

SANTA FE COUNTY

ORDINANCE NO. 1978- 1

AN ORDINANCE GRANTING COUNTRY CLUB ESTATES WATER UTILITY, INC. THE RIGHT, PRIVILEGE, AND NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN AND OPERATE IN AND FOR THE AREA DEFINED HEREIN A SYSTEM FOR THE COLLECTION, TREATMENT, PUMPING, STORAGE, TRANSMISSION, DISTRIBUTION AND SALE OF WATER FOR A PERIOD OF TEN YEARS WITH PROVISIONS FOR WATER RIGHTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF SANTA FE, NEW MEXICO:

Article 1. - GRANT OF FRANCHISE. The County of Santa Fe, New Mexico (referred to in this ordinance as "County") grants to COUNTRY CLUB ESTATES WATER UTILITY, INC. (referred to in this ordinance as "Company") a nonexclusive franchise for the collection, treatment, pumping, storage, transmission, distribution and sale of water within the area defined in Schedule "A" of this ordinance (and referred to in this ordinance as "Service Area").

Article 2. - AUTHORITY TO CONSTRUCT SYSTEM. Subject to all the other provisions of this franchise, Company shall have the right to construct and maintain a water system for the collection, storage, pumping, treatment, transmission, distribution and sale of water within the service area (referred to in this ordinance as "the water system").

Article 3. - SERVICE AREA. Company shall provide water

service only in the area described in the plat and map contained in Schedule "A" of this ordinance. Within this area, Company will provide service to no more than 264 persons. If during the term of the franchise Company has reason to believe that the population of the service area will exceed the number of persons it is permitted to serve within two years, it shall immediately notify the County in writing. Company shall obtain the approval of the County prior to any extension of service to previously unserved areas within the service area or enlargement of existing service lines. Company will seek and obtain an amendment of this ordinance prior to seeking a Certificate of Public Convenience and Necessity from the Public Service Commission of the State of New Mexico for a service area other than that described in this ordinance.

Article 4. - WATER AVAILABILITY AND WATER RIGHTS.

Section 1. Acquisition of Water Rights. Company shall obtain water rights and water adequate to supply the service area. Company has obtained and will have the use of water rights equal to 22.4 acre feet per year (consumptive use) for the exclusive use of the service area. If Company fails to meet the requirements of this paragraph, this franchise shall be forfeited or, in the alternative, Company shall pay to the County the sum of \$100.00 per day for each day the Company does not meet the requirements of this paragraph.

Section 2. Valuation of Water Rights in Rate Base. Company shall include the cost of such water rights in its rate base at the lesser of

(A) their fair market value, or

(B) their original cost, plus

(1) the percentage increase of the Consumer Price Index maintained by the Department of Labor from the date of the acquisition of the water rights by Company or a subsidiary or parent organization of company to the date of inclusion of the water right in Company's rate base, minus

(2) the net income derived by Company, or a subsidiary or parent organization of Company from the use of the water right by Company, or its parent or subsidiary organization since the date of its acquisition by Company, or its parents or subsidiaries.

(3) The Company will provide County with the amount, location, and purchase price and date of all water rights and associated land owned or purchased by the Company and its subsidiaries or parents. The Company will also provide to the County the purchase price, amount, location and disposition of any land attached to the acquisition of water rights which have been included in its Water Rate Base. The Company shall update this information when water and associated land purchases are made by either the Company, its subsidiaries or parents. The information shall include the sale price of any land separated from water rights and sold, and the value, use and amount of any rights which have been transferred for use in the Company's water system. The County agrees to protect the confidentiality of all such information provided by the Company.

Article 5. - CURTAILMENT. If Company determines that any curtailment or restriction of service is necessary in the service area it shall follow the following procedure -

Section 1. Company shall present its plan for restriction or curtailment of service to the County.

Section 2. The County shall approve the proposed plan or provide to the Company in writing suggested changes in the plan.

Section 3. The Company shall then incorporate any changes suggested by the County in any plan submitted to the Public Service Commission, or it shall include the changes suggested by the County in its written submission to the Commission, together with a statement explaining the Company's failure to include these changes in its proposed plan.

Section 4. Company shall provide the County a copy of any petition to obtain a restriction of service or curtailment.

Article 6. - CONSERVATION. Company shall provide a water measuring device (meter) to measure the water utilized from any source to provide water to the service area. In addition, Company shall require each residence, place of business, or other person or entity to whom service is provided to utilize an individual meter. Company shall keep records of meter usage in a form prescribed by the County and shall make such records available to the County upon request. Company shall present a plan for general use restriction to encourage conservation in a form acceptable to the County.

Article 7. - RIGHT OF WAY AND EXCAVATIONS.

Section 1. Right of Way. Subject to the provisions of this article and to the other provisions of this ordinance, Company shall have the right to install, remove, change, alter, extend, lay, operate or maintain the water pipes, hydrants, valves and other equipment of the system upon, across, or under any street, alley, road, highway or other public place now or hereafter dedicated, owned or controlled by the County within the County limits.

Section 2. Permit and Inspection Requirements. Prior to installation, construction, replacement, repair or removal of any pipeline or any other devices required or useful in the proper operation of the Company's water system on property dedicated to, owned or controlled by the County and prior to any excavation on property dedicated, owned or controlled by the County, Company is required to obtain a permit from the County and to pay the fee established by the County. Such permits shall be granted pursuant to regulations established by the County. The County may require that Company post a bond or other security to insure the proper performance of excavation work or the restoration of any other disturbance of County property or right of way in conformity with the conditions of the permit.

Section 3. Inspection. All County property on which work is done by Company shall be restored by Company according to the conditions of the permit. Any work done pursuant to a permit shall be subject to inspection by the County. If the County determines that the work done has violated any of the con-

ditions of the permit or any of the provisions of this ordinance, Company shall, at its own cost and expense, correct the violation as required by the County.

Article 8. - REPORTS.

Section 1. Annual Report. At least once each year Company shall prepare an annual report in a form to be determined by the County. Copies of this report shall be sent to the Metropolitan Water Board and to the Utilities Committee of the City Council of the City of Santa Fe. This report should include but not be limited to the following subjects: water usage, financial status, present and projected capital improvement programs, projected modifications of the water system, projected rate requirements, and other information pertinent to the operation of the system under the terms of this franchise ordinance. The information provided in such reports shall be a public record. Company, at the request of the County, shall hold appropriate meetings to discuss the report.

Section 2. Development Plan and Construction Procedures. Each year Company shall submit a development plan for water production facilities, water transmission lines, water distribution lines, water pumping facilities or water storage facilities for County review prior to commencement of construction.

A.. Information related to the construction of new facilities shall include the following:

(1) a description of the present or anticipated deficiency in the supply system which the Company seeks to alleviate,

(2) a description of the facility to be constructed and an exposition of the method and duration of alleviation of the above described deficiency.

(3) an estimate of the construction cost of the proposed facility, and

(4) a description of any other alternative action serving to alleviate the deficiency, the estimated cost of such alternatives, and the reasons why each were rejected in favor of the proposed alternative.

B. Within 60 days after submittal of this information, County will submit to Company written comments and recommendations concerning the proposed construction. If the County does not recommend endorsement of the proposed Company action, the County shall then meet with the Company to develop a recommended course of action acceptable to the County and the Company.

C. After the County has endorsed the recommended action, the Company shall submit the following information;

(1) a list of all contractors who bid on the construction job, the price quotes and description of work to be performed by each, and

(2) the reasons for selecting the proposed contractor.

Within two weeks of submitting this information, the Company will meet with the County to discuss the Company's proposed selection of a contractor. After this review, the Company may proceed with any construction work.

D. Within two weeks of completion of said construction

work, the Company shall submit to the County a statement of actual time and cost of the construction work, and justify any deviations from the estimates submitted by the selected contractor. In the event the County approves the development of a new subdivision to be served by Company, the developer shall have the opportunity to construct the subdivision water supply system or to subcontract this work to the Company or any other company capable of performing the necessary work. In all cases, the supply and distribution system must be constructed to meet Company design specifications.

Section 3. Quarterly Report. If the water system of Company has more than 200 hook-ups, Company agrees to provide quarterly reports in a simplified form to be determined by the County.

Section 4. Corrective Action. If the County determines from the reports provided by Company that Company has either acted or proposed to act in violation of any of the provisions of this ordinance, Company agrees to take corrective action as determined by the County.

Article 9. - APPLICABILITY OF COUNTY GENERAL PLAN AND COUNTY LAND DEVELOPMENT CODE - COOPERATION WITH METROPOLITAN WATER BOARD. Company shall conform the planning, construction, and operation of the water system to the County General Plan and the Land Development Code as they may be adopted and amended by the County. Company shall cooperate with the Metropolitan Water Board and any programs developed by it.

Article 10. - COMPANY'S RESPONSIBILITIES. In addition to requirements imposed by the other provisions of this franchise,

the following responsibilities are imposed on Company.

Section 1. Maintenance. The water system shall at all times be maintained in good working order.

