

2013728

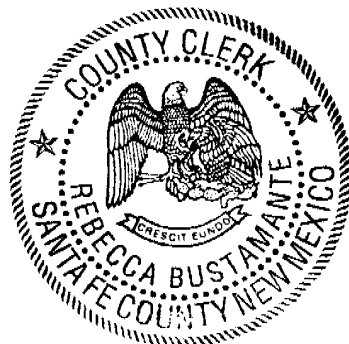
SANTA FE

BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

OCTOBER 22, 2001

Paul Duran, Chairman
Paul Campos
Javier Gonzales
Jack Sullivan
Marcos Trujillo



COUNTY OF SANTA FE
STATE OF NEW MEXICO 1181 } SS 405
I hereby certify that this instrument was filed
for record on the 20 day of NOV A.D.
20 01 at 8:05 o'clock A.m.
and was duly recorded in book 2013
page 728-765 of the records of

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

Cathy Libary
Deputy

2013729

SANTA FE COUNTY

SPECIAL MEETING

BOARD OF COUNTY COMMISSIONERS

October 22, 2001

This special meeting of the Santa Fe Board of County Commissioners was called to order at approximately 5:47 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll Call indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Duran, Chairman
Commissioner Marcos Trujillo
Commissioner Javier Gonzales
Commissioner Paul Campos
Commissioner Jack Sullivan

Members Absent:

None

III. APPROVAL OF THE AGENDA

- A. Amendments
- B. Tabled or withdrawn items

CHAIRMAN DURAN: Are there any amendments to the agenda?

STEVE KOPELMAN (County Attorney): No amendments, Mr. Chairman.

CHAIRMAN DURAN: Okay, the chair will entertain a motion to approve the agenda.

COMMISSIONER CAMPOS: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

2013730

SFC CLERK RECORDING 08/17/2004

IV. PUBLIC HEARING:

A. Ordinance No. 2001-12. An ordinance amending Ordinance No. 2001-4, declaring a moratorium on new subdivisions, land divisions and master plans for projects served by Eldorado Utilities, Inc. and encouraging conservation measures within the Eldorado Utilities, Inc. service area to establish provisions under which development can proceed (second public hearing)

CHAIRMAN DURAN: How do you want to handle this, Mr. Kopelman?

MR. KOPELMAN: Mr. Chairman, you probably would want to take public testimony and then close the public hearing for deliberation. It's your prerogative to hear from County staff. I think County staff has a very, very brief presentation.

CHAIRMAN DURAN: Katherine, would you like to address the Commission?

KATHERINE YUHAS (County Hydrologist): Thank you, Mr. Chairman, Commissioners. Since this is the second public hearing, I just have a couple extra things to enter into the public record. The first is that last week, a mailing was sent out to approximately 30 residents in the Eldorado area who'd been identified through their leadership in the 285 Coalition to inform them of this meeting, and I have a copy of that for you that I'll hand out when I'm done.

I have also received approximately 140 petitions in support of amendments two and three. Of those 140 petitions, about 35 of them are in Spanish. The following types of businesses are recommended if you want to know. General contractors, door manufacturers, tile contractors, masons, surveyors, concrete contractors, realtors, title companies, cabinet makers, painters, plasterers, that type of thing.

I also received one e-mail today in opposition to any amendments to the moratorium and a phone call that was also in opposition to all the amendments. I'll enter those into the record now.

CHAIRMAN DURAN: Thank you. Any questions of Katherine?

COMMISSIONER GONZALES: Mr. Chairman, I just have—I apologize I wasn't, I don't think I was here at the first public hearing. But just real briefly can you—the issue at hand is to create some amendments, right? To the moratorium. So the moratorium would stay in place. Is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct. The moratorium would stay in place and these would just be three specific amendments that would allow additional development through these different avenues.

COMMISSIONER GONZALES: Okay, so can you tell me currently, basically the status of Eldorado Utilities and their ability to meet the current demand or the current needs that exist out there, what the current number of residences that are in place? Quickly, do you know the number of residences that are currently being serviced by Eldorado Utilities?

2013731

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I'm sorry. I don't have that number.

COMMISSIONER GONZALES: I see Matt Spangler out there. I'm not sure if he knows it offhand.

MS. YUHAS: He may know.

COMMISSIONER GONZALES: Do you know the number of residences, Matt?

MATT SPANGLER: Mr. Chairman, Commissioner, we have between 2800 and 2900.

COMMISSIONER GONZALES: So there's 2900 residences that are currently being serviced by EDU. Do we know how many lots that were allowed to continue under the moratorium, because the moratorium basically allowed approved subdivisions to continue. Do we know how many number of lots that are out there? That are still undeveloped that have not received permits from EDU?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, when the moratorium was put into effect, there were supposed to be approximately 400 lots that had not been developed yet. Based on how much they've been developing, most of those should be built on by now, is my estimation.

COMMISSIONER GONZALES: Okay. So you're saying that 2900 now probably includes—

MS. YUHAS: Most of those, maybe 300.

COMMISSIONER GONZALES: So currently, has there been done an assessment as to Eldorado Utilities' current capacity and their ability to meet the needs of the 2900 residential units?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that evaluation was made in the report by John Shomaker that was finalized in July of this year.

COMMISSIONER GONZALES: Right. I remember you talking about that. Can you brief me on that again?

MS. YUHAS: Sure. Essentially, what that report said is that they have the ability to serve for another 25 years with the system exactly the way it is—if they don't drill new wells, if they don't deepen any wells. It is expected that they would do some of that work so that they would be able to further their ability to serve.

COMMISSIONER GONZALES: To serve the 2900 current residences in place.

MS. YUHAS: Exactly.

COMMISSIONER GONZALES: As far as you know, is any of that work underway at the State Engineer's Office, or are there any permits in place? Did they request more wells?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I know that they have settled some of their water rights issues and I'd let Mr. Spangler address that if that's okay. But I don't know of any additional work to drill wells.

COMMISSIONER GONZALES: Okay. Could you tell me again, just to go over the amendments real briefly, amendment number one relates to residential home sites and domestic wells. Is that right? That they could be reduced to 2.5 acres?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct. And currently staff is recommending against the first amendment.

COMMISSIONER GONZALES: Okay. Amendment number 2, can you help me find it in the ordinance.

MS. YUHAS: I have it highlighted if you'd like.

COMMISSIONER GONZALES: Amendment number two, just more so for people in the public. I don't know if they would know where the amendments are. So amendment number two is at the bottom of page 3 under letter C, number 4. It basically states New development can contribute water and water rights to the Eldorado Utilities.

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct. A development could commit physical water and water rights to Eldorado Utilities and then take service for that amount of water, minus 20 percent.

COMMISSIONER GONZALES: So tell me, what would they have to do to get to that point? Could they just say, We've got a permit for a well, so here you go. Therefore you have to serve us?

MS. YUHAS: No, it would be more extensive than that. They would need to have drilled the well and done a 100-year proof of water that shows that they will not impact either Eldorado Utilities or any other water user in the area over that 100-year period. They would also need to demonstrate that they have the water rights in hand that they could transfer to the utility.

COMMISSIONER GONZALES: So would that whole process be conducted by the State Engineer's Office or the County, or your office?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, the 100-year proof of water would be done by myself and the State Engineer. As far as the water rights transfer, that would be done at the State Engineer's Office.

COMMISSIONER GONZALES: So prior to any transfer of the water rights, they'd have to go through the whole adjudication process that would have to be completed in hand before it could be transferred, before water rights could be transferred?

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: Because some parties will end up buying some water rights to transfer into their lands, but those water rights need to go from one party to EDU. Is that right?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I think we might be talking about two different things. They would just have to transfer ownership of the water right to EDU. As to whether or not the water right would have to be transferred from its place of diversion, that would be another issue.

COMMISSIONER GONZALES: Would that be a factor in the State Engineer? What happens if the diversion wouldn't work in that area? What happens if the

diversion point is not a valid diversion point?

MS. YUHAS: Then they wouldn't be able to follow through with this amendment. This provision wouldn't apply.

COMMISSIONER GONZALES: Okay. Then remind me again. This takes me back to the point of the moratorium, is that right? The point of the moratorium is to focus on a long term renewable source of water. Is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct.

COMMISSIONER GONZALES: So the reason that you guys are recommending that the moratorium stay in place is because Eldorado Utilities to date has not been able to provide that.

MS. YUHAS: That is correct.

COMMISSIONER GONZALES: But you're allowing, you're asking for an amendment that would allow any other resident of Eldorado—

MS. YUHAS: Who can prove a 100-year water supply to give it to the utility company, and also a well. It's my opinion that this would actually strengthen Eldorado Utilities' ability to serve because it would give them additional good wells to produce from.

COMMISSIONER GONZALES: So by individuals being able to provide that to Eldorado Utilities, does it meet the request or the concern of the moratorium, of finding additional new water, basically?

MS. YUHAS: I think so. That's why we're recommending for it.

COMMISSIONER GONZALES: Okay. So item number three is page 4 in ordinance, number 5, wastewater can be treated for reuse in an expanded commercial operation. Can you tell me a little bit about how that's going to affect this moratorium?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, the intent behind the third amendment was that developments that already exist, that have a water allocation from Eldorado Utilities, let's for example say it's one acre-foot. They can use their wastewater to expand their development by treating their wastewater to a very high quality so that they can reuse it. They can then make that water available to themselves for reuse.

COMMISSIONER GONZALES: So you're talking about a system that doesn't do injection into the aquifer. This would be a system that's a surface system that's treating it and then putting it back into the business or home.

MS. YUHAS: That's correct. Yes.

COMMISSIONER GONZALES: Would it—is it only for businesses, or can it be deemed for residential as well?

MS. YUHAS: It could be used for residences, but it's my belief that probably the economies of scale would be too small to make it viable for a residence to do it.

COMMISSIONER GONZALES: Help me. We don't have a map here, but the Eldorado moratorium, is that just, the boundary, is that the Eldorado service area only, or is it outside the Eldorado service area as well?

2013734

MS. YUHAS: It's just the service area, but the service area is actually quite large and I think I may have a map if I could find it.

