

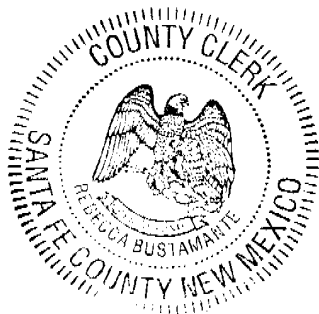
2477500

SANTA FE
BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

December 10, 2002

Paul Duran, Chairman
Jack Sullivan, Vice Chairman
Paul Campos
Marcos Trujillo
José Varela López



1256.555
COUNTY OF SANTA FE }
STATE OF NEW MEXICO } ss
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
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2003 AT 8:55 O'CLOCK PM
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PAGE 500-537 OF THE RECORDS OF
SANTA FE COUNTY

WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.

Handwritten signature of Marcela Delgado
DEPUTY

SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBER COUNTY ADMINISTRATION BUILDING

SPECIAL MEETING

December 10, 2002 - 9:00 a.m.

2477501

Notice of Special Meeting

Notice is hereby given that the Santa Fe Board of County Commissioners, Santa Fe County, Santa Fe, New Mexico, will hold a Special Meeting on Tuesday, December 10, 2002, at 9:00 a.m. in the Commission Chambers at the County Administration Building, 102 Grant Avenue, Santa Fe, New Mexico.

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Approval of Agenda
- V. Study session-Discussion of Proposed Acequia Protection Ordinance
- VI. Request Authorization to Publish Title and General Summary of an Ordinance Amending Article VII, Section 6.2 of the Santa Fe Land Development Code, to Provide for Acequia Protection.
- VII. 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).

— any Tombo arrived at 9:40

SANTA FE COUNTY

SPECIAL MEETING

BOARD OF COUNTY COMMISSIONERS

2477502

December 10, 2002

This special meeting of the Santa Fe Board of County Commissioners was called to order at approximately 9:25 a.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called by County Clerk Bustamante and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Duran, Chairman
Commissioner Marcos Trujillo [late arrival]
Commissioner Paul Campos
Commissioner Jack Sullivan
Commissioner José Varela López

Members Absent:

[None]

APPROVAL OF THE AGENDA

CHAIRMAN DURAN: Any changes to the agenda?

ESTEVAN LOPEZ: Mr. Chairman, it was just pointed out to me that when I got approval from this board to have this, I had spoken of this meeting as being solely a work session. And I, perhaps not knowing any better, added the request authorization to publish title and general summary. Certainly, that doesn't have to be done now. In thinking about setting up this agenda I had thought that we could go through this, through the draft that has been prepared and talk that through, but if it's inappropriate at this time to do the authorization I'm certainly fine with it being tabled and we can bring this forward at another time. The focus of this really should be a study session.

CHAIRMAN DURAN: Okay, well, why don't we cross that bridge when we get there?

MR. LOPEZ: That would be fine with me as well.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: When I was informed about this meeting I was told it

2477503

was simply a study session and I'm comfortable with that at this point. So we can cross that bridge but that was my understanding.

CHAIRMAN DURAN: Okay, Estevan, anything else?

MR. LOPEZ: That's it. So then you'll make that decision when you get there? Is that what I'm understanding? As to whether to table it or do you prefer to—

CHAIRMAN DURAN: I don't care.

COMMISSIONER VARELA: Mr. Chairman, I would prefer to keep it as a study session also.

COMMISSIONER SULLIVAN: Based on that, Mr. Chairman, I'll move to approve the agenda with the deletion of item VI.

CHAIRMAN DURAN: There's a motion.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Second. Any further discussion?

The motion to approve the agenda with the deletion of item VI requesting authorization to publish title and summary for the ordinance passed by unanimous [4-0] voice vote. [Commissioner Trujillo was not present for this action.]

V. Discussion of Proposed Acequia Protection Ordinance

MR. LOPEZ: Commissioners, good morning. This study session has really been a long time in the works. We've been talking primarily to Commissioner Trujillo about him wanting to establish some sort of a dialogue and if appropriate an ordinance between County government and acequia governing entities in northern New Mexico who I think are viewing themselves, to some extent, at a crossroads relative to the demands of water rights and in particular acequia water rights as municipalities and population grows and we in Santa Fe County are in kind of a unique position in terms of the growth that's going on and in terms of our creation of a water utility and all of those issues where these issues really come directly at us and we will ultimately have a very direct impact on some of those things.

With that in mind, with that as a backdrop, we've begun over the course of the last several months a pretty in depth dialogue about how we might work together and what form that sort of working together might take. We have under the general direction from Commissioner Trujillo worked on drafting an ordinance that will be the focus of today's meeting. So with that kind of a backdrop I would turn this over to Gerald just to begin walking or talking us through the ordinance draft that you should have a copy before you.

CHAIRMAN DURAN: Gerald, do you mind if we go to the ordinance and kind of move through it section by section? Maybe this is what you plan on doing but section by section and let the Commissioners ask questions, specific questions to the specific paragraph.

GERALD GONZALEZ (Assistant County Attorney): That would be perfectly acceptable as a way of working.

CHAIRMAN DURAN: Because I think we all know why we're here. I just

2477504

have some concerns about some of the paragraphs and how they're worded.

MR. GONZALEZ: I'd also like to invite our guests to introduce themselves before we begin that process because some of them will be responding to questions that you raise as well.

CHAIRMAN DURAN: Gerald, one last thing. The first paragraph basically sounds to me or seems to be exactly like the other ordinance that's being brought forward by Commissioner Sullivan relative to having master plans before coming in for submittal to have proof of a valid water right.

MR. GONZALEZ: What I've done in terms of the drafting is use legislative form. So I took the existing Section 6.2, repeated the existing sections but plugged in the new ones and those begin on page 2 under Section 6.2.3. So what I've done, this first paragraph 6.2, with the exception of the addition of Section 6.2.3, Acequia or Community Ditch Water Rights, is a repeat of what appears in our existing ordinance.

STEVE KOPELMAN (County Attorney): Excuse me, Mr. Chairman. Right now, 6.2.2 only applies for final development plan. The change is actually not in 6.2.2 in Commissioner Sullivan's proposal, it's in Article V. So this is just what's in there now and it's only, at this point it's for final development plan.

CHAIRMAN DURAN: Okay. Go ahead, Gerald. Thank you.

MR. GONZALEZ: I'd just like to begin with David Benavides and have him introduce himself and then go on down the line.

DAVID BENAVIDES: Good morning, Commissioners. I very much appreciate the invitation to be here. My name is David Benavides. I'm a staff attorney for Community and Indian Legal Services. We're a non-profit, free legal services for low-income people in the fifteen northern counties of New Mexico and the 19 Indian Pueblos. For 12 years I've been a staff attorney working on water rights issues and acequia issues.

PAULA GARCIA: Good morning, Commissioners. My name is Paula Garcia. I'm the director of the New Mexico Acequia Association. We're a non-profit organization, membership-based organization that represents eleven of the regional associations of acequias in New Mexico, including the Pojoaque Valley Association, Santa Cruz, Rio Chama, Taos and several others, altogether representing about 400 acequias and our mission is to protect acequias and strengthening the self-governance of acequias in order to assure their continued survival into the future as local governmental entities that manage water at the local level. And I'm pleased to be here. Thank you for the opportunity. Thank you.

