



Pojoaque Basin Regional Water Authority Joint Powers Agreement

Fact Sheet – June 9, 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? 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 “administering agency” to more efficiently 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 Joint Powers Agreement (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. The Authority would be managed by a Board of Directors appointed by the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque and the County.

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 June 5, County staff provided Pueblo representatives with a new 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 actively 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. There is the Settlement Agreement (and federal act approving it), the Cost-Sharing and System Integration Agreement, and the Operating Agreement, which has not yet been negotiated.

What are some of the more significant aspects of the current draft of the JPA prepared by the County?

1. **Board Representation:** In its current draft, the County proposes a nine member Board consisting of one director appointed by each Pueblo except San Ildefonso. San Ildefonso would be allowed to appoint two directors, one of whom would be required to reside within the exterior boundaries of the Pueblo de San Ildefonso and either (i) be a water customer served by the County Distribution System or (ii) have elected to be served by the County Distribution System pursuant to Section 3.1.7.2.1 of the Settlement Agreement. The County would appoint four directors to the Board, one County Commissioner and three water customers served by the RWS or persons who have elected to be served by the RWS pursuant to Section 3.1.7.2.1 of the Settlement Agreement. In addition, the County’s draft requires the concurrence of the County Commissioner and designated 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 (Article 6.G). Lastly, the offices of Chair and Vice-Chair would rotate among the parties (Article 6.G).

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 and other 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 at no cost. (Cost-Sharing Agreement, Section 2.3.)
 - c. In the current draft of the JPA the County proposes an integrated water system that is managed by a single operator with authority to provide water throughout the service area, both on and off Pueblo land (JPA, Articles 3 and 14A). Article 14 as 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 by all parties to connect customers to 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 current draft of the JPA proposed by the County would establish an Emergency Fund for unforeseen infrastructure failure, and a Revenue Stability Fund to provide funds in the event of a revenue shortfall, among other potential reserve funds. (JPA, Article 11.G)
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.C). 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 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, requiring all meetings to be held in the Pojoaque Basin or elsewhere in Santa Fe County (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).
5. **County to Serve as Initial Fiscal Agent and System Operator.** The County’s 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 initially be responsible for the Authority’s fiscal and administrative functions as well as the operation, maintenance, and repair of the RWS.
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.C). 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 out 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 or mail them to Sandra Ely at 424 NM HWY 599 Frontage Rd, Santa Fe, NM 87507 by July 10. 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/aamodt_outreach;

<http://utntoncenter.unm.edu/ombudsman/npt.php>, <https://sites.google.com/site/pbwatereis/>, and

http://www.ose.state.nm.us/legal_ose_aamodt_info.html