

MINUTES OF THE
SANTA FE COUNTY
WATER POLICY ADVISORY COMMITTEE

January 14, 2016
Approved March 10, 2016

Santa Fe, New Mexico

I. This meeting of the Santa Fe County Water Policy Advisory Committee (WPAC) was convened at 5:00 p.m. by Chair Charles Nylander on the above-cited date at the Santa Fe County Public Works Building Conference Room, 424 NM 599, Santa Fe, New Mexico.

II. The following members were present and a quorum was established:

Members Present:

Charles Nylander, District 2
Consuelo Bokum, BDD Board
Anna Hamilton, District 4
Mary Helen Follingstad, Northern Planning Area
Steve Rudnick, District 5
Sigmund Silber, Central
Rik Thompson, Estancia Basin Water Planning Committee
Martha Trujillo, Acequia Association

Member(s) Excused:

Bill King, Soil & Water Conservation
Rita-Loy Simmons, District 3
[Two vacancies]

Staff Present:

Claudia Borchert, Utilities Division Director
Sandra Ely, Utilities Division, Project Manager - Aamodt
Jerry Schoeppner, Utilities Division, Hydrogeologist

Others Present:

Kathy Holian, County Commissioner
Carl Trujillo, District 46 State Representative
Paul White, Chupadero
John Gutting, Pojoaque
Beverly Duran-Cash, Northern New Mexico Protects
Alex Trujillo, Pojoaque

III. **Approval of Agenda**

SFC CLERK RECORDED 05/24/2016

Upon motion by Ms. Hamilton and second by Mr. Rudnick, the agenda was unanimously approved.

IV. Approval of Minutes: November 12, 2015

A correction was incorporated into the minutes and with that correction, Ms. Hamilton moved to approve. Mr. Rudnick seconded and the motion passed without opposition.

V. Matters from the Public

Paul White said upon his review of the November 12th WPAC minutes regarding dams he wanted to mention that recently deceased hydrologist Francis West had talked to him about a major geological fault that he identified at the Nambe Dam that extended into the City of Santa Fe. At that time, Mr. West advocated the use of InSAR satellite to establish a baseline. Mr. White said he contacted OSE, USGC, and the federal government and he has not garnered any interest. Acknowledging his lack of success, he suggested that WPAC petition for InSAR.

Chair Nylander said he was unaware of Mr. West's finding but he thought there would be several state and/or federal agencies interested. He requested Mr. White forward any information Mr. West published on the topic as that would be a helpful start for the WPAC to pursue. Chair Nylander said he would conduct some follow-up on the issue.

Ms. Bokum said the Bureau of Geology & Mineral Resources in Socorro has localized knowledge about the state and is a tremendous resource.

Mr. White stated at Aamodt outreach meetings former Public Works Director Leigland said in order to ascertain the viability of the proposed regional water system he proposed knocking on doors to see who would sign up for the water utility. Chair Nylander expected the County would conduct a study of that nature for system sizing.

VI. Discussion Items

A. Presentation of information regarding the Aamodt Settlement and the County-owned portion of the Pojoaque Basin Regional Water System

Speaking to the visiting public, the Chair said this presentation was the Committee's first formal educational session on Aamodt.

Sandra Ely, Aamodt Manager, provided background that identified the affected area as the Rio Pojoaque Basin. An adjudication commenced in 1966 regarding Indian and non-Indian claims in the Rio Pojoaque Basin. Stakeholders/settlement parties include San Ildefonso, Pojoaque, Nambe and Tesuque pueblos, over 1,000 non-pueblo parties, the State, and the City and County of Santa Fe. In 2001 a federal court ordered settlement negotiations. The parties developed an agreement in 2006 and the Congress provided funding for the Settlement in 2009. The following year Congress enact the Aamodt Litigation Settlement Act. Agreements regarding cost sharing and systems integration were revised and signed. In 2014, non-Pueblo parties filed objections to the Settlement Agreement and to date there has not been a formal decision from the court as to

whether the Settlement will be effective. However, the County is moving forward to meet 2017 milestones that are required for the Settlement.