COMMISSIONER GONZALES: Do we have any idea as to the number of vacant land that is held by other property owners who through this amendment would be able to come in—who through this amendment would have the opportunity to do exploratory wells, find water rights, prove up the 100-year water supply, transfer it, and have the engineer validate it? Do we have a number of—

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, again, I'm not positive exactly how many but we've looked at it and it's somewhere less than ten.

COMMISSIONER GONZALES: Less than ten. Ten what?

MS. YUHAS: I'm sorry. Less than ten landowners. That does not translate to less than ten lots. It's large parcels of land that might be able to be divided in that way.

COMMISSIONER GONZALES: You don't have an idea as to the quantity of land?

MS. YUHAS: I'm sorry. I don't

COMMISSIONER GONZALES: Roman, do you have any ideas as to—

ROMAN ABEYTA (Deputy Land Use Administrator): Mr. Chairman, no, we don't have that information right now.

COMMISSIONER GONZALES: Assuming that these large landowners are wanting to come in to, if this amendment is successful, to try and prove up the water supply, all the other provisions of the Code take place, right? In terms of uses and traffic and all the other things that we require. Is that right?

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: Okay. That's assuming that they've been given the okay by the State Engineer's Office for the 100-year water supply.

MS. YUHAS: That's also correct.

COMMISSIONER GONZALES: Okay. Thank you.

CHAIRMAN DURAN: Katherine, I just have a question. Has anyone ever been able to prove a 100-year water supply out there?

MS. YUHAS: Mr. Chairman, yes. There have been individual landowners in that area that have proved a 100-year water supply for one house or two houses at a time.

CHAIRMAN DURAN: Has EDU been able to provide us with a 100-year supply? Proof that they have a 100-year water supply?

MS. YUHAS: Mr. Chairman, no they have not.

CHAIRMAN DURAN: So other than a few isolated single family residences, no one has been able to prove that?

MS. YUHAS: Mr. Chairman, I think that's correct. Yes.

CHAIRMAN DURAN: And the reason I bring that up is that if we use this, history pretty much shows us that no one's going to be able to do that.

2013735

MS. YUHAS: Mr. Chairman, there are several wells in the area that people will be conducting pumping tests on, that they believe may be successful in proving up a 100-year water supply. It has not been worth their while to do it because there was no way for them to use the well, and so they didn't want to expend the money, I think.

CHAIRMAN DURAN: But since they're all tied into the same aquifer, how can one person out there prove a 100-year water supply and another person couldn't?

MS. YUHAS: Mr. Chairman, some of that is dependent upon how the well is constructed, how deep it's drilled. There are different formations in that area. Yes, the entire area is connected, but there are different formations that you can drill into and some of them provide better water than others.

COMMISSIONER GONZALES: Can I ask a question, just following up for the chairman, which I thought was an interesting point and that is that to date, no one's been able to really necessarily prove up a 100-year water supply, but it does appear that if there are people who can prove it up, it may not necessarily be the large land holders as much as the small parcel land holders who are caught up in this moratorium who would be able to conduct well tests.

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I think that may be true. One of the things about the geology in the Eldorado area is that it would be easier to drill a well that could supply four homes, reliably for 100 years, than a well that could reliably supply 20 or 50, even given your best well drilling technique.

COMMISSIONER GONZALES: So some of the smaller landowners might be the people who might have more of a reasonable chance. The individual lot owners as opposed to the large tract owners.

MS. YUHAS: That may be true.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Katherine, one question. On this second alternative proposed by the staff, if an applicant has a well and water rights that are transferred to EDU water system, they can then take service for their development of the amount of water donated minus 20 percent to account for leakage from EDU. Two questions on that. First of all, if an applicant has a well, once this—if it were passed and were to go into effect, would that mean that the applicant had to have the well at that time? Or does this say that an applicant can drill a well, on say speculation, hoping that it will work out?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, my intent was that you could now go and drill a well.

COMMISSIONER SULLIVAN: So that you could go out and drill a well and hope that it met these requirements.

MS. YUHAS: Correct.

COMMISSIONER SULLIVAN: Okay. But that well would have to have water rights with it that could be transferred to EDU.

2013736

MS. YUHAS: That is also correct.

COMMISSIONER SULLIVAN: So then that would preclude residential wells, or wells that are permitted under the three acre-foot—

MS. YUHAS: You could not use a residential well to transfer. That's right.

COMMISSIONER SULLIVAN: Because those water rights can't be transferred.

MS. YUHAS: Exactly.

COMMISSIONER SULLIVAN: So EDU couldn't accept that, accept those wells.

MS. YUHAS: Correct.

COMMISSIONER SULLIVAN: Then also, the intent of that is that the applicant must have a well and water rights. They cannot just transfer water rights.

MS. YUHAS: Correct. It's both things together.

COMMISSIONER SULLIVAN: And maybe we'll hear something in a few minutes from the representative from EDU, but I understand that their new regulations that were approved recently allow the transfer of water rights for nine lots or less to EDU, water rights only and then EDU could serve them, but I would read this that this would control. The County is saying, in order for the County to approve the development, you must not only have the water rights, you must physically have a well with wet water. Is that the intent?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that's correct. That's our intent.

CHAIRMAN DURAN: It just seems to me, we keep on coming back to this moratorium issue and I think there's a lot of time and energy expended on trying to figure out where we're going to—how we're going to squeeze blood out of this turnip and I don't think it's out there. I really would like to see this Commission and the community try to petition the City a little bit more to try and get some regional water out there, and once we tap into this San Juan Chama water rights, I think that there should be an effort already in place to have the City participate in trying to create a solution to the problem out there. I think once we do that then all of these—I think we're just kind of trying to come up with solutions to the problem out there that are only going to intensify the problem. Any other questions of Katherine?

COMMISSIONER TRUJILLO: Just a comment, Mr. Chairman. What I understand, Katherine, is that these amendments are short term resolution if you will, but what we're proposing as a local government, the County, is a long term sustainability from the Rio Grande or from wherever. But these amendments, in order for the County to play a pro-active role in doing something in the Eldorado area other than the stagnated moratorium, is to implement something short term so that things happen in Eldorado, and then long term, give impetus to some long term sustainability water source. Is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, yes. Part of the

2013737

SFC CLERK RECORDING 08/17/2004

County's draft 40-year water plan is to provide some water to Eldorado Utilities so that they could have conjunctive use of their groundwater and some surface water to try and sustain their water supply for a longer term.

COMMISSIONER TRUJILLO: What aquifer presently serves the Eldorado area? I understand we have two of them, Tesuque and Ancha.

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, that's correct. There is also the Galisteo formation that's a little deeper that you could drill into. Some recommendations are that by drilling deeper, you may drill into a better producing formation. Some people think they have drilled into fractures from the mountains when they've drilled on the eastern boundary, essentially, of the Eldorado area, and that that's a better water producing zone. So it's not as though the Eldorado area, it's not really the same as Santa Fe. In Santa Fe we really do only have in the city one formation to produce from.

COMMISSIONER TRUJILLO: But the issue remains that by digging copious wells, essentially what we're doing is mining the water table, because in that area we don't have the appropriate return flow, recharge or things like that. That's why it's imperative that we continue to look for a sustainable source of water outside of the immediate area.

MS. YUHAS: You're absolutely correct. Yes.

CHAIRMAN DURAN: So Katherine, what you're saying is that amendments two and three tie into what our long range plan is to solve the water issues that Eldorado is experiencing.

MS. YUHAS: Mr. Chairman, that's correct. Especially amendment three, if you look at that, it looks at reuse of water. There's been a lot of interest in getting a sewer system or something to collect and reuse the wastewater from the Eldorado area, which I think is a critical part of good groundwater and surface water management. And that sort of ties into that. It's a small scale use of wastewater.

CHAIRMAN DURAN: So two and three would be in addition to the other long range solutions we have?

MS. YUHAS: That is correct.

CHAIRMAN DURAN: Okay.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: Sorry to keep asking these questions over and over Katherine, but I think it's important. As to the issue, again, the issue of amendment number two, water rights, which is the legal ability, wet water, which is the substance of the real issue. Is that right?

MS. YUHAS: Yes.

COMMISSIONER GONZALES: And you're also saying that it cannot have a negative impact on the current users of Eldorado Utilities.

MS. YUHAS: I'm saying more than that. I'm saying it can't have a

2013738

negative impact on any current water user.

COMMISSIONER GONZALES: Any current water user.

MS. YUHAS: So that looks at people down gradient, it's going to look at the Eldorado Utilities wells and it's going to look at the local neighbors. People who have domestic wells in the area.

COMMISSIONER GONZALES: So basically, people out there are currently being served and those who aren't being served but could be impacted, are basically going to be assured that any new wells, if they prove the water rights and they show that they have the wet water, their water supply will not be affected.

MS. YUHAS: That's my intent.

COMMISSIONER GONZALES: How do we determine that?

MS. YUHAS: That's done through the process of groundwater modeling, which, it's not an exact science, it's not perfect, but it is well researched and there are very good models that make good predictions about what draw-down will be and what is a reasonable amount to allow somebody to take out of the aquifer without impacting their neighbors. And that's what I would be looking at and evaluating.

COMMISSIONER GONZALES: Are we using those model programs anywhere else in the county as we're trying to monitor the impact?

MS. YUHAS: That type of modeling is done for every development that comes in.

COMMISSIONER GONZALES: Okay. So we're already practicing the type of monitoring that we would be doing in this area?

MS. YUHAS: Absolutely.

COMMISSIONER GONZALES: And the question, Mr. Kopelman, from a legal standpoint, is a moratorium a permanent solution, or can it be used as a permanent solution as in the case of the Eldorado community where this is this concern of continuous long term water supply?

MR. KOPELMAN: Mr. Chairman, Commissioner Gonzales, the moratorium should not be viewed as a permanent, long term solution, and it really does need to be re-examined periodically to make sure the conditions are still appropriate to continue what the moratorium is prohibiting. But generally speaking, moratoria are looked at more for short term, interim solutions while something else is coming down the pike.

COMMISSIONER GONZALES: In your estimation is six years okay? Are we, from a legal standpoint, if it's been looked at. If it's supposed to be a short term measure. Is it all relative, depending on the situation or are there concerns here that someone out there could challenge the moratorium and the fact that nothing has really been done to address the long term water supply. What seems to me what Katherine is trying to propose here that at least by trying to allow some wells to go forward for some research and wet water and water rights that that might try and accomplish that goal.