Section 2. Proper Construction. The Company shall utilize generally accepted techniques to construct the water system. The County may require that construction to be undertaken must be compatible with the water system serving the City of Santa Fe.

Section 3. Quality of Water. The water system shall provide water which meets standards set forth in the Federal Safe Drinking Act (PL 93-523) as it may be amended.

Section 4. Cooperation and Review with the County. Company agrees to discuss and review with the County any action which could lead to an increase in water rates. Company agrees to prepare a cost effectiveness analysis of such actions prior to their implementation.

Section 5. Company agrees that if and when the water system becomes a part of the regional water system for the Metropolitan area of Santa Fe it will transfer any water rights owned by it to such a system upon such terms and conditions as may be mutually agreed upon by the parties.

Article 11. FIRE PROTECTION. Company agrees to provide piping and hydrants necessary to assure adequate fire flow and storage according to standards set forth in the County Subdivision Regulations and the County Land Development Code when adopted.

Article 12. RATES.

Section 1. At least 90 days prior to the filing of any application to the Public Service Commission for a change in

the rates charged for water service or the regulations of Company governing water service, Company agrees to submit proposed rates to the County for comments and suggested changes. Company agrees in making its rate proposals to state how the following factors have been taken into account:

A. That water in Santa Fe County is a scarce resource which must be conserved as much as possible.

B. That water rates should be set to provide a price incentive for decreased water use.

C. That water rates should be set so as to properly reflect the long term incremental costs of providing additional amounts of water to the service area.

D. That rates should be designed to exclude service charges for residential hook-ups - minimum use charges are acceptable.

Section 2. No later than 60 days after submission of the proposed changes in rates, the County shall approve the proposed rates or provide to the Company in writing suggested changes in the rates.

Section 3. The Company shall then incorporate any changes suggested by the County in any rates submitted to the Public Service Commission, or it shall include in its written submission to the Commission the changes suggested by the County together with a statement explaining the Company's failure to include these changes in its proposed rates.

Article 13. PIPING SYSTEMS FOR SERVICE AREA. Company shall provide an adequate piping system for its service area according to generally accepted standards. All lines within the service area shall be looped unless otherwise approved by the County.

Article 14. HOLD HARMLESS PROVISIONS. Company shall assume and pay all liabilities for damage to persons or property which may arise from negligent construction or negligent operation of any or all parts of the water system, or its appurtenances, that may be erected or constructed and shall save the County, its officers, agents and employees harmless from, and defend them from, any and all liability that may arise or be incurred from Company's

negligent operation or negligent construction of the same.

Article 15. TERM OF FRANCHISE. The term of the franchise granted under this ordinance is ten years. No extension or renovation of the franchise granted under this ordinance shall be provided unless Company acquires permanent water rights to provide adequate service in its service area. The rights which it will be necessary for Company to acquire in order to satisfy the provisions of this Article are currently estimated to be 11 acre feet per year (consumptive use). Company shall include a detailed description of its progress in obtaining such water rights in the annual report.

Article 16. VALUE OF FRANCHISE. In the event that the County or the successor in interest of the County shall at any time hereafter acquire by purchase or otherwise the water system described herein, the value of this franchise shall be arbitrarily fixed and determined at the sum of \$1.00 and no more.

Article 17. FRANCHISE TAX. Company, in consideration for the granting of this franchise and as rentals for the occupation and use of the property and right of way of the County, shall pay to the County the following amount:

Section 1. The lesser of (1) the actual costs of the County directly attributable to the supervision of the provisions of this franchise or (2) 2% of the gross receipts of Company, less gross receipts tax billed to customers, received from sales within the service area during each year for water sold from the water system and consumed within the County. Company shall make such payments on or before January 30th of each year while this franchise shall remain in force and effect.

Article 18. RULES AND REGULATIONS. Company shall file with the Public Service Commission reasonable rules and regulations for the conduct of its business. Company shall notify the County 30 days prior to filing any proposed amendments to its water rules and regulations.

Article 19. FORFEITURE. If Company fails to comply with any of the provisions of this ordinance, the County may:

A. declare this franchise to be forfeited by giving notice in writing to Company, or

B. provide to Company in writing a notice specifying the violation. If the violation or violations are not corrected within the specified period, the County may levy as a penalty a sum of up to \$100.00 per day until such violation or violations are corrected.

Article 20. RELOCATION. Company shall bear the cost of any relocation of any part of its water system which may be reasonably required because of the change of use or regrading, re-routing, improving or widening of any County property, street or right of way; provided that if funds over and above the total cost of the project causing the relocations are available from state or federal sources, the County agrees to use all reasonable efforts to obtain these funds to defray the cost of relocation.

Article 21. AMENDMENTS. At any time during the period this ordinance is in effect, either Company or the County may propose amendments to it by giving 30 days written notice to the other of the proposed amendment desired, and both parties shall within reasonable time negotiate in good faith in an effort to agree upon

mutually satisfactory amendments.

Article 22. ACCEPTANCE. Company shall file in the office of the County Clerk of the County a written statement of acceptance duly signed and acknowledged by officers of Company authorized to execute such acceptance, and when accepted this ordinance shall be a contract between the County and Company. In the event such acceptance is not filed within 30 days after passage of this ordinance the rights, privileges, and the franchise granted shall be void; provided the County may, by resolution, extend the time allowed for the filing of such acceptance for an additional period of 30 days.

Article 23. SEVERABILITY. If any part of this franchise is held invalid, the remaining portions of the ordinance shall not be affected. If any portion of this franchise is held invalid, the parties shall negotiate in good faith to replace the provisions held invalid.

PASSED, ADOPTED AND APPROVED by the Board of County Commissioners of Santa Fe County, as Ordinance No. 1978- 1, this 6th day of February, 1978.

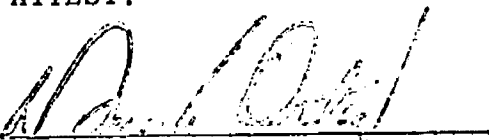
BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

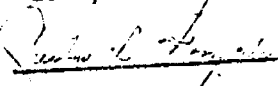
BY: Arthur E. Trujillo
Arthur E. Trujillo, Chairman

358637

This ordinance was recorded in the Santa Fe County
Ordinance Book on _____, 1978.

ATTEST:


DANNY ORTIZ
Santa Fe County Clerk

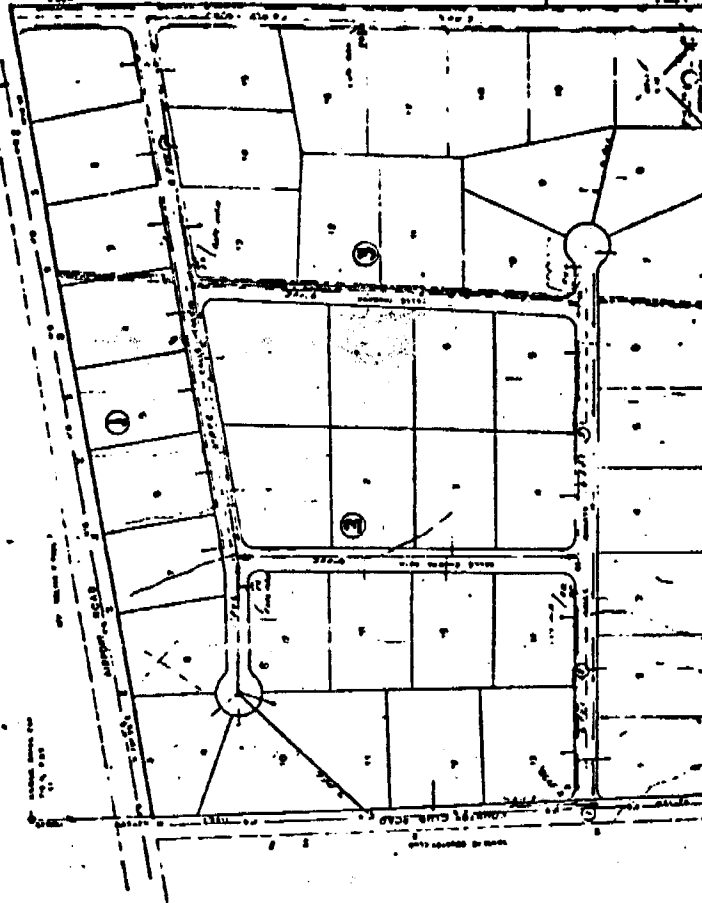
COUNTY OF SANTA FE	SS
STATE OF NEW MEXICO	
I HEREBY CERTIFY THAT THIS INSTRUMENT	
WAS RECORDED ON THE _____ DAY OF _____	
TO _____ AT _____ O'CLOCK _____	
AND WAS FULLY RECEIVED IN MY BOOK 358	
PAGE 623-637	
Witness in _____	
DANNY ORTIZ	
County Clerk, Santa Fe County, N.M.	
	
Deputy	

SCHEDULE "A"

358636

COUNTRY CLUB ESTATES

SAVING COMPANY 1918 MEMPHIS



Legend:
--- road with center
--- road without center
--- railroad
--- electric line

Water Distribution System

