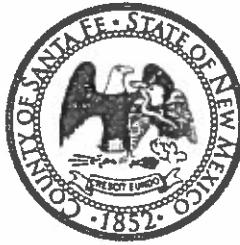


**Henry P. Roybal**  
*Commissioner, District 1*

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

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



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

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

**Katherine Miller**  
*County Manager*

## MEMORANDUM

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

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

**From:** Patricia Boies, Health Services Division, Community Services Department

**Date:** May 12, 2015

**Re:** Approval of County Health Care Assistance Claims in the Amount of \$53,817.00  
(Community Services Department/Patricia Boies)

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### ISSUE:

Approval of County Health Care Assistance claims in the amount of \$53,817.00.

### BACKGROUND:

The BCC has approved FY 2015 funding for the County Health Care Assistance Fund, to fund community-based providers, including ambulance providers. The Health Care Assistance Program has processed claims this month in the amount of \$53,817.00, as indicated on the Presentation of Claims document.

### RECOMMENDATION:

We recommend the approval of County Health Care Assistance claims in the amount of \$53,817.00.

05/26/15

**Santa Fe County Health Care Assistance Program  
Presentation of Claims for Approval  
26-May-15**

	<u># Claims</u>	<u>Amount</u>
<b>COMMUNITY-BASED PROVIDERS</b>		
La Familia Medical Center	264	\$36,734.00
Southwest Care Center/Women's Health	9	\$1,333.00
Ortiz Mountain Health Center, Cerrillos		
El Centro of Northern New Mexico		
First Choice Community Health, Edgewood		
Pecos Valley Medical Center, Pecos		
 Santa Fe Recovery Center	 3	 \$15,750.00
Life Link		
Hoy Recovery Program, Espanola		
Millennium Treatment Services		
 City of Santa Fe Ambulance Services		
Santa Fe County Fire Department		
Espanola Hospital Ambulance		
 <b>Total</b>	 <b>276</b>	 <b>\$53,817.00</b>

**Santa Fe County Health Care Assistance Fund Community-Based Providers**  
**Fiscal Year 2015**

26-May-15

Provider Name	FY 15 Allocated Funding	Claims from FY14 Approved Through April 28, 2015	Claims from FY15 Approved Through April 28, 2015	Claims from FY15 Presented May 26, 2015	FY 15 Remaining Balance	% Remaining
<b>Primary Care Providers</b>						
La Familia Medical Center	425,000.00	24,815.00	217,496.00	36,734.00	145,955.00	34%
SW Care/Women's Health Services	40,000.00	1,499.71	21,022.19	1,333.00	16,145.10	40%
PMS: Hope Medical Center & Ortiz Mountain Health	7,000.00				7,000.00	100%
El Centro of Northern of NM	7,000.00		3,108.00		3,892.00	56%
First Choice Healthcare	500.00				500.00	100%
Pecos Valley Medical Center	500.00				500.00	100%
<b>Total Primary Care Providers</b>	<b>480,000.00</b>	<b>26,314.71</b>	<b>241,626.19</b>	<b>38,067.00</b>	<b>173,992.10</b>	<b>36%</b>
<b>Substance Abuse Treatment Providers</b>						
Santa Fe Recovery Center	241,000.00	7,225.00	201,610.00	15,750.00	16,415.00	7%
Life Link	43,000.00	745.00	64.00		42,191.00	98%
Hoy Recovery Program	6,000.00				6,000.00	100%
Millennium Treatment Services	1,000.00				1,000.00	100%
<i>Set-aside for third-party assessment for need for residential treatment</i>	9,000.00				9,000.00	100%
<b>Total Substance Abuse Treatment Providers</b>	<b>300,000.00</b>	<b>7,970.00</b>	<b>201,674.00</b>	<b>15,750.00</b>	<b>74,606.00</b>	<b>25%</b>
<b>Mental Health Providers</b>						
Life Link	50,000.00	64.00	128.00		49,808.00	100%
PMS PACT Team	25,000.00				25,000.00	100%
<b>Total Mental Health Providers</b>	<b>75,000.00</b>	<b>64.00</b>	<b>128.00</b>		<b>74,808.00</b>	<b>100%</b>
<b>Ambulance Providers</b>						
City of Santa Fe Ambulance Services	21,000.00				21,000.00	100%
Santa Fe County Fire Department	21,000.00	939.04			20,060.96	96%
Espanola Hospital Ambulance	3,000.00				3,000.00	100%
<b>Total Ambulance Providers</b>	<b>45,000.00</b>	<b>939.04</b>			<b>44,060.96</b>	<b>98%</b>
<b>Contingency</b>	<b>25,000.00</b>				<b>25,000.00</b>	<b>100%</b>
<b>Total Health Care Assistance Provider Claims</b>	<b>925,000.00</b>	<b>35,287.75</b>	<b>443,428.19</b>	<b>53,817.00</b>	<b>392,467.06</b>	<b>42%</b>
<b>UNM Health Sciences Center (FY 2014 Funding)</b>						
Cremations (Under Separate Cover)	25,000.00	12,439.91	16,200.00	1,200.00	7,000.00	28%
<b>Grand Total</b>	<b>900,000.00</b>	<b>47,727.66</b>	<b>443,428.19</b>	<b>53,817.00</b>	<b>355,027.15</b>	<b>39%</b>







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

**Miguel Chavez**  
Commissioner, District 2

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Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## ***MEMORANDUM***

**DATE:** *April 22, 2015*

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

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

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

**ITEM AND ISSUE:** *BCC Meeting May 26, 2015*

**Discussion and Possible Direction on the Creation of County Flood Commission  
Pursuant to NMSA 1978, Sections 4-50-1 Through 4-50-9 (Public Works/Adam Leigland)**

---

**BACKGROUND:**

State statute (NMSA 1978, Section 4-50-1 *et seq.* (1921), full text attached) grants boards of county commissioners the power to approve the creation of the office of the county flood commissioner. Flood commissioners, in turn, are empowered to

....inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage.

Further, per Section 4-50-4, the flood commissioner is allowed "free and unobstructed ingress and egress to any and all lands and premises where such ingress and egress are necessary to the performance of the duties by this act" though the flood commissioner must still follow the anti-donation clause of the state constitution. The flood commissioner also has the power of eminent domain. The flood commissioner is appointed by the governor, and serves a term of two years.

To pay for this work, per Section 4-50-2, boards of county commissioners are authorized to levy a property tax not to exceed 1.5 mills (and subject to yield control) on properties within the flood zones. The proceeds of this tax must go into a "county flood fund," which can only be used for flood control projects in the drainage area in which it is assessed.

Three counties have created flood commissions: Dona Ana, Chaves, and Sierra. (Sandoval County created a flood commission many years ago, but subsequently changed it into the South Sandoval

County Arroyo Flood Control Authority). The three commissions operate under two different models, described below.

Chaves County. Chaves County has declared one drainage area for the entire county, since all lands drain into the Pecos River. They have imposed the full 1.5 mills. All incorporated areas, including Roswell, are included in the mill levy and the flood district. The Chaves Flood Commission operates as an in-house work force. It comprises 10 employees, all laborers or heavy equipment operators, who perform the maintenance activities in the drainage ways. It is essentially equivalent to one of Santa Fe County's road maintenance districts in size and scope of work. Chaves Flood Commission routinely does work on private property, in accordance with Section 4-50-4 of the state statute. It uses its tax proceeds purely as operating revenue.

Dona Ana County. Dona Ana is divided into two drainage areas, east of the Organ Mountains which drains into the Tularosa Basin and west of the Organs which drains into the Rio Grande. Las Cruces is excluded from the tax and the district, but all other incorporated areas are included. Dona Ana has imposed the full 1.5 mill levy. Dona Ana Flood Commission operates more as a technical service provider. It is staffed by engineers, planners, surveyors, and GIS technicians, and contracts out all construction and maintenance activities. It also implements Dona Ana County's Flood Damage Prevention Ordinance. Dona Ana Flood Commission has taken the position that it will acquire property interest either by easement or right-of-way for its drainage structures. In addition to operating revenue, it has used its tax proceeds for grant matches and to secure bonds.

Sierra County. Staff was unable to contact anyone from the Sierra Flood Commission, but both Dona Ana and Chaves indicated that Sierra operates the same way as the Chaves Flood Commission, that is, as an in-house work force.

Organizationally, the county flood commission is a hybrid. The flood commissioner determines how the county flood fund is spent, but all expenses and indebtedness are subject to approval by the board of county commissioners. Each year, the flood commissioner is required to make a full and detailed report to the county commissioners, giving a detailed description of all work constructed, built, or maintained by them during the current year, together with a full and true account of all expenditures made by the flood commission. Thus, the flood commissioner is technically separate from but still dependent on the County commission.

In all three existing flood commissions, the flood commission has an MOA with the County for the provision of HR, Finance, Legal, Procurement, IT, fleet maintenance, and other operational support. Chaves Flood Commission pays Chaves County a fiscal agent fee. The Dona Ana Flood Commission is housed in the main Dona Ana County building, while the Chaves Flood Commission has its own compound. Further, the Chaves Flood Commission has a contract with the City of Roswell for the provision of services.

### DISCUSSION

A County flood commission can be a powerful tool because it has its own dedicated revenue source and because it has a statutory right of access to private property with the explicit mandate to protect human life and private property. Staff believes that a flood commission would fill a large gap in

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services provided by Santa Fe County. The county spends considerable resources to protect its infrastructure from flood damage and is often asked to work in drainage ways. The county has no legal way of working strictly to protect private property beyond exercising the power of eminent domain.

