



Aamodt Water Rights Adjudication Settlement Agreement Pojoaque Basin Regional Water Authority Joint Powers Agreement Fact Sheet – October 18, 2016

What is the Pojoaque Basin Regional Water Authority (Authority)? The entity that will partially own and operate the Regional Water System (RWS) that will deliver water to Santa Fe County (County) Water Utility and Pueblo Water customers. The Authority is required to be created by the Aamodt litigation settlement agreement.

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. Often times, joint powers agreements create a separate “administrating agency” to exercise the parties’ common powers. The 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, the Authority would be managed by a Board of Directors (Board), described below.

Has the public been involved in developing the draft JPA? Yes. The public has commented on previous County drafts of the JPA. In addition to some technical cleanup, previous public comments are partially responsible for the substantive changes to the draft JPA that:

- Strengthen the requirement that the Authority conform to County policies with respect to County customer billings, collections, and suspensions of service (JPA, Articles 6(D)-(E));
- Expanded Authority Board to include two (2) customers or future customers of the RWS (JPA, Article 6(A));
- Require the governing Board of the Authority to hold its meetings in the Pojoaque Basin (JPA, Article 6(F));
- Require advisory committees of the Board to comply with the NM Open Meetings Act (JPA, Article 6(J));
- Strengthen the dispute resolution and waiver of sovereign immunity provisions, so as to ensure that disputes under the JPA (and future agreements) are subject to binding resolution (JPA, Article 19);
- Clarify the organizational structure of the Authority (JPA, Article 7);
- Require an Operational Stability Fund to protect against budget shortfalls, which must contain a minimum of one-year’s operating costs after twenty years (JPA, Article 11(F)(3)); and
- Require the Parties to appropriate for operations and maintenance money made available to them from the federal government (JPA, Article 26).

Where are we in the JPA approval process? Pueblo and County representatives have finished their negotiations. The draft JPA accompanying this fact sheet will be considered by the BCC at two public meetings on October 25, 2016, and November 29, 2016. The Board of County Commissioners (BCC) may take action on the JPA on November 29th. The Public is encouraged to comment on the draft JPA at or before the October 25 meeting.

The JPA must also be approved by the Pueblos and the New Mexico 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 and Fiscal Services agreements described below.

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

1. **Board Composition:** The current draft proposes a seven member Board consisting of one director appointed by each Pueblo, one County Commissioner, and two water customers appointed by a majority vote of other Board members. The offices of Chair and Vice-Chair would rotate among the parties. (JPA, Article 6(C).)
2. **Special Voting Power of the County and San Ildefonso Director:** The current 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). (JPA, Article 6(G)-(H).)

3. Reliability of Service: Congress, the Pueblos, the County, and potential RWS customers all want reliable service. The draft JPA and other agreements attempt to ensure reliable service 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; JPA, Article 14(B).)
 - c. Article 14 of the draft JPA 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. The County Commissioner and Pueblo de San Ildefonso directors must approve the conveyance of 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 (or failure of a statutory condition) is required to terminate the JPA. (JPA, Article 24.)
 - g. The JPA would require the establishment of 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(F).)
4. 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 (JPA, Article 5.D). The County sets water rates through a public process, as rates must be approved by the BCC.
5. 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. (JPA, Article 27.) 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 current draft JPA would require all Board of Directors’ meetings to be held in the Pojoaque Basin (JPA, Article 6.F).
6. County May Serve as Initial Fiscal Agent and System Operator: The draft JPA would enable the County to serve as the initial Fiscal Agent and System Operator (JPA, Articles 10(A) and 12(A)) and contemplates that the County would endeavor to contract with the Authority to provide those services. If the County and Authority successfully negotiate and execute such 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.
7. Capital Expenditures: Capital expenditures are subject to the special majority voting provisions, requiring County and Pueblo de San Ildefonso director approval of budgets and contracts in excess of \$125,000. (JPA, Article 6(G).) The Authority would also have to follow the New Mexico Procurement Code (JPA, Article 8(A)).
8. Dispute Resolution: Article 19 of the draft JPA establishes binding and enforceable dispute resolution mechanisms, which include a waiver of tribal sovereign immunity for purposes of enforcing those mechanisms.

How can potential customers provide additional comments on or ask questions about the draft JPA? Interested persons are strongly encouraged to submit written comments on the JPA at or before the BCC’s October 25 meeting. In addition, oral comment will be allowed at the October 25 meeting; however, oral comment will likely be subject to time limits. Written comments on the JPA may be submitted at the BCC’s October 25 meeting and to Sandra J. Ely by email at sely@santafecountynm.gov or by mail at Santa Fe County Public Works Department 424 NM HWY 599, Frontage Rd, Santa Fe, NM 87507. Questions can also be asked of Ms. Ely by email, by calling 505-986-2426, or at office hours she will be holding at the Pojoaque Satellite Office, 5 West Gutierrez, Suite 9, Pojoaque, NM, from 4:00 p.m. to 6:00 p.m. on October 18, 19, and 20, 2016.