

**POJOAQUE BASIN REGIONAL
WATER AUTHORITY JOINT POWERS AGREEMENT
SANTA FE COUNTY STAFF PREPARED QUESTIONS & ANSWERS**

Board Composition

1. Question: Since there are four Pueblo Directors on the Authority Board, won't the Pueblos dominate the Board's decisions to the potential detriment of the County and its customers?

Answer: No. Section 6(G) of the JPA gives the County special voting rights. Specifically, the County Director must vote in the affirmative for the Board to approve the annual budget, hire or terminate the General Manager, borrow money in excess of \$125,000, enter into the System Operator Agreement, the Fiscal Services Agreement or any contract in excess of \$125,000. These voting rights will help protect the interests of the County.

In addition, cost-sharing and day-to-day operations of the Regional Water System will be largely controlled by the yet-to-be-negotiated Operating Agreement. This means that the Authority Board's ability to control such things will be constrained by that (and the other relevant agreements). (For example, Article 5 provides that the Authority is empowered and authorized to do specified things "[t]o the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement".

Finally, the four Pueblos are independent sovereign entities with different perspectives and interests, meaning that we do not anticipate them having uniform positions on all things related to the Authority and Regional Water System.

2. Question: Why aren't there term limits for Authority directors?

Answer: As a practical matter, there are term limits for the County Director and Alternate Director. They must be County Commissioners (JPA, Article 6.A and 6.D), and County Commissioners have term limits.

With regard to other Party Directors, it seemed appropriate for each Pueblo Party to decide their own qualifications for office, which could include term limits imposed by the Party.

With regard to non-Party Directors, there were several reasons why term limits were not included. First, in the context of a business enterprise like the Authority, the tradeoff with term limits is experience. Second, the County's own experience is that it can prove difficult to find people to volunteer for uncompensated service on a boards and commissions, especially when the number of would be candidates is not that large. Disqualifying willing, able, and experienced candidates based on prior service could exacerbate those challenges.

3. Question: Why not have qualifications for each Board Director, including certain knowledge and experience?

Answer: With regard to the County Director and Alternate Director, the County felt it important that elected officials serve on the Authority Board.

With regard to other Party Directors, it seemed appropriate for each Pueblo Party to decide their own qualifications for office, which could establish such requirements as they deem appropriate.

With regard to non-Party Directors, there were several reasons why qualifications were not specified. First, the needs of the Authority Board in terms of non-Party Directors may change over time. For example, at the initial operating stage, it may be prove useful to have non-Party directors with an accounting background (for cost allocating purposes and development of the Fiscal Services Agreement) and engineering or water utility background (to help oversee the turnover and initial operations). Second, the County's own experience is that it can prove difficult to find people to volunteer for uncompensated service on a boards and commissions, especially when the number of would be candidates is not that large. Specifying qualifications shrinks the potential applicant pool even further.

4. Question: Why not allow Alternates for the two non-Party Directors?

Answer: The Parties desire to have committed non-Party Directors who can regularly attend Authority Board meetings. In addition, it has proven less than ideal in other contexts to have alternates that lack the knowledge base of the primary director stand it. Finally, as previously indicated, it has proven difficult to obtain volunteers to serve on boards and committees.

Board Meetings/Voting

5. Question: What is the rationale for Santa Fe County's special voting rights?

Answer: County participation was considered by the engineer studying the feasibility of the system necessary for the system to be viable. In addition, County received no operation and maintenance money from the federal government or state. Finally, County customers are likely to be largest customer base over time.

6. Question: What is the rationale for San Ildefonso's special voting rights?

Answer: The Cost-Sharing and System Integration Agreement specifies that, in consideration for the unique contribution that the Pueblo de San Ildefonso provides to the Settlement, including permitting the diversion and water treatment facilities on their land, the Pueblo could have one board member more than each of the other Pueblos on the Regional Water Authority. Rather than have an extra board member, the Pueblo opted to have special voting rights.

7. Question: Is it true that only three votes are required for the Board to pass something?

Answer: Yes, provided that both the San Ildefonso and County Director are among the three on items specified in Article 6.G of the JPA. A quorum to conduct business is four directors. The action of the majority of the directors constitutes the official action of the Board.

This is no different than the Board of County Commissioners, for whom a majority of a quorum of three commissioners is often sufficient to pass an item.

8. Question: Why doesn't the Board have regularly scheduled meetings? Section 6.F of the JPA states that the Board shall meet monthly or as *may be determined* by the Board.

Answer: First, establishing such a requirement in the JPA could prove problematic if the schedule does not work for the Directors, including the non-Party Directors. Second, the meeting needs of the Authority will likely vary over time. Third, we would anticipate that the Board will establish its regular meeting schedule on an annual basis, in conjunction with its resolution determining what is reasonable notice of its meetings, as required by the Open Meetings Act.