But is there any concern on your part that we may be extending our authority to have a moratorium for this amount of time?

2013739

SFC CLERK RECORDING 08/17/2004

MR. KOPELMAN: Mr. Chairman, Commissioner Gonzales, staff has been periodically reviewing all the available data. So I think as you said earlier that there is some degree of relativity to how moratoria would be reviewed. Generally, most moratoria that I've reviewed have to do with land use and they often are put in place while an ordinance is being developed, for example. In this particular case, I think there's documented, pretty strong evidence of public safety and welfare issues. We did have one court test to this particular moratorium. It was in conjunction with a development application and the court did uphold the ordinance as valid.

So at this point, I think because we are reviewing things periodically, and also I think that by bringing options forward, I think it shows some movement on the part of the County. But the County is somewhat limited in what it can do until, like was said earlier by the chairman, that until a diversion project is actually operable and the water rights are obtained or transferred, there's very little the County can do short of what we're doing now.

COMMISSIONER GONZALES: One final question. I'm glad Judy's here. In terms of shifting to the planning component that's currently underway in the Eldorado communities. I know that, at least in the individuals that I met with from Eldorado that there is a very active group that's planning the Eldorado area, and I'm assuming from that plan when it's adopted it's going to create some zoning and uses and density. Where are we in that process and how far away are we from beginning to consider any plans that might be coming from the Eldorado communities?

JUDY MCGOWAN (Senior Planner): Mr. Chairman, Commissioner Gonzales, there have been several planning meetings. They're in the organizational phases right now and in fact there's a meeting a week from today. There will be presentation on the water situation for what's being called the Simpson Ranch contemporary community to talk about what options there might be for planning for the future. I'm imagining that there will be alternative future scenarios based on what if water can come into service, more lots in the Eldorado Utilities service area? What if it can't? Would be the two extremes.

So they are, I would say at least a year away from coming forward with recommendations. Maybe longer. Our next step after having a few more organizational meeting is to do an RFP for a needs analysis. So it's not going to be imminent.

COMMISSIONER GONZALES: But the plan, you expect, is going to reflect not only the community's desires in terms of growth management in the area but also reflects what the County and the community and in fact the State Engineer's Office has determined is the available water resource out there.

MS. MCGOWAN: That's going to be an obvious component, yes. Because it will determine—we did some rough numbers over there but right now, I believe there's—I think the number we came up with is about 2200 acres of land that's inside the service area that has been master planned for 2.5-acre lots but is held up by the moratorium. And what happens with those lands, whether they can develop at 2.5-acre lots. Whether they

have to go back and do 12.5-acre lots on wells. There's a big range in the kind of impact and the densities and the growth that that would—

COMMISSIONER GONZALES: But those are the tools that the County will have at its disposal when this plan comes forward or some zoning component to either affirm the 2.5 acres that's currently in place or, do you call it down-zone it—

MS. MCGOWAN: Come up with some other option for this.

COMMISSIONER GONZALES: One for 12.5, one for 15, whatever it might be. And that would reflect the amount of resources available to support that.

MS. MCGOWAN: There were some questions earlier about how many dwelling units and how many lots and I'm sorry, I don't have the number for the service area. We have done the area west of 285 for the transportation analysis zones, and basically, what happened is our consultant, Al Pitts, overlaid the census data with the lot data that I had developed in ARCview and that area is basically about 80 percent built out. And there's about, in the range of 600 vacant lots left that are already platted. That's not counting these other acres that could be developed at either 2.5-acre, if the water were available, or at 12.5-acre if they were to do wells.

We haven't done a similar analysis on the east side of 285 so I can't give you the whole statistics for the water service area, but the 80 percent build-out rate seems to be fairly consistent for all the Seaton Village, Arroyo Hondo area, the Eldorado area, and in fact, over into the San Marcos area.

COMMISSIONER GONZALES: So it's similar with the surrounding areas in terms of the build-out.

MS. MCGOWAN: That's correct. Yes.

CHAIRMAN DURAN: Okay. This is a public hearing. Could I have a show of hands of those that want to speak to this issue? Okay.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just had one quick question for Katherine before we start. Katherine, under the proposal number two, if the applicant had a well and the documented water rights, which were approved by the State Engineer, then they could go below the 12.5-acre minimum. Is that correct? Down to 2.5 acres?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: But if you were to have an individual well you would be limited to 12.5 acres if proposal one was not accepted.

MS. YUHAS: That's correct.

COMMISSIONER SULLIVAN: So the second proposal would apply to commercial as well as to residential subdivisions if they could provide that wet water plus the water rights, transfer it all to EDU, pay whatever EDU's charges were for extensions and so forth, determine that if a point of diversion had to be changed, it were changed, the State Engineer approved it and satisfied all those criteria, then they would be permitted to at least bring forward a development that had lot sizes at 2.5 acres and up.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that's right.

COMMISSIONER SULLIVAN: Okay. Thank you.

MS. YUHAS: Mr. Chairman, I'm sorry. I have copies of the new moratorium language if anybody in the audience would like them. I didn't put them in the back, but I'll hand them out.

CHAIRMAN DURAN: Why don't you take a few minutes so you can distribute it to them. While you're doing that I'd just like to say a few things. As you come up to address the Commission, if you could please keep your comments to specifically to the amendments that we're hear to discuss and vote on tonight, I'd appreciate that. Try not to be repetitive and I think that's it. And that the moratorium is going to stay in place as it exists today, except for these three amendments that we're going to be discussing should we adopt any of them.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Just a brief comment. I think there are people in the audience that would like to address the bigger issues in Eldorado and that may be necessary to put all issues in context. So I would ask that you give some leeway to discuss the big picture issues.

CHAIRMAN DURAN: Well, I think some leeway is acceptable. Again, we're not here to rehash the whole moratorium issue. We're here to discuss the three amendments and how they are going to impact the community and listen to comments on how some people feel it would affect the moratorium that we have in place right now. I think some flexibility is in order. Again, just try and stay focused with what we're here to vote on this evening. Okay, first speaker please. And if I could ask the Commission to allow the public to comment and we could have questions after the public comment. That way we don't have to prolong this discussion. Unless you have a problem with that. I just thought maybe—just to save our questions—if you really have a burning question, ask. But if we could keep the public comment moving along, that would be great, so we can make a decision on what we want to do. Dennis.

DENNIS KINSEL: Thank you, Chairman Duran. My name is Dennis Kinsel and I have been a landowner in the Eldorado Utilities franchise area since 1982. I currently live at 635 Caminito del Sol, Santa Fe, 87505. I am speaking in favor of amendments two and three as proposed by the Land Use staff. Staff has presented a reasonable compromise to the five and a half year impasse between EDU, the County and the State Engineer regarding the availability of water for new development.

Since it was first imposed by the County in April, 1996, the moratorium has fostered inequities and unfairness that has affected landowners, the construction industry, and limited the creation of commercial services for residents. Just as the current moratorium is imperfect, so too are the amendments before you tonight. However, these amendments begin to address in a cautious and limited way, the challenge of providing new services without harming existing customers. Staff has been prudent in looking for

solutions that encourage the search for new, untapped water resources and allow for the expansion of existing commercial services through the treatment of wastewater.

Amendment two strengthens the utility by adding new wells new water and State Engineer approved water rights to the system. Each new development must still meet the County's 100-year water supply requirement. Each new development would contribute 20 percent more water to EDU and existing customers than what the project would use. Each new development, each new residential development would be supplied water from a community water system, rather than sprawling on 12.5-acre homesites with independent domestic wells. Amendment two is the enabling legislation that allows development to comply with the new PRC line extension policy of contributing new well, untapped water, and OSC water rights to Eldorado Utilities.

Amendment three should be an opportunity that is available to all developments in the county. Circumstances vary, but recycling wastewater should be given serious consideration by any project that wants to expand. There's a popular misconception that the moratorium only affects a few developers. Unfortunately, this is a rather narrow view of what the moratorium means to people that work with their hands for a living. EDU hook-ups plummeted from 271 in 1996 to 104 in the year 2000. With one in five jobs in Santa Fe County related to the construction industry, virtually every lost hook-up represents a home not built, jobs that are lost and gross receipts and property taxes that are not collected.

Over 140 signatures from a variety of employees and businesses in the Eldorado area are a testament to the importance of making sensible changes that encourage economic diversity, job development, and the opportunity to bring job opportunities to the wider community of Santa Fe County residents. I would like to acknowledge the staff for proposing creative solutions to a long standing and difficult problem, and I ask for your support in voting for amendments two and three.

CHAIRMAN DURAN: Thank you, Dennis. Next speaker please.

RICHARD CROMBIE: Thank you, Honorable Commissioners. My name is Richard Crombie. I'm a real estate broker down in the State Highway 14 area. I would hope that other users include us, because I think it's fairly common knowledge that the flow of water off that mountain is through Eldorado to us. We're all very, very worried about this, okay? We want that moratorium maintained. We want it maintained until you have the information you really need to make a wise choice. And I don't think that information exists, either within this County or within the State Engineer's Office.

When we started talking about guarantees of 100-year supply, that's the biggest smoke-and-mirror gambit I ever heard. Because you've got to put that 100 years within the context of one of the fastest growing counties in the southwest. How can you tell, who will replace you guys, what kind of decisions will they make in five, ten or fifteen years, and how that relates to the problem of 100-year supply. It's a big game and it's a dangerous game.

We on State Highway 14 don't want that moratorium touched and until at least the

2013743

SFC CLERK RECORDING 08/17/2004

information and the knowledge and the plans that are needed to distribute that water properly is in hand, between State Highway 14 and Eldorado, there's a subdivision by the name of Silverado. Silverado well failures are pretty widely known and the rate of those failures I dare say is increasing, but it's going unnoticed. It's not being studied and it's just an example of the way things could potentially head. Thank you very much.

CHAIRMAN DURAN: Thank you. Next speaker please.

MATTHEW SPANGLER: Mr. Chairman, members of the Commission, my name is Matthew Spangler and I'm here representing Eldorado Utilities. The utility is here tonight to support moratorium amendments two and three. I would specifically like to speak to amendment number two, which the utility feels will have a significant beneficial impact on the utility and its customers. This amendment will increase the amount of water, water rights and wells available to the utility. It will strengthen the utility system for all existing utility customers by first bringing new water rights into the system. The way I understand this amendment to the moratorium, it would require new water rights to be brought into the Eldorado system.

