

# SANTA FE COUNTY

## *Ordinance No. 1996-4*

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**AN ORDINANCE DECLARING A WATER EMERGENCY WITHIN THE  
SERVICE AREA OF ELDORADO UTILITIES AND REQUIRING MANDATORY  
CONSERVATION MEASURES AND IMPOSING A DEVELOPMENT  
MORATORIUM**

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A. The Santa Fe County Board of County Commissioners hereby **FINDS**:

1. Eldorado Utilities is a utility company providing water service within Santa Fe County (A map of the Eldorado Utilities service area is attached to this ordinance as Exhibit A).
2. In a March 1996 letter to County staff, the utility indicated that it is currently serving 2015 residential customers and 26 commercial establishments in Santa Fe County.
3. In addition to current customers, Eldorado Utilities has told County staff that it has committed to provide future service to almost 1600 additional residences and four additional commercial establishments.
4. Both County staff and the State Engineer's Office have encountered long-standing difficulty in obtaining accurate and up to date information about water supply, production capacity and user demands on Eldorado Utilities' system.
5. In 1993, Eldorado Utilities and Santa Fe County entered into a written agreement which stated that the County and the utility did not agree on the yield from the utility's wells but then went on to recognize a projected yield of 1641.06 acre feet per year from 16 wells.
6. County staff has recently learned that seven of the wells identified by the utility as contributing to this projected yield were not producing water at any time between January 1991 and the present and did not yield any of the water Eldorado Utilities projected they would yield.

7. In addition, based on production summaries provided by Eldorado Utilities, the nine wells which have actually been producing cannot be relied upon to produce the yields projected by Eldorado Utilities. Many of these nine producing wells have consistently produced less water than Eldorado Utilities projected in 1993.

8. The State Engineer's office currently is not able to give the County favorable opinions on the water supply plan of any subdivider who proposes to hook up to Eldorado Utilities as its source of water supply for a new development. This is, in part, because of litigation brought by the State Engineer against Eldorado Utilities challenging the legal right of Eldorado Utilities to use certain wells and, in part, due to a lack of data about Eldorado Utilities system, water inventory and operations.

9. A February 9, 1996 State Engineer's office memorandum indicated that the State Engineer's office will continue to give negative opinions unless and until it receives information which demonstrates that Eldorado Utilities can assure the required water availability.

10. Based on information provided by the State Engineer's Office, there are questions about whether Eldorado Utilities has sufficient water rights to provide a reliable water supply presently or in the future.

11. Insufficient geohydrological data has been provided by the utility to demonstrate whether the utility can provide a reliable water supply presently or in the future.

12. In early April, 1996, Eldorado Utilities applied to the State Engineer for an "emergency permit" to add an "exploratory well" to the nine wells which have been serving the system.

13. The emergency permit application and accompanying documents filed by Eldorado Utilities with the State Engineer's Office indicate that there would be serious harm to domestic supplies, including fire protection, without the requested emergency authorization. In addition, the material submitted to the State Engineer by Eldorado Utilities indicates that the utility has been experiencing a diminution in the capacity of certain wells and has relied upon well RG 18529 to compensate. However, the capacity of RG 18529 has also diminished recently. This well, originally capable of producing over 300 acre feet per year, has recently dropped to about 100 acre feet per year, creating what Eldorado Utilities referred to as a "dire need" to supplement its system.

14. In the 1993 agreement, Eldorado utilities listed the projected yield of RG 18529 as 535.83 acre feet per year.

15. Hydrologist Jack Frost, working under contract with the County, has preliminarily concluded that, in 1994 and 1995, RG 18529 provided approximately 30% of the water to the Eldorado Utilities system.

16. Pumping summaries recently received by County staff from Eldorado Utilities indicate no record of water pumped by RG 18529 between January and March 1996.

17. In making the emergency authorization to add an exploratory well to the system, the State Engineer's Office stated that the capacity of RG 18529 has decreased such that a supplemental well is necessary to continue the supply of water for domestic supplies, including fire protection, and further stated that an emergency exists requiring the emergency authorization to prevent serious economic loss to Eldorado Utilities.

18. The emergency authorization to use the exploratory well is temporary and will expire on September 8, 1996.

19. The emergency authorization limits the pumping of the exploratory well to 75 acre feet.

20. In connection with the emergency authorization, the State Engineer's Office has required Eldorado Utilities to submit a water conservation plan by September 8, 1996.

21. Working under a contract with Santa Fe County, hydrologist Jack Frost has preliminarily determined the following:

- A. Eldorado produces approximately 251 gallons per day per household (including system losses which were approximately 43% in 1994);
- B. Eldorado Utilities' physical production capability is stretched and is just barely keeping up with current demand;
- C. The production of RG 18556 (the Lamy well) has fallen from a summer maximum of 229 gallons per minute in 1995 (almost 50% of the system's production) to less than 32 gallons per minute in February 1996;
- D. All of the system's wells are producing at low rates;
- E. The system's production in February 1996 was at a 24 month low;
- F. Between 1993 and 1995 eight out of nine system wells had a proven capacity significantly less than their Public Utility Commission rated capacity;

G. In 1995, approximately 63% of the system's needs were supplied by wells RG 18529 and RG 18556 (the Lamy well), which are currently either out of service or producing at very low rates;

H. The Eldorado Utilities system cannot meet the equivalent of last year's peak demand without the production historically provided by RG 18556 (the Lamy well);

I. The Eldorado Utilities system may not be capable of meeting the coming summer's demand, let alone the prospect of additional hook ups;

J. An emergency water supply shortfall is emerging in the Eldorado area and will be exacerbated by growth and increase in demand. With key wells down, overall declines and round the clock pumping, the system is presently at its maximum.

22. Under these circumstances, the system has virtually no cushion for storage, fire protection, line breaks, system losses, well failures, dry periods, or usage spikes.

23. On April 11, 1996, County staff learned of a water emergency in Eldorado Utilities' service area.

24. On the morning of April 11, 1996, Eldorado Utilities staff informed the Santa Fe County Fire Marshal of the following:

A. That the exploratory well had been drilled and they expected it to pump approximately 100 gallons per minute once it went on line;

B. There had been a big usage spike the previous Sunday with Eldorado Utilities customers using three times more water than on the previous Friday;

C. The water level at the Lamy well (RG 18556, Eldorado Utilities' largest producing well) was down 50' and had dropped below the level of the pump, rendering the well inoperable;

D. The remaining operational wells were being pumped 24 hours a day; and

E. There were 750,000 gallons of water in storage, with one storage tank with a capacity of approximately 850,000 completely dry.

25. On the afternoon of April 11, 1996, Eldorado Utilities staff informed the Santa Fe County Fire Marshal of the following:

A. The exploratory well was on line and producing approximately 110 gallons per minute;

B. The Lamy well was not pumping;

- C. A total of nine wells (including the exploratory well and excluding the Lamy well) were pumping 24 hours a day;
- D. Total pumping capacity was approximately 305 gallons per minute;
- E. Daily consumption averages approximately 300,000 gallons (208 gallons per minute);
- F. The water levels in all wells had dropped and the pumping capacity of all wells had diminished; and
- G. The utility would be grateful for an emergency ordinance mandating water conservation and would support it.

26. However, based on the pumping summaries provided to County staff by Eldorado Utilities in March, 1996, average daily diversion from all wells in 1995 was 448,756 gallons (311 gallons per minute) and significantly higher during the summer months (610,362 gallons per day and 423 gallons per minute between June and August 1995).

27. Using the daily figures provided in the pumping summaries, the Fire Marshal and other Santa Fe County staff made calculations indicating that, if trends continued, stored water would be necessary to meet water service demands and that fire protection would be compromised as storage amounts dropped.

28. County staff distributed literature and otherwise publicized the crisis, encouraging water conservation in the area, which alleviated the crisis somewhat.