9. Question: Santa Fe County may be the System Operator and Fiscal Agent, contracts for which would have to be approved by the Authority Board and County. Would the County Director vote on those contracts?

Answer: No. The Parties felt it important to prohibit a Director from voting on a contract between the Authority and the Party that appointed the Director, so as to avoid the appearance of impropriety.

As a practical matter, the County would have to approve of those agreements.

RWS Reliability

10. Question: Article 11.C of the draft JPA requires each party to appropriate funds each fiscal year to meet its financial obligation or provide notice to the Authority that it has failed to do so. Are Regional Water System customers protected in the event of such non-appropriation or any other budget shortfall?

Answer: Yes. First, with respect to the Pueblo parties, Congress is to appropriate approximately \$37.5 million for operations and maintenance. Under Article 26.B, the Pueblos may not refuse to appropriate such funds.

Second, the Parties will, over time, establish a significant reserve fund to guard against budget shortfalls. The JPA seeks to protect the Parties and their

customers from the risk of non-appropriation by a Party (and budget deficits, generally). Specifically, the Operational Stability Fund called for in Article 11(F)(3) is meant to provide operating funds in the event of a revenue shortfall or significant increase in expenses. After twenty years, that fund is supposed to have a minimum of one-year's operating costs.

11. Question: Will the Pojoaque Basin Regional Water System be viable?

Answer: Yes, if prudent decisions are made as to the size and extent of the County system and use of excess capacity. Per the Cost Sharing and System Integration Agreement (Sec. 3.1.2), the County has the many opportunities during the planning and design of the Regional Water System to size the County's share of the system so as to be viable in the short-term, deferring future capacity and distribution lines to the future.

In addition, the County has the option of using excess capacity and water diverted from the Rio Grande elsewhere in the County until it is needed for water customers in the Pojoaque Basin. A water line connecting the RWS to the rest of the County's water system would benefit a greater portion of Santa Fe County than just the Pojoaque Basin and also help pay for the system.

12. Question: How will the County pay for the Construction of the RWS?

Answer: The Board of County Commissioners has not made that decision yet. In the past, major public works projects have been funded from general obligation bonds, revenue bonds, current year revenue, or a combination of these sources. That decision will be made by the Board in 2017, based upon a variety of factors, including the County's projected costs.

13. Question: Can you explain the non-appropriation clause?

Answer: With respect to the County, the state constitution and statute generally precludes the County from pledging future general fund revenue in future fiscal years. In simple terms, without voter approval, one Board of County Commissioners cannot generally commit a future one to spend money. The non-appropriation clause is meant to ensure that the County complies with those limitations.

With respect to the Pueblos, Article 26 would likewise recognize the ability of future Tribal Councils to decide how to spend Pueblo resources. Congress, however, is to appropriate approximately \$37.5 for operations and maintenance. Under Article 26.B, the Pueblos may not refuse to appropriate such funds.

14. Question: The County may become the Fiscal Agent for the RWA. Does this put the County at risk for the financial liability of the RWS?

Answer: No. Article 11(E) of the JPA provides that “[n]o Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.”

15. Question: Article 14.C of the draft JPA references “interim uses” of unused capacity in the Regional Water System. How will the County use the water in the interim until it is needed in the Pojoaque Basin?

Answer: The Aamodt Litigation Act and the Settlement Agreement allows the County to use unused capacity and water rights of the County Water Utility to supply water outside the Pojoaque Basin but within the County until it is needed to serve customers within the basin. Water could also be used within the County’s service area for County Utility customers. The potential source of an additional surface water supply for the entire County Utility system is a compelling justification for the County investment in the Regional Water System.

In addition, some of the water rights come from the Top of the World Farm in Taos County, which the County may lease to the owners of that farm until they are needed. Interim use is important to help assure the financial sustainability of the entire RWS.

16. Question: Article 14.D of the draft JPA references additional authorizations that maybe required for interim use of unused capacity. What is being contemplated here by additional authorizations?

Answer: This commits the Parties to do what it is necessary to authorize interim use of unused capacity. For example, if it was determined that a specific form was required to memorialize a Party’s approval, this clause would require the Party to provide it. Such a clause is not uncommon in complex transactions where the Parties want to ensure that their agreement and intent is effectuated, if necessary, through future acts.

Pueblo Employment Preferences

17. Question: Where does the employment preference for members of San Ildefonso and other Pueblos come from?

Answer: Section 3.4 of the Cost-Sharing and System Integration Agreement. It provides, in part, as follows:

“In consideration for the unique contribution that the Pueblo de San Ildefonso provides to the Settlement, and the related water project, the following special considerations are provided to that Pueblo: (a) to the extent authorized by law, employment preference and training to qualified members of the San Ildefonso Pueblo community and second priority to members of other Pueblos for

construction, operation and maintenance of facilities located within San Ildefonso Pueblo[.]”