Second, it would all to the number of wells that would be a part of the system. The more wells that you have in the system, the less reliance there is on any one particular well. Third, the amendment will also increase the amount of data available regarding the aquifer by the increased exploration of the aquifer. This may lead to the discovery of new water resources or more understanding of the water resources that currently exist.

For those three reasons, we would ask you to approve the last two moratorium amendments. I would also like to briefly tell you about two new developments with regard to the water system that have occurred since March of this year when I last spoke with you.

First, the New Mexico Public Regulation Commission approved in July a new line extension policy. And developer who desires to put a new subdivision in the Eldorado franchise area must comply with the line extension policy. The new policy requires developers of ten or more lots to contribute to the utility both wet water and water rights sufficient to meet their new development. Therefore, any development that would come into the utility under the new line extension policy would be required to carry its own weight with regard to both wet water and water rights.

For any development under ten lots, nine or less, the new policy requires the developer to contribute a fee to the utility which is then put into a separate account which can be solely used to purchase water resources to supply the new development. So the net effect of the new line extension policy which the Public Regulation Commission approved, is that it requires any new development to bring the water and water rights sufficient to serve that development. It essentially follows the similar lines of amendment number two.

Second, the utility recently received an approval from the New Mexico State Engineer approving supplemental well #15. This well has a capacity to produce between 250 and 300 gallons per minute of water on a sustained basis. This water is available for all utility customers. But there's a more important point than that in the granting of this particular permit. That point is that in the process of gaining the permit, the utility and the State Engineer

2013744

reached agreement with regard to the water rights available in the utility's wells one through eight.

In the permit, the State Engineer recognized 780 acre-feet per year of water right in the utility's wells one through eight. This is important because last year, the utility used approximately 500 acre-feet of water. This means that in wells one through eight alone, there is an excess water right capacity of approximately 50 percent. This will allow—and that approval has been supplied to your staff since it was gained.

The figure of 780 acre-feet does not include wells 9, 10, 11 or 12, which also have an additional water right. Therefore the water right issues that we discussed previously seem to have been resolved with the State Engineer. So with those two things we would ask you to support the last two amendments. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker please.

THOMAS MARN: Honorable Commissioners, my name is Thomas Marn. I reside at #8 First Street in the traditional village of Los Cerrillos. I am a former president of the El Vadito de los Cerrillos Water Association. I am a former chair of the advisory committee of the Ortiz Mountain Health Center, and then presently, the president of the Turquoise Trail Association.

There is simply—there are some simple facts that need to be expressed. The traditional village of Los Cerrillos is located at the end of the Galisteo water basin. That means we get the water left as it proceeds through Eldorado and it's tapped off by Eldorado and other users along the way. Our water rights go back to the Santa Fe Railroad's building of the dam in the 1880s and beyond. It's my understanding that the water rights in the Galisteo Basin have not been adjudicated, and so there is paper water and there is wet water.

We are documented wet water users at present. Every new well drilled depletes our water source. Every new septic system threatens the health of our residents. We have approximately 360 people living in the traditional village. We have paper rights to some 51 acre-feet of water. We use about 30. The reason we have a moratorium on any new water meters in the village is that we have a very serious leak in the dam built by the railroad and we have asked the railroad and the governor to give us the money to repair this dam and to date, this has not been forthcoming.

Every new septic system that threatens the health of our residents is going to become a public health and welfare issue. Traditional villages' water rights must take precedence over new construction, new wells, into the limited aquifer. New land developers must find different water sources. If there are no rights for the traditional villages in our wonderful state, what rights do we have? It's called justice for the people who have been here. And I might add that the people in the traditional village of Los Cerrillos, 65 percent are Hispanic. And they are third and fourth generation families. They don't sell their land; they give the land to their children and they become residents of that village. I stand here opposed to lifting the moratorium. Thank you for your time.

CHAIRMAN DURAN: Thank you, sir. Next speaker please.

NATHAN OCKMAN: Mr. Chairman, Commissioners, my name is Nathan

2013745

Ockman. I'm a retired physicist with a doctorate from the University of Michigan, and I live at 9 Monte Alto Road in Eldorado. I oppose the first two amendments and support the third, to the Eldorado moratorium. My review of the entire Shomaker report—study, I should say, the 2001 Duke Engineering study, and EDU data has made it clear to me that the drilling of many new wells to serve new hook-ups linked to new development not allowed by the moratorium, as contemplated by the first two new amendments could lead to a severe water shortage in the Eldorado area in the not too distant future.

The major detriment of new wells will be the increased mining of our groundwater aquifer, which I will now discuss. Let me first define mining for those not sure of it. It's defined as depletion of an aquifer due to the amount of discharge being greater than the recharge. At present, the mining of the north Galisteo Creek sub-basin, which includes Eldorado, amounts to 1765 acre-feet a year. This is a result of the Duke study, and this figure is for a discharge of 537 acre-feet per year from EDU pumping for about 2400 hook-ups for year 2000.

The number will increase to 1900 acre-feet per year for 3000 hook-ups, which includes a number of build-outs allowed by the moratorium in the Eldorado area, and will rise to 2120 acre-feet per year for 4000 hook-ups, corresponding to the complete build-out for the EDU water area.

What are the consequences of this considerable mining? These are big numbers. One, if we knew the total amount of water stored in the aquifer then this would be an easy calculation. All one has to do is divide that by the mining per year and you will find out what the number of year the aquifer can support water usage. However, this number is not known. However, there will be a decrease in the water table as a consequence due to mining. Therefore a consequence that can be determined is the effect on the decrease of the water table level and the accompanying drying up of wells.

I will present some data on these now. Shomaker claims that pumping only results in draw-down at well sites, but not outside of their vicinity. However, his study does not present any data to verify this conclusion. My estimate, using Shomaker and EDU data gave a decrease of about one foot per year for the water table for the years 1947 just prior to development in Eldorado to 1998. In forty to 100 year, this would yield a sizable drop in the water table, which would increase if many new wells are put into production. A consequence would be the decrease in the lifetimes of present wells.

Now the Shomaker study predicts that of the 13 EDU wells functioning in the year 2000, only seven will be left by 2040, and only five will be left by 2100. Consequently, new wells will add to production but will no doubt hasten the retirement of older wells. Eventually the lifetime of the new wells will also be lowered by the accelerated decrease in the water table.

Let me discuss some data on the lifetime of the EDU wells. Shomaker's data for the lifetime of the eight wells to be retired by year 2100 range from about 13 years to less than 69 years, with only one exception, with a lifetime between 56 and 100 years. Not a very promising scenario for the 100 year supply required for new wells under the first two amendments. In fact, in the vicinity of wells 13, 14 and 15, which are large producers and the

2013746

most likely area for new wells as a consequence of that, the lifetime of #13 is estimated to be between eight and 13 years only.

In addition, Shomaker data indicates the pumping of wells 14 and 15 caused a draw-down in well #13. This indicates an impairment problem for new wells in this region, which could be a problem for amendment number 2. For the present water usage of about 2600 hook-ups using 520 acre-feet per year, Shomaker predicts a shortfall between year 2028 and 2040. This assumes a highly productive well #15, which as you've just heard, has only been connected in July, and some very large unlikely increases in the production of #9, the Lamy well, and #1 and #14, which Shomaker recently made a remark to someone I know about the production of these wells and considered them wildly speculative.

If 1, 9, 14 and 15's production is more reasonable, like the average of EDU wells in recent years, which have averaged about 4 acre-feet per year, this shortfall could occur as early as 2003 to 2008. Very different than the remarks you heard by the County Hydrologist, who is much more optimistic, but consider that the numbers in the Shomaker report were going to be the real truth and not speculative, which they really are. To increase hook-ups to 3000 allowed by the moratorium requires about 620 acre-feet per year. This could bring about an even earlier shortfall, and to produce enough water for a full build-out of about 4000 hook-ups would require 800 to 1000 acre-feet per year.

The results are conjectural; it would be a great risk to the ED community as just indicated. In conclusion I'd like to state that the data I've presented creates a great deal of doubt about the sustainability of the groundwater supply for Eldorado as well as the surroundings. To have sufficient water for the 3000 hook-ups allowed by the moratorium for the reasonable future will require sustainable well #15 and possibly another well in the near future. These are reasonable possibilities. However, to expand beyond 3000 hook-ups as envisioned by amendments one and two for the benefits of new developments are a big risk to the Eldorado community. Therefore I urge the Board to vote against these first two amendments, but to support amendment three, as it is truly water neutral and shows the direction in which we will have to go in the future to assure our water supply. I thank you.

CHAIRMAN DURAN: Thank you, sir. Next speaker please.

JIM SIEBERT: Mr. Chairman, Commissioners, my name is Jim Siebert. I'm a planning consultant, working as a planning consultant in this matter representing Dr. Murt Byrne and the veterinary clinic in Eldorado. There is in your packet a request for an amendment to the moratorium that would allow for uses such as Dr. Byrne's veterinary clinic to allow them to submit for a development request for an expansion of their existing development providing that the water source that was previously granted would be sufficient to accommodate that expansion. The reason for this that at the time that Dr. Byrne had his clinic approved, it was not clear whether it also included an expansion of the clinic.

He came back in recently and requested an expansion to the clinic and was informed that under the terms of the moratorium, it was the interpretation of staff that he couldn't even submit an application, although there was sufficient water granted previously to accommodate the addition. So what you have in your packet is a request to consider this particular type of

2013747

use, one that's needed in the community. Presently, there's limited space for the clinic and I'd like to have Dr. Byrne just maybe elaborate a bit on this.

COMMISSIONER GONZALES: Mr. Chairman, Jim, can I just ask you a quick question again? You're saying that he's not using the amount of water currently under—to support his business that he's been approved?

MR. SIEBERT: Correct. He was originally granted .3 acre-feet as part of the approval of the original plan.

COMMISSIONER GONZALES: Does he have a contract from Eldorado Utilities for .3 acre-feet?

MR. SIEBERT: Well, actually, that was part of the approval process itself, and there is a contractual obligation to deliver that amount of water. What's happened, as based on actual records, his use is less than that, so he has the ability to expand the business without going over the original approval of .3 acre-feet.

COMMISSIONER GONZALES: So what's—I'm sorry. I don't see your amendment.