Even though the office of the flood commission appears “ready-made” in state statute, significant time and decisions would be necessary to fully actualize it. If the Board of County Commissioners chose to approve the creation of the office, it would face the following required actions:

1. Determination of the drainage areas
2. Determination of tax rate
3. Seek appointment of flood commissioner by governor

These actions are described in more detail below.

Drainage areas. Attachment 1 is a map showing the six major drainage basins in the County. All but two drain into the Rio Grande. The fifth drains into the Pecos River, while the Estancia Basin is closed and doesn’t drain anywhere. It should be noted that even though Pecos basin is entirely within the national forest, there are 34 Santa Fe County parcels located in it. Based on this, three drainage areas should be determined: Rio Grande, Pecos, and Estancia.

Tax rate. Attachment 2 shows the seven current tax districts within the County (the red lines) underlain by the basins from Attachment 1 (dark blue is for the Rio Grande, light blue the other two). The County Assessor has stated that the creation of new tax districts is a very complicated and far-reaching effort and would ask that existing tax districts be used to the extent possible for any future tax reasons. The map shows that tax district 8-T-Out (which includes 8-T-In) roughly corresponds to the Estancia Basin, while the other five roughly correspond to the Rio Grande drainage area. Therefore, the County could be divided into two Section 4-50-2 flood control or drainage areas: North or Rio Grande, comprising tax districts 18-In, 18-Out, 1, C-In, and C-Out; and South or Estancia, comprising 8-T-In and 8-T-Out.

Attachment 3 shows the revenues that a flood commission could potentially receive under various scenarios in the seven tax districts. Note that these revenues could be overstated because of the impact of yield control. State statute states that the county commission levies the property tax “upon certification of the need and estimated cost by the county flood commissioner.” The decision of how large a tax to levy and upon which tax districts would come after the appointment of the flood commissioner.

Flood commissioner. Section 4-50-1 states, “County flood commissioners shall be appointed by the governor to serve for a term of two years, or until their successors are appointed and qualify, and they shall each receive a salary of one dollar (\$1.00) a year payable from the county flood fund.” The office of the governor has stated that, once a board of county commissioner has approved the creation of a flood commission, it should officially notify the governor’s office of this by letter. The governor’s office would welcome any county commission recommendations but will conduct its own candidate

solicitation and selection process. The governor's office estimated that the time to appointment will be less than six months.

Below is a list of other considerations.

Space. The office of the flood commission would need physical work space, including, if the Chaves model is chosen, space for heavy equipment. An estimate of needed space would be 2500 square feet of office space and a yard of approximately 2 acres. Currently, the county has no such available space.

Cash flow. The flood commission would receive its revenues when property taxes are collected (April and November), so depending on when the office is created, bridging funds may be necessary.

Ramp-up time. The office would need time to hire personnel and purchase equipment.

Shared responsibilities. The flood commissioner could be hired by the County to perform other duties, such as implementation of the Flood Damage Control Ordinance or certain road maintenance tasks.

Participation of the incorporated areas. While the statute seems to indicate that the incorporated areas could be unilaterally included in the drainage areas for tax and work reasons, the experience of Dona Ana and Chaves Counties suggests that the incorporated areas should be approached as voluntary partners. In this case, an MOA between the flood commissioner and the incorporated areas may be warranted.

Following the lead of the other Counties, staff would recommend the execution of an MOA between the County and the flood commission,

There are several possible objections to the creation of a flood commission.

Tax increase. Any increase in property tax is generally unpopular, especially one that is not subject to voter approval.

Cross-subsidization. Anyone who lives far from a water course and is consequently at a low risk of flooding could complain about subsidizing those who live immediately next to the water course and are at higher risk. Similarly, someone who lives in a lower-risk area (such as Las Campanas) might balk about any cross-subsidization of high-risk areas elsewhere in the County (such as Chimayo).

Moral hazard. A flood commission could incentivize high-flood-risk development because a developer is protected from the consequences of flooding by public funds and an entity whose sole purpose is to alleviate flood risk.

There are several possible dangers to a flood commission.

Governor appointment. A gubernatorial appointment could introduce an unwelcome partisan aspect to an essentially technical position. Further, the governor's office may not

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act in a timely manner. Sierra County went without a flood commissioner from April 2012 to April 2014 despite repeated requests from the board of county commissioners to the governor for an appointment.

Flood commissioner. The only qualification the flood commissioner must have is residency in the relevant county, which, coupled with the statutorily limited annual salary of one dollar, may result in poorly suited individuals being appointed. Attachment 4 is an article from the July 11, 2014, Sierra County Sentinel that illustrates the disputes that can arise between the flood commissioner and the county commission.

Private property. The ability to work on private property carries with it a high potential for abuse and political patronage.

In sum, a county flood commission is a potentially powerful tool for the County, but to create one will require care and consideration.

**ACTION REQUESTED:**

Direct staff on desired next steps in the possible approval of the creation of a county flood commission.



## ARTICLE 50 Flood Control

### 4-50-1. County flood commissioner; appointment; salary. (1967)

Subject to the approval of the board of county commissioners, there is created the office of county flood commissioner in each county through which runs any river or stream which is subject to flood conditions destructive to property or dangerous to human life. County flood commissioners shall be appointed by the governor to serve for a term of two years, or until their successors are appointed and qualify, and they shall each receive a salary of one dollar (\$1.00) a year payable from the county flood fund.

### 4-50-2. Tax levy; county flood fund; authority to borrow. (1997)

A board of county commissioners, upon certification of the need and estimated cost by the county flood commissioner, may contract to borrow funds through state or federal agencies or through the New Mexico finance authority for flood control purposes and may levy an annual tax at a rate not to exceed one dollar fifty cents (\$1.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax imposed under this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], of all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life. Such taxes shall be levied and collected for the purpose of creating a fund which shall be used to construct and maintain dikes, dams, embankments, ditches or such other structures or excavations necessary to prevent flood waters from damaging property or human life within such counties or to repay, according to their terms, any state or federal loans obtained for flood control purposes. Such tax shall be assessed, levied and collected as other taxes are collected and when so collected shall be known as the "county flood fund", and such fund shall be maintained in such a manner as to keep separate records of all flood control taxes collected from each stream or river drainage area. The taxes collected shall only be used and disbursed for flood control projects in the drainage area for which they were assessed in accordance with the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 and shall not be transferred to any other fund or purpose.

### 4-50-3. Inspection of rivers; construction of works; personnel; contracts for financing. (1969)

County flood commissioners may inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage. County flood commissioners may employ engineering and other personnel, directly supervise or contract for the construction and maintenance of flood control works and do all other acts necessary to carry into effect the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978. If the money in the county flood fund is insufficient to finance flood control projects and

provide for maintenance, the board of county commissioners, upon the recommendation of the county flood commissioner, may contract with any federal or state agency for grants or loans for the purpose of construction and maintenance of dikes, dams, embankments, ditches and other structures and excavations. Any contract for borrowing funds from state or federal agencies may provide that annual installments of principal and interest on the debt shall be paid out of the appropriate account within the county flood fund. The provisions of Sections 6-6-11 through 6-6-18 NMSA 1978 shall not apply to contracts entered into with state or federal agencies for flood control projects under the provisions of this section.

4-50-4. [Entry upon lands; damages; interference; misdemeanor; objections.] (1921)

Such county flood commissioners, their agents and employees shall have free and unobstructed ingress and egress to any and all lands and premises where such ingress and egress are necessary to the performance of the duties by this act [4-50-1 through 4-50-9 NMSA 1978] imposed, and shall not be liable for damages because of any such entry, except for wanton and malicious injury, and any person or persons obstructing such ingress or egress shall, upon conviction thereof, be found guilty of a misdemeanor. Provided, however, that no such dikes, embankments, dams and ditches, or other structures or excavations shall be constructed, built or maintained where written objection to such construction, building and maintaining are filed by the state engineer with any commissioner in charge thereof, and except in the manner as, after such objection, shall be approved by said state engineer.

4-50-5. Condemnation of property. (1981)

The county flood commissioners shall have the power to condemn property for the purpose of carrying Sections 4-50-1 through 4-50-17 NMSA 1978 into effect, upon petition to the district courts, and in the manner provided by the Eminent Domain Code [42A-1-1 through 42A-1-33 NMSA 1978].

4-50-6. Limit on indebtedness; payment of expenses. (1997)

A. No expense or indebtedness shall be incurred by any county flood commissioner in excess of the amount of any annual levy, excepting where there may be remaining on hand funds arising from previous similar levies; provided, however, that where a board of county commissioners, upon the recommendation of the county flood commissioner, contracts to borrow funds from a state or federal agency or from the New Mexico finance authority for flood control projects and pledges the proceeds of the annual levies for their repayment, the amount which may be borrowed shall be limited by the terms of repayment so that no annual installment of principal and interest shall exceed eighty percent of the amount produced by the annual levy in the year preceding the signing of the loan agreement.

B. All expenses and indebtedness incurred by any county flood commissioner under the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 shall be subject to the approval of the

board of county commissioners. Upon the approval of the board, the expenses and indebtedness incurred shall be paid upon warrant drawn by the board of county commissioners, upon the filing by the county flood commissioner of vouchers for the expenditures and indebtedness with the board of county commissioners. The warrants shall be paid by the county treasurer out of the appropriate separate account within the county flood fund. The county clerk shall file and keep a record of all vouchers filed with the board of county commissioners by the county flood commissioner.