JUDY STEVENS : I'm Judy Stevens. I'm with the Santa Fe Land Use Resource Center. And this is an issue that we've followed with a great deal of interest and we have simply tried to be helpful to the legal services and the acequia associations when we could. Thank you for having us here.

CHAIRMAN DURAN: Thank you. Thank you for joining us.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos. As you suggested that Mr. Gonzalez maybe go through this section by section. What I wanted to suggest is perhaps get the overall concept and then go section by section so that makes a little more sense in context. I

2477505

haven't seen it before this morning. I haven't had a chance to read it. I'd like to get the overall concept and then the specifics of that concept.

CHAIRMAN DURAN: That's fine.

COMMISSIONER CAMPOS: That would be more understandable to me.

CHAIRMAN DURAN: That's fine. What I was going to say is that I'd like to at some point, I guess maybe after all this have a clear understanding of what we're here to discuss that we deal with the proposed ordinance section by section.

MR. GONZALEZ: I'll begin with sort of an overview then, Mr. Chairman. The concept behind the ordinance is that it's important from the standpoint of the traditional communities, the way of life, the culture and the County of Santa Fe to preserve some aspects of lifestyle, way of making a living and cultural and traditional observances that relate to the use of water. Water as we know is important and acequias are the traditional way of delivering that water. I think it was an eye-opener for all of us when some years ago Judge Encinias decided that he was going to release water into the Santa Fe Acequia and there was kind of an upbeat mood in the community and sort of a sense that this was a way of making sure that we didn't abandon traditional roots and traditional ways of making a living.

I think acequias for some time have found themselves feeling a little beleaguered. Some people look at them as sort of fighting a rearguard action but I think the folks who are here today will be able to tell us that acequias are living institutions. They have great vitality and they're important to the way that we live our life in the County of Santa Fe. And probably in ways beyond what we normally think of.

The ordinance itself was an attempt to—Commissioner Marcos Trujillo has joined us.

COMMISSIONER TRUJILLO: Good morning. Sorry I'm late.

CHAIRMAN DURAN: We just started talking. Gerald is giving us a brief overview of what the ordinance is all about.

MR. GONZALEZ: And Commissioner Trujillo, you're certainly welcome to join in here. I was sort of talking about the background and the meaning of acequias in the lifestyle and the culture and the economy of Santa Fe County. So the ordinance itself was an effort to do some balancing in a way that also supported and protected acequias and acequia-based agriculture and acequia-based communities. And it does so by approaching the transfer of acequia water rights and treating that as the critical point in terms of how to support and protect acequias and at the same time deal with water rights for the County in a rational way. As we know, and you'll see as we go through some of the purpose sections here, acequias are sort of a prime target in terms of acquisition of water rights, in part because of the acceleration of the development process, the pressures that we've all felt as that's occurred in the county.

What the ordinance says is that before the County will recognize a transfer or water rights from an existing acequia that the acequia's approval has to be secured from the applicant, whether that's the County, whether it's a developer or whether it's a proposed special district, because there are special districts that can also be formed for the purpose of dealing with, or using water. The County has I think to date only approved one special district of that sort but it's likely that we will see more of those in the future. And what the ordinance says is that in

2477506

approving the charters which this Commission has the authority and the requirement to do, in approving the charters for those special districts they also have to agree and incorporate in their charters, basically, the contents of the ordinance.

So the ordinance requires that acequias be consulted as part of the process of transferring water rights from acequias. If they're acequia rights, and the transfers generally have to be approved by the acequia. We have, and there's going to be some discussion towards the end of how to deal with, when you get to the place where these either not approval or default in the approval or that sort of thing, and those are some of the issues that will need to be grappled with in the future in terms of drafting and how we structure this. But that's the overall concept of the ordinance and I'd open that up for comments from anybody else who participated in the drafting. I don't know whether David or Paula or Judy or Steve or the County Manager, Estevan, have anything they want to add at this point.

MR. BENAVIDES: Maybe just a quick, one-minute kind of overview in terms of some more of the general things that we were thinking about. I think the County is in a very important point in time. When the County, when any entity in New Mexico begins to become the owner of water rights and begins to seek to buy water rights I think you enter into something which has great opportunity and great danger. I guess that's the way to put it, because where water rights are and what is done with water rights really defines any area of the state.

And so when you go out into the market for water rights you're taking a huge step and I think we all appreciate that and that's why we've come together to try to work on this. You take a huge step in terms of your ability to transform other communities by acquiring water rights in those communities. So it's with that appreciation, with that understanding that Santa Fe County and of course the City of Santa Fe also being in the market, are embarking on kind of a new chapter in their relationships with their neighbors and their relationships with their neighboring communities. Whether we realize it or not, the acquisition of water rights is not like buying a car or buying a piece of machinery for the County. It's something with those kinds of implications in terms of your relationships with your neighbors and in terms of the future of New Mexico and so it seems as if we're here to urge that we don't believe that the County means to obtain water rights no matter what.

We believe that the County probably has some values and has some things that in the course of their water policy that they want to say about what the County values and who the County is. This would be a first step in terms of the acequias. The acequias are not the only implication of the County being involved in the water market but they're an important one and it's a good first step and the idea of this ordinance is a good first step to start to flesh out what our values are with regard to water and what we do and don't want to do with our water policy.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: I guess what I'm trying to say is we don't have the support from the existing legislation or the existing laws that is conducive to protecting traditional water rights. Traditional water rights, the law says can be separated from a piece of

2477507

land. So a lot of people look at traditional water rights as equity. If they need financial support or something like that they're going to sell their water rights and they're going at a pretty good price. Is there any way that local governments can work with the legislature to implement some legislation that will keep traditional water rights as part of the a piece of land that cannot be separated as a result augmenting the value of that piece of land and not use traditional water rights as a commodity of exchange, or to increase financial coffers.

Because right now, I talk to a lot of people that look at their traditional water rights as equity. And they would consider any ordinance or any law that would not let them do whatever they want with their water rights as a taking. The sensitivity from this Board is there to protect traditional water rights. They're senior water rights. Ostensibly the ordinance is to give the acequias, the acequia community a voice in the process of losing, if you will, or somebody trying to acquire water rights from them. It gives them a voice so that they represent what their position is regarding that water right.

CHAIRMAN DURAN: Commissioner, I think this ordinance is actually a first step in establishing policy locally that we can then take to the legislature. I don't think—I think that we as Commissioners and County government probably have the ability to get first hand information from our communities, our acequia communities so that those people in those communities have, a part of the process. They're actually the reason for the process and I think once we establish this water policy, some water policy through this ordinance that we can then take it to the next step and go to the legislature and ask them to implement legislation that would be—it would give us the teeth, it would give us the teeth to really make sure that the ordinance is, that the acequia rights are protected and we can implement the goals of the ordinance. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Gerald, I think protecting the acequias is a lot like the canals of Europe. They're a historic tradition. They're a community that we need to preserve. Very often a lot of that is word of mouth, history and even as to the location of the Acequia Madre at the lower end is under constant question as to where it goes and where it ends, particularly as agricultural lands are taken out of production and the acequias become merely drainage ditches. They lose their character; they lose their value to the community.

