rates. We were able to get the feds to concur that the Authority was a successor to the mutuals and that the responsibility would be transferred to the Authority, which would assume fiscal responsibility. USDA attorneys and our attorneys went back and forth to get adequate documentation.

Then we had other liabilities, such as vehicle loans, maintenance contracts, small debts, and vendor obligations. Often one vendor had five different account numbers and five different state and federal ID numbers on record, so we had to consolidate them. Another problem was our assets. Some of the properties we thought we owned, we didn't own. "Ownership" had been based on a gentleman's agreement. For example, we had a well site at the old cotton gin in Mesquite that had no documentation. We discovered some very nice letters authorizing the well but the letters weren't signed. To make a long story short, in our discussions with the federal government, we had pledged assets we were not authorized to pledge, which stirred up other issues.

The transfer of the vehicles was another major problem. We now had to get state issued government plates. I never thought transferring an old '79 Ford pickup would be such a headache but some of the Board of Directors had really old vehicles that were recognizable by customers. Most of our pipe is underground and other than a water tank or a well house, people don't see anything out there except for the service vehicles that they recognize.

Other liquid assets were a big challenge. Some of the mutuals, in an effort to diversify their funds, would put money in Roswell and Albuquerque banks so we had bank accounts all over the state. We are still recovering some of that money. To make matters worse, many former board directors had moved money, and bankers want some kind of signed official document to release funds. Unless Governor Richardson can give us signed documentation, we have nothing other than the state statute. So there were problems with the consolidation of bank accounts and the Department of Finance and Administration wanted us to have all of money in one account before we could diversify it. Another kink occurred when the feds came in and said we had too much money in one

account and they would only protected up to \$300,000.

The legislation required us to determine who our constituents are. We had to define our membership by establishing eligibility criteria. Basically, property owners within our service area who receive our services are members. That excludes renters and other larger entities and corporations. We evolved from grass-roots small water systems and we do try to take advantage of that small-town feeling.

We have had problems with member documentation, for items like parcel ID numbers and map code numbers that do not match with county records. This means some people who thought they were members actually might not be. A lot of folks, especially in the colonias, don't own their properties. Many people, even if they paid off their land, have not filed the documents with the county. It is a big hurdle to overcome and we are required by July 2011 to establish boundaries for election purposes. Some existing water system boundaries must be cut up so we have an equal amount of representation. Some people don't want to switch from the Mesquite area to the La Mesa area or from the Mesquite area to the Vado area, but we are going to have to deal with these changes.

The county clerk's office has been very helpful in fitting us into a general election process and we are following the model that the Elephant Butte Irrigation District (EBID) uses for election purposes. We will need to deal with the whole procurement process of hiring election officials and entering into a contract with the county to run the election. Also, we will need to canvas elections.

We will have to go back and dissolve the memberships for the individual mutuals. Four of the five water systems have already gone through this process where they agreed to disband. But we must settle any outstanding liabilities with debt service or situations where individuals have filed suit against the mutuals for various reasons. Then we'll close out all of our agency information. Here we run into the problem of some money specifically naming a mutual recipient so we can't shut down the tax ID numbers or the federal ID numbers until we expend those funds. So even if a mutual isn't meeting anymore, a legal board must continue to exist. A whole gamut of documents must be closed, including approval and finalization of audits and budgets.

Our transition from individual mutual domestics to a single water Authority will allow us to rehabilitate and upgrade our existing system. We will be networking the large transmission lines. The Department of Finance and Administration folks asked us why we didn't simply install a large waterline all the way around our area so we could connect to it wherever we needed, but that is easier said than done. We have interconnected the large transmission line to about a third of our system, so we are all physically interconnected at this point.

We need to establish adequate storage with larger capacity and perhaps install booster pumps. We are being approached by a lot of areas that are not currently being served and now want water from us. Some are colonias with the same issues in their systems. We are operating under three different billing programs and will need to integrate that entire operation and create an intranet in an area where some don't even get wireless service.

Exploring alternative water resources will be a priority. We are looking at the possibility of surface water facilities partnerships. We've been approached by another mutual domestic north of Mesquite that wants to do a physical interconnect for emergency purposes. And operators from another mutual domestic located in the mountains north of Chaparral have contacted us. We will continue to expand and cement ourselves as we grow. We are hesitant to take on any new members until we are actually established and that is a big challenge. We have a lot of interest by others to join the Authority, but we aren't quite ready yet. We will be, but at this point, we are not.

Thank you.