4-50-7. [Report to county commissioners.] (1921)

Between the 15th day of December of each year and the succeeding first day of January each county flood commissioner shall make full and detailed report to the county commissioners of their respective counties, giving a detailed description of all work constructed, built or maintained by them during the current year, together with a full and true account of all expenditures made by such county flood commissioner. A copy of the report by this act [4-50-1 through 4-50-9 NMSA 1978] required shall be filed in the office of the state engineer.

4-50-8. [Work in adjoining counties.] (1921)

The county flood commissioners are hereby authorized and empowered to jointly expend money with the county flood commissioners of adjoining counties, or to locate dikes, dams, embankments, ditches and other structures and excavations without their counties when such location is deemed necessary for the purpose of protecting property and lives in their counties.

4-50-9. [Expenditure of funds raised under prior law.] (1921)

All county flood funds now on hand shall be held and disbursed subject to the provisions of this act [4-50-1 through 4-50-9 NMSA 1978]. All moneys in the county flood fund of the respective counties affected by this act, levied under the provisions of Section 1308 of the Compiled Laws of 1915, of the state of New Mexico, shall be held, applied and expended in accordance with the terms and provisions of this act.

4-50-10. [Emergency flood districts; establishment.] (1921)

Each county of the state through which runs any river, stream or arroyo subject to flood conditions destructive to property or dangerous to human life shall be by the board of county commissioners, within thirty days after the passage and approval of this act [4-50-10 through 4-50-17 NMSA 1978], divided into emergency flood districts, and said board shall set out the limits and boundaries of each said district, and cause the same to be properly numbered so that the same may be known and identified.

4-50-11. [Emergency flood superintendent; appointment; qualifications.] (1921)

It shall be the duty of the board of county commissioners to appoint an emergency flood superintendent for each of said districts. Each emergency flood superintendent shall be a citizen of the United States, and of the state of New Mexico, and shall have resided in the district for which he is appointed not less than two years. The term "superintendent" wherever used in this act [4-50-10 through 4-50-17 NMSA 1978] shall be construed to mean "emergency flood superintendent."

4-50-12. [Term, oath and bond of superintendent.] (1921)

The term of office of such superintendent shall be for a period of two years, and until his successor is appointed and qualified, and the board of county commissioners shall have power to remove such officer for any cause they shall deem sufficient. Within thirty days from the date of appointment each superintendent shall qualify by taking and filing with the county clerk an oath to faithfully perform his duties as such superintendent, and shall furnish a bond to the county to faithfully perform his duties and to account for all moneys collected by him, which bond shall be in the sum of two thousand dollars [(\$2,000)], with at least two good and sufficient sureties, to be approved by the board of county commissioners, and filed with the county clerk.

4-50-13. Emergency flood workers. (1969)

The superintendent, in all cases where property or life is threatened by flood waters, may, with the consent of the county commissioners, summon all or any part of the able-bodied male persons under the age of sixty years residing within his district and within five miles on each side of the flood river or stream, and require the persons summoned to work in the control and diversion of the flood waters not to exceed five days during any current year, as their services may be needed. All persons having teams may be required to appear and work with their teams for the required number of days as above provided. The services may be rendered in person, or by substitution, or the person summoned may pay in cash the sum of two dollars (\$2.00) per day for each day's services required of him, and the sum of three dollars (\$3.00) per day for each day's service required of any team belonging to him and summoned hereunder; however, no person or team summoned shall be required to work for more than one day until all of the persons and teams residing in the district have been required to either work or pay.

4-50-14. [Service of notice, summons or calls for work; filing list.] (1921)

Said superintendent shall have the right to serve notice, summons or calls for work upon persons summoned and called hereunder. Such notice shall state time and place where such work is required, and the number of days' work required, and the teams required, and he shall make a correct list of the names of all persons and teams summoned and file the same with the county clerk.

4-50-15. [Failure to work or pay; penalty; use of fine money.] (1921)

Any person summoned and called to do work hereunder as above provided, who shall fail to appear and do said work or to furnish a substitute who shall appear and do said work, or pay to the superintendent the sum or sums herein provided in lieu of said work, shall be guilty of a misdemeanor and upon conviction therefor before any justice of the peace [magistrate] shall be fined in a sum not more than fifty dollars [(\$50.00)], or imprisoned in the county jail not more than thirty days, or suffer both such fine and imprisonment. All fines collected hereunder shall be deposited in the emergency district flood fund.

4-50-16. [Emergency district flood fund; superintendent failing to pay amounts collected; penalty; recovery.] (1921)

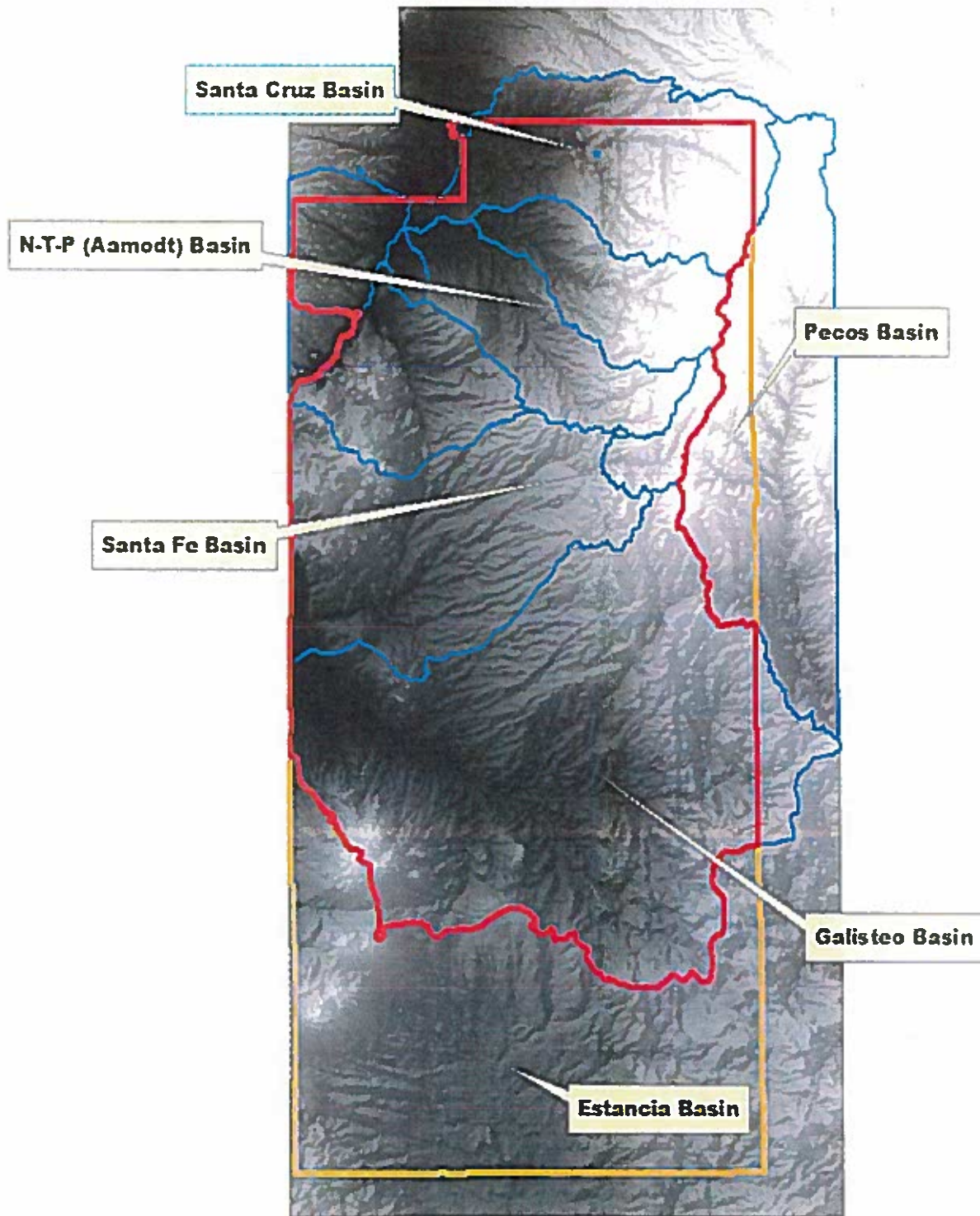
All moneys collected under the provisions of this act [4-50-10 through 4-50-17 NMSA 1978] shall be deposited with the county treasurer to the credit of a fund to be known as the "emergency district flood fund," and shall be used and applied solely for the purposes of this act within the districts where such moneys are collected. Each superintendent to whom any money shall be paid in lieu of work shall forthwith deposit the same with the county treasurer and take a receipt therefor, and shall file with the county clerk a correct list of the names of the persons paying such moneys. Any superintendent who shall fail, neglect or refuse to account as required by law for moneys collected by him, or shall fail, neglect or refuse to deposit moneys collected by him as hereinbefore provided, shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding two hundred dollars [(\$200)], or imprisoned in the county jail not exceeding ninety days, or suffer both fine and imprisonment. Any moneys which any superintendent shall fail, neglect or refuse to account for may also be recovered in a civil action upon the bond filed by such superintendent.