18. Question: How would the employment preference work in practice?

Answer: If allowed by law, a preference would be given to “qualified members” of the Pueblos. This would mean that the member must be on par with non-member applicants. It would not mean that an inferior candidate would be hired solely on account of their Pueblo membership.

RWS Operations

19. Question: Why is the County not required to be the System Operator and Fiscal Agent?

Answer: To provide flexibility to the County and Authority. Mandating that the County fulfill these roles before all of the details were known seemed ill advised upon reflection.

20. Question: Can another Party to the JPA unilaterally shutoff the supply of water to the County Water Utility?

Answer: No. The diversion, treatment, and transmission infrastructure is owned by the Authority and will be built within legal easements granted to the Authority for so long as required for construction, use, operation, maintenance, repair and replacement of the Regional Water System. Consequently, a Party would not have the legal right to interfere with the Authority’s property.

21. Question: How will rates be set for County utility customers?

Answer: By the County, through a public process culminating in formal action by the Board of County Commissioners at a public meeting.

When setting rates it charges customers, the County follows industry standards consistent with those established by the American Water Works Association (AWWA). The AWWA provides a few options for determining utility revenue needs and rate schedules (by customer class) by conducting a cost-of-service analysis.

General/Other

22. Question: Who will enforce the terms of the JPA?

Answer: Any one of the Parties may enforce the provisions of the JPA through the binding and enforceable dispute resolution process established in Article 19 of the JPA, which includes waivers of tribal sovereign immunity.

23. Question: Does approval of the JPA mean the County must fund construction of the Regional Water System?

Answer: No. The JPA specifically provides that nothing in the JPA “obligates the County to appropriate or expend such money for the initial planning, design, and construction of the Regional Water System.” [JPA, Article 26(A).]

24. Question: The Operating Agreement, System Operator Agreement, and Fiscal Services Agreement is referenced many times in the JPA, but those agreements have not yet been drafted. Why not delay action on the JPA until those agreements have been negotiated?

Answer: That approach would risk wasting a lot of resources on a failed endeavor. Implementation of the Settlement Agreement hinges on the existence of the Authority. As if with any endeavor, you want to fail quickly. Here, that means determining whether the Parties can agree on the foundational JPA before additional resources are invested.

In addition, the System Operator Agreement and Fiscal Services Agreement are between the Authority and the County (or other provider). The Authority cannot negotiate those agreements until it exists.

25. Question: Article 13 requires compliance with the Public Records Acts and Inspection of Public Records Act. Why not require that all public records will be available to the public on a website maintained by the Authority?

Answer: This could be cost-prohibitive and counter-productive by causing incomplete or inaccurate information to be posted on the Authority’s website. The County is aware of no governmental entity that makes all of its public records available on its website.

26. Question: What is meant by terminating the System Operator Agreement and Fiscal Services Agreement “for convenience” in Articles 10.B and 12.B?

Answer: “For convenience” means unrelated to the contractor’s performance. These clauses are meant to ensure that there is no gap in services. Namely, if the Authority was to terminate its System Operator Agreement and Fiscal Services Agreement with the County “for convenience” but not resolve to handle those functions on its own, the termination would not be effective until replacement agreements were in place and the next contractor was ready, willing, and able to perform its duties.

27. Question: What is meant by “proportionate contribution” in Article 11.C?

Answer: The Party’s share of the Authority’s budget.

Easements

28. Question: Are the Parties required to provide future easements – i.e., easements for future expansions of the Regional Water System beyond its initial construction by the Bureau of Reclamation – at no cost?

Answer: Yes. In Article 14.B of the JPA, the Parties agree to grant such easements at no cost. Easement locations must be reasonable and construction locations are subject to reasonable mitigation requirements.

29. Question: Does the JPA guarantee access to rights-of-way on Parties' land for maintenance, repair, and replacement?

Answer: Yes. In Article 14.A of the JPA, the parties grant the Authority, its employees, contractors, and agents the right to enter upon their lands within rights-of-way established for the Regional Water System and through reasonable access routes designated by them to access such rights-of-way. Access is to be in accordance with access protocols established by each Pueblo, which the County anticipates to be established once the final location of the rights-of-way and access routes are determined.

General

30. Question: Has Santa Fe County changed its position with respect to resolving the legal status of County roads within Pueblo boundaries before appropriating money for the Regional Water System?

Answer: No. Resolution No. 2015-125 remains the Board of County Commissioners' stated policy on this issue. Santa Fe County continues to work on implementation of the Aamodt Settlement Agreement, however, in the good faith belief that the roads status can be timely resolved in a mutually agreeable way.