MR. SIEBERT: The amendment is—I'll read it to you very quickly. It was in the previous packet and I assume it's part of this packet as well. It says, Existing approved commercial development may use up to the amount of water previously approved by the Board of County Commissioners. The amount of water that the existing development has historically used shall be based on an average water use by the development in previous years. A water budget shall demonstrate that any expansion shall not result in a use greater than previously approved for the development.

And in this particular case there's actual water records to substantiate the use.

COMMISSIONER GONZALES: Has the staff had an opportunity to review the proposed amendment?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, yes. Mr. Siebert did give us that language and it had been my opinion that it was already included in the language that we'd reading it, I was incorrect about that. And Jim, I'm sorry, because I did tell him that it was in the packet for you.

COMMISSIONER GONZALES: So do you have a recommendation? What's your view on his request for the amendment?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I think that what he is recommending is a situation that would use more water than is currently being used, without providing any new water to Eldorado Utilities.

COMMISSIONER GONZALES: Which in fact is what he's stating, that it would use more water, because it's going to be an expansion, but it's going to go up the amount that was previously approved by the Commission.

MS. YUHAS: Yes. And I think I'd have to defer to you on a decision on that.

COMMISSIONER GONZALES: So you're saying it's more of a policy issue than anything else on this.

MS. YUHAS: I think so. From a hydrologic perspective, it uses more water,

2013748

so that's not necessarily a good thing, but he has the right to use that much water.

COMMISSIONER GONZALES: Because he was given the approval to use that water.

MS. YUHAS: I'm kind of torn.

CHAIRMAN DURAN: He could use that water though in his existing—he could expand his existing water usage.

MS. YUHAS: Mr. Chairman, that's right. If he has the right to .3 acre-feet, he could start washing more often or whatever it is.

CHAIRMAN DURAN: Do his laundry there.

MS. YUHAS: Yes. Exactly, and use that .3 acre-feet without expanding the business.

CHAIRMAN DURAN: You had a word to say?

MURT BYRNE: Yes I guess so. I'm Murt Byrne. I own the Eldorado Animal Clinic outside of Eldorado.

CHAIRMAN DURAN: Excuse me, Murt, we're not here to discuss your case, so please address the amendments that you are—

DR. BYRNE: Okay. I would like to support the amendment that Mr. Siebert wrote. Again, all it says is that commercial enterprises who are not asking for more water can go ahead and add on. Again, I won't address my specific issue, but it seems like an easy thing for me that I was told I could use this much water and I'm really struggling in the position I'm in and I can't grow.

CHAIRMAN DURAN: Okay. Thank you very much. Next speaker please.

RICHARD GRISCOM: Mr. Chairman, my name is Richard Griscom. I'm the treasurer of the Galisteo Water Users Association. I've been a resident of the Village of Galisteo for the last 30 years. I would like to point out that the Eldorado Utilities' largest well is in Lamy, which is upstream from and clearly in the watershed.

CHAIRMAN DURAN: Excuse me. I just wanted to remind you that the gentleman before you gave us a pretty detailed explanation of the Shomaker report and all that. Please try not to be repetitive on that.

MR. GRISCOM: I'll be brief. I'd like to remind you that Eldorado Utilities' largest well is in Lamy, which is upstream from and clearly in the watershed of the Galisteo Creek. I would also like to remind you that you all received a letter signed by 73 residents of Galisteo, dated July 19th, in which those residents expressed serious concern about the negative impact of changing the moratorium in Eldorado and the negative impact that that would have on the Galisteo water situation. It's clear that the Eldorado Utilities has not proven a 100-year supply as required by the Commission, and it's also clear, as reported by the representative of the Route 14 Coalition that there have been well failures already just downstream from Eldorado.

We sit in roughly the same situation as the people on Route 14 in terms of possible well failures. I would also like to point out that there are numerous coalitions involved in the efforts to plan in a rational way the growth of the area and I think it would be irrational for the County

2013749

to lift the moratorium at this point when those planning efforts are just beginning and there are very promising, but they'll take a while to develop and it would not be appropriate to make long term water decisions until those planning efforts have borne fruit.

So in summary I would say, I would urge you to think of the water availability for future generations of everybody in the Galisteo watershed, not the short term benefits of those currently living in the Eldorado area, and that you approve only that amendment which would be truly water-neutral, which is amendment number three. Thank you.

CHAIRMAN DURAN: Thank you, sir. Next speaker please. How many more speakers are there? Okay. Thank you.

JOELLEN SCHILMOELLER: Mr. Chairman, Commissioners, thank you for this opportunity to speak on this very important subject. My name is Joellen Schilmoeller. I am speaking today on behalf of the US Highway 285 South Coalition. The Coalition is an organization that represents the homeowners and residents associations throughout the area that will be affected by your decisions here this evening.

At the August 28th meeting of the BCC, Estevan Lopez presented a proposal for the Santa Fe County Water Utility 40-year water plan. In this plan, he addressed the need to establish water supply priorities. The plan states that the utility's top priority must be to meet the existing contractual commitments and allocations. We understand that this proposed plan was written specifically for the Santa Fe County Utility Company. However, it is the idea of setting water supply priorities that is of interest to us. What Mr. Lopez has suggested is that the needs of the existing customers, i.e., the residents in the Eldorado area should be the top priority.

As you know, the Eldorado Utilities company has never proven that they can comply with the County's 100-year water supply requirement. The current customers, who should receive top priority, have not yet been assured a reliable, long term water supply based on the County's 100-year definition. It is the opinion of the coalition that no new customers should be added to the EDU system until the existing customers have been guaranteed what the County considers to be a reliable, long term water supply.

What we need most is a comprehensive, long term water plan that is directly linked with a long term growth plan. There are many pieces in place for this to be a foreseeable reality. For example, the Jemez y Sangre Regional Water Plan may be finalized as early as this spring. The County's proposed 40-year water plan, the Eldorado Water and Sanitation District has many of the pieces in place for an Eldorado service area water plan. And in terms of growth planning, the Highway 285 Corridor Plan is very close to being complete and the Simpson Ranch contemporary community planning process has already been started.

What is required now is patience. Within a fairly short period of time, all of the pieces necessary for a comprehensive, long term water and growth plan will be in place. In an area where the current customers are not guaranteed a 100-year water supply, it would be easy to build beyond our system's capacity to handle the growth. This existing moratorium is one of the few safeguards that we have in place to protect us. Patience is needed now so that in a very short period of time, decisions can be made with wisdom and confidence. We respectfully

request that you vote no on all of the proposed amendments. Thank you once again for an opportunity to present our concerns and recommendations. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker please.

DON DAYTON: Mr. Chairman, members of the Commission, I'm Don Dayton. I've lived in Eldorado for 21 years. Of that, the last ten years have been closely involved with the water situation in Eldorado, and I'm also on the Regional Water Planning Council under the Interstate Stream Commission.

I just want to make a short statement to urge you to—I think you all have copies of the executive summary of the Eldorado water model by Dr. Shomaker. I urge that you follow, or consider his recommendations in our deliberations now and later regarding Eldorado water. It was a two-year study. It cost about \$150,000 and had very intense oversight by the State Engineer Office throughout that two-year period. It has five scenarios of what might happen in the future and we would urge you to look at it closely in all these deliberations.

I might just read the last paragraph of the summary to get an oversight of the model. Eldorado Utilities and the Eldorado Water and Sanitation District should continue to support the planning efforts toward a regional water supply system, based on conjunctive use of surface water and groundwater, so that a supply for an indefinite future can be provided. Any expansion of the utility except for wells in the Galisteo Creek alluvium will draw on groundwater storage and natural discharge, and will lead to a continued lowering of water levels and declining well yields. Thank you.

CHAIRMAN DURAN: Thank you, sir. Next speaker please.

JONAS SNYDER: Commissioners, Mr. Chairman, I'd like to just say one thing real quick. I'm a resident of Eldorado. My name is Jonas Snyder. Somewhere several months ago, Katherine and Jack Frost came out and they spoke about these amendments to us. And not being a geologist and not having any idea what was going on. We went to this meeting. It was really informative and I just really would like to address number two, the amendment number two, because they talked about the 100-year issue, of proving you have that much water. They talked about a well that was dug 600 to 700 feet, and they had hit this amount of water that was coming out at an incredible rate. I wanted to know if it was a part of the same aquifer.

Jack Frost said more than likely, yes it is. My concern was just logistically, since my well, the people around me have wells around 200 to 300 feet deep. This was 600 to 700 feet deep. This is like taking the straw, putting it to the bottom of the glass while the rest of us are only half-way up the glass, and sucking the water out. And I was really concerned. So I would like to say that this moratorium, I think should stay in place until we can come up with a plan and that these amendments should not be voted on. Thank you very much.

CHAIRMAN DURAN: Thank you, sir. Anyone else out there that would like to address the Commission? I'd just like to offer a suggestion here, that if we decide to adopt this, and if Mr. Siebert's amendment is agreed to or incorporated, that the following language should cover it. And that would be, if you look at page 4, paragraph 5. I'll go ahead and read it. Developments that already exist and are using EDU can reallocate the water they receive

2013751

from EDU on their property without being subject to the 100-year proof of water required by the County Code. This could be based—and this is the new language—this could be based on reuse of water, implementation of water conservation measures, or unused capacity.

Any comments or discussion from the Commission?

COMMISSIONER GONZALES: Question.

CHAIRMAN DURAN: Commissioner Gonzales.

COMMISSIONER GONZALES: Katherine, can I just go to the issues that were brought up tonight in terms of the areas that surround the community of Eldorado, and I know that for some time the community of La Cienega has continuously come forward with concerns about what's happened on the west side of Santa Fe in terms of wells and certainly in the Silverado area as well. They claim that the same area, that what's happened in the Silverado area has had a disparate impact, or what's happened in the New Mexico 14 area has had a disparate impact on their aquifers. So how do we grapple with this whole issue as to how one area affects another area's water quantity.

First I guess I should make this a little easier question. Is what's happening out in Eldorado, do we know for sure, is it having a disparate impact on the New Mexico 14 subdivisions and communities? Is there any data out there? Any scientific data that we know that's causing it?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I would want to open up John Shomaker's report and look at what he's predicted for that area. He did do extensive modeling as part of his report. That was the main bulk of it, was looking at those types of impacts and see how far he predicts that it extends before I answer that question.