Rep. Trujillo said the federal court needs to sign the Partial Final Decree by September 17, 2017. Mr. Gutting interjected that it has not been signed because there are 800 objectors that must be addressed prior to signing off on it.

Ms. Ely pointed out that from those objections, two briefs were filed in the federal court and those two briefs are what the court is looking at to determine whether to move forward.

She identified the basin on a map and outlined the goals of the Settlement as follows:

- Resolve Indian priority water rights claims
- Provide certainty with regard to supply and use of water in the Pojoaque Basin
- Limit impacts on the aquifers and increase stream flows
- Protect existing agricultural uses
- Protect existing non-Pueblo domestic wells
- Provide water users with a safe, reliable water supply for domestic and commercial purposes

The County has determined that fire protection will be provided for its County customers through the water system. The design and construction of a sewer system is not being considered at this time.

In response to a concern that agricultural use was not being protected, Ms. Ely noted there were members of the acequia associations that participated at the settlement negotiations. The increased surface flow will protect groundwater.

Ms. Duran-Cash discussed her particular situation with the possibility dividing/developing her land for her children and according to the Settlement no additional wells may be drilled and one would be required to provide basin water rights of which none will be available. Ms. Ely said drilling a new well requires the transfer of new water rights. New wells will be allowed after the basin is closed if water can be brought in from the basin. Ms. Duran-Cash expressed concern that transferring water rights will deplete the aquifer and impair traditional agricultural practices.

Ms. Ely reviewed the Settlement Agreement terms that provide for administration of water rights within the basin and the monitoring of pueblo water use by the OSE. The regional water system will serve both pueblo and non-pueblo residents. The terms include a quantification of the pueblos' first priority rights identified by existing use and future use. The total existing use is 1,391 afy and the total first priority rights are 3,600 afy. The pueblos are going to exercise their first priority rights on the 1,391 and hold off on future use. The pueblos will also receive an additional 2,600 afy of water from outside the basin from the Rio Grande, north of the Otowi Bridge. The non-pueblo settlement water rights include non-pueblo surface water rights that are subject to priority call by the pueblos only for the existing use portion of the first priority rights. There will be no priority call from the pueblos for domestic well owners who are in compliance with the Settlement. Further, the basin will be closed to new depletions but there can be re-appropriations within the basin. It was noted that water can be purchased and transferred from pre-basin wells, existing before 1956, within the tributary.

The regional water system will be designed as a surface water based water utility in the Pojoaque Basin with:

- 4,000 afy capacity – 2,500 afy for pueblos and up to 1,500 afy for non-pueblo resident
- Diversion above Otowi Bridge
- Treatment facility will be on San Ildefonso land
- Transmission of water throughout the basin
- The regional water system will be run by a Regional Water Authority
- The majority of the construction costs are covered by the federal government with the non-pueblo portion paid by the State and County

Using a map, Ms. Ely identified the service area and how the water system will be laid out, noting it will be refined as customers are identified. The furthest point will be Bishop's Lodge. The line was originally designed in 2008 by HKM, an engineering firm that provided a rough cost estimate and engineering requirements.

The system will be designed and constructed by the BOR and constructed in phases. Once fully constructed, the County will operate the system under contract with the Regional Water Authority (RWA) Board. Much of the County's water is coming from the Top of the World (TOW) farm and the pueblos' water is from San Juan-Chama. Top of the World farm is near the Colorado border where potatoes and alfalfa were grown since the 1950s. The County purchased the farm and water rights in 2006 and sold part of it to the pueblos which is held in federal trust. The County is going through a water transfer process with the OSE and a hearing is anticipated this summer.

Ms. Ely discussed the EIS that the BOR is preparing. A draft EIS was taken to the public for input as required by National Environmental Policy Act, the Endangered Species Act and the Clean Water Act. The EIS should be ready for additional public comment this summer. The final EIS and Record of Decision will be completed by 2017. She said the BOR website is very useful for updates on this project as is the County's website along with a list of others that are valuable resources.

