

1
2
3
4 **SANTA FE COUNTY**
5 *Ordinance No. 2001 - 14*
6
7

8 **AN ORDINANCE AMENDING AND REPLACING ORDINANCE 2001-4 AND**
9 **DECLARING A MORATORIUM ON NEW SUBDIVISIONS, LAND DIVISIONS AND**
10 **MASTER PLANS FOR PROJECTS SERVED BY EL DORADO UTILITIES INC. AND**
11 **ENCOURAGING CONSERVATION MEASURES WITHIN THE EL DORADO**
12 **UTILITIES INC. SERVICE AREA AND TO ESTABLISH PROVISIONS UNDER**
13 **WHICH DEVELOPMENT CAN PROCEED**

14
15
16 **Introduction**

17 This Ordinance amends and replaces Santa Fe County Ordinance 2001-4. Ordinance 2001-4 was
18 enacted following Ordinance 1996-4 and subsequent ordinances replacing Ordinance 1996-4 in
19 response to a seasonal drought and evidence that El Dorado Utilities, Inc. (EDU) was
20 experiencing a water supply shortfall. Evidence compiled and opinions rendered by County
21 staff, consultants, and the Office of the State Engineer demonstrate the potential for a long term
22 water supply shortfall for existing customers and undeveloped legal lots of record, and point out
23 the lack of a reliable source of supply for future development relying on the EDU system. The
24 findings of moratorium Ordinances 1996-4, 1997-5, 1998-4, 1999-4, 2000-2, 2000-14 and 2001-4
25 are herein incorporated by reference.

26
27 **A. THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS HEREBY**
28 **FINDS:**

- 29 1. El Dorado Utilities Inc. is a water utility providing service within the County (see attached
30 map).
- 31 2. Water sales in 1999 were about the same as 1998, whereas the number of customers steadily
32 increased at an average of about 10 to 12 per month. Building and real estate activity on existing
33 lots is brisk according to the County building permits desk.
- 34 3. Groundwater use in the EDU service area increased five fold from 1985 to 1995. According
35 to EDU estimates, at build out water requirements of the system will more than double from
36 1995 levels.
- 37 4. Although the County has experienced a modest real estate slowdown in recent years, the
38 Eldorado area share of total County permits for single family construction was about the same
39 from 1995 through 1997. In 1998 and 1999 the Eldorado fire district exceeded others in the
40 County for residential development permits issued.
- 41 5. EDU has exaggerated its true, legal water producing capabilities. The utility has made no
42 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. 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. If an applicant has a well(s) and water rights that are transferred to the EDU water
8 system, he or she can then take service for the development of the amount of water
9 transferred minus 20% to account for leakage from EDU. The applicant shall furnish
10 funds for the County to hire an independent hydrologist to prepare the geohydrological
11 report and to determine whether production from the well will impact EDU or any other
12 water user in the area. Only applicants whose wells do not impact EDU or any other
13 water user and who can demonstrate a 100-year water supply for the proposed
14 development in accordance with Article VII, Section 6.4.2 shall be allowed to proceed with
15 their application under this section. At least two weeks prior to drilling a well and
16 conducting any geohydrologic investigations of the area, the applicant shall provide written
17 notice to the County Hydrologist so that public notice of the impending project can be
18 given.

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

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

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

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

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

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

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

PASSED AND APPROVED this 22nd day of October, 2001, by the Santa Fe County Board of County Commissioners.

[Signature]

PAUL DURAN, CHAIRMAN



[Signature]
REBECCA BUSTAMANTE
COUNTY CLERK



APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
STEVEN KOPELMAN, COUNTY ATTORNEY

1178 560
COUNTY OF SANTA FE
STATE OF NEW MEXICO } ss
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 30 DAY OF Oct A.D.
20 01 AT 11:10 O'CLOCK a.M
AND WAS DULY RECORDED IN BOOK 2000
PAGE 211-215 OF THE RECORDS OF
SANTA FE COUNTY
WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.

[Signature]
DEPUTY

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 30 day of Oct, 2001, in Book Number 2000 at Page 211-215.

SANTA FE COUNTY CLERK

[Signature]
REBECCA BUSTAMANTE

