

RESOLUTION NO. 2006-57

A RESOLUTION ADOPTING A SANTA FE COUNTY WATER RESOURCES DEPARTMENT LINE EXTENSION AND WATER SERVICE POLICY

WHEREAS, pursuant to the Water Resources Agreement by and Between Santa Fe County and the City of Santa Fe (2005), the City of Santa Fe agreed to provide wholesale water deliveries to Santa Fe County in the amount of 500 acre feet per year (in perpetuity) and an additional 375 acre feet per year between the year 2005 and the year that the Buckman Direct Diversion Project becomes operational;

WHEREAS, of the 875 acre feet of wholesale water deliveries that the County may receive from the City of Santa Fe prior to the date the Buckman Direct Diversion becomes operational, approximately 700 acre feet per year has already been committed by the County through Water Service Agreements, yet the County Water Resources Department in calendar 2005 delivered 324.68 acre feet per year to County customers;

WHEREAS, under current practice, the County provides water to new customers through a system of water rights transfers and parallel water service agreements;

WHEREAS, the form of water service agreements has varied widely, but has become more consistent in recent years, and a common element of virtually all water service agreements is the "allocation" of available water which is reserved to the holder of the water service agreement, whether the holder of the water service agreement actually puts the water to beneficial use or not;

WHEREAS, the practice as described above has resulted in an apparent shortage of water and has also apparently created the possibility of speculation in water service agreements and County allocations of available water, thus reducing the amount of water needed for the County to achieve its stated purposes of providing affordable housing for its citizens and assuring that the County's growth management objectives are met;

WHEREAS, in order to assure that the County's stated objectives as described above are met, significant amendments to existing practices and policies are needed to ensure that water is put to beneficial use, that water is targeted to affordable housing, that water is targeted towards persons who will put it to use, and that speculation in water and water service agreements is avoided; and

WHEREAS, the Board of County Commissioners desires to put such policies in place, effective immediately.

2006 APR 11 11:41 AM
SANTA FE COUNTY CLERK'S OFFICE



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TATE OF NEW MEXICO) ss PAGES: 13
Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of April, A D , 2006 at 11 41
and Was Duly Recorded as Instrument # 1427655
of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy *Valerie Espinoza* County Clerk, Santa Fe, NM

IT IS THEREFORE RESOLVED, AS FOLLOWS:

1. The Board of County Commissioners of Santa Fe County hereby adopts Attachment A hereto as its Water Resources Department Line Extension and Water Service Policy.

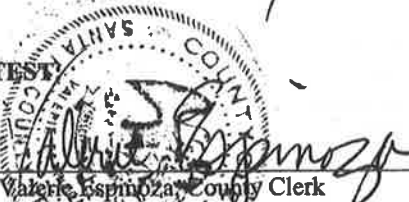
2. Attachment A shall henceforth govern new water service by the by Santa Fe County Water Resources Department, and shall supplant the current practice.


3. Any resolution or policy of the County that is inconsistent herewith shall be, and hereby is, rescinded.

PASSED, APPROVED AND ADOPTED this 28th day of March, 2006.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO**

By 
Harry B. Montoya, Chair

ATTEST
By 
Valerie Espinoza, County Clerk
Approved as to Form

By 
Stephen C. Ross, County Attorney

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CLERK'S OFFICE
3/28/2006

ATTACHMENT A

SANTA FE COUNTY WATER RESOURCES DEPARTMENT LINE EXTENSION AND
WATER SERVICE POLICY

I. PURPOSE.

The purpose of this Document is to guide Santa Fe County staff and interested persons on the procedures and principles that will be applied to applications for water service from the Santa Fe County Water Resources Department, water line extensions, allocation of scarce water resources, and areas served by the Department with water service.