HKM's 2008 report used 2006 dollars and the estimate at that time was \$159 million. It is currently closer to \$210 million. The State through the LFC and the Governor have agreed to pay \$45.5 million, indexed, and no more than that. The County will be required to pick up additional costs. There are options for cost control that include reducing the length of the distribution line. Based on 2006 dollars, the cost sharing for the parties is as follows:

- Federal \$106,400,000.
- State \$ 45,500,000.
- County \$ 7,400,000.

Ms. Ely discussed the composition of the Regional Water Authority (RWA) and noted the County will serve as the initial fiscal agent and system operator.

Following the approval of the Final Partial Decree, the Court will have to set a "well election" deadline and that is where the residents in the basin make a decision on whether to hook up or

not hook up and continue to use their wells. Residents can wait until the deadline to decide. She confirmed that well use will be restricted to .5 afy to .7 afy. If a resident chooses to hook up to the regional water system within a certain prescribed period of time the County will pay for the connection. The water right from the well will be transferred to the County. The current owner's election/choice will bind future owners to how that well will be used.

Ms. Ely said although this action has been ongoing for 50 years it could fold if the court finds for the briefs filed in 2015 which will invalidate the Settlement. In that event, the process would revert back to the adjudication process with the pueblos. As junior users, the non-pueblo residents could face a priority call from the pueblos and the Pojoaque residents would not have the regional water system.

The County is moving forward in anticipation of the system being put in place. There is a lot to be accomplished this year and those items were identified as: the creation of a Joint Powers Agreement to create the Regional Water Authority Board, and create an operating agreement that will define distribution, allocations and management of used capacity, shortage sharing, use of wells, transfer of water right for Pueblos, etc. Ms. Ely said the plan is to finish the JPA by the end of the year. There will be a funding agreement between BOR and the County. Watermaster rules will direct the administration of the Settlement through the OSE.

Ms. Duran-Cash asked why when her water well was reduced to .5 afy from 3 afy she was told by the OSE that it was not a water right but rather a privilege, and how is it a water right for the County but a privilege for a resident. Ms. Ely referred to a table within the Settlement Agreement which specifies that the water right would be based on the well type.

Mr. White offered that he believed there were hundreds of properties within the proposed service area that do not have wells and will have to scramble to find water rights.

Returning to her report, Ms. Ely said the WPAC may want to consider shared wells within the RWA area and how those can be managed. The State has a \$4 million connection fee fund that may be provided to the County to administer. Should there be use limitation on that fund? Is there an interface between the County's new SLDC and the Settlement? Could the development of a water rights bank be useful for a resident wanting a new well?

Mr. Silber recommended adding to that list subsidizing water capture and cloud seeding as options for WPAC consideration. The Pojoaque Valley Irrigation District recently passed a resolution in support of cloud seeding. Nambe Pueblo, the City of Santa Fe, Española and Rio Arriba County have all passed resolutions in support of cloud seeding.

The Committee commended Ms. Ely for a concise informative report.

B. Presentation regarding the Aamodt Settlement and Pojoaque Basin Regional Water System

Representative Trujillo said the Settlement Agreement sounds complicated and convoluted because it is. The system will be based on customers and a great deal of the community has lost

trust with the government and is not willing to sign on to be a customer. He said he personally was dissatisfied with the OSE.

Representative Trujillo said there has not been a definitive hydrology report on the system. He said he has not seen, although he has asked for, evidence that the basin is water-short. The total population within the basin boundary is approximately 8,455. There are 2,600 non-pueblo wells in the basin and he reviewed the static water level that the OSE has been monitoring. The Settlement area consists of fee simple land that resides within the boundary of the pueblo. Right-of-way issues become extremely complicated in this area, stated the Representative. The Settlement Agreement and the US Government have said the pueblos have to give up r-o-w for water lines.

He mentioned that in 2000 the OSE realized Pojoaque Pueblo was building a golf course and filed a lawsuit against them in federal court alleging the pueblo did not have adequate water rights to maintain the course. The court said the basin needs to be adjudicated before they can act. The federal government bought 2,500 afy with 475 afy supplement for the golf course.

