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SANTA FE COUNTY
Ordinance No. 2001 - 12

2014430

**AN ORDINANCE AMENDING AND REPLACING ORDINANCE 2001-4 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 AND TO ESTABLISH PROVISIONS UNDER
WHICH DEVELOPMENT CAN PROCEED**

Introduction

This Ordinance amends and replaces Santa Fe County Ordinance 2001-4. Ordinance 2001-4 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, 2000-2, 2000-14 and 2001-4 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 Section 3 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.**

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

39 **a. This is for the purpose of sale, and**

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

42 **4. If an applicant has a well(s) and water rights that are transferred to the EDU water**
43 **system, he or she can then take service for the development of the amount of water**
44 **transferred minus 20% to account for leakage from EDU. The applicant shall furnish**
45 **funds for the County to hire an independent hydrologist to prepare the geohydrological**

1 report and to determine whether production from the well will impact EDU or any other
2 water user in the area. Only applicants whose wells do not impact EDU or any other
3 water user and who can demonstrate a 100-year water supply for the proposed
4 development in accordance with Article VII, Section 6.4.2 shall be allowed to proceed with
5 their application under this section. At least two weeks prior to drilling a well and
6 conducting any geohydrologic investigations of the area, the applicant shall provide written
7 notice to the County Hydrologist so that public notice of the impending project can be
8 given.

9 **5. Developments that already exist and are using EDU can reallocate the water they receive**
10 **from EDU on their property without being subject to the 100-year proof of water required**
11 **by the County Code. This could be based on re-use of water, implementation of water**
12 **conservation measures or unused capacity. This provision is limited to expansion of**
13 **existing development. Changes can be made between commercial uses, but any change that**
14 **requires new zoning is not permitted. The amount of water that the development has for**
15 **this purpose shall be based on the amount of water proposed in the water budget when the**
16 **project was approved by Santa Fe County.**

17 **6. Building and development permit applications on legal lots of record will be acted upon**
18 **by the Santa Fe County Land Use Administrator. In no case will building and development**
19 **permits be allowed in which more than 0.25 feet per year per legal lot of EDU water service**
20 **is required, unless the provisions of #5 above are met.**

21 **7. Based on conservation information available from EDU, the County, and the**
22 **community, residents within the EDU service area are encouraged to continue water use**
23 **and conservation measures. Water users not subject to covenanted water use restrictions**
24 **are encouraged to target their consumption to fall within 0.22 acre feet per year (71,682**
25 **gallons per year).**

26 **8. The provisions of this Ordinance shall apply within the service area of any successor to**
27 **EDU if the ownership, name or management of EDU changes while this ordinance is in**
28 **effect.**

29 **9. If any provision of this ordinance is adjudged or declared to be illegal, the remainder of**
30 **the ordinance, not so adjudged, will remain in force and effect.**

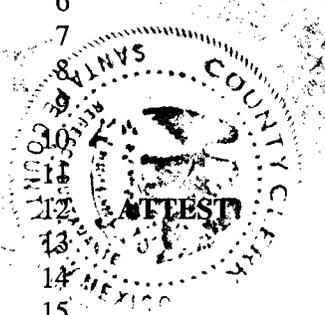
31 **10. County staff shall present updates describing any changes in conditions to the Santa Fe**
32 **County Board of County Commissioners approximately 180 days from the effective date of**
33 **this Ordinance and annually thereafter until such time as the Ordinance is amended or is**
34 **repealed.**

35 **11. This Ordinance shall remain in effect until the Santa Fe County Board of County**
36 **Commissioners, County technical staff and the State Engineer are satisfied that**
37 **developments which propose EDU as the water supply are in full compliance with state and**
38 **county standards, at which time the Board shall pass a resolution discontinuing the**
39 **application of this Ordinance.**

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2 PASSED AND APPROVED this 22nd day of October, 2001, by the Santa Fe County
3 Board of County Commissioners.
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PAUL DURAN, CHAIRMAN



15
16 Rebecca Bustamante
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18 REBECCA BUSTAMANTE
19 COUNTY CLERK
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COUNTY OF SANTA FE 1181,600
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 20 day of Nov, A.D.
20 01 at 2:10 o'clock P.m.
and was duly recorded in book 2014
page 430-435 of the records of
Santa Fe County

22
23 APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

24
25 Steven Kopelman
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27 STEVEN KOPELMAN, COUNTY ATTORNEY
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Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.
Maggie Baker
Deputy

33 CERTIFICATE OF FILING

34
35 I, Rebecca Bustamante, County Clerk, do hereby certify that the foregoing ordinance, designated
36 as Ordinance, No. 2000 - 12, was filed in my office on the 20th day of November, 2000, in
37 Book Number 2014 at Page 430-435.
38

39 SANTA FE COUNTY CLERK

40
41 Rebecca Bustamante
42 REBECCA BUSTAMANTE
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2014435

Notice:

To be published two times in the **Public Notice** section of the **Legal Ads** of the paper on **October 29, and November 5, 2001:**

**SANTA FE COUNTY BOARD OF COMMISSIONERS
PUBLIC NOTICE**

Notice is hereby given that a public hearing was held before the Board of County Commissioners (BCC) on the 10th day of July, 2001 and the 22nd day of October 2001 at 5:30 p.m. in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico and the BCC adopted Ordinance **2001-14**, "An Ordinance amending and replacing Ordinance 2001-4, 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 and to Establish Provisions Under Which Development Can Proceed."

Santa Fe County Ordinance **2001-14** will become effective on December 20, 2001. Copies are available at the Santa Fe County Land Use Department, 102 Grant Ave., Santa Fe.

Please forward affidavit of publication to the County Land Use Administrator, P.O. Box 276, Santa Fe, New Mexico 87504-0276.