

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: July 30, 2015

TO: Board of County Commissioners

FROM: Adam Leigland, Public Works Department Director *per 8/1/15*

VIA: Katherine Miller, County Manager *per 8.17.15*

ITEM AND ISSUE: BCC Meeting August 25, 2015

Resolution No. 2015-__, A Resolution Adopting Procedures Governing the Acquisition, Integration, and Provision of Technical Assistance to Community Water and Wastewater Systems; and Creating Community System Technical Advisory Committee (Public Works/Adam Leigland)

SUMMARY:

This resolution elaborates, improves, and updates the County's Rural Water System Acquisition Policy as articulated in Resolution No. 2012-58, as requested by the BCC.

BACKGROUND:

The BCC approved Resolution No. 2012-58 on April 24, 2012, creating a mechanism whereby small water and wastewater systems (mutual domestic water consumer associations (MDWCA), water cooperatives, and private systems) can be acquired by the County Utility as a mutually beneficial way to inject needed capital and technical resources into the small systems. To date, three rural water systems have availed themselves of the policy: Canoncito at Apache Canyon MDWCA, Chupadero MDWCA, and Hyde Park Estates Cooperative Domestic Water Association.

In the beginning, this policy was somewhat controversial, especially for those MDWCAs that have relied on essentially condition-less County funding and technical assistance over the years. After significant public outreach, including two well-attended town hall meetings and testimony at several BCC meetings, in February 2013 the BCC directed staff to revise the April 2012 version. An updated, much more detailed, policy was drafted in July 2013 with significant input from not only the rural water systems themselves but also from the Office of the State Engineer, the New Mexico Environment Department, the Rural Development Assistance Corporation, and the New Mexico Rural Water Association.

The updated policy had not been brought back to the BCC for approval before July 28, 2015, because the three rural water system acquisition processes were being used as trial runs to fine-tune the policy. At the January 27, 2015, commission meeting, the BCC was provided an update on the

three ongoing system acquisitions and was told that the updated policy would be brought back for approval later in the year.

DISCUSSION:

Based on the lessons learned in the three ongoing acquisitions, the policy drafted in July 2013 was updated and fine-tuned. The result is a balanced but thorough policy. The core of the original policy is preserved, but the application process is now more robust and addresses the issues of easements and loan balances, two unforeseen pitfalls. It provides rural systems a menu of three options to seek assistance from the County. It is not coercive but it does ask the candidate systems to submit detailed applications. It recognizes that decisions to acquire rural systems must balance County financial interests with community needs.

The two-step application and approval process as described in this resolution is modeled after the application processes for County Improvement Districts (Resolution No. 2013-86), Road Acceptance (Resolution No. 2012-151), and Traffic Calming (Resolution No. 2013-102). The Water Policy Advisory Committee is explicitly involved at numerous points. The BCC and the public are given several opportunities to review and vet any application.

The Water Policy Advisory Committee reviewed and endorsed the policy at its July 9, 2015, meeting. (See attached email from the WPAC chair).

A copy of the original policy resolution is attached to this memo.

ACTION REQUESTED:

Approval of subject resolution

Attachments:

1. Resolution 2012-58, Rural Water System Policy
2. Email message

SANTA FE COUNTY

RESOLUTION No. 2015-__

A RESOLUTION ADOPTING PROCEDURES GOVERNING THE ACQUISITION, INTEGRATION, AND PROVISION OF TECHNICAL ASSISTANCE TO COMMUNITY WATER AND WASTEWATER SYSTEMS; AND CREATING COMMUNITY SYSTEM TECHNICAL ADVISORY COMMITTEE

WHEREAS, by Resolution 2012-58, the Board of County Commissioners ("the Board") articulated a "County Policy Regarding Funding Requests from Private, Quasi-Private, or Public Water and Wastewater Systems for Capital Improvements" (collectively referred to in this Resolution as "community systems"); and

WHEREAS, the Board's policy under Resolution 2012-58 is to entertain requests from community systems to fund capital improvements "only under the following conditions":

- a. The County takes control of the water source(s), a master meter is installed at the point(s) of supply, and the ... [community] system becomes a wholesale customer of the County; or
- b. The County Water Service Area boundaries shall expand to fully include the boundaries of the ... [community] system, the County takes control of the entire water supply and distribution system capital assets, and the customers of the ... [community] system become retail customers of the County.

