

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Deputy of Civil Affairs

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy and Public Affairs

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Deputy of Criminal Affairs

December 16, 2016

Vadito Mutual Domestic Water Consumer Associations
Charles L. Gonzales, President
P.O. Box 217
Vadito, NM 87579

Alberto Romero, Vice President
P.O. Box 374
Penasco, NM 87553

Re: Open Meetings Act Complaint

Dear Mr. Gonzales & Mr. Romero:

We have reviewed the complaint submitted by Paul Pacheco alleging that the Vadito Mutual Domestic Water Consumers Association ("Vadito") violated the Open Meetings Act ("OMA"), NMSA 1978, §§ 10-15-1 to -4 (as amended through 2013), at its meetings held on March 1, 2016. On April 11, 2016, our office sent you an inquiry letter asking Vadito to respond to the allegations found in the complaint. We did not receive your response. On July 19, 2016, we sent an additional inquiry letter requesting a response to the allegations. This letter also stated, if our office did not receive a response, we would deem the allegations in the complaint true and accurate. We still have not received a response from Vadito. As such, based on the complaint, and the Vadito's failure to respond, and the applicable law, we conclude that the Vadito violated OMA when it improperly closed its March 1, 2016 meeting.

OMA's Provisions Governing Closed Meetings

Section 10-15-1(B) states: "All meetings ... any board, commission...of any state agency, any agency or authority of any county...or any political subdivision...are declared to be public meetings...." The OMA confirms as its purpose that members of the public "are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." NMSA 1978, § 10-15-1(A). Therefore, Vadito must always comply with these statutory mandates and with the specific procedures set forth in the OMA itself.

The exceptions from OMA's public meeting requirements are listed in Section 10-15-1(H). Subsection H prescribes the circumstances under which certain meetings or portions of meetings are not subject to the open meetings and minute-taking requirements of the OMA. Because the basic policy established by OMA favors open meetings, the OMA must be strictly followed when meetings are to be closed. As a general rule, meetings may only be closed when the matter to be considered falls within one of the enumerated exceptions defined in the OMA. Aside from these limited circumstances, however, no exception to the Open Meetings Act can be implied.

Before meeting in closed session, a public body must follow the procedures specified in Section 10-15-1(I). When a public body votes to close a meeting pursuant to an exception contained in Subsection (H), OMA requires that the motion to close state the "authority for the closure and the subject to be discussed ... with reasonable specificity." *Id.* A roll call vote of the members present must be taken on the motion and the vote of each individual member recorded in the minutes. If the motion is approved, the public body shall convene in closed session to consider only the item or items covered by the motion voted on prior to closing the meeting.

Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. *See* Section 10-15-1(J).

Vadito Closed its March 1, 2016 Meeting Improperly

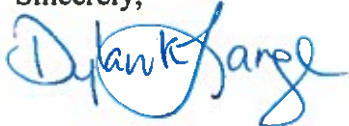
The allegations in the complaint center on the meeting held on March 1, 2016. During that meeting Vadito did not follow the required closing procedures to close a meeting and closed the meeting to discuss an issue not covered by one of the exceptions to OMA. Because the Vadito closed its March 1, 2016, improperly, and discussed matters in closed session that were not excluded from OMA's requirement for open, public meetings, Vadito violated the OMA.

The OMA provides that no action taken by a public body "shall be valid unless taken or made at a meeting held in accordance with the requirements of ... Section 10-15-1." *See* OMA § 10-15-3(A). Vadito violated numerous section of the OMA. However, a public body can legally correct prior mistakes and effectively give legal force to its prior invalid actions. *See* OMA § 10-15-3(B); Open Meetings Act Compliance Guide, pp. 38-42. To cure the OMA violations discussed above, Vadito should convene and hold another meeting in accordance with Section 10-15-1, discuss the specific matters and summarize the comments made at the March 1, 2016 meeting at which the OMA was violated, and retake any actions or vote again on the matters in which the board acted or voted in violation of the OMA. *See* OMA § 10-15-3(B). Vadito should also give proper notice of such a meeting and timely provide an agenda pursuant to Section 10-15-1(D) and (F). **After the conclusion of your next scheduled meeting, please provide me with a copy of the notice, agenda and meeting minutes of the meeting where the Vadito takes the corrective action described here.**

In enforcing the law, our Office educates public bodies about their obligations under, and how they can comply with, the OMA. We trust that Vadito will take all steps necessary to ensure its future compliance with the OMA and to better inform the public as to what Vadito is doing. If you have questions about the specific matters addressed in this letter, please let me know.

If you have any questions regarding this determination, please let me know. I can be reached by phone at (505) 490-4847 or email at dlange@nmag.gov.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: Paul Pacheco

OPEN MEETING ACT ("OMA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

Your Contact Information:

First Name: Paul Last Name: Pacheco

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Vadito MOWCA Vadito (TAOS County)

Specific date(s) of OMA violation(s): March 1, 2016

ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

DEFICIENCIES IN NOTICE OF THE MEETING

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

AGENDA

- Agenda was not available seventy-two (72) hours prior to the meeting

- Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity
- Public body took action on items that were not listed on the agenda
- In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

MINUTES

- The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent
- The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken
- A draft copy of the minutes was not available within ten (10) working days of the meeting
- The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

CLOSED MEETINGS

- The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)
- The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions
- Matters not stated in the motion to close were discussed in the closed session.
- Final action was taken by the public body in the closed meeting

CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

- A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting
- A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)

___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS: Please provide a description of the actions taken by the public body that violated the OMA, including specific dates and times, and why you believe the OMA has been violated.

on 3-1-16 I attended the Vadito MOWCA monthly meeting. When it was time for treasurer report the Pres. Charlie C. asked the treasurer J. D. Romero if he was going to mention any names J. D. responded he was, on passed meeting they read the members names that are delinquent. The pres. then said I would have to leave the room because he was moving to a closed meeting. I mentioned it was not a good reason as per open meeting act he didn't want to hear it. This is the 2nd time this has happen the 1st time was approx 10 months ago in 2015 the pres closed the meeting saying me & another person had to leave the room for a closed meeting later I found out they were negotiating large amount owed by a member which the amount was reduced. Both times the pres. made the decision on his own the board of directors weren't involved in the decision.

ADDITIONAL INFORMATION: Please attach any documentation or evidence you have regarding the alleged OMA violation.



Attorney General of New Mexico

HECTOR H. BALDERAS
Attorney General

April 11, 2016

Charles L. Gonzales, President
Vadito Mutual Domestic Water Consumers Association
P.O. Box 217
Vadito, NM 87579

Alberto Romero, Vice President
Vadito Mutual Domestic Water Consumers Association
P.O. Box 374
Peñasco, NM 87553

Re: Open Meetings Act Complaint

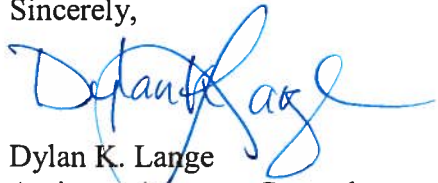
Dear Mr. Gonzales and Mr. Romero:

The Office of the Attorney General, Open Government Division (“OGD”) has received a complaint alleging violations of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (2013) by Vadito Mutual Domestic Water Consumer Association (“Vadito”), in its March 1, 2016 meeting, by not properly closing the meeting in accordance with the OMA. The OGD is charged with enforcement of the OMA. *See*, NMSA 1978, Section 10-15-3(B). In order to properly evaluate the allegations, we request that you provide a response to all allegations found in the OMA complaint. Please also include the requested documents and a response to the following:

1. Did Vadito close their March 1, 2016 meeting correctly pursuant to 10-15-1(I)? Please provide the meeting minutes and agenda from the March 1 meeting.
2. Under which OMA exception did Vadito rely in closing its meeting? Please provide any further legal authority relied on by Vadito in closing its meeting.
3. Did Vadito limit its discussion to the matters it stated in its motion to enter into executive session?
4. Did Vadito further comply with Section 15-10-1(J) when returning from executive session?
5. Please provide any other information, documentation, or statutory authority relied upon by Vadito that is relevant to the OGD inquiry into these potential violations.

We have enclosed a copy of the complaint for your review. Please provide the requested information and any response by April 21, 2016. Be advised that this complaint and your response to the matter will be treated as a public record, subject to inspection. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dylan K. Lange". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dylan K. Lange
Assistant Attorney General

cc: Paul Pacheco

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CARLA MARTINEZ
Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy and Public Affairs

July 19, 2016

Charles L. Gonzales, President
Vadito Mutual Domestic Water Consumers Association
P.O. Box 217
Vadito, NM 87579

Alberto Romero, Vice President
Vadito Mutual Domestic Water Consumers Association
P.O. Box 374
Penasco, NM 87553

RE: Open Meetings Act Complaint

Dear Sirs:

The Office of the Attorney General, Open Government Division (“OGD”) received a complaint alleging violations of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (2013) by Vadito Mutual Domestic Water & Sewer Association (“Vadito”), in its March 1, 2016 meeting, by not properly closing the meeting in accordance with the OMA. In order to properly evaluate the allegations, we requested that you provide a response to all allegations found in the OMA complaint attached in an April 11, 2016 letter. We also requested that you include documents and responses to the following:

1. Did Vadito close their March 1, 2016 meeting correctly pursuant to 10-15-1(I)? Please provide the meeting minutes and agenda from the March 1 meeting.
2. Under which OMA exception did Vadito rely in closing its meeting? Please provide any further legal authority relied on by Vadito in closing its meeting.
3. Did Vadito limit its discussion to the matters it stated in its motion to enter into executive session?
4. Did Vadito further comply with Section 15-10-1(J) when returning from executive session?
5. Please provide any other information, documentation, or statutory authority relied upon by Vadito that is relevant to the OGD inquiry into these potential violations.

To date we have received no response from Vadito regarding the complaint or its allegations. We

have made no conclusions at this point, but if we still have not received a formal response by August 5, 2016, we will deem the allegations true and accurate. Please note that failure to respond will be noted in the file and all complaints are subject to inspection and considered a public record.

Vadito should bear in mind that the OMA provides consequences for failure to comply with its requirements. If you have any questions, please do not hesitate to contact me.

Sincerely,

Dylan K. Lange
Assistant Attorney General

Enclosure

cc: Paul Pacheco