II. DEFINITIONS.

The following definitions shall apply to terms and phrases used in this document:

- A. "Afy" means "acre feet per year."
- B. "Applicant" means a person, corporation, unincorporated association or other legal entity who seeks water service through the Santa Fe County Water Resources Department.
- C. "Application" shall mean the form used by Applicants to apply for New Water Deliveries from the Santa Fe County Water Resources Department.
- D. "Board" means the Board of County Commissioners of Santa Fe County.
- E. "Customer" means a person, corporation, unincorporated association or other legal entity who receives water service through the Santa Fe County Water Resources Department.
- F. "Department" means the Santa Fe County Water Resources Department.
- G. "Line Extension" means an extension of the Department's existing water system or facilities, which extension may include but is not limited to planning, design and construction of transmission and distribution line(s) with related appurtenances.
- H. "New Water Deliveries" means deliveries of water that are applied for after the effective date of this document.
- I. "Project" means a residential or commercial development that was platted or, in the case of a commercial development, that received final approval prior to the effective date of this document.
- J. "Service Area" means the territory which is eligible for water service by the Department as set forth by separate Resolution of the Board.

SEE CLERK RECEPTION/08/2006

K. "Water Delivery Agreement" is the agreement that grants an Applicant water deliveries pursuant to the approved schedule.

L. Water Resources Agreement means the "Water Resources Agreement between the City of Santa Fe and Santa Fe County."

M. "Year" means calendar year.

III. WATER SERVICE: GENERAL.

A. New Water Deliveries may be provided to an Applicant under the conditions set forth herein.

B. New water service shall be provided through a Water Delivery Agreement after deliveries are scheduled as set forth herein. The form and content of a Water Delivery Agreement shall be specified by the Department, and all such agreements shall be written on a form prepared by the Department.

C. Water service shall only be provided to Applicants within an area designated for water service.

D. A Water Delivery Agreement for New Water Deliveries will only be executed if the proposed deliveries are contained on the schedule of deliveries prepared by the County on an annual basis, as set forth in Article V.

E. Water Delivery Agreements shall not be assignable.

F. Nothing herein shall be interpreted as obligating the Department or the County to provide water service. Any oral representation by any person, whether or not employed by the County or the Department, that water service will be provided to any person not holding a valid Water Delivery Agreement shall be void.

IV. WATER SERVICE.

A. Sources of Water and Water Rights

1. Santa Fe County maintains a portfolio of water rights which are matched against physical water deliveries pursuant to State law. Nothing herein shall permit deliveries of water that are not matched with appropriate water rights, and Santa Fe County shall be the sole judge of whether adequate water rights exist at any particular time to serve an Application. Santa Fe County may deny any Application on the grounds that adequate water rights are not available to serve the Application.

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2. Santa Fe County delivers physical water from a limited number of sources. Santa Fe County, through the "Water Resources Agreement Between the City of Santa Fe and Santa Fe County," has the right to receive 500 afy from the City of Santa Fe in perpetuity. Most of this water has already been obligated through existing water service agreements, and Santa Fe County allocations for economic development and affordable housing. The County, through the Water Resources Agreement, has the right to receive an additional 375 afy of water deliveries from the City of Santa Fe until the Buckman Direct Diversion, a joint City-County venture to divert San Juan-Chama contract water to the City, the County and Las Campanas, is completed. The City's commitment of 375 afy will cease in approximately 2009 when the Buckman Direct Diversion becomes operational and therefore cannot be considered to be a permanent and perpetual source of water. The County has applied to divert its 375 afy of San Juan-Chama water rights from the Buckman Direct Diversion. After completion of the Buckman Direct Diversion, the County will have the right to divert up to 1,700 afy from the Buckman Direct Diversion, and has the capacity to receive 500 afy of perpetual deliveries from the City of Santa Fe. Applicants may therefore expect that supplies of physical water may be limited until the Buckman Direct Diversion is completed. The County's decisions on allocating any part of the 375 afy supplied by the City of Santa Fe, given the uncertainty of deliveries after 2009, shall be final. The County may deny any Application on the grounds that adequate physical water is not available to serve the Application.

3. Because the County holds a limited amount of water rights, Applicants for New Water Deliveries may be required to deposit or dedicate water rights with the County to match against expected deliveries (see Section X, below), pay the County to acquire water rights to match against deliveries that are sought, pay a significant initial service fee, or pay other fees to the County to assist the County to provide a permanent and perpetual water supply. In addition, Applicants for New Water Deliveries may be required to pay the costs of infrastructure (such as line extensions) to supply physical water to projects, and to pay for necessary improvements to County infrastructure to serve an Applicant.

B. Annual Schedule of New Water Deliveries

1. Twice each year, the County shall promulgate a schedule of New Water Deliveries for the upcoming six months, which shall be approved by Resolution of the Board upon recommendation of the Department. The approved schedule shall govern New Water Deliveries over the following year.

2. To assist in preparing the annual schedule of deliveries, the Department shall maintain an accounting of available physical water, water rights, allocations established through a valid water service agreements in existence as of the effective date of this document, line losses, allocations established for affordable housing pursuant to Ordinance No. 2006-02, other allocations made to County sponsored projects or for County discretionary use, and deliveries that were made in the preceding year. When total deliveries of water in a given year to all customers of the County do not exceed 500 afy, the Department shall set aside no less than ten percent of the water that is deliverable that year for County purposes. When total deliveries of water in a given year exceed 500 afy, the Department shall set aside no less than 50 acre feet plus five percent of the water that is deliverable that year for County purposes. The Department shall

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present the accounting to the Board along with its recommendations for the upcoming years' schedule.

3. Once the schedule is approved as described in the previous paragraph, any allocations established through valid water service agreements in existence as of the effective date of this document, line losses, allocations established for affordable housing pursuant to Ordinance No. 2006-02, other allocations made to County sponsored projects or for County discretionary use, and deliveries that were made in the preceding year shall not be available for distribution as New Water Deliveries.

4. Persons desiring New Water Deliveries during the upcoming year and persons holding valid water service agreements in existence as of the effective date of this document, shall file an Application seeking new water service with the Department on or before the date set for the filing of such applications by the Department. The Application shall be made on a form supplied by the Department, and shall be complete; incomplete Applications shall not be accepted. Holders of water service agreements that were executed prior to the effective date of this document must apply for each new delivery, and the deliveries shall be included on the annual schedule.

5. Based on its accounting, the Department may declare that water to service pending Applications is not available, either because of the unavailability of physical water or because insufficient water rights exist to justify deliveries. In this event, the Department shall, during a regular meeting, advise the Board of the problem and the inability to provide service. The Board may suspend issuance of a schedule or schedules for New Water Deliveries pursuant to Section IV (B) (1), until the problem is resolved, or issue a schedule based on its prioritization of water that is available.

6. If, based on its accounting, the Department determines that insufficient physical water or water rights exist to serve existing allocations plus scheduled deliveries for the upcoming year and a declaration of unavailability is made pursuant to the previous paragraph, the Department shall reject any pending Application, but shall keep the Application on file. If the problem that resulted in the declaration is corrected within one year, the Application may be processed. If water becomes available more than one year after submission of the Application, a new Application will be required.

7. Any New Water Deliveries that are scheduled for delivery that are not made within the one-year period of the schedule shall be cancelled and the underlying Water Delivery Agreement shall automatically terminate. Subsequent deliveries will require a new Application, schedule delivery and Water Delivery Agreement.

8. No deliveries will be made that are not consistent with the annual schedule unless extreme hardship is first demonstrated to the Board.

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C. Prioritization of new deliveries

1. When there is more demand for New Water Deliveries for the upcoming fiscal year than the Department can deliver, and finding has been made pursuant to Section IV (B) (6), above, the County may allocate deliveries in any reasonable manner; allocation of water deemed to be available may be allocated among pending applications in any reasonable manner taking into consideration the following factors:

a. [reserved]

b. A project that partially developed a phase under a previous year's schedule and that requires water service to prevent economic infeasibility of the phase may receive priority.

c. A project that employs water conservation measures above and beyond what are already required by County ordinance, or a project that employs energy efficiency measures may receive priority.

d. Existing residential customers that do not receive County or community water service that suffer water supply quantity and/or quality problems (e.g., well requiring immediate work to meet demand or nitrate concentration greater than 10mg/l) or reasonably believe that water quantity or quality problems threaten water supplies (e.g., well water level declining and likely to require well work within two years or nitrate concentration between 4 and 10 mg/l), may be entitled to priority.

e. A project that provides both water and wastewater service may be entitled to priority.

f. A project within a growth priority area of the County, as established by planning documents adopted by the Board, may receive priority.