WHEREAS, the Board continues to support the Policy it adopted under Resolution 2012-58 and desires to establish procedures under which community system owners may apply to the County to become retail or wholesale water or wastewater customers of the County and to govern the County's acquisition of their systems, in whole or in part; and

WHEREAS, the Board also desires to enable community system owners to apply for technical assistance from the County even if the County does not acquire their system and the owners do not seek to become County customers; and

WHEREAS, staff has developed the attached *Procedures Governing the Acquisition, Integration, and Provision of Technical Assistance to Community Water and Wastewater Systems* ("Procedures"); and

WHEREAS, the Board finds that the Procedures set out a fair and reasonable process by which the County will evaluate applications submitted by community system owners to become water or wastewater service customers of the County; and

WHEREAS, under the Procedures, the Board retains complete discretion over whether the County should acquire any community system; and

WHEREAS, the Procedures also set out a simple process by which community system owners may apply to the County for technical assistance; and

WHEREAS, the BCC desires to create the Community System Technical Advisory Committee ("Advisory Committee") comprised of County staff and representatives of community systems that have elected to become water or wastewater service customers of the County; and

WHEREAS, the purpose of the Advisory Team shall be to advise the County on an ad hoc basis in operating and maintaining community systems acquired by the County;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The attached *Procedures Governing the Acquisition, Integration, and Provision of Technical Assistance to Community Water and Wastewater Systems* are hereby adopted.
2. The Community System Technical Advisory Committee is hereby created. The Committee shall be comprised of County staff and representatives from community systems whose final applications to become water or wastewater service customers of the County have been approved pursuant to the attached Procedures. The purpose of the Committee is to advise the County in operating and maintaining the community water systems acquired by the County to help assure a smooth transition from private community system to County service. Upon Board approval of a community system's final application under the attached Procedures, the County Utilities Director shall invite one representative from the system to join the Technical Advisory Committee. The term of non-County members shall be three years unless extended by the Utilities Director. The Technical Advisory Committee shall be chaired by the Utilities Director or other County staff appointed by the Director. The Committee shall meet on an ad hoc basis, as called by the chair.

PASSED, APPROVED, AND ADOPTED THIS 25th DAY OF AUGUST, 2015.
BOARD OF COUNTY COMMISSIONERS

Robert A. Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk

Date

Approved as to form:

Gregory S. Shaffer County Attorney

SANTA FE COUNTY UTILITY

PROCEDURES GOVERNING THE ACQUISITION, INTEGRATION, AND PROVISION OF TECHNICAL ASSISTANCE TO COMMUNITY WATER AND WASTEWATER SYSTEMS

I. PURPOSE

By Resolution 2012-58, the BCC adopted a policy regarding County funding of capital improvements for Community Systems. The BCC resolved not to fund capital improvements of Community Systems unless the System Owner agreed to become a wholesale customer of the County Utility or, alternatively, agreed to fully incorporate the Community System into the County Utility, in which case the water users of the System would become regular retail customers of the County Utility. These procedures implement and further explain the BCC's policy. In addition, System Owners who do not seek to become wholesale customers of the County Utility or to integrate their Systems into the Utility may apply for technical assistance from the County under these Procedures.

II. DEFINITIONS

"Acquisition Agreement" means a negotiated agreement between the County and a System Owner, pursuant to which the County acquires all or part of a community system. Acquisition agreements are negotiated only after the BCC approves a final application. Among other things, the agreement will describe the community system to be acquired by the County, identify the infrastructure, assets, and liabilities of the system, describe any parts of system to be excluded from the acquisition, set out the agreed upon value of the system and method of valuation, the purchase price (if any), and any set offs and credits (if any) and the basis for them.