Do we have a definition of agricultural water rights in the Code?

MR. GONZALEZ: Not per se.

COMMISSIONER SULLIVAN: I know it's not in here, but I mean in our current Code.

MR. GONZALEZ: I don't know if in our current Code—Katherine is telling me that no, we do not.

COMMISSIONER SULLIVAN: I think one of the things we're going to have to grapple with as we go through here is the difference between agricultural water rights and acequia water rights. That's no easy task, because acequia water rights are traditionally used for agriculture. But knowing that 85 percent of the water in New Mexico, water usage, is agricultural water usage, according to what the State Engineer tell us, we know that in the upcoming years the water use in municipalities, in urban areas, is going to come at some point

2477508

in time from current agricultural uses being taken out of production.

Now, should those be acequia uses? In my judgement, no. Because I think acequia uses are a very narrow band of agricultural uses as opposed to commercial agricultural irrigation from deep wells and things like that. It's very different from acequia usage. And I think as a part of this, we're going to have to bite the bullet and think about a definition for agricultural use and that's kind of come up also in the conservation ordinance where we're exempting agricultural uses and one of my questions tonight to Katherine will be what's an agricultural use? What does that mean? Well, we're exempting, I think, commercial agricultural uses. No, we're exempting all agricultural uses. I'm not sure what that means and I don't know that we have a definition of it, unless it's in that ordinance. Is there a definition of it in that ordinance?

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, we didn't really attempt to define agricultural water uses as broadly as it could be defined, but we did try and define acequia water rights, to carve out that definition and that is one of the first definitions that we'll do and we were pretty careful as to how we did that so we didn't inadvertently include in that definition all agricultural water rights. So that is one of the things that we thought of fairly carefully in terms of how we define, what this ordinance at least would affect.

COMMISSIONER SULLIVAN: I still think some definition of agricultural water rights is going to be needed in there even if you only say any other agricultural use is defined as an agricultural water right. Well, let's see how it goes. I think we're going to run into that problem headlong.

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, I guess we'll get to that and try and really get at the point of whether that definition is needed. But the point you bring up is a really good one in that it brings up, at least from my perspective another reason that I felt it was very, very important for us to work on this sort of ordinance. And that is that we are in the market for water rights. And per the direction of this Commission we've typically stayed away from trying to acquire acequia water rights, but really without any very clear articulation as to the reasons and so forth. We have, however, entered into some purchase agreements, and in fact purchased some agricultural water rights. I think that if we are to be able to actually finalize that transfer, we need to have articulated to the acequia communities what that means in terms of a precedent for future acquisitions and we have to put them at ease with what our intentions are as we try and deal with our own growth issues and how we're going to supply resources for those. So the point you've brought up, really is another important reason why we need to address the issue overall.

CHAIRMAN DURAN: I really need some help at some point understanding the difference between agricultural rights and acequia rights. I don't know if this is the time to do it but I'm really having a hard time distinguishing a real difference between the two.

MR. LOPEZ: I could give a real quick definition that then could perhaps be elaborated upon.

CHAIRMAN DURAN: That would be great.

MR. LOPEZ: We've defined the acequia water rights as water rights that are pertinent to land. Usually they are a portion of agricultural water rights. That means that they're

2477509

used on land that's specifically defined, but importantly, they're also conveyed by the acequia. In other words, the acequia defines where the source of that water is, the point of diversion. And then it conveys those water rights to the various properties that have a right associated with them. The difference being other agricultural water rights might simply be a well, where the point of diversion is a well and you extract the water, you use it for irrigation. You use it to raise crops for agricultural in general. So that's much broader than the acequia water rights. The acequia really is a conveyance mechanism. And there is a whole governing system around that conveyance system.

CHAIRMAN DURAN: And of the two, the acequia are the most senior and the ones that we're most interested in protecting and preserving. Of the two, the acequia rights are—

MR. LOPEZ: Well, there's a couple of different aspects to that. One, they are senior, but then there's a very communal aspect to acequias. Traditionally and today, acequias are maintained by a community as a whole. They're an integral part of community function and there's a whole governing system around maintaining that acequia. And part of the fear is, you might say, well, if we just take some of the water rights that are associated with that acequia and transfer them elsewhere, the rest of the water rights are still there. The problem is that at some point, if there's not sufficient water to run through that acequia, it's no longer a viable system by which anybody can use it and that's part of the reason that it's important to protect it.

The senior—by the historical context that we find ourselves in, these are usually some of the very senior water rights in this area. That's the first way that people were able to put water on their agricultural fields. They didn't generally have wells drilled or anything else. So acequias are some of the most senior water rights around.

CHAIRMAN DURAN: But our goal is to actually protect both of them, the agricultural rights and the acequia rights. They're both of equal value.

MR. LOPEZ: That's not the goal of this particular ordinance. And we haven't made that a goal of this particular ordinance.

MR. GONZALEZ: The reason, we've taken the whole apple of agricultural rights and taken the bite out of it that's acequia rights. And to try and give a little more definition here, in addition to the water right that comes with a piece of land, you also have a ditch right, which is the right to use the ditch to get that water onto the land. Those two pieces are what we're working with in this ordinance. As the County Manager pointed out, there are other agricultural rights that would allow you to put water on the land. A well would be one way of doing it. In some places you also have springs. There are a few springs that are applied locally that are also water rights that have early priority dates, but for the main part, you're absolutely correct that the oldest water rights, the oldest priorities are ditch rights because that has to do with when people first started applying the water to agricultural uses.

So this ordinance deals with just the piece that has to do with acequia-based water rights. And preserving that portion of it. It does not address rights to water coming out of wells for irrigation purposes and that sort of thing.

CHAIRMAN DURAN: Okay.

2477510

COMMISSIONER SULLIVAN: But Mr. Chairman, Gerald, if I'm a well and ditch provider, like in the southern part of the county, we had some ranchers at the water conservation meeting who were just that and they were saying you're regulating the use of our acequias, which they term the ditches that they use from a well. Can I organize as an acequia, pursuant to Chapter 73, Article II and III NMSA 1978 if I'm served by a well?

MR. GONZALEZ: Under some circumstances, you can. And David may be able to elaborate on that, but that's my understanding. Or Paula.

COMMISSIONER SULLIVAN: So then I could bring myself under the purview of this ordinance even though I'm not what at least I think of as a traditional acequia, as one dating back hundreds of years and coming from a surface water diversion. I could organize, even though I'm a well-based ditch system and become an acequia and therefore come under the protection of this ordinance.

MR. GONZALEZ: Yes, and you tend to see those kinds of ditch associations mostly on the eastside, but there are a number down in the Stanley area, I think. You also have the situation where a traditional acequia may have switched their point of diversion from the stream itself to a well in order to have a more continuing supply of water than might be available in a stream that's intermittently carrying water.