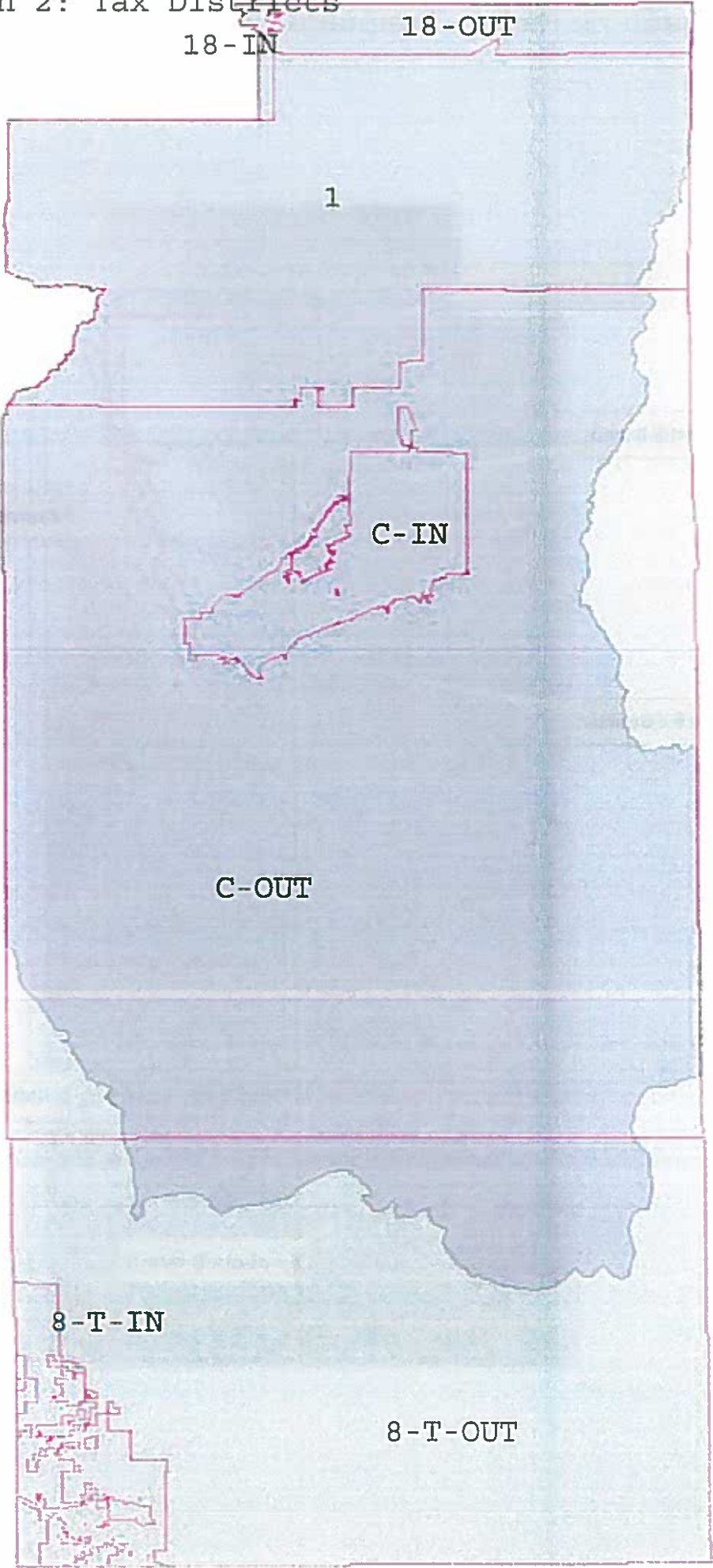
4-50-17. [Powers and duties of superintendent.] (1921)

The said superintendent is hereby authorized and empowered in times of flood emergency to order headgates of ditches to be closed, ditches to be cut, flood waters to be drained through ditches or other channels already cut, or through ditches or channels to be cut for that purpose; dikes, dams, embankments and other structures to be erected, necessary labor to be employed, and necessary materials to be purchased, and generally to do all things according to the necessity and emergency existing. The superintendent and his agents, laborers and employes shall have the right of entry upon all premises necessary to control and suppress flood emergencies, and shall not be liable for any damage thereto except for any wanton or malicious injury. No expenditures hereunder shall be made by any superintendent in excess of the moneys in the emergency district flood funds at the time such expenditure is made. All moneys paid out of the emergency district flood fund shall be paid by warrants drawn by the board of county commissioners on vouchers filed and approved by the superintendent. Any person who shall willfully hinder, delay or obstruct any superintendent, his agents, laborers or employes from performing any of the duties

imposed by this act [4-50-10 through 4-50-17 NMSA 1978] shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed fifty dollars [(\$50.00)], or imprisoned in the county jail not to exceed thirty days, or suffer both such fine and imprisonment.

## Attach 1: Major Drainage Basins





Potential Revenue for Santa Fe County Flood Commission  
(in thousands of dollars)

		TAX DISTRICT								COUNTY TOTAL
		C-IN	C-OUT	1	8-T-IN	8-T-OUT	18-IN	18-OUT		
Total Net Taxable Value		3,804,400	2,205,824	178,861	98,873	134,522	48,445	61,152		6,532,076
Flood	At 1.5 mills	5,707	3,309	268	148	202	73	92		9,798
Commission	At 1.0 mills	3,804	2,206	179	99	135	48	61		6,532
Revenue	At 0.5 mills	1,902	1,103	89	49	67	24	31		3,266

Key:

- C-IN City of Santa Fe
- C-OUT Santa Fe School District
- 1 Pojoaque School District
- 8-T-IN Town of Edgewood
- 8-T-OUT Moriarty School District
- 18-IN City of Espanola
- 18-OUT Espanola School District

Size:

# Timeline: The Controversy Over The Flood Commissioner

By Etta Pettiohn

For The SENTINEL

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**2000** - Sierra County Commission establishes Flood Commission, funded with property taxes, one of only three in the state.

**2010** - Flood Commissioner Rubin Olivas serves until 2012, with Flood Director Barry Ragsdale under Olivas. County manager is Jan Porter-Carrejo. Bobby Allen (Dist. 1) becomes commissioner in early 2011.

**2012** - Olivas resigns as flood commissioner and the position goes unfilled until 2014, although Carrejo, Armijo and others wrote several letters to Gov. Susana Martinez asking for an appointment. Ragsdale remains flood director.

**Nov. 2012** - Frances Luna is elected, (Dist. 3) becomes commission co-chair. Armijo is chairman.

**June 25, 2013** - Heavy thundershowers stall across the area. The U.S. Forest Service warns residents downstream from the Silver Fire of the potential for massive flooding. Commissioners declare a state of emergency and disaster. Ragsdale prepares the drainage below to avert danger to property and lives, using emergency procurements for the work.

An emergency procurement is the purchase of goods, construction, services or tangible property, when normal procurement methods cannot be used, during threats to public health, welfare or safety due to fires, floods, epidemics, etc.

They are limited to responses to emergencies. Commissioners execute all contracts and the county manager executes construction contract modifications or change orders necessary to continue construction without delay, for amounts less than \$60,000. The chief procurement officer executes services less than \$20,000. All contracts approved by these are presented to the commission.

**July 2013** - IPRA requests show on July 7, and again on July 25, Ragsdale provides emailed updates on the work below the Silver Fire; any meetings with federal and state officials, purchases and type of work secured. All three commissioners received the emails.

**Sept. 2013** - Flooding causes widespread damage and two deaths in Sierra County. The county is declared an emergency disaster area by state and federal governments. Ragsdale holds several meetings with Federal Emergency Management Agency (FEMA) and New Mexico Department of Homeland Security and Emergency Management (NMDHSEM) officials detailing critical areas for mitigation work and future flood prevention.

**Nov. 2013** - The county is deemed eligible for reimbursement of mitigation and emergency expenses. Under a cost-sharing formula, FEMA reimburses the county for 75 percent, the state for 20 percent, and the county five percent of the work.

**May 2013** - County Manager Jan Porter-Carrejo submits her retirement notice. The commission, with only Bobby Allen abstaining, accepts her resignation. Mark Huntzinger is hired as manager a short time later. The 2013 state audit shows no procurement irregularities, improper or criminal activity regarding the commission or flood office.

**March 2014** - The commission votes 2-1 (with Allen abstaining) to establish an agreement with separate contractors to provide on-call, pre-paid service for emergency flood mitigation and

County: Sierra

implying it was not taking bids competitively, according to Luna and Armijo.

Interested firms could submit bids as small, medium and large contractors. Eleven bids from seven separate contractors were considered through a "blind" process, where the qualifications were measured and listed by number, so no names would be

revealed. Bids were chosen from (small contractor) Las Cruces-based Garrett Western; (medium) contractors Sierra Valley Contractors, Ace Electric (owned by Frank Chavez), and Renegade Construction, based in Las Cruces. Huntzinger and county procurement officer Christine Nendza chose the successful bids without seeing or knowing which company submitted them. Named as the sole large contractor was Albuquerque-based AJAC Enterprises, owned by a nephew of Walt Martin.

**April 2014** - Jim Goton is appointed by Gov. Susana Martinez as flood commissioner. Walter and Jeff Martin, Albert Varrel, Doug Caudle and Tim Haver are among the references he lists on the resumé seeking his appointment. Ragsdale and Luna meet with Goton to assist him in learning how to use the computer software for FEMA map coordinates for flood repair.

**April 2014** - Goton stops all mitigation work on the drainages and sends contractors home, just weeks before the 2014 monsoon season normally occurs. Claiming the FEMA coordinates are wrong, Goton said he contacted the governor's office to complain that the county is not cooperating with him, and that office, in turn, contacts the DHSEM. Goton hires a person at \$9.89 per hour to assist him before the proper and legal procedure for advertising the position is completed, which is illegal. At press time the invoice had not been paid. Goton told the Sentinel he has the authority to hire part-time contract labor without following established procedures; the county attorney and other staff said legally these steps must be completed.

**April 2014** - Sierra County Procurement Officer Christine Nendza, who had lived in the county for less than eight months and worked for the county since December, said several people made what she took as threatening comments to her and other county staff. She resigned, she said, after being told or overhearing other county employees being told, "I am here to kill me some snakes," "A stormload of crap is going to rain down on you," and "You better be watching your steps."

