

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
WORK SESSION HELD ON
TUESDAY, APRIL 15, 2025**

A work session of the Cochise County Board of Supervisors was held on Tuesday, April 15, 2025, at 9:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Frank Antenori, Chairman; Tom Crosby, Vice-Chairman; Kathleen L. Gomez, Supervisor

Staff Present: Sharon Gilman, Interim County Administrator
Joe Casey, Interim Deputy County Administrator
Paul Correa, Chief Civil Deputy County Attorney
Lara Loewenheim, Clerk of the Board

Chairman Antenori called the meeting to order at 9:00 a.m.

ITEMS FOR DISCUSSION

Board of Supervisors

1. Discussion and Possible Direction Regarding the Tabled Agenda Item from the March 11, 2025, Board of Supervisors Meeting, for the Water Franchise Agreement for Cactus State Utility Company, LLC., to Clarify Language in the Agreement.

Mr. Correa presented this item. Mr. Correa introduced a previously tabled item regarding a franchise agreement for Cactus State Utility Company, LLC. He explained that state law requires the Board to enter into such agreements if a utility seeks to use county right-of-way (ROW), and the Board has broad authority to impose conditions for public safety and welfare. He referenced ARS 40-283 and discussed existing language in older agreements allowing the county to amend terms and potentially impose future fees, though currently no such authority exists.

The Board discussed the idea of requiring a public vote before any franchise fees could be imposed. The Board raised concerns about how such fees, like impact fees, often end up as pass-through costs to consumers, whether in utility bills or home prices. The conversation also touched on perceptions that builders or utility companies can afford the fees, but ultimately those costs are shifted to the public.

The Board clarified that no franchise fees currently exist, but discussed how such fees would be handled if implemented. The idea was raised that a utility would pay the fee, which could go into the general fund or possibly a dedicated fund for remediation or risk-related expenses. Vice-Chairman Crosby suggested a voter approval before imposing any fee, along with a mandate that the revenue be specifically identified and used only for designated purposes.

Mr. Correa stated that his role involves risk analysis, especially concerning the county's rights-of-way. He outlined potential risks such as environmental damage, company bankruptcy, or abandoned infrastructure. To address concerns about franchise fee language, he suggested simplifying the agreement by removing a

sentence and keeping language that directly reflects the statute, allowing flexibility for future action.

The Board discussed the importance of creating a separate resolution that would require any future franchise fee to be approved by voters through a ballot measure. The Board acknowledged that while a future Board could overturn the resolution, doing so would involve a formal process and could draw public attention.

Mr. Correa clarified that striking the bolded sentence in the memo, paragraph 10, would remove mention of franchise fees from the agreement but would not prevent the county from implementing such fees in the future. He stated the removal simply avoids referencing fees in the agreement itself and any actual decision to impose fees would still be subject to the separate resolution, which would require a public vote.

In response to the Board, Ms. Gilman explained that removing language about franchise fees from the contract could limit future flexibility. If state law later allows counties to impose such fees, having a contract that says otherwise could prevent enforcement.

In response to the Board, Mr. Correa clarified that the proposed language in the sample combined clause addresses contingencies, including those related to franchise fees. He highlighted that the clause mirrors statutory language and also adds provisions for financial assurances, such as bonds or letters of credit, in case of risks like environmental contamination or abandoned infrastructure.

The Board discussed the process for moving forward with the franchise agreement and how to handle franchise fees. The Board also clarified that the franchise fee issue would only apply to the specific service area affected, not countywide, and would be placed on the ballot for the consumers within that service area. The Board would like a resolution to be drafted to ensure that, if the legislature allows franchise fees in the future, they would be subject to voter approval and the new clause would also specify that franchise fees would not be charged without voter consent.

Chairman Antenori adjourned the meeting at 9:43 a.m.

APPROVED:

Frank Antenori, Chairman

ATTEST:

Lara Loewenheim, Clerk of the Board