There are various classifications of wells in the basin depending on when they were established: pre-basin or 1956 or earlier (before the OSE was issuing well permits); post 1983 moratorium and any new non-pueblo well in the basin that can only be used for domestic indoor use. The 1983 moratorium is being heard in the 10th Circuit Court; if overturned, the Settlement Agreement will be disrupted. Those individual wells that have been adjudicated at 3 afy can be sold to another basin user. As the basin closes, the water rights will be very valuable. Those with well permits between 1956 and 1983 and post-moratorium wells will be reduced to .5 afy or .3 afy for outdoor use.

Rep. Trujillo said there are 555 pre-basin wells that were adjudicated during the 1970s and 1980s in Pojoaque. There are 65 wells that are currently in the adjudication process. He said this area is agrarian with a minimum lot size of .75 acres. The notion that people who traditionally farm are going to give up their wells and hook up to the system is unlikely.

Rep. Trujillo said he has issues with manner in which the OSE notified the residents of the well election. These issues feed into the community's mistrust of the process that lacks sufficient information for a resident to make an informed election. He believes this led to the 800 residents objecting to the Settlement. At this point, he understood only 120 residents have signed on to the system.

Fueling the community's sense of mistrust, Rep. Trujillo brought up the expired easements going through pueblo lands that have caused an increase in utility rates and threatens clear title for non-pueblo property owners on pueblo land. He commended Santa Fe County for working to resolve these issues.

As a State Representative he said he was concerned about a State lawsuit with Texas regarding a water delivery compact and how this Settlement Agreement may impact the water delivery to Texas.

As a hydrology issue, Mr. Silber said there is a question that the ceasing of farming at Top of the World will improve the water supply in the Rio Grande.

Rep. Trujillo discussed what he referred to as a contentious issue regarding the composition of the Regional Water Board that fails to adequately represent the 83 percent of the service area's non-pueblo people. Ms. Ely said that has changed. County Commissioner Roybal has been in active negotiations with the pueblos and the latest draft depicts a nine-member board with four members from the pueblo, four members from the public and one from Santa Fe County. She urged the Representative to review the current posted information.

The Representative said if the implementation of the system were conducted differently he would support the regional water system but with the inadequate notification and components of the Settlement Agreement he cannot. He noted that the system will negatively affect property values. The process has created tremendous animosity among the people of the valley and the residents must have a voice. He went on to say that he had a DNA test and he is 33 percent Native American and his family has been living in the area together for over 400 years.

Ms. Borchert said the County bought the Top of the World in the mid 90s and leased them to the town of Questa to address that town's debt to the Rio Grande. The OSE had to evaluate and determine the water rights and how much benefit does the Rio Grande gain from it. She said it is not a paper transfer and there is a hydrologic connection.

Mr. Gutting said he found it very interesting that the Pojoaque Regional Water System diversion is roughly 50 percent of the Buckman Direct Diversion's capacity, 164 miles of pipeline will have to be built, along with 12 to 14 pumping stations, creating a large carbon imprint. Design/build has to be completed within 90 days of the EIS publication, BOR wants a contract in place by the end of 2017 to start construction and lay pipe to the treatment plant. Locating storage tanks is required, all for a system with at this point 121 customers. He expressed concern that many residents that live in the basin area will never have water from the system but will have to live by the Settlement rules. He mentioned thousands of acres that are within the basin that will not be able to get on the system – land against the mountain in the Chupadero area, areas of Tano Road, Circle Drive, Ski Basin, etc.

Mr. Gutting continued and said the County has handled the creation of the system poorly and there were too many open questions for the County to have signed up for the expenditure. "It's time for the County to show us where the system is going to be, when it's going to be there, and how much the cost is going to be to the County." The first question that County needs to answer is how many customers are required to make this work?

[Rep Trujillo excused himself from the remainder of the meeting.]

Chupadero resident, Paul White said he petitioned the County to consider running a water line to his area and was told it would cost \$6 million. The County approved a bond issue to run water to Cañoncito, an area with 1/10 of the population along the 592 corridor. He said 60 percent of the trees in Chupadero have died – "we need it more than anyone in the valley and we're being discriminated against..." Settlement Agreement section 4.2.2.1 allows for loss priority protection

which basically says if you don't use your water within 5 years you will lose protection and the water rights will go to the pueblo. It was his understanding from Nambe Pueblo legal counsel that the pueblos will go after water rights in the valley because the state is not enforcing their own statute and this provides an avenue to go after those rights.