2. If prioritization becomes necessary, the Department shall provide recommendations to the Board concerning the relevant factors to be considered, the proper application of the factors to the facts of the Application, and the amount of water believed to be available for scheduling. In addition, the Department shall provide recommendations concerning the Department's efforts to increase future supplies.

V. WATER SERVICE: LINE EXTENSIONS.

A. Whenever a water service line is required in order for the Department to be able to deliver water to customers, an Applicant for New Water Deliveries shall be responsible for constructing infrastructure to provide the water service and for constructing any necessary improvements to the Department's infrastructure.

B. A valid Water Delivery Agreement or a separate line extension agreement shall be required prior to beginning construction of any proposed infrastructure.

C. The Applicant shall plan, design and construct the proposed line extension project. The planning, design work, and construction shall conform to this document, all other applicable laws, standards, Ordinances, Resolutions and regulations of the County, and the standards established by the American Water Works Association (AWWA). Prior to commencing construction of any line extension, engineering plans shall be prepared and certified by a Licensed Professional Engineer in the State of New Mexico and submitted to the Department for review and approval. The Department may disapprove any engineering plans that do not comply with this Resolution and the standards set forth herein. A line extension may be phased, but each phase must independently comply with this Resolution. Construction may commence only after the Department has issued its written approval of the engineering plans. Construction of the line extension project must conform to the approved plans, and shall meet all applicable standards, and shall be performed in a workmanlike manner consistent with standards existing within Santa Fe County. Personnel of the Department shall be permitted reasonable access to the construction site during periods when construction is taking place, and shall be permitted to inspect the project and to issue relevant orders relating to the project, including stop work orders for work that does not conform to the approved plans, requiring that work be constructed according to the approved plans, and requiring that work meet all applicable codes and standards.

D. The cost of planning, designing, constructing and inspecting a line extension project shall be the sole responsibility of the Applicant. Upon completion of construction of the work, the County may accept the work. Acceptance of the line extension project shall be made only by the Director of the Water Resources Department or a designee, and shall be made in writing. After acceptance, the applicant shall ensure that the line extension project and all of its components, including water lines, meters, trunks, stubs, fire hydrants, pumps and other equipment, become the property of Santa Fe County through a separate deed or, as appropriate, plat dedication. Thereafter, the line extension project shall become the property of Santa Fe County and shall be operated and maintained by the Department.

E. The Applicant shall grant to the County, without charge, any and all permanent easements and rights-of-way over and across the Applicant's property on which the line extension project, and any component thereof, is located. Such grant shall be made through the appropriate plat dedication or instrument, and shall be recorded in the office of the Santa Fe County Clerk. The easements and rights-of-way may be located, to the extent possible considering cost and engineering feasibility, in a manner that avoids unreasonable interference with the Applicant's contemplated uses of its property, in a way that complements the contemplated uses, and in accordance with sound construction and engineering standards and practices. In the event that easements and rights-of-way must be acquired from third parties who are not parties to this Agreement in order to complete the line extension project, acquisition of such easements and rights-of-way shall be the sole responsibility of the Applicant.

F. After completion of the line extension project as set forth in the previous paragraphs, the Applicant may be entitled to receive water service pursuant to a Water Delivery Agreement. All such service must be scheduled pursuant to Section IV (B) (1), above, and shall be subject to the prevailing service rates, as published from time to time by the Water Resources Department.

B. Once an application is made to amend the Department's service area, the Department shall analyze the request and shall determine the technical merits of the application and evaluate the cost of providing service within the area requested. The analysis shall be presented to the Board for consideration.

C. The Board shall consider the application, the report of the Department, and the statements of persons supporting or opposing the application. The Board may base its decision whether to amend a service area on the ability of the County to service the proposed service area, the costs of providing such service, the revenue expected to be received as a result of the service so provided, and other relevant facts.

VIII. BULK WATER SERVICE TO COMMUNITY SYSTEMS.

A. The County may provide water service to community water systems, mutual domestic water associations, cooperative water associations, water and sanitation districts, and other similar entities on a bulk service basis.

B. All requests for such service shall be presented to the Board, and shall be documented pursuant to a Joint Powers Agreement or other appropriate agreement.

C. The rate to be charged for water provided pursuant to this Section shall be the bulk service rate set forth in Department's rate schedules.

D. Deliveries made pursuant to this Section shall be scheduled as set forth in Section IV (B), herein.

IX. ALLOCATION LIMITATIONS.

A. Allocations of capacity for New Water Deliveries shall be limited as set forth on the schedule in any given year, and an Applicant, notwithstanding any transfer of water rights or cash, shall not be entitled to water in any upcoming year unless water deliveries are scheduled and have commenced pursuant to the schedule.

B. In no event shall a residential property be scheduled to receive more than 0.25 afy per dwelling unit (including guest homes, if any) in any given year.

C. New Water Deliveries to any residential development or commercial development shall be limited to 35 afy each year absent extraordinary conditions, except for deliveries made under water service agreements executed prior to the effective date of this document.

D. In no event shall any property be scheduled to receive water in excess of the amount of water rights held by the County to match against the deliveries.

E. For residential subdivisions and commercial developments, an allocation for a given amount of water pursuant to a Water Delivery Agreement will be based on the Applicant's expected water demand for the project, which will in turn be based on the Applicant's projected water budget. Although the Department, and in many cases the County Land Use Department, reviews the proposed water budget for reasonableness, the Department's review shall not be construed as legitimizing the amount of the request for purposes of land use approvals. In the

event that the actual use exceeds the allocation and the amounts set forth in the Water Delivery Agreement, the Department shall take steps to limit actual water use to the amount agreed upon or require the Applicant to supply additional water rights to support deliveries.

X. WATER RIGHTS AND CASH PAYMENTS.

A. At the time of execution of a Water Delivery Agreement, or before at the Applicant's election, an Applicant shall be required to deposit with the County water rights (or the cash equivalent at the County's option to the value of the water rights required, both as established by the County), to support deliveries pursuant to the Water Delivery Agreement, plus 20%. Using a dedication form provided by the Department, an Applicant may deposit water rights with the County at any time that are intended to back up water deliveries in future years or to satisfy requirements under the Land Development Code, with the understanding that deposit of said water rights does not create a delivery obligation on the part of the County to delivery water in subsequent years otherwise than as set forth in this document and the annual schedules issued by the County pursuant to the provisions herein. If the Applicant elects to make a cash deposit in lieu of water rights, deliveries will not be scheduled until the County has obtained water rights to match against scheduled deliveries.

B. If water rights are deposited, no later than upon execution of the Water Delivery Agreement, the Applicant shall prepare and submit to the County an application for the transfer of water rights. The water rights transferred pursuant to this paragraph shall be used for offset purposes at the City's Buckman well field pursuant to the "Water Resources Agreement between the City of Santa Fe and Santa Fe County," or transferred to another point of diversion designated by the County. Concurrent with the application to transfer the water rights to the point of diversion, the Applicant shall convey the water rights to the County and obtain approval of a transfer through the Office of the State Engineer. The Applicant shall pay all costs associated with these proceedings. If the water rights are transferred to the Buckman Well Field, the Applicant shall pay the additional cost, if any, necessary to transfer the water rights from the Buckman Well Field to the Buckman Direct Diversion project at any time, if requested to do so by the County. If the County elects to undertake the transfers itself, the Applicant shall reimburse the County for all costs associated with the proceedings before the Office of the State Engineer, and may be required to provide advance payment of the costs.

C. Upon the final, non-appealable issuance of an order approving the application for transfer, the Applicant shall inform the County and provide a copy of the order. If the application is denied, the Applicant shall provide adequate substitute water rights.

