

SANTA FE COUNTY

Resolution No. 1999-40

A RESOLUTION SUPPORTING A REQUEST FOR LAND FROM THE BUREAU OF LAND MANAGEMENT FOR THE LA PUEBLA RECREATION AREA

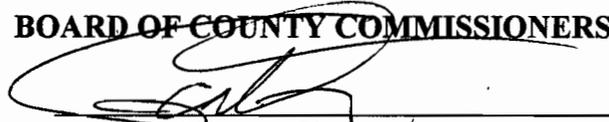
WHEREAS, Santa Fe County has received funds from the New Mexico Legislature to establish a recreation area for the Community of La Puebla, located in northern Santa Fe County; and

WHEREAS, Santa Fe County intends to submit an application to the Bureau of Land Management for a five acre parcel to be developed as the La Puebla Recreation Area; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners that the Chairman of the Board is authorized to submit a request for a five acre parcel of land from the Bureau of Land Management within the Community of La Puebla, New Mexico.

APPROVED, ADOPTED AND PASSED this 30th day of March, 1999.

BOARD OF COUNTY COMMISSIONERS

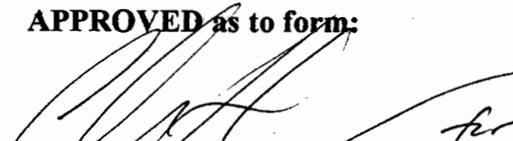

Paul Duran, Chairperson



ATTEST:


Rebecca Bustamante, County Clerk

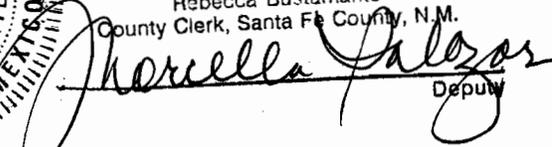
APPROVED as to form:


Derice Brown, County Attorney



1067.753
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 31 day of Mar A.D.
19 99, at 9:43 o'clock a.m.
and was duly recorded in book 1621
page 028 of the records of
Santa Fe County.

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.


Marcela Salazar
Deputy

1621029

SANTA FE COUNTY
Resolution No. 1999 - 41

**A RESOLUTION ADOPTING A
POLICY FOR ALLOCATION OF WATER RIGHTS FOR
THE SANTA FE COUNTY WATER UTILITY**

WHEREAS, Santa Fe County ("County") owns a water utility system ("County Water Utility") which provides water service to certain areas within the County; and

WHEREAS, water is an essential but limited resource which must be wisely and efficiently utilized; and

WHEREAS, the water rights available to the County Water Utility to provide water service are finite and limited; and

WHEREAS, it is in the best interest of the County Water Utility to establish objective criteria by which to deal with requests for service in an orderly and consistent manner.

NOW, THEREFORE, BE IT RESOLVED that the Santa Fe Board of County Commissioners hereby approves and adopts the attached **POLICY FOR ALLOCATION OF WATER RIGHTS FOR THE SANTA FE COUNTY WATER UTILITY**.

APPROVED, ADOPTED AND PASSED this 30th day of March, 1999

BOARD OF COUNTY COMMISSIONERS


Paul Duran, Chairman



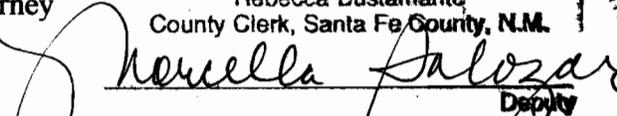

Rebecca Bustamante, County Clerk

1067.754
COUNTY OF SANTA FE)SS
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 31 day of March, 19 99, at 9:44 o'clock a m and was duly recorded in book 1021 page 029-038 of the records of Santa Fe County.

APPROVED AS TO FORM:


Denise Brown, County Attorney

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.


Marcela Salazar
Deputy



SANTA FE COUNTY WATER UTILITY
POLICY FOR ALLOCATION OF WATER RIGHTS

I. PURPOSE

The purpose of this Policy is to provide a reasonable and consistent mechanism by which the Santa Fe County Water Utility will consider its available water rights when determining whether it will commit to provide water service to an applicant who requests such service. This mechanism includes objective criteria for comparing competing water service requests when the demand for water service outpaces the water rights and production capacity available to support such service. The specific needs of both existing residents and new developments that request service are given explicit consideration.

II. DEFINITIONS:

The following definitions shall apply to this Policy:

- A. **Allocation** means a commitment to provide water service. Such a commitment is an "allocation" in the sense that water rights owned or under the control of the Santa Fe County water utility must be reserved to support that particular service commitment.
- B. **Applicant** means the person, corporation, association or other entity requesting a water service commitment for a new customer or a group of customers.
- C. **BCC** means the Santa Fe County Board of County Commissioners.
- D. **Department** means the Santa Fe County Utilities Department.
- E. **Line Extension** means the extension of the existing water utility system or facilities, which extension may include but is not limited to the planning, design and construction of transmission and distribution line(s) with related appurtenances needed to serve the new customers.
- F. **New Development** means a proposed residential, commercial and/or industrial development for which land use approvals are required pursuant to the Santa Fe County Land Development Code and for which the applicant proposes to rely on the Utility for water service.
- G. **Service Area** means the area in which the Santa Fe County Water Utility is authorized to provide water utility service as adopted and approved by the Santa Fe County Board of County Commissioners.
- H. **Utility** means the Santa Fe County Water Utility, which is owned and operated by Santa Fe County, and managed by the Santa Fe County Utilities Department.

III. GENERAL PROVISIONS

- A. This Allocation Policy (“Policy”) shall become effective after adoption by the Board of County Commissioners. Upon its adoption, the Policy shall be in effect until changed or modified as provided herein.
- B. The Utility shall allocate no more than the total acre-feet of water per annum which it will have available (i.e., water rights ownership/control and/or water supply availability are assured) during the time in which the demand will occur. Allocations made under this Policy shall be permanent subject to the conditions and limitations contained herein.
- C. This Policy may be amended, revoked or superseded only by official action of the Board of County Commissioners.

IV. ALLOCATION ELIGIBILITY

- A. To be eligible for Allocation of available County water rights an Applicant must meet the following criteria:
 - 1. Allocation request or application must be submitted to the Utility in writing.
 - 2. Requested service must be within the Utility’s Service Area.
 - 3. The Applicant must be willing to comply with the terms of the Utility Line Extension Policy including financial requirements.
 - 4. Projects must be consistent with County Growth Management Plan and Land Development Code.
- B. The County may also allocate available water rights to County owned or County sponsored projects within the Utility’s Service Area. Allocations for County sponsored projects shall be documented as to the date and amount of allocation.

V. ALLOCATIONS

- A. Water Rights Availability - The Department Director or his designee shall maintain an accounting of available water rights and allocations. Based on that accounting, the BCC shall be the sole judge of the availability of water rights for Allocation.

- B. County Set Aside – When water rights are determined to be available, the Utility shall set aside and reserve a portion of those water rights for County projects or discretionary use. The water rights, which are thus set aside, are not subject to Allocation to other Applicants. The amount of water rights to be reserved for County uses shall be as follows:

<u>Available Water Rights</u>	<u>County Set Aside Amount</u>
Less than 500 Acre-feet/year (AFY)	10% of available amount
500 AFY or more	50 AFY plus 5% of the available amount in excess of 500AFY

If at any time the County has more than 100AF/y of water rights not committed for some service, no additional amounts will be set aside.

- C. Adequate Water Rights Available - If the Utility has sufficient water rights available to satisfy an eligible request (as described in Section IV.), the Allocation will be made. The Allocation will not become effective until a water service contract between the Applicant and the Utility is executed. If prior to execution of such contract, one or more additional eligible request(s) are received such that demand exceeds the available water rights, then all pending requests shall be subject to prioritization as described in Subsection V.E.2. below.
- D. Excess Demand - If the Utility’s unallocated water rights are insufficient to satisfy an Applicant’s request, such requests shall be registered by the Utility. The Utility shall keep a record of all such requests until it acquires additional water rights. At a minimum, that record shall include: a copy of the written request/Application; the date the request was received (as endorsed by the Utility on the written application); the place and purpose(s) of use; and the amount of the Allocation requested.
- E. Processing Outstanding Allocation Requests –If and when water rights are determined to be available pending Allocation requests shall be filled as follows:
1. If the available water rights are sufficient to fill all outstanding requests, those requests shall be filled according to Section V.C. of this policy.
 2. If the available water rights are not sufficient to satisfy all outstanding requests, then the outstanding requests will be prioritized as described in Section VI (“Allocation Priority”). Allocations will be made to the request with the highest priority first then to progressively lower priority requests until the available water rights are fully allocated.
- F. No Vested Rights – Determination of an Applicant’s high priority for Allocation shall not by itself obligate the County to provide that Applicant with a water service commitment if other conditions make the immediate need or use

questionable (e.g., Land Development Code conditions, Applicant's development timing, Applicant's willingness to enter into a contract, etc.).

VI. ALLOCATION PRIORITY

When there is excess demand, priority for Allocation shall be determined as follows:

- A. **Pre-existing Contractual Preference** – An Applicant who opts to exercise a pre-existing contractual preference for Allocation shall be given the preference afforded under the terms of his/her contract when and if additional water rights become available.
- B. **Under-Allocated Non-Residential Customers** – An existing non-residential customer whose actual water usage exceeds the existing contractual commitment represent a potential water rights deficit to the Utility. Similarly, an existing non-residential customer whose County approved development project is likely to require water service in excess of a pre-existing contractual commitment also represents a potential water rights deficit.