**April 2014** - Black Ranger Enterprises files a lawsuit against the Board of County Commissioners on April 17. Paul Peterson, owner of the Winston-based company, told the Sentinel his company bid on work after the flood and was not chosen because his business did not have the required Construction Industries Division (CID) license, although he has one as an individual. He also said he had the second lowest bid.

"I had a small issue with my subcontractor's license," said Peterson, "and the CID dropped the ball on getting the license converted from my name individually to Black Range Enterprises." He said the lawsuit was to contest the way county bids are chosen.

**May 2014** - Commission meetings become increasingly argumentative. Concern is expressed about the new flood commis-

Ragsdale of "doling" out funds to his "friends." Ragsdale accompanies Goton to the flood-damaged areas and told commissioners that Goton "took umbrage with some of the mitigation and with many aspects of the ongoing work, and expressed this in a "condescending manner."

**May 2014** – Ragsdale, saying he and Goton were too far apart in opinions of what needed to be done to prepare for the upcoming monsoon season, resigns. The commission votes to move county funds from the flood commission and to disband the office, with Allen dissenting. After Goton hires a contractor (AJAC) without turning in purchase orders, the county attempts to contact the governor's office. Repeated calls (with monsoon season fast approaching) go unanswered. Meanwhile Goton said he is in contact with the governor's office, and told representatives there that the commission and staff won't cooperate with him.

**June 2014** – Nicholas Platek, director of Boards & Commissions for the governor's office, sends a letter to commissioners stating, "I am deeply disturbed by the reports coming out of Sierra County with regard to the flood mitigation work being done under the Federal Emergency Management Agency." Commissioner's phone calls have still not been returned. A Sentinel reporter also made dozens of calls, which went unanswered.

**June 2014** – A local newspaper, the Herald, publishes what it calls an "investigative" article, which was a list of accusations leveled at Sentinel Publisher Luna (a business competitor), who is also a commissioner. The interview with Commissioner Bobby Allen made several unsubstantiated and false accusations. Phone calls to Ragsdale, Luna and Armijo reveal that the newspaper reporter did not contact any of the accused before publication. Allen accused Ragsdale of questionable emergency procurements, which Allen had approved paying in July 2013, and accused Luna of asking former manager Carrejo to leave, and of firing Huntzinger.

"In 2012 a new commissioner joined our commission," Bobby Allen told the Herald, referring to Commission Vice-Chair Frances Luna. "A short time later, a county manager (Jan Carrejo) was asked to leave. A few months after that, a new county manager (Huntzinger) was hired and a few months later in 2014, he was fired. We have a track record of if the other two commis-

sioners (Luna and Commission Chair Walter Armijo) don't like what the manager says, they will be terminated a short time later."

An Inspection of Public Records Act (IPRA) request for the minutes of a May meeting show Allen voted 'yes' on a roll call vote to terminate Huntzinger's contract. Also, Carrejo told the Sentinel she had resigned, and planned to retire. She said she was not fired, and commissioners even offered her a raise to stay on as county manager. After she resigned, commissioners told her she could leave before her notice ended in order to handle personal business.

Allen also said, "For approximately eight years the county has been betting on things like PILT (Payment in Lieu of Taxes) funding to keep daily operations going in Sierra County and making big expenditures."

"Allen acknowledges that it is somewhat ironic that he – as a Democrat – is fighting Republican Luna – taking nontraditional stances on government handouts," reads the Herald article.

When asked by the Sentinel if he didn't know, having been on the commission since 2010, the PILT funds are taxes paid to counties by the federal government since 1908, he responded, "I didn't tell the Herald that, I don't know where they got that."

When asked about former County Manager Huntzinger stating, at the May 13 public and open meeting, where Allen was present, "The PILT funding for the current fiscal year is in the Farm Bill and it has been appropriated and Sierra County will be receiving this in June 2014," Allen reiterated that he did not make that statement to the Herald. Allen also signed a resolution, adopted on Aug. 13, 2013 by the commission, approving all contracts made through emergency procurements during and immediately after the Silver Fire and the 2013 flooding.

**June 2014** – Estevan Lujan, public relations officer for the DHSEM tells the Sentinel, at the governor's request, that the agency is working with Goton to help him understand the FEMA coordinates, which Goton says are wrong. The agency is here to see the work is completed and correctly, said Lujan. He said there have been no determinations and nobody in the commission office or elsewhere is under investigation.

**July 7, 2014** – County Commissioners approve contract with King Industries to oversee the FEMA money on behalf of, and at the request of Flood Commissioner Jim Goton.

# Contracted Flood Management Approved

By Chuck Wentworth

SENTINEL

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In a unanimous vote of support at their July 7 special meeting, Sierra County Commissioners approved the establishment of an agreement with Ruidoso-based King Industries Corporation to serve as a primary contractor for the Sierra County Flood Commission. Commissioners said the firm would now essentially fulfill the duties of the currently vacant flood director position.

Sierra County Flood Commissioner Jim Goton requested the move, and during Monday's session suggested King Industries was experienced in all aspects of flood remediation, especially issues relating to Federal Emergency Management Agency (FEMA) regulations and funding.

Goton told commissioners that the action would allow flood remediation efforts to begin in earnest. He said that preliminary steps had several areas to be addressed marked out, and contracted bulldozers were poised to begin. While acknowledging a remaining need for the proper filing of related work orders and questions regarding "Corps of Engineers permits", Goton said he would like to see channel repairs begin as quickly as possible.

•The morning's session was highlighted by numerous comments suggesting that the commission has erred in their handling of the flood commission.

Aligning with citizen comments, Commissioner Bobby Allen said county officials have

met Goton's requests with "road blocks and excuses," saying these actions have hindered the flood commissioner's ability to effectively respond to the issues at hand. Allen also offered what appeared to be accusations directed at County Finance Director Teresa Ragsdale, saying she is the wife of former Flood Director Barry Ragsdale, but did not further clarify his concerns.

Goton said he concurred with Allen's assessment, and after emphasizing it was not his direct responsibility, went on to detail similarly vague concerns about the proper submission of work orders.

County Attorney Dave Pato said the commission's past and

present actions have been in line with its obligations as fiscal agent for related flood repair and flood commission funding.

He also suggested that the now approved contract with King Industries would likely address any confusion regarding the generation of work orders and related necessities.

•During public comment, county resident Craig Bunke shared concerns about a previously approved project to address flood damage on a portion of his property. Bunke reminded board members that the effort was to be funded through flood commission mill levy allotments and that an established July 4 deadline for related Corps of Engineers' permit had elapsed.





Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: May 13, 2015

TO: Board of County Commissioners

VIA: Katherine Miller, County Manager

FROM: Adam Leigland, Public Works Director *AL 5/13/15*

ITEM AND ISSUE: BCC Meeting May 23, 2015

Request Approval of Memorandum of Agreement between the City of Santa Fe and Santa Fe County Regarding the Provision of Wastewater Collection and Treatment for the Thornburg Amended Master Plan Area (Public Works Department/Claudia Borchert)

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### SUMMARY:

Approval of the attached Memorandum of Agreement between the City of Santa Fe (City) and Santa Fe County (County) Regarding the Provision of Wastewater Collection and Treatment for the Thornburg Amended Master Plan Area (MOA) is necessary in order to allow Santa Fe County Utilities (SFCU) to assume Turquoise Trail Master Association (TTMA)'s duties to provide sanitary sewer service to the Thornburg Service Area (see attached map) per Section II.A.(i), (ii), and (iv) of the attached Agreement Between Santa Fe County and Turquoise Trail Master Association For Acceptance and Conveyance of A Wastewater System (Agreement), dated December 8, 2012.

### BACKGROUND:

When the City purchased the Sangre de Cristo Water Company in 1994, the City assumed responsibility to provide water and wastewater services to TTMA per PUC Cases Nos. 2428 and 2588. As a result of the Santa Fe County - City of Santa Fe Settlement Agreement and Mutual Release of Claims, dated May 19, 2008, that responsibility was transferred to the County. On December 8, 2012, the County and TTMA entered into the agreement at Attachment 3, under which SFCU assumes TTMA's wastewater service responsibilities and allows SFCU to expand its wastewater collection system and customer base.

Within the Thornburg Service Area, SFCU currently provides water and wastewater services to approximately 257 residential and 18 non-residential customers. At full build out, SFCU anticipates serving 603 residential and 45 non-residential customers. The Santa Fe Brewing Company is not part of the Thornburg Service Area, but needs to connect to the TTMA collection system in order to convey its sewer to the City's wastewater treatment facility.

**DISCUSSION:**

Upon approval of the subject agreement by both the County and City governing bodies, SFCU will provide TTMA a letter with a suggested infrastructure take-over date, schedule the on-site training, and verify the assignment of easements, granting of infrastructure, and receipt of record drawings.

**ACTION REQUESTED:**

Approve subject Memorandum of Agreement

**Attachments:**

1. Memorandum of Agreement between the City of Santa Fe (City) and Santa Fe County (County) Regarding the Provision of Wastewater Collection and Treatment for the Thornburg Amended Master Plan Area
2. Map of TTMA service area
3. December 8, 2012, Agreement between Santa Fe County and Turquoise Trail Master Association for Acceptance and Conveyance of a Wastewater System.

**MEMORANDUM OF AGREEMENT  
BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY  
REGARDING THE PROVISION OF  
WASTEWATER COLLECTION  
AND TREATMENT FOR THE THORNBURG  
AMENDED MASTER PLAN AREA**

The City of Santa Fe ("City") and Santa Fe County ("County") enter into this Memorandum of Agreement ("MOA") this \_\_\_\_ day of \_\_\_\_\_, 2015, to provide for the City and County's understanding regarding wastewater discharge and wastewater treatment for a location outside the City of Santa Fe presumptive city limits.

**RECITALS**

**WHEREAS**, the City and County entered into a Settlement Agreement and Mutual Release of Claims ("Settlement Agreement"), dated May 19, 2008, to resolve several lawsuits concerning annexation of Las Soleras and issues relating to annexation generally. Section 2(m) of the Settlement Agreement states: "The City shall provide water and wastewater service within the presumptive city limits and shall not provide water and wastewater service outside the presumptive city limits unless required by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission, unless otherwise agreed upon between the City and the County in a separate written agreement"; and

**WHEREAS**, in 2009 the Third Amended and Restated Declaration of Covenants and Restrictions ("The Lift Station Declaration") was executed and recorded for the "Thornburg Service Area," an area of development that is located outside the City of Santa Fe presumptive city limits, as more specifically defined in Section 1(A)(2) of this MOA; and

**WHEREAS**, Article 7, Water and Wastewater Service of the Third Declaration describes how wastewater from the Thornburg Service Area is to be collected and discharged into the City's wastewater system and sewer treatment plant through a lift station and wastewater infrastructure owned by the non-profit corporation Turquoise Trail Master Association ("TTMA"). The agreement between the City and TTMA regarding TTMA collection and discharge of wastewater from the Thornburg Service Area into the City's sanitary sewer system is described in an "Exhibit B" to the Third Declaration; and

**WHEREAS**, the Third Declaration and its Exhibit B describe TTMA's maintenance and operation of its wastewater disposal system to serve the Thornburg Service Area; establishes a TTMA reserve fund for maintenance and operational costs; provides for the City's oversight of the TTMA reserve fund; and provides for termination of the agreement if another entity assumes TTMA's duties to provide sanitary sewer service to the Thornburg Service Area. The Third Declaration and Exhibit B permit TTMA to assign with the City's consent its wastewater disposal and wastewater system maintenance and operational duties if the City is satisfied that TTMA's duties under the agreement are adequately provided for in the assignment; and

**WHEREAS**, in 2012 TTMA and the County entered into an agreement whereby TTMA agreed to convey its lift station and wastewater infrastructure to the County and the County agreed to accept the TTMA system on certain conditions. One of the conditions is that the County obtain the City's consent to terminate the agreement between TTMA and the City that is described in Exhibit B to the Third Declaration; and

**WHEREAS**, the County has determined that it is willing and able to assume ownership and maintenance of the TTMA lift station and wastewater infrastructure and TTMA is prepared to convey its lift station and wastewater infrastructure to the County for the County's ownership and continued operation and provision of sanitary sewer service to the Thornburg Service Area; and

**WHEREAS**, City Ordinance, SFCC § 22-6.2 provides for a process whereby connections to the City's sanitary sewer service system for areas outside of the City of Santa Fe presumptive city limits can be made subject to approval and review by a water/wastewater review team consisting of City and County staff from the water division, the wastewater division, the City attorney's office, the County attorney's office, the land use departments and the City's office of affordable housing; and

**WHEREAS**, by this MOA between the City and the County, the City consents to the termination of Exhibit B to the Third Declaration between the City and TTMA and this MOA describes how the County will assume ownership, maintenance and operation of the lift station and wastewater infrastructure formerly owned by TTMA and continue the discharge of wastewater into the City's sanitary sewer system for treatment by the City's water treatment plant and thereby continue to provide sanitary sewer services to the Thornburg Service Area.

**NOW THEREFORE** the City and County agree as follows:

#### **AGREEMENT**

**1. DUTIES OF THE PARTIES:**

**A. The County shall:**

1. Accept the conveyance from TTMA of the lift station and wastewater infrastructure.
2. Own, operate and maintain the lift station and all wastewater infrastructure and associated appurtenances including the force main up to its connection with the City of Santa Fe's sewer system at the manhole located near Mutt Nelson Road for discharge and disposal of wastewater from the Thornburg Service Area. For purposes of this MOA, the Thornburg Service Area means "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A," all as described in Instrument #1362150, recorded in the records of Santa Fe County on January 10, 2005, in Book 577 Page 36-42, and including any

subsequently approved boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.

3. Become a wastewater customer of the City.
4. Not permit properties located outside the Thornburg Service Area to connect to the County's wastewater collection and sewer lift station system and infrastructure or the City's sanitary sewer collection and treatment system without prior written approval of the City and County pursuant to the Settlement Agreement and Mutual Release of Claims dated May 19, 2008.
5. Comply with Federal, State and Local Law. The County agrees to maintain and operate the County wastewater collection and sewer lift station system as required by all applicable Federal, State, and local laws and shall comply with all applicable requirements imposed upon City utility customers. The City's affordable housing ordinance, SFCC §14-8-11(D), does not apply, pursuant to SFCC §22-6.2(G).
6. Require the all properties within the Thornburg Service Area to have a water meter pursuant to the Customer Service Policies (County Policies) of the Santa Fe County Water Utility (County Utility), adopted by Resolution 2012-88, as the same may be amended from time to time. The County will collect the metered usage in accordance with County Policies, approximately on a monthly basis. The County will report the metered water usage and other pertinent billing information to the City on a monthly basis for use in calculating the invoice for the wastewater bill to be paid by the County in accordance with the City's most current rates.
7. Pay to the City the sum of the City's monthly service fees under SFCC Section 22.7, as it may be amended from time to time, for wastewater collection and treatment services provided for the wastewater discharge by the TTMA for properties within the Thornburg Service Area.
8. Pay or cause to be paid the City's Utility Expansion Charge incurred by properties within the Thornburg Service Area under SFCC Section 22-6.6.
9. Agree that the discharges from any commercial/industrial properties within the Thornburg Service Area shall be subject to the provisions of SFCC §22.9, *Industrial Pretreatment Regulations and Procedures*, and SFCC §22.10, *Wastewater Extra Strength Surcharge Program*, as they may be amended from time to time.
10. Agree that if determined to be necessary by the City, the City will issue a significant industrial user permit to appropriate commercial/industrial properties within the Thornburg Service Area in accordance with SFCC§22.9, in which case all permit

conditions and requirements must be met by Santa Fe County or any other occupant of the property as a condition of service.

B. The City:

1. Hereby consents to the termination of the agreement described in Exhibit B to the Third Declaration and to the release to TTMA of the \$25,000.00 revenue fund required to be maintained by TTMA as provided in Exhibit B of the Third Declaration.
2. Shall accept wastewater from the County's lift station and wastewater infrastructure from the Thornburg Service Area.

C. The City and County agree:

1. The City's affordable housing ordinance, SFCC § 14-8-11(D), does not apply to properties outside of the presumptive city limits and will not apply to the County and the County's wastewater customers within the service area of the County's wastewater collection system.
2. To conform to the requirements of SFCC § 22-6.2(I), as may be amended from time to time, when submitting and reviewing applications for City sewer service connections for property outside the presumptive city limits including but not limited to the Thornburg Service Area.
3. This MOA and its term and conditions shall supersede and replace the agreement described in the Exhibit B to the Third Declaration.

2. **EFFECTIVE DATE AND TERM:** This MOA shall become effective on the date of execution by the City and County, whichever occurs last. The term of this agreement shall be until such time as the County no longer owns, operates and maintains the lift station and wastewater infrastructure, or until the Thornburg Service Area is annexed by the City, or until such time as the County, in its sole discretion, ceases to be a wastewater customer of the City or otherwise permanently ceases to discharge wastewater from the TTMA lift station into the City wastewater system.

3. **ASSIGNMENT:** The County or City shall not assign or transfer any interest or rights in this MOA without the advance written approval of the other party. Any attempted assignment or transfer without the other party's advance written approval shall be null and void and without any legal effect.

4. **LIABILITY:** Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOA. Each party shall be liable for its actions in accordance with this MOA. Any liability incurred by the County or the City in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, et. seq. and as amended. The County, City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to law. No provision in this MOA modifies or waives any

provision of the New Mexico Tort Claims Act.

5. AMENDMENT: This MOA shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.

6. NO THIRD-PARTY BENEFICIARIES: The parties do not intend to create, and this MOA does not create, any third-party beneficiaries under this MOA. Without limiting the generality of the foregoing, no action to enforce the terms of this MOA or for damages for breach thereof may be brought against either party by any person who is not a party to this MOA.

7. REVENUE SOURCE TO MEET OBLIGATIONS: The obligations under this MOA in a fiscal year shall be payable solely from fees and charges, however denominated, collected by the parties for the provision of wastewater services that fiscal year. Without in any way limiting the generality of the foregoing, nothing in this MOA imposes a duty on the parties to pay any obligation arising hereunder through tax revenues.

8. GOVERNING LAW: This MOA shall be governed by, and construed in accordance with, the laws of New Mexico.

9. SUCCESSORS AND ASSIGNS: This MOA will inure to the benefit of the parties' successors or assigns.

10. ENTIRE AGREEMENT: This MOA represents the entire understanding between the County and the City and supersedes any prior agreements or understandings with respect to the subject of this MOA. No changes, amendments or alterations to this Agreement will be effective until in writing and signed by the parties.

IN WITNESS WHEREOF, the parties set their hands:

**FOR THE CITY OF SANTA FE**

\_\_\_\_\_  
Javier Gonzales  
Mayor, City of Santa Fe

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Yolanda Y. Vigil, Clerk  
City of Santa Fe

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Kelley Brennan  
City Attorney

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Oscar Rodriguez  
Finance Director  
City of Santa Fe

\_\_\_\_\_  
Date

**FOR SANTA FE COUNTY**

\_\_\_\_\_  
Robert A. Anaya, Chair  
Santa Fe County Board of County Commissioners

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

\_\_\_\_\_  
Date

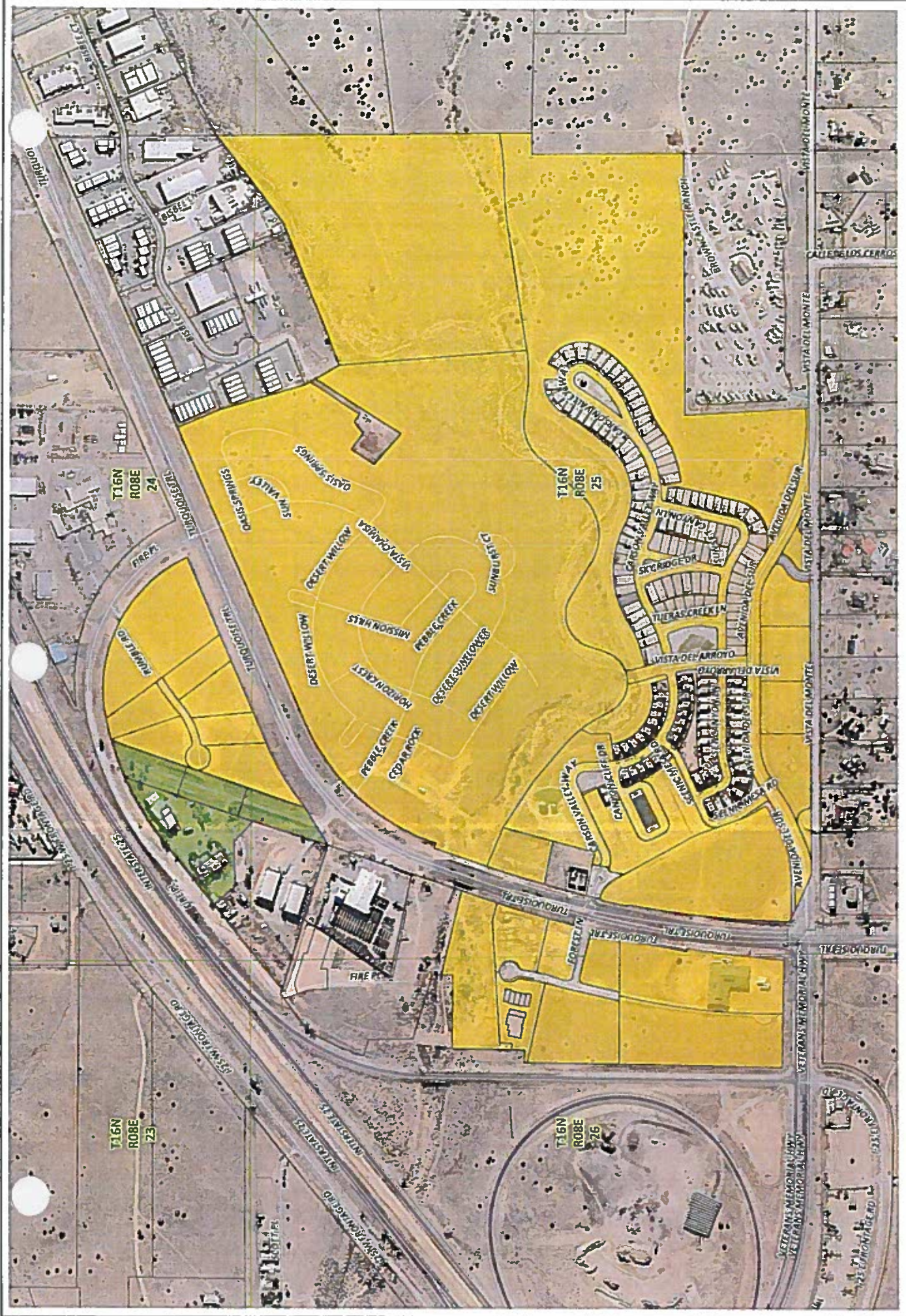
Approved as to form:

\_\_\_\_\_  
Gregory S. Shaffer  
County Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carole H. Jaramillo  
Finance Department

\_\_\_\_\_  
Date



**Legend**

- TTMA Boundary (Residential and Commercial)
- SF Brewing Company (Commercial)
- GPS Roads All
- Township, Range, and Section Bndys

1 inch = 800 feet

**Turquoise Trail Master Association Development Map**

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Copyright 2015 Santa Fe County GIS Department.

05-12-15



**AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
THE TURQUOISE TRAIL MASTER ASSOCIATION  
FOR ACCEPTANCE AND CONVEYANCE OF  
A WASTEWATER SYSTEM**

THIS AGREEMENT for the conveyance and acquisition of a wastewater system dated this 8th day of December, 2012, is made and entered into by and between Santa Fe County, a political subdivision of the State of New Mexico (hereinafter "County") and the Turquoise Trail Master Association (hereinafter "TTMA"), a New Mexico non-profit corporation.

**RECITALS**

A. WHEREAS, TTMA currently owns, operates, and maintains wastewater infrastructure, including a wastewater lift station, located within Santa Fe County that serves residents of Santa Fe County (hereinafter the "System"). The System is described on Exhibit A, attached hereto and incorporated herein;

B. WHEREAS, TTMA desires to irrevocably and permanently convey the System to the County and the County wishes to acquire the System and continue to operate, maintain and improve the System;

C. WHEREAS, the County has determined that the acceptance of ownership and maintenance of the System is in the public interest, and the acquisition and ownership would allow the County to expand its wastewater collection services to a larger area of County residents as more accurately indicated in Exhibit B, attached hereto and incorporated herein;

D. WHEREAS, the System is outside the City of Santa Fe Presumptive City Limits, as that term is defined in a Settlement Agreement and Mutual Release of Claims between the County and the City of Santa Fe dated May 19, 2008;

E. WHEREAS, pursuant to Final Orders issued in PUC Cases Nos. 2428 and 2588, the City of Santa Fe (hereinafter the "City") is required to provide water and sanitary sewer services to TTMA's customer the Thornburg Amended Master Plan Area, under certain terms and conditions set forth in those orders and stipulations and an Annexation Agreement dated November 4, 2003;

F. WHEREAS, the Thornburg Amended Master Plan Area currently receives water from the City and TTMA's System disposes of wastewater from the Thornburg property to the City's Sewer Treatment Plant, as set forth in the agreement between the City and TTMA dated September 9, 2004 and is pursuant to the September 15, 2003 agreement with the City and requires the City's consent to terminate;

G. WHEREAS, upon TTMA's conveyance to the County and the County's acceptance of the System, the City will continue to provide water to the Thornburg Master Plan Area until the County is able to provide water, and the County will receive wastewater from the Thornburg Amended Master Plan Area for disposal at the County's wastewater treatment facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the County and TTMA agree as follows:

## AGREEMENT

### Section I

#### The System

- A. TTMA owns, operates and maintains the System. The System is comprised of approximately 4,528 feet of 8" and 10" diameter gravity flow mains and 4" service connections; a wastewater lift station equipped with pumps capable of conveying 417 GPM at 178 foot TDH; approximately 9,224 feet of 8" diameter PVC (C-900) wastewater force main; and all appurtenant easements all of which are described on Exhibit A attached hereto.
- B. The current and proposed extended service area of the System is described on Exhibit B attached hereto.

### Section II

#### Acceptance and Conveyance of the System

- A. Conditions precedent to the County's acceptance of the System.

The County shall accept ownership and title to the System and assume the duties set forth in this Agreement upon completion of all the following conditions:

- (i) County shall obtain the consent of the City to terminate the Agreement between the City and TTMA as described in "Exhibit B" to the Third Amended and Restated Declaration of Covenants and Restrictions for the Thornburg Amended Master Plan Area (Lift Station Only) (hereinafter the "Declaration") recorded June 5, 2009 wherein the parties provided for the maintenance and operation of the System, established a Reserve Fund for maintenance of the System, and provided for the City's provision of emergency repairs to the System.
- (ii) The termination of the Agreement referred to in paragraph (i) above shall provide for the release of the Reserve Fund to TTMA.
- (iii) Under the terms of the Declaration TTMA shall duly record its termination.

- (iv) Completion of a written agreement on terms acceptable to the County between the County and City confirming the City's continuing commitment to provide water and wastewater services to the Thornburg Master Plan Area until such time that the County completes the necessary construction of infrastructure to begin transferring wastewater to the County's wastewater treatment facility.
- (v) Within 120 days of the execution of this Agreement, the County shall complete a field inspection of all components of the System including the lift station to account for any deficiencies that may exist and completion of any items on a punch list. Once the County has completed the punch list, and it is acknowledged by both parties, it is at the County's discretion to decide whether or not to accept the System as is, which decision to accept shall not be unreasonably withheld, and which must be conveyed in writing to TTMA within 60 days following completion of the punch list. The County shall provide the punch list to TTMA. TTMA has the option, but not the obligation to cure such deficiencies to the satisfaction of the County. Within 60 days of the County's decision to accept the System under this Paragraph, the parties shall formally close this transaction by the giving of a Special Warranty Deed and a general bill of sale for any personal property.

B. TTMA's Conveyance of the System.

In consideration of the County's agreement to accept, own, operate, and maintain the System to provide wastewater services to all current and future customers in the County's service area, TTMA agrees to irrevocably and permanently convey the following to the County, provided that such items are in TTMA's possession or can be reasonably obtained:

- (i) The System including all components and related infrastructure and all current customers who are connected to the System and to whom wastewater services are provided by the System;
- (ii) All existing easements for the System and associated pipes and infrastructure which constitute the System, including easements for installation, replacement, repair and maintenance of gravity feed flow lines and other elements of the System;
- (iii) All records and documentation related to the operation, maintenance and repair of the System;
- (iv) All plats, easement descriptions, and other pertinent records related to real property affected by this Agreement;
- (v) Any and all record drawings ("as built"), certified by a New Mexico licensed engineer and any existing test results related to the installation of all

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components of the System, including any televised inspections of the lines and associated logs, pressure test results, and soil compaction test results; and

- (vi) All billing records for current customers connected to the System including names and addresses with indication of the status of the accounts.
- C. TTMA agrees to provide the County with any and all written agreements between TTMA and the City as well as any and all written agreements between TTMA and owners of real property abutting the service area of TTMA's customers currently being served by the System.
- D. Prior to the conveyance of the System to the County, TTMA agrees to provide the County personnel with a minimum three-hour training session and site visit which shall be guided by knowledgeable and experienced individuals who are operating and maintaining the System for TTMA.

Section III

Guarantee of Availability and Capacity

The County agrees to guarantee the availability of the wastewater capacities specified in the September 9, 2004 and September 15, 2003 agreements with the City to all landowners in the Amended Thornburg Master Development Plan area which is defined as "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A" recorded as Instrument #1362150 on January 10, 2005, at Book 577 Page 36-42, and any boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.

Section IV

Bisbee Court

- A. Service to Bisbee Court.

The development area known as Bisbee Court is currently shown to be within the potential service area indicated in Exhibit B. Residents of Bisbee Court are currently served by a private wastewater collection and treatment system that is not connected to the TTMA System. In the future, water customers in Bisbee Court will be eligible to connect to the System once the System is owned and operated by the County, however the cost associated with such connection shall be borne solely by the Bisbee Court's Homeowners' Association, and the County shall not assume any financial obligation associated with installing the connection to Bisbee Court. Once a design to connect Bisbee Court's wastewater infrastructure to the System is completed to the satisfaction of the County, the existing and new gravity sanitary

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sewers shall also be conveyed to the County upon the County's acceptance of ownership, operation and maintenance.

Section V  
Representations and Warranties

- A. TTMA hereby represents and warrants to the County that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for County's acceptance and performance of the County's obligations under this Agreement:
- (i) TTMA is legally authorized to enter into, and to take or cause to be taken the actions and activities contemplated pursuant to this Agreement, including, without limitation: (a) causing the System to be constructed and operated on the property described on Exhibit A, (b) conveying to the County clear title in fee to the System, (c) granting easements, as described herein, and (d) providing the surety to the County as described herein.
  - (ii) TTMA is the owner in fee of the System, and there are no liens or mortgages against the System including its associated infrastructure and components and TTMA is conveying fee title without encumbrance or liens to the County.
  - (iii) The signatory to this Agreement is an officer of TTMA and is duly authorized to execute this Agreement and bind TTMA to its terms.
  - (iv) This Agreement has been authorized by all necessary action on the part of TTMA.
  - (v) There are no outstanding debts, obligations, liabilities or liens on or related to the System or related to any aspect of the System.
  - (vi) TTMA is not in breach or violation of any of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents or other agreements to which it is a party.
  - (vii) TTMA's execution, delivery and performance of duties and obligations under this Agreement will not result in a breach or violation of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents, or other agreements to which it is a party or otherwise bound, nor does TTMA's execution of this Agreement constitute a violation of any law, rule or any court order or decree applicable to TTMA, or result in the acceleration of any lien or encumbrance upon the System or the System's components or equipment.

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- (viii) This Agreement is the legal, valid and binding obligation of TTMA, enforceable against TTMA in accordance with its terms and conditions.
- (ix) There is no action, claim, litigation, proceeding or governmental investigation pending against TTMA or the System, or to TTMA's best knowledge, threatened against TTMA or the System, which might directly or indirectly have a material adverse effect upon any of the matters contemplated by this Agreement. As part of a mortgage foreclosure case against Longford, now known as Galway Construction, the Association has filed counterclaims and cross claims to enforce its lien for Association dues against Longford. However, there are no claims against the System in this case.
- (x) TTMA has received no written or oral notice of any proposed or contemplated condemnation of the System or any part thereof, and TTMA has received no written or oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the System or any part thereof.
- (xi) To TTMA's actual knowledge: (a) the sites on which the System and its infrastructure are located have not at any time been used for the purpose of storing (except for the proper storage of diesel fuel for generator operation), manufacturing, releasing or dumping Hazardous Materials and there are no Hazardous Materials located at, on or under the real property on which the System and its infrastructure are located, except for normal quantities of Hazardous Materials utilized in connection with the normal maintenance and operation of the System in compliance with all Environmental Laws and so-called household hazardous materials utilized by residences; and (b) no underground storage tanks, pipelines or clarifiers are located on the System or its infrastructure, other than the lift station's wet well. As used herein, "Hazardous Materials" is defined as any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under Environmental Law, including without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used herein "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.

- B. The County hereby represents and warrants to TTMA that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for the performance of TTMA's

obligations under this Agreement:

- (i) The County is a political subdivision of the State of New Mexico, and its Board of County Commissioners has authorized the County to enter into and perform its obligations under this Agreement.
- (ii) The execution and delivery of this Agreement and performance of the actions contemplated by this Agreement will not conflict with any agreement to which the County is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the County.

#### Section VI

##### Indemnification of County by TTMA

- A. TTMA shall indemnify and hold the County harmless from any obligation, cost, expense, liability or claim by any third party against the County arising from or in any way connected with TTMA acts or omissions in statements made above in connection with the System. The indemnity period commences with formal closing of this transaction and ends two (2) years later.
- B. In connection with Hazardous Materials, as defined herein, TTMA shall indemnify and hold harmless the County, its employees, agents and representatives from and against any and all loss, damage, claim or damage, liability or expense, including costs and all attorneys' fees actually incurred, arising out of or in connection with any injury or damage or claim of injury, including death, or damage of any kind whatsoever, to persons or property (unless and only to the extent caused by the County, its employees or agents), fines, penalties, sanctions or costs occasioned in or about the System, existing on the System site or arising out of the use of the System site on or before date of this Agreement, whether known or unknown to TTMA or the County, to the extent that such losses arise from the existence of Hazardous Materials on the System site.

#### Section VII

##### Miscellaneous

- A. Notices. All notices, certificates or other communications made pursuant to this Agreement shall be made as follows:
  - (i) To the County:

Santa Fe County  
Attention: County Manager  
102 Grant Avenue  
Santa Fe, New Mexico 87501

(ii) To TTMA:

President  
Turquoise Trail Master Association, Inc.  
Post Office Box 4156  
Santa Fe, New Mexico 87502

B. Assignment. This Agreement shall not be assigned without the express written consent of the non-assigning party.

C. Integrated Agreement. This Agreement constitutes the entire agreement of the County and TTMA with respect to the subject matter of this Agreement and supersedes all prior oral and written communications with respect to such subject matter.

D. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, and venue shall be in Santa Fe County, New Mexico.

E. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

SANTA FE COUNTY

Liz Stefanics Date: 12/31/12  
Liz Stefanics, Chair  
Santa Fe County Board of County Commissioners

Attest:

Geraldine Salazar Date: 1/4/13  
~~Valerie Espinoza, County Clerk~~  
Geraldine Salazar, County Clerk

Approved as to form:

Stephen C. Ross Date: 11/7/12  
Stephen C. Ross  
Santa Fe County Attorney

Santa Fe County Finance Department

Teresa C. Martinez  
Teresa C. Martinez, Finance Director

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Date: 11/15/2012

**TURQUOISE TRAIL MASTER ASSOCIATION**

A New Mexico nonprofit corporation

By Bruce Golden  
Bruce Golden, President

Date: 12/10/2012

## Exhibit "A" – System Description\*

1. Lift Station: Lift station includes two FLYGT CP3201 SH 423 Submersible pumps, with cast iron discharge connection, a 50 hp motor, 460vac/3/60, 1760 RPM, and 50' electrical cable. Each pump is capable of delivering 412 GPM at 171ft TDH. Lift station pump controls, Mechanical, Power distribution, Soft stop, Overload heaters, Control transformers, Level Controls, Alarm system, and Emergency generator. The lift station is 24' x 12' and is enclosed with a 6' x 8" stacked block wall, that is also enclosed by a 30' x 57' Steel fence.

2. 10" PVC Sanitary Sewer (12' – 16' Deep) – 676 LF

3. 10" PVC Sanitary Sewer in 22" Casing – 170 LF

4. 8" PVC Sanitary Sewer (8' – 12' Deep) – 1,818 LF

5. 8" PVC Sanitary Sewer (12' – 16' Deep) – 1,618 LF

6. 8" PVC Sanitary Sewer (16' – 20' Deep) – 319 LF

7. 4' Diameter Manhole (0' – 8') – 19 EA

8. 20" Bore and Case (8" Gravity Sanitary Sewer) – 234 LF

9. 8" PVC Sanitary Sewer in 20" Casing – 234 LF

10. 8" Force Main PVC, C-900 – 9,224 LF

11. 3" Air Release Valve – 4 EA

12. 8" Valve on Force Main with No Cleanouts – 1 EA

13. 8" Valve on Force Main with 2 Cleanouts – 5 EA

14. Easements: 2 easements

\* All linear footages are approximate.