"BCC" means the Santa Fe County Board of County Commissioners.

"Community System" means any non-municipal water or wastewater system that serves an identifiable community within the unincorporated areas of the County. As used in these Procedures, "Community System" refers to all physical and legal attributes of the System, including the land, water rights, easements, infrastructure, and all other rights, title, and interests that are necessary to the System's continued operation.

"County" means Santa Fe County.

"Customer Service Policies" or "Policies" mean all water and wastewater policies and rates of the County, including those policies adopted under Ordinances Nos. 2014-11, 2011-10, 2010-16, and 1998-16, and Resolution Nos. 2006-57 and 2012-88, as the same may be amended from time to time.

"Manager" means the Santa Fe County Manager.

“Retail Customer” means an individual who receives retail service from Santa Fe County.

“Retail Service” means (a) transmission and distribution of water to individual users by the County using the County’s water rights and the County’s transmission and distribution lines, or (b) collection and treatment of wastewater by the County from individual generators using the County’s wastewater collection and treatment system.

“System Owner” or “Owner” means the owner(s) of a Community System, including but not limited to entities formed or regulated under the New Mexico Sanitary Projects Act, NMSA 1978, Section 3-29-1 through -21, the Water Users Association Act, NMSA 1978, Section 73-5-1 through -9, or the Water and Sanitation District Act, NMSA 1978, Section 73-21-1 through -55. System Owners may be individuals, homeowner associations, mutual domestic water consumer associations, special districts, or any other entity or entities that own and have authority to govern, operate, transfer, and encumber a Community System.

“Technical Assistance” means assistance provided by the County to a System Owner to: (a) assist the Owner in obtaining federal or state funding for capital improvements for a community system; or (b) assist the Owner in providing or obtaining via contractual technical services relating to the operation, maintenance, repair, or replacement of a Community System.

“Utility” means the County Water Utility owned and operated by or on behalf of Santa Fe County for the supply of potable and non-potable water, as well as the collection, treatment of wastewater and reuse of treated wastewater effluent, and whose office is located at 424 NM 599, Santa Fe, New Mexico 87505.

“Wholesale Customer” means a System Owner who receives wholesale service from the County.

“Wholesale Service” means (a) County delivery of water to a System Owner at a single master-metered point of delivery using the County’s water rights and the County’s transmission line, which the system owner then distributes to individuals using the owner’s water distribution system; or (b) County treatment of wastewater that has been collected and delivered to the County by a System Owner using the Owner’s wastewater collection and transmission system.

“WPAC” means the Water Policy Advisory Committee formed under Resolution No. 2013-42.

III. PROCEDURE

A. Application for Technical Assistance: System Owners may apply to the Manager by letter for technical assistance, identifying the type of assistance required. If the Manager determines that staff can provide the required service, the Manager and the Owner will negotiate an assistance agreement that describes the assistance to be provided and the fee to be paid by the Owner to the County. The fee charged by the County shall be based on the actual cost of Santa Fe County staff time as determined by the Manager.

Owner to the County. The fee charged by the County shall be based on the actual cost of Santa Fe County staff time as determined by the Manager.

B. Applications for County Water or Wastewater Service: System Owners may file applications to obtain retail or wholesale service:

1. Retail Service: A System Owner may apply to the County to fully incorporate the Owner's community system into the County Utility. If the County approves the final application, the County and the System Owner will attempt to negotiate an acquisition agreement and, if applicable, a line extension agreement in accordance with the County's line extension policy. Finally, upon performance of all required agreements, the former community system users will become County customers in accordance with and subject to all County Customer Services Policies.

2. Wholesale Service: A System Owner may apply to the County to become a wholesale customer. If the County approves the application, the County and the System Owner will attempt to negotiate an acquisition agreement, a wholesale water service agreement and, if applicable, a line extension agreement in accordance with the County's line extension policy. The County and the System Owner may negotiate for the County to provide wholesale service as an interim step to providing retail service.

a. A System Owner who becomes a wholesale water customer shall maintain ownership of its community system downstream from the master-metered point of delivery to the System, and shall be responsible for operation and maintenance of the community system and for rate-setting and billing of individual users of the system, as set out in the acquisition agreement. The County shall only acquire and be responsible for that portion of the system that is upstream of the master meter.

b. A System Owner who becomes a wholesale wastewater customer shall maintain ownership of its community system upstream of the point of delivery to the County and shall be responsible for operation, maintenance of the collection infrastructure, rate-setting, and billing, as set out in the acquisition agreement. The County shall only acquire and be responsible for that portion of the system that is downstream of the point of delivery.

3. Preliminary Application Form: Unless the Manager provides an application form, Owners shall apply by letter with pertinent attachments that include all of the information, data, and documents required by these Procedures.

4. General Application Process:

a. Unless a resolution concerning a specific community system provides otherwise, the County will follow a two-step application process. First, Owners will submit a preliminary application in accordance with this Section. Second, if the BCC approves the preliminary application, the Owners may file a final application under Section 6. If the BCC approves the final application, the Manager and the Owner will negotiate an acquisition

agreement and such other agreements as may be required under the circumstances for the County to provide retail or wholesale water service, wastewater service, or both.

b. Unless extraordinary circumstances exist, preliminary applications shall be submitted to the Manager on or before November 15th for consideration during the next calendar year. The Manager and staff shall evaluate the preliminary application and present it to the BCC along with staff recommendations before March 1st, if possible. Any operational or capital funding associated with a given application shall be considered and budgeted (if approved) during the County's normal annual budgeting process, typically beginning in March of each year.

c. These Procedures do not apply to County acquisitions pending at the time the BCC adopted these Procedures, and the BCC may establish different or additional procedures for specific community systems by subsequent resolutions. Owners may petition the BCC directly for the County to acquire a particular community system.

5. Preliminary Applications: The following provisions apply to all preliminary applications for retail and wholesale service.

a. Contents: Preliminary Applications shall generally include the following:

(1) Financial information concerning the community system for the current and previous three fiscal years that includes income, expenditures (including capital expenditures), outstanding indebtedness, accounts receivable, customer listings, and a copy of an audited financial statement, if available.

(2) A general technical description of the community system, including a description of the water sources, easements and other property interests, pumps, water distribution or wastewater collection lines, wastewater discharge points, meters, and any other infrastructure, equipment or property necessary to fully describe the community system.

(3) A general description of all water rights of the System Owner, including a copy of all court orders, permits, licenses, declarations and any other documents that demonstrate the amount of use, priority, point and place of use, and all other pertinent attributes of the water rights.

(4) A map of the service area of the community system, number and location of service connections and supply sources, and supply and demand characteristics.

(5) Copies of any technical reports or preliminary engineering reports completed within the last five years.

(6) A copy of the current rate schedule.

(7) Information concerning compliance with relevant state and federal health and environmental laws, including copies of all necessary permits and drinking water quality reports.

(8) System financial statements.

(9) Such other information and data as the Manager or the WPAC may request regarding the community system.

b. Site Inspection: The County shall conduct a physical inspection of the System.

c. County Review and Report: Preliminary applications shall be submitted to the Manager, who shall determine whether the application is complete. If the Manager determines that the application is incomplete or requires additional information, the Manager shall notify the applicant in writing. Once the preliminary application is deemed complete, the Manager will submit the preliminary application to the WPAC for consideration,

d. WPAC Report: Upon receipt from the Manager of the preliminary application, the WPAC will prepare a report for submission to the BCC. The report will describe the community system at issue, including all pertinent information for the BCC's consideration, and recommend whether the County should consider the acquisition. If the WPAC recommends acquisition, the report shall explain why and describe the necessary steps (including a timeline), any required preliminary County expenditures, and any suggested conditions of acquisition. The report shall identify and explain any divergence of opinions regarding the proposed acquisition.

e. BCC Decision: The BCC may approve, conditionally approve, or deny the preliminary application by resolution, require additional information or submission of supplemental reports, or take any other action regarding the preliminary application as it deems appropriate in its sole discretion. If the BCC approves the preliminary application, the Owners may submit a final application in accordance with Section 6 and any other requirements imposed by the BCC. The approving resolution shall authorize any County expenditures as described in the WPAC report for the preparation of the final application. If BCC denies the application, no further action will be taken, subject to the Owner's right to petition BCC at a later time.

6. Final Applications: The following provisions apply to all final applications for retail and wholesale service.

a. Contents: To the extent not included in the preliminary application, the final applications shall include the following:

(1) Records of all local, state and federal grants obtained.

(2) Detailed technical information concerning the system itself, including information about the infrastructure (water source, pumps, distribution and transmission lines) including, but not limited to, maintenance history, condition, capacity, limitations.

(3) A complete inventory of capital assets, including equipment, infrastructure, wells, pump stations, reservoirs, distribution and transmission lines, easements, real property, and water rights.

(4) A complete inventory of non-capital assets such as cash, accounts or contracts, with copies of all statements and other documents pertinent to those resources.

(5) A complete list of obligations of the water system, including contractual obligations, debt, and any collective bargaining agreements.

(6) A complete list of customers, both active and inactive, including up-to-date reference information including names, service addresses, billing addresses, meter sizes and meter serial numbers in meter reading route sequence, records of hook-up fees, and the status of each account.

(7) A complete list of extant contracts with vendors and consultants, including the status of each account.

(8) Detailed information and documents concerning compliance with relevant state and federal environmental laws, including any relevant correspondence, test results, penalty assessments, notices of violation, and complaints.

(9) Detailed listing of names, qualifications and employment history of any administrative or technical staff, whether paid or volunteer.

(10) A complete list of claims pending against the System, and details concerning the System's insurance coverage.

(11) Such other information and data as the Manager or WPAC may request.

b. Staff Assistance: Upon request, County staff may assist in the preparation of the final application. If the County incurs costs in doing so, such as through the procurement of professional services, the cost shall be credited against the purchase price to be paid by the County (if any) for acquisition of the community system.

c. Review and Report: Final applications shall be submitted by March 1st of the following year to the Manager, who shall determine whether the application is complete. If the Manager determines that the application is incomplete or requires additional information, the Manager shall notify the applicant in writing. Once the application is deemed complete, the Manager will submit it to the WPAC, which will analyze the application along with staff and prepare a final report and proposed terms of agreement to the BCC for approval. The final report will update and expand on the preliminary report and, subject to negotiation of the acquisition agreement, identify the final purchase price, any set offs and credits, any known short- and long-term repairs or replacements needed to responsibly operate the system, and the

estimated operation and maintenance costs. The proposed terms of agreement shall cover Sections C(1)(a) through (f) regarding acquisition agreements.

d. BCC Decision: The BCC may approve, conditionally approve, or deny the final application by resolution, require additional information or submission of supplemental reports, or take any other action as it deems appropriate in its sole discretion. If the BCC approves the final application, the Manager and the Owner will negotiate an acquisition agreement and any other agreements that may be required in accordance with Section C below and any additional requirements imposed by the BCC. If BCC denies the application, no further action will be taken, subject to the Owner's right to petition BCC at a later time.

C. Acquisition Agreements:

1. Contents: In regards to the community system to be acquired by the County, the Manager and the Owner negotiate a proposed acquisition agreement that shall include the following:

a. A description of the infrastructure of the community system, including wells, diversion structures, pumps, lines, meters, facilities, works, equipment and all other tangible assets to be acquired by the County.

b. A description of the sources of water and water rights.

c. A description of all lands, easements, and any other interests in real property. All deeds and other grants shall be identified in the agreement by reference to the records of the County Clerk.

d. A description of banks accounts, reserve accounts, cash, and any other financial assets.

e. A description all mortgages, liens and other encumbrances to which the County's title would be subject and any debt or other liabilities that the County has agreed to and has the ability to acquire. The agreement shall specifically identify the justification for taking on debt or other liabilities.

f. The purchase price and description of any set offs, credits, or other adjustments to the purchase price or future expenses.

g. A description of the Owners and representations and warranties of marketable title in all property to be transferred to the County and the Owner's authority to grant marketable title to the County.

h. Form assignment or transfer instruments by which the Owners will grant, assign or transfer assets and liabilities (if any) to the County shall be attached as exhibits.

i. The location of the master meter, if any.

j. A detailed exhibit showing the entire system, the location of the master meter, and all service connections, as applicable.

k. A list of the current retail customers to be served by the County, if any, and their current contact information.

l. A description of any portions of the community system to be retained by the Owner and the Owner's responsibilities as to such portions.

m. A description of all additional agreements to be executed or future payments or fees to be paid (other than those required under the Customer Service Policies) as a condition of the County providing service. A transition plan, to include such items as final meter readings and billing, customer transfer protocol, transfer of water rights, determination of effective dates, and any applicable escrow procedures.

n. Such other terms and conditions as the Manager and County Attorney determine to be in the best interest of the County, including standard purchase agreement terms and conditions.

2. Valuation: The market value of infrastructure and other assets to be acquired by the County may be valued by a qualified third-party appraiser at the applicant's expense. If the Manager approves the appraisal, the appraised value less any consideration paid by the County may be credited against the customary costs of commencing County water service, including the cost of connection fees, meter installation, or any required professional services. The valuation and credit process shall be set out in an acquisition agreement. If the value of the infrastructure and other assets acquired by the County exceeds the costs of commencing County water service, the excess amount shall be credited toward a capital reserve fund dedicated to the acquired infrastructure and assets.

3. Non-Essential Infrastructure: The County will generally not acquire infrastructure or other assets of a community system that is not immediately necessary for its operation, as determined by the Manager, including such things as non-producing wells and obsolete lines.

4. Good and Marketable Title: All of the infrastructure, wells, facilities, works and other appurtenances to be transferred to the County shall be established on lands, easements, or other legally sufficient interests held by the Owner, properly recorded, and transferrable to the County. The Owner shall be responsible for acquiring any additional interests that may be required to assure sufficient legal access to the entire system to be acquired by the County. The Owner shall be responsible for establishing and warranting to the County's satisfaction that the Owner has good and marketable title to and authority to transfer all property, infrastructure, and other assets of the community system to be transferred to the County. The Owner shall furnish title insurance for the real property to be transferred and an attorney title opinion as to water rights.

5. The County will generally use the services of a title company, surveyor, or other appropriate real property professional to effect some or all of the acquisition process.

Adam Leigland

From: cdnylander@comcast.net
Sent: Tuesday, August 11, 2015 7:19 PM
To: Adam Leigland; Claudia I. Borchert
Subject: WPAC Memo to Manager and BCC

Adam and Claudia,

Since the WPAC reviewed and commented on the latest draft of the resolution regarding rural water system acquisition...and agreed that it represented reasonable county policy, I believe it would be appropriate to have a short memo of support from the WPAC regarding this resolution to accompany the BCC package that will be presented to the BCC at their meeting on August 25th. I'm leaving town on vacation tomorrow morning and won't be able to attend on August 25th, so if you want to provide such a memo on behalf of WPAC, I will heartily approve WPAC support for this resolution.

Thanks.

Regards,

Charlie