29. Using the pumping summaries provided by the utility, County staff projects that in the coming summer, the utility will have trouble producing enough water to meet last year's peak summer demand. Projecting added demand based on actual growth in the area since last year, County staff is concerned that the utility may not be able to meet 1996 summer peak demands. This concern is worsened by the recent loss of the utilities' two largest producing wells.

30. In the area of fire protection, Santa Fe County has had long-standing problems with Eldorado Utilities.

31. Section 6 (J) 4 of the Santa Fe County Fire Code (1991-7) requires that hydrants be tested by a qualified person in the employ of a water system twice annually, to provide the test results to the County Fire Marshal, to mark any deficient hydrants and to remedy any deficiencies within two weeks.

32. Eldorado Utilities was not providing the required information. Consequently, Eldorado Utilities entered into a contract with the Eldorado Volunteer Fire Department for the required testing of the hydrants in its system.

33. Eldorado Utilities requires the Eldorado Fire Department to get the permission of Eldorado Utilities before any hydrant tests. However, Eldorado Utilities frequently refuses to allow hydrant tests, claiming that there is insufficient water to do the tests.

34. Despite frequent requests, the Eldorado Fire Department was only able to test each hydrant once during 1995 instead of twice as required.

35. There are numerous hydrants in the Eldorado Utilities system which have been out of service for a year or more in violation of the County Fire Code.

36. Section 6 (H) 5 of the Santa Fe County Fire Code (1991-7) requires that the absolute minimum fire flow for commercial developments is 1000 gallons per minute for two hours.

37. The Uniform Fire Code, which has been incorporated into the Santa Fe County Fire Code, requires a water supply in reservoirs, tanks, mains or other fixed systems, capable of supplying the required fire flow. The required fire flow of 1000 gallons per minute for two hours equates to required storage of 120,000 gallons dedicated for fire flow.

38. Eldorado Utilities provides service to approximately 26 commercial buildings and developments, including several located in the Agora shopping center.

39. Based on information provided to Santa Fe County staff by the utility, it appears that Eldorado Utilities is not capable of providing the required water supply or fire flow for the commercial buildings and developments within its service area.

40. In a March 1996 letter to County staff, the utility stated that: "EUI attempts to provide 500 gallons per minute for two hours of fire protection purposes in all areas of its system."

41. Eldorado Utilities has no water storage which is "dedicated" for fire protection but uses all storage tanks for both fire protection and domestic service.

42. New Mexico Public Utilities Commission Rule 750.12 requires utilities to keep 2.5 times average daily use in storage.

43. In the case of Eldorado Utilities, this would require well over a million gallons in storage (based on the utilities' 1995 pumping summaries) plus the required 120,000 gallons for fire protection.

44. Eldorado Utilities has recently reported to County staff that it has the following five (5) storage tanks:

- A. A 500,000 gallon tank located in the Dos Griegos serving "Zone 1" (7044'-6929' in elevation);
- B. A 250,000 gallon tank on Monte Alto Road serving "Zone 2" (6929'-6814' in elevation);
- C. A 250,000 gallon tank on Avenida Eldorado serving "Zone 3" (6814'-6699' in elevation);
- D. A 835,600 gallon tank on Avenida Vista Grande serving "Zone 4" and "Zone 5" (6699'-6584' in elevation); and
- E. A 50,000 gallon tank serving the Ridges, Cimmaron, La Lumbre and other subdivisions.

45. However, the large tank at Vista Grande has frequently been less than full or almost empty.

46. Water stored in the large tank at Vista Grande cannot be recovered for use elsewhere in the system. A leak, a fire or other high use anywhere outside the immediate area served by this tank cannot be replenished by water stored in this tank.

47. The amount of water stored by Eldorado Utilities is frequently below the amount required by the Public Utility Commission and below the amount required for fire protection.

B. The Santa Fe County Board of County Commissioners therefore concludes and **DECLARES** that the diminishing production capacity of Eldorado Utilities, continuing growth and high water demand in the area, and the failure of Eldorado Utilities to properly develop and maintain adequate storage and fire protection has created a water emergency within the service area of Eldorado Utilities. The Santa Fe County Board of County Commissioners further concludes and **DECLARES** that this water emergency is creating an immediate danger to the public health, safety and welfare.

C. **WHEREFORE**, the Santa Fe County Board of County Commissioners **ADOPTS** the following requirements and prohibitions:

1. All customers within Eldorado Utilities' service area shall be subject to the following mandatory conservation measures:

A. Any watering of lawns, gardens, yards or landscaped area shall be limited to the hours between 8:00 p.m. and 6:00 a.m. and shall be controlled to prevent any runoff from the lawn, garden, yard or landscaped area onto any paved or unplanted surface;

B. Non-critical uses of water such as vehicle washing, hosing down pavement, or filling any private pool, outdoor tub or ornamental water feature such as a fountain is strictly prohibited; and

- C. Lawns, gardens, yards or landscaped areas may not be expanded.
2. All customers within Eldorado Utilities' service area are encouraged to use gray water systems, xeriscaping and rain collection devices.
3. Any new construction, remodeling, and fixture and appliance replacement shall meet the following requirements:
- A. Inclusion of water saving fixtures and appliances, including but not limited to low flush toilets, low flow fixtures, and insulation of hot water pipes. Toilets shall use no more than 1.6 gallons per flush; shower head flows shall not exceed 2.5 gallons per minute; and faucet flow shall not exceed 2.5 gallons per minute;
  - B. Evaporative coolers must circulate bleed-off water;
  - C. Dishwashers shall use no more than 13 gallons in a regular cycle and shall have a cycle adjustment which allows reduced water to be used for reduced loads;
  - D. Washing machines shall use no more than 43 gallons in the regular cycle and shall have cycle or water level adjustments which permit reduced amounts of water to be used for reduced loads;
  - E. Low water use landscaping techniques applying the principles of xeriscaping shall be utilized. Lawn of non-native grasses shall not exceed 800 square feet per lot, and native grasses and plant species may be watered only during the first year of their growth, and on a supplemental basis only during critical growth periods. However, non-native species may be watered if the water comes from rain water collected by means confined to the property or if the water comes from recycling of household gray water;
  - F. All water system service connections shall be metered with a Santa Fe County approved meter. Meter readings shall be recorded at least annually within two weeks of January 1<sup>st</sup>. Meter readings shall be provided to the Santa Fe County Code Administrator at his request.
4. Installation of a swimming pool, outdoor tub or ornamental water feature such as a fountain shall be prohibited for new construction or remodeling.
5. No person, firm, corporation, governmental entity or operation within Eldorado Utilities' service area shall waste water or cause or permit water to be wasted. For the purpose of this emergency ordinance "waste" means any non-beneficial use of water, including but not limited to the following:
- A. Landscape water applied in such a manner, at such a rate, or in such a quantity, that it overflows the landscaped or planted area being watered and runs onto driveways, sidewalks, paved surfaces, public rights of way or adjacent property;

B. Landscape water which is directed through a sprinkler or other watering device in such a manner or such a direction as to spray onto driveways, sidewalks, paved surfaces, public rights of way or adjacent property;

C. Hosing, washing or spraying hard surfaces such as parking lots, driveways, sidewalks, houses or windows when water is applied in sufficient quantity to flow from those surfaces onto adjacent property or onto public rights of way; and

D. Causing or allowing water to be lost through leaky pipes, toilets, faucets or other wasteful appliances in any home, apartment, commercial or industrial location.

6. Nothing in this ordinance shall apply to the following:

A. Flow resulting from fire fighting or the testing of fire hydrants;

B. Flow necessary for aquifer and well pump or performance tests approved and supervised by the Santa Fe County Hydrologist;

C. Water for construction or other activities if required by state, federal or county law, regulations or standards;

D. Water applied to abate spills of flammable or other hazardous materials; and

E. Water which reaches paved areas, driveways, sidewalks, adjacent property or public rights of way as the direct result of vandalism, wind and weather emergencies, or acts of God.

7. The Santa Fe County Code Administrator and his designees shall be responsible for the administration and enforcement of these mandatory conservation measures and may prescribe policies, rules or regulations in order to facilitate administration and enforcement. In the course of administering and enforcing these measures, the following shall apply:

A. The Santa Fe County Code Administrator has authority to permit exceptions to the requirements of this ordinance in any case to maintain and protect adequate health, safety and sanitation;

B. On determination by the Santa Fe County Code Administrator or his designee that a violation of this ordinance has occurred, the Administrator or his designee shall do one or any combination of the following:

1. Issue a verbal and/or a written warning to the responsible party to abate the violation immediately;

2. Issue a written citation; or

3. Apply to the District Court for a restraining order or injunction enjoining and ordering the immediate abatement the violation.

C. Upon conviction, a responsible party shall be deemed guilty of a misdemeanor and shall be punished by a fine of up to three hundred dollars (\$300.00).

E. Each and every occasion on which this ordinance is violated shall be considered a separate offense.

8. No applications for new land divisions, master plans and subdivisions will be accepted by the Santa Fe County Land Use Administrator or his staff and no pending applications for land divisions, master plans or subdivisions will be acted upon by the Santa Fe County Land Use Administrator, his staff, the County Development Review Committee or the Santa Fe County Board of County Commissioners for any property within Eldorado Utilities' service area.

9. No applications for new land divisions, master plans and subdivisions will be accepted by the County Land Use Administrator or his staff and no pending applications for land divisions, master plans or subdivisions will be acted upon by the Santa Fe County Land Use Administrator, his staff, the County Development Review Committee or the Santa Fe County Board of County Commissioners for any property within Eldorado Utilities' service area. The time during which this ordinance is in effect shall not be used in calculating the period of the validity of an approved master or preliminary plan in accordance with the Santa Fe County Land Use Code.

10. Applications for building or development permits for residential construction within Eldorado Utilities' service area will be acted upon by the County Land Use Administrator or his staff but all building or development permits issued will be subject to the mandatory conservation measures outlined in this ordinance and the issuance of any such permit will be specifically contingent on the permittee's adherence to the mandatory water conservation measures outlined in this ordinance.

11. Nothing in this ordinance shall prevent or prohibit the construction of any fire stations or fire protection facilities within Eldorado Utilities' service area.

12. The provisions of this ordinance shall apply within the service area of any successor to Eldorado Utilities if the ownership, name or management of the utility changes while this ordinance is in effect.

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

14. This ordinance shall take effect on the earliest date allowed by law following passage by the Santa Fe County Board of County Commissioners.

15. County staff shall present updates on the water situation within the Eldorado Utilities' service area at regularly scheduled meetings of the Santa Fe County Board of County Commissioners approximately 90 days and 180 days from the effective date of this ordinance.

16. This ordinance shall remain in effect until the earlier of one year from its effective date or until Eldorado Utilities has demonstrated, to the satisfaction of the Santa Fe County Board of County Commissioners, that Eldorado Utilities has succeeded in the following:

- A. Supplementing or managing its water supply so that supply is adequate to reliably meet existing demand, fire protection needs and storage requirements even in periods of relatively high use and low production;
- B. Establishing that sufficient supply is available for sustainable growth and expansion of its system; and
- C. Complying with all applicable provisions of the Santa Fe County Fire Code.

APPROVED, ADOPTED AND PASSED this 24 day of April, 1996.

Board Of County Commissioners

*Richard D. Anaya*  
Richard Anaya, Chairman

943-562

COUNTY OF SANTA FE 188  
STATE OF NEW MEXICO  
I hereby certify that this instrument was filed for record on the 30 day of APR, A.D. 19 96, at 10:42 o'clock a . m and was duly recorded in book 1265, page 421-432 of the records of

Santa Fe County.  
Witness my Hand and Seal of Office  
Jona G. Armijo  
County Clerk, Santa Fe County, N.M.



*Jona G. Armijo*  
Jona G. Armijo, County Clerk

Approved as to Form:

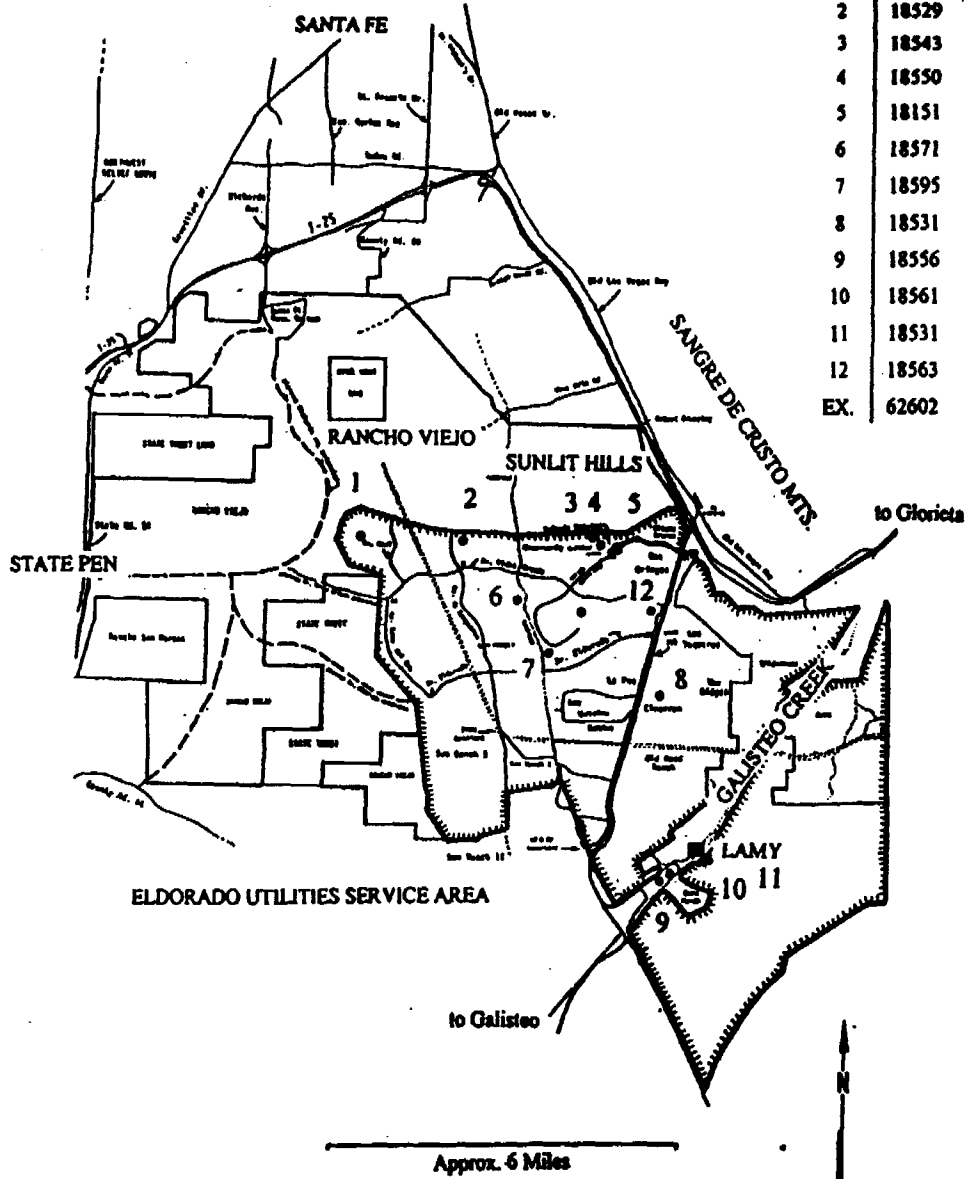
*Steven Kopelman*  
Steven Kopelman, County Attorney

*Rune* *Chalota*  
Deputy



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**LOCATION MAP  
ELDORADO UTILITIES SERVICE AREA  
WITH LOCAL FEATURES**

**FROST & ASSOCIATES**  
Hydrologists, Geologists, Ltd. Co.

Page

Figure

EXHIBIT "A"