Mr. White said he reviewed what he understands to be the most current hydrologic study, the 1992 Flanigan study on the TOW water rights and that study said those rights were probably not connected to the Rio Grande and in semi-parched lands.

Mr. White urged the County to determine how many undeveloped properties there are in the valley that will need water and will be actively seeking water rights in the basin; how many hookups are needed to make the system work; and, of the 120 residents that accepted the Settlement, are they near where the system is planned to service?

Ms. Duran-Cash introduced herself as the president of Northern New Mexico Protects, a not-for-profit organization that began a couple of years ago when the San Ildefonso rights-of-way issues began with the electric co-op. This is affecting the lives of the people in the community. She too had a DNA test and was surprised to learn she is more Native American than Hispanic. She doesn't attribute the problems to the pueblo people but to the pueblo government. She then discussed the pueblo easement issues with the area electric co-op. She said Ohkay Owingeh used extortion practices to raise the easement prices. In fact, former St. I Governor Aguilar said he would be the Arab of water because the infrastructure/system will be in San Ildefonso and the Settlement says the perpetual easement is only during construction. She conjectured the water system could go the same way as easements for roads and utilities. The utility lines and the easements have become a cash cow for the pueblos. The title companies have said they are not willing to take the risk with any properties that cross near the boundary of a pueblo.

Ms. Duran-Cash said it was important the Committee has all the information and understands how the Settlement will hurt the community where most of the residents are at the poverty level. Government officials appear to believe this is a good settlement because it ends the Aamodt suit, but Ms. Duran-Cash said if this goes into effect it will hurt all of northern New Mexico and people lives will be destroyed.

Chair Nylander thanked the public for the information.

VII. Matters from the Committee

Chair Nylander said the 2016 work plan will be presented to the BCC in February and he understood the WPAC's memo regarding the Flood Commissioner will be rolled into a Public Work's presentation.

In regards to the County proceeding before the Settlement is finalized, Ms. Borchert said the County's exposure, should it not be approved, is limited. The County is not protecting water rights; rather the County's interest is being part of the Settlement for the best interests of the community in the County.

Ms. Bokum said her term has expired with the BDD Board and she would no longer be serving in that capacity which created her position on this committee. Chair Nylander acknowledged Conci Bokum and her service on the WPAC and the BDD. She received a round of applause and well wishes for future endeavors.

VIII. Status on Member Vacancies

Ms. Borchert said Ms. Bokum's position will be refilled with whomever the BDD Board appoints as the citizen member. The District 1 seat and the countywide position representing the small water systems will be re-advertised.

Ms. Ely was again congratulated on her concise presentation on Aamodt.

Chair Nylander said there has been a great deal of activity with Aamodt Settlement and this Board needed to understand the scope and problems therein. WPAC may be called upon to look at components of the project but at this point there is no particular question or issue.

Ms. Trujillo said the WPAC needed to hear the perspectives of the Settlement from the residents as well as the Representative. There are a great many concerns regarding easement issues with the sovereign nations.

Ms. Follingstad said the State's fixed contribution amount should be considered as the price creeps up. She recognized the residents that spoke have serious questions and are distressed by the situation.

Mr. Rudnick said it appears too murky for a resident to make a well election at this point.

Mr. Silber noted there was a great deal of information on the OSE website and the HKM engineering report would be valuable to review. Ms. Ely recommended the County website which has a good overview of the adjudication, Settlement, a number of links and the latest JPA.

IX. Adjournment

The next meeting was scheduled for March 10th same time, same place.

Having completed the agenda and with no further business to come before this Committee, Chair Nylander declared this meeting adjourned at approximately 7:55 p.m.

Approved by:

Charles Nylander co-chair for
Charles Nylander, Chair *Charles Nylander*

Respectfully submitted by:

Karen Farrell
Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

WATER POLICY ADVISORY
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I Hereby Certify That This Instrument Was Filed for
Record On The 24TH Day Of May, 2016 at 11:13:23 AM
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Deputy Estrella Martinez Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM