

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY
RESOLUTION NO. 2016 - 102**

**A RESOLUTION DELEGATING AUTHORITY TO
THE COUNTY MANAGER TO SIGN APPLICATIONS
TO TRANSFER WATER RIGHTS TO THE COUNTY
IN CASES WHERE THE DEVELOPER REQUESTS
COUNTY WATER UTILITY SERVICE AND THE
OFFICE OF THE STATE ENGINEER REQUESTS
THE DEVELOPER AND THE COUNTY TO BE CO-
APPLICANTS OR IT IS OTHERWISE IN THE COUNTY'S
INTEREST TO BE A CO-APPLICANT**

WHEREAS, pursuant to the Santa Fe County ("County") Line Extension and Water Service Policy ("Water Service Policy"), adopted by Resolution No. 2006-57, the County requires developers at their own expense to acquire and transfer to the County such water rights as may be required by the County Utility to provide new water service to their developments; and

WHEREAS, the point of diversion of the water rights acquired by developers must typically be changed to a County point of diversion, such as the Buckman Direct Diversion; and

WHEREAS, the purpose and place of use of the water rights must also typically be changed to County Utility purposes and the Utility service area, respectively; and

WHEREAS, changes to a water right's point of diversion, purpose and place of use (collectively referred to as a "water rights transfer") may only be accomplished by filing a transfer permit application with the Office of the State Engineer ("OSE"); and

WHEREAS, OSE's water rights transfer process can be contentious and involve costly and time-consuming adversarial proceedings before the OSE and again before a state district court, and court's final decision may then be appealed as of right to the New Mexico Court of Appeals; and

WHEREAS, after conclusion of the OSE transfer process, including any appeals, the County requires the developer to grant the successfully transferred water rights to the County as a condition of providing Utility water service; and

WHEREAS, OSE may require the County and developer to be co-applicants on permit applications to transfer water rights to County points of diversion and to County purposes and places of use or it may otherwise be in the County's interest to be a co-applicant; and

WHEREAS, where a developer requests water service from the County Utility, the County requires the developer to prosecute the water rights transfer and to bear all costs associated with the transfer, which duty is typically expressed in a water rights delivery agreement or other appropriate contract ("Transfer Agreement") between the County and the developer; and

WHEREAS, in cases where a Transfer Agreement is in place, the County Manager or the County Manager's delegate already has the authority to sign a water rights transfer application as a co-applicant and to otherwise perform the Transfer Agreement on behalf of the County; and

WHEREAS, because the water rights transfer process may require one or more years to complete, developers who will require new water service from the County Utility occasionally request the County to join the developer as a co-applicant on a water rights transfer application before formal execution of any Transfer Agreement; and

WHEREAS, the purpose of this Resolution is to delegate authority to the County Manager to sign a water rights transfer application on behalf of the County as a co-applicant with a developer where no Transfer Agreement is in place and the developer is requesting new water service from the County Utility within the Utility's service area.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners as follows:

1. Where a developer is requesting new water service from the County Utility within the Utility's service area, and solely for the purpose of allowing the developer to commence the water rights transfer process as soon as practicable, the County Manager may sign a water rights transfer application on behalf of the County as a co-applicant with the developer notwithstanding the absence of any Transfer Agreement between the County and the developer.
2. The developer shall solely be responsible for prosecuting the water rights transfer and shall bear the full expense of such transfer, including but not limited to filing fees, notice fees, attorney's fees, and all witness fees.
3. Notwithstanding the County's status as a co-applicant on a water rights transfer application, the County shall have no obligation whatsoever concerning the water rights transfer, no obligation to participate in the water rights transfer process, and no obligation to accept any grant of water rights subject to the transfer except as may be provided in a fully executed Transfer Agreement between the County and the developer.

4. Where the County is a co-applicant with a developer on an application to transfer water rights to County points of diversion and County purposes and places of use, the County Manager may in his or her discretion authorize County staff to participate in the transfer proceeding and may perform such other tasks as the County Manager deems necessary or appropriate to protect or advance the County's interests in the proceeding.

5. The County's status as a co-applicant on a water rights transfer application shall not constitute or imply approval or favorable consideration by the County of any application, proposal, agreement, or any other submittal required under the County Sustainable Land Development Code or any other County ordinance, resolution, or policy.

PASSED, APPROVED, AND ADOPTED THIS 27th DAY OF SEPTEMBER, 2016.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: Miguel M. Chavez
Miguel M. Chavez, Chair

Date: 9/27/16

ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

Date: 9-27-2016



APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer, Santa Fe County Attorney

Date: 9/14/2016



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 28TH Day Of September, 2016 at 09:07:10 AM
and Was Duly Recorded as Instrument # **1805571**
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Laura Howard County Clerk, Santa Fe, NM