COMMISSIONER SULLIVAN: Yes, but I don't see a problem with that because they're using the same water rights. They either had water rights as a diversion before and they transferred it to an underground diversion, which the State Engineer has approved. Another red flag I see is perhaps some language needed that it's acequia associations that are in effect as of the date of the ordinance because I see the ability now of going back and suddenly creating all of these pseudo acequia organizations that wouldn't be within what I think is the intent of this ordinance.

MR. GONZALEZ: Yes, although I think economically the pendulum would be on the other side. The tendency would be not to do that, just because of the marketability of water rights. If you did that I suppose it could give you a certain amount of leverage under the ordinance, but really people would want to not encumber their water rights with this ordinance if they're interested in marketing those water rights. So I would see the marketing forces going the other way.

COMMISSIONER SULLIVAN: Okay.

CHAIRMAN DURAN: Well, I'm hearing two different things. I'm hearing staff telling me that this ordinance was crafted to protect the acequia rights and hear Commissioner Sullivan saying, and correct me if I'm wrong, that you want to have this ordinance address agricultural rights through well.

COMMISSIONER SULLIVAN: Not to address it, because as I say, we're going to need the ability to buy agricultural water rights to develop water systems. But to be specific, what the difference between an acequia right is and an agricultural right, so that we're giving the right direction to the staff. And all along, as Estevan said, we haven't pursued what we felt were acequia rights. But we're going to have to pursue the purchase of agricultural water rights. We've got to be up front and clear about it.

2477511

CHAIRMAN DURAN: I agree, but I think that for me, I really need to be focused on what it is we're talking about here. And if I need to be thinking about acequia rights as we go through this thing in addition to how to preserve and protect acequia rights, how we're going to protect agricultural rights through wells, as we move through the ordinance, for me, I need to know what our intent is. If we're going to include wells and agricultural rights derived from those wells, then I think it's a little bit more encompassing.

COMMISSIONER SULLIVAN: I just wanted to point out that acequia water rights and acequia organizations use wells. That's part of what we're dealing with here.

CHAIRMAN DURAN: I understand that, but staff was telling us that this ordinance was crafted based on acequia rights.

COMMISSIONER SULLIVAN: I understand. And that's what we're dealing with now.

CHAIRMAN DURAN: So we're going to focus on that.

COMMISSIONER SULLIVAN: Right. It's not my intent to develop this into an ordinance that also deals with agricultural rights.

CHAIRMAN DURAN: Because I think that's probably another thing we need to talk about.

COMMISSIONER SULLIVAN: But we have to be clear that our definition of acequia water rights is crafted specifically enough that it doesn't become a method for someone to come in and say This applicant is using an agricultural water right to promote their development and you're not permitted to do that under this new ordinance.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: It seems to me that we're losing our way here. We're here at our first study session to understand the basic ideas. It seems we're deviating into minor points that at point may become more important down the road. I would like to have this discussion proceed so that we come away from this meeting with an understanding, a comprehensive understanding of what the ordinance is about and what the values are. We'll continue to refine the discussion but I don't think we should go down some of these little side roads so early and I think that's what we're doing.

CHAIRMAN DURAN: Is that okay with you, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Yes. My questions are answered for now except I have one more when we get into 6.2.2.

CHAIRMAN DURAN: Gerald.

MR. GONZALEZ: Thank you, Commissioner, Commission members. I'm going to start on page 2, because that's where the new material really begins.

COMMISSIONER SULLIVAN: Oops. My question is on page 1.

CHAIRMAN DURAN: So.'s mine.

MR. GONZALEZ: All right. The only change on page 1 made by virtue of this ordinance is under 6.2, to add Section 6.2.3, Acequia or Community Ditch Water Rights in the list of requirements and submittals that are required with respect to water applications.

2477512

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: My question was, and probably Roman or Gerald can answer it. Could you explain the difference here in the existing 6.2.2.a where subdivisions of 20 or less, which is more than two acres in size, and in Type III subdivisions, you can have up to 24 lots that don't have to have water rights. What's the difference between this part of the Code and a Type III subdivision.

ROMAN ABEYTA (Land Use Administrator): Type III subdivisions are defined as subdivisions with 24 or less lots and the lot sizes are less [inaudible] This section is for subdivisions containing 20 or more parcels, any of which is two acres or less. So this actually, you could have a Type III subdivision but if you have a lot that is less than two acres then you'll need water rights also. So this also captures subdivisions with smaller lots.

CHAIRMAN DURAN: Where in the county can we have smaller lots except in the EZ? Oh, and in the traditional communities. Right. Okay.

MR. ABEYTA: Then you would need water rights. Again, that's if you have 20 or more parcels.

CHAIRMAN DURAN: So this is kind of specific for traditional communities, more so than—

MR. KOPELMAN: Excuse me, Mr. Chairman. This is current Code language. This isn't being changed or anything.

COMMISSIONER SULLIVAN: We understand that. It's what's in the Code. We're trying to clarify the difference between this language and the language for a Type III subdivision, which deals with 24 lots, both of which you have to have water rights.

MR. ABEYTA: For a Type III subdivision you don't need water rights.

COMMISSIONER SULLIVAN: No, but above the Type III.

MR. ABEYTA: Above the Type III.

COMMISSIONER SULLIVAN: In other words, if I have a Type III subdivision with 24 lots, I don't need water rights.

MR. ABEYTA: That's correct.

COMMISSIONER SULLIVAN: I can use domestic wells to serve that whole subdivision.

CHAIRMAN DURAN: Provided you have the geo-hydro reports.

COMMISSIONER SULLIVAN: No, I don't even need a geo-hydro report.

COMMISSIONER CAMPOS: Mr. Chairman, we're losing the thrust of this meeting. We're getting lost on details. Let's talk about the big issues today and worry about the little issues and the more technical issues down the road. It's already 10:00 and we're losing our direction.

CHAIRMAN DURAN: If you need to go somewhere, Commissioner, why don't you go ahead and go.

COMMISSIONER CAMPOS: I don't have anywhere, Commissioner Duran. I'm here to have a discussion.

2477513

CHAIRMAN DURAN: Okay, and that's what we're having.

COMMISSIONER CAMPOS: Let's talk about the general ideas of what we're here to talk about.

CHAIRMAN DURAN: Commissioner Sullivan, do you have anything else about this?

COMMISSIONER SULLIVAN: No, I understand Roman's explanation.

MR. GONZALEZ: Shall I proceed?

COMMISSIONER SULLIVAN: You're not finished yet?

MR. GONZALEZ: It's not I that do the finishing. Beginning on page 2, I think, Section 6.2.3 is the beginning of the new language and it runs through the duration of what you have before you. It starts out, it's titled Acequia or Community Ditch Water Rights. It starts out with 6.2.3a Purpose and Intent section, which basically reiterates some of the discussion that we've had here this morning. It points out that the County of Santa Fe has a long and valued tradition of acequia agriculture, transfers of water rights from acequias can threaten viability of the acequia as well as the community. That was one point that we didn't hit on earlier. It's not only having sufficient water in the acequia but it's also having the labor required in order to make it a functioning acequia that's important as well.

So transfers affect an acequia both by taking water out of the ditch but they also affect it by removing labor to keep the ditch in a functioning conditions, and that's very important from the standpoint of the vitality of the acequias.

Santa Fe County considers the continued health and viability of acequias and their communities to be in the public welfare, not only as historic and cultural resources, but models for sustainable community-based agricultural production. We also have an interface with sustainable agricultural production in terms of the farmers' market interface that we have here in the county. Santa Fe County recognizes that transfers of water rights from acequias can threaten preservation of agricultural land, and that the senior rights status of acequias makes them a target for transfers. The County is desiring to maintain a relationship of trust and cooperation with them as local governmental entities. They can fulfill a number of local governmental functions in addition to just operating the acequia system.

In some communities they actually function as social organizations as well. I think Paula has deep experience with that. The County wishes to ensure that in pursuing its water supply or exercising its zoning, land use, development and related authority it doesn't harm the acequias. The County—and I'm summarizing here—the County does its best to assure that it will not cause harm or place itself in conflict with acequias and acequia communities by conditioning the County's acquisition of water rights and by regulating and conditioning approval of proposed developments and districts so the proposed transfers of water rights away from acequias meet with the agreement of the affected acequia. I read that directly because I think it's important. And that it's in the interest of the County to adopt a clear policy on that.

So that's basically the purpose and intent section, and I don't know if anyone has any other comments or additions or suggestions for—

COMMISSIONER TRUJILLO: Gerald, how about, we're trying to protect the

2477514

agricultural intent of the acequias and in some cases though we're getting land that is being divided for family transfers and houses and/or mobile homes are located on some of that agricultural land. The way that it is now, the State Engineer, if they see that that land is not being used for agricultural purposes they purge the water right, the traditional water right from that piece of land and they take it away from it. They revert it back to the state and they use it wherever they want to use it.

Does the ordinance address specifically that situation when rather than the water right going to the State Engineer, it stays in the community, in the acequia, so that acequia continues to be a viable source of agricultural or water flow?

MR. GONZALEZ: That it doesn't, Commissioner, because that's really a function of state law and the way the State Engineer applies it. We don't have the statutory authority at this point to make sure that when fallow land remains fallow for that period of time that allows the water rights to have been deemed to have been relinquished to make sure that the water stays there somehow. We can't do that. I may be one of the areas that we want to think about cooperating with the legislature in terms of future legislation. I know the water banking concept has been applied in some locations for that purpose to make sure that water rights are not lost from fallow land. I know that Paula has specifically worked with that issue and I know that she can address that in more detail if you'd like.

CHAIRMAN DURAN: Before you—to kind of piggy-back on what Commissioner Trujillo mentioned and maybe before you address it you can also address one of my concerns. There is an organization, or there are some individuals out there that are right now trying to develop a water trust that would be similar to a land trust. They are getting people to donate or convey water rights to this trust and then they would be the keepers of the water so that that water could be then used to preserve acequia rights and traditional agricultural uses. I'm sure that that effort is going to be successful some time in the near future and I'm wondering if this organization or this type of trust is available to our community, could we use that to prevent the taking away of water rights from properties that fall into that situation that Commissioner Trujillo mentioned where they've done family transfers and the property is not being used for agricultural use, and when the state catches wind of that they try and take the water rights. Do you think that we might be able to incorporate this trust into preventing that process from taking place?

MS. GARCIA: Mr. Chairman, I think that there are a lot of options for keeping water in the community under the governance of the acequias. Just to address the first question about what happens in the case of family transfers. Commissioner Trujillo brings up an important point, that water rights that are on agricultural land that is developed are subject to forfeiture or abandonment. Forfeiture to a degree isn't enforced by the State Engineer. It's a four-year time frame and then by law, you're supposed to get—on the fifth year get a notice and you have a year to put it back into beneficial use. Abandonment is more of a common law concept where if there's been an intent to abandon that has been demonstrated, such as building on the land, and it's been several years, maybe 15 according to some of the cases, then that water right is deemed to have been abandoned.

The water banking concept is something that I've seen being talked about as a way to allow the acequia mechanism to operate a bank, you could call it a trust, a bank, whatever you want, within its existing governing system, in which water rights that are in danger or being lost for non-use, forfeiture or abandonment, could be placed in the bank and the commission of that acequia could then decide how to reallocate that water. One specific legislative proposal that we've looked into is that an acequia water bank could hold water rights that aren't being used and reallocate them among the remaining parciantes. And those wouldn't be subject to loss for non-use.

The water trust idea that you mentioned, I've heard of similar proposals and that's a little bit more of a private, in my understanding, it's more of a private arrangement analogous to a land trust where a conservation easement on a property is being held in trust by an entity, a non-profit entity or something of that nature. A water trust, in my understanding would operate in a similar way. So I think that's another option. An acequia can operate a water bank if authorized by—Well, another think that I have to mention about water banking is that acequias, although the state has real specific provisions about forfeiture and abandonment, acequias have usually operated by the idea that water rights really aren't ever lost and because on parciante is not irrigating, it's shared among the remaining users. So all the state legislation would do is confirm an existing practice. So the water bank idea is something that will part of the governance of the acequia. You could call it a water trust also or water bank, and the water trust that you mentioned is analogous to a land trust which is more of a contractual relationship between the property owner and some entity, the water trust, that would hold it. An acequia could operate a water trust in that way too. So there are definitely some options for doing that.

CHAIRMAN DURAN: As I think about that, I think the trust might be a way of retiring the water rights, I think is what their goal might be.

MS. GARCIA: That's correct, Mr. Chairman. Some of these water trust proposals are intended to enhance stream flows. Other water trust proposals are intended to keep water in agricultural production. And if it was placed in a water trust it would be like a conservation easement where it wouldn't be subject to transfer any more, based on limitations on that property right that that individual agreed to.

COMMISSIONER TRUJILLO: Those are issues that your group, the state Acequia Association is addressing, right? This ordinance would be an instrument to protect and preserve acequia traditional water rights in traditional communities. The legislation and changes in the laws and things like that, that's something that you are making efforts to lobby for or change or whatever.

MS. GARCIA: That's correct, Commissioner Trujillo. This is very innovative. Santa Fe County is the first to pursue this course and it is in my opinion a very positive thing. I believe that the discussion earlier, going in the direction of strengthening the state laws concerning acequia water rights would be in order as well and that would be something the statewide Acequia Association would pursue. Clarifying the water banking policy would be real important and also the provisions on water rights served by acequias.

MR. GONZALEZ: During the course of discussing the ordinance, we did talk

about—and these are issues you may want to think about as we go through, delineating what the different steps are in the ordinance, but we did talk about the possibility of giving acequia associations sort of a right of first refusal. In a sense they have one anyway because they have to approve, but it was a thought that occurred to us in the process of drafting in terms of trying to make sure that there are as many protections as possible to keep the water rights with the acequias.

CHAIRMAN DURAN: Gerald, how have you—if the acequia community has the first right of refusal, that would be first right of approval to purchase, right?

MR. GONZALEZ: That's correct.

CHAIRMAN DURAN: And how, has any thought been given to how this process might be funded? Is there a way that the County can participate in that, similar to an open space—

MR. GONZALEZ: Mr. Chairman, our discussions didn't go quite that far because we weren't sure whether that was a place that the Commission would want to move its thinking to, but we're certainly prepared to discuss that further and to explore those options. They are certainly viable options for protecting acequias. I think that as we go through this process, that's something that we can consider and would be willing to.

