



## Pojoaque Basin Regional Water Authority Joint Powers Agreement

Fact Sheet – December 15, 2015

**What is the Pojoaque Basin Regional Water Authority?** The Congressional Act that approved the Aamodt litigation settlement agreement calls for the formation of the Pojoaque Basin Regional Water Authority (Authority) to oversee the Regional Water System (RWS) that will deliver water to the Pojoaque Basin.

**What is a Joint Powers Agreement (JPA)?** It is an agreement under State law that allows two or more “public agencies”, including counties and Indian pueblos, to enter into agreements to “jointly exercise any power common” to the agencies. Agencies of different departments or governments commonly use joint powers agreements to create a separate “administrating agency” to exercise their common powers. Santa Fe County (County) has entered into such agreements in the past, such as the ones with the City of Santa Fe that created the Buckman Direct Diversion Board and Solid Waste Management Agency.

**What would the Pojoaque Basin Regional Water Authority JPA do?** Generally speaking, it would create the Authority as the “administering agency,” define its purposes and powers, and prescribe the manner in which those powers are exercised. Under the current draft JPA proposed by the County, the Authority would be managed by a Board of Directors (Board), described below. (Note: All references to “JPA” in this fact sheet, whether expressed or not, refer to the proposed draft JPA that the County has proposed to the Pueblos for consideration. *The final JPA may vary from the County’s current proposed draft.*)

**What is the process for developing the JPA?** Santa Fe County Resolution No. 2015-63 provides, in part, as follows: “In conjunction with the County Attorney and other appropriate County staff, the County Commissioner for County Commission 1 shall work with the Pueblos to prepare a proposed Joint Powers Agreement. Once a final proposed JPA is prepared, it shall be placed on one or more public meeting agendas for consideration and action by the Board of County Commissioners. As determined by the County Commissioner for County Commission District 1, the County shall consult with representatives of potential customers concerning the proposed JPA.”

The County Commissioner from District 1, Commissioner Henry Roybal, and County staff are in negotiations with Pueblo representatives and have received comments from potential County customers concerning earlier drafts of the JPA. On December 17, 2015, County staff provided Pueblo representatives with a new proposed draft JPA, a copy of which is available on this webpage. The Pueblos have not yet commented on many of the changes in the current draft JPA proposed by the County, and the JPA will likely be further modified as the parties continue their negotiations. County staff is soliciting additional comments on the draft JPA at this time.

Once the County and Pueblo representatives have come to an agreement, the JPA must be approved by the Board of County Commissioners, the Pueblos, and the Secretary of Finance and Administration.

**Is the JPA the only agreement that affects the RWS?** No. The completed agreements include the Settlement Agreement (and federal act approving it) and the Cost-Sharing and System Integration Agreement. Yet to be negotiated are the Operating Agreement and the System Operator/Fiscal Services Agreement between the Authority and County.

**What are some of the more significant aspects of the current draft of the JPA?**

1. **Board Composition:** In the current draft, the County proposes a nine member Board consisting of one director appointed by each Pueblo, one County Commissioner, and four water customers. The U.S. Representative and State Representative whose districts encompass the largest geographic portion of the service area would each appoint two water customers. In addition, the County’s draft requires the concurrence of the County Commissioner and Pueblo de San Ildefonso director to a) approve the annual budget, b) hire or terminate the RWS general manager, c) approve delegation of any power of the Authority, d) borrow money in excess of \$125,000 or convey any of the Authority’s assets and, e) enter into or terminate a contract greater than \$125,000 (except that a party may not vote on its own contract) (Article 6.G). Lastly, the offices of Chair and Vice-Chair would rotate among the parties (Article 6.C).