COMMISSIONER GONZALES: If amendment number two was allowed though, and you talk about doing a test or being able to determine through your water models the impact of surrounding communities, will these communities be part of that water model?

MS. YUHAS: Absolutely.

COMMISSIONER GONZALES: Okay. So if your water model shows that there is going to be a disparate impact on Cerrillos and any of the New Mexico 14 subdivisions, then they would not be allowed to proceed forward.

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: Okay. On to the next question. Will this water model—there was an issue tonight that was brought up as it relates to the mining of the aquifers, where there's a greater draw-down than a replenishment of the aquifer. How does item number two address that issue?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, it really doesn't. Pretty much any place where they're using groundwater, groundwater is being mined. I cannot think of a place in the southwest where groundwater is being used where it's not being withdrawn at a greater rate than it's being replenished.

COMMISSIONER GONZALES: So you're basically stating then that throughout the Santa Fe area and around New Mexico that any groundwater, any use of it is going to mine the aquifers.

2013752

MS. YUHAS: Yes.

COMMISSIONER GONZALES: So there's no water models, nothing that can be done, other than using imported water to prevent the mining of an aquifer.

MS. YUHAS: That's correct. You can try and have conjunctive use. You can try and rest the aquifer so that you get flow through, which is a form or recharge into that aquifer area. But as far as precipitation making it down into the aquifer and filling it back up, that's not happening.

COMMISSIONER GONZALES: Okay. Tonight there were several questions or concerns about making sure that the moratorium stayed in place until there was a long term source of water supply, until it was determined. Again, minus the issue of importing water, which Santa Fe County is basically limited to at this time because we don't have any water to import into the area. How is that water supply determined or how would it be determined?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, it would be done the same way that 100-year water supplies are determined for other developments in the Santa Fe area. We'd look at pumping test data, evaluate how long you could sustain the development based on that, how far out the effects would go, based on that pumping test data. And I don't have all of that for the Eldorado area.

COMMISSIONER GONZALES: So you're saying that basically, with amendment two, by allowing people to do exploratory wells—let me ask you this. Based on what you're telling me, it seems like there's a lot more restrictions on this than would be allowed anywhere else in the county. Is that true? If someone wanted to put up a well in a subdivision or they were near a utility that was going to be servicing their area, would they be required to perform a wet water test, get water rights, and hand them over to the State Engineer prior to the County approving the use of those wells?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, this is more stringent. A development just in another area of Santa Fe County would be required, depending on the size, to show that they had water rights and to do the 100-year proof of water. But they wouldn't be required to do a transfer or anything like that.

COMMISSIONER GONZALES: Do they have to show that they're not having the disparate impact on the surrounding communities as well through your water models?

MS. YUHAS: Yes. That's also a part of the standard evaluation that I do.

COMMISSIONER GONZALES: So then to answer the question how do we determine a long term water supply, you're basically telling us the way you determine that is to do the 100-year water studies.

MS. YUHAS: Commissioner Gonzales, that's correct. John Shomaker in this report has looked quite extensively at what their options are for a 100-year water supply and says that their system right now isn't going to do it, that they're going to need to drill deeper and look at other formations and things like that in order to sustain the community for 100 years. But that's also typical of any development. The life of a well is not 100 years. It's maybe 40 years. So any development that is approved is going to need to drill some new wells or to refurbish the ones that they have.

2013753

COMMISSIONER GONZALES: Okay. So Mr. Spangler indicated that wells one through eight have been approved for 700 acre-feet. They've been permitted for that? Is that right?

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: Does that include—is that paper water, or has the State Engineer determined through whatever data that Eldorado Utilities has provided them that there is 780 acre-feet of water available annually?

MS. YUHAS: Commissioner Gonzales, those are paper water rights. I don't think the State Engineer, unless I'm not aware of it, has made a determination that they have the physical ability to supply that water.

COMMISSIONER GONZALES: Is Mr. Spangler still here? No. And would you receive something like that if they had done that?

MS. YUHAS: Yes, and I've met with Eldorado Utilities. And what they have told me is that they have the water rights approved, not that there's a 100-year proof of water.

COMMISSIONER GONZALES: So that basically doesn't have any bearing and shouldn't really be considered unless they can prove that they truly have the wet water.

MS. YUHAS: Correct.

COMMISSIONER GONZALES: Which would be proven through a series of well tests that amendment—you're basically saying amendment 2 would do?

MS. YUHAS: Amendment two would do that for the new developments. Eldorado Utilities still needs to do that on some of their own wells.

CHAIRMAN DURAN: Any other questions of staff?

COMMISSIONER CAMPOS: Mr. Chairman, I have a question.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Ms. Yuhas, amendment two, what impact on mining is this going to have on the aquifer, if any?

MS. YUHAS: Mr. Chairman, Commissioner Campos, I'm sorry. Yes, it will mine the aquifer.

COMMISSIONER GONZALES: Will it continue, will it enhance the effect of the mining of the aquifer, that's the question. If so by how much? If you can project.

MS. YUHAS: I see what you're saying. In the Eldorado area, the formation is fairly tight. Its ability to transmit water through the aquifer itself is fairly limited, so the ability of one well to affect another is more limited because of that. Yes, it will continue to mine the aquifer, but it will enhance Eldorado Utilities' ability to produce from the aquifer. In that area, the more wells you have the better off you are.

COMMISSIONER GONZALES: I understand the argument but the question is about acceleration of the mining. Do you foresee there's going to be additional water used with amendment two? Will that encourage a lot of new use or will it just transfer from water user A to water user B and then to the Eldorado Utilities Company?

MS. YUHAS: Mr. Chairman, Commissioner Campos, the intent of my proposed amendment number two is that they would be looking for water that is not currently

2013754

being utilized. So, yes. It would mine it, but it would not enhance the effect that Eldorado Utilities is already having on the aquifer. I'm sorry if I'm being vague. I'm not trying. Yes, it will take more water out of the aquifer. That will happen. Yes. But Eldorado Utilities will have the ability to use those wells to potentially transfer rights and produce more water.

CHAIRMAN DURAN: Over and above what they're using now.

MS. YUHAS: Yes, that's correct. Over and above what they're using now. There is no way to avoid mining.

COMMISSIONER CAMPOS: It can be accelerated. That's a point.

MS. YUHAS: Yes. You're taking out more water.

COMMISSIONER CAMPOS: The mining will be accelerated because there's going to be more use of unused resources.

MS. YUHAS: That's correct.

COMMISSIONER CAMPOS: Now, Eldorado Utilities does not have a 100-year water supply right now.

MS. YUHAS: That is correct.

COMMISSIONER CAMPOS: Do you see it as a problem?

MS. YUHAS: Absolutely.

COMMISSIONER CAMPOS: How do we deal with that?

MS. YUHAS: How do we deal with that? Part of the County's 40-year water plan is to supply them with some surface water, imported water, so that they can practice what we call conjunctive management where they rest some of the wells and they use this surface water. By resting the wells in the Eldorado Utilities area, you could allow some of the water levels to rise and give yourself enhanced production by resting the wells in some sort of rotation, is what I would expect they would do.

COMMISSIONER CAMPOS: So you're saying, you're relying on this entirely on imported water. Your comment is based—we can move forward if we have imported water to the site of Eldorado Utilities.

MS. YUHAS: Not for these amendments, no.

COMMISSIONER CAMPOS: In general.

MS. YUHAS: In general, yes. I think that's a critical thing to have for that area, whether you pass these amendments or you don't pass these amendments, we still need to get imported water to that area.

COMMISSIONER CAMPOS: How foreseeable? What's the foreseeability of actually getting this water to Eldorado Utilities? What's the likelihood?

CHAIRMAN DURAN: You're working on that.

MS. YUHAS: Mr. Chairman, Commissioner Campos, these are hard questions. We are working right now on a project to take water out of the river with the City and Eldorado Utilities is one of the customers that we are looking to serve when we get that water. When that project might actually be on line, putting wet water in the pipes? Five to ten years though.

COMMISSIONER CAMPOS: And then transporting that to Eldorado. Do you

2013755

have an idea how much that would cost?

MS. YUHAS: No.

COMMISSIONER CAMPOS: There are a lot of questions that aren't answered, right?

CHAIRMAN DURAN: Well, I heard it was \$500,000 to \$1,000,000.

COMMISSIONER CAMPOS: That's a lot of money.

CHAIRMAN DURAN: Ten million for the pipeline? It's gone up.

COMMISSIONER CAMPOS: I guess what you're saying is amendment number two will accelerate the use of water and increase the mining and imported water is somewhere down the horizon maybe.

MS. YUHAS: Commissioner Campos, that's absolutely correct.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: Any other questions?

COMMISSIONER SULLIVAN: Question on each of the second and third ones. First of all, let me go to the easier one for just a moment, the third one. Chairman Duran, your suggested changes on the third proposed amendment, I'm not clear why, as it's written this wouldn't satisfy the particular applicant as well as others who have existing uses and can expand their commercial use within the limit of that existing use. It says changes can be made between commercial uses but any change which requires new zoning is not permitted. The amount of water which the development has for this purpose would be based on the amount of water proposed in the water budget when the project was approved by Santa Fe County.

You think that's not adequate to cover the—

CHAIRMAN DURAN: The reason that—Katherine Yuhas herself said after she read it, it didn't incorporate the concern that Siebert had. Is that still your position?

MS. YUHAS: Mr. Chairman, I just thought that if added that sentence it would be clearer that that provision was covered. I thought, when I put this into the packet that that sort of situation would be covered by this amendment.

COMMISSIONER SULLIVAN: Could you read that again, Mr. Chairman, that sentence?

CHAIRMAN DURAN: It goes after, it's right after the first sentence. It says, this could be based on reuse of water, implementation of water conservation measures, or unused capacity.