Therefore, prior to making other Allocations, the Utility shall attempt to determine whether the respective customer has employed (or plans to employ) reasonable water conservation practices. If not, the customer should be encouraged to implement such conservation practices to reduce use to conform to the existing contract. If water use cannot be sufficiently reduced through conservation or other means, then it is the customer's responsibility to negotiate and amend the water service contract to allocate incremental water rights to support the entire actual or expected usage.

If the Utility and the customer cannot reach agreement under which to allocate the necessary incremental water rights or if the use cannot be reduced to within the pre-existing contract limits, the Utility may take steps to limit the customer's use to the pre-existing contract amount.

[Note: Individual residential customers are specifically excluded from this subsection to avoid individual allocation variations. The Utility shall attempt to influence residential customer demand through conservation education, properly structured service rates and/or enforcement of County codes and covenants appurtenant to the lands.]

- C. **Other Allocation Requests** - All other Allocation requests (aside from those included in Subsections VI.A. and VI.B. above) shall be filled in order of Allocation priority. Allocation priority shall be determined by summing all priority points (described below) for each project request being considered. The project with the highest priority point total shall be given the highest Allocation priority. The priority criteria and associated points are as follows:

Existing resident considerations:

1. Existing water supply quantity and/or quality problems (e.g., well requiring immediate work to meet demand or nitrate concentration greater than 10mg/l). **Fifteen (15) Priority Points**
2. Imminent water quantity or quality problems (e.g., well water level declining and likely to require well work within two (2) years or nitrate concentration between 4 and 10 mg/l). **Ten (10) Priority Points**
3. No documented water supply problems. **Five (5) Priority Points**

Utility infrastructure and water reuse/return flow credit considerations:

4. Requested service will extend both water and sewer system infrastructure consistent with Department plans. Wastewater to be collected for treatment by County sewer utility. **Five (5) Priority Points**
5. Requested service will in-fill along previously constructed water system infrastructure but extends sewer system consistent with Department plans. Wastewater to be collected for treatment by County sewer utility. **Four (4) Priority Points**
6. Requested service will in-fill along previously constructed water and sewer infrastructure. Wastewater to be collected for treatment by County sewer utility. **Three (3) Priority Points**
7. Requested service will extend water system infrastructure consistent with Department plans. Wastewater will not be collected/treated by County sewer utility. **One (1) Priority Point**
8. Requested service will in-fill along previously constructed water infrastructure. Wastewater will not be collected/treated by County sewer utility. **Zero (0) Priority Points**
9. Wastewater will be collected for treatment and possible reuse by third party. **One (1) Priority Point**

Other considerations:

10. Affordable housing (as defined in County Affordable Housing Ordinance-AHO).

Each 5 units two lowest priced tiers AHO (i.e., affordable to income ranges 50-64.9% of area median income) **Three (3) Priority Points**

Each 5 units two middle priced tiers AHO (i.e., affordable to income ranges 65-79.9% of area median income) **Two (2) Priority Points**

Each 5 units highest priced tier AHO (i.e., affordable to income ranges 80-100% of area median income) **One (1) Priority Point**

11. Economic development aspects:
Every ten (10) permanent jobs created **One (1) Priority Point**

- D. **Tie Breaker** – In the event that two or more requests are determined to have the same priority point total, priority for such requests shall be determined on a first-requested, first-served basis.
- E. **Priority Bypass** – In the event that available water rights are insufficient to satisfy the needs of the highest priority project and that project’s Applicant is either unwilling or unable to reduce the project demand, the project with the next highest priority may be considered for allocation. If an Applicant is willing and able to reduce the request, such reduced demand may be reconsidered if and when additional water rights become available.

VII. REQUESTS FOR ALLOCATION OUTSIDE OF SERVICE AREA

- A. Requests for service (Allocation) outside currently approved Service Area. Applicant and/or County Staff must first successfully petition BCC for expansion of Service Area.
- B. Requests for long-term bulk sales to community water systems – Allocations for bulk sales to community water systems shall require specific approval by the BCC.
- C. If the BCC approves consideration of requests under Subsections VII.A. or VII.B. above, any Allocations shall be pursuant to the terms of this Policy.

VIII. ALLOCATION LIMITATIONS

- A. Allocations shall only be made for New Developments which have a BCC approved Master Plan and shall be limited to the amount of water needed to support the approved project. Additionally, an Allocation to a given New Development shall not exceed the lesser of (a) one half of the total water rights available for allocation at a given time or (b) twenty-five acre-feet/year (25 AFY), unless specifically authorized by the BCC.
- B. An Applicant’s expected water demand and, therefore, its associated Allocation request is generally based on a projected water budget for the development, which is generally developed by the Applicant. Although the Department, and in many cases the County Land Use Department, generally reviews such water budgets for reasonableness, the Department’s review shall not be construed as legitimizing the amount of the Allocation request. Applicant must agree that if the actual demand ultimately exceeds the Allocation, the Utility shall be authorized to take steps necessary to limit actual water use to the Allocation amount. In the

alternative, if water rights are available, the Utility may require an additional Allocation be acquired as necessary to support the actual use.

IX. RESIDENTIAL CUSTOMERS ALLOCATION REQUIREMENTS

Residential Customers who receive an Allocation must agree to the following:

1. Not to drill a well under the authority of Section 72-12-1 NMSA (1978) after the date on which water service is first received using the Allocation;
2. Disconnect any existing domestic well which has been drilled under the authority of Section 72-12-1 NMSA (1978) from the indoor plumbing system and discontinue water use from such a well for indoor domestic purposes after the date on which water service is first received using the Allocation;
3. Waive any present or future claim of impairment against the Utility.
4. Allow the County to transfer indoor-use water rights associated with a domestic well to the County. In past practice, the New Mexico Office of the State Engineer (OSE) has allowed transfers of this type up to sixty (60) gallons per day per resident. If and when the OSE approves the transfer of such rights to the Utility, the Applicant (customer) shall be given credit for the amount transferred (not to exceed the amount of the original Allocation) less a pro-rata portion of attendant costs.
5. Section 72-12-1 NMSA (1978) shall mean the statute as it presently exists, as it may be amended from time to time, or as it may be repealed and newly enacted.

X. OTHER CONDITIONS

- A. An Applicant requesting an Allocation must comply with all applicable state and federal statutes or laws, and applicable County ordinances, conditions of County land use approval and County executed covenants.
- B. The County shall retain any return flow credit or any other credit of any type resulting or to result from the utilization of allocated water.
- C. The County, with written agreement of the Applicant, may make additional conditions for the Allocation or its utilization in the event the County determines that such conditions are essential to the best management of water resources in Santa Fe County.
- D. Any Applicant entering into an contract for the Allocation of water, together with his successors and assigns, must grant the County a right of first refusal to reacquire the allocated water rights if the Allocation will not be put to use as originally planned. Any such reacquisition shall be at the same cost as was originally paid to the County for the Allocation. In such a reacquisition, any

standby or service charges, which may have been paid to the Utility shall not be recoverable by the Allocation holder.

- E. Within twelve (12) months of getting an Allocation, an Applicant must provide proof that he/she has gotten, or is diligently pursuing, all necessary approvals for the project on which the water will be used to proceed. If such proof cannot be given, the Allocation shall be subject to reacquisition by the County under the terms of Subsection X.D. above.
- F. If a New Development for which water rights have been allocated, has not progressed within five years of the original Allocation, the County may, at its sole option, require proof that the project is still viable. If such viability cannot be proven or if the nature of the original project has changed, the County shall, at its sole option, have the right to reacquire the allocated water rights under the terms of Subsection X.D. above.
- G. Water which has been allocated to an Applicant but which has not been put to beneficial use may be distributed to another Applicant requesting water on a short-term basis.
- H. Any non-compliance with any of the conditions, provisions or obligations specified in this Policy and the contract between the County and the Applicant shall be grounds for immediate reversion of the Allocation to the County. The County shall notify the Applicant of a violation by certified mail. If the violation is not cured within thirty (30) days after mailing the notice, the Allocation shall be deemed forfeited unless the time for compliance is extended by the County.
- I. In the event of a drought or lack of water availability from any cause whatsoever, the water allocated by the County will be reduced to all customers proportionately. Use of amounts greater than the said proportionately reduced allocation shall be considered excess use and shall subject the allocation to forfeiture or, at the option of the County, to a discontinuance of water use for the time necessary to make the actual use of the Applicant conform to its restricted allocation.
- J. Allocation made to an Applicant by the County shall be governed by contract entered into between the successful Applicant and the County.
- K. If the Allocation contract contains any provisions that fall within the jurisdiction of any regulatory body, the agreement shall be expressly made subject to the applicable statutes relating to the agency, and its rules, regulations and orders.
- L. Any costs or expenses incurred by the County, including, but not limited to, reasonable attorneys' fees, in enforcing compliance with these policies and the Allocation contract shall be paid by the Applicant.

- M. Applicants who receive a water rights Allocation shall be required to pay a standby fee for that portion of the allocated water rights which are not supporting actual service (i.e., for which construction has not yet begun and metering has not yet been installed).