2. **Reliability of Service:** Congress, the Pueblos, the County, and potential customers of the RWS have a common interest in reliable service. The draft JPA proposed by the County and other required agreements attempt to achieve this common interest in the following, among other, ways:
  - a. Easements and rights of way for the RWS – whether acquired from the United States, a Pueblo, the County, or private landowners – are required to last “for so long as required for construction, use, operation, maintenance, repair and replacement of the [RWS].” (Cost-Sharing Agreement, Section 2.3.)
  - b. The United States, Pueblos, and County are required to grant easements and rights of way for the RWS on their land at no cost. (Cost-Sharing Agreement, Section 2.3.)
  - c. Article 14 of the draft JPA proposed by the County would assure that the Authority has access to all lands covered by the system, as necessary for operations, maintenance and repair; it would also provide for the granting of easements for customers to access the RWS.
  - d. County Commissioner and Pueblo de San Ildefonso director approval is necessary to convey any of the Authority’s assets. (JPA, Article 6.G.)
  - e. Ownership of any portion of the RWS can only be transferred pursuant to a subsequent act of Congress. (Cost-Sharing Agreement, Section 2.4.) Among other things, this means that the parties could not convey the RWS (or their individual systems) to a private utility company, for instance.
  - f. The JPA does not allow one party to unilaterally withdraw. Instead, agreement by all parties and an act of Congress is required for the JPA to terminate. (JPA, Article 24.)
  - g. The JPA proposed by the County would establish an Emergency Fund for unforeseen infrastructure failure, and an Operational Stability Fund to provide funds in the event of a revenue shortfall, among other potential reserve funds. (JPA, Article 11.E)
3. **Individual Utilities Establish Customer Water Rates:** Under the draft JPA, the Authority would not establish water rates charged to customers of the County Water Utility or a Pueblo Water Facility. Instead, the billing of County and Pueblo customers would conform to the policies of the County and applicable Pueblo Water Facility (Article 5.D). When setting rates for customers, the County follows industry standards, consistent with those established by the American Water Works Association, and includes an analysis of the cost of service.
4. **Transparency and Accountability:** The current draft JPA makes explicit that the Authority is subject to all of the laws that are applicable to the County. In addition, the JPA specifically notes applicability of the New Mexico Open Meetings Act (JPA, Article 6.F), the New Mexico Inspection of Public Records Act (JPA, Article 13), the New Mexico Audit Act (JPA, Article 9.B), and the New Mexico Procurement Code (JPA, Article 8.A). In addition, the County’s draft JPA would require all Board of Directors’ meetings to be held in the Pojoaque Basin.
5. **County to Serve as Initial Fiscal Agent and System Operator.** The County’s current draft JPA includes language designating the County as the Fiscal Agent and System Operator (JPA, Articles 10.A and 12.A) and contemplates that the County will contract with the Authority for these services. Under these contracts, the County would be responsible for the Authority’s fiscal and administrative functions as well as the operation, maintenance, and repair of the RWS. The County Commissioner Director would have to approve of the County’s replacement under either contract, unless the Authority resolved to be its own system operator or fiscal agent.
6. **Capital Expenditures:** Capital expenditures are subject to the special majority voting provisions, requiring County and Pueblo of San Ildefonso director approval of budgets and contracts in excess of \$125,000. (JPA, Article 6.G). In addition, the Authority will be required to follow the New Mexico Procurement Code (JPA, Article 8.A).
7. **Dispute Resolution:** Article 19 clearly spells binding and enforceable dispute resolution mechanisms.

**How can potential customers provide additional comments on the latest draft JPA?** If you would like to provide comments, please email them to [sely@santafecountynm.gov](mailto:sely@santafecountynm.gov) or mail them to Sandra Ely at 424 NM HWY 599, Frontage Rd, Santa Fe, NM 87507 by January 29, 2016. This will help ensure that County staff can timely consider them during negotiations with Pueblo representatives. For questions you may email or call Ms. Ely at 505-986-2426.

**For additional information about the Regional Water System, please visit the following websites:**  
[http://www.santafecountynm.gov/public\\_works/utilities/aamodt](http://www.santafecountynm.gov/public_works/utilities/aamodt) ,  
<http://uttcntr.unm.edu/ombudsman/npt.php>, <https://sites.google.com/site/pbwatereis/>, and  
[http://www.ose.state.nm.us/legal\\_ose\\_aamodt\\_info.html](http://www.ose.state.nm.us/legal_ose_aamodt_info.html)