COMMISSIONER SULLIVAN: Okay, thank you. It sounds okay to me. Getting onto proposal number two then. Katherine, I think we've all, we all understand that any proposal that's going to relax to some extent the moratorium is going to increase the impact on the aquifer, so what we're being asked to do is say is this reasonable? Is this a measured response and one that hopefully won't impair other users, and if it's proved that it will, the proposal won't be brought forward. The thing I'm concerned about, and give me your thoughts on this, is that are we encouraging wildcatting? Are we encouraging individuals, developers, whomever to go out and drill speculative wells, simply for the purpose of selling

2013756

that water and the water rights, which they would have to have appurtenant to it, to EDU or to a developer who then transfers it or donates it to EDU. Do you see this as occurring?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, I suppose that that could happen. The cost of drilling a well and doing the testing that's required is quite expensive in that area. I've heard quotes from people something around the order of \$100,000, maybe more than that on their projects. So to that end, it seems to me that you would be more careful about what you were doing. That we wouldn't be getting a whole lot of wells, given that that's the expense of putting them in. As to whether or not people would go out and drill wells to find out if they could drill a good one? That might be a good thing in that area.

COMMISSIONER SULLIVAN: So there's not a requirement that the individual who transfers this water be, in fact, the developer. In other words, I could drill a well and it turns out to be a good well, and it costs me \$100,000. I can sell that well to developer X for \$200,000. Developer X then transfers it to EDU and builds how many ever, 2.5-acre lots the development will accommodate. That would be permitted under this provision?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that could happen, but that could happen without these amendments. Somebody could go out and prove up the water and sell it to a developer.

COMMISSIONER SULLIVAN: But not in Eldorado because there's a moratorium on that.

MS. YUHAS: Correct.

COMMISSIONER SULLIVAN: Okay. So this would give an option of someone who was just in the business of water wildcatting. They'd have to be a high-roller, I think, but none the less, they could do that. Then the other question I had in the second line of that second provision, you say so they can take service for their development of the amount of water donated minus 20 percent to account for leakage. In the first part of that sentence you say, you talk about water rights that are transferred to the EDU water system, and maybe this is a question for legal. In one phrase we say the water is to be transferred and the second part of that sentence we say that the water is to be donated. Are we specifying that the developer simply transfer the water, which to me would mean he could make some monetary deals if he could talk EDU into it. I don't know what that would do. Or are we mandating—and if so is that appropriate—that that water, those wells and those water rights, be donated to EDU?

MR. KOPELMAN: Mr. Chairman, Commissioner, I think the word donated is meant in a more general sense and I think it could probably be substituted for the amount of water transferred, rather than use the term donated. I think that would be more accurate.

COMMISSIONER SULLIVAN: So it wasn't your intent to absolutely insist that the water be donated to EDU. If the applicant wanted to move forward and if EDU agreed as a part within its rate structure that the applicant had some compensation coming to it, that's between them.

MS. YUHAS: That's correct.

COMMISSIONER SULLIVAN: It's not up to us to dictate the private deals

2013757

between the developer and the Eldorado Water Utilities. They're regulated by a separate entity. Okay, so transferred would be a more accurate—

MS. YUHAS: Transferred would be a good change there. Thank you.

COMMISSIONER SULLIVAN: My last question is, and this reflects off of some of Commissioner Gonzales' questions earlier on, which I know were hard for you to answer, and that is, have you made any assessment of how much, how many users would take advantage of this provision. And by how many users, I mean really getting to the bottom line, how much water, how much more water would we be drawing out of the aquifer as a result of this provision?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, again, I don't have an exact number on that. I think the provisions of amendment number two are fairly restrictive. And I think drilling a really good well in the Eldorado area is a difficult thing to do. Some of it has to do with luck of your location, whether or not you're going to be able to drill into a good formation that's going to produce enough and be able to sustain you for 100 years.

So I don't really think it's going to be that many people but I'd hesitate to speculate about how many it would really be and what that would translate to in terms of water. A hundred acre-feet a year? Maximum? But that's kind of off the top of my head.

COMMISSIONER SULLIVAN: If it were, that would be 20 percent more than Eldorado is pumping right now, EDU is pumping right now, not Eldorado.

MS. YUHAS: That's a lot of water.

COMMISSIONER SULLIVAN: And by the way, we should make it clear that although this covers the entire EDU service area, there are a number of homes in Eldorado that are not serviced by EDU. They have individual wells, particularly on the western side of the Eldorado Subdivision, there's a number of lots, and I presume some of them are still unsold, that are on individual wells.

MS. YUHAS: And they would be taken into account in any analysis that's done of impacts and things like that.

COMMISSIONER SULLIVAN: We don't want to impact those residential wells.

MS. YUHAS: Absolutely.

COMMISSIONER SULLIVAN: The last thing I wanted to say, I just want to be sure that the public understands, and we appreciate people—they certainly have the right to sign a petition and express their opinions, which they do and I think we provide a good opportunity for that. I'm sure I speak for the Board and I want to make it clear that we don't make our decisions based on, at least I don't, on the scorebox, on the tally, of whether it's 140 to 73 or what the number is. We recognize that certain groups have vested interest and they're entitled to express those interests and entitled to get petitions and they may have more organizing capability than individuals. So I just want people to know that we're doing our very best to analyze these issues as specific issues and how they impact the entire county and not tallying petition totals. Those are all my questions. Thank you, Mr. Chairman.

CHAIRMAN DURAN: Thank you. Commissioner Gonzales.

2013758

COMMISSIONER GONZALES: Just to follow along with Commissioner Campos' issues concerning the mining of the aquifer and how that mining takes place in this area. And you keep talking about the formations of the aquifers in the Eldorado area. And I'm assuming that the formations of the aquifers in the Eldorado area are very different from the formations of the aquifers in the La Cienega area. That's basically what I heard you say is that the formations state that there might be some pockets where you might have some water that's separated from other pockets. Is that correct?

MS. YUHAS: That is correct. Definitely.

COMMISSIONER GONZALES: Whereas in other areas, you may not have those pockets of separation. When the straws go down, you're hitting everything, basically. Or is that not the case?

MS. YUHAS: No. I think that's an accurate way to look at it. There may be some areas in the Eldorado service area where just because you have a well in one location, it won't be able to draw from this other area within a 100-year period. So you would do well to go over and drill in that other area and access what is essentially new water.

COMMISSIONER GONZALES: So the point is, you are mining an aquifer, but through the models that you're talking about, the water models you're talking about that exist today, those models can be run to assure that there's not a disparate impact on other wells that are also mining aquifers.

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: Okay. So that's going to take all that into account, basically.

MS. YUHAS: I would take all that into account, yes.

COMMISSIONER GONZALES: So I want to ask you these three questions one last time so I understand it for the record. One, the moratorium in its entirety and what it's supposed to accomplish in terms of assuring that there's a long term, renewable source of water for the Eldorado communities, is that being jeopardized by any of these amendments?

MS. YUHAS: I don't think so. That's why I recommended them.,

COMMISSIONER GONZALES: Second question. Does these amendments, specifically amendment two, provide for an opportunity to determine whether there is a long term renewable source of water for the Eldorado communities?

MS. YUHAS: Yes, I think that's inherent in number two, and beyond that, number two asks for not just my evaluation, but for my ability to contract somebody to corroborate my opinion.

COMMISSIONER GONZALES: Does number two also require a State Engineer's concurrence?

MS. YUHAS: All of our development plans require the State Engineer's concurrence. So that would be a part of number two.

COMMISSIONER GONZALES: So it's not something that you could determine just wholly on your own that someone's going to get a permit?

MS. YUHAS: Absolutely not.

2013759

COMMISSIONER GONZALES: So there is a level of a check and balance that exists between the state and between the County in determining the data that's provided to you by any well drilling that would take place.

MS. YUHAS: That's correct.

COMMISSIONER GONZALES: And that takes into account all those issues, long term water supply, disparate impacts of surrounding communities, all that is being checked by the State Engineer as well.

MS. YUHAS: They take into account the same factors that I do in my evaluations. Yes.

COMMISSIONER GONZALES: Okay, and then this is the last, is that the water models, again, that we have are water models that are proven to identify any disparate impacts or negative impacts that might occur to surrounding well users or communities that could be affected by draw-downs of aquifers.

MS. YUHAS: That's correct. These are models that the State Engineer accepts and uses that are well documented in the geo-hydrologic literature. Yes.

COMMISSIONER GONZALES: In terms of the County process, anyone who was to apply for a permit, is that public record and how is the public to know who's requesting well permits or doing these types of well tests?

MS. YUHAS: Permits for wells are not public noticed, nor are pumping tests. Anybody can get a permit for a well and go and do a pumping test, and that is not a matter of public record. When they come in to develop their property, that's done through the County Code process which I would do well to let Roman explain instead of me.

COMMISSIONER GONZALES: If the Commission were to go forward with this, is there a problem in making available to the public, requests by individuals to do pump tests, or is that—

MS. YUHAS: I think that would be fine. We could do that. Certainly the data from pumping tests and that sort of information is always available to the public as soon as I have it. It's the notice that a pumping test is being conducted.

CHAIRMAN DURAN: Isn't there an association out in Eldorado?

MS. YUHAS: Yes.

CHAIRMAN DURAN: Maybe you could give them notice, since they're the affected—actually, maybe the Cerrillos community too and anyone else that came up here and expressed an interest in that process. Maybe we could notice them.

COMMISSIONER GONZALES: One other question. How long do these pump tests take, and then how long does it take for the data to be analyzed and determined by the State Engineer, the whole transfer of the water rights, the whole process, for one well to basically go from the point that it's being drilled to the point that the State Engineer says, Yes, you can transfer the water rights to Eldorado Utilities. We concur with the 100-year water supply, and we agree that there's no negative impact that's going to take place to any other wells in the aquifer or any other communities around it.

MS. YUHAS: I think that might take six months to a year, if it's not protested.

2013760

SFC CLERK RECORDING 08/17/2004

If it's protested it might take longer than that.

COMMISSIONER GONZALES: Okay, Mr. Chairman. With those in hand, I'm prepared to make a motion. I'd like to move for the approval of amendments number two and number three as presented.

COMMISSIONER CAMPOS: Mr. Chairman, could we do them one at a time? Just as a suggestion.

COMMISSIONER GONZALES: That's not a problem. I'd move for denial of amendment number one, if we're going to start from the beginning.

CHAIRMAN DURAN: Is there a second?

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: Any further discussion.

The motion to deny the first amendment to the ordinance passed by unanimous roll call vote with Commissioners Trujillo, Duran, Gonzales, Campos and Sullivan all voting in to deny.

COMMISSIONER GONZALES: Mr. Chairman, I'd move for approval of amendment number two with the change on item number four, the word "donated" to "transferred" and that all requests for well drilling, there would be a notification to the public, which includes any individual or any organization or association that is requesting that information as it becomes available to the County staff.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Motion and a second. Any further discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Comment from Legal on that change?

Comment from staff?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, what I heard is that once the information was made known to the County staff that it would become public. But again, normally, when somebody comes forward with a permit, we won't even know about it. To get the permit to begin with they go straight to the State Engineer and there's no legal obligation for them to actually put the County on notice at that point in time.

CHAIRMAN DURAN: I heard the motion speak to whenever the County is notified.

MR. KOPELMAN: Right. That's what I'm saying, Mr. Chairman. That once the County gets notice of it, we can then require that, or we can disseminate that information.

COMMISSIONER GONZALES: Can we send a letter to the State Engineer's Office asking that the County be notified for any requests for permits when they become available?

MS. YUHAS: Yes, we can do that. Sure.

COMMISSIONER GONZALES: So if the State Engineer chose to provide that

2013761

SFC CLERK RECORDING 08/17/2004

information to us, then at that point, we would be able to make it available.

MS. YUHAS: No problem.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'd suggest one of the concerns in the area has been the lack of knowledge that the resident have when someone's out there drilling a well as to what that well is for. An apprehension and a concern about the ultimate use of that well. I think we could take Commissioner Gonzales' language and mold it to say that if an applicant is contemplating the submission of a development under the provisions of this ordinance, and the drilling of a well thereunto appertaining, that said applicant shall notify the County prior to and in conjunction with the submittal of a permit to the State Engineer and prior to drilling the well. What this does is it puts us on notice. It's kind of like a pre-master plan application if you will or whatever they're going to do, that this is taking place.

So if questions arise, we can answer it. If the Hydrologist has immediate concerns, she can express them. If she wants some particular kind of logging which may change from time to time as the technology improves, she can insist upon it. What I'm getting at is so that when the applicant spends the money, what they come back with is immediately what the Hydrologist wants and additionally, that the public, as Commissioner Gonzales has been advocating, knows what's going on. So it's not just that we find out what is submitted to the State Engineer, but we find out prior to a well being drilled for the purposes of a submittal under this ordinance, the County is placed on notice.

CHAIRMAN DURAN: Is that an acceptable amendment to your motion?

COMMISSIONER GONZALES: That's acceptable. I didn't know if, Commissioner Sullivan, also in that notice if we can get it in there that the applicant or the proposed applicant would state their intent also for the use of the well to address maybe Commissioner Sullivan's concern that the wells could be used for speculative purposes and more for economic gain than achieving the goals of the moratorium.

CHAIRMAN DURAN: And the second accepts that amendment. Any further discussion?

MS. YUHAS: Mr. Chairman, I have one point I need to bring up. It's on page 4, number 6. It reads building and development permit applications on legal lots of record will be acted upon by the Santa Fe County Land Use Administrator. In no case will building and development permits be allowed in which more than .25 feet per year per legal lot of EDU water service is required. That would mean that—I think, I think this problem we are running into over here is the gentleman who spoke about his project that was approved for .3 and he now wanted to expand because he wasn't using up to .3. I think we might need to get rid of this or change it somehow because I think this would prohibit us from acting on such a project.

CHAIRMAN DURAN: Well, we're not there yet, are we? Isn't that amendment number three?

MS. YUHAS: I merely bringing that up that that would somehow need to be part of—

2013762

CHAIRMAN DURAN: Number three, correct?

MS. YUHAS: Yes. The removal of that would somehow have to be part of number three.

COMMISSIONER GONZALES: The proposed Siebert amendment, does that address amendment number three or part of amendment number two?

MS. YUHAS: Three.

COMMISSIONER SULLIVAN: Also I'd be very hesitant, Mr. Chairman, to eliminate that provision. I think this particular individual was in business prior and is probably grandfathered in prior to this.

CHAIRMAN DURAN: I agree. I don't see how this would apply.

COMMISSIONER GONZALES: We could address the language when we get there.

CHAIRMAN DURAN: Okay, let's speak to this motion.

COMMISSIONER CAMPOS: Discussion. Not a question but discussion amongst ourselves. Basically, what I would like to add is that the water situation in New Mexico, the southwest, Santa Fe County, is basically something like a house of cards that eventually is going to collapse. One system connects to another to another. We heard somebody and it's going to affect somebody downstream. It clearly is going to accelerate the mining of this aquifer and the only solution is really nothing but the possibility that we may import water and then that we may have money to take it to Eldorado. And that the Eldorado Utilities may want to buy it. So there's just so many questions. And I just feel that we have to be a little bit more conservative dealing with water and dealing with 2400, 2800 people who are using water now to protect their situation before we move forward. Thank you, Mr. Chairman.

CHAIRMAN DURAN: I'd just like to say I think that we are moving forward. I think we're trying to be pro-active and I think that the amendments that were made by Commissioner Sullivan and the motion that was created by Commissioner Gonzales take all of that into consideration. We just can't sit here, can't sit on our hands forever. I think that we need to definitely address the community's concerns and I think that we've done that in the motion.

COMMISSIONER GONZALES: Commissioner Campos, I would just say that minus an imported source of water, this is a dilemma that we're facing throughout the entire county, not just in the Eldorado area. I think that what the Commission has done to assure that, to have the rules that require 100-year proof of water, to prove through our water models that there's not a disparate impact on surrounding well users and surrounding communities, and specifically, in the Eldorado area to require water rights, that they're transferred to the utility, I think is really the tools that we have available to manage this house of cards that you're talking about.

The issue of water in the southwest, you're right. It is somewhat fractured. It is somewhat limited and it requires pro-active management. But pro-active management doesn't mean basically shutting everything down and assuming that it's all going to solve itself, because it's not. And for the last six years, the County has not done anything to try and spur any action

2013763

by anybody to try and find a renewable source of water. We can't hide behind this moratorium and think that the water solutions or the water problems are going to be solved in Eldorado. And I hope that through this effort that the message is sent out that unless you can prove through some form of scientific data that has a check and balance system between the state and the County that you have a continuous, renewable source for 100 years, that through our proven water models that you're not going to have a disparate impact, that you're not going to get your right to access any of that water. If you can't prove it, you're not going to get it.

But we can't stay hiding behind this moratorium and think that the water problems are going to be solved in Eldorado. We need, as the Hydrologist has indicated, we need to find out, we need to encourage as much as we can, people to explore some of these aquifers to see if there is any other renewable long term source of water. I think that option two accomplishes that.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think also that if this particular provision is accepted by the Commission tonight, the Commission which has been taking a greater role and a greater monitoring look at water supply in not only the Eldorado area but the county as a whole, is going to look very closely at any development proposal that utilizes this mechanism. And if there are loopholes, if there are ways to abuse this and get around the intent of the ordinance and the wording, then I for one will be the very first to bring it back to rescind it immediately. I think that we are proffering in this particular amendment a tool, a tool that's usable and that's probably reasonable if it's properly employed. If it's employed on a speculative basis, and if we see attorneys tramping up here to point out loopholes in it, then my first reaction will be to rescind it and go back to the moratorium as it stands. So I want to be sure that that message, at least from my standpoint, representing District 5 and the Eldorado area is extremely clear to those who want to propose developments in the area.

COMMISSIONER TRUJILLO: Call for the question, Mr. Chairman.

The motion to approve the second ordinance amendment passed by majority [4-1] vote with Commissioners Trujillo, Gonzales, Duran and Sullivan voting in favor and Commissioner Campos voting against.

COMMISSIONER GONZALES: Move for approval of amendment three with the modification of the language that the chairman has proposed. Can you share that language?

CHAIRMAN DURAN: And it would be in paragraph 5, right after the first sentence, this could be based on reuse of water, implementation of water conservation measures, or unused capacity. Is there a second?

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: Steve?

MR. KOPELMAN: Mr. Chairman, members of the Commission, Katherine had pointed out earlier on paragraph 6 that the language is somewhat unclear about prior

2013764

SFC CLERK RECORDING 08/17/2004

projects, and staff would suggest that if you do go forward with this change, that you add unless the provisions of paragraph 5 are otherwise met. That would mean that if a prior project got .3 acre-feet, they can still use .3 acre-feet. They're not limited to going back to .25.

CHAIRMAN DURAN: Will you include that in your motion?

COMMISSIONER GONZALES: Yes.

CHAIRMAN DURAN: And the second agrees?

COMMISSIONER TRUJILLO: The second agrees.

CHAIRMAN DURAN: Do we have any discussion on the motion?

The motion passed unanimously upon roll call vote with Commissioners Trujillo, Gonzales, Duran, Campos and Sullivan all voting in favor.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: One minor typographical thing, in the second amendment, it says only applicant's whose wells do not impact EDU, and it's spelled "applicant's." I think you mean only applicants, plural, right? Not applicant's in the possessive.

MS. YUHAS: Yes. You are correct. Thank you.

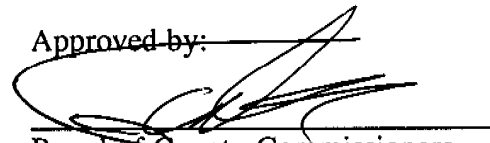
COMMISSIONER SULLIVAN: I hate to go through a whole new motion. Is that within our jurisdiction to take that apostrophe out?

COMMISSIONER GONZALES: Sure.

ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 7:45 p.m.

Approved by: _____


Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:


Karen Farrell, Commission Reporter

ATTEST TO:


REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



2013765

SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

SPECIAL MEETING

October 22, 2001 - 5:30 p.m.

Notice of Special Meeting and Agenda

Notice is hereby given that the Santa Fe Board of County Commissioners will hold a Special Meeting on Monday, October 22, 2001 at 5:30 p.m. in the Commission Chambers at the County Administration Building, 102 Grant Avenue, Santa Fe, New Mexico to discuss the following items:

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Public Hearing:
 - A. Ordinance No. 2001- An Ordinance Amending Ordinance No. 2001-4, Declaring a Moratorium on New Subdivisions, Land Divisions and Master Plans for Projects Served by El Dorado Utilities, Inc. and Encouraging Conservation Measures within the El Dorado Utilities, Inc. Service Area to Establish Provisions Under which Development can Proceed (Second Public Hearing)
- V. Adjournment

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).