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SANTA FE COUNTY

Ordinance No. 2000 - 14

1847825

**AN ORDINANCE AMENDING AND REPLACING ORDINANCE 2000-2 AND
DECLARING A MORATORIUM ON NEW SUBDIVISIONS, LAND DIVISIONS AND
MASTER PLANS FOR PROJECTS SERVED BY EL DORADO UTILITIES INC. AND
ENCOURAGING CONSERVATION MEASURES WITHIN THE EL DORADO
UTILITIES INC. SERVICE AREA**

Introduction

This Ordinance amends and replaces Santa Fe County Ordinance 2000-2. Ordinance 2000-2 was enacted following Ordinance 1996-4 and subsequent ordinances replacing Ordinance 1996-4 in response to a seasonal drought and evidence that El Dorado Utilities, Inc. (EDU) was experiencing a water supply shortfall. Evidence compiled and opinions rendered by County staff, consultants, and the Office of the State Engineer demonstrate the potential for a long term water supply shortfall for existing customers and undeveloped legal lots of record, and point out the lack of a reliable source of supply for future development relying on the EDU system. The findings of moratorium Ordinances 1996-4, 1997-5, 1998-4, 1999-4 and 2000-2 are herein incorporated by reference.

**A. THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS HEREBY
FINDS:**

1. El Dorado Utilities Inc. is a water utility providing service within the County (see attached map).
2. Water sales in 1999 were about the same as 1998, whereas the number of customers steadily increased at an average of about 10 to 12 per month. Building and real estate activity on existing lots is brisk according to the County building permits desk.
3. Groundwater use in the EDU service area increased five fold from 1985 to 1995. According to EDU estimates, at build out water requirements of the system will more than double from 1995 levels.
4. Although the County has experienced a modest real estate slowdown in recent years, the Eldorado area share of total County permits for single family construction was about the same from 1995 through 1997. In 1998 and 1999 the Eldorado fire district exceeded others in the County for residential development permits issued.
5. EDU has exaggerated its true, legal water producing capabilities. The utility has made no new submittals since 1996 to the County to demonstrate long-term water availability.

- 1 6. The Findings of Ordinance 1996-4, 1997-5, 1998-4 and 1999-4 list additional, older data
2 supporting other estimates of EDU well production potential and water rights. Estimates of the
3 Office of the State Engineer (OSE), Public Regulatory Commission (PRC) and Santa Fe County
4 are lower than EDU's assertions.
- 5 7. EDU well #9, the Lamy well, went dry in the spring of 1996 and lost capacity in 1999. The
6 Lamy valley aquifer relies on seasonal recharge from Galisteo Creek. Water supply from the
7 Lamy well in 2000 continues to be subject to drought and declining production. Because it is
8 drought sensitive, regulatory agencies will not include it in estimates of reliable reserves.
- 9 8. Several of EDU's active wells have suffered significant declines in average production over
10 time, according to the State Engineer records. As much as one third to one half of the early
11 production capability, and water column, has been lost in several wells.
- 12 9. EDU's Torreon well (well #13) has been designated by the OSE as supplemental to well #2.
13 Together these wells can share the historical beneficial use established in well #2. The net result
14 is that minimal new water production has been added. A new well replacing an exploratory well
15 has been drilled and tested, but has no additional water rights and again is supplemental to
16 existing wells.
- 17 10. The Santa Fe County Land Development Code requires that new development prove the
18 availability of a 100 year water supply; the availability of groundwater sources must be shown in
19 specific wells.
- 20 11. EDU's consultant, Westwater Associates, states that " long term tests of existing and
21 additional wells, (and) close monitoring in test wells will be necessary in order to model or
22 provide estimates of future long term resource potential".
- 23 12. There has been no demonstration or report submitted by EDU or others analyzing the
24 sustainable and reliable ground water supply that incorporates the facts of water production and
25 use over the last ten years. Based on estimates by the OSE, the County Hydrologist, and the
26 PRC, EDU lacks the demonstrated capacity and water rights to serve demand projected for build
27 out of lots already approved in the service area.
- 28 13.. EDU's Updated Master Plan estimates ultimate build out, or "all known proposed and
29 infill" service to be 3740 connections, a 55% increase from current connections (2404). The
30 Master Plan estimates that 2035 acre feet per year will be required at that level of service. For
31 comparison purposes, research by the OSE and County Hydrologist estimate that EDU has
32 demonstrated the beneficial use of from 350 to 800 AFY. It is unlikely that EDU will establish
33 by beneficial use the water rights they declare.
- 34 14. County Staff estimates roughly 400 undeveloped approved and buildable lots exist in
35 EDU's service area unaffected by this Ordinance.
- 36 15. A February 9, 1996 OSE memorandum indicated that the OSE will continue to give
37 unfavorable opinions on new subdivisions which propose EDU as a source of supply unless and
38 until it receives information which demonstrates that EDU can assure the required water
39 availability.
- 40 16. An April 18, 1997 letter from the State Engineer concludes that until the water
41 availability issue is resolved the OSE Subdivision Review Bureau will be unable to issue a
42 positive review finding.
- 43 17. Other communities in the watershed are also concerned about water resource issues. It is
44 difficult to isolate Cañada de los Alamos, Eldorado and Cerrillos water issues from the greater

1 watershed. Issues concerning groundwater appropriations in one area affect others in the
2 watershed.

3 18. For the sole purpose of providing guidance to EDU and future applicants for development
4 approval, **Appendix A** in the 1997 ordinance is herein incorporated by reference, which lists
5 suggested activities to assist the County in evaluating water availability and fire protection
6 capabilities in the EDU service area.

7
8 **THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS THEREFORE**
9 **CONCLUDES AND DECLARES:**

10
11 1. The continuing growth and corresponding water demand in the area, the presence of
12 hundreds of legal lots awaiting EDU service, the uncertain present and future production
13 capacity of EDU and the failure of EDU to properly develop reserve groundwater production
14 raise ongoing and unresolved concerns about the adequacy of EDU as a water supplier for new
15 development.

16 2. These concerns are directly linked to the public health, safety and welfare.

17 3. Voluntary water awareness and conservation efforts shall continue to be encouraged in the
18 EDU service area.

19
20 **C. NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
21 **COMMISSIONERS OF SANTA FE COUNTY:**

22
23 **1. No new or pending applications for land divisions, master plans or subdivisions which**
24 **propose to utilize EDU water services will be deemed complete until water supply**
25 **requirements of the County Land Development Code, the County Fire Code, and this**
26 **Ordinance are satisfied, except as noted in Sections 3 & 4 below. No new or pending**
27 **applications for land divisions, master plans or subdivisions which propose to utilize EDU**
28 **water services will be processed by the County Land Use Administrator, the County**
29 **Development Review Committee, or the Santa Fe County Board of County Commissioners**
30 **until deemed complete. For valid master plans, the time during which this Ordinance is in**
31 **effect shall not be used in calculating the period of validity of an approved master plan in**
32 **accordance with the Santa Fe County Land Development Code.**

33 **2. New subdivision, land division and master plan applications which do not rely on EDU**
34 **water service will be processed subject to the Santa Fe County Land Development Code, as**
35 **amended. However, no density adjustments beneath 12.5 acres per dwelling unit, the basic**
36 **Basin Fringe Hydrologic Zone Minimum Lot Size, will be considered and these approvals**
37 **will be contingent upon acceptable site specific hydrology reports, water use covenants, and**
38 **proper well drilling and construction techniques which protect and optimize the source of**
39 **supply. Cluster housing is encouraged for those developments that proceed under these**
40 **conditions.**

41 **Notwithstanding the above, if a comprehensive, watershed-wide hydrologic study is**
42 **conducted and clearly demonstrates to the reasonable satisfaction of the State Engineer**
43 **and County Hydrologist that there is adequate long term water availability to allow density**
44 **below 12.5 acres, such densities may be allowed.**

1 3. A single division of land per Article II, Section 2.3.1.a., vii or viii of the County Land
2 Development Code shall be permitted for commercially zoned property to create a tract for
3 an existing commercial building, subject to the following conditions:

4 a. This is for the purpose of sale, and

5 b. The plat will contain a note that no development will be permitted on the vacant
6 tract until this Ordinance, as amended, is lifted.

7 4. The Code Administrator may consider and process applications for master plan zoning,
8 preliminary and final development plans for commercial development within the El
9 Dorado Subdivision with the following conditions:

10 a. Applicant dedicates EDU water from platted, approved residential lots in an
11 amount equal to the total water budget for the proposed commercial development.

12 b. The amount which can be transferred from each platted residential lot and
13 pledged to the proposed commercial project shall be limited to .25 acre-feet/year/lot
14 regardless of whether such limitation was placed on the original residential
15 development.