CHAIRMAN DURAN: Because I think that that kind of goes in line with what Commissioner Trujillo brought up earlier in that there was some concern that he had relative to a takings issue that if the acequia community denied the transfer of the water rights out of the acequia neighborhood that there might be some cause, there might be a takings issue that we might have to deal with. So I guess I'm wondering, I guess there will be some criteria created that would allow the acequia community to actually deny. There has to be just cause or a reason to deny the transfer. And if we have those reasons, based on certain criteria we sure don't want it to turn into a legal battle, especially if there's some profit that the property owner is going to be losing because of the denial.

MR. GONZALEZ: Mr. Chairman, that was the focus I think if the last portion of the discussion that we had as we were in the process of preparing this draft to bring it forward. And you'll find when we get to the very end that there's some language that is still sort of in process that we wanted to bounce off of you for those kinds of thoughts and reflections and would be helpful in terms of shaping what we do with it. One other thing in terms of putting all the cards on the table is those of you who are familiar with the Pojoaque and Tesuque Valleys know that there has been significant development and water rights are potentially being lost simply by virtue of people building homes on agricultural land, because that water is no longer being applied.

The County does have an application in with the State Engineer to sweep up, essentially, abandoned water within the county. And I think that that issue at least needs to be out there on the table so that you know what all the cards are that we're working with. Potentially, that water that's swept in I suppose could be used for a number of purposes, including the County water system, but there may be some way of working cooperatively with acequias with that as well.

CHAIRMAN DURAN: Many times in the ordinance you reference the County, and the County is thinking of acquiring these water rights. I'm sure you've all had some discussion as to the fact that the private sector is out there acquiring these rights a lot faster than we are even thinking about buying them. Do you think that this ordinance would provide the basis for some kind of—is this a resolution or is this an ordinance? That this ordinance would then provide protection that the acequia community needs when it comes to the transfer and the use of water rights by the private sector.

MR. GONZALEZ: I think, Mr. Chairman and members of the Commission, you may see a sort of a peaking effect, sort of a short flurry as this hits the consciousness of the developers out there in terms of acquiring water rights from acequias, but long term, I think the answer is yes. It provides protection for water rights that are already in acequia systems. The other effect that it may have is sort of heating up the market, so to speak with regard to agricultural and other waters that is not within acequia systems out there. So that could occur. There are also issues having to do with competing governmental entities. The City I know is not as far along as we are with respect to this proposal but there are some there who have been considering the possibility of adopting a similar kind of ordinance.

Long term, one of the issues that we've talked about internally with staff and with the County Manager is the issue of competing with other governmental entities for those water rights. Is there some way not to do that in a way that heats up the market even more than it needs to be with respect to that. Those are all sort of factors that impact what this ordinance will do in terms of protection as well as the general water market in the region. So all of those things need to be brought out and I think that's a very good question.

CHAIRMAN DURAN: Do you know how many water rights are being requested to be transferred at this point?

MR. GONZALEZ: I don't know.

CHAIRMAN DURAN: To finish my thought. It might not be a bad idea to find out how many requests are in front of the State Engineer so that we could notify those people that are considering a transfer that we are in the process of trying to develop an ordinance that may have a major impact on their future plans for the reasons why they're buying the rights. Because it seems to me that there's a lot of people out there buying these water rights and they're trying to do it under the wire, that we might want to consider having this—I guess we need to figure out where is this ordinance going to take place. Is it going to take place, is it going to be retroactive? I don't know. It seems to me that there are a lot of people rushing to get their transfers approved for the main reason of trying to circumvent what we're trying to do in adopting this ordinance.

MR. GONZALEZ: There is some language we'll come to shortly, Mr. Chairman.

CHAIRMAN DURAN: Well, we'd better move along. But this is very thought provoking.

MR. GONZALEZ: Any other questions on the purpose and intent section? Moving to the next portion on page 2, 6.2.3b provides for definitions and I'll go through those

2477518

and you can raise any questions that you want as we go through. Acequia is defined to mean a community acequia or community ditch organized pursuant to state law. The reference there is to Chapter 73, Articles II and III.

Definition number two, and a couple of e's have been dropped in "acequia." My fingers were having trouble following my head last night as I was inputting this. Acequia water right means an irrigation water right appurtenant to lands served by an acequia or community ditch, having a common point of diversion. Now, a common point of diversion normally is a diversion on a stream source but it could also be a point source such a well if that point of diversion has been transferred into a well. With the other irrigation water rights under the acequia and subject to governance of the acequia commission. So it's got to be an acequia organized pursuant to state law.

Definition number three, transfer, water right transfer means the change in point of diversion and/or place of use, and/or purpose of use of a water right, whether temporary, permanent, or through a lease, as set forth in Chapter 72, New Mexico Statutes of state law.

So those are the basic definitions that we're working in going through the ordinance. Next page, unless there are any questions so far. We begin the next section, 6.2.3c, the General Provisions and it starts out sort of affirming what we've already said. Santa Fe County shall not acquire, and there's my type. Instead of "and" it should read "an" in that first line, an acequia water right for transfer or otherwise seek to transfer an—another type there—acequia water right without prior approval from that acequia consistent with that acequia's bylaws or governing rules. So that's a restriction on the County itself.

CHAIRMAN DURAN: What about the private sector?

MR. GONZALEZ: We come to those—

CHAIRMAN DURAN: Okay.

MR. LOPEZ: Mr. Chairman, could I just ask something very quickly? I want to make a point here that contrary to some of the other general discussion that is going on, this ordinance doesn't prohibit outright the possibility of a transfer, but it does give the acequia governing body in whether that would go forward or not. And in fact, given the discussion that came up previously about the possibility of water rights being lost as a result of development on traditionally irrigated property, there's a possibility that the acequia could amass those water rights. It might then want to make those available to a municipality with some sort of a revenue mechanism for itself. So I just want to point that out, gentlemen.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER SULLIVAN: Gerald, I read ahead and I haven't found it, so I'm going to ask if anywhere you have any guidelines on what the acequia associations would consider in doing that. Just taking the devil's advocate point of view I would say that 99 percent of the acequia associations would just say No. Period. They don't want any water transferred anywhere. It's certainly their historic right to do that. But, and I would speculate also that the bylaws are very different from association to association and in some cases may not exist at all.

So it would seem incumbent on us to lay out some general guidelines of what the acequia associations could consider in that respect. That would be one thing I think that would be

2477519

important.

And secondly, and you mentioned this at the beginning, is what we're definitely saying here is that they must approve it. Now, is that putting an authority onto the association which should be an elected official's, should be a County Commission authority? It's like giving to the homeowners association of Eldorado the right to approve commercial developments in Eldorado or new subdivisions in Eldorado. Could we do that?

MR. GONZALEZ: Mr. Chairman, Commissioner Sullivan, there are several questions that you've asked there but I'll try to go through them as I can. In the first place, the State Engineer does give weight to the approval or disapproval of the acequia itself in terms of transfer. There is a path that has been carved in law for that purpose. And since the County still retains the ultimate authority to approve or disapprove, you can repeal the ordinance, you can modify the ordinance, you can amend it in the future. The authority to approve the transfer still remains with the County. So I don't think, and we did have some long discussions about the delegation issue but I think that we don't have a strict delegation issue in the traditional sense.

So with respect to the delegation issue, I think we're okay. With respect to the issue of precision regarding the basis for the acequia's decision, we may want to tinker a little bit with the language. You're getting ahead of me slightly, but at the bottom of page 4, item 6, continuing on to the next page, it talks about the basis for the acequia's approval and it says, a decision by an acequia denying the acequia's approval for a transfer must incorporate a clearly articulated finding that the transfer would have an injurious or adverse effect upon the acequia and defining the nature of that effect. Now if you want to put more detail in there we can, but the more detail we have, I think the more problems we have with trying to reach out and cover the diverse ways in which these acequias are organized.

There is sort of an overall term that the State Engineer applies also in terms of looking at transfers and so forth and it's kind of a general welfare provision. Probably the State Engineer exercises even greater latitude in terms of looking at what the effect is considered to be within the general welfare provision of these transfers. I don't know if David has any additional comments or Paula.

CHAIRMAN DURAN: Why don't we deal with that when we get to it though?
Is that okay?

MR. GONZALEZ: That's fine.

CHAIRMAN DURAN: We need to look through the—Commissioner.

COMMISSIONER CAMPOS: On delegation, Mr. Gonzalez, could you explain that a little bit to me, the meaning of the delegation issue in the context.

MR. GONZALEZ: Well, it briefly has to do with whether the Commission is giving away its ultimate authority or not but I'll let David also address it because he did some of the research that we used for drafting the ordinance.

CHAIRMAN DURAN: David, when you start defining that, wouldn't it be recommendation to us though?

MR. BENAVIDES: That's definitely part of the answer, Commissioner. The important thing to remember, and a lot of the phrasing was very deliberate in the purposes and

2477520

intent section. It's to suggest why exactly we're doing what we're doing and why this is not a delegation. In other words, this ordinance is saying that we value our relationship with this local government entity, the acequias that are in our vicinity. We value that relationship so much and we do not want to be in conflict with those entities over water issues. We want to achieve cooperation and some kind of agreement over the terms of a transaction if there is to be one. And this is the mechanism by which we're doing it.

We're not giving them our authority; we're just saying we want to avoid a situation of conflict because that conflict is not in our interest and it's not in the regional interest. And that's why it's not a delegation. You can see that in the purposes and intent, we don't say we're giving over our authority to acequias because we simply should. We're saying we want to avoid conflict by making sure that the types of things that we want, that they're also in agreement with.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Do we have any quantification of how many, how much water rights we're talking about here?

KATHERINE YUHAS: Within Santa Fe County?

COMMISSIONER SULLIVAN: Yes, within Santa Fe County.

MS. YUHAS: Within the acequias? Sorry, I don't know the answer.

COMMISSIONER SULLIVAN: I think the philosophical discussion is important but I think we ought to have a handle on—we know how much water we're going to need until the year 2020. We've got a good handle on that. Realistically, what pool of water rights are we dealing with?

MR. BENAVIDES: I don't have any numbers for you but I know the way I'd approach that question is that the State Engineer has mapped water rights for the Nambe-Pojoaque-Tesuque system as part of the Aamodt adjudication. They've mapped water rights on the Santa Cruz system, a part of which is in Santa Fe County. And there's been some mapping that's quite old of the Santa Fe River water rights as well, which includes the La Cienega area as well. And those are where the acequias are that I'm aware of in Santa Fe County. So you can go kind of acequia by acequia mapping where they've published reports and you can tally those and get those numbers. And I haven't done that.

COMMISSIONER CAMPOS: Could you tally up those for us so we could have an appreciation of how many acre-feet of water we're talking about? I think that's important.

MS. GARCIA: Mr. Chairman, Commissioner Sullivan, I think that's a good question. If the question is asked in a broad way, what water rights are available to the County, it gets back to our original conversation. There are a number of water rights that might be out on the market potentially, acequias are just a sub-set and this ordinance addresses only acequia water rights. But conceivably there are some water rights in the Middle Rio Grande that are available to Santa Fe County and those are not acequia water rights, those are conservancy district water rights. Those are more plentiful and it might be interesting or informative as well to know how many water rights are there as well as how many water rights are in acequias. I

2477521

think that would be good information. And also keep in mind that those water rights that are part of the conservancy district are subject to their approval, but they're a little more willing, I think, to be in a market because of the extent of water rights that they have. But they're a distinct entity. They're not like an acequia. They're a big district. Acequias are different. But that might be an interesting part of the information you might want also.

CHAIRMAN DURAN: Okay, getting back to the ordinance, I have some concern relative to what we just talked about. The intent is so that we avoid conflict. But if you look at 6.2.3c number 1, it says that Santa Fe County shall not acquire acequia water rights or otherwise seek to transfer a water right without prior approval from the acequia consistent with—and this is where there might be some potential conflict—with the acequia's bylaws or governing rules. And I'm not sure, does each acequia have their own bylaws and governing rules? And could an acequia have a provision in there that says no water right will ever be transferred. I'm just worried that there might be something in those bylaws that would already establish a conflict because of something that wasn't very reasonable within those bylaws.

MR. GONZALEZ: Mr. Chairman, I'll try to give a partial answer and also ask Paula if she has some additional thoughts there. Item number 4 on page 4 talks about an acequia that has no bylaws or governing rules. There are acequia associations out there that are not well organized. The character of organization varies deeply and that's what we're trying to do is capture a very large sector in terms of how they operate. Some of them are no more than they get together once annually, look at each other, pick the mayordomo and they go on. Others have much more elaborate rules. They're written. They're handed out to all the members. There are ways in which they do the assessments, ways in which they figure out exactly how you're going to participate in cleaning the ditch and maintaining the ditch each year, when the meetings will be held, who's the chair of the meetings.

So yes. There's a big variety but we've tried to address, to the extent that we can that variety that's out there. Paula?

MS. GARCIA: I think Gerald's covered it.

CHAIRMAN DURAN: Okay. Well if the intent is going to be the guiding, is going to offer us the guidance we might need when it comes to potential conflict based on our efforts in trying to be consistent with any of the acequias' bylaws or governing laws.

MR. BENAVIDES: Yes, Mr. Chairman. And keep in mind also Gerald mentioned on the bottom of page 4, part 6, any denial has to meet that minimum criteria of finding or injury. So mainly, we were just trying to accommodate knowing that there were different decision making processes out there. Sometimes a decision like this will be made by a commission. Sometimes it will be made by a membership vote after presentations and discussion among them and we don't want to dictate in general. We wanted to accommodate all the different types of processes that might be in the bylaws. And then we said in part 4 that if there is no bylaws then there's just kind of the standard commission decision with the decision making process default.

COMMISSIONER TRUJILLO: David, Mr. Chairman, I think 6.2.3 on general provisions, can you think of any case, David, where an acequia might say that the sale or

2477522

release of a water right might not be injurious to the acequia? It seems to me that any release or sale or forfeiture of a water right in an acequia would be injurious to the acequia.

MR. BENAVIDES: I think that question goes really to kind of the heart of the choices we had in terms of how we were going to approach this ordinance. One approach could have been some kind of protective measure in the form of a ban as Estevan pointed out, that's not what this is. This is not saying that in all instances there will be no transaction in acequias. Instead, we decided that that decision would rest with the acequias. So for example, you may be aware of this, in the Nambe-Pojoaque-Tesuque Valley there have been a number of transactions with acequias with PNM when they had the water system. Now the City owns that system and anyone that pumps at Buckman well or is involved in pumping at Buckman wells has to offset from the Nambe-Pojoaque-Tesuque system.

Well, the Pojoaque Valley Irrigation District current policy right now is fairly accommodating for people who are interested in a transaction with water rights to them. They typically ask that a purchaser take over the dues payments of the water right that's being moved out of the system. So in that event, they've made—this is a kind of dynamic that we're trying to create. One of how can we not injure you and in the estimation of those particular acequias or the individual acequias involved in those particular transactions in the Pojoaque Valley, they've made the determination that there is injury to the extent that we're losing dues.

Well, the entity comes back and says We'll pay the dues. They say, Okay. You've got a deal. And the transaction occurs. Now that's not going to be the same criteria in every case, but the way this ordinance is set up is that it allows for the possibility that there can be a transaction. It doesn't say no in all instances, there will not be a transaction.

MR. GONZALEZ: In the Taos are when I was the Taos Town Attorney, the acequia association up there also had entered into arrangements with people who were purchasing water rights to either maintain the ditch, pay the dues or accomplish other tasks that the acequia association needed to have performed in order to maintain their viability.

MR. LOPEZ: Mr. Chairman, one other comment relative to that question is that it may be that your assumption is absolutely right. Maybe every single proposed transaction would be said to be injurious to the acequia system. They would have to say how but basically, we make, the premise of this ordinance would be that that group, that governance group that's closest to that action will make that call and ultimately if there were such a group that maybe felt very strongly about acequias as property rights, maybe they would chose to approve such a thing even if there were a detriment. But it acknowledges their right to be heard.

CHAIRMAN DURAN: I have a scenario I'd like to throw out to you. It's probably not a very popular one. But I need to understand your organization's thinking on this type of a situation. And that is if somebody has like 20 acres, and this is a real story in Nambe, and it has always been used for agricultural use and it's in a traditional community and the family decided that they wanted to sell it, and based on the zoning that is in place right now, they sold it to somebody. They preserved some of the—their intent was to preserve some of the water rights so that they can maintain some landscaping and create a nice little green area for this development.

2477523

They decided to turn these 20 acres into one-acre sites and they didn't need all the water rights that were appurtenant to that land traditionally or historically. So they sold the land to somebody who was going to do this development and only sold let's say three acre-feet of the 15 acre-feet that they had appurtenant to that property. And they kept the other 12 acre-feet and sold it to someone else because there was value in those rights. And those rights were then going to be transferred some place else.

If this ordinance, and that scenario was brought forward for you all to approve, how would you deal with that?

MS. GARCIA: Mr. Chairman, that scenario does occur and I can give you some examples of acequias that have tried to take a pro-active stance on acknowledging that that does occur, most often for family transfers where part of the land will be developed and some of the leadership in our organization has moved forward with pilot projects on their acequias where they've gotten some funding to identify to do GIS mapping, identify those parcels that are in the process of being developed or potentially could be developed, identify those water rights and try and do something with them so they're not lost through abandonment.

And so it's the position of these acequia leaders that it's better that those water rights be put to beneficial use which means that they will probably be transferred.

CHAIRMAN DURAN: But you're talking about family transfer. I'm talking about a specific, real, major development. And the property rights issues that come up as a result of the family selling the land, keeping some of the water rights and then further selling those water rights, because of the value of those rights. I'm just kind of wondering how, what would the acequia organizations, how do they perceive that and how do they deal with those issues, outside of the family transfers?

MS. GARCIA: Mr. Chairman, it's viewed as something that over the long term hurts the sustainability of the acequia. However, within a given land use framework, that's going to occur. And if that does occur, those water rights shouldn't be lost for abandonment. I think there's broad agreement on that. So the best thing for those water rights is to bank them, ideally. If that acequia has some and possibly sharing with the net acequia. Another alternative is to transfer them out of the acequia and it's in the best interest of that particular property owner to do so. It wouldn't be in the interest of the acequia or that property owner to sit on that water and allow it to get abandoned.

CHAIRMAN DURAN: I'm not talking about abandonment at all though. I'm talking about a strictly capitalistic approach to a situation here, which our ordinances and land use policies allow. And I'm just trying to find out how, what your position is going to be on that because it's possible that we might have to do something relative to our ordinances to further protect the goals and intent of this ordinance. Because nothing in this ordinance is going to prevent the right that those people have, short of it becoming a takings issue.

MR. LOPEZ: I'm a little bit perhaps confused after hearing the exchange and I'm not sure whether your question really goes to transactions that have already occurred with a certain expectation or a transaction of that nature that would happen sometime after this would—potentially if this ordinance were adopted, a transaction that would take place after that.

2477524

CHAIRMAN DURAN: Let's say that 20 acres took place and they sold off the 12 acre-feet of water rights to someone else. And the person who bought the water rights made application for a development using those water rights from that particular site. How can this—how would this ordinance affect that? How could we deny the transfer, how can we deny a development based on that transfer of those water rights from that particular piece of property?

MR. LOPEZ: I think if it's already a transaction that's already occurred with kind of the expectation, we, correct me if I'm wrong but I think that we kind of contemplated that the provisions of this ordinance would basically affect such transfers prospectively, first of all. And then secondly, if somebody was contemplating that sort of transaction after such an ordinance were enacted, then presumably everybody would be on notice as to what—this would in essence be part of the overall approval process that the County goes through. So everybody would be on notice that it's not a given that this approval will be given. There's a process that would have to be followed and so forth and have to be played out.

CHAIRMAN DURAN: Well, let me formalize my concern a little bit more in weeks to come and I can talk to everybody about it more. I just have some concern about how this might affect the Code as it exists today and how we might have to change that Code in order to make sure that this ordinance actually works. Anyone else have anything?

COMMISSIONER SULLIVAN: Mr. Chairman, I just think one way to think about that in the future is to provide some additional disclosure and getting back to the original question of how many water rights are we talking about, if we go back through the State Engineer's adjudication and list the acequias we're talking about in Santa Fe County and attach them as an appendix to the ordinance. It may not be every one of them but it would certainly put anyone on notice who needed to, or was in the process of acquiring water rights that these were one of the "protected acequias."

We do kind of a similar thing with the cell tower ordinance. In the cell tower ordinance, we designate areas of visual concern and we physically—I don't think we've finished it yet but we're in the process of physically, based on GIS mapping, saying this is area A, B, C, D, and so forth. And that gives the applicant notification, rather than going to all the expense of coming in with all their plans and everything, saying, Oh, by the way, this is in an area of visual concern, they know it ahead of time. So that may be one way of dealing with that problem.

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, I guess when thinking about the applicability of this we had discussions as to whether it would apply only to transfers out of acequias that exist within Santