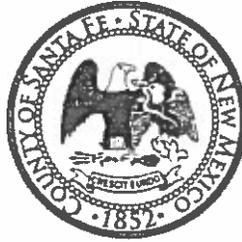


**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**Date:** January 13, 2015  
**To:** Board of County Commissioners  
**From:** Penny Ellis-Green, Growth Management Director *PEG*  
**Via:** Katherine Miller, County Manager  
**Re:** Growth Management Monthly Report November and December 2014

---

This report is a summary of projects for Growth Management with statistics from November and December 2014. Growth Management consists of 4 divisions; Planning, Economic Development, GIS and Building and Development Services.

### **Planning Division**

#### **Affordable Housing**

##### **Home Sales**

One new affordable home in Rancho Viejo was closed, the buyer was a Tier 2 buyer, earning under 80% of Area Median Income.

##### **Happy Roofs**

The BCC approved a Resolution which enabled a change in regulations in the Happy Roofs program which would increase the amount of assistance that can be given from \$10,000 to \$14,999, increase the length of the affordability period from 5 to 10 years, and limit recipients to low income households with incomes under 80% AMI. One Happy Roofs project for \$10,000 in assistance was initiated under the previous ordinance and regulations.

##### **Down Payment Assistance**

A Tier 3 buyer of an affordable home in Rancho Viejo applied for and was approved for \$10,000 in down payment assistance.

##### **Inclusionary Zoning**

Staff proposed an amendment to ordinance 2012-1 which would eliminate the ten year reduction in affordability lien. The BCC approved publishing title and general summary of this proposed

ordinance amendment at its November 25 meeting. The first public hearing of this Ordinance was held on January 13, 2015, the second public hearing is scheduled for February 12, 2015.

### **Open Space**

The Open Space planner attended the ESRI Southwest User Conference in Santa Fe and is using that training to create Story Maps for the Open Space and Trails program.

Earth Analytics has finalized the models for the GIS Resources Inventory Assessment to help identify potential property for open spaces and trails.

COLTPAC discussed publicity and outreach options for Open Space and Trails projects.

The Santa Fe Traditional Community Collaborative met to discuss planning project for River.

### **Frontier Community Initiative**

Galisteo Community members and planning staff began working with Charlie Deans, Principle of Community by Design on a revitalization plan for the Galisteo village core area as part of NMEDD Frontier Community Initiative.

### **Chimayo Community Plan**

Chimayó Youth Vision Workshop -Staff in collaboration with UNM's Community and Regional Planning Program Center for La Raza Planning facilitated the second of three youth vision workshops in Chimayó.

### **NCRTD Report**

The NCRTD Board met on November 7<sup>th</sup> and December 5<sup>th</sup>, the agendas are attached.

### **SLDC**

**Community Districts** - Staff has continued the internal review process of existing community plans and Ordinances. Advertising has been completed to establish planning committees in the existing community planning areas, a Resolution will be brought forward to the BCC at the end of January to create these committees and allow staff to move forward with working with the communities to create Overlay Districts for Chapter 9 of the SLDC, zoning maps for their area and make any required plan updates to ensure consistency with the SGMP.

**Fees** – no comments have been received on the proposed fee ordinance. Staff plans to bring this ordinance forward to the Board within the next few months.

**DCIs** – A contract has been awarded to Consensus Planning to assist with the drafting of the DCI section of the SLDC and any required SGMP amendments relating to DCIs. This contract also covers the density bonus and transfer of development rights (TDRs) sections of the SLDC.

## **Economic Development Division**

### **North Central NM Economic Development District (NCNMEDD)**

The NCNMEDD met on Dec. 5, the majority of the meeting was dedicated to the upcoming session, and the NM Association of Counties as well the NM Municipal League presented their 2015 legislative priorities.

Additionally, NCNMEDD is part of the NewMARC (NM Association of Regional Councils) in an attempt to integrate all the regional economic development strategic and tactical efforts and “build a

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505-995-2740 [www.santafecountynm.gov](http://www.santafecountynm.gov)

statewide, integrated system to enable the economic development community to better plan, manage, and measure growth.” One of the outcomes of this will be a county-by-county dashboard with economic development metrics.

US Rep. Ben Ray Lujan provided an update on legislation in Washington, and urged economic developers to use his office when recruiting companies, and personally invite him and members of his staff to recruitment meetings with individual companies.

The legal feasibility study for Amtrak initiative was finalized relating to the Amtrak request for \$4million per year for 10 years from New Mexico, Colorado, and Kansas.

The next NCNMEDD board meeting will be Nov. 21.

The SF Business Incubator staff, in collaboration with the County staff, hosted a business forum for all businesses located in the County interested in learning more about the services available to them. The forum was attended by approximately 30-35 business owners. All the registered businesses located in the unincorporated area of the County were invited. A second forum is being planned for spring 2015.

The SF Business Incubator, in collaboration with County staff, hosted its first Growthwheel workshop for businesses located in the County. Participants learned new tools to enable their businesses to grow.

The County entered into a Professional Services Agreement with Estancia Valley Economic Development Association for assistance in business recruitment and retention for the southern part of the County

Resolution 2014-136 was approved by the BCC, encouraging SFC staff to pursue IMBA Gold Ride Center designation.

## **Building and Development Services Division**

### **Permits and Development Review**

The following statistics are provided for permits and approvals issued in November and December 2014:

	November 2014	December 2014
New Residential Permits - Stick Built Homes	14	10
New Residential Permits - Manufactured Homes	2	1
Commercial Building Permits	0	1
Number of Lots Created – Subdivision	0 lots	0 lots
Exemptions	6 Lots	8 lots
Summary Review Subdivisions	0 lots	2 lots
Commercial Business Licenses	2	0
Home Occupations Business licenses	4	0
Film Permits	0	2

### **Code Enforcement**

The following statistics are provided for code enforcement actions in November and December 2014:

	November 2014	December 2014
Number of Initial Notices of Violation Issued	19	22
Number of Final Notices of Violation Issued	8	2
Number of Notices of Violation resolved without court action	10	18

Attached is a report that covers 2013 and 2014 of projects that were given a timeframe for complying with a condition or approval.

### **GIS Division**

GIS staff Digitized MLS (real-estate) boundaries for the Assessor's Office, to assist them in appraisals.

Field staff (911 Mapping) reviewed San Ildefonso roads and added new street signs and addresses for some new roads.

GIS Analysts got the open space planner started on creating a "Story Map" of open space properties to put online.

GIS staff created custom maps, showing boundaries and fire hydrants, for the Stanley Fire District, the La Cienega Fire District and the La Puebla Fire District for their ISO inspection. This process should result in an improved ISO rating for those areas of the county.

Staff continued to review initial sample deliveries of the 2014 LiDAR (terrain) and orthophoto project, to send to USGS for quality review.

In December the E911 Addressing staff checked 112, and replaced 63 addresses



**NORTH CENTRAL REGIONAL TRANSIT DISTRICT  
BOARD MEETING AGENDA**

**November 7, 2014  
9:00 AM - 1:00 PM  
Jim West Regional Transit Center  
Board Room**

**CALL TO ORDER:**

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – September 5, 2014 and October 3, 2014
7. PUBLIC COMMENTS

**PRESENTATION ITEMS:**

- A. **Presentation of Federal Transit Administration Award to the North Central Regional Transit District For Outstanding Public Service in Rural Public Transportation**  
*Sponsor: Anthony J. Mortillaro, Executive Director.*
- B. **Presentation and Discussion of Long Range Transit Service Plan**  
*Sponsor: Anthony J. Mortillaro, Executive Director.*

**ACTION ITEMS FOR APPROVAL/ DISCUSSION:**

- C. **Discussion and Consideration of Resolution 2014-18 Adding the Town of Taos as a New Member of the North Central Regional Transit District**  
*Sponsor: Anthony J. Mortillaro, Executive Director. Attachment.*
- D. **Discussion and Consideration of the Intergovernmental Contract Approving Modification of Voting Strengths Analysis for the City of Santa Fe Annexation**  
*Sponsor: Anthony J. Mortillaro, Executive Director. Attachment.*
- E. **Discussion and Consideration of Memorandum of Agreement between the Town of Taos and the North Central Regional Transit District Regarding Various Service Modifications and Exchanges**  
*Sponsor: Anthony J. Mortillaro, Executive. Attachment.*
- F. **Discussion and Consideration of Resolution 2014-19 Adopting Revised Paratransit and Demand Policies**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Michael J. Kelly, Transit and Facilities Operations Director. Attachment.*

- G. **Continued Discussion and Possible Direction Regarding Jicarilla Apache Nation Service Request**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. *Attachment.*
- H. **Discussion and Consideration of Resolution No. 2014-20 Authorizing the Submittal of an Application for Federal Section 5310 Funding in Federal Fiscal Year 2016**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. *Attachment.*

**DISCUSSION ITEMS:**

- I. **Discussion and Review of Ski Santa Fe Service Update**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist.
- J. **Financial Report for October 2014:**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Glenda Aragon, Finance Director. *Attachment.*
- K. **Finance Subcommittee Report:**  
*Sponsor:* Chair Tim Vigil and Anthony J. Mortillaro, Executive Director. *No Report.*
- L. **Tribal Subcommittee Report:**  
*Sponsor:* Chair Mary Lou Valerio and Anthony J. Mortillaro, Executive Director. *No Report.*
- M. **Executive Report for October 2014 and Comments from the Executive Director:**  
1) Executive Report  
2) Performance Measures for September 2014  
3) Ridership Report for September 2014

**MATTERS FROM THE BOARD**

**MISCELLANEOUS**

**ADJOURN**

**NEXT BOARD MEETING:** December 5, 2014 at 9:00 a.m.

If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.



**NORTH CENTRAL REGIONAL TRANSIT DISTRICT  
BOARD MEETING AGENDA**

**December 5, 2014  
9:00 AM - 1:00 PM  
Jim West Regional Transit Center  
Board Room**

**CALL TO ORDER:**

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – November 7, 2014
7. PUBLIC COMMENTS

**PRESENTATION ITEMS:**

**ACTION ITEMS FOR APPROVAL/ DISCUSSION:**

- A. **Discussion and Consideration of Resolution 2014-21 establishing the North Central Regional Transit District's 2015 Legislative Agenda**  
*Sponsor: Anthony J. Mortillaro, Executive Director. Attachment.*
- B. **Discussion and Consideration of Resolution 2014-22 Open Meetings Act 2015**  
*Sponsor: Anthony J. Mortillaro, Executive Director. Attachment.*
- C. **Discussion and Consideration of Resolution 2014-23 Amending the North Central Regional Transit District's Procurement Regulations**  
*Sponsor: Anthony J. Mortillaro, Executive. Attachment.*
- D. **Discussion and Consideration of Resolution 2014-24 Adopting Fares for Premium Transit Services**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Michael J. Kelly, Transit and Facilities Operations Director. Attachment.*
- E. **Discussion and Consideration of Resolution 2014-25 for a Budgetary Amendment**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Glenda Aragon, Finance Director. Attachment.*

**DISCUSSION ITEMS:**

- F. **Discussion and Review of Ski Santa Fe Service - Update**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist.*

- G. **Financial Report for November 2014:**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Glenda Aragon, Finance Director. Attachment.*
- H. **Finance Subcommittee Report:**  
*Sponsor: Chair Tim Vigil and Anthony J. Mortillaro, Executive Director. Minutes from August 22, 2014.*
- I. **Tribal Subcommittee Report:**  
*Sponsor: Chair Lonnie Montoya and Anthony J. Mortillaro, Executive Director. Minutes from July 1, 2014.*
- J. **Executive Report for November 2014 and Comments from the Executive Director:**  
1) Executive Report  
2) Performance Measures for October 2014  
3) Ridership Report for October 2014

**MATTERS FROM THE BOARD**

**MISCELLANEOUS**

**ADJOURN**

**NEXT BOARD MEETING:** January 9, 2015 at 9:00 a.m.

If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.









**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**Pablo Sedillo, III**  
*Public Safety Director*

**To:** Santa Fe County Board of County Commissioners  
**From:** Pablo Sedillo, III  
Public Safety Department Director  
**Via:** Katherine Miller  
County Manager  
**Date:** 12/10/14  
**Re:** SFC Public Safety Department Monthly Report for November 2014

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The purpose of this memo is to provide you information relative to the SFC Public Safety Department for the month of November 2014.

## **CORRECTIONS DEPARTMENT**

### **Adult Detention Facility (ADF)**

- 40 hour In-Service Training held for staff.
- Food Service Evaluation Committee Meeting was held.
- The Mobile Health Van was located in the ADF parking lot, providing Flu Vaccinations for Public Safety Staff.
- A debriefing was held for booking staff regarding the incident that occurred with the Santa Fe County Sheriff's Department. This service was provided by the Solutions Group through Human Resources.
- Pre-Construction meeting was held with Comfort Systems USA for installation of HVAC unit in booking area.
- Correctional Advisory Committee meeting was held at the Youth Facility. A presentation was given by Stacy Byard, Re-entry Specialist regarding employment issues for Ex-Offenders.
- A tour of the facility was given to incoming Commissioner Roybal.
- The Warden and ADF staff attended training in Albuquerque on the Mexican Drug Cartel.
- Mark Caldwell was named the new Warden of Santa Fe County Adult Detention Facility.

### **Electronic Monitoring Program**

- Providing services to 273 clients.
- There were 37 successful releases for November.
- Clients Financial Obligation – Paying - 36%, Waived - 0%, Unemployed - 63%, Out of County - 1%.
- Other Client Data – Arrests – 22, Absconded – 2, Intakes – 56, Releases – 372, Drug Tested – 475, Surety Bonds – 91, Cash Bonds – 75, Municipal Bonds – 35 and Municipal Fees - \$350.00.

## Youth Development Program (YDP)

### Special Activities

- On November 15, 2014, Demetria Martinez from Los Amigos del Parque conducted a poetry seminar focusing on self-reflection, values and personal goals. All participating residents created uniquely personal poems that were shared with the group and discussed amongst each other in a positive and encouraging atmosphere. The poems were typed and given to the residents as keepsakes.
- On November 22 and 23<sup>rd</sup>, the "I'm thankful for..." art project was conducted and involved both residents and staff. Residents were granted creative license to decorate their poems from the seminar or describe what they are most thankful for as the holiday season approached. Turkeys, leaves and pilgrims were created using colored paper, feathers and glitter to decorate their writings. Resulting artwork was laminated for residents to keep.
- In support of Thanksgiving, staff from YDP and ADF assisted in providing donations to a family in need through United Way. Donations were delivered to the family on November 25, 2014.



### New Hires/Staffing

- Currently YDP has a total of 21 security staff.
- There are a total of four positions vacant at YDP. There are three Life Skill Worker I positions and one Assistant Shift Supervisor available.
- Deseray Gallegos was promoted to Shift Supervisor from Assistant Shift Supervisor.
- Interviews were conducted on November 13, 2014, for Assistant Shift Supervisor.
- Interviews were conducted on November 20-21, 2014, for Life Skill Worker I.

### Inspections/Audits

- Chika Ezeanyim with Environmental Health Bureau came in for Annual Inspection of Kitchen on November 17, 2014.
- Fire Panel and Smoke Detector Annual Inspection completed on November 19, 2014.

### Training

- 40 hour In-Service training for Adult staff and Juvenile Medical Staff was held at YDP during November.
- Molly Archuleta, RN attended Meth Awareness Training at Santa Fe County HR in November.
- Narcan Training provided by Molly Archuleta, RN, for new security staff.
- 10 hour of training completed for new security staff on November 12, 2014.

## **Meetings**

- Santa Fe County Corrections Advisory Committee on November 13, 2014.
- Attended First Judicial District Multidisciplinary Team Protocol 2014, at Solace Crisis Treatment Center on November 19, 2014.
- Meeting with Santa Fe Regional Juvenile Justice Board on November 20, 2014 at 5:15 pm.

## **FIRE DEPARTMENT**

Total Emergency Responses – 475

Other Emergency Responses - 112

EMS – 363

## **Operations and Administration**

- Preparations for Cadet class starting December 1<sup>st</sup> (5 career cadets)
- Ebola and other infectious disease response preparations and trainings ongoing
- Successfully moved San Miguel County fire departments to their own radio repeater
- Out to bid on Hondo Station 1 apparatus bay addition and roof
- Out to bid Pojoaque station remodel and addition project
- Out to bid for Tesuque station roof repairs
- Coordinating with Public Works staff on solarizing projects for fire stations
- Glorieta La Joya Station design through CDRC and preparing bid documents
- Completed and reviewed all ARC station inspections
- Personal Protective Gear cleaning, repair, and inspection program 95% complete
- ISO District inspection for Galisteo (11/12) and preparations for La Cienega ISO inspection (12/3) and Stanley ISO (12/19)
- New apparatus designs underway for Stanley, Edgewood, Tesuque
- Hose and ladder testing complete all districts
- Radio inventory completed
- Volunteer Fire Academy completed FF1 module, graduation on 12/12
- Final 2014 Paramedic refresher class completed for regional staff and volunteers
- On-going EMS protocol update for regional and volunteer crews
- Volunteer and Combination Officer Training Symposium attended by 2 career and 4 volunteer chief officers in Florida
- 43 fleet repair orders processed and completed
- 4 annual pump tests completed
- Coordinated major repairs for several district pumpers and tankers
- Winter preparations for plows, vehicles, and stations

## **Fire Prevention and Wildland**

- Business registrations – 5
- Development Reviews – 21
- Lot line Adjustments/Land Division/Family Transfers – 3
- Burn Permits – 12
- Movie permits processed – 2

- School and business inspections – 8
- Pre-school/School fire and injury prevention presentations – 6
- 2 Wildland fire trainings completed for 24 personnel
- Hired 9 wildland firefighters for the winter crew – extensive orientation and training
- Coordinated firewood removal from San Pedro by community members

### **Volunteer Recruitment and Retention**

- New member applications received and approved – 4 (YTD 87)
- Hosted Leadership Seminar with special guest Chief Lasky for career and volunteer staff with 85 attendees, 5 agencies
- Completed and received NM Fire Protection Grants for Agua Fria Training tower, 2 district mini-pumpers, water storage improvements, station generator, SCBA and PPE (\$374,000)
- Work on International Association of Fire Chief projects – Chair of Company Officer Leadership Committee and Vision Project: Leader for “Reputation Management” team

### **Emergency Management**

- Conducted Active Shooter Multiple Casualty Incident Training for regional crews
- Attended NE Healthcare Coalition Meeting for Hospital Preparedness
- Hosted Santa Fe Amateur Radio Emergency Services meeting
- Attended the International Association of Emergency Managers Conference in San Antonio, Texas
- Attended FEMA Homeland Security Exercise and Evaluation Course
- Work on preparing for Ebola response for volunteers and career staff
- Conducted Technical Rescue Training on the Interstate Rescue Strut system
- Conducted Technical Rescue training drill in backcountry trauma management and evacuation
- Work to maintain Emergency Management organizational readiness

## **RECC**

### **Operations**

- Total telephone calls handled (incoming and outgoing)
  - November 2014 – 60,479
  - Calendar Year to Date – 478,092
- Total calls received via 911
  - November 2014 – 5,864
  - Calendar Year to Date – 68,401
- County calls requiring response agency dispatch
  - November 2014 – 6,315
  - Calendar Year to Date – 85,123
- City calls requiring response agency dispatch
  - November 2014 – 11,617
  - Calendar Year to Date – 135,174
- Town of Edgewood calls requiring response agency dispatch
  - November 2014 – 510
  - Calendar Year to Date – 6,376

## **Staffing**

- **Current vacancies**
  - 1 Team Leader position waiting for HR approval
  - 4 new hire Call Taker Trainees waiting for HR approval
  - 1 new hire Dispatch Trainee waiting for HR approval
  - 1 Call Taker Trainee moving to Dispatcher Trainee position
  - 6 Dispatch Trainee positions still open
- **Training Status**
  - Two Trainees have completed training on all stations and are working on their own
  - Three Dispatchers have completed the Law Enforcement Academy
  - Four Dispatch Trainees are currently in the RECC Academy
  - Four Trainees continue with their trainers at various stations

If you have any questions, I can be contacted at 992-3092. Thank you.







**Henry P. Roybal**  
*Commissioner, District 1*

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*Commissioner, District 2*

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*Commissioner, District 3*



**Kathy Holian**  
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*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## ***MEMORANDUM***

**DATE:** *January 7, 2015*

**TO:** *Board of County Commissioners*

**VIA:** *Katherine Miller, County Manager*

**FROM:** *Adam Leigland, Public Works Director*

**ITEM AND ISSUE:** *BCC Meeting January 27, 2015*  
*Public Works Monthly Report for January 2015*

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### **DISCUSSION**

#### **Operations and Maintenance**

Public Works closed out 6008 work orders in road, facility, and open space maintenance in 2014, or on average, 23 per work day. Of those, 5373, or 89%, were closed out on time. This corresponds to a 36% increase in work load and 10% increase in on-time completion over 2013. This can be seen in Chart 1 below.

The solid waste program handled 11,717 tons of solid waste, 1443 tons of recycling. This resulted in an 11.0% diversion rate.

Fleet maintenance closed out 2108 work orders in 2014.

The administrative section processed 6209 invoices over the last calendar year, with an average turn-around time of 3.7 days.

Chart 1: Year-to-year On-time Completion Rates

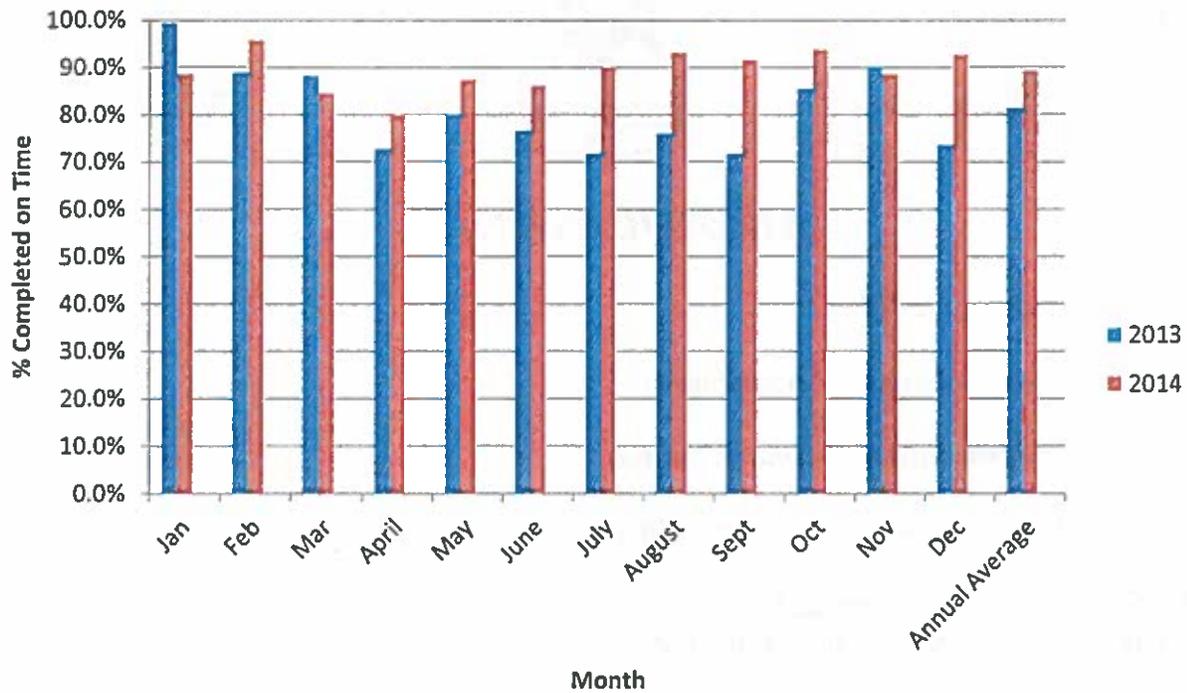
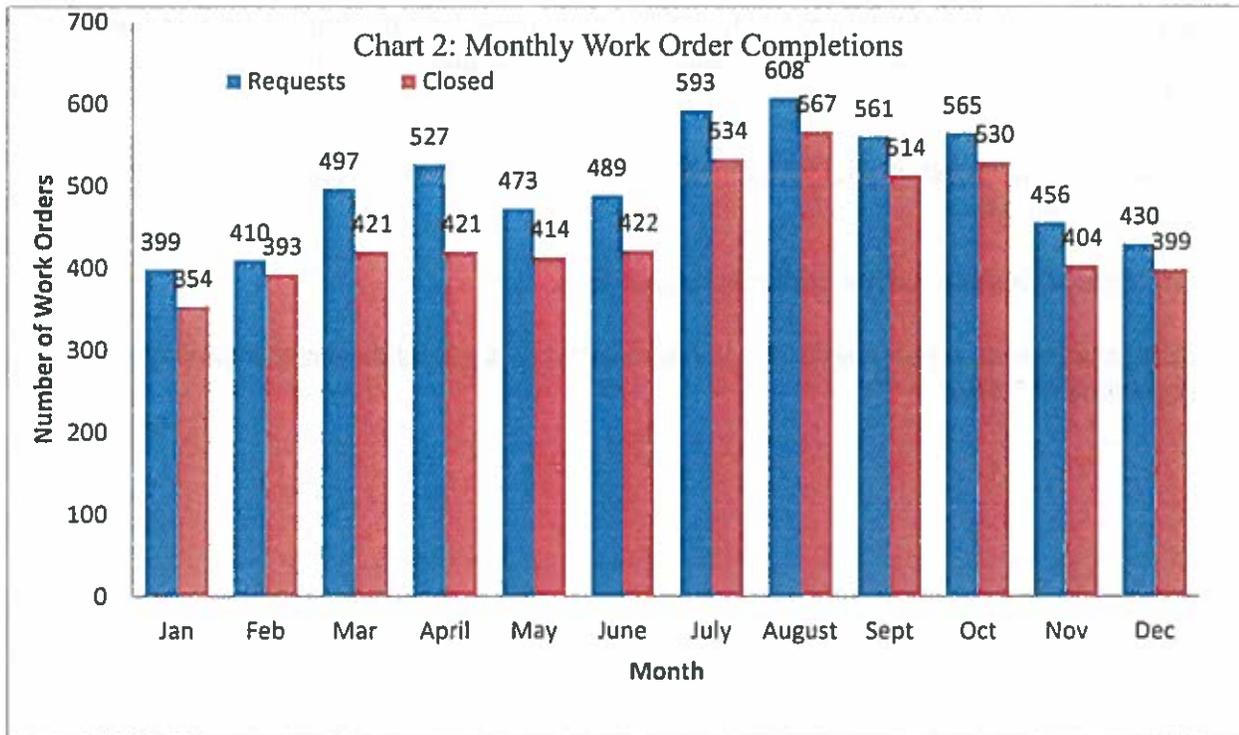
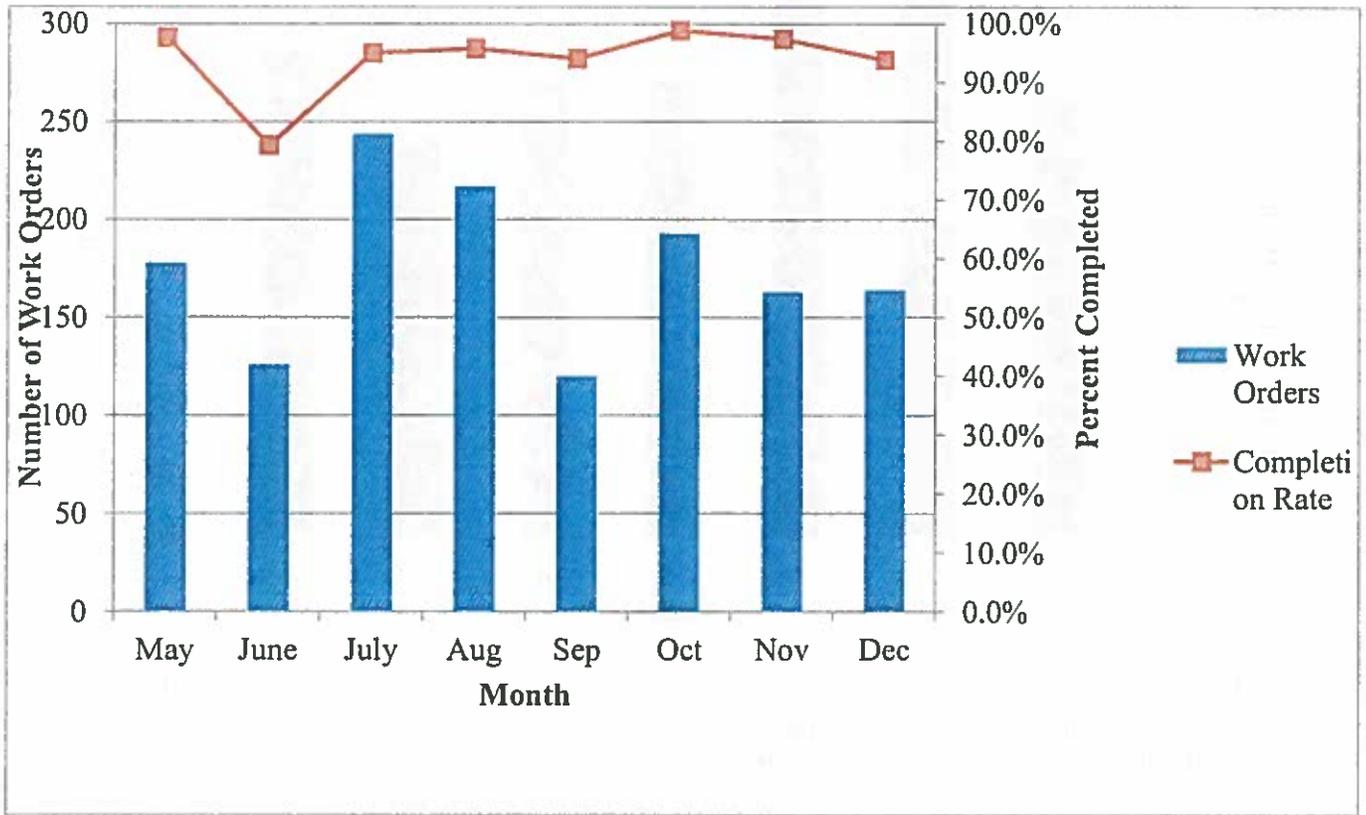


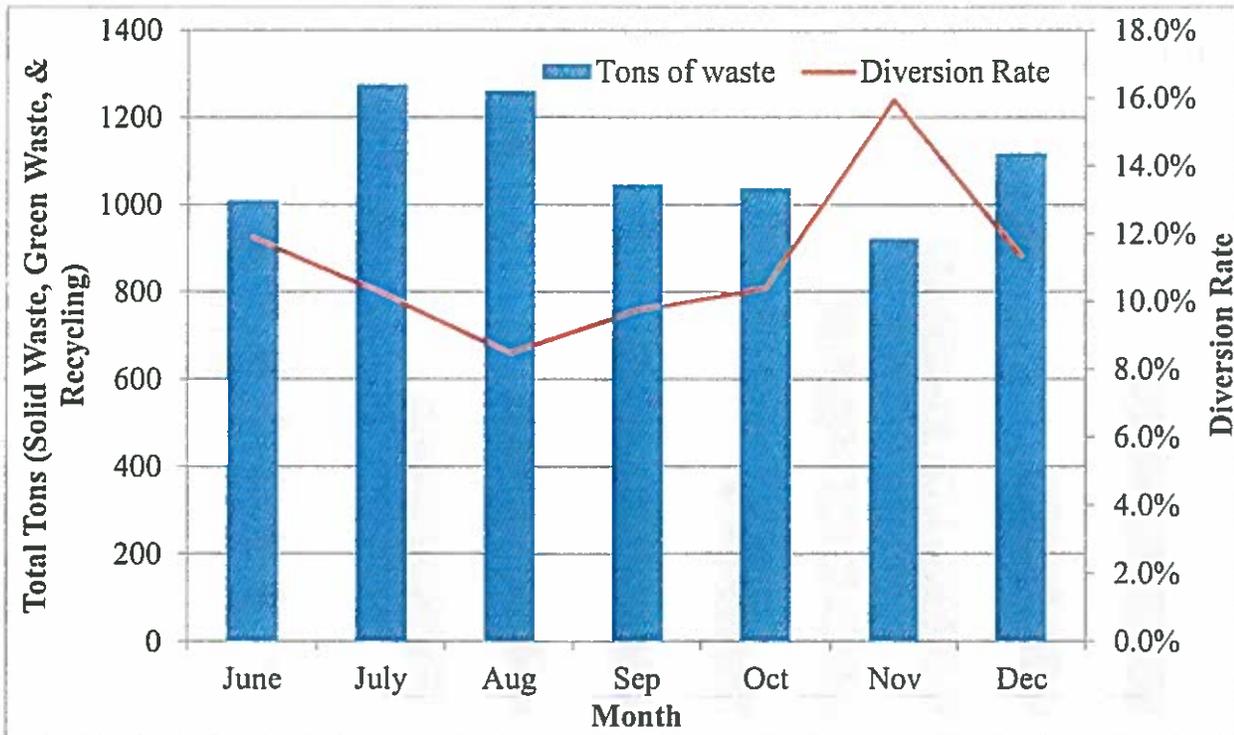
Chart 2 below shows the work order volumes by month. November and December were slower than expected.



**Fleet Maintenance:** Fleet maintenance work order completion can be seen in the chart below.



**Solid Waste:** The County's diversion rate (the amount of recycling compared to total material disposed, by weight) continues to hover around 11%, as seen in the chart below.



Solid waste permits sales are shown below. We saw an uptick in permits sold in December, likely in anticipation of the new permit schedule. That said, we still finished the calendar year at only 39% of permit sales volume compared to the previous fiscal year.

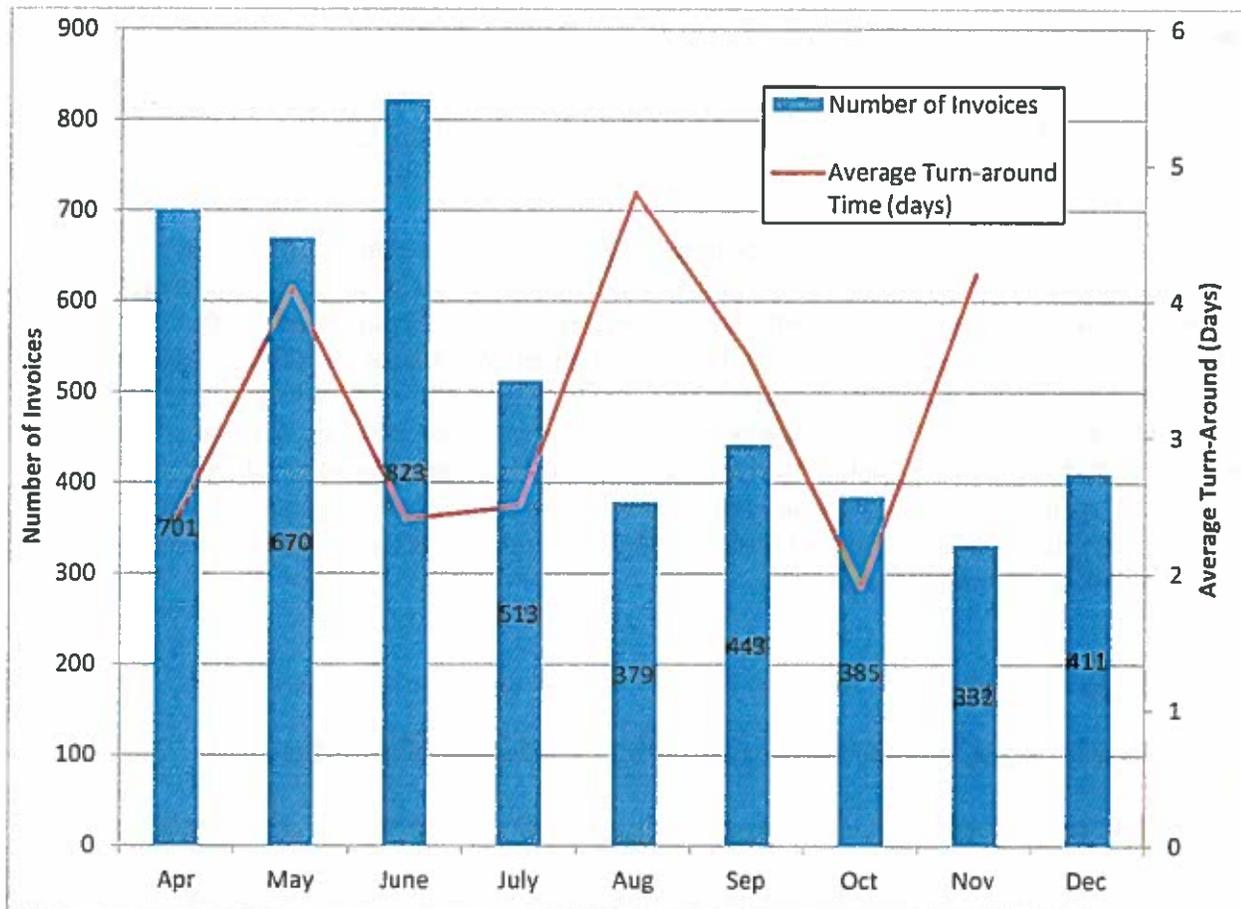
Permit Type	Number Sold in Time Period			
	FY14 Total	FY15 YTD	Dec-13	Dec-14
24-trip	3,718	1,386	67	160
Senior	1,539	673	28	73
Low Income	90	33	1	4
Bag tags	842	373	52	53
1-trip	987	270	50	30
Commercial	10	3	0	0

The new solid waste permit structure and fee schedule approved by the BCC on November 25, 2014, went into effect on January 1, 2015. The new schedule is shown below.

Permit	Year 1 (CY15)	Year 2 (CY16)	Year 3 (CY17)	Year 4 (CY18)	Year 5 (CY19)
1-Trip	15	15	16	17	18
6-Trip	35	45	55	70	95
12-Trip	65	75	85	110	140

New compactors for recycling were installed at the Eldorado transfer station. These compactors have not only made it easier for customers to use by having lower openings, they have also produced a marked decrease in the hauling costs by allowing greater densities per load and thus fewer loads.

**Administration Invoice Processing:** The Public Works Administrative team processed 332 invoices in November and 411 in December. The average turn-around time stayed below the internal goal of 5 days. See chart below.



The first set of roads was transferred to the City under the terms of the June 2013 City-County MOA. These roads are listed below:

	<b>Road Name</b>	<b>Length (miles)</b>	<b>Width (feet)</b>
1	Calle Chupa Rosa	0.14	35
2	Calle de Vencejo	0.31	35
3	Calle Tangara	0.16	35
4	Calle Zanate	0.26	35
5	Camino Carlos Rael	0.17	24
6	Country Club Road	0.34	34
7	Fairly Road	0.28	35
8	Morning Drive	0.61	20
9	Morning Lane	0.03	20
10	Morning Street	0.03	20
11	Mutt Nelson Road	1.97	22
12	Quail View Lane	0.50	21
13	South Meadows Road	0.92	22

**Utilities:**

The new sewer rate that was approved by the BCC on November 25, 2014, went into effect on January 1, 2015, and will be seen by customers in their February bill for January service. Flyers notifying customers of the rate change were inserted in the January bills.

**Aamodt.** Opening briefs in support of the Settlement Agreement were submitted back in November. The opposing parties had 60 days to respond, and they asked for an extension at that time. The court denied the time extension (denial attached). Two opposing parties submitted a briefs (also attached), citing two problems with the Settlement Agreement: (1) the Settlement Agreement is defective because it was not presented to the legislature for approval; and (2) the Agreement is contrary to state law because settling parties are not subject to priority calls while non-settling parties are. The opposing briefs make no mention of the many other objections that were raised last spring, such as Operating Agreement, JPA, state rules and regulations not being complete. Supporting parties have until February 4 to rebut the objections. After that, it's entirely in the court's hands as to how to proceed.

**Project Delivery**

We are currently managing 79 procurements. Details on 35 of them follow below.

1. **Camino Torcido Loop:** Received consultant's proposal for design services on December 12, 2014; under review.
2. **NE/SE Connector Alignments:** Focus Group meetings ongoing; scheduled to be completed by January 30, 2015.

3. **CR55A General Goodwin Drainage and Road Improvements:** Miller Engineering submitted their proposal amendment for the addition engineering services to incorporate the design for the drainage modifications on NM14 and design for the drainage structure on CR55A and the Hyatt property. This should produce a cheaper final technical solution.
4. **Old Santa Fe Tail Multi-Modal Road Improvements/TL2N Water Line:** Final drawing review completed for the road widening portion of this project. Project schedule to putting out to bid March 2015. Land acquisition offers have been submitted to the respective property owners for their review.
5. **Vista Redonda Drainage and Road Improvements:** Working with Vista Redonda Water Association to make their infrastructure changes necessitated by the County road project.
6. **CR50A San Jose Road Drainage and Road Improvements:** Work began on October 10, 2014. Consultant working on Topo Survey and Right of Way Mapping.
7. **Richards Avenue Slip Lane Design –** Design is 100% complete. Anticipating putting out to bid on March 2015.
8. **CR84D Drainage Improvements and Paving Design:** The drainage report revealed that three retaining ponds on the southern segment of CR84D would alleviate the drainage problem in this area and resolve the drainage problems on the northern segment of CR84D. Currently working with property owners to see if it is acceptable to construct retaining ponds on their property prior to moving on to the next phase of the design.
9. **Install Master Meters:** 60% design submittal due January 28th.
10. **Quill Water Reclamation Plant – Treatment Improvements:**
  - a. **Electrical System Upgrades:** Bixby Electric has installed 3 new transformers and is currently addressing punch list items.
  - b. **Design Upgrade Entrance Works Bar screen:** Invitation for Bids was advertised on January 6, 2015.
  - c. **Design Improvements to Effluent Irrigation System:** Staff met with HDR regarding 60% design drawings and are proceeding to 90% design submittals early in January
  - d. **Design Improvements to Access Driveways:** Staff has received a quote from Access Technologies for vehicle security system required by the New Mexico Department of Corrections. Senior County Management is coordinating directly with the Department of Corrections and General Services Department regarding security system requirements.
11. **Design La Cienega Water Line Improvements:** The 60% Design Submittal was received on November 6<sup>th</sup>. Staff is addressing utility easement issues identified in that submittal.
12. **Chupadero Water System Easement Study/Drainage Improvements:** Staff has provided final comments regarding the right-of-way verification and the drainage study and have

provided additional utility easement information to surveyor. Both documents finalized January 16, 2015.

13. **Public Safety Complex Upgrade Design:** Staff is proceeding with obtaining a technical specialist to develop design criteria for Design Build RFP for this project. The RFP for the technical specialist occurred on December 17, 2014. A pre-proposal conference was held on January 6 and proposals are due on January 22.
14. **UDV Temple Cost Estimate Verification:** A Purchase Order to allow reimbursements to the UDV Temple is in place with construction scheduled to begin in February 2015.
15. **Old Santa Fe Trail TL2N Waterline:** Molzin-Corben has provided 100% design drawings and specifications for this project. A coordination meeting is scheduled for January 14, 2105.
16. **Madrid Fire Station – Fire Protection System:** Staff met with On-Call Engineering firm to obtain budgetary estimate for planning document to determine the optimal type of system design and operation.
17. **Adult Detention Facility / Youth Development Program Projects**
  - a. **Server Rooms:** Site visit and walk-thru with contractors is scheduled for January 22.
  - b. **Repair/Replace Front Retaining Wall:** Staff has requested electrical specs from corrections electrician for additional electrical outlets to be included in revised IFB.
  - c. **Recreation Yard Concrete Floor and Door Replacement:** IFB advertised on December 22, 2014. Site Visit is scheduled for January 9, 2015.
  - d. **Installation of Isolation Valves:** Project has been completed. Processing final payment
  - e. **Upgrade Cooling System For Booking Server Room:** Final payment request from Air Comfort Systems USA has been received and is being processed.
18. **Construct ADA Accessibility from Rodeo Road to Fair Grounds Building:** Site visit was conducted on December 9, 2014, and bids received December 22, 2014. Bids under review.
19. **Improve Edgewood Senior Center Parking Lot:** Site visit with Santa Fe County Road Maintenance Manager and GMA Emulsion was conducted on December 22, 2014.
20. **Edgewood Senior Center Food Storage:** Have requested quote from Architect.
21. **Ken and Patty Adam Senior Center/County Community Center:** Rebar inspection passed. Pouring of footings on January 9, 2015.
22. **La Cienega Fire Station Remodel #2:** Project is complete. Fire and burglar alarm training on Wednesday, January 14. Staff continues assembling shelving with scheduled completion by Wednesday, January 14, 2015
23. **Pojoaque Fire Station – Volunteer side interior remodel:** Bids have been received and are being evaluated by Purchasing.
24. **Hondo Fire Station # 1 Remodel:** Bids have been received and are being evaluated by Purchasing.

25. **Jacona Transfer Station:** Staff has received proposals from 4 design firms. Staff is evaluating proposals and anticipates selection of design firm on January 14.
26. **Romero Park:** The IFBs were advertised on December 28, 2014. The Pre-Proposal Conferences for the Civil and Landscape Improvements were held January 5 and 6, 2015, respectively. Bids are due January 28 and 29. Plan to award the award the contracts at the February 24, 2015, BCC meeting.
27. **Santa Fe River Greenway Wayside Exhibits:** Received the 100% designs on December 17, 2014 and sent to National Park Service for review; awaiting their comment.
28. **Arroyo Hondo Trail:** The engineer is revising the trail connection to the La Pradera trails as requested by Warren Thompson. Submitted a request to NMDOT for an easement for the trail within NMDOT ROW on December 12, 2014. Preparing Right-to-Enter (ROE) agreements for the private properties along the trail alignment. Plan to present the ROEs to the landowners in late January.
29. **Mt. Chal:** Tierra presented the offer documents to the property owners the week of December 8, 2014. Draft purchase agreement in legal review.
30. **Rio Quemado Watershed Restoration:** Submitted PPR for Amendment No. 1 to the engineering contract to modify the scope of work to include the design of the two stream stabilization structures identified during the stream assessment. The amendment to the engineering contract will allow the County to close out the WTB grant by the grant deadline. Purchasing is preparing the solicitation for construction. Plan to advertise in January 2015.
31. **Thornton Ranch Open Space:** The cultural resources consultant is preparing a draft management plan for circulation. The master plan consultant has begun working on the Precedent Studies. The agency meetings have been scheduled as follows: County January 22; Bureau of Land Management January 23; and State Land Office January 27. The CR consultant will submit the Class I report mid-January 2015.
32. **Agua Fria Monument Sign:** Cornerstones is requesting bids for the structural work that must be completed by a licensed contractor.
33. **Santa Fe Rail Trail:** Delivered the Cooperative Project Agreement for Segment 4 to NMDOT on December 4, 2014. Federal grant applications for Segment 5 and Nine Mile TH are due January 23, 2015.
34. **El Camino Real Retracement Trail FLAP project:** The Central Federal Lands Highway Division (CFLHD) is revising the engineering costs to include ROW and

limited topographic surveying. Legal is reviewing the Project Memorandum of Agreement and a Reimbursable Agreement prepared by CFLHD and preparing an MOU with the City of Santa Fe for the \$150,000 in matching funds. Kick-off meeting for the design is tentatively scheduled for January 29, 2015.

35. **Eldorado Trails:** Staff is working with Purchasing to finalize MOA with ECIA to allow the application of ECIA funds to the project. It is anticipated that the bids will be requested in early spring.

Information on all active projects can be found in the attached Capital Project Status Update.

**Committee Meetings:**

**BDD Board:** The BDD board met on January 8, 2015. Two key issues were discussed at the meeting. First, the facility manager discussed his vacancies and his recruitment and retention plan. Second, he briefed that increased sediment in the water indicates physical damage to the diversion intake structure. The nature, extent, and cause of the damage are all unknown and so BDD staff is working on an investigation plan. The upshot for the County is that in six to eight weeks, the BDD could be done for an extended time. This will require the County to purchase water from the City through the 2005 Water Resources Agreement (WRA). The City and County currently disagree about the price of this WRA water, so another BDD down period may exacerbate this disagreement.

**ACTION REQUESTED:**

None; for information only.

# SANTA FE COUNTY

## Capital Project Status Update (as of 1/12/2015 1:26:22 PM)

PW/ ProjectNbr	Project Name	Nature of Procurement	% Comp	District	Project Budget	Estimated Start Date	Estimated Completion Date	Project Manager
1	Replace Existing Roof at Nambé Community Senior Center			1	\$20,000.00			PJ Montano
2	Perform design an all weather crossing for Pinon Hills Subdivision in SFC	Design	15	2	\$50,000.00	1/13/2014	4/17/2015	Chuck Vigil
3	Madrid Fire Protection Upgrades		33	3	\$15,000.00			David Madrid
4	Richards Avenue Slip Lane	Design	95	5	\$153,306.52	8/21/2014	12/30/2014	Chuck Vigil
5	Improvements of trails for the Eldorado Community Improvement Association	Construction	20	5	\$90,000.00	4/15/2015	5/29/2015	Paul Olafson
6	Public Safety Complex Upgrade Design	Plan	5	5	\$200,000.00	1/30/2014	3/6/2015	David Madrid
7	Design and Construction of all roads listed in Phase 2 of annexation		33		\$950,000.00	9/22/2014	11/28/2014	Chuck Vigil
8	Replace Existing Roof at County Administration Building			1 2 3 4 5	\$160,000.00			PJ Montano
9	Evaluation of Heating & Cooling State Health Center,	Design	15	1 2 3 4 5	\$10,000.00	1/15/2015	3/15/2015	Paul Olafson
10	Construct ADA Accessibility from Rodeo Road to Fair Grounds Building(s)	Design	15	1 2 3 4 5	\$30,000.00	2/9/2015	3/27/2015	Joseph Martinez
11	Install Cistern/connection for Youth Shelters	Other	0	3	\$12,000.00		12/12/2014	Ron Sandoval
12	Install Furniture at Ken and Patty Adams Senior Center the new addition	Other	10	5	\$50,000.00	11/21/2014	4/30/2015	Ron Sandoval
13	Replace Existing Garage Doors in Fleet Maintenance Building	Plan	5	2	\$115,000.00	2/9/2015	4/3/2015	Joseph Martinez
14	Romero Park	Design	95	2	\$1,194,082.00	5/17/2013	6/30/2015	Colleen Baker
15	Pojoaque Valley Recreation Complex	Construction	9	1	\$1,785,000.00	1/28/2014	5/31/2015	Colleen Baker
16	Improve Edgewood Senior Center Parking Lot	Design	5	3	\$100,000.00	2/23/2015	3/20/2015	Joseph Martinez
17	Edgewood Food Storage	Design	5	3	\$7,150.00	2/16/2015	3/20/2015	Joseph Martinez
18	Vista Grande Library Addition / Construction	Construction	99	5	\$1,050,000.00	9/20/2013	6/30/2014	Ron Sandoval
19	Construct Addition to Ken & Patty Adams Senior Center	Construction	10	5	\$1,275,531.00	8/18/2014	6/13/2015	Ron Sandoval
20	Plan and Design Improvements to the Santa Fe County Fairgrounds			1 2 3 4 5	\$610,000.00	12/16/2014		

# SANTA FE COUNTY

## Capital Project Status Update (As of 1/12/2015 1:26:22 PM)

21	0798	Design Old Santa Fe Trail Multimodal	Design	100	4	\$264,692.00	3/5/2013	12/26/2014	Chuck Vigil
22	0834	Design Hondo Fire Station #1 Addition	Construction	2	4	\$325,348.00	2/10/2014	8/5/2014	Ron Sandoval
23	1410	Improve Bulk Water Station Install master meters for Utility Department	Construction	25	5	\$20,000.00	11/3/2014	12/31/2014	David Madrid/Robert George
24	1410	TL6S Water Transmission Line	Design	5	2 5	\$150,000.00		12/19/2014	David Madrid
25	1449	Design La Cienega Water Line Improvements	Design	60	4 5	\$333,080.30	2/17/2012	12/5/2014	Scott W. Rivers
26	1457	Construct Glorieta MDWCA Water System Improvements	Design	30	3	\$300,000.00	1/8/2014	5/29/2015	David Madrid
27	1465	Rio Quemado Watershed Restoration	Construction	99	4	\$424,759.00	2/28/2014	12/11/2014	Paul Olafson
28	1472	Quill Water Reclamation Plant - Treatment Improvements	Construction	57	1	\$306,000.00	5/8/2013	3/31/2015	Colleen Baker
29	1473	Old Santa Fe Trail Water Line	Construction	10	5	\$500,000.00	1/1/2014	8/28/2015	David Madrid
30	1474	Design Lamy Junction Water Transmission Line	Design	100	4	\$190,000.00	2/15/2013	11/21/2014	Chuck Vigil
31	1474	Upgrade Chupadero Water System Design & Construction of Las Lagunitas Waste Water System	Design	60	4 5	\$411,368.96	5/4/2012	12/5/2014	Scott W. Rivers
32	1477	UDV Waterline Analysis	Survey	65	1	\$77,656.00		2/6/2015	David Madrid
33	1486	Install Bar Screen and Modular Building at ADF	Other	99	3	\$150,000.00	2/19/2014	1/30/2015	David Madrid
34	1487	Upgrade server rooms at Adult Detention Facility and Youth Development Program	Other	5			1/5/2015		David Madrid
35	1860	Repair and replace recreation doors and cement on yard floors	Plan	5	5	\$200,000.00	1/2/2015	6/12/2015	David Madrid
36	1860	Replace and Repair Stormwater catchment structures at ADF	Design	100	5	\$616,000.00	2/23/2015	4/30/2015	Joseph Martinez
37	1860	Renovate Old Judicial Courthouse Redevelopment	Design	100	5	\$60,000.00	2/10/2015	3/27/2015	Joseph Martinez
38	1860	Upgrade County Road 50A - Camino San Jose	Design	100	5	\$30,000.00	2/9/2015	3/27/2015	Joseph Martinez
39	2219	CR 54 Los Pinos Road All Weather Structure Design	Design	10	1 2 3 4 5	\$475,000.00	3/31/2015	3/31/2016	Paul Olafson
40	6159	Install Fence County Road 98	Design	20	3	\$178,000.00	10/10/2014	4/3/2015	Chuck Vigil
41	6167	NE-SE Connectors Location Study	Design	99	3	\$95,000.00	8/12/2013	12/26/2014	Chuck Vigil
42	6170	CR 55A General Goodwin Rd Design	Construction	10	1	\$12,500.00	2/2/2015	2/27/2015	Scott Rivers
43	6181	Upgrade	Plan	75	5	\$500,000.00	2/4/2013	3/13/2015	Chuck Vigil
44	6182		Design	60	3	\$100,000.00	9/23/2013	3/27/2015	Chuck Vigil

# SANTA FE COUNTY

## Capital Project Status Update (ms of 1/12/2015 1:26:22 PM)

45	6183	Torcido Loop - Design/Archaeological Survey	Design	30	3	\$48,683.69	7/18/2013	3/27/2015	Chuck Vigil
46	6197	Vista Rendonda Drainage and Road Paving Design	Design	70	1	\$120,000.00	12/16/2013	2/27/2015	Chuck Vigil
47	6198	Programming for Drainage and Roadway Improvements on County Road 89.	Design	90	1	\$55,000.00	2/12/2014	12/15/2014	Scott W. Rivers
48	6199	Programming for Drainage and Roadway Improvements on County Road 89 C	Design	50	1	\$35,000.00	3/28/2014	12/31/2014	Scott W. Rivers
49	6201	Jacona - Northern Santa Fe County Solid Waste Convenience Center	Design	10	1	\$268,498.00	1/12/2015	6/30/2015	Paul Olafson
50	6202	Design drainage and roadway improvements on County Road 84 D	Design	30	1	\$80,000.00	5/21/2014	3/27/2015	Chuck Vigil
51	6204	Design and construct drainage and pavement improvements for County Road 109 S	Design	15	1	\$260,000.00	10/20/2014	3/27/2015	Chuck Vigil
52	6206	Upgrade Spruce Road Improvements			5	\$156,000.00			Chuck Vigil/
53	6207	Upgrade Race Track Subdivision Chip Seal			3	\$167,700.00			Chuck Vigil/
54	6209	Upgrade Rancho Alegre's Subdivision Road up	Construction	10	3	\$264,335.00	6/15/2015	8/15/2015	Paul Olafson
55	6210	Calle Cantando - Cerros Subdivision			4	\$118,500.00			
56	6211	Paseo Rincon - Cerros Subdivision				\$59,500.00			
57	6212	Upgrade Camino Pacifico Road Improvements			4	\$192,000.00			
58	6213	Upgrade Puye Road improvements			4	\$140,000.00			
59	7006	La Bajada Ranch Planning, Programming, & Design	Plan	10	3	\$120,000.00	9/28/2012	3/29/2015	Mark Hogan
60	7118	Rio En Medio Senior Center - Improve Site Drainage	Design	5	1	\$25,000.00	2/16/2015	4/17/2015	Joseph Martinez
61	7120	Santa Fe River Greenway: Wayside Exhibit Planning, Design, Fabrication	Other	90	2	\$84,841.50	7/1/2012	9/30/2015	Colleen Baker
62	7121	Design and Construct Stanley Community Wellness Center Phase 2	Design	10	3	\$50,000.00	9/2/2013	12/30/2014	David Padilla
63	7122	Highway 14 Senior/Community Center	Acquisition	10	3	\$350,000.00	11/5/2012	5/1/2014	Agnes Leyba-Cruz
64	7123	District Attorney Complex Energy & Accessibility Upgrades	Design	70		\$850,000.00	12/21/2012	3/31/2015	Paul Olafson
65	7124	Admin Building Computer & Communications Room	Construction	99	1 2 3 4 5	\$275,000.00	3/31/2014	11/25/2014	Paul Olafson

# SANTA FE COUNTY

Capital Project Status Update (As of 1/12/2015 1:26:22 PM)

66	7701	Arroyo Hondo Trail	Design	22	5	\$470,572.00	12/13/2012	6/30/2015	Colleen Baker
67	7706	Mt. Chachihuitl	Acquisition	50	3	\$988,499.00	8/1/2012	6/30/2015	Colleen Baker
68	7707	Santa Fe Rail Trail	Construction	9	4, 5	\$1,476,900.00	9/15/2014	7/31/2015	Scott W. Rivers
69	7708	Santa Fe River Greenway Acquisition	Acquisition	35	2	\$1,814,850.00	10/9/2012	9/30/2016	Scott Kaseman
70	7708	Santa Fe River Greenway: Frenchy's Field to Siler Rd.	Archaeology	100	2	\$59,406.47	3/1/2009	9/26/2014	Scott Kaseman
71	7708	Santa Fe River Greenway Engineering Design Services	Design	90	2	\$412,725.85	10/3/2012	12/31/2014	Scott Kaseman
72	7711	Thornion Ranch Open Space	Plan	15	3	\$224,564.00	3/3/2014	7/30/2015	Colleen Baker
73	7723	Nambe Community Center, Park and Head Start Site Improvements	Construction	100	1	\$354,065.00	2/27/2014	7/15/2014	Scott W. Rivers
74	7732	Agua Fria Gateway Monuments Design and Construct El Camino Real	Construction	12	2	\$83,846.00	4/21/2014	8/31/2015	Colleen Baker
75	7733	Buckman Road Segment Retracement Trail	Other	2	2	\$3,330,000.00	1/1/2015	4/30/2018	Colleen Baker
76	8008	La Cienega Fire Station No. 2 Apparatus bay expansion and Library remodel.	Construction	70	3	\$494,091.00	3/24/2014	9/30/2014	Ron Sandoval
77	8009	Glorieta Fire Station #2 - New Construction	Design	95	4	\$50,000.00	5/16/2014	9/30/2014	Ron Sandoval
78	8010	Pojoaque Fire Station - Interior Remodel Volunteer Side	Construction	2	1	\$181,470.00	3/24/2014	8/8/2014	Ron Sandoval
79	9692	CR67F La Barbania Drainage and Road Paving Design	Design	40	4	\$100,000.00	12/16/2013	3/27/2015	Chuck Vigil

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*  
State Engineer,

Plaintiff,

v.

No. 66cv06639 WJ/WPL

R. LEE AAMODT *et al.*,

Defendants,

and

UNITED STATES OF AMERICA,  
PUEBLO DE NAMBÉ,  
PUEBLO DE POJOAQUE,  
PUEBLO DE SAN ILDEFONSO,  
and PUEBLO DE TESUQUE,

Plaintiffs-in-Intervention.

**MEMORANDUM OPINION AND ORDER**  
**DENYING MOTIONS FOR EXTENSION OF TIME AND**  
**MODIFICATION OF CASE MANAGEMENT ORDER**

THIS MATTER comes before the Court on the Dunn Group Defendant-Objectors Motion for Extension of Time and Modification of Case Management Order (Doc. 9915, filed November 8, 2014) and the Atencio Group Defendant-Objectors Motion for Extension of Time and Modification of Case Management Order (Doc. 9916, filed November 10, 2014). For the reasons stated below, the Court **DENIES** the Motions.

Over 700 objections opposing approval of the Settlement Agreement have been filed. On August 8, 2014, the Court entered a case management order (Doc. 9506) which gave the settlement parties 90 days to file memoranda in support of their position that the Court should approve the Settlement Agreement. The case management order also gave parties that filed objections 60 days to file responses, and the Settlement Parties 30 days to file replies.

On September 12, 2014, approximately five months after the deadline for filing objections, two individuals filed a motion (Doc. 9676) for leave to file an objection. The Court denied their motion to file a late objection and stated:

The Court has carefully considered the deadlines it has set in its orders, keeping in mind that the Settlement Agreement, if approved by the Court, will no longer be effective if the Court does not enter a final decree in this case by the September 15, 2017 deadline set by Congress. *See* 124 Stat. 3134 § 623. Consequently, the Court will not modify those deadlines without a showing of good cause.

Doc. 9903 at 3, filed October 29, 2014.

A group of objectors represented by A. Blair Dunn (“the Dunn Group”) filed a motion requesting at least 150 days from the filing of the memoranda in support to file their responses. Doc. 9915 at 2. The Dunn Group asserts that the current schedule “is unfair to objecting parties” noting that the objecting parties only get 60 days to file a response while the Settlement Parties were granted 90 days to file the memorandum in support of entry of the settlement and “get another bite at the apple after 30 days to file a reply.”

The Court is not persuaded that the case management procedure is unfair, because it is similar to general motion practice: a motion with a memorandum in support is followed by a response, which in turn is followed by a reply. *See* D.N.M.LR-Civ. 7.4(a). The Court notes that it entered the case management order in response to motions filed by some of the Settlement Parties (Doc’s 9409 and 9411, filed May 7, 2014). The Dunn Group filed a response opposing the motions on the grounds that there were threshold issues that should be resolved before entry of a case management order, but did not oppose the proposed schedule for filing memoranda, responses and replies. *See* Doc. 9430, filed May 21, 2014.

The Dunn Group also states that “there is proposed draft legislation for the upcoming New Mexico Legislative Session that directly impacts and would serve to clarify issues pending

before this Court,” but does not describe the proposed legislation or identify which issues might be impacted by the proposed legislation.

A group of objectors represented by Lorenzo Atencio (“the Atencio Group”) also filed a motion for an extension of time to file a response. *See* Doc. 9916, filed November 10, 2014. The Atencio Group asks the Court to extend the time to file responses until the Court rules on pending motions for summary judgment regarding three domestic well water rights, asserting that “the rulings may likely have an effect on the issues relating to the objections to the settlement agreement and having guidance on that very critical issue would promote judicial efficiency.” The Atencio Group previously filed a response opposing the motions for a case management order and requested 120 days to file a response “in light of the huge disparity in resources.” *See* Doc. 9428, filed May 21, 2014. The Atencio Group does not raise the resource disparity issue in its motion now before the Court.

As it previously stated, the Court has carefully considered the deadlines it has set in its orders and will not modify those deadlines without a showing of good cause. The Dunn Group unconvincingly asserts that the current schedule is unfair and speculates that proposed draft legislation might impact or clarify issues currently before the Court. Similarly, the Atencio Group suggests that the Court’s upcoming rulings on pending motions for summary judgment might have an effect on issues relating to the objections. However, neither the Dunn Group nor the Atencio Group provides a persuasive discussion that the Court should modify the current briefing schedule.

Accordingly, for the reasons stated herein, the Dunn Group Defendant-Objectors Motion for Extension of Time and Modification of Case Management Order (Doc. 9915, filed November 8, 2014) and the Atencio Group Defendant-Objectors Motion for Extension of Time and

Modification of Case Management Order (Doc. 9916, filed November 10, 2014) are **DENIED**.

**SO ORDERED.**

  
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**UNITED STATES DISTRICT JUDGE**

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**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2014-\_\_\_\_**

**INTRODUCED BY:**

- Councilor Joseph Maestas
- Councilor Chris Rivera
- Councilor Peter Ives

**A RESOLUTION**

**DIRECTING STAFF TO COLLABORATE WITH SANTA FE COUNTY STAFF TO EXPLORE, RESEARCH AND ANALYZE THE NEXT STEPS IDENTIFIED IN THE DECEMBER 2012 *FINAL REPORT OF A PRELIMINARY ECONOMIC FEASIBILITY ASSESSMENT OF A PUBLICLY-OWNED ELECTRIC UTILITY FOR THE CITY OF SANTA FE AND SANTA FE COUNTY* AND REPORT BACK TO THE GOVERNING BODY STAFF'S FINDINGS RELATED TO THE NEXT STEPS, EXISTING CITY AND COUNTY POLICIES AND OTHER STAFF CONSIDERATIONS.**

**WHEREAS,** the City of Santa Fe and Santa Fe County jointly funded a preliminary feasibility assessment of a publicly-owned electric utility in Santa Fe in the amount of \$50,000; and

**WHEREAS,** in December of 2012, the City and County were presented with the *Final Report of a Preliminary Economic Feasibility Assessment of a Publicly-Owned Electric Utility For the City of Santa Fe and Santa Fe County* prepared by MSA Capital Partners for New Energy Economy ("Preliminary Assessment") attached hereto as Exhibit A; and

**WHEREAS,** according to the Preliminary Assessment, Santa Fe can improve its quality of

1 life and local economy by creating a model electric utility that could:

- 2 • Help advance local and national efforts to address global climate disruption, reduce  
3 regional air and water pollution, save water and secure sustainable economic growth;  
4 and
- 5 • Move the area away from dependence on coal-fired power generation to natural gas,  
6 wind and solar with an energy efficiency standard that doubles the current state  
7 requirement, and economic development intended to support job growth and keep  
8 substantially more of electric consumers' dollars in the local economy; and

9 **WHEREAS**, the Preliminary Assessment is a preliminary economic feasibility study that  
10 addresses the economic benefits of having a public electric utility in Santa Fe that could build the  
11 local economy, create jobs and protect the public health and environment; and

12 **WHEREAS**, the Preliminary Assessment identifies and analyzes key economic  
13 considerations that might support the formation of Santa Fe Public Power ("SFPP") electric utility  
14 that would be jointly-owned and governed by the County and City similar to the City/County  
15 Buckman Direct Diversion facility and the Santa Fe Solid Waste Management Authority; and

16 **WHEREAS**, the Preliminary Assessment identifies steps that are necessary to advance the  
17 feasibility of SFPP; and

18 **WHEREAS**, the Governing Body desires for City staff to work in conjunction with Santa Fe  
19 County staff to explore, research and analyze the next steps identified in the Preliminary Assessment  
20 and present their joint findings to the Governing Body.

21 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
22 **CITY OF SANTA FE** that the City Manager is directed to contact the Santa Fe County Manager to  
23 coordinate and schedule a joint City Council/County Commission meeting for the purpose to discuss  
24 and determine if and how the City and County may pursue a joint publicly owned electric utility.

25 **BE IT FURTHER RESOLVED** that staff is directed to conduct a study of the legal and

1 technical options the City has in creating a publicly owned electric utility, including the fiscal impacts  
2 associated with those options, based on the 2012 Preliminary Assessment and other resources,  
3 reports, studies, and documents, as deemed necessary.

4 **BE IT FURTHER RESOLVED** that within 60 days of adoption of this resolution, staff  
5 shall report back to the Governing Body its findings. After such report to the Governing Body, the  
6 Governing Body shall provide formal direction to staff on the desires of the Governing Body to  
7 pursue a public electric utility either jointly with the County or solely by the City.

8  
9 PASSED, APPROVED and ADOPTED this \_\_\_ day of \_\_\_\_\_, 2014.

10  
11 \_\_\_\_\_  
12 JAVIER M. GONZALES, MAYOR

13 ATTEST:

14  
15 \_\_\_\_\_  
16 YOLANDA Y. VIGIL, CITY CLERK

17 APPROVED AS TO FORM:

18  
19 \_\_\_\_\_  
20 KELLEY A. BRENNAN, CITY ATTORNEY

21  
22  
23 *M/Legislation/Resolutions 2015/City County Public Power\_Redline*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex. rel.	)
STATE ENGINEER,	)
	)
Plaintiff,	)
	)
v.	)
	)
R. LEE AAMODT, et al.,	)
	)
Defendants,	)
	)
and	)
	)
UNITED STATES OF AMERICA,	)
PUEBLO DE NAMBE,	)
PUEBLO DE POJOAQUE,	)
PUEBLO DE SAN ILDEFONSO,	)
and PUEBLOS DE TESUQUE,	)
	)
Plaintiffs-in-Intervention.	)

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**RESPONSE IN OPPOSITION TO MOTION TO APPROVE  
SETTLEMENT AGREEMENT AND ENTRY OF PROPOSED  
PARTIAL FINAL JUDGMENT AND DECREE**

COMES NOW Defendant-Objectors<sup>1</sup> by and through their counsel, A. Blair Dunn, Esq, and file this Response Brief in Opposition to Motion to Approve Settlement Agreement and Entry of Proposed Partial Final Judgment and Decree on the Water Rights of the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso.

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<sup>1</sup> Defendant-Objectors have been previously represent by this counsel have been previously identified to the Court as Group 1. Objecting Parties Rogaliner Trust, ECF No 8365, and Wolff Trust ECF No 8855 have recently joined this Group and wish to join in this Response. Defendant-Objector Paul White has also joined in this Response but has also presented unique claims to response to the Court in a separate pleading.

## INTRODUCTION

The crux of this case centers on priority water rights administration, and specifically the authority of the settling parties to create law that excepts some non-Pueblo water rights from priority water calls for priority administration in exchange for reduction of their rights; while providing that other similarly situated junior water right holders will be subject to curtailment of their rights to satisfy future water needs of the Pueblos. This underlying violation of state water law flows like water from a broken dam through legal issues that prevent entry of judgment and issuance of decree sought by Plaintiff's Motion, *i.e.* equal protection, adverse impacts, lack of settling authority of the state signatories to the settlement agreement, public policy and the fundamental unfairness of harming non-pueblo water rights holders because they will not agree to the proffered settlement.

Defendant-Objectors do not contest that water rights of the Pueblos are and should be adjudicated in accordance with previous decisions of this Court and the 10<sup>th</sup> Circuit Court of Appeals, nor that the United States has an interest in such adjudication pursuant to its trust responsibilities. Rather, the major issue of this group of Objectors is that the settlement was designed such that, absent complete agreement of all of the parties, certain non-Pueblo junior rights will become elevated and exempt from a priority calls irrespective of their priority relation to other non-Pueblo rights.

For instance, if a priority call is initiated in the future by the Pueblos it would likely affect non-Pueblo rights in the following fashion:

“Water Right A has a priority date of 1940, Water Right B has a priority of 1970. Water Right A does not agree to this settlement and chooses instead to retain its full historical use and priority, but Water Right B accepts this settlement agreeing to a reduced right in exchange for being exempted from the priority call of the Pueblos. The State Engineer as a settling party has agreed to the exception to priority administration and therefore 1940 Water Right A is curtailed, thus receiving no water even though the junior right of the 1970 Water Right B receives its full, reduced amount.”

Effectively, the Attorney General is attempting to draft new water law through the proffered Settlement agreement that allows for a party to escape priority administration between non-Pueblo water rights holders in times of shortage. The Settlement agreement itself cannot bind non-settling parties. To swim around this limitation, Plaintiffs seek for the proffered Settlement to be anointed by this Court to create new law negatively impacting and binding non-settling parties, *i.e.* the objectors filing herein. The Settlement as drafted by the United States leaves parties with little choice - to accept a reduced amount now or face having their rights subordinated to other junior rights in the

future. A more transparent attempt to coerce parties to agree to an unwanted settlement is hard to imagine.

## ARGUMENT

### I. THE FAIR AND REASONABLE STANDARD IS ONLY REVIEWABLE AND RELEVANT IF THE AGREEMENT IS NOT ILLEGAL OR AGAINST PUBLIC POLICY.

#### A. Illegality and Public Policy Considerations Must be Addressed before the Substance of the Settlement Itself.

In *United States of America v. Colorado*, 937 F.2d 505 (10<sup>th</sup> Cir. 1991),

the Court stated that:

The district court, however, is not obliged to approve every proposed consent decree placed before it. Because the issuance of a consent decree places the power of the court behind the compromise struck by the parties, the district court must ensure that *the agreement is not illegal, a product of collusion, or against the public interest*. The court also has the duty to decide whether the decree is fair, adequate, and reasonable before it is approved.

*United States of America v. Colorado*, 937 F.2d at 509 (emphasis added), citing *City of Miami*, 664 F.2d at 440-41. Similarly, the Court in *Sierra Club, Inc. v. Elec. Controls Design, Inc.*, 909 F.2d 1350 (9<sup>th</sup> Cir. 1990), cautioned that:

Because of the unique aspects of settlements, a district court should enter a proposed consent judgment if the court decides that it is *fair, reasonable and equitable and does not violate the law or public policy*. See *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1125-26 (D.C.Cir.1983), cert. denied, 467 U.S. 1219, 104 S.Ct. 2668, 81 L.Ed.2d 373 (1984); cf. *Davis v. City and County of San Francisco*, 890 F.2d 1438, 1444-45 (9<sup>th</sup> Cir.1989) (district court reviews proposed consent decree in a class action suit brought under Fed.R.Civ.P. 23(c) to determine whether the settlement is "fundamentally fair, adequate and

reasonable") (quoting *Officers for Justice v. Civil Serv. Comm'n of the City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir.1982), cert. denied, 459 U.S. 1217, 103 S.Ct. 1219, 75 L.Ed.2d 456 (1983)).

*Id.* at 1355. While the settling party governments strenuously argues that the proffered Settlement Agreement is fair and reasonable and thus should be entered, they strikingly fail to address the illegality of the Agreement or to even assert that the Agreement is fair as to non-settling parties. They fail to make these arguments because it is unable to do so. Instead, the governments argues that non-settling parties had the opportunity to participate in the process and therefore their rights were not violated. The governments miss one undeniable point. You can lead a horse to water, but you cannot make it drink, *i.e.* you cannot force a party to settle when it has determined its interests are better served and established by a fact-finding trial on the merits. Moreover, nowhere do the governments present legal authority that establishes that non-settling parties can be bound by a settlement they declined to enter into. Indeed, the cases cited by the United States in favor of an entry of judgment and decree are not on point, as such cases involve entry of settlement based on an agreement reached by all parties; or pursuant to Rule 23 of the Federal Rules of Civil Procedure related to class actions, not Rule 54 as invoked in this proceeding. Even in its argument, the government concedes that the fair and reasonable standard relating to Indian water settlements is not yet established law, but "recognized by scholars" as a viable standard of review for assessing a

proposed settlement. (See US Memorandum, FN 15) In its argument, however, the government is forced to note that such scholars add additional criteria for the courts in reviewing a proffered settlement, to include that an agreement was “reached in good-faith, all parties received due process, the terms are fair to the settling parties and *do not prejudice other claimants.*” *Id.* (emphasis added).

The United States suggests that *Ratzlaff v. Seven Bar Flying Serv., Inc.*, 646 P.2d 586 (N.M. Ct. App. 1982) supports an entry of settlement based on New Mexico law. *Ratzlaff*, however, is equally unavailing as to the United States’ desire for entry of judgment. In *Ratzlaff*, the Court noted that, “[T]he policy of our law is to favor amicable settlement of claims without litigation when the agreements are fairly secured, are without fraud, misrepresentation, or overreaching, and when they are supported by consideration.” *Ratzlaff* at 590. In *Ratzlaff*, all parties to the underlying litigation had entered into a settlement and release. Plaintiff, a settling party, sought to set aside that settlement. The trial court had made specific findings, however, that no misrepresentations were made during settlement negotiation, that there was no mutual mistake, fraud or improper conduct in connection with their obtaining the release, and that the release was supported by adequate consideration. The Court then found that Plaintiff had not complied with the New Mexico Release Act to seek settlement set aside. Thus, while New Mexico common and statutory law provides a

mechanism to set aside settlements, they were inapplicable in Plaintiff's proceeding.

*Ratzlaff* notes that "amicable settlements" are favored when those settlements are fairly secured, are not overreaching, and when supported by consideration. These elements are not met by the proffered Settlement Agreement. Rights agreed to in the Settlement Agreement will impact non-settling parties with water rights. This is evidenced by a cursory reading of the language of the Agreement.

Quite simply, in its desperation to have this Court bless the proffered agreement and create legally binding law that negatively impacts third parties, the United States glosses over the preliminary review requirements of illegality and public policy. However you slice the settlement the United States has reached with the Pueblos as to their water rights, it negatively harms and impacts non-settling parties. Moreover, the Agreement is patently against public interest as it includes penalties against non-settling parties, in its effort to extort a Settlement agreement. (See Settlement Agreement at 2.4.4.2.2 in conjunction with Section 4).

Based on the above, and as a preliminary matter, a court must first determine whether a proposed settlement agreement is illegal or against the public interest, before assessing whether such agreement is "fair, adequate and reasonable." In this instance as demonstrated *supra.* and *infra.*, the proffered Settlement Agreement is illegal and against public interest. It

must not be entered by this Court.

B. The Proffered Settlement Agreement is Not Legal.

1. Executive Branch Officials are not Authorized to Engage in the Proffered Settlement.

New Mexico state law controls the enforceability of settlements. *United States v. McCall*, 235 F.3d 1211, 1215 (10th Cir. 2000). In interpreting settlement agreements, state law applies absent a significant conflict between using state law and some federal policy or interest. *Atherton v. FDIC*, 519 U.S. 213 (1997). “Construction of a settlement agreement generally is governed by state law.” *Brockman v. Sweetwater County School Dist. No. 1*, 25 F.3d 1055, (10th Cir.), *cert. denied*, 513 U.S. 951 (1994). In reviewing the elements of a contract, the federal courts turn to a state’s basic contract rules. *Hueser, et al. v. Kephart, et al.*, 215 F.3d 1186, 1211-1212 (10<sup>th</sup> Cir. 2000).

It is without question that settlement agreements are contracts. *See Cortez v. Cortez*, 145 N.M. 642, 203 P.3d 857 (Feb. 20, 2009). Pursuant to New Mexico law, “[a] contract is a legally enforceable promise.” UJI 13-801 NMRA. *Nance v. L.J. Dolloff Associates, Inc.*, 126 P.3d 1215, 1220 (Dec. 6, 2005). To be legally enforceable there must be an offer, acceptance, consideration, and mutual assent. *Id.*, *citing DeArmond v. Halliburton Energy Servs., Inc.*, 2003-NMCA-148, ¶ 9, 134 N.M. 630, 81 P.3d 573. Additionally, a contract is only established when signed by individuals

having the authority to do so. *See Landers v. Board of Educ.*, 116 P.2d 690 (N.M. S.Ct. Sept. 15, 1941), and internal citations.

In the instant matter, the Objectors challenge the authority of New Mexico Executive branch officials to sign the proffered Settlement Agreement and bind the State to its terms. *See* Argument, *infra*. As such, before granting the Motion for Entry of Partial Final Judgment and Decree, this Court must first determine whether the State signatories are authorized to bind the state to the terms of the proffered Settlement. Because Executive branch officials purporting to sign the underlying Settlement agreement presented to this Court for approval do not have the requisite authority to do so, the United States' Motion should be denied.

2. The Settlement Negotiation and Agreement Attempts to Extort Approval by Non-settling Parties by Subverting Junior Rights.

A district court can enter a consent decree that goes beyond the type of relief provided by the statute under which the suit had been brought. *See Local Number 93, International Association of Firefighters, AFL-CIO, C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986). The Court stated that “a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial.” *Id.* at 478 U.S. at 525. This is true, though, only if the agreement is “within the general scope of the case made by the pleadings,” furthers “the objectives upon which the law is based,” and does not “violate the statute

upon which the complaint was based.” *Id.* at 525-26, (quoting *Pacific R. Co. v. Ketchum*, 101 U.S. 289, (1880) (citations omitted)).

The proffered Settlement agreement violates current State water law, by changing the priority rights of water right holders that are junior to the Pueblos. This disparate treatment between the non-Pueblo rights is what gave rise to the numerous objections filed by the parties represented in this group. A settlement agreement deciding the amount and priority of the Pueblos’ rights should not have included an attempt to force all parties to agree to the settlement. If the water rights of the Pueblos stood on the merits, and some of the parties could agree that was the proper settlement of their rights, that would be acceptable and in keeping with the law. Even still, an agreement that offered consideration of funds for hooking up to the regional water system in exchange for voluntary reductions of rights would have been equitable and in keeping with the law, but creating a new system that effectively punishes objecting water rights owners for failing to agree to settlement by forcing them to bear the curtailment of future priority calls by the Pueblos while rights that are junior are excepted is unjust. Such an exception to priority administration does not exist in the law and such a new law cannot be created by the Executive Branches without violating the Separation of Powers of the New Mexico Constitution absent a delegation from the legislature. Neither the Attorney General nor the State Engineer possess the authority to create a whole new system that elevates certain

junior water rights over other senior water rights during a priority call. This is new law that impermissibly places water rights owners at odds and is contrary to existing New Mexico water law of first in time, first in right. See New Mexico Constitution Article XVI Sec. 2.

II. THE FAIR AND REASONABLE STANDARDS ARE ONLY REVIEWABLE AND RELEVANT IF ALL IMPACTED PARTIES AGREE TO SETTLE.

The United States seeks an entry of “Partial” Final Judgment and Decree, and states its intent that the proffered Settlement Agreement be treated as a consent decree as final judgment pursuant to Fed. R. Civ. P. Rule 54(b) “as to each of the Pueblos surface and groundwater rights in the Basin.”

Rule 54(b) in pertinent part provides:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

Because a judgment by consent has the same force and effect as judgment rendered on the merits following trial, (*Cf. VTA, Inc. v. Airco, Inc.*, 587 F.2d 220, 224 (10<sup>th</sup> Cir. 1979)) such judgment cannot be issued in contravention of the rights of impacted, non-settling parties. Hence, the Rule prohibits judgment by consent in the absence of an “express” determination by the

court that there is *no just reason* for delay. Without an express finding that there is no just reason to delay entry of the settlement, the Rule further provides that entry of the settlement “does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment.”

Since the pending action must proceed as to the non-settling parties without such express determinations by a Court, entry of a judgment – or even less strong as proposed in this instance, a partial judgment -- is essentially without any legal effect. This is so because it is not possible to issue a judgment determining the water rights of the Pueblos without also determining the right of other impacted users.

### III. PUBLIC POLICY MANDATES AGAINST APPROVAL OF THE PROFFERED SETTLEMENT WITHOUT FIRST RULING ON CONSTITUTIONAL AND STATE LAW SHORTCOMINGS.

As the United States has acknowledged in its brief, the federal government has a strong public interest in respecting state management of state-created rights to use natural resources. (U.S. Memorandum at 50) It cites to the Desert Land Act of March 3, 1877, 43 U.S.C. §§ 321-339, *Cappaert v. United States*, 426 U.S. 128, 143 n. 8 (1976) (“[W]ater rights vested under state law or custom are protected.”) and *Cal. Or. Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 158 (1935) in support of the establishment of this policy. Yet, in its public policy discussion section, at

pages 36-39, it fails to mention how it reconciles this policy with a proposed Settlement that contravenes state water law as to priority use.

Instead, the government argues repeatedly that “amicable settlements” are favored whenever possible and that the “preference for negotiated resolutions is embodied in Fed. R. Civ. P. 16(a)(5) . . . and Fed. R. Evid 408.” (U.S. Memorandum at 37) Then the government attempts to tip the proverbial boat by arguing that the general policy favoring settlements “has particular force where . . . a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement.”<sup>2</sup> Id.

The federal government continually overreaches in its sole argument that public policy supports the use of settlement agreements to resolve litigation. No party has argued that settlements are *per se* disfavored or inappropriate when entered into all impacted parties who meaningfully engaged in developing the terms of the settlement and understand the rights given and taken by a settlement’s terms. It misses the boat in its arguments, however, as the public policy to be assessed and reviewed in determining whether to approve a settlement by entry of judgment goes beyond the concept of merely settling. Such policy assessment must look to the

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<sup>2</sup> The United States has argued throughout its Memorandum that its sole interest is in determining Pueblo water rights in furtherance of its trust responsibility. Suggesting that it serves the general public’s interest because it is a government actor having “pulled the laboring oar” to reach settlement, is consequently disingenuous.

underlying law, the rights of impacted parties and whether the rights of non-settling parties are prejudiced by such settlement as is the case here.

None of the cases cited by the federal government supporting its “settlement is in the public interests” argument are on point with the type of settlement and entry of judgment at issue in this proceeding. The United States fails to identify cases where an entry of judgment and decree is sought in contravention of non-settling impacted parties. It fails to disclose to this Court the differences in class action settlements per Fed. R. Civ. P. Rule 23, such as at issue in *Ehrhear*; or that cited language in support of this settlement is dicta, as in *Pfizer, Inc. v. Lord* which reached a decision on a motion to recuse a District Court judge for alleged bias, not on the propriety of an actual settlement agreement; or even that the issue in *United States v. Armour & Co.* was interpreting an existing settlement to identify rights and responsibilities of settling parties. None of these scenarios are relevant in this case.

What is relevant is effecting the articulated federal policy of leaving the management of state resources to states. The proffered settlement violates this policy, as it changes the standards for determining the priority of water rights for junior rights holders – based on whether they succumbed to the federal and State Executive branch officials’ pressure to enter into the proffered settlement. This violates New Mexico water law and is akin to

extortion. Only the State legislature can change this aspect of State water law.

IV. THE PROFFERED SETTLEMENT AGREEMENT VIOLATES FEDERAL LAW.

A. Equal Protection.

In a self-serving, cursory discussion (US Memorandum at 55-56), the United States concludes that “[t]he fact that priority protection may not extend to all of a junior right does not constitute a taking of that right.” Without any discussion of the Equal Protection Clause and the nature of rights protected thereby, the government reaches its conclusion solely based on a referenced statement in *Aamodt I*, 537 F.2d at 1113 (“A recognition of any priority date for the Indians later than, or equal to, a priority date for a non-Indian violated the mandate of Congress that nothing in the 1933 Act shall deprive the Pueblos to a prior right to the use of the water.”). Based on this statement, the United States over-archingly concludes that all Indian water rights in the impacted area are senior to all other water rights; and thus, all non-Indian users’ junior rights to water use can be denied. (US Memorandum at 56, “the Pueblos have senior priority rights.”) In the immediately preceding sentence, however, the U.S. states that “[n]othing in the Settlement Agreement alters any non-Pueblos’ quantified right.”<sup>3</sup>

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<sup>3</sup> The ways to reconcile this statement are limited. Either the U.S. is arguing that no rights were confirmed prior to 1933; or they were confirmed and already created a senior right in the Pueblos. If the latter were the case, there would be no need for the pending litigation.

The United States makes no mention of the disparate impact the proffered Settlement Agreement has as to junior water right holders. As discussed *infra.* at water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. N.M.S.A. 19.26.2.8. Consequently, the proposed settlement – to the extent it suddenly creates a “tier” for junior water users – violates the Equal Protections Clause.

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides that:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The United States argues that the Settlement agreement does not violate the Equal Protection Clause because it is rationally related to the government’s federal trust responsibility to the Pueblos. The Objectors, as to the concept of adjudicating Pueblo water rights, do not contest such interest. However, the Pueblos’ senior rights to water have already been determined. *See State of New Mexico ex. rel. S.E. Reynolds v. Aamodt*, 618 F.Supp. 993, 1010 (D.N.M. 1985), adopting the Special Master report and finding that the Pueblos have an aboriginal right to use water to support all acreage irrigated by the Pueblos between 1846 and 1924. The issue of the objectors is not the water acreage sought to be established by the United States on behalf of the Pueblos. Rather, it is the derogation of the priority system established by

State law equally applied to junior water rights holders. The proffered Settlement Agreement subverts the rights of junior water rights users, based on whether they went along with the United States' settlement demands, and not based on applicable water law and priority rights. Thus, a junior water rights holder who acquired such right in 1950 and signed on to the government's drafted agreement, will be given priority over a senior user having acquired water rights in 1940, if the latter did not sign onto the Settlement agreement. This violates state law and the equal protections clause. The federal government has no rational basis in changing the prior beneficial state water law as to junior rights, as part of its trust responsibilities. It is simply not necessary to affect junior rights in an attempt to avoid a priority call for water as part of the government's trust responsibilities. To do so violates the rights of non-Pueblo users.<sup>4</sup> The United States asserts that it is its policy "to respect state management of state-created rights to use natural resources." U.S. Memorandum at 50. Yet, the Settlement agreement as drafted and negotiated by the United States violates the State priority system. Modifying the rights of junior water right holders is not necessary, nor appropriate, for the government to fulfill its trust responsibilities. No party to the Settlement agreements is authorized

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<sup>4</sup> The United States argues in its brief that, "Pueblo water rights are not defined by or subject to the laws of Ne Mexico, but solely by federal law." U.S. Memorandum at 49. This statement is difficult to reconcile with the Court's holding that, "non-Pueblo's priorities begin as of the date they applied water to the land they used or occupied and which have not been lost by non-use pursuant to the law of Spain, Mexico or the Territory or State of New Mexico." *State of New Mexico ex. rel. S.E. Reynolds v. Aamodt*, 618 F.Supp. at 1010.

to create new priority water rights for junior users, without legislative approval. The United States' argument on the Equal Protection issue misses the boat and argues issues immaterial to the objectors' position.

B. Due Process.

The United States again misunderstands the Objector's argument related to a violation of due process for non-Pueblo water rights holders. Essentially, the government asserts that no third parties were required to be included in negotiations of the Pueblo water rights. U.S. Memorandum at 57. The government goes on to note that "to the extent that the Settlement Agreement will affect the interests of any third-party, this Court should consider whether any impact on third-parties is unfair or proscribed." *Id.* at FN 24. By this statement, the government acknowledges the possibility that third-parties are harmed by the proffered Settlement. In pleading the Court to enter judgment anyway, however, it asserts that any harm to third parties should be assessed as to whether the harm is "unfair or proscribed." *Id.* This is simply an erroneous legal standard. A determination as to the legality of the Settlement agreement must be made before fairness is assessed. *See Discussion infra.*

The federal government argues that due process is met because it provided notice to non-Pueblo water users. Due process is not met in the pending matter by merely showing that notices were mailed to potentially impacted non-Pueblo water rights holders, even if such notice met procedural

due process. Substantive due process serves to protect individuals from government action that exceeds the limits of authority, regardless of the fairness of process/notice. *See generally Mugler v. Kansas*, 123 U.S. 623 (1887). In the instant matter, the State Executive branch officials have exceeded its authority as to impacting non-Pueblo junior water rights, depriving individuals of their Constitutional rights.

V. THE PROFFERED SETTLEMENT AGREEMENT VIOLATES STATE LAW.

The United States continually puts the cart before the horse when arguing that the proffered settlement is “fair and reasonable.” Before reaching a factual determination of the fairness and reasonableness of the settlement, the questions of whether the agreement itself violates applicable law must be answered. Instead of addressing these issues head on, the federal government plunges us down the rabbit hole into an unnecessary treatise of federal Indian water law. No party has questioned that the federal government has an interest in addressing Indian water rights. Quite the contrary. It is this very interest that creates the biases evident in the Settlement Agreement, leaving state citizens and individuals without a meaningful voice in the process. It is this very interest that has resulted in a proposed Settlement Agreement – against the interests and wishes of impacted state citizens and junior water right holders – that the United States seeks this Court to bless.

A. THE POWERS VESTED IN NEW MEXICO'S THREE BRANCHES OF GOVERNMENT ARE DISTINCT.

The New Mexico Constitution, Art. III, sec. 1, provides:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted. Nothing in this section, or elsewhere in this constitution, shall prevent the legislature from establishing, by statute, a body with statewide jurisdiction other than the courts of this state for the determination of rights and liabilities between persons when those rights and liabilities arise from transactions or occurrences involving personal injury sustained in the course of employment by an employee. The statute shall provide for the type an organization of the body, the mode of appointment or election of its member and such other matters as the legislature may deem necessary or proper. (Adopted by the people November 4, 1986.)

This provision vests state legislative power in "a senate and house of representatives which shall be designated the legislature of the state of New Mexico, and shall hold its sessions at the seat of government." *Id.* With the powers of the State government being vested in three distinct departments – legislative, executive and judicial – "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others." *State of New Mexico v. The Hon. Gary Johnson*, 904 P.2d 11, 22 (July 13, 1995). This doctrine, the separation of powers, flows from the recognition that the accumulation of too much power in one governmental entity presents a threat to liberty. *See generally, Gregory v. Ashcroft*, 501 U.S. 452, 459

(1991). While an absolute separation of powers may not be completely realistic, Art. III, sec. 1 must be accorded its intended effect, which is to ensure that another branch of government does not unduly “interfere with or encroach on the authority or within the province” of the other governmental branches. *See Smith v. Miller*, 384 P.2d 738, 741 (Colo. 1963).

Article III, sec. 1 mandates that the Legislature creates law, “while the Governor’s proper role is the execution of the laws.” *State v. Fifth Judicial Dist.Court*, 36 N.M. 151, 153, 9 P.2d 691, 692 (1932); *See State v. Armstrong*, 31 N.M. 220, 255, 243 P. 333, 347 (1924). “Deeply rooted in American Jurisprudence is the doctrine that state constitutions are not grants of power to the legislative, to the executive and to the judiciary, but are limitations on the powers of each.” *State of New Mexico v. The Hon. Gary Johnson*, 904 P.2d at 19.

In this regard, the New Mexico Constitution, Article II, Section 14 does not expressly limit the Legislature’s power to legislate to [ ] enumerated items.” *Jones v. Murdoch, et al.*, 200 P.3d 523, 532 (NM 2009), *citing Varney v. Albuquerque*, 40 N.M. 90, 94, 55 P.2d 40, 43 (1936) (recognizing that “when an act of the Legislature is assailed, the court looks to the state Constitution only to ascertain whether any limitations have been imposed upon such power”) (internal quotation marks and citation omitted); *cf. State ex rel. Capitol Addition Bldg. Comm’n v. Connelly*, 39 N.M. 312, 321, 46 P.2d 1097, 1102 (1935) (ruling that “the enumeration of subjects of taxation contained in

article 8, § 2, as originally adopted, was merely confirmatory of the Legislature's inherent power to tax, and not a limitation thereon").

Contrary to the broad powers committed to the legislature, the Executive branch powers are limited. "A governor's proper role is the execution of the laws." New Mexico Const. Art. V, sec. 4. In the administration of authorized programs, Executive branch discretion is not boundless. *State ex. Rel. Taylor v. Johnson*, 961 P.2d 768, 775-6 (NM 1998). Generally, the Legislature, not the Executive branch, declares the policies and establishes primary standards to which the Executive branch and its agencies must conform. *See State ex rel. State Park & Recreation Comm'n v. New Mexico State Authority*, 76 N.M. 1, 13, 411 P.2d 984, 993 (1966). The Executive branch's discretion may not justify altering, modifying or extending the reach of a law created by the Legislature. *See, e.g., Chalamidas v. Environmental Improvement Div. (In re Proposed Revocation of Food and Drink Purveyor's Permit)*, 102 N.M. 63, 66, 691 P.2d 64, 67 (Ct.App.1984) (stating that an "agency cannot amend or enlarge its authority through rules and regulations"); *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 306, 502 P.2d 406, 409 (Ct.App.1972).

Thus, the powers inured to each branch are not only limited, but functionally identifiable. *Old Abe Co. v. New Mexico Mining Commission*, 908 P.2d 776, 787 (1995) (Article III provides for the division of government into three distinct branches, the legislative, executive, and judicial branches,

each responsible for performing a different function. The separation of powers provision of Article III, Section 1, generally bars one branch of government from performing a function reserved for another branch of government. *Citing State ex rel. Clark v. Johnson*, 904 P.2d 11, 22 (1995)).

The question at hand is, therefore, does the Executive branch's entering into the proposed Settlement Agreement make or change law, and/or is it a compact/contract requiring legislative approval. "The test is whether the Governor's action disrupts the proper balance between the executive and legislative branches." *State ex rel. Clark*, 904 P.2d at 23. If a governor's actions infringe upon "the essence of legislative authority the making of laws then the [g]overnor has exceeded his authority." *State ex rel. Clark*, 1995-NMSC-051, 120 N.M. at 573, 904 P.2d at 22. A violation occurs when the Executive, rather than the Legislature, determines "how, when, and for what purpose the public funds shall be applied in carrying on the government," *State ex rel. Schwartz v. Johnson*, 1995-NMSC-083, ¶ 14, 120 N.M. 820, 907 P.2d 1001 (quoting *State ex rel. Holmes v. State Bd. of Fin.*, 69 N.M. 430, 441, 367 P.2d 925, 933 (1961)). In addition, infringement upon legislative power may also occur where the Executive does not "execute existing New Mexico statutory or case law [and rather attempts] to create new law." *State ex rel. Clark*, 1995-NMSC-051, 120 N.M. at 573, 904 P.2d at 22.

In the instant matter, the proposed Settlement Agreement seeks to determine water rights outside of existing law; to enter into compacts with

sovereign entities; and to provide for the appropriation and expenditure of state funds without legislative review and approval. Since the Executive branch's authority (the Governor and State Attorney General in this instance) is limited to implementing laws, not changing them, the Executive branch's approval of the subject settlement agreement is an act outside and in excess of its powers.

B. APPROVAL OF THE SETTLEMENT AGREEMENT PER THE JOINT MOTION FOR PROPOSED PARTIAL JUDGMENT AND DECREE WITHOUT LEGISLATIVE REVIEW IS IN DEROGATION OF ARTICLE III OF THE STATE CONSTITUTION.

1. Similar to Other Compacts, the Proposed Water Adjudication Settlement Agreement Creates and/or Changes Existing Law.

In this case, the Governor and State Attorney General have entered into a Settlement Agreement without legislative approval. These Executive Branch Officers seek to enter into a compact with other sovereign powers and create new law through this Court's order.

In *Clark v. Johnson*, 904 P.2d 11, 120 N.M. 562 (1995), the then-Governor of New Mexico, Gary Johnson, entered into an agreement with the Pojoaque Pueblo. Petitioners, including Clark, filed a Writ of Mandamus, alleging that Governor Johnson "attempted to exercise legislative authority, contrary to the doctrine of separation of powers expressed in the state Constitution. See N.M. Const. art. III, § 1..." *Id.* The New Mexico Supreme Court took up the issue of whether the Governor of New Mexico had "authority under New Mexico law to enter into the compacts and agreements absent legislative authorization or

ratification.” *Id.* “Such authority cannot derive from the compact and agreement; it must derive from state law.” *Id.* The Court in *Clark* stated, “[t]he Governor may not exercise power that as a matter of state constitutional law infringes on the power properly belonging to the legislature. We have no doubt that the compact with Pojoaque Pueblo does not execute existing New Mexico statutory or case law, but that it is instead an attempt to create new law.” *Id.* (internal citations omitted).

“[I]n determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which [the action by one branch prevents another branch] from accomplishing its constitutionally assigned functions. *United States v. Nixon*, 418 U.S. at 711-12 [94 S.Ct. at 3109-10].” *Id.* One of the ways the Court could determine undue disruption was if the Governor’s actions:

[W]ould be an attempt to foreclose legislative action in areas where legislative authority is undisputed. The Governor’s present authority could not preclude future legislative action, and he could not execute an agreement that foreclosed inconsistent legislative action or precluded the application of such legislation to the agreement. The compact with Pojoaque Pueblo and those of which it is representative cannot be said to be consistent with these principles.

*Id.* The Court went on to say that “[w]hile the legislature might authorize the Governor to enter into a...compact or ratify his actions with respect to a compact he has negotiated, the Governor cannot enter into such a compact solely on his own authority.” *Id.* The Court concluded with the following:

Since 1923, the State of New Mexico has entered into at least twenty-two different compacts with other sovereign entities, including the United States and other states. These agreements

encompass such widely diverse governmental purposes as interstate water usage and cooperation on higher education. In every case, New Mexico entered into the compact with the enactment of a statute by the legislature. Apart from non-discretionary ministerial duties, the Governor's role in the compact approval process has heretofore been limited to approving or vetoing the legislation that approves the compact. This is the Governor's role with respect to all legislation passed by the legislature. See N.M. Const. art. IV, § 22.

The state legislature directly represents state citizens and has broad plenary powers. "If a state constitution is silent on a particular issue, the legislature should be the body of government to address the issue ..." *Clark*, at 24. In *Clark*, the Court concluded "that the Governor lacked authority under the state Constitution to bind the State by unilaterally entering into the compacts and revenue-sharing agreements in question." *Id.* at 25 (internal citations omitted).

It is clear from the opinion in *Clark* that only the New Mexico legislature has the authority to bind the State into compacts and agreements. Executive branch Officers signing and authorizing compacts that confer water rights, the guarantee and the use of state appropriations is simply not consistent with the New Mexico Supreme Court's decision in *Clark*, in which the State Supreme Court clearly stated that the power to enter into such agreements rests with the Legislative branch.

The New Mexico Executive branch Officers who signed the proposed Settlement Agreement in the pending matter lacked the authority to authorize it. This represents a threshold issue that must properly be decided prior to

addressing the substantive merits of the Settlement Agreement as it currently exists.

C. The State Engineer is required to Adjudicate Water Rights based on Specific Criteria and Existing Law.

The Office of the State Engineer is charged with administering the state's water resources. The State Engineer has power over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries.

<http://www.ose.state.nm.us/index.html>. The State Engineer is an Executive branch employee, serving by appointment of the Governor. In this capacity, his function is limited, as other Executive branch employees, to implementing law, not create it. N.M.S.A Section 72-2-1 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. N.M.S.A 72-2-8 gives the state engineer authority to adopt regulations and codes *to implement and enforce any provision of any law administered by him* and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. N.M.S.A Section 72-2-9 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts. N.M.S.A. Section 72-9-1 gives the state engineer authority to regulate reservoirs, canals, pipelines or other works and the rights of the owners thereof. These rules shall be construed so as to provide the state engineer with authority to take

*lawful alternative or additional actions* relating to the management of surface water resources. 19.26.2.3 NMAC (1/31/2005)(emphasis added).

All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. N.M.S.A. 19.26.2.8. Thus, the law in New Mexico is that beneficial water rights existing and used prior to 1907 have been confirmed. The instant Settlement Agreement seeks to modify this legal standard and provide water rights to the Pueblos that were not established by beneficial use prior to 1907. This departure and factual inconsistency warrants further review and consideration by the State of New Mexico legislature, as well as the other State-based commitments contained in the proposed Settlement Agreement.

## CONCLUSION

The Joint Motion to Approve and Enter Partial Final Judgment and Decree on the Water Rights of the Pueblos of Nambe, Pojoaque, San Idelfonso and Tesuque seeks for this Court to approve a Settlement Agreement or Compact creating and/or improperly extending New Mexico law, creating state financial appropriation obligations and agreeing to Mutual-Benefit projects, based solely on State Executive branch approval. These functions are properly vested in the New Mexico legislature per the State Constitution.

Thus, the Joint Motion should be denied at this time. This court should enter an Order of prohibitory mandamus to prevent the Executive branch Officers from authorizing the proposed Settlement Agreement and compel the Governor to submit the Settlement agreement to the State Legislature for action as appropriate.

RESPECTFULLY SUBMITTED,

/s/ A. Blair Dunn  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on January 5, 2015, the **RESPONSE IN OPPOSITION TO THE MOTION TO APPROVED SETTLEMENT AGREEMENT AND ENTRY OF PROPOSED PARTIAL FINAL JUDGMENT AND DECREE** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I FURTHER CERTIFY that, on January 6, 2015, copies of the foregoing were mailed to the non-CM/ECF Participants.

/s/ A. Blair Dunn  
A. Blair Dunn, Esq.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.* STATE )  
ENGINEER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
R. LEE AAMODT, *et. al.*, )  
 )  
Defendants, )  
 )  
and )  
 )  
UNITED STATES OF AMERICA, )  
PUEBLO DE NAMBE, )  
PUEBLO DE POJOAQUE, )  
PUEBLO DE SAN ILDEFONSO, and )  
PUEBLO DE TESUQUE, )

No. 66cv6639 WPJ/WPL

Plaintiffs-in-Intervention.

**OBJECTORS' RESPONSE TO MOTIONS IN SUPPORT OF ENTRY OF A PARTIAL  
FINAL JUDGMENT AND DECREE**

Objectors identified as Atencio Group, by their undersigned attorney, submit for their Response to the State's, the Santa Fe City and the County's Memorandum In Support Of The Agreement (Dkt. #9913), Plaintiffs-in-Intervention Memorandum And Points And Authorities In Support Of A Partial Final Judgment And Decree (Dkt. # 9910), Certain Non-Pueblo Defendants' Memorandum In Support Of Entry Of Partial Final Judgment And Decree Incorporating Settlement Agreement And Adjudicating Pueblos' Water Rights (Dkt. # 9912), state:

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## INTRODUCTION

Plaintiff State Engineer, the Plaintiffs-in-Intervention U.S.A., Pueblo of Nambe, Pueblo of Pojoaque, Pueblo of Tesuque, and Pueblo of San Ildefonso, collectively referred to as “Plaintiff Parties” seek a partial final decree that approves the settlement agreement and makes it an order of the Court. The Court has set the test for approving the settlement agreement. Objectors have the burden to prove that the settlement agreement is **not** fair, adequate, reasonable, in the public interest, or in compliance with applicable law

The motion to approve the settlement agreement should be summarily dismissed for failure to comply with the applicable law. The settlement agreement violates the McCarran Amendment, the Anti-Injunction Act, the Treaty of Guadalupe Hidalgo, the New Mexico Anti-Donation Clause, the New Mexico Domestic Well Act (72-12-1.1), Due Process, and Equal Protection, and should be summarily rejected by the Court as 792 Objectors have rejected it. .

## OBJECTIONS

1. Objectors adopt all objections of record.
2. The settlement agreement takes the Objectors’ right to use up to 3.0 AFY of Pojoaque Basin water without just compensation.
3. The settlement agreement uses a double standard for determining and administering water rights thereby depriving the Objectors of Equal Protection of the Law.
4. The settlement agreement violates the McCarran Amendment.
5. The settlement agreement enforces the restraint against irrigation of trees, lawns, and gardens.
6. The settlement agreement is void for inadequate consideration for the reduction in water rights of non-Pueblos.

7. The promised regional water system is not feasible.

#### STATEMENT OF FACTS

8. States' evidence is a one page letter and a one page affidavit by Plaintiff's employee stating what the average use of domestic water was in California in 1984. Exhibit 2.
9. The N-P-T Basin holds 55 million acre-feet of water in its aquifer. Exhibit 1.
10. The combined diversion of groundwater in the N-P-T Basin has a *de minimus* impact on surface waters. Exhibit 1.

#### ARGUMENT

#### I. THE SETTLEMENT AGREEMENT FAILS TO COMPLY WITH APPLICABLE LAW

The motion to approve the settlement agreement should be summarily dismissed for failure to comply with the applicable laws.

##### 1. The Preliminary Injunction Violates the Anti-Injunction Act.

America decided early in its life that the Federal Government must not interfere with State court proceedings for the system to succeed. (Dkt. # 9906). Congress has codified that policy in the Anti-Injunction Act which prohibits a Federal court from restraining a state officer from enforcing a state statute only if the subject statute is substantially unconstitutional and only by a three judge panel. 28 USCA §2281; 28 USCA . §2284. *Jackson v, State of Colorado*, 294 F. Supp. 1065 (Colo. 1968). The single judge may enter a temporary restraining order if supported by specific evidence, but only the three judge panel has authority to decide the merits of the case. Responsibility is on the single judge to convene a three judge panel.

On February 26, 1982 the U.S.A. and Pueblo Plaintiffs-in-Intervention filed a motion and memorandum (Dkt.# 576, 577) alleging a concern that they did not have reliable information

regarding the amount of water actually being pumped by domestic wells in the Pojoaque Basin and sought an adjudication of all such wells to determine that amount. To that end, they requested a preliminary injunction to maintain the status quo *pendent lite* and to ensure that all water users in the Pojoaque Basin have their water rights adjudicated. Id at pp. 1-2.

On January 13, 1983, the Court entered a preliminary injunction (Dkt. # 641) to restrain the New Mexico State Engineer from issuing permits pursuant to the Domestic Well Statute to drill a well and divert groundwater to be used for domestic purposes that allow outdoor irrigation of non-commercial trees to one acre of non-commercial trees, lawns or gardens.

The preliminary injunction is in direct conflict with the New Mexico Domestic Well Statute (§72-12-1.1 1978 as amended) which grants all applicants for a permit to drill a well pursuant to the Domestic Well Statute (“DWS”) to be issued a permit to divert sufficient groundwater to irrigate up to one acre of non-commercial trees, lawns and gardens.

The preliminary injunction herein is void *ab initio* for failure to comply with the procedure set forth in 28 U.S.C. §2284 . That renders condition number 8 of the Defendants’ permit to drill a domestic well, void. The prohibition against outdoor irrigation is void. The settlement agreement is void.

The motion for three judge panel (Dkt. #9906) is pending before the Court.

## **2. The Settlement Agreement Violates the McCarran Amendment.**

One objection is that the Pueblos and non-Pueblos are subject to two different sets of laws in the quantification and administration of water rights in the Pojoaque Basin, namely Federal laws and State laws.

The settlement agreement distinguishes claimants between “Pueblos” and “non-Pueblos”. That is the same as “Indians” and “non-Indians”, clearly a distinction based on race. It is divisive by definition. It divides the community. Resentment caused by the unequal treatment stifles communications necessary for an agreement that is fair, adequate, reasonable, in the public interest, or compliant with applicable law. But the courts have said that the preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. *Morton v. Mancari*, Congress granted a preference to Indians in employment matters. It does not follow that because Congress gave Indians an employment preference in the Indian Reorganization Act, that it gave Indians a preference in this water adjudication case. Congress would not approve of taking water rights from the non-Indians to give to the Pueblos.

The McCarran Amendment places the U.S.A. and the four Pueblos on equal footing with all other claimants and thus eliminates the need to distinguish on the basis of race.

By the Treaty of Guadalupe Hidalgo, Art. VIII the U.S.A. agreed:

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

The term “Mexicans” included the Indians in the promise to protect property.

The U.S.A. has adopted a policy of acting as trustee for the Indians. If Congress decides to give the Indians help to prosper in this Country, that is its prerogative. It is easy to see why the U.S.A. feels compelled to give the Indians preference in employment as in *Morton v. Mancari*, or to fund legal representation, as in this case, in light of its history of genocide of the indigenous people. But Congress has not authorized the taking of individuals’ water rights from the non-

Indians to give to the Pueblos as the U.S.A. is attempting to do in this case, without compensating the domestic well owners for their losses.

**3. The New Mexico Domestic Well Statute Is Being Violated.**

The Legislature of New Mexico has set policy regarding the administration of domestic wells of the public waters of the State by the Domestic Well Statute (DWS). The DWS requires the State Engineer to grant all applications for a permit to drill a well for domestic purposes. The New Mexico Supreme Court has affirmed the Legislature's authority to issue a permit to drill a domestic well in a specific water basin without a determination that the water is available and unappropriated. *Bounds V. State Ex Rel. D'Antonio*, 2013-NMSC-037, 306 P.3d 457 (2013) The Legislature has also determined that the applicants who are issued a permit pursuant to the Domestic Well Statute are entitled to sufficient water to irrigate one acre of trees, gardens and lawns.

The Supreme Court of New Mexico upheld the constitutionality of the Domestic Well Statute. In *Bounds V. State Ex Rel. D'Antonio*, supra. The court held that the state engineer cannot deny an application for a permit to drill a well but is responsible for enforcing the priority of each well to groundwater for domestic use. New Mexico law provides that the statute requires the state engineer to issue a permit without considering whether the Basin is fully appropriated. It is up to the state engineer to administer the water use by enforcing the priority of water rights. Id.

**II. The Settlement Agreement is Based on the Wrong Law.**

**1. State Law Governs These Proceedings.**

Congress enacted the McCarran Amendment (43 U.S.C. §666(1952) to remedy the chaos created by the development of two sets of laws relating to the ownership and administration of water rights in the western states: Federal law verses State law. 97 Cong. Rec. 7817 (1951).

Congress waived the U.S.A.'s sovereign immunity in comprehensive water adjudication cases, such as this case, wherein the U.S. claims a water right. The waiver also makes the U.S.A. and the Pueblos subject to a State court judgment. The State court judgment applies to all claimants equally. The Plaintiffs-in-intervention should be realigned as defendants.

The purpose of the McCarran Amendment is to make the Federal law amenable to State law for a proper administration of the water law "as it has developed over the years." See Statement of Purpose, S. Rep. No. 755, 82<sup>nd</sup> Cong., 1<sup>st</sup> Sess. (1951).

At the time the Amendment was being debated in Congress, the situation was described as:

"...[i]t is apparent that if any water user claiming to hold such right by reason of the ownership thereof by the United States . . . is permitted to claim immunity from suit in, or orders, of a State court, such claims could materially interfere with the lawful and equitable use of water . . . by the other water users who are amenable to and bound by the decrees and order of the State courts." *Id.* at 5.

The Committee described this situation as one that "cannot help but result in a chaotic condition." *Id.*

The non-Indian Objectors and the Pueblos are similarly situated as claimants to the Pojoaque Basin water. Each may own different amounts but the same laws and rules apply to all claimants equally. The Court has denied a motion to reject the settlement agreement because it denies the non-Indians Equal Protection of the law. The motion was denied with a finding that the two groups are not similarly situated because the Pueblos' water rights are governed by Federal laws and non-Pueblos' water rights are governed by State laws. (*See* Mem. Op. and Order, Doc. No.

7579, filed March 30, 2012). But the McCarran Amendment places the U.S.A. and the Pueblos under a single legal standard as all other claimants.

The settlement agreement proposes a dual system of administration of water rights implemented by the State Engineer resulting in a double standard that treats the Pueblos and the non-Indians differently. The settlement agreement calls for the non-Indians' water rights to be reduced while the Pueblos' water rights are increased. The Pueblos are awarded water rights under Federal laws that are not available to non-Pueblos. Forfeiture applies to the non-Pueblos water rights while Pueblo rights are protected from forfeiture.

There can be no compelling reason for a double standard of laws because Congress has waived sovereign immunity in general water adjudication cases where the U.S. has a claim, such as this case, to be sued in State court and to be bound by a State court judgment by the enactment of the McCarran Amendment. The Court is required to apply a single standard – State law.

The McCarran Amendment applies to the U.S.A. and Tribes in State general water adjudications such as the one at bar. See *Colorado River Conservation District v. U.S.*, 424 U.S. 800, 96 S.Ct. 1236 (1976).

It is *not reasonable* to have two standards that violate constitutionally protected property rights in the face of the McCarran Amendment.

The Plaintiffs-in-Intervention argue that the Federal law applies because the State has no force on Indian Tribes and their property and cite *Morton V. Mancari*, 435 U.S. 517, 94 S.Ct. 2474 (1974), for their justification that treating Pueblos differently than the non-Indian claimants is not a denial of Equal Protection to give the Pueblos a preference. But the Supreme Court held that:

“These 1964 exemptions [to the Civil Rights Act] as to private employment indicate

Congress' recognition of the longstanding federal policy of providing a unique legal status to Indians in matters concerning tribal or 'on or near' reservation employment. The exemptions reveal a clear congressional sentiment that an Indian preference in the narrow context of tribal or reservation-related employment did not constitute racial discrimination of the type otherwise proscribed." Id at p. 2481.

It is one thing to give preference to an Indian applicant for a job that is being filled. It would be quite different if the non-Indian was removed from an employment position already held and the job awarded to the Indian. That is the circumstance in this case: vested non-Indian water rights are being taken from non-Indians and awarded to the Pueblos. The settlement agreement does not just give the Pueblos a preference, it takes the non-Indians' water rights and transfers them to the Pueblos via the watermaster rules and regulations, the operating agreement, the Joint Powers Agreement.

The leasing of the water to the City and County governments is public record. The settlement agreement is not intended to "...give Pueblos a greater participation in their own self-government; to further the Government's trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life." *Morton V. Mancari*, supra. The settlement agreement will transfer ownership of the Basin water to the Pueblos, and then allow the Pueblos to lease the water for economic development elsewhere in the County, and make obscene amounts of money. The land owners who have worked the lands in the Pojoaque Basin get nothing.

Leasing the water rights for up to 99 years is, arguably, economic success for the Pueblos, but what to drink after the aquifer is dried up? Leasing the water was not the primary purpose for reserving the Pueblos' water in this case. There is no preference for secondary use of

the water.

The preference claim is the legal device used in the settlement agreement to take control of all or almost all the water in the Basin without affording the defendants an opportunity to opt out of the settlement agreement and not be bound by it if they object to it.

## **2. Federal Water Law Favors Application of State Water Law.**

In 1866, the U.S. had retained the rights to use water on the public domain, but the U.S. Supreme Court recognized the acquisition of water rights by the doctrine of prior appropriations for a beneficial use, including New Mexico's water laws. *California Oregon Power Co. v. Beaver Portland Cement Co.* 295 U.S. 142, 154 (1935).

In 1866 and 1870, Congress enacted the Public Lands Act. Then, in 1877, Congress enacted the Desert Land Act of 1877. Together, these Acts served to sever ownership in the non-navigable waters from the public domain, and rights developed under the doctrine of prior appropriations were confirmed. In *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690, 702-09 (1899). The U.S. expressly relinquished plenary control over water resources in the public domain to the States. *California Oregon Power Co. v. Beaver Portland Cement Co.*, *Id* at pp.163-164.

In 1908, the Supreme Court declared in *Winters v. United States* 207 U.S, 564, (1908) that when the United States withdrew lands from the public domain in order to establish Ft. Belknap, it impliedly withdrew from the then unappropriated waters of the Milk River sufficient water to satisfy the purposes for which the lands were withdrawn. *Id* at p. 577.

In *United States v. New Mexico*, 438 U.S. 696, (1978), the Supreme Court recognized that large claims to water on federal reservations are in competition with other private and public claims for the limited quantities found in the rivers and streams. *Id* at p. 699. The

quantification of federal reserved rights is made according to Federal law, at least for the primary purpose of the reservation. Thus the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the primary purpose of the reservation: agriculture.

Under Federal law, reserved rights vest on the date of the reservation which differs from the State law which provides that the water rights vest on the date the water is put to beneficial use. The reserved rights apply to unappropriated waters. The reserved rights would not affect waters that were already appropriated at the time the Pueblos' rights were reserved. The Pueblos' reserved rights under State law are usufructuary in nature and must be put to beneficial use, although Pueblo water rights cannot be lost through forfeiture for non-use.

Having two distinct bodies of law to quantify and administer water rights is a recipe for chaos, as the Senate Judiciary Committee recognized in reviewing the McCarran Amendment. The Committee supported the enactment of the McCarran Amendment to

“...permit the joinder of the United States as a party defendant in any suit for the adjudication of rights to use the water of a river system or other source or for the administration of such rights where it appears that the United States is the owner or is in the process of acquiring water rights by appropriation under state law, by purchase, exchange or otherwise and that the United States is a necessary party to such suit”.

S. Rep. No. 755, 82<sup>nd</sup> Cong., 1<sup>st</sup> Sess. (1951).

The Committee recognized that each and every owner along a water course must be amenable to the laws of the State if there is to be a proper administration of the water.

“The Government has long recognized and conceded, particularly in the Desert Land Act of 1877, the supremacy of State law in respect to the acquisition of water. It has been under these laws that the water rights of the owners on a given stream have been adjudicated. Under the laws of many States, in order that an adjudication of the water rights of a stream may be had, it is necessary to join all parties owning or claiming to

own any rights to the stream. If one or the other of the owners cannot be joined, the effect of the decree is obvious. Since the United States has not waived its immunity in cases of this nature, suits of the adjudication of water rights necessarily come to a standstill, and confusion results.” 97 CONG. REC. 12947-48 (1951).

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L.Ed.2d 483 (1976), a water adjudication case in Colorado very similar to the case at bar as they relate to state court water law: both apply the doctrine of prior appropriations in establishing rights to use water, both require the water to be diverted from its natural source and applying it to some beneficial use, both have a state engineer charged with administration of water rights and enforcement of the priority dates – the dates the water is first diverted from its natural source and put to beneficial use. The Supreme Court held that the State court and the Federal court have concurrent jurisdiction in comprehensive water adjudication suits like this case.

The U.S. district court dismissed the Federal water adjudication suit filed by the U. S on grounds that there was already a water adjudication suit in State court that was filed prior to the Federal case. The district court reasoned that the doctrine of abstention required the federal court to give deference to the state court proceedings. *Id* at 96 S.Ct. 1241.

The court also held that the State court has jurisdiction over Indian water rights under the McCarran Amendment; that the Amendment includes consent to determine in State court reserved rights held by the Pueblos. *Id* at 424 U.S. 810-811. Since Indians own water rights throughout the Southwest, excluding Indian water rights from coverage by the Amendment “would enervate” the Amendment’s objective to avoid piecemeal litigation.

The court rejected the assumption by the U.S. that consent to State jurisdiction for the purpose of determining Indian water rights imperils those rights or in some way breaches the special obligation of the Federal Government to protect the Indians. *Id* at 424 U.S. 812.

In considering the propriety of dismissing the Federal case pursuant to the doctrine of abstention, the Supreme Court noted that the McCarran Amendment "... bespeaks a policy that recognizes the availability of state systems for adjudication of water rights..." and the responsibility of managing the state's water is delegated to a state engineer. *Id.* at 424 U.S. 820.

Thus, the McCarran Amendment has been a significant move by Congress to combine Federal and State laws governing the acquisition and administration of water rights into a more equitable and simplified process. The amalgamation of the two law systems is accomplished facily. The doctrine of prior appropriations automatically gives the Pueblos preferential treatment by its corollary that "first in time is first in right". The Pueblos have existed in the Basin before any non-Indian so their rights would be superior to any non-Indians in the amount that was being diverted at the time of the arrival of the Spanish settlers after the Revolt of 1680. Water rights after 1695 were documented.

### **3. Quantifying Non-Indian Water Rights.**

The Plaintiff Parties relate the Pueblos' history of residing in the Pojoaque Basin in times before the written record was kept. Nothing is said of the Spanish settlers who have worked the land for centuries and generations. Certainly having used the waters of the Basin for 300+ years, the land owners own vested property interest in the water used to develop the Basin.

When Spanish settlers arrived at the Pojoaque Valley circa 1695, they brought metal tools, horses and oxen, and the knowledge and experience of Moorish irrigation methods acquired over centuries of irrigating southern Spain. The Pueblos were irrigating with an intricate system of canals, diversion dams and head gates for irrigating with ditches and natural precipitation and

runoff from mesa tops. The settlers installed the first acequia in 1598 in Chamita west of Ohkey Owenge. See “*Acequia Culture: Water, Land and Community in the Southwest*”, p. 1, Jose’ A. Rivera, © 1998 University of New Mexico Press. ISBN 0-8263-1859-2.

The acequias required a community effort to install and maintain the system that fed the community. *Acequias*: p.15 . The acequias were administered according to the equitable principal of first in time is first in right. The right to water for cultivating the land was appurtenant to the land, the longer a landowner used the water for irrigation, the higher was his priority when it came to scheduling the distribution of water for irrigation. The *Water in New Mexico: A History of Its Management and Use* , pp. 9-23, Ira G. Clark, UNM Press. ISBN 0-8263-0923-2.

Administration of the acequia was delegated to the *mayordomo* who had the authority to allocate water and to compel the residents to assist in repairing and cleaning the acequia. In times of drought, he prepared a list with the order of precedence and a rotating schedule of each user’s turn to receive the water and how his turn lasted. Local custom of administering the acequias became the law for expediency since the prevailing law, the Crown, was absent. The *mayordomo* apportioned the irrigation waters based on principles of equity and need. All users shared in the labor to repair and clean the acequia prorated to the number and size of their individual *suertes*, or irrigated plots. Id @ P. 7. The Spanish Crown’s policy was to reward beneficial use of water for the “tilling of land and rearing of cattle” by granting a property interest in the water used for development. Id @ p. 9.

The settlers and the Pueblos installed many acequias jointly and separately for 151 years from the resettlement of Santa Fe and Santa Cruz in 1695 until General Stephen Kearny occupied the Territory of New Mexico in 1846. The process of cleaning and maintaining the

acequias was repeated annually in the Basin for all those years until it became a culture then a common law system for governing the community. See Forest Service publication *Water in New Mexico: A History of Its Management and Use*, pp. 9-23, Ira G. Clark, UNM Press. ISBN 0-8263-0923-2.

In 1846, the law of the acequias resulting from the customs and rules that developed from 1598 to govern the administration of the acequias and the apportionment of water were recognized and preserved in the Kearny Code by General Kearny on September 22, 1846 for the New Mexico Territory. *Water: pp. 24-43*.

On February 2, 1848, the USA acquired the Territory of New Mexico under the doctrine of manifest destiny and agreed to protect all the property then owned by Mexicans in the Territory, which included the Indians. *Treaty of Guadalupe Hidalgo*, Article 8. “[A]ll property” includes the land and appurtenant water rights acquired by the Indians and non-Indians through centuries of developing the N-P-T-SI Basin up to the date of the acquisition of the Territory of New Mexico by the United States.

The same law applied to all users.

It is clear that the non-Indians residing in the Pojoaque Basin also acquired water rights before 1956 and before 1848.

#### **4. Pre-1848 Non-Pueblo Water Rights Are Omitted From The Settlement Agreement.**

The settlement agreement addresses rights by dates as follows:

The settlement agreement ranks wells by increasing priority into post-1983 wells, pre-1983 wells, pre-1956 wells and Pueblo wells.

All post-1983 wells are reduced from 3.0 AFY to 0.5 AFY and are restrained from using the well for outdoor irrigation.

The pre-1983 wells are reduced from 3.0 AFY to 0.5 AFY, unless you want to keep your well, then the amount permitted to be used is reduced by 90% to 0.3 AFY.

The pre-1956 wells are reduced from no limit to 3.0 AFY.

And before 1956, the next group is the Pueblos, so that Pueblos are given the highest priority for all Pueblo rights before 1956. The non-Pueblos' roles in the development of the Pojoaque Basin between the resettlement of Santa Fe in 1695 until 1848 when the Basin became a territory of the U. S. are not recognized in the settlement agreement. The development of the Basin from 1695 to the present has been a joint effort by the entire community of Pueblos and non- Pueblos through the acequia system to survive and prosper. The water rights appurtenant to those lands were and are at least equal to the Pueblos' rights for that period. There are records of that development.

Not all Pueblo rights are equal. Some Pueblo rights were developed after 1695.

The Court's decision that all Pueblo water rights in the Basin are superior to any non-Pueblo water rights is clear error.

##### **5. Applying State Water Law To The Pueblos.**

The Federal reserved water rights determination is very much like New Mexico law in that water rights are appurtenant to the land. Water rights for irrigation remain appurtenant to land until severed. *Turner v. Bassett*, 2005-NMSC-009, 137 N.M. 381, 111 P.3d 701; *Hydro Res. Corp. v. Gray*, 2007-NMSC-061, 143 N.M. 142, 173 P.3d 749 . When land is acquired,

the water rights are acquired, albeit inchoate in nature. The rights are vested when the water is diverted from its natural source and put to beneficial use. The date the water is first diverted is used as the measure of the priority of the right. §72-12-2 NMSA 1978 (as amended). In times of water shortage, the priority date is used to determine the hierarchy of right to receive the water the land owner is entitled to use – the older the date, the higher the priority. Thus, the Pueblos have the highest priority to receive up to the amount of water they were using at the time the first Europeans settled in the Pojoaque Basin. After that time, the ownership and development of land is shared by the Pueblos and non-Pueblos and are of record.

In the case of *Cappaert v. United States*, 426 U.S. 128, 138, the Supreme Court confirmed the *Winters* doctrine regarding reserved water rights and held that when the United States withdraws land from the public domain to be used for a federal purpose, it impliedly reserves appurtenant *unappropriated* water from appropriation under state and territorial law sufficient in amount to achieve the primary purpose of the reservation. Thus, water rights existing at the time the water is reserved would not be affected by the reservation of water.

Three cases were brought by the Federal Government to adjudicate Indian water rights, then non-Indians brought suit in state court and moved to dismiss the federal court suits. The three cases were before the U.S. Supreme Court in *Arizona v. San Carlos Apache Tribe Of Arizona*. 463 US 545, 103 S.Ct. 3201, 77 L.Ed.2 837 (1983). The Supreme Court held that, (1) assuming that the state adjudications were adequate to quantify the rights at issue in the federal suits, (2) and taking into account the McCarran Amendment policies, (3) the expertise and administrative machinery available to the state courts, (4) the infancy of the federal suits, (5) the general judicial bias against piecemeal litigation, and (6) the convenience to the parties, *the district courts were correct in deferring to the state proceedings.*

The settlement agreement proposes to apply two separate codes of law to the quantification and administration of water rights in this case in violation of Congressional intent in enacting the McCarran Amendment. The settlement agreement is illegal and the motion to enter a partial final decree to order it effective should be denied.

**6. The Present State of the Law Regarding Pueblo Water Rights.**

The present State of Federal water rights, including the Pueblos', is that the Pueblos are subject to State court jurisdiction in a comprehensive adjudication of water rights and Pueblo water rights are governed by State law and State court may apply the Federal reserve doctrine in determining the quantity of water rights.

**III. THE SETTLEMENT AGREEMENT VIOLATES OBJECTOR'S CONSTITUTIONAL RIGHTS.**

**1. Objectors Have A Property Interest In The Permit.**

A threshold issue is whether the defendants have a property interest in the permit issued to them pursuant to the Domestic Well Statute. The State Engineer admits by its offer of 0.5 AFY to settle post-1983 claims that Defendants have some property interest in the permit to drill a domestic well and use up to 3.0 AFY of Basin groundwater, if its available.

In the motion for summary judgment and objections to special master's order denying Defendants' motion for summary judgment, Defendants argue that a permit to drill a domestic well is an inchoate interest on the date it is issued. It is a promise to allow the permittee to use up to 3.0 AFY of underground water, if it is available, for domestic uses. The property right vests when the water is put to beneficial use.

The State Engineer Rules require that the well be drilled and the well record filed within one year of date the permit is issued. Clearly the assumption is that the water will be put to beneficial

use when the well is completed. The well record is cogent proof that the water is being put to beneficial use. The filing of the well record is the final step in perfecting a water right to drill a well and have water for the family. The State Engineer argues that he has the authority to set water rights by assuming that all domestic well users consume less than 0.5 AFY. But the Legislature has already made the assumption that a domestic well user will use enough water to irrigate up to one acre of non-commercial trees, lawns and gardens. That amount in the Pojoaque Basin is up to 3.0 AFY and has set that amount in the permits as the amount of groundwater that will be put to beneficial use. The State Engineer does not have authority to modify or amend the legislation.

The permit grants a usufruct to use up to 3.0 AFY for domestic purposes, if the water is available. The permit does not guarantee that the owner will receive the corpus of the water. In this case the usufruct is valuable property because the water is available. Once vested, that right does not expire. (Vince Chavez deposition, 40:9-23, Dkt. #7982, Exhibit 4). That right may be sold or otherwise transferred or assigned. Section 72-5-22 NMSA 1978; *Mathers v. Texaco, Inc.*, 77 N.M. 239, 421 P.2d 771 (1966).

The Settling Parties' time and resources expended to convince the Objectors to accept the settlement agreement and reduce their right to divert groundwater down to 0.5 AFY speak to the value of that right. (See Response to motion for partial Stay, filed April 14, 2014, Dkt. # 9299, pp. 3-5). If the water right that Defendant and other claimants acquired by the permit had no value, there would be nothing to be gained by reducing Defendant's permitted amount by up to 2.5 AFY. In fact, the State Engineer's offer of judgment in the amount of 0.5 AFY is an admission that the permit is protected property in *some* amount.

A water right or an interest in water is real property and is treated as real property under laws pertaining to real property, including the Statute of Frauds. *Posey V. Dove*, 1953-NMSC-019, 57 N.M. 200,210, 257 P.2d 541 (S. Ct. 1953) citing *New Mexico Prods. Co. V. New Mexico Power Co.*, 1937-NMSC-048, 42 N.M. 3.

The Objectors perfected their water rights when they applied for a DWS permit to drill a well, then drilled it and filed the well record signed by a licensed well driller. The Rules require nothing else of the domestic well owner to perfect his title to the water rights.

The Objectors have vested property rights in their DWS permits.

The Order to Show Cause filed by the Court orders the defendants to show why the Court should not adjudicate the defendants water rights at 0.5 AFY.

The following are some reasons for not adjudicating the Objectors rights at 0.5 AFY:

## **2. The Domestic Well Statute Creates An Entitlement.**

The Legislature declared the measure of groundwater that each applicant for a permit is entitled to is enough to irrigate one acre of trees, lawns and gardens. In the N-P-T-SI Basin, that quantity is 3.0AFY.

The duty of water in the Basin is 3.0 AFY per acre so the amount of water required to irrigate one acre in the N-P-T-SI Basin is 3.0 AFY. (34:10-16, Dkt. #9299, Exhibit 6).

The permits do not set a time limit for the use of 3.0 AFY as the State Engineer seeks to impose. The right to beneficial use of groundwater is in perpetuity just like property rights in land.

Defendants have complied with the State Engineer's requirements for perfecting their domestic well water right with the drilling of a well and filing the well record. The permit has no

requirement to measure usage. There is no notice to the domestic well owner that, in the future, water rights would be measured by proof of actual historical use.

The permit has economic and commercial value. The settling parties spent significant resources to put “lipstick” on the settlement agreement. And yet, 792 people rejected the settlement agreement. See Plaintiff’s Response on motion for partial stay, filed April 4, 2014. Dkt. # 9299, pp. 3-5).

### **3. The Permit Creates an Entitlement.**

The State Engineer uses the dates the Defendants filed their applications for a domestic well permit as the priority dates. Because the water rights run with the land, the priority dates are the same as the priority dates of the surface water. The Constitution of New Mexico does not distinguish between surface waters and groundwaters in applying the doctrine of prior appropriations. But whatever method is used to set the priority date for wells, the same method of determining the priority date must be applied to all parties, including the Pueblos.

### **4. NMAC 19.27.5.9(D) Creates An Entitlement to 3.0 AFY.**

NMAC 19.27.5.9(D) provides that a person who can prove that the combined use of domestic wells in the Basin does not impair senior rights is entitled to use 3.0 AFY. The amount of water in the Basin and whether any senior rights owner has complained of impairment are directly relevant to the issues of whether there is sufficient groundwater to service all claimants without impairment. *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1251-52 (10th Cir. 2006). They are also relevant to the likelihood of a priority call which is being touted as a reason for accepting the settlement agreement. Yet, discovery on the amounts of groundwater and use amounts has been severely restricted. See Dkt. # 7967.

N.M.A.C. 19.27.5.9(D)<sup>1</sup> provides defendants an opportunity to be awarded 3.0 AFY if the defendant is able to prove that the combined diversion from domestic wells will not impair existing water rights, the defendants are entitled to 3.0 AFY. The amount of water in the N-P-T-SI aquifer becomes an issue. The Defendants' expert hydrologist states that the Pojoaque Basin aquifer holds 55 million acre-feet of water and that domestic wells are having a *de minimus* effect on surface water. See affidavit of Francis West attached hereto as Exhibit 1. That is uncontroverted evidence that the Pojoaque Basin contains sufficient groundwater to service all domestic wells without impairing existing water rights and thereby entitle Defendants to 3.0 AFY of groundwater.

**5. The State Engineer Has No Authority To Reduce Water Rights Permanently.**

The Court cites N.M.A.C. § 19.27.5.13(B), N.M.A.C. § 19.27.5.13(B)(6), N.M.A.C. § 19.27.5.13(B)(11), and N.M.A.C. § 19.27.5.14 to decide that the State Engineer is authorized to curtail the Defendants' amounts and uses of groundwater.

A recent Supreme Court of New Mexico decision also relates to the State Engineer's authority. See *Bounds V. State Ex Rel. D'Antonio*, 2013-NMSC-037, 306 P.3d 457 (2013).

In that case, the court was clear that the State Engineer has extensive authority and presumption of being correct in his decisions. See §72-2-8 and §72-2-9.1. But in each case, the

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<sup>1</sup>“The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 1.0 acre-foot per annum, *except* in hydrological units where applicant can demonstrate to the satisfaction of the state engineer states plainly and clearly that: “The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 1.0 acre-foot per annum, *except* in hydrological units where applicant can demonstrate to the satisfaction of the state engineer that the combined diversion from domestic wells will not impair existing water rights, then the maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 3.0 acre-foot per annum.” (emphasis added)

State Engineer's power to curtail water rights as part of performing his duties according to priority administration is only invoked by a concrete risk of impairment of senior water rights. Id at {15}. Thus, the State Engineer is given the duties of the mayordomo, i.e. to distribute the water according to the priority date in the amount owned, and in times of water shortage, to cut off all junior users until the senior user has receive full measure - to enforce the priority dates. The State Engineer is not authorized to adjudicate rights.

Section 72-2-9.1 NMSA 1978 further authorizes the State Engineer to promulgate rules to administer water allocations in accordance with the water right priorities. But the statute also limits that authority by prohibiting the State Engineer from adopting rules "...so as not to interfere with a future or pending adjudication; so as to create no impairment of water rights, other than what is required to enforce priorities..."

The statute places responsibility on the State Engineer to protect all water rights by enforcing priorities. The rules cited by the Court as the State Engineer's authority have interfered with this litigation significantly. The rules impair the Objectors' water rights by reducing the right from 3.0 AFY and add nothing to the State Engineer's ability to administer water rights by priority.

The State Engineer has not shown either a water shortage or a risk of impairment to invoke subject matter jurisdiction to reduce the Objectors' water rights, and has objected to the production of information regarding water quantities and uses. The State Engineer acts arbitrarily and without authority.

#### **IV. OBJECTORS ARE DENIED DUE PROCESS AND EQUAL PROTECTION.**

##### **1. Equal Protection of the Law.**

The non-Indian Objectors and the Pueblos are similarly situated as claimants to the Pojoaque Basin water. Yet, the settlement agreement intends to treat each very differently. (Sect. 2.0, 3.0

5.3). The Court has denied a motion to reject the settlement agreement because it denies the non-Indians Equal Protection of the Law. (Dkt. 7579) The motion was denied with a finding that the two groups are not similarly situated because the Pueblos' water rights are governed by Federal laws and non-Pueblos water rights are governed by State laws.

The result of the double standard is that the Pueblos and the non-Indians are treated differently by the settlement agreement. The non-Indians' water rights are reduced but the Pueblos' water rights are increased. The Pueblos get water rights that are not available to non-Pueblos. Forfeiture applies to the non-Pueblos' water rights while Pueblo rights are protected from forfeiture. The non-Indians are being discriminated against based on race.

There can be no compelling reason for a double standard because Congress has waived sovereign immunity for the U.S. in general water adjudication cases where the U.S. has a claim. The U.S. allows to be sued in State court and be bound by a State court judgment by the enactment of the McCarran Amendment.

The McCarran Amendment applies to the U.S.A. and Tribes in state general water adjudications such as the one at bar. See *Colorado River Conservation District v. U.S.*, 424 U.S. 800, 96 S.Ct. 1236 (1976).

It is not reasonable to have two standards that violate constitutionally protected property rights in the face of the McCarran Amendment. All claimants have to be treated equally.

The settlement agreement on its face distinguishes between Pueblos and non-Pueblos in its quantification and administration of water rights despite their similar standing as claimants. The McCarran Amendment waiver of sovereign immunity makes the U.S.A. and the Pueblo claimants like all other claimants - subject to State court jurisdiction.

As the Supreme Court observed in Eagle County, “Indeed, Eagle County spoke of non-Indian rights and Indian rights without any suggestion that there was a distinction between them for the purposes of the Amendment.” *United States v. District Court for Eagle County*, 401 U.S. 520, 523 91 S.Ct. 998, 1002 28 L.Ed.2d 268 (1971).

The Plaintiffs in Intervention are actually defendants and should be realigned. That would eliminate the division by race. (Dkt. #7148).

## **2. The Objectors Are Deprived of Their Property Without Due Process Of Law.**

The Objectors own water rights in the Pojoaque Basin, be they 3.0 AFY as they claim or 0.5 AFY as the State Engineer claims. The issue of how much water the defendants are entitled to use is presently pending before the Court. See (Dkt.# 8223, Dkt. # 8233 and Dkt. # 8250).

This is an adjudication, so a judgment adjudicating those water rights will ultimately result. Those adjudicated rights are protected by the Due Process Clause of the Fifth Amendment to the U.S. Constitution as applied through the Fourteenth Amendment. If the settlement agreement is approved, the Objectors will be required to transfer all those adjudicated rights to the County of Santa Fe by 2024 (Sec. 3.0), unless they decide to keep their wells and reduce their use by 90% to 0.3 AFY.

The Court’s Memorandum Opinion and Order (Dkt. # 6236, May 24, 2007) assures the claimants that “[t]he Settlement Parties’ Motion does not violate due process because it does not deprive any person of their property rights. *See Mitchell v. City of Moore*, 218 F.3d 1190, 1198 (10th Cir. 2000).” The Court has assured the claimants that “Those claimants objecting to the settlement will not be forced to join the settlement but instead will be permitted to adjudicate their water rights via litigation. *See Kothe v. Smith*, 771 F.2d 667, 669 (2nd Cir. 1985) (court cannot coerce a party to settle). Furthermore, as discussed elsewhere in this Order, those who

believe that the settlement agreement will cause them harm will have the opportunity to present their objections to the Court.” Id.

The Court’s statement that, “the modified procedure will identify and serve all persons entitled to notice, so far as they can be ascertained with reasonable diligence, serve notice on unknown claimants by publication, and afford all claimants the opportunity to be heard by the Court before it approves the settlement agreement” (emphasis added), suggests that the Court has already decided that it will approve the settlement agreement.

Since the Court cannot lawfully deny the Objectors *some* water rights, the settlement agreement is the device used to dispossess the Objectors of all their water rights by requiring that the objector “agree” to commit to transfer all adjudicated water rights to the county water authority immediately upon approval of the settlement agreement and allow the county water authority to begin using the water. (Sect. 3) The taking of water rights is shown by the fact that without the settlement agreement the permit owner has at least 0.5 AFY of water rights, and with the approval of the settlement agreement the county will own all non-Pueblo post 1983 domestic water rights by 2024.

The settlement agreement orders the domestic well owner to “agree” to transfer ownership of those rights to the County of Santa Fe or be penalized by only receiving ten percent (0.3 AFY) of the 3.0 AFY of groundwater that the owner is permitted to divert. (Sec. 3). The governmental action to take those rights invokes the Due Process protections as embodied in the Federal Rules of Civil Procedure for the District Courts.

The water rights are property. The adjudication process to resolve conflicts in ownership of property normally involve a summons and complaint, the right to discovery, and a judgment on the merits by an impartial trier of fact.

Legal questions regarding ownership of water rights in this case include whether filing of the well drilling record perfects the permit to drill a domestic well; and whether the State Engineer is authorized to declare water rights quantities without the Legislature's approval. These issues relate to property and are therefore state court issues and should be certified to the New Mexico Supreme Court.

The order setting the procedure for getting approval of the settlement agreement in this case (Dkt. #6236, May 24, 2007) is a hybrid procedure that attempts to replace the Federal Rules of Civil Procedure in its stated goal of obtaining approval of the settlement agreement. Whereas the Federal Rules provide a tested procedure for fair resolutions of competing claims by seeking truth, the hybrid procedure has the goal of approving the settlement agreement before the September 15, 2017 deadline.

It might seem that the Federal Rules don't apply to the approval of the settlement agreement. It purports to be a motion, but it is more like a plan to enforce a judgment already entered. The hybrid system presumes that the proposed settlement agreement is approved by the Court and the process now is to cram it down the Objectors' collective throats.

Congress presumed the settlement agreement was already a judgment when it enacted the Settlement Act. The Secretary of the Interior and the representatives of the several sovereign governments that are parties herein assumed that the settlement agreement was a judgment when they met on April 19, 2012 and signed it. No one signed the settlement agreement for the non-Pueblo Objectors.

The hybrid system is designed to expedite the settlement agreement approval process by allowing the State Engineer to devise a method of summarily eliminating the objections. But the hybrid procedure did not anticipate 792 objections.

The hybrid procedure assumes that service of its order to show cause is accomplished by saturating the community with pro-acceptance propaganda to replace the requirements for proof of service of its Order to Show Cause dated December 6, 2013 as set forth in Federal Rules 1 through 4. Any domestic well Owner who did not receive the order to show cause is assumed to be a non-responding owner who agrees with the settlement agreement. (Sec. 3.1.9 ).

Federal Rule 8(d)(1) provides, "In General. Each allegation must be simple, concise, and direct. No technical form is required." Substance is considered over form.

The case management order sets technical requirements on the form of the objections that would not be cause for dismissal of a claim under the Federal Rules. The hybrid procedure makes the objections susceptible to dismissal for technical deficits.

The Federal Rules provide a process for commencing a lawsuit: file and serve a complaint. Filing an answer puts the allegations of the complaint at issue. The parties are then allowed to discover the other parties' evidence in support of their allegations. The hybrid system does not provide for an answer to the settlement agreement. Instead it provides for objections to the settlement agreement, discovery is optional with the court and difficult to acquire. See (Dkt. # 7967; Dkt. # 9506, p. 8)

The hybrid procedure allows the court to enter an order of protection on its own motion. The hybrid procedure has different rules for implementation of the settlement agreement for Pueblos and non-Pueblos.

The Federal Rules provide an opportunity to be heard subject to the Rules of Evidence, the Rules of Civil Procedure and the Bill of Rights. In the hybrid procedure, the Objectors' "opportunity to be heard" is the right to file an objection to the settlement agreement which the Court need not respond to individually. The objections are required to be in a precise format that makes them susceptible to dismissal without a hearing.

This is not a class action so the Federal rules require the judge to consider all the evidence and enter a decision on the merits for each individual's objections. The hybrid procedure allows the court to treat the claimants as a class and apply its orders *en masse*.

The motion before the Court is a concerted effort to take the domestic well owners' water rights, as much as they are, without providing a *meaningful* opportunity to be heard or just compensation, offering instead non-binding representations of a regional water system and increased water availability in the Basin from water rights to be acquired in Taos County. However, Objectors do not accept the presumption that their rights are inconsequential and demand their rights.

If the settlement agreement is approved, the Objectors will be required to immediately transfer equitable title to their water rights to the County of Santa Fe, and to commit to transfer their ownership of all water rights to the County, or agree to reduce their use to 0.3 AFY. The Objectors are entitled to a trial on the merits of their objections they apply to them or to opt out of the settlement agreement and not be bound by it. The hybrid procedure replaces the hearing on the merits with the objections process.

The hybrid procedure allows a partial final decree without an *inter se* hearing. The Federal Rules prohibit a judgment unless each party has had an opportunity to challenge any other party's claim.

The hybrid procedure's objective clearly is to approve the settlement agreement and enter a partial final decree by the September 15, 2017 deadline for entering a judgment or purportedly lose millions of dollars in funding. See Memorandum Opinion and Order (Dkt. #9964). The objective of the Federal Rules of Civil Procedure is to arrive at a judgment on the merits. The touchstone of the Federal Rules is fairness. *Graves v. Thomas*, 450 F.3d 1215, 1220 (10th Cir. 2006)(citing *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998)). The polestar of the hybrid procedure is the Settlement Act funding.

Objectors invoke the Federal Rules of Civil Procedure.

### **3. The Proposed Settlement Agreement Does Not Bind Objectors.**

Plaintiff Parties cite several Memoranda and Orders of the Court entered before the Objectors were joined as parties to this lawsuit as bases for their claims that the issues regarding the quantity and administration of Pueblo water rights have been decided. (Dkt. # 9910, pp. 14-15.)

Objectors were not joined as parties at the time that those orders of the Court were filed and did not have notice of the motions or an opportunity to be heard on the applicability of Federal law. In *Sanguine, LTD v. United States Department of Interior*, 798 F.2d 389 (Cir. 10, 1986) tribal members who owned oil and gas-producing restricted Indian lands sought to intervene as of right in an action by a lessee against the U.S.A. The trial court granted the Tribe's motion to vacate a prior judgment. The court held that to bind the Tribal members to judgments entered prior to intervening violates Due Process because they were non-parties at the time the judgment adopting the consent decree was entered.

A partial final decree is not binding on all non-Pueblo domestic well owners unless all have participated in the *inter se* portion of the adjudication process. *State Ex Rel. Reynolds V. Pecos Valley Artesian Conservancy Dist.*, 1983-NMSC-044, 99 N.M. 699, 701, 663 P.2d 358 (S. Ct. 1983); *Sanguine, LTD v. United States Department of Interior*, 798 F.2d 389 (Cir. 10, 1986).

#### V. THE SETTLEMENT AGREEMENT IS NOT FAIR.

The settlement agreement would close the basin to new permits for a domestic well. It is not fair to land owners who have not installed a domestic well on their property or land owners who divide their property among their heirs who will then require a domestic well permit. If the settlement agreement is approved, the land owner will be obligated to purchase water rights from someone in the Basin and the only ones with water rights to lease will be the Pueblos.

The settlement agreement provision to close the Basin to new permits is not fair because there is no showing that the Basin water is completely appropriated. And even if it is completely appropriated, the New Mexico Supreme Court has held that the State Engineer is required to issue the permit anyway and enforce the priority system, *Bounds, supra.*, thereby making it illegal to close the Basin to new domestic well permits.

However, after converting groundwater from being appropriated in the amount of 3.0 AFY to 0.5 AFY, there are significant newly unappropriated waters in the Pojoaque Basin. The settlement agreement is silent as to what becomes of the newly unappropriated water. That water is public water and is under the responsibility of the State Engineer, but the State Engineer is supporting the closing of the Basin. The State Engineer is abdicating his duty to administer the water. Instead, the State Engineer allows the Pueblos to take the newly unappropriated water in violation of N.M. Const. Art. IX, Section 14 – the Anti-Donation Clause.

It is not fair that the initial design of the regional water system by HKM used to estimate the cost of the proposed regional water system omits large areas of the Basin from service but does not exclude them from operation of the settlement agreement.

It is not fair that the feasibility of the regional water system is not a condition precedent to approval of the settlement agreement because it is presented as consideration for accepting the settlement agreement. It is possible that a user will accept the settlement agreement because of the proposed water system and commit to transferring all water rights to the County, and then have the regional water system be abandoned as too costly or for lack of funding. The user's water rights are committed to the county water authority at that point. The settlement agreement unfairly places the burden on the user to quiet the title to her water rights if the regional water system fails to materialize. (Sect. 3.1.8.4).

It is unfair that the Court restrains the domestic well owner from using domestic wells for outdoor irrigation then sets the owner's rights at the owner's actual use. The domestic well owner is prevented from proving his actual use.

It is unfair that the prohibition of outdoor irrigation is based on a temporary preliminary injunction but the restriction against outdoor irrigation is made permanent in the permit without a hearing.

It is not fair that the Basin water will be leased to the City and County of Santa Fe for economic development – a public concern. If the sovereigns decide that the Basin groundwater is better utilized in Santa Fe, they all have the power to take the water by eminent domain. That would require just compensation.

## **VI. Damages.**

The Objectors will be damaged by approval of the settlement agreement by the reduction in the amount of water they will be permitted to use. The settlement agreement ranks wells by increasing priority into post-1983 wells, pre-1983 wells, pre-1956 wells and Pueblo wells.

All post-1983 wells are reduced from 3.0 AFY to 0.5 AFY and are restrained from using the well for outdoor irrigation.

The pre-1983 wells are reduced from 3.0 AFY to 0.5 AFY, unless you want to keep your well, then the amount permitted to be used is reduced by 90% to 0.3 AFY.

The pre-1956 wells are reduced from no limit to 0.5 AFY.

The settlement agreement reduces all domestic water use amounts. The amount of water that is lost is a function of the priority date and the Court's ultimate decision whether the Objectors' permit is property and its measure.

The loss of use of the water for outdoor irrigation means loss of fruit trees and vegetables gardens and birthday parties in the back yard and a way of life. All property that does not presently have a well will be reduced in value.

The motion for three judge court presently pending before the Court can mitigate the damages by stopping the harm.

## VII. Conclusion.

The Objectors respectfully submit that the issue in this motion is *whether* the settlement agreement should be approved, not *how* it will be approved. The hybrid procedure for approving the settlement agreement has resulted in 792 Objectors to the settlement agreement. That fact alone is sufficient to conclude that the settlement agreement is not fair, not adequate, not

reasonable, not in the public interest and does not comply with applicable law. For the reasons stated herein and in prior legal briefs, Objectors request the Court to deny the motion for partial final decree.

Respectfully Submitted,

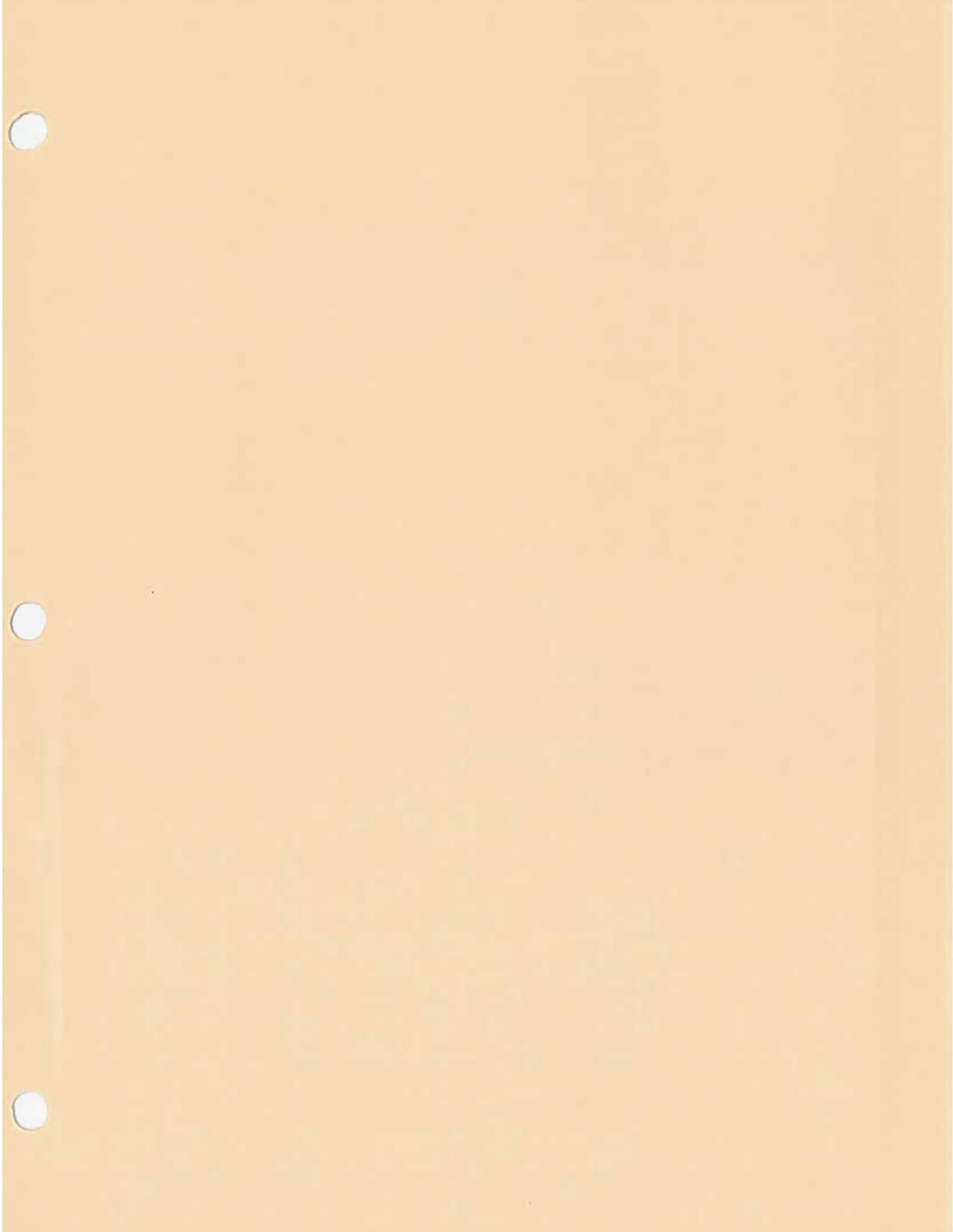
Filed electronically  
LORENZO ATENCIO  
Attorney for Atencio Group Objectors  
P. O. Box 1538  
Española, N. M. 87532  
505-920-7382

#### CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2015, I caused the foregoing to be filed electronically through the CM/ECF system which caused parties on the electronic service list to be served as described in the Notice of Electronic Filing.

Filed electronically  
LORENZO ATENCIO







**Henry P. Roybal**  
Commissioner, District 1

**Miguel M. Chavez**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## MEMORANDUM

To: Board of County Commissioners

Via: Katherine Miller, County Manager  
Bernadette Salazar, Human Resources Director *BJS*

Date: January 14, 2015

Re: HR Monthly Report November and December 2014

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### Topic:

The HR Division provides the Santa Fe County Board of County Commission with a monthly report regarding highlighted HR information and events.

### Information:

The purpose of this memo is to provide you with information relative to various HR functions and statistics for the months of November and December 2014. Throughout the month of November, HR coordinated/ conducted eighteen training sessions. Three-hundred thirty-four employees attended these training sessions. Throughout the month of December, HR coordinated/ conducted twelve training sessions. One-hundred forty seven employees attended these training sessions. During the month of December, HR received one application for tuition assistance and it was approved for a total of \$917.60. This is a great program that provides a supportive environment for employees to obtain a job related degree.

The Adult Detention Facility conducted Corporal testing during the month of November. Out of the three who participated in the process, Beverly Fernandez was selected to be promoted effective December 27, 2014. Ms. Fernandez began her employment with the Adult Detention Facility March 2007 as a Detention Officer Cadet. We congratulate Ms. Fernandez for her great accomplishment! In December we also conducted Detention Officer testing. We had seven applicants successfully complete the recruitment process and the new hire process is underway.

Attached are the HR Statistics Report, the New Hire Report and the Labor Statistics Report for November and December 2014 and the list of Years of Service for Santa Fe County Employees for January 2015. If you have any questions, I can be contacted at 992-9886. Thank you.

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF NOVEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
MANAGER'S OFFICE	01-COUNTY MANAGER ADMINIS.	8		8			1	9
	02-COMMISSION	5		5	5			5
	15-HUMAN RESOURCES	10		10			1	11
	21-FINANCE	21		21			3	24
<b>CMO TOTAL</b>		<b>44</b>		<b>44</b>	<b>5</b>		<b>5</b>	<b>49</b>
	01-LEGAL ADMINISTRATION	8		8			1	9
<b>LEGAL TOTAL</b>		<b>8</b>		<b>8</b>			<b>1</b>	<b>9</b>
ADMINISTRATIVE SERVICES DEPARTMENT	00-ADMINISTRATION	3		3				3
	02-INFORMATION TECHNOLOGY	14		14			3	17
	12-PURCHASING	7		7				7
	16-MAIL ROOM	1		1				1
	17-RISK MANAGEMENT	3		3				3
<b>ASD TOTAL</b>		<b>28</b>		<b>28</b>			<b>3</b>	<b>31</b>
COMMUNITY SERVICES DEPARTMENT	01-ADMINISTRATION	3		3				3
	20-INDIGENT HOSPITAL FUND	3		3				3
	21-EMS-HEALTH CARE	3		3				3
	74-MOBILE HEALTH FAIR VAN	4	2	2			1	5
<b>TOTAL</b>		<b>13</b>	<b>2</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>14</b>
	04-DWI LOCAL	8		8			1	9
<b>TOTAL</b>		<b>8</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>
	09-DWI TEEN COURT	2		2				2
<b>TOTAL</b>		<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
	89-SENIOR PROGRAMS - ADMIN.	12		12			1	13
	90-SR SVCS-CONGREGATE MEALS	7	2	5				7
	92-SR SVCS - HOME DELIVERED	7		7		2		7

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF NOVEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	93-SR SVCS - TRANSPORTATION	1		1			1	2
<b>TOTAL</b>		<b>27</b>	<b>2</b>	<b>25</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>29</b>
	01-POJOAQUE SATELLITE OFFICE					1		
	02-EDGEWOOD SATELLITE OFFICE					1		
<b>TOTAL</b>						<b>2</b>		
<b>CSD TOTAL</b>		<b>50</b>	<b>4</b>	<b>46</b>	<b>0</b>	<b>4</b>	<b>4</b>	<b>54</b>
<b>HOUSING TOTAL</b>		<b>13</b>		<b>13</b>			<b>2</b>	<b>15</b>
GROWTH MANAGEMENT DEPARTMENT	01-LAND USE ADMINISTRATION	4		4				4
	02-PLANNING	7		7			1	8
	08-REGIONAL PLANNING AUTHRTY							
	14-GIS	9		9				9
	15-AFFORDABLE HOUSING-COUNTY	2		2				2
	16-BUILDING & DEVELOPMENT	15		15				15
<b>GMD TOTAL</b>		<b>37</b>		<b>37</b>			<b>1</b>	<b>38</b>
PUBLIC WORKS DEPARTMENT	01-PUBLIC WORKS ADMIN.	13	1	12			1	14
	02-FLEET SERVICE	8		8		1	1	9
	03-TRAFFIC ENGINEERING	5		5			2	7
	05-SOLID WASTE	18		18		1	3	21
	11-ROAD MAINTENANCE	38		38			4	42
	02-PROPERTY CONTROL	12		12			3	15
	03-BUILDING SERVICES	15	1	14			3	18
<b>TOTAL</b>		<b>109</b>	<b>2</b>	<b>107</b>	<b>0</b>	<b>2</b>	<b>17</b>	<b>126</b>
	18-PROJECT DEVELOPMENT DIV	9		9			1	10
	26-OPEN SPACE	5		5				5
	08-SANTA FE RIVER GREENWAY	1		1				1

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF NOVEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
TOTAL		15	0	15	0	0	1	16
	10-WATER	16		16		1	3	19
	15-AAMODT						1	1
	20-WASTEWATER	1		1				1
TOTAL		17		17		1	4	21
PWD TOTAL		141	2	139	0	3	22	163
PUBLIC SAFETY DEPARTMENT	01-FIRE ADMINISTRATION	27		27		9	3	30
	09-FOREST RESTORATION	2		2			1	3
	11-FIRE REGIONS	74		74				74
	14-FEMA GRANT	1		1				1
TOTAL		104		104		9	4	108
	01-ADMINISTRATION	6		6			2	8
	60-ADULT FACILITY	128		128			28	156
	62-MAINTENANCE DIVISION	6		6			1	7
	63-MEDICAL SERVICES	24		24		1	5	29
	65-ELECTRONIC MONITORING	9		9				9
	70-YOUTH DEVELOPMENT FAC.	23		23			6	29
	72-ADOLESCENT RESIDENCE CTR							
	73-DAY REPORTING ASSESSMENT							
TOTAL		196		196		1	42	238
	01-ADMINISTRATION	40		40			8	48
TOTAL		40	0	40	0	0	8	48
PSD TOTAL		340	0	340	0	10	54	394
COUNTY CLERK'S OFFICE	01-REPORTING & RECORDING	18	3	15	1		3	21
	02-BUREAU OF ELECTIONS	11	1	10		52	2	13

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF NOVEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
CLERK'S OFFICE		29	4	25	1	52	5	34
TREASURER'S OFFICE	01-COUNTY TREASURER ADMIN.	13		13	1	1		13
	01-COUNTY ASSESSOR ADMIN.	27		27	1		2	29
	11-PROPERTY VALUATION	14		14				14
ASSESSOR'S OFFICE		41		41	1		2	43
SHERIFF'S OFFICE		116		116	1		7	123
COUNTY PROBATE OFFICE	01-COUNTY PROBATE JUDGE				1			
COUNTY WIDE TOTAL		860	10	850	10	70	106	966

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF DECEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
MANAGER'S OFFICE	01-COUNTY MANAGER ADMINIS.	8		8			1	9
	02-COMMISSION	5		5	5			5
	15-HUMAN RESOURCES	10		10			1	11
	21-FINANCE	21		21			4	25
<b>CMO TOTAL</b>		<b>44</b>		<b>44</b>	<b>5</b>		<b>7</b>	<b>50</b>
LEGAL	01-LEGAL ADMINISTRATION	8		8			1	9
ADMINISTRATIVE SERVICES DEPARTMENT	00-ADMINISTRATION	3		3				3
	02-INFORMATION TECHNOLOGY	14		14			3	17
	12-PURCHASING	7		7			1	8
	16-MAIL ROOM	1		1				1
	17-RISK MANAGEMENT	3		3				3
<b>ASD TOTAL</b>		<b>28</b>		<b>28</b>			<b>4</b>	<b>32</b>
COMMUNITY SERVICES DEPARTMENT	01-ADMINISTRATION	3		3				3
	20-INDIGENT HOSPITAL FUND	3		3				3
	21-EMS-HEALTH CARE	3		3				3
	74-MOBILE HEALTH FAIR VAN	4	2	2			1	5
<b>TOTAL</b>		<b>13</b>	<b>2</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>14</b>
	04-DWI LOCAL	8		8			1	9
<b>TOTAL</b>		<b>8</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>
	09-DWI TEEN COURT	2		2				2
<b>TOTAL</b>		<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF DECEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	89-SENIOR PROGRAMS - ADMIN.	12		12			1	13
	90-SR SVCS-CONGREGATE MEALS	7	2	5				7
	92-SR SVCS - HOME DELIVERED	7		7		2		7
	93-SR SVCS - TRANSPORTATION	2		2				2
TOTAL		28	2	26	0	2	1	29
	01-POJOAQUE SATELLITE OFFICE					1		
	02-EDGEWOOD SATELLITE OFFICE					1		
TOTAL						2		
CSD TOTAL		51	4	47	0	4	3	54
HOUSING TOTAL		13		13			2	15
GROWTH MANAGEMENT DEPARTMENT	01-LAND USE ADMINISTRATION	4		4				4
	02-PLANNING	7		7			1	8
	08-REGIONAL PLANNING AUTHRTY							
	14-GIS	9		9				9
	15-AFFORDABLE HOUSING-COUNTY	2		2				2
	16-BUILDING & DEVELOPMENT	15		15				15
GMD TOTAL		37		37			1	38
PUBLIC WORKS DEPARTMENT	01-PUBLIC WORKS ADMIN.	13	1	12			1	14
	02-FLEET SERVICE	8		8		1	1	9
	03-TRAFFIC ENGINEERING	5		5			2	7
	05-SOLID WASTE	18		18		1	3	21

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF DECEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	11-ROAD MAINTENANCE	38		38			4	42
	02-PROPERTY CONTROL	12		12			3	15
	03-BUILDING SERVICES	15	1	14			3	18
TOTAL		109	2	107	0	2	17	126
	18-PROJECT DEVELOPMENT DIV	9		9			1	10
	26-OPEN SPACE	3		3			2	5
	08-SANTA FE RIVER GREENWAY	1		1				1
TOTAL		13	0	13	0	0	3	16
	10-WATER	16		16		1	3	19
	15-AAMODT						1	1
	20-WASTEWATER	1		1				1
TOTAL		17		17		1	4	21
PWD TOTAL		139	2	137	0	3	24	163
PUBLIC SAFETY DEPARTMENT	01-FIRE ADMINISTRATION	28		28		9	3	31
	09-FOREST RESTORATION	2		2			1	3
	11-FIRE REGIONS	74		74				74
TOTAL		104		104		9	4	108
18-CORRECTIONS	01-ADMINISTRATION	6		6			2	8
18-CORRECTIONS	60-ADULT FACILITY	130		130			26	156
18-CORRECTIONS	62-MAINTENANCE DIVISION	6		6			1	7
18-CORRECTIONS	63-MEDICAL SERVICES	25		25			4	29

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF DECEMBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
18-CORRECTIONS	65-ELECTRONIC MONITORING	9		9				9
18-CORRECTIONS	70-YOUTH DEVELOPMENT FAC.	23		23			6	29
<b>TOTAL</b>		<b>199</b>		<b>199</b>			<b>39</b>	<b>238</b>
	RECC ADMINISTRATION	38		38			10	48
<b>TOTAL</b>		<b>38</b>	<b>0</b>	<b>38</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>48</b>
<b>PSD TOTAL</b>		<b>341</b>	<b>0</b>	<b>341</b>	<b>0</b>	<b>9</b>	<b>53</b>	<b>394</b>
COUNTY CLERK'S OFFICE	01-REPORTING & RECORDING	18	3	15	1		3	21
	02-BUREAU OF ELECTIONS	11	1	10		2	2	13
<b>CLERK'S OFFICE</b>		<b>29</b>	<b>4</b>	<b>25</b>	<b>1</b>	<b>2</b>	<b>5</b>	<b>34</b>
TREASURER'S OFFICE	01-COUNTY TREASURER ADMIN.	13		13	1	1		13
COUNTY ASSESSOR'S OFFICE	01-COUNTY ASSESSOR ADMIN.	26		26	1		3	29
	11-PROPERTY VALUATION	14		14				14
<b>ASSESSOR'S OFFICE</b>		<b>40</b>		<b>40</b>	<b>1</b>		<b>3</b>	<b>43</b>
<b>SHERIFF'S OFFICE</b>		<b>113</b>		<b>113</b>	<b>1</b>		<b>10</b>	<b>123</b>
PROBATE OFFICE					1			
<b>COUNTY WIDE TOTAL</b>		<b>856</b>	<b>10</b>	<b>846</b>	<b>9</b>	<b>19</b>	<b>113</b>	<b>968</b>



SANTA FE COUNTY NEW HIRES FOR DECEMBER 1, 2014 - JANUARY 9, 2015

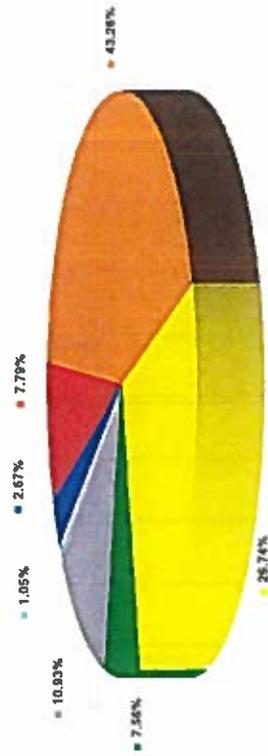
NAME	FIRST NAME		DEPARTMENT	POSITION	EMP STATUS	HIRE DATE
MASCARENAS	TESSA JO		COUNTY MANAGER	CONSTITUENT SERVICES LIAISON	E	12/10/2014
MARTINEZ	JAMES	L	HEALTH & HUMAN SVCS DEPT	COOK	PB	12/4/2014
MARTINEZ	GUS		COUNTY ASSESSOR DEPT.	COUNTY ASSESSOR	EO	1/1/2015
ROYBAL	HENRY	P	COUNTY MANAGER	COUNTY COMMISSIONER	EO	1/1/2015
TRUJILLO	SANTIAGO	H	CORRECTIONS	DETENTION OFFICER	PB	1/8/2015
WHITING	CYNTHIA	A	CORRECTIONS	DETENTION OFFICER	PB	1/9/2015
LOPEZ	BRANDON	C	RECC	EMERGENCY COMM SPEC TRAINEE	PB	12/1/2014
MARQUEZ	JOE	R	RECC	EMERGENCY COMM SPEC TRAINEE	PB	12/1/2014
SANDOVAL	SENAIDA	J	RECC	EMERGENCY COMM SPEC TRAINEE	PB	12/1/2014
MONTANO	BENJAMIN	J	RECC	EMG COMMUNICATIONS CALL TAKER	PB	12/27/2014
SALAZAR	ASHTEN	N	RECC	EMG COMMUNICATIONS CALL TAKER	PB	12/1/2014
SENA	JUSTIN	J	FIRE DEPARTMENT	FIREFIGHTER/EMT I CADET	PB	12/1/2014
SOWER	GREGORY	L	FIRE DEPARTMENT	FIREFIGHTER/EMT I CADET	PB	12/1/2014
FRANCES	NORBU	C	FIRE DEPARTMENT	FIREFIGHTER/EMT-BASIC CADET	PB	12/1/2014
LINO	CONNOR	A	FIRE DEPARTMENT	FIREFIGHTER/EMT-BASIC CADET	PB	12/1/2014
ROMERO	CLARENCE	V	FIRE DEPARTMENT	FIREFIGHTER/PARAMEDIC CADET	PB	12/1/2014
SALAZAR	BERNADETTE	J	COUNTY MANAGER	HUMAN RESOURCES DIVISION DIR	E	12/29/2014
HERNANDEZ	MATTHEW	P	ADMINISTRATIVE SERVICES	IT DESKTOP SUPPORT SPEC.	PB	12/8/2014
BULMAN	SHANNON	B	COUNTY PROBATE DEPARTMENT	PROBATE JUDGE	EO	1/1/2015
BARELA	JENNIFER	A	CORRECTIONS	REGISTERED NURSE	PB	12/8/2014
VORIARTY	KERRY	A	CORRECTIONS	THERAPIST	PB	12/2/2014

# LABOR STATISTICS FOR NOVEMBER 2014

Union Status		Percentage of Union Status		Percentage of Employees Paying Union Dues	
AFSCME Employees	230	AFSCME Employees	26.74%	AFSCME Employees	58
NMCP SO (Sheriff) Employees	65	NMCP SO (Sheriff) Employees	7.56%	NMCP SO (Sheriff) Employees	21
AFSCME (Corrections) Employees	94	AFSCME (Corrections) Employees	10.93%	AFSCME (Corrections) Employees	0
AFSCME (Medical) Employees	9	AFSCME (Medical) Employees	1.05%	AFSCME (Medical) Employees	0
NMCP SO (RECC) Employees	23	NMCP SO (RECC) Employees	2.67%	NMCP SO (RECC) Employees	12
IAFF (Fire) Employees	67	IAFF (Fire) Employees	7.79%	IAFF (Fire) Employees	64
Total Number of Union Employees	488	Total Percentage of Union Employees	56.74%	Total Number of Employees Paying Dues	170
Non-Union Employees	372	Non-Union Employees	43.26%		
Total Number of Employees	860		100%		

### Paying Members

### Union Status



**Legend for Paying Members:**

- AFSCME Employees
- NMCP SO (Sheriff) Employees
- AFSCME (Corrections) Employees
- AFSCME (Medical) Employees
- NMCP SO (RECC) Employees
- IAFF (Fire) Employees

**Legend for Union Status:**

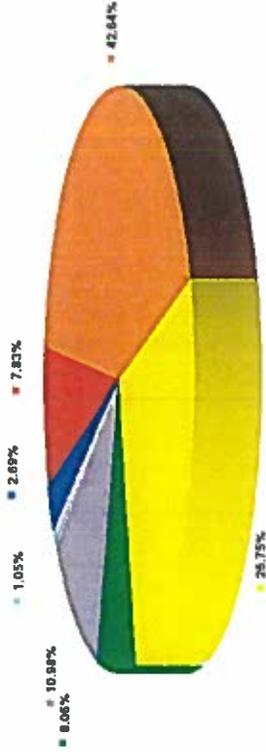
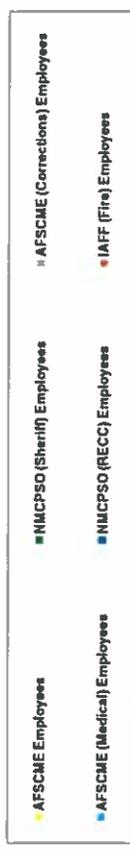
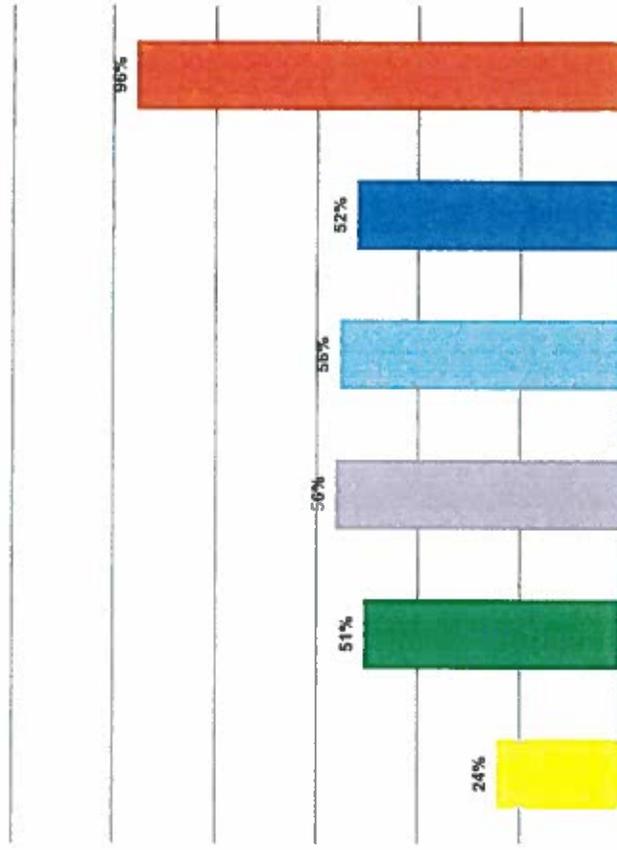
- AFSCME Employees
- NMCP SO (Sheriff) Employees
- AFSCME (Corrections) Employees
- AFSCME (Medical) Employees
- NMCP SO (RECC) Employees
- IAFF (Fire) Employees
- Non-Union Employees

# LABOR STATISTICS FWH DECEMBER 2014

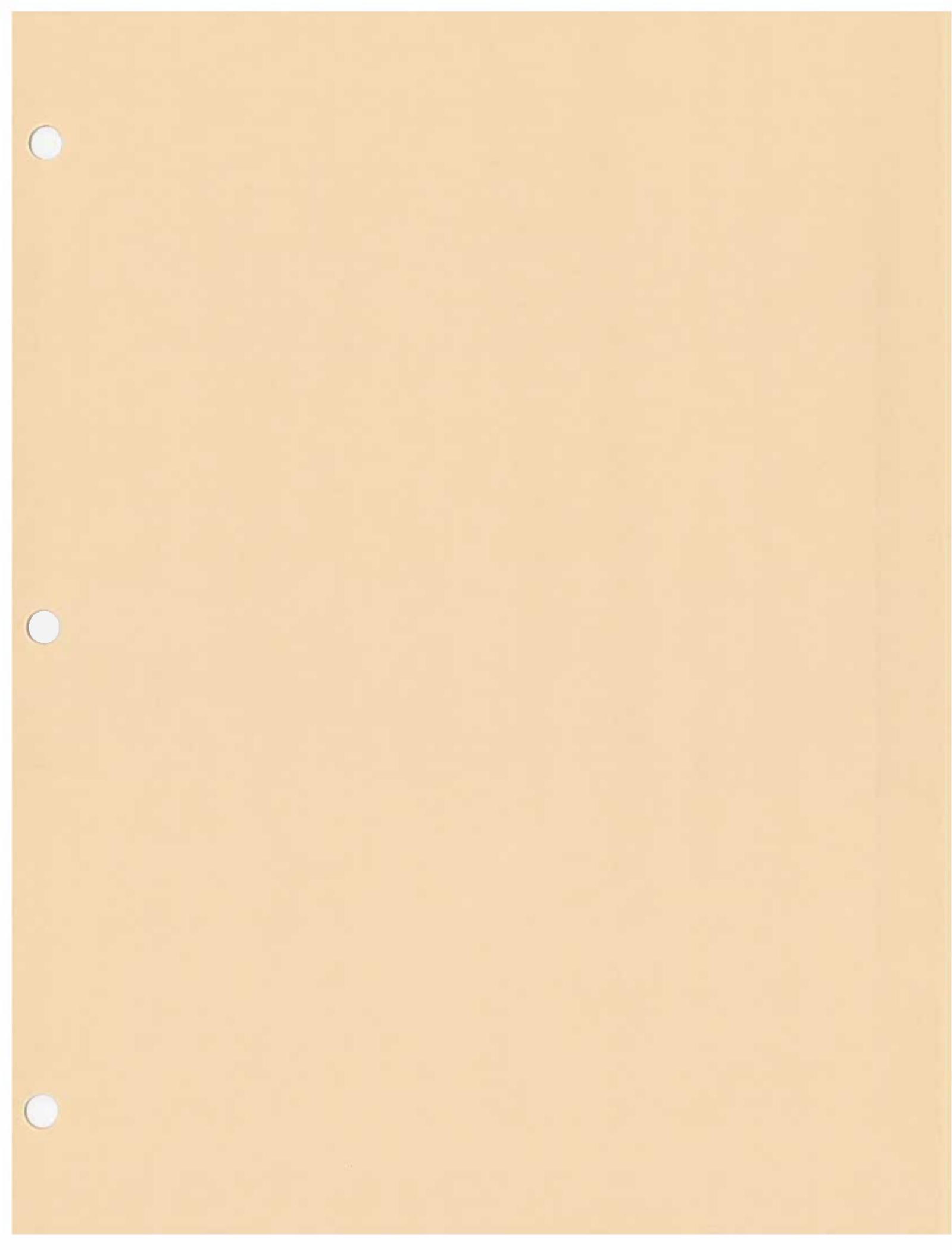
Union Status		Percentage of Union Status		Percentage of Employees Paying Union Dues	
AFSCME Employees	229	AFSCME Employees	26.75%	AFSCME Employees	56
NMCP SO (Sheriff) Employees	69	NMCP SO (Sheriff) Employees	8.06%	NMCP SO (Sheriff) Employees	35
AFSCME (Corrections) Employees	94	AFSCME (Corrections) Employees	10.99%	AFSCME (Corrections) Employees	53
AFSCME (Medical) Employees	9	AFSCME (Medical) Employees	1.05%	AFSCME (Medical) Employees	5
NMCP SO (RECC) Employees	23	NMCP SO (RECC) Employees	2.69%	NMCP SO (RECC) Employees	12
IAFF (Fire) Employees	67	IAFF (Fire) Employees	7.83%	IAFF (Fire) Employees	64
Total Number of Union Employees	491	Total Percentage of Union Employees	57.36%	Total Number of Employees Paying Dues	225
Non-Union Employees	365	Non-Union Employees	42.64%		
Total Number of Employees	856		100%		

## Paying Members

## Union Status









Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

Date: January 13, 2015  
To: Board of County Commissioners  
From: Jeffery Trujillo, ASD Director *JST*  
Via: Katherine Miller, County Manager  
Subject: Administrative Services Monthly Report – December 2014

Below is an informational report in regards to the Administrative Services Department for the month of December 2014.

### **Information Technology**

Work Orders/Technical Support All IT requests are captured using a work order tracking system located on SharePoint.	272 work orders were completed/resolved in December 2014.												
Systems and Network Uptime for December 2014.	Q1 2015 Actual: 100% Q2 2015 Actual: 99.03% FY 2015 YTD: 99.52%												
<table border="1"><thead><tr><th colspan="3">December Unscheduled Downtime</th></tr><tr><th>Date</th><th>Description</th><th>Hours</th></tr></thead><tbody><tr><td></td><td>VMware Outage (12/16/2014 &amp; 12/17/2014): Internal Battery failure caused system failover to backup system and did not return to normal state.</td><td>4.75</td></tr><tr><td colspan="2">Total</td><td>4.75</td></tr></tbody></table>		December Unscheduled Downtime			Date	Description	Hours		VMware Outage (12/16/2014 & 12/17/2014): Internal Battery failure caused system failover to backup system and did not return to normal state.	4.75	Total		4.75
December Unscheduled Downtime													
Date	Description	Hours											
	VMware Outage (12/16/2014 & 12/17/2014): Internal Battery failure caused system failover to backup system and did not return to normal state.	4.75											
Total		4.75											
<small>Formula: downtime 4.75 hours / 488 hours per quarter * 100 = 0.97 100% - .97 = 99.03%</small>													

## Legal

The County Attorney's Office has processed 227 contracts, 55 resolutions, and reviewed or drafted (or participated in drafting) 3 ordinances this fiscal year. In addition, we hope to fill the last vacant Assistant County Attorney position by early February.

## Mailroom

The Mailroom processed the following in the month of December

Co. Manager (Commissioners)	87
DWI	56
MCH	0
PFMD	0
Clerks	179
Elections	362
Assessors	2724
Treasurers	811
Probate Judge	0
Attorney or Legal	13
Sheriff	302
Human Resources	52
Corrections Admin	4
Home for Good Program	0
Purchasing	13
PW-Solid Waste	0
Care Connection	0
HHS Admin	0
Sobering Center	0
Adult Jail	0
Teen Court	119
ASD	1
Fire Department	1083
E-911	0
RECC	5
Senior Services	44
YDF	0
Natural Resources	0
Affordable Housing	0
Section 8	95
Finance/Payroll	1077
Utilities (Water Resources)	39
Public Works	68









**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

### Memorandum

**To:** Santa Fe County Board of County Commissioners

**From:** Katherine Miller, County Manager, SFC  
Rachel O'Connor, Director, Community Services Department, SFC

**Date:** January, 2015

**Subject:** Community Services Monthly Report

---

#### Health Services

The RFP for Mobile Crisis Services has been re-released and the bidder's conference was held last week. We are hoping to have a minimum of one bidder for this project. The RFP to reduce low birth weight is also drafted and we are working with Procurement to finalize and release it.

The Mobile Health Van administered about 400 flu shots this year at locations around the County. The top sites for shots included Eldorado Senior Center, Solana Center, and the Turquoise Trail Fire Station.

The NM Public Health Policy Legislative Forum was held in Albuquerque; both Rachel and Patricia attended. Legislative proposals advocated for at the Forum included the following:

- Think New Mexico's proposal that was presented to HPPC for increasing transparency in health care and a website showing cost and quality for hospital procedures.
- \$900,000 to support health councils, from the NM Association of Health Councils.
- Funding for NM grown fruits and vegetables in schools; the BCC recently passed a resolution in support of this legislation.
- Allowing for continuation of Medicaid when someone is admitted to a detention center when already enrolled in Medicaid.

The CEO of First Choice Community Healthcare, Bob DeFelice, and other First Choice representatives presented the vision of the Edgewood Health Commons, seven acres that will house a 42,000 foot Health Center and (later) a 15,000 square foot Wellness Center. The Health Commons is part of the Town of Edgewood's Master Plan. They are modeling the Health Commons on the integrated approach of First Choice's existing South Valley campus in Albuquerque. The new

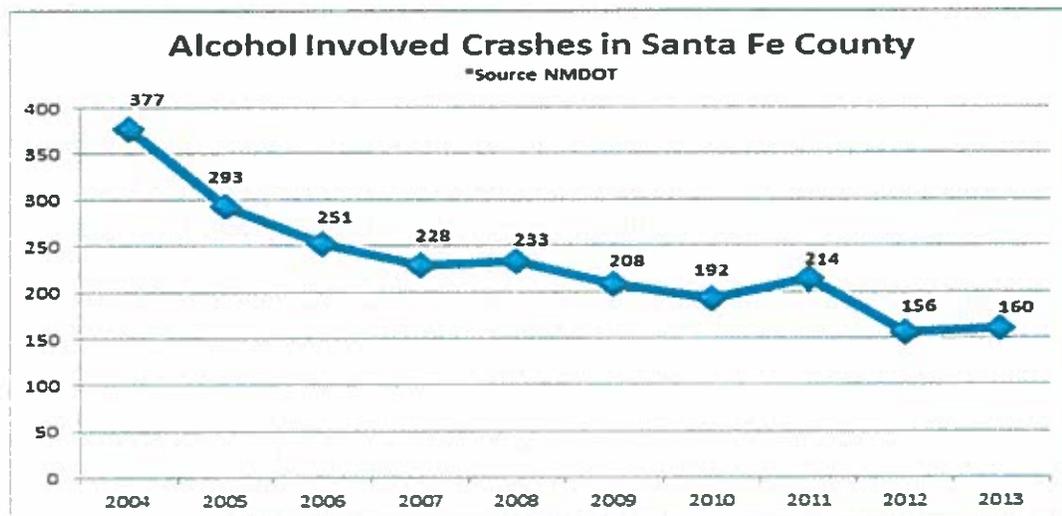
102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:  
505-995-2740 www.santafecountynm.gov

Health Commons would triple their capacity overall, including primary care, dental care, behavioral health, and would provide access 24/7 to urgent care, which is needed in South Santa Fe County. The Health Center is projected to cost \$13 million. They said they are not seeking any legislative funding in this year's session. HPPC voted to support this initiative and concept. HPPC will be holding their March 6, 2015 meeting at the South Valley Health Commons, and will also have a tour of the facility. **All BCC Commissioners are welcome to attend.**

We are partnering with the NM Health Insurance Exchange on several insurance enrollment events, arranging for piggybacking on sites where the mobile health van is visiting. We are also gearing up our staff to be able to do Medicaid enrollment for Teen Court and DWI clients, as well as others.

### **Community Safety**

The DWI program is reviewing Magistrate Court data for cases that involve driving on a revoked license for DWI. The DWI program has concerns due to a large number of these cases being dismissed. The DWI program is trying to determine why the cases are being dismissed. It is believed that the cases are being dismissed, due to police officers failing to prosecute these cases. Once the data has been analyzed the DWI program will work with the DA's office, Traffic Safety Division and local law enforcement agencies to resolve this issue.



Two Too Many, our new public awareness campaign, kicked off in December. This campaign focuses on vehicle forfeiture in Santa Fe County.

The Cab Ride Home program provided \$1 rides home for 193 riders in Santa Fe County on New Years Eve.

The Santa Fe County Teen Court program has hired Stuart Castle to complete an evaluation of Teen Court. He has already begun the process of information collection.

## **Community Operations**

The Imagination Library project has taken off and our Local Champion, United Way, is enrolling children. They have already enrolled over 100 children and we are planning various ways of reaching out and recruiting across the County. There will be a kickoff and enrollment event on February 5<sup>th</sup>.

Staff is working with Rachel Brown to update the resolution regarding the use of Community Centers. In addition, Anna has developed a working group to begin to clarify the roles that will outline the roles and responsibilities of CSD, Public Works, and the Santa Fe County Extension Office with regard to the County

Carol Branch is working with Public Works to install the Adopt An Open Space signs. Three have been installed including Spur Trail, Rail Trail and Arroyo Hondo.

Carol is finalizing the designing the for the kiosk sign at Sierra Del Norte Trailhead. This is being developed as part of a grant that the County received from New Mexico Clean and Beautiful. The sign will be located at the Sierra Del Norte Trailhead at the Dale Ball Trails. The sign does include the county portion of the Dale Ball trails, which previously had been unrecognized.

## **Senior Services**

Senior staff met with their counterparts in Sandoval County to discuss their program and to share ideas about moving forward. It was very productive as they provide an array of services for frail elderly residents. We are hoping to incorporate some of this growth into our Senior Plan.

Transportation staff is now at the old PW facility.

Senior Services had worked with Procurement to hire a contractor for strategic planning. We hope to be starting next month.

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**HEALTH POLICY & PLANNING COMMISSION**

**December 5, 2014**

**Santa Fe, New Mexico**

This regular meeting of the Santa Fe County Health Policy & Planning Commission (HPPC) was called to order by Vice Chair Catherine Kinney at approximately 9:00 a.m. on the above-cited date at County Community Services Department Conference Room, 2052 Galisteo Street, Suite B. A quorum was achieved with the following members present:

**Members Present:**

Catherine Kinney  
AnnaMaria Cardenalli  
Don Reece  
Shirlee Davidson [telephonically]  
Vivian Heye  
Bonnie Keene  
Carolyn Roberts

**Member(s) Absent:**

Judith Williams, Chair  
Bryan Conkling  
John Abrams  
Reena Szczepanski

**County Staff Present:**

Rachel O'Connor, Director, Community Services Department  
Patricia Boies, Health Services Division Director  
Katie Schwartz, RN, Mobile Health Van  
Kyra Ochoa, Health Care Assistance

**Others Present:**

Amy Sandoval, DOH  
Kristen Carmichael, CSV  
Bob DeFelice, First Choice  
Monica Briones, First Choice  
Michelle Melendez, First Choice  
Fred Nathan, Think New Mexico  
Jeff Thomas, Southwest Care Center  
Orit Tamir, Highlands University

**III. Introductions**

Those present introduced themselves.

**IV. Approval of Agenda**

Upon motion by Commissioner Reece and second by Commissioner Roberts the agenda was unanimously approved as published. [Commissioner Heye was not present for this action.]

**V. Approval of Minutes – November 7, 2014**

Commissioner Reece moved for approval as presented. His motion was seconded by Commissioner Roberts and passed unanimously. [Commissioner Heye was not present for this action.]

**VI. Matters of Public Concern**

None were offered.

**VII. Presentations**

**B. First Choice Edgewood Health Commons**

CEO Bob DeFelice outlined the background of First Choice Community Healthcare, noting it was a federally qualified health system based in the South Valley of Albuquerque with locations throughout the Mid-Rio Grande Valley. These consist of five centers in Bernalillo County, two in Valencia County and one in Edgewood. Additionally, there is a school program in the South Valley. The organization was begun 43 years ago and now has a staff of over 400, with 56,000 people having it as their medical care home. There are 75 providers – medical, dental and behavioral health. Their budget now exceeds \$30 million.

In addition to primary care they offer integrated behavioral health services, sub-specialties in telemedicine with UNM, Suboxone services, rheumatology, diabetes, endocrinology, and hepatitis-C. He gave a history of the facility in Edgewood.

Dr. Monica Briones, assistant medical director, stated the Edgewood site has been in operation since 2003. In addition to the three primary care providers there are two dentists, and two hygienists. Over 6,000 patients are served, some coming great distances.

Mr. DeFelice described the plans for expanding into a “healthcare commons,” a 42,000 square foot facility in Edgewood which will triple their capacity. As in the case of South Valley, there are plans for urgent care services available 24/7, tie-in with WIC and numerous community partnerships. He encourage the commission to visit the website [fch.com](http://fch.com) to see more details. Using an architectural plan Mr. DeFelice showed the proposed location of the health center, nearby wellness center and a building for auxiliary leased space.

The health commons is planned for seven acres of Edgewood’s 640-acre master plan for town services. There is additional room for adjunct activities such as manpower development, farming, education, demonstration kitchen, childhood learning, etc. There is to be an “ecosystem of activity” to create new products focused on wellness in community. Edgewood has already placed a fire station and animal control facility on this town commons and is anticipating housing, equestrian use, a war memorial, and other civic properties.

Michelle Melendez spoke of the economic development aspects. The health center will cost \$13.5 million and provide 111 construction jobs. Once up and running the facility will employ 129 people with salaries totaling \$8.5 million, which will generate \$42 million per year in economic activity.

Ms. Boies passed along regrets from John Abrams that he could not be present but is aware of the plans for Edgewood. Commissioner Reece said he used to run cattle on that part of the county. He added there have been companies moving into the area and this need for medical services will grow.

Ms. Sandoval asked if talks had begun relating to partnership with the DOH. Mr. DeFelice said they have, and they are already partnering in the South Valley.

Commissioner Reece asked about a timeline and Mr. DeFelice said as soon as possible. Full built-out will take a couple years.

Commissioner Kinney asked about funding plans and Mr. DeFelice said they are in the phase of setting up financing. There is a fund development committee and they have been talking with foundations. The town is providing infrastructure. "We would hope that the County would see this as a high priority."

In response to a question from Commissioner Roberts, Ms. Melendez said the wellness center would have demonstration kitchens for diabetes prevention and management, fitness facilities and classrooms. Mr. DeFelice said the entire community will be able to access the fitness facilities. He said the commons will be a driver to draw private investors.

Ms. O'Connor said the County Manager suggested this presentation be made to the HPPC before the County Commissioners are contacted.

Jeff Thomas, executive director for Southwest Care Center, stated he has visited the South Valley commons and commended the progressive approach to what a community health center can do. He said the current proposal is admirable and achievable.

Dr. Briones indicated the South Valley operation has been inspirational with its emphasis on education and partnership with UNM. They have been successful in getting doctors to stay in the area. She said there is a nurse practitioner on staff as well.

Commissioner Roberts moved to support this initiative and concept. Commissioner Cardenalli seconded. The motion carried without opposition.

Commissioner Kinney proposed having a meeting at the South Valley facility at some time in the future.

## **VII. A. Recommendations for Making Health Care More Affordable by Increasing Transparency**

Fred Nathan described the goal of Think New Mexico as working to improve the state's standing in rankings. He said the board of directors crosses the political spectrum. The think tank has been instrumental in instituting full-day kindergarten, repealing tax on groceries, establishing reserves in rivers and reforming the Public Regulation Commission. This year they are focusing on health care transparency. Fourteen states currently have websites on pricing. Since there is a trend toward high deductibles it is important that consumers be aware of price and quality. Some websites have been overwhelmingly lengthy and complex.

Think New Mexico's plan includes:

- Legislation to promote a user-friendly website with the 50 most common in-patient and out-patient procedures, with cost and quality information
- Establishment of risk-adjusted quality metrics

It has been shown that transparency contributes to lowering of overall health costs in some states. The initial focus would be on the 44 hospitals in the state.

A discussion ensued regarding problems in establishing quality ratings; Leap Frog, the New Mexico Coalition for Healthcare Quality and the CMS are already involved in data collection. Mr. Nathan said he believed the hospitals could be convinced; transparency would show that they are patient-centered. Hospitals will be represented on the rating committee. He advocated collaboration among all parties in data collection.

Commissioner Kinney pointed out she was interested in transparency in charity care and community benefit in a state with many for-profit hospitals in monopoly settings. There are huge variations between for-profit and non-profit hospitals in how they write-down charity care. Currently only non-profits have to report their policies to the IRS.

Commissioner Keene brought up access being a driver in pricing in a rural state. Mr. Nathan agreed there were many variables but overall, more information is better. The for-profit hospitals have hired a lobbyist to fight transparency. If this proposal succeeds they will have to change their business model, which could help bring prices down.

Commissioner Heye mentioned some doctors are invested in keeping old equipment and procedures to make more money. Mr. Nathan said published metrics would be an incentive to modernize. He speculated that eventually all states will have transparency websites on price and quality. He added they are looking for allies in addition to newspapers and the League of Women Voters and would like to have the support of the BCC.

There were discussions on price discrimination, gag clauses and bundling. In response to a question from Ms. Boies, Mr. Nathan said their main focus legislatively is the website database.

In response to questions from Ms. O'Connor, Mr. Nathan said the bill is currently being written by Legislative Council Services. When the draft is complete they plan to arrange a number of sponsors from both parties. They will not be pre-filing. He hopes the website will be hosted by the New Mexico Health Insurance Exchange. They are going to try to avoid an appropriations bill, piggybacking on software and staffing already in place.

Commissioner Roberts volunteered to connect Mr. Nathan with the New Mexico Nurses Association. He offered to send copies of the bill draft to commission members when it was complete.

Mr. Nathan said Think New Mexico's website has a pre-scripted letter to legislators.

Commissioner Davidson moved to conceptually support the concepts of transparency and an all-payer database for cost and quality. Commissioner Heye seconded and the motion carried unanimously.

## **VIII. Matters from the Commission and Staff**

### **A. Update on Health Action Plan**

Commissioner Keene said the low birth weight RFP is being worked on. Ms. Ochoa said low birth weight is a complex indicator. Ms. Boies said Santa Fe County is part of the Early Childhood Steering Committee which is working on a report with their priorities.

Ms. Boies reported on several developments within the "increasing consumption of healthy food" goal in the Health Action Plan. The BCC officially adopted the Food Policy Council's Food Plan for the County. The BCC also passed a resolution in support of New Mexico grown fresh fruits and vegetables for school meals, seeking state funding for their purchase. Following up on the HPPC's request during the November meeting, Ms. Boies brought before the Food Policy Council the issue of the proposed Human Services Department rule change concerning employment and training requirements for SNAP recipients, and the Food Policy Council sent a letter to the Secretary of HSD, recommending that rather than change the rule, HSD should focus on improving SNAP participation rates and supporting "double bucks" legislation. These are also recommended actions within the food priority of the Health Action Plan.

After speaking with Dan Green, epidemiologist on the Youth Risk and Resiliency Survey, Commissioner Heye proposed tweaking the drug abuse indicators to emphasize the most serious drugs: heroin, cocaine, methamphetamines and prescription drugs. Commissioner Kinney pointed out that the Health Action Plan has already been endorsed, but it could be seen as a focus of work. The metric can be changed in the next three-year cycle of planning, if determined.

On the insurance enrollment priority, Ms. Boies spoke of PSAs in Spanish going out on radio stations regarding the NMHIX open enrollment, as well as enrollment efforts for people within the DWI and Teen Court programs at Community Services Department.

**B. Director's Report**

Ms. O'Connor stated they are finishing up the revised mobile crisis team RFP with more diversified funding sources. She attended a meeting of parties interested in establishing a regional crisis center/triage assessment program for Albuquerque. Santa Fe County will not be specifically involved and the issue is really long-term care which is lacking in the state. Commissioner Davidson pointed out this is not a new concept and references can be found in the literature from the sixties and seventies. Commissioner Kinney mentioned the ACT model.

**IX. Future Agenda Items**

Michael Weinberg will speak on early childhood development, and the DOH will present an overview of the public health programs they provide in Santa Fe County, including early childhood programs.

**XI. Announcements**

A. Next HPPC meeting Friday, February 6, 2014, 9 a.m., 2052 Galisteo St.

**XII. Adjournment**

This meeting was declared adjourned at approximately 11:00 a.m.

Approved by:

\_\_\_\_\_  
Catherine Kinney  
Health Policy & Planning Commission

Respectfully submitted by:

Debbie Doyle, Wordswork

# DRAFT

SUBJECT TO APPROVAL





Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## Memorandum

**To:** Santa Fe Board of County Commissioners

**From:** Teresa C. Martinez, Finance Director 

**Via:** Katherine Miller, County Manager

**Date:** January 12, 2015

**Re:** *Financial report for the quarter ending 12/31/2014*

### ISSUE:

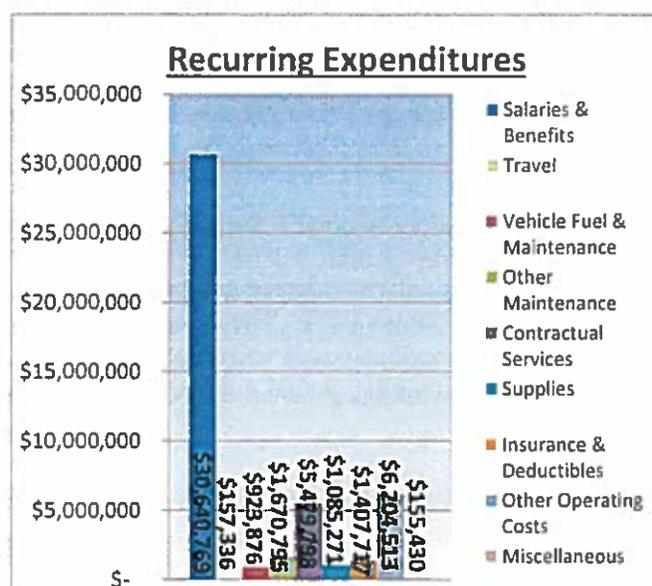
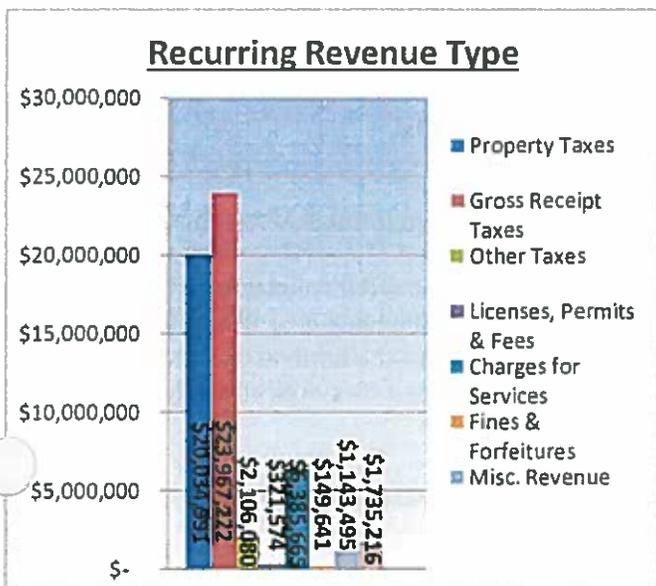
Enclosed is a report summarizing the financial activities of the County through the quarter ending December 31, 2014.

### BACKGROUND:

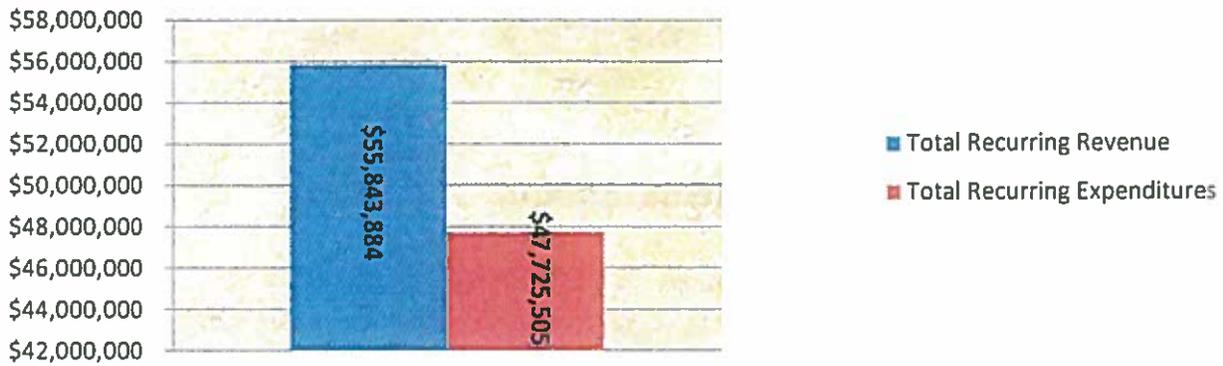
The following report will summarize total revenues and expenditures county-wide and by major fund. The numbers presented within this report are as of December 31, 2014.

### ALL FUNDS:

For the quarter ending December 31, 2014, the county collected a total of \$60 million from all revenue sources. The largest share of revenue sources were generated by taxes; property taxes of \$20 million and GRT's of \$23.9 million excluding \$2.2 million which is a pass-through to the regional transit district. On December 31<sup>st</sup>, expenditures across all funds totaled \$66 million. Capital expenditures totaled \$8 million, debt service payments totaled \$10.5 million and operational expenditures totaled \$47.5 million.

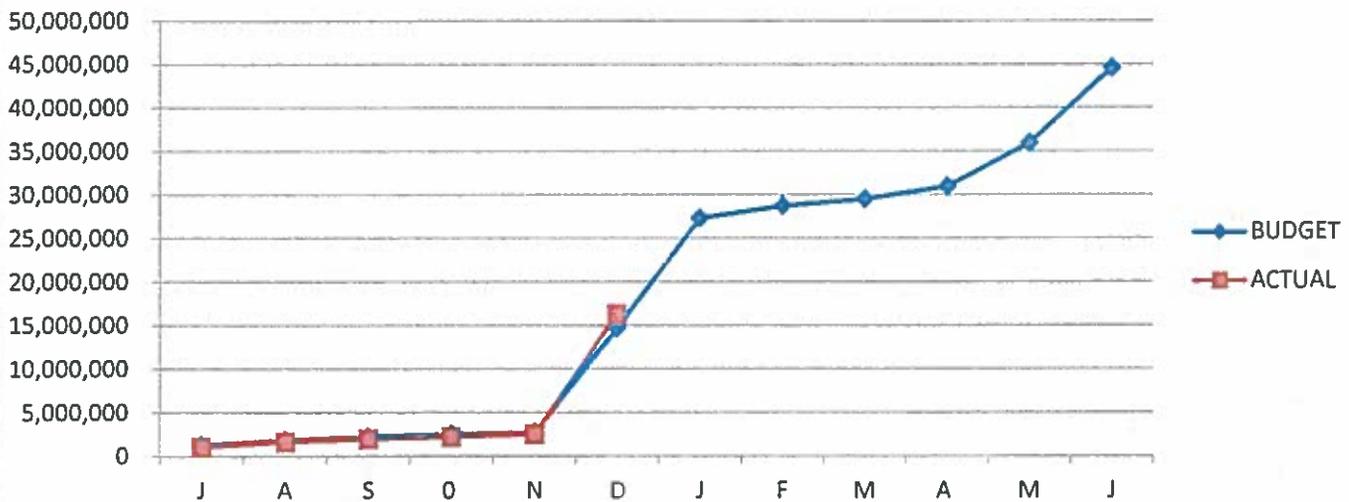


## Recurring Revenues versus Recurring Expenditures



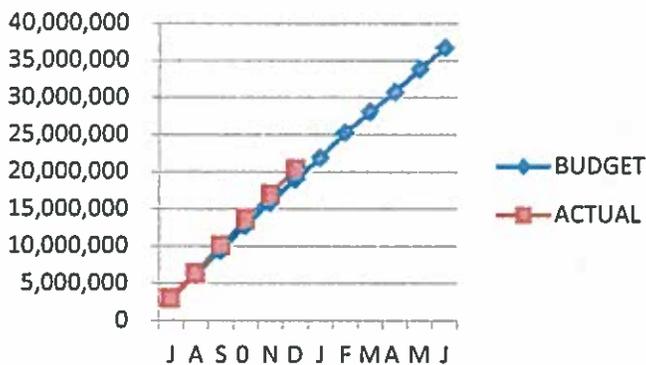
The following charts reflect the two largest revenue sources for the County. Actual property tax collections of \$16.3 million through the end of December exceeded the projected budget of \$14.7 million by \$1.6 million. The property tax collections of \$16.3 million through December 31<sup>st</sup> are \$557,753 or 3.5% higher than the previous year's collections of \$15.7 million.

## General Fund Property Tax FY15 Cumulative Collections-Budget to Actual

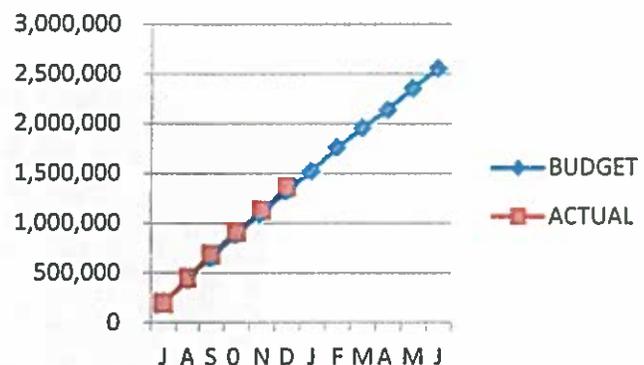


Cumulatively, both the county-wide and the unincorporated gross receipt taxes collected through December total \$21.8 million (excluding \$2.2 million which is passed through to the regional transit district). The GRT collections are \$1.5 million greater than the cumulative budgeted amount of \$20.3 million. The county-wide GRT collections fell below the prior year collections by \$270K or 1.5%. The unincorporated GRT collections exceeded budget by \$49,327 and are up a total of \$175,951 from the previous year's collections of \$1.2 million. This increase may be attributed to the enacted Fire Excise tax, which began witnessing actual collections in September 2013. Fire Excise Tax collections total \$679,160 through December.

**COUNTY-WIDE GROSS RECEIPTS TAXES  
FY15 CUMULATIVE COLLECTIONS-  
BUDGET TO ACTUAL**



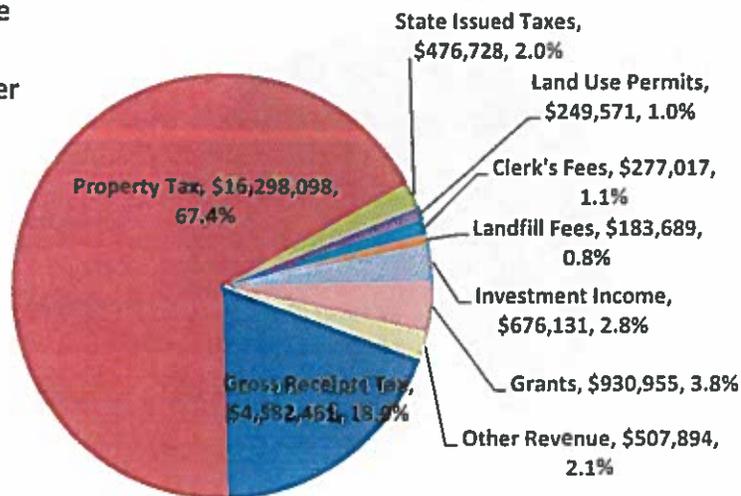
**UNINCORPORATED COUNTY  
GROSS RECEIPTS TAX  
FY15 CUMULATIVE COLLECTIONS-  
BUDGET TO ACTUAL**



**GENERAL FUND**

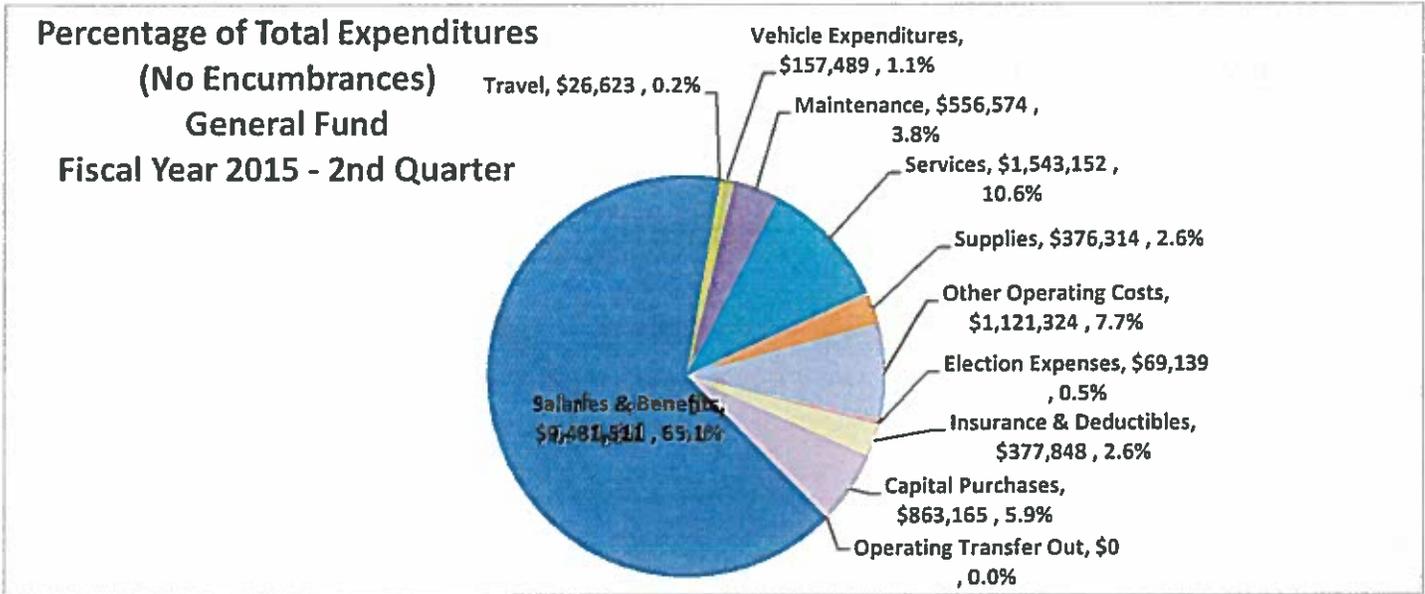
The chart below summarizes all revenue for the general fund; all revenue sources total \$24.2 million. Recurring revenue totaled \$22.8 million; recurring revenue includes property taxes, gross receipt taxes, state issued taxes, construction permits, clerk's fees, landfill fees and other revenue. It is important to note that included in recurring revenue in years past was Payment in Lieu of Taxes (PILT), which is in jeopardy of continued funding. The amount recognized for this fiscal year totals \$698,926 and usually totals between \$600K and \$635K on annual basis. Overall, total general fund revenues in FY 2015 of \$24.2 million are slightly less than the previous fiscal year's revenues by \$112,556. This decrease can be attributed to smaller collections for other fees totaling \$43K, but the main decrease can be directly attributed to increased collections of gross receipts taxes of \$187,656 and decreased revenue for the solid waste permit fees of \$67,352. The solid waste transfer permit sales and collections are down given that the permits no longer expire resulting in reduced sales/revenue. The decrease was offset by increased property tax collections of \$557,849.

**Percentage of Total Revenue  
General Fund  
Fiscal Year 2015 - 2nd Quarter**



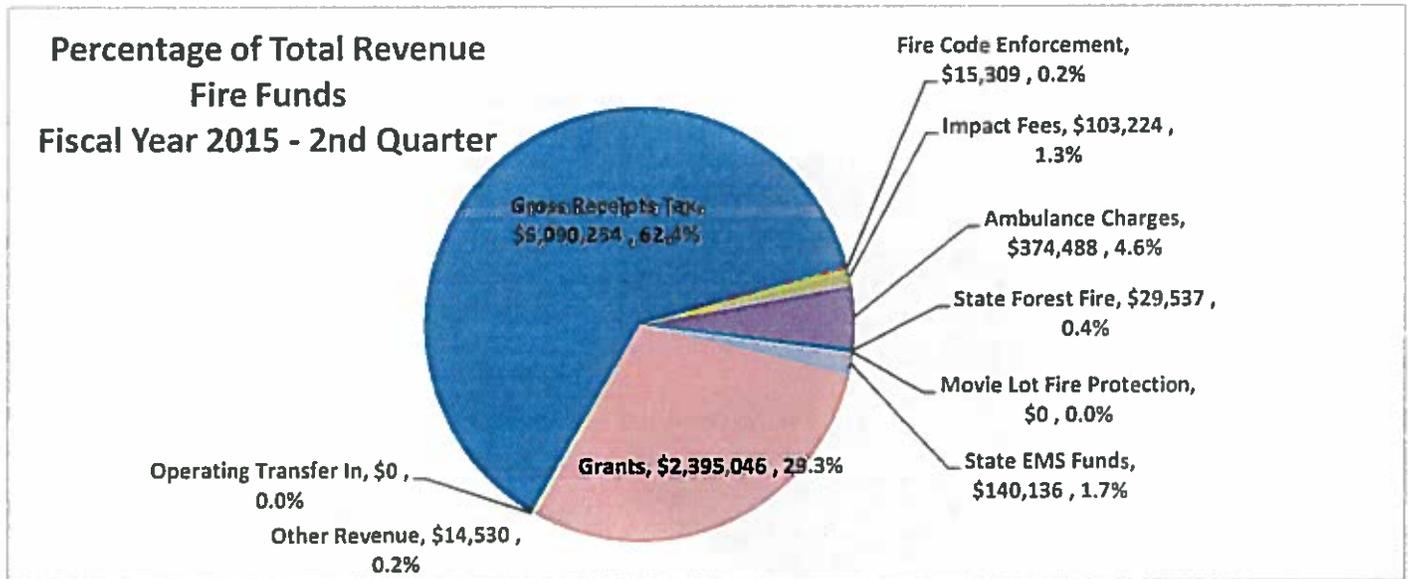
General fund expenditures totaled \$14.5 million. Recurring expenditures totaled \$13.7 million. Total General Fund expenditures were \$232K greater than the expenditures incurred in the prior fiscal year for the same time period. The increase is mainly related to increased expenditures in the Salaries and Benefits of \$397K, Maintenance of \$153K,

Services of \$65K, Supplies of \$181K and Other Operating Costs of \$196K. These increases were additionally offset by decreased expenditures in the Vehicle, Insurance and Deductibles and Capital Purchases categories totaling \$765K.



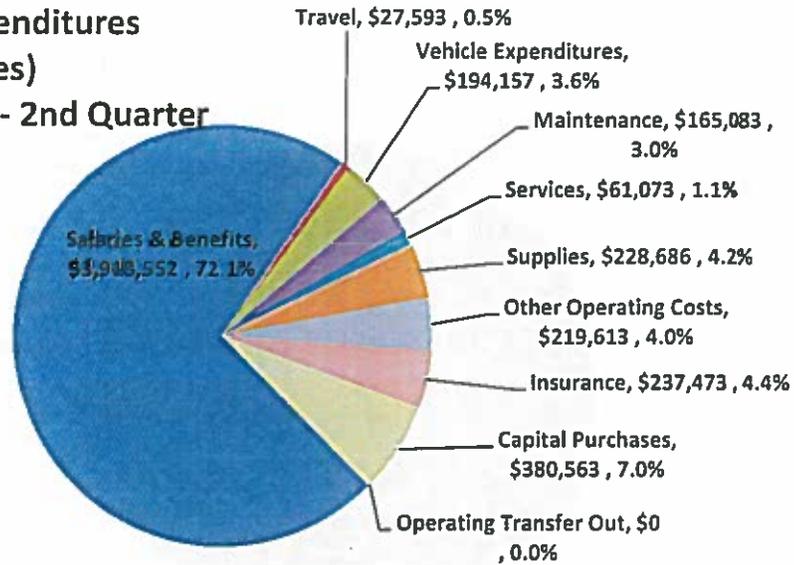
**FIRE FUNDS:**

The chart below identifies the major revenue sources for all Fire Funds. Total recurring revenues of \$8 million were collected and consist mainly of gross receipt taxes, ambulance charges and some of the grants. Through December 31<sup>st</sup>, the ambulance charges fell slightly behind the budgeted amount of \$375,512 by \$1,042 and are \$48K greater than the prior year's collections. The remaining revenue sources for the fire operations are considered non-recurring and can be impacted by the economic activity.



Expenditures for fire operations totaled \$5.4 million and included operational expenditures of \$5.1 million. The FY 2015 operational expenditures are \$113,562 less than the previous fiscal year mainly due to decreases in the Vehicle, Services and Supplies line items.

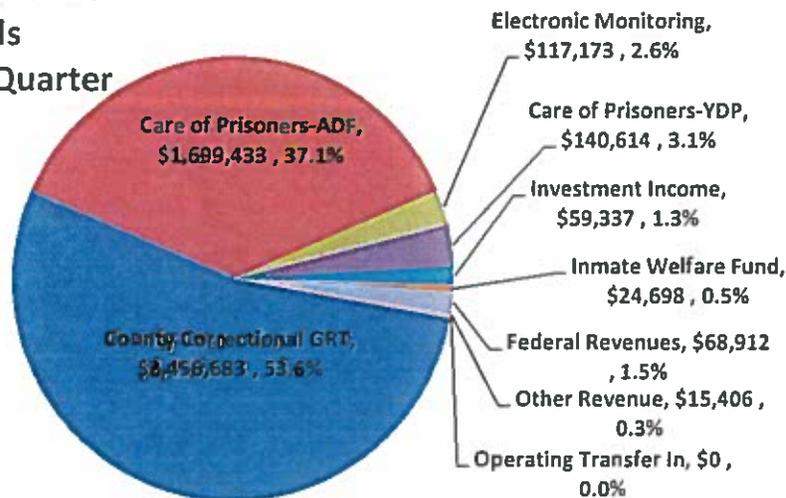
**Percentage of Total Expenditures  
(No Encumbrances)  
Fire Funds - Fiscal Year 2015 - 2nd Quarter**



**CORRECTIONS FUNDS:**

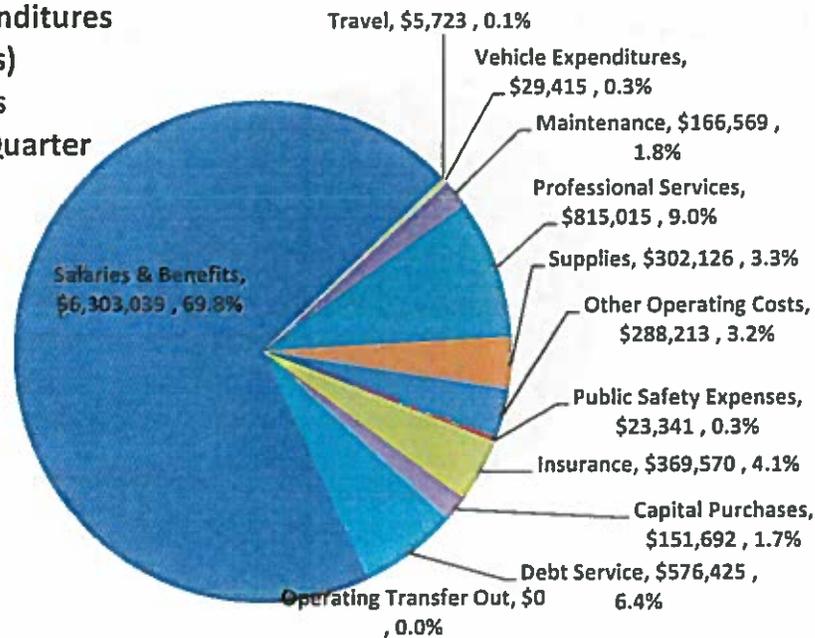
The chart below identifies the major revenue sources for the Corrections Funds. Recurring revenue, which mainly includes Correctional GRT collections, operating transfers and care of prisoner revenue, totaled \$4.5 million. The Care of Prisoner revenues of \$2 million in FY 2015 is less than the previous year's collections. This decrease is difficult to determine given that one entity's receipts for two months are outstanding in the current year (\$400K) and the prior year's collections are overstated. The FY 2014 receipts are overstated because included in the total are four months of collection pertaining to FY 2013. Finance staff has worked with the entity and the banking institution to rectify the rejection of wires leading to both under and overstatements of collections. Additionally, this fix will hopefully align the collections so that a year by year comparison may be made.

**Percentage of Total Revenue  
Corrections Funds  
Fiscal Year 2015 - 2nd Quarter**



Total expenditures for the Corrections fund are \$9 million and the operational expenditures totaled \$8.3 million. Capital expenditures totaled \$152K. The total expenditures are \$372K lesser than the prior year expenditures. This decrease can mainly be attributed to decreased costs in the categories of Salaries and Benefits, Vehicle and Other Operating Costs.

**Percentage of Total Expenditures  
(No Encumbrances)  
Corrections Funds  
Fiscal Year 2015 - 2nd Quarter**



**CLOSING:**

The numbers reflected within this report reflect activity as of close of business on December 31<sup>st</sup>. Capital expenditures, one-time expenditures and debt service payments are not considered recurring expenditures.

In summary, the 2<sup>nd</sup> quarter revenues and expenditures were as follows:

- Property Taxes of \$16.3 million – collections exceeded both budget by \$1.6 million and the prior year’s collections by \$557,755.
- Gross Receipt Taxes of \$21.8 million – cumulatively, collections have exceeded budget by \$1.5million and are above the prior year’s collections by \$93,299.
- Capital expenditures totaled \$7.9 million and debt service payments totaled \$10.5 million.