16 c. Single phase developments must pledge EDU water service from all residential
17 lots to the commercial project as a condition of recordation of the final plat. Multi-
18 phase projects must pledge EDU water service from the residential lots necessary to
19 satisfy the water budget for each proposed phase. Approvals for subsequent phases
20 of development must prove that actual water use is in compliance with the
21 proposed water budget.

22 d. A note identifying which approved residential lots are to be pledged for the
23 project shall be placed on the master plan and development plan prior to
24 recordation. For phased projects, the proposed residential lots for each phase shall
25 be noted.

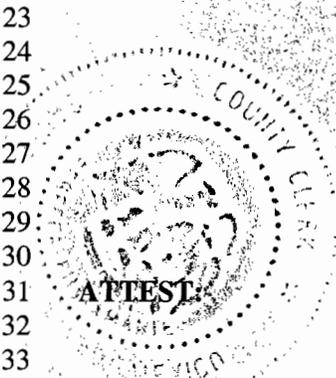
26 e. The residential lots from which water has been pledged and transferred to a
27 commercial development shall be prohibited from being developed and shall not be
28 entitled to drill a domestic well or utilize EDU water for the duration of the
29 moratorium. Pledged residential lots shall not be sold, traded or exchanged until
30 such time as the Moratorium is lifted and adequate water is demonstrated pursuant
31 to the "Santa Fe County Land Development Code." The applicant may dedicate
32 pledged residential lots as permanent open space or place upon them a
33 Conservation Easement. Such restrictions shall be conspicuously noted on the deed.

34 f. The maximum number of residential lots which may be pledged and transferred
35 to a commercial project shall be five. This shall limit the amount of water which
36 can be transferred to 1.25 acre-feet per year. Therefore, the maximum amount of
37 water which can be utilized by a commercial project shall be 1.50 acre-feet per year
38 (the amount of pledged water, 1.25 acre-feet, plus the .25 already allotted to the
39 commercial lot).

40
41 5. Building and development permit applications on legal lots of record will be acted upon
42 by the Santa Fe County Land Use Administrator. In no case will building and development
43 permits be allowed in which more than 0.25 feet per year per legal lot of EDU water service
44 is required.

- 1 6. Based on conservation information available from EDU, the County, and the
- 2 community, residents within the EDU service area are encouraged to continue water use
- 3 and conservation measures. Water users not subject to covenanted water use restrictions
- 4 are encouraged to target their consumption to fall within 0.22 acre feet per year (71,682
- 5 gallons per year).
- 6 7. The provisions of this Ordinance shall apply within the service area of any successor to
- 7 EDU if the ownership, name or management of EDU changes while this ordinance is in
- 8 effect.
- 9 8. If any provision of this ordinance is adjudged or declared to be illegal, the remainder of
- 10 the ordinance, not so adjudged, will remain in force and effect.
- 11 9. County staff shall present updates describing any changes in conditions to the Santa Fe
- 12 County Board of County Commissioners approximately 180 days from the effective date of
- 13 this Ordinance and annually thereafter until such time as the Ordinance is amended or its
- 14 application is discontinued.
- 15 10. This Ordinance shall remain in effect until the Santa Fe County Board of County
- 16 Commissioners, County technical staff and the State Engineer are satisfied that
- 17 developments which propose EDU as the water supply are in full compliance with state and
- 18 county standards, at which time the Board shall pass a resolution discontinuing the
- 19 application of this Ordinance.

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 21 PASSED, ~~18/12/2000~~ AND APPROVED this 12th day of December, 2000, by the
 22 Santa Fe County Board of County Commissioners.



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CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

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Rebecca Bustamante
 REBECCA BUSTAMANTE
 COUNTY CLERK



1142.392
 COUNTY OF SANTA FE) SS
 STATE OF NEW MEXICO)
 I hereby certify that this instrument was filed
 for record on the 17 day of Jan A.D.
 20 01 at 4:02 o'clock P.m.
 and was duly recorded in book 1847
 page 825-830 of the records of
 Santa Fe County

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
 OFFICE OF THE SANTA FE COUNTY ATTORNEY

Witness my Hand and Seal of Office
 Rebecca Bustamante
 County Clerk, Santa Fe County, N.M.
[Signature]
 Deputy

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CERTIFICATE OF FILING

I, Rebecca Bustamante, County Clerk, do hereby certify that the foregoing ordinance, designated as Ordinance, No. 2000 -14, was filed in my office on the 17 day of Jan, 2000, in Book Number 1847 at Page 825-830.

SANTA FE COUNTY CLERK



REBECCA BUSTAMANTE