D. Any return flow credits that may be approved by the Office of the State Engineer (hereinafter "the OSE") that are associated with the water rights shall belong to the County.

E. If required by the Office of the State Engineer, the Applicant shall acquire and transfer ownership to the County sufficient water rights within an affected tributary system sufficient to offset depletion of the tributary surface flows, as determined by the OSE, and associated with the pumping of the transferred water rights from the diversion point.

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F. If water service is not scheduled and the Applicant proposes to terminate the Water Delivery Agreement, the water rights may be returned to the Applicant and the Applicant shall be responsible for the costs of effectuating the transfer, or, at the County's sole option, the County may purchase the water rights for their-then fair market value.

XI. THE COUNTY'S DELIVERY OBLIGATIONS UNDER A WATER DELIVERY AGREEMENT

A. Once deliveries have been placed on the annual schedule and a Water Delivery Agreement has been executed, and so long as the Customer or Applicant has fulfilled all of its obligations as set forth in the relevant agreement, then, for so long as the Customer or Applicant complies with such obligations, the Department shall provide water service to the Customer or Applicant and successors-in-interest.

B. The Department shall endeavor, by all reasonable means, to deliver the agreed-upon amount of water, suitable in quality for municipal, domestic and industrial use, at pressures meeting the Customer or Applicant's needs.

C. Water service will be provided in accordance with all of the Department's policies, and subject to all the established fees, costs and expenses required by ordinances, resolutions, regulations, contractual conditions, as amended from time to time.

D. In the event of a shortage of water supply or an interruption of water supply due to operational constraints, insufficient water rights, or a lack of physical water, the Department may curtail usage or customers in accordance with County ordinances and regulations. The County shall have no liability for any reduction in water deliveries due to water supply shortages or an interruption of water supply due to operational constraints.

E. Once deliveries pursuant to a Water Delivery Agreement begin, use of any domestic well associated with the premises shall cease and the well plugged and abandoned. Any water rights associated with such a domestic well shall, to the extent permitted by the Office of the State Engineer, be transferred to the County.

XII. CHARGES AND FEES

A. All customers of the Department shall pay fees and charges associated with water service as set forth in schedules promulgated from time to time by the Department and approved by the Board. The Department may assess standby fees, meter fees, impact fees, connection fees, inspection fees, and engineering fees on any particular project.

B. [reserved]

C. The Applicant's obligation to pay service charges will cease when a sufficient number of dwelling units and commercial properties have used water for a period of time sufficient for the County to determine whether the approved water budget reflects actual usage. Release of the Customer from its obligation to pay service charges will be at the sole discretion of the County but such release shall not be unreasonably withheld.

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XIII. DEVELOPMENT APPROVALS

A. Nothing herein shall be construed as a commitment by the Department or the County to bind or obligate the County, its Elected Officials, boards, committees, employees and agents to take any action, including but not limited to: acceptance of any application or other documents for filing; processing of any application or proposal; approval of any kind of land use or development proposal; issuance of any license or permit; or any other action, whether discretionary, ministerial or otherwise, with respect to any proposal or application or other request by the Applicant or anyone on the Applicant's behalf. The Applicant shall acknowledge in a Water Delivery Agreement, that the County's obligations as described in this Agreement are totally independent of any other action or decision-making process of the County and have no bearing whatsoever upon the exercise of any authority or discretion of the County, its Elected Officials, boards, committees, employees, or agents. The Applicant shall be solely and fully responsible for obtaining any and all licenses, permits, approvals or other consents required enabling it to utilize the water committed to be delivered by the County hereunder. Nothing herein constitutes a commitment, promise, assurance or other favorable indication that any such license; permit, approval or other consent will in fact occur or be granted.

B. Applicants shall comply with any conditions of approval and covenants applicable to the development engaged in, and Water Delivery Agreements may be conditioned upon compliance with same.

C. The County may include additional conditions in a Water Delivery Agreement when necessary to address particular circumstances.

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