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SANTA FE COUNTY

Ordinance No. 1998 - 4

1476633

“An Ordinance Amending and Replacing Ordinance 1997-5 and Declaring a Moratorium on New Subdivisions Serviced 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 1997-5. Ordinance 1997-5 was declared following 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 State Engineer Office 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 and 1997-5 are herein incorporated by reference.

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

1. El Dorado Utilities Inc. (EDU) is a water utility providing service within the County (see attached map).
2. Water sales in 1997 increased 13% from 1996, whereas the number of customers increased by 6%, and commercial sales doubled. Building and real estate activity on existing lots is brisk according to the media and the County building permits desk.
3. EDU ground water production has increased about 15% per year since the late 1970's. Average population growth in Santa Fe County was about 3% per year for the same period. Groundwater use in the EDU service

1 area increased five fold from 1985 to 1995. At buildout, water
2 requirements of the system will more than double according to EDU
3 estimates.

- 4 4. Although the County has experienced a modest real estate slowdown in
5 recent years, the Eldorado area share of total County permits for single
6 family construction was about the same from 1995 through 1997, about
7 14% of permits issued. The Eldorado fire district is second only to the
8 Edgewood fire district for all types of development permits issued in 1997.
- 9 5. EDU provides fire protection infrastructure and water storage in the
10 service area. The County Fire Marshal and Chief of the El Dorado Fire
11 area coordinate with EDU in the planning, review, and testing of fire
12 protection equipment in the area.
- 13 6. In several field tests of EDU's water distribution pipeline computer model,
14 the model failed to accurately predict field conditions. A final, working
15 model of the system has never been submitted to County Land Use.
- 16 7. EDU's Updated Master Plan dated October 1996, reported that in
17 September 1996, its water storage available for supply and fire protection
18 purposes was under required capacity in pressure zones 2 and 3. Zones 2
19 and 3 include portions of the Original Eldorado de Santa Fe subdivision.
20 No revision of this plan have been submitted to the County.
- 21 8. The EDU Updated Master Plan dated October 1996 reported that in
22 September, 1996 EDU possessed 789 gallons per minute (gpm) or 1270
23 AFY of production capacity from 11 wells, including the new well #13.
24 Well #13's emergency permit from the State Engineer was about to expire
25 at the time. The State Engineer (SEO), the Public Utilities Commission
26 (PUC), and the County Hydrologist estimate that the reliable and legal
27 production available to EDU was less than 650 AFY in 1996.
- 28 9. In the 1996 Updated Master Plan, EDU estimated it supplies 1,991 units.
29 The Master Plan estimated current production required is equivalent to
30 1,083 acre feet per year (AFY). Based on EDU records, EDU's highest
31 historical production was 502.7 AFY in 1995.
- 32 10. EDU has exaggerated it's true, legal water producing capabilities. The
33 Master Plan's "status of well production based on test flows and daily
34 operations" estimates production capability at 1014 gallons per minute
35 (gpm) or 1633 AFY. According to the PUC, in May, 1996, during a self
36 declared water supply emergency, with 11 active wells pumping 24 hours
37 per day, EDU was pumping 328 gpm (528 AFY, if sustained). Well #9,
38 the Lamy well, was dry at the time.

- 1 11. According to New Mexico law, beneficial use is the basis, the measure,
2 and the limit of the right to use water. The amount of water production
3 recognized as the water right for municipal use is typically estimated at 60
4 percent of the proven pumping capacity of a well, demonstrated by
5 historical beneficial use (often the highest historical annual volume).
- 6 12. The PUC estimated EDU's peak well production in 1996 was 319 gpm
7 (513AFY), using their standard analysis to evaluate water utilities. The
8 State Engineer's analysis, using a similar process, estimates EDU's
9 proven production capacity to be from 365 AFY (Dec. 1996 memo), to
10 473AFY, (January 9, 1997 addendum).
- 11 13. The Findings of Ordinance 1996-4 and 1997-5 list additional older data
12 supporting other estimates of EDU well production and potential water
13 rights. All regulatory agency's estimates are lower than EDU's assertions.
- 14 14. EDU well #9, the Lamy well, went dry in the spring of 1996. The Lamy
15 valley aquifer relies on seasonal recharge from Galisteo Creek. It
16 accounted for 36% of total 1995 production, and only 8% of the 1996 well
17 share. Because it is subject to drought regulatory agencies will not include
18 it in estimates of reliable reserves.
- 19 15. Of the 32 court order wells EDU is allowed to produce, 25 have
20 estimated or declared capacities less than 20 gallons per minute.
21 Declarations frequently exaggerate long term production potential.
22 Approximately twelve court order wells are currently hooked up to the
23 system. At least 4 wells were worked over and abandoned in the 1980's.
24 Several court order wells are in close proximity of one another, and
25 several have not been found in recent field checks. EDU has chosen to
26 drill at least 4 new wells in the last two years.
- 27 16. Several of the active wells have suffered significant declines in average
28 production over time, according to the State Engineer records. As much
29 as one third to one half of the early production capability, and water
30 column, has been lost in several wells, including well #2, their biggest
31 producer in 1996.
- 32 17. Worked over in 1997, well # 2 has never been returned to production, and
33 tests following it's work over have not been released to the County.
- 34 18. EDU's newest well, the Torreon well (well #13), was drilled to a total
35 depth of 1000 feet in 1995. The well only found about 40 feet of aquifer
36 within 100 feet of the water table, and plugged back to 300 feet.
- 37 19. Well #13 has been designated by the State Engineer Office (SEO) as
38 supplemental to well #2. Together these wells can share the historical

- 1 beneficial use established in well #2. The net result is that minimal new
2 water production has been added.
- 3 20. The Updated Master Plan allocates 400 gallons per minute to the 1996
4 exploratory program wells. No mention is made of the State Engineer
5 water rights application process in determining the legal right to produce
6 these wells. To date these wells lack the legal right to produce any water,
7 and their capability is unproven.
- 8 21. Although the exploratory wells were drilled in the summer of 1996, and
9 most were at least briefly tested, data and detailed interpretations of these
10 wells have not been released to the County.
- 11 22. The Santa Fe County Land Development Code requires that new
12 development prove the availability of a 100 year groundwater source in
13 specific wells.
- 14 23. EDU's consultant, Westwater Associates, states that "...long term ...tests
15 of existing and additional wells, (and) close monitoring ...in test wells will
16 be necessary in order to model or provide estimates of future long term
17 resource potential". This finding precludes production from these wells
18 being booked to EDU's long term water supply by the SEO or County
19 Hydrologist.
- 20 24. The Updated Master Plan allocates 150 gpm and 75 gpm to new wells
21 #10 and #11, which lie within the Lamy valley aquifer.
- 22 25. EDU's hydrogeologic consultant's estimate of wells #10 and #11 range
23 from 30-40 to 150 gpm, and 10-15 to 75 gpm, based on short well tests in
24 1995. These wells have yet to be put to beneficial use. Their 1970
25 declarations recognized by the State Engineer is 4.8 acre feet per year
26 each, not significant in terms of economics or additions to production.
27 Consequently, their contribution in the Lamy valley aquifer cannot be
28 estimated. They too are subject to drought.
- 29 26. There has been no demonstration or report submitted by EDU or others
30 analyzing the sustainable and reliable ground water supply that
31 incorporates the facts of water production and use over the last ten years.
32 Based on estimates by the State Engineer, the County Hydrologist, and the
33 PUC, EDU lacks the demonstrated capacity and water rights to serve
34 demand projected for build out of lots already approved in the service
35 area.
- 36 27. In 1996, under the County mandatory conservation program, EDU
37 customers consumed approximately 6000 gallons of water per month.
38 Overall well usage in 1996 was 81% of 1995 pumpage. In 1994 and 1995
39 the average groundwater produced to serve fewer customers ranged from

1 about 7000 to 8000 gallons per customer per month. According to data
2 submitted to the SEO and the PUC, EDU's "lost or unaccounted for"
3 water losses, i.e. gross water produced exceeding sales, averaged 32%
4 from 1991 to 1995.

5 28. In part because of the moratorium associated with Ordinance 1996-4,
6 EDU's reported unaccounted for water losses were significantly lower
7 than in proceeding years. EDU reports that they sold more water than they
8 produced in 1996.

9 29. EDU's Updated Master Plan estimates ultimate buildout, or "all known
10 proposed and infill" service to be 3740 connections, an 87% increase from
11 current. The Master Plan estimates that 2035 acre feet per year will be
12 required at that level of service. For comparison purposes, research by the
13 SEO and the County Hydrologist's estimate that EDU has demonstrated
14 the beneficial use of from 350 to 800 AFY. It is unlikely that EDU will
15 establish by beneficial use the water rights they declare.

16 30. County Staff estimates roughly 1000 approved and build-able lots exist in
17 EDU's service area unaffected by this Ordinance.

18 31. A February 9, 1996 SEO office memorandum indicated that the SEO will
19 continue to give unfavorable opinions on new subdivisions which propose
20 ED as a source of supply unless and until it receives information which
21 demonstrates that EDU can assure the required water availability. The
22 Santa Fe County Hydrologist concurs with these findings.

23 32. An April 18, 1997 letter from the State Engineer concludes that until the
24 water availability issue is resolved the SEO Subdivision Review Bureau
25 will be unable to issue a positive review finding.

26 33. Other communities in the watershed are concerned about water resource
27 issues. It is difficult to isolate Canada de los Alamos and Cerrillos water
28 issues from the greater watershed. Issues concerning groundwater
29 appropriations in one area affects others in the watershed.

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

35

36 **B.** The Santa Fe County Board of County Commissioners therefore
37 concludes and DECLARES:

38

- 1 1. The continuing growth and corresponding water demand in the area,
2 the presence of hundreds of legal lots awaiting EDU service, the
3 uncertain present and future production capacity of EDU, and the
4 failure of EDU to properly develop and maintain adequate storage,
5 fire protection, and reserve groundwater production raises ongoing
6 and unresolved concerns about the adequacy of EDU as a water
7 supplier for new development.
- 8 2. That these concerns are directly linked to the public health, safety
9 and welfare.
- 10 3. Voluntary water awareness and conservation continue to be
11 required in the EDU service area.

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16 **C. NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF**
17 **COUNTY COMMISSIONERS ADOPTS THE FOLLOWING:**


- 18
19 1. No new or pending applications for land divisions, master plans or
20 subdivisions which propose to utilize EDU water services will be deemed
21 complete until all fire protection and water supply requirements of the
22 County Land Use Code, the County Fire Code, and this Ordinance are
23 satisfied. No new or pending applications for land divisions, master plans
24 and subdivisions which propose to utilize EDU water services will be
25 processed by the County Land Use Administrator, the County
26 Development Review Committee, or the Santa Fe County Board of
27 County Commissioners. The time during which this ordinance is in effect
28 shall not be used in calculating the period of the validity of an approved
29 master plan in accordance with the Santa Fe County Land Use Code.
- 30 2. New Subdivisions and land division applications which do not rely on
31 EDU water service will be processed subject to the Santa Fe County 1996
32 Land Development Code. HOWEVER, no density adjustments beneath
33 12.5 acres per dwelling unit, the basic Basin Fringe Hydrologic Zone
34 Minimum Lot Size, will be considered, and these approvals will be
35 contingent upon acceptable site specific hydrology reports, water use
36 covenants, and proper well drilling and construction techniques which
37 protect and optimize the source of supply. Cluster housing is encouraged
38 for those developments that proceed under these conditions.

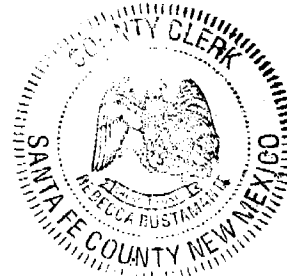
- 1 Notwithstanding the above, if a comprehensive, watershed wide
2 hydrologic study is conducted and clearly demonstrates to the reasonable
3 satisfaction of the State Engineer and the County hydrologist that there is
4 adequate long term water availability to allow density below 12.5 acres,
5 such densities may be allowed.
- 6 3. Building and development permit applications on legal lots of record will
7 be acted upon by the Santa Fe County Land Use Administrator.
- 8 4. Based on conservation information available from EDU, the County, and
9 the community, residents within the EDU service area are encouraged to
10 continue water use and conservation measures. In the absence of
11 covenanted water use restrictions in some part of the EDU service area,
12 water users are encouraged to target their consumption to fall within 0.22
13 acre feet per year.
- 14 5. The provisions of this ordinance shall apply within the service area of any
15 successor to EDU if the ownership, name or management of the EDU
16 changes while this ordinance is in effect.
- 17 6. If any provision of this ordinance is adjudged or declared to be illegal, the
18 remainder of the ordinance, not so adjudged, will remain in force and
19 effect.
- 20 7. This ordinance will take effect immediately upon adoption by the Santa Fe
21 County Board of County Commissioners.
- 22 8. County staff shall present updates describing any changes in conditions to
23 the Santa Fe County Board of County Commissioners approximately 90
24 days and 180 days from the effective date of this ordinance.
- 25 9. This ordinance shall remain in effect until the earlier of one year from it's
26 effective date or until the Santa Fe County Board of County
27 Commissioners, County technical staff, and the State Engineer are
28 satisfied that developments which propose EDU as the water supply are in
29 full compliance with state and county standards.
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PASSED, ADOPTED AND APPROVED this 31st day of March, 1998, by the Santa Fe County Board of County Commissioners.

Javier M. Gonzales
JAVIER M. GONZALES, CHAIRMAN


Rebecca Bustamante
REBECCA BUSTAMANTE
COUNTY CLERK



APPROVED AS TO FORM:

Steven Kopelman
STEVEN KOPELMAN, COUNTY ATTORNEY

COUNTY OF SANTA FE
STATE OF NEW MEXICO ¹⁹⁹⁸ 1019 075
I hereby certify that this instrument was filed
for record on the 7 day of April A.D.
19 98, at 9:55 o'clock a m.
and was duly recorded in book 1476
page 033 - 040 of the records of
Santa Fe County.

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

Marcella Salazar
Deputy

CERTIFICATE OF FILING

I, Rebecca 'Becky' Bustamante, County Clerk, do hereby certify that the foregoing ordinance, designated as Ordinance, No. 1998 - 4, was filed in my office on the ~~31st~~ day of April, 1998, in book Number 1476 at Page 033 - 040 ₇₇₆



SANTA FE COUNTY CLERK
Rebecca "Becky" Bustamante
REBECCA 'BECKY' BUSTAMANTE