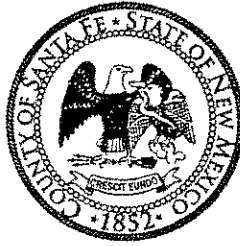


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *November 26, 2018*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director MK 11/28/18*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting December 11, 2018*
Water Rights Purchase Agreement Between Santa Fe County and the Adela G. Padilla Revocable Trust (Utilities Division/John Dupuis)

SUMMARY:

This proposed agreement allows the County to enter into a Water Rights Purchase Agreement with Adela G. Padilla Revocable Trust to purchase water rights that the Utility can use to backup deliveries.

BACKGROUND:

Santa Fe County Utilities is required to ensure that the County owns adequate water rights in order to backup water deliveries we make to our customers. Purchase of additional water rights is also necessary to support current and reasonably foreseeable future water demand over the County's 40-year planning horizon, plus an additional amount to provide an adequate backup supply.

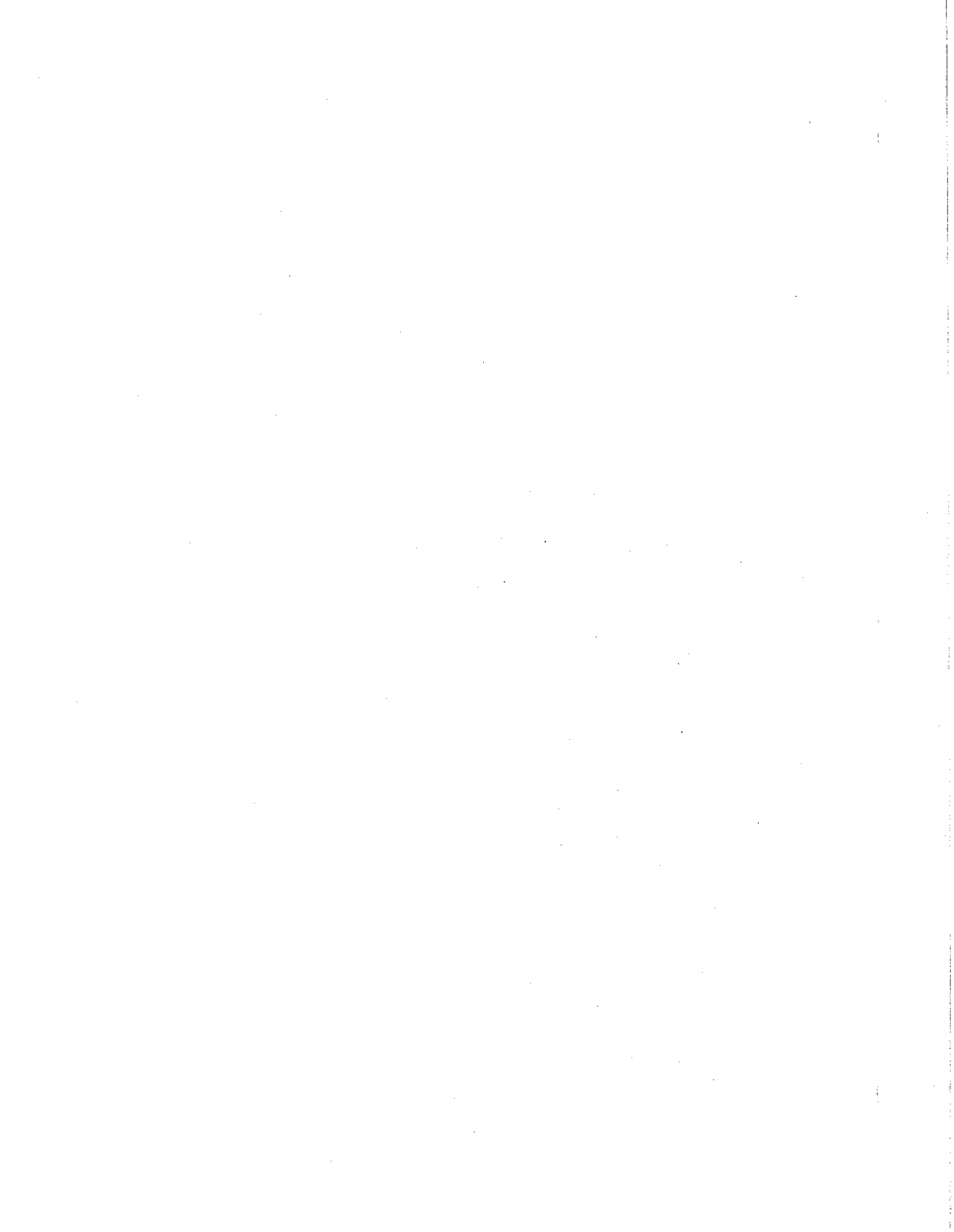
DISCUSSION:

SFCU desires to purchase 23.5494 acre-feet per year of vested pre-1907 consumptive use surface water rights from the Adela G. Padilla Revocable Trust at a rate of \$19,347 per acre-foot for a total of \$455,610.24. The water rights will be transferred to the Buckman Direct Diversion to backup water deliveries to our customers. The County has throughout time purchased water rights to ensure adequate rights exist to backup deliveries and to provide a backup supply. Funding was and is still currently provided by connection and standby fees.

ACTION REQUESTED:

BCC approval of the Water Rights Purchase Agreement between the County and the Adela G. Padilla Revocable Trust.

Attachment:
Water Rights Purchase Agreement



**WATER RIGHTS PURCHASE AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE ADELA G. PADILLA REVOCABLE TRUST**

THIS AGREEMENT is between the Adela G. Padilla Revocable Trust, dated August 4, 1993 ("Seller"), and Santa Fe County ("County"). The Seller and the County collectively are referred to as the "Parties."

RECITALS

A. The Seller has filed a sworn Declaration of Ownership of Water Rights ("Declaration") claiming to be the owner of 23.5494 acre-feet per year ("AFY") of vested pre-1907 consumptive use surface water rights appurtenant to 11.214 acres of land ("Move-From Location") located within the Middle Rio Grande Conservancy District ("Declared Water Rights"). The Declaration is attached as Exhibit A.

B. The Seller represents and warrants that the Declaration is a true and correct statement of the amount and nature of the water rights appurtenant to the Move-From Location, that the Seller is the sole and exclusive owner of the Move-From Location and the Declared Water Rights, and that there is no mortgage, lien, or other encumbrance that would prevent the Seller from severing the Declared Water Rights from the Move-From Location.

C. Seller believes that the Declared Water Rights can be severed from the Move-From Location and transferred to the Buckman Direct Diversion ("BDD") under a transfer permit ("Transfer Permit") issued by the Office of the State Engineer ("OSE").

D. The Seller desires to sell and the County desires to buy all or that portion of the Declared Water Rights that may be approved under a Transfer Permit ("Permitted Water Rights").

AGREEMENT

NOW, THEREFORE, for consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Title Report or Attorney Opinion. No later than thirty (30) days after the effective date of this Agreement, the Seller shall provide to the County a title report or attorney opinion demonstrating that: (a) the Seller is the sole owner of the Move-From Location and the Declared Water Rights; and (b) the Declaration is true and correct or, if not strictly true and correct, opining as to the amount of vested pre-1907 consumptive use water rights, if any, that are appurtenant to the Move-From Location.
2. Water Rights Transfer Process. No later than thirty (30) days after the Seller complies with Section 1 of this Agreement, the County shall prepare and file an application with the OSE to transfer the Declared Water Rights to the BDD, identifying

the County and the Seller as co-applicants ("Transfer Permit Application"). The County shall bear the cost of and responsibility for prosecuting the Transfer Permit Application, provided however, that the Seller, at its own cost, shall assist the County in preparing and prosecuting the Transfer Permit Application and responding to and seeking resolution of any protest(s), including preparing and responding to discovery requests, appearing as providing a witness(es) to testify, and providing such information and documents as may be requested by the County.

3. Closing Date. The Closing Date shall be no later than thirty (30) days after the later of the following events: (a) the OSE's issuance of a Transfer Permit, if the permit is not appealed; or (b) if the OSE's issuance of a Transfer Permit is appealed, then the date on which the OSE's issuance of the Transfer Permit is finally affirmed or all appeals are otherwise terminated without further rights of review, including any remands.

4. Purchase and Sale of Permitted Water Rights. The Seller shall sell and the County shall purchase the Permitted Water Rights on the Closing Date.

A. Purchase Price. On the Closing Date, the County shall pay Seller nineteen thousand three hundred and forty seven dollars (\$19,347) per AFY of Permitted Water Rights. The County shall not be required to pay any commissions or fees related to the purchase of Permitted Water Rights, and any such commissions or fees shall be paid by the Seller.

B. Transfer of Title. On the Closing Date, the Seller shall grant the Permitted Water Rights to the County by warranty deed, free and clear from any mortgage, security interest, or other encumbrance. The County shall bear the cost of preparing and filing a change of ownership form with the OSE and the County Clerk; provided however, that the Seller shall assist the County in such preparation and filing and shall execute such other documents as may be required or appropriate to perfect the transfer of the Permitted Water Rights to the County.

5. Termination

The Seller may terminate this Agreement by sending the County a written notice of termination no later than (60) days after one of the following events: (1) the OSE denies the Transfer Permit Application for all of the Declared Water Rights; (2) the Transfer Permit Application is protested, provided however, that the Seller first shall meet and confer in good faith with the County to discuss the validity of any protest(s) and the possibility of resolving the protest(s); or (3) the OSE has not scheduled a hearing on the merits of the Transfer Permit Application within two (2) years of the effective date of this Agreement.

The County may terminate this Agreement by sending the Seller a written notice of termination at any time after one of the following events: (1) the OSE denies the Transfer Permit Application in whole or part; (2) the Transfer Permit Application is protested; or

(3) the OSE has not scheduled a hearing on the merits of the Transfer Permit Application within two (2) years of the effective date of this Agreement.

Either party may terminate this Agreement by giving written notice to the other party that it has committed a material breach of this Agreement, and allowing the other party at least sixty (60) days after receipt of the written notice to substantially cure the material breach, and then, if the other party fails to substantially cure the material breach, by providing a written notice of termination.

If either party terminates this Agreement for any reason, including the reasons stated above, the Parties shall jointly withdraw the Transfer Permit Application.

6. Special Fund. Prior to the end of the County's fiscal year in which this Agreement is executed, the County shall establish a special fund and deposit into such fund a total of four hundred fifty five thousand six hundred and ten dollars and twenty four cents (\$455,610.24) for the purpose of purchasing the Permitted Water Rights.

7. Notice. Notification required by this Agreement shall be given by first-class U.S. mail addressed as follows:

Seller: Adela G. Padilla Revocable Trust
Elizabeth A. Manning, Co-Trustee
Stephen Mahony, Co-Trustee
119 Rail Car Road
Corrales, New Mexico 87048

County: County Attorney
Santa Fe County
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

8. Assignment of Rights. Neither Party shall assign a right or obligation in this Agreement.

9. Choice of Law Clause and Venue. The law of the State of New Mexico shall govern this Agreement, and the exclusive venue for litigation of any dispute between the Parties concerning this Agreement shall be the New Mexico First Judicial District Court in Santa Fe, New Mexico.

10. Incorporation of Recitals. The Recitals of this Agreement are incorporated into the Agreement and made a part thereof by reference.

11. Entire Agreement. This Agreement represents the complete, final, and exclusive terms of agreement between the Parties concerning the subject matter of this Agreement, and no course of prior dealings between the Parties, including any prior agreement or

written or oral communications, shall be relevant to determine the meaning of this Agreement.

12. Amendment. This Agreement shall not be amended except by a writing executed by both Parties.

13. Effective Date. This Agreement is effective upon the last signature of the Parties.

Adela G. Padilla Revocable Trust, dated August 4, 1993

By: _____
Elizabeth A. Manning
Co-Trustee
Date _____

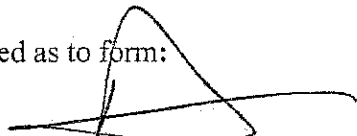
By: _____
Stephen Mahoney
Co-Trustee
Date _____

Santa Fe County

By: _____
Anna Hansen, Chair
Board of County Commissioners
Date _____

ATTEST:

By: _____
Geraldine Salazar,
Santa Fe County Clerk
Date _____

Approved as to form:
By: 
R. Bruce Frederick, County Attorney

11/26/18
Date

FINANCE DEPARTMENT:

By: 
Stephanie Schardin Clarke
County Finance Director

11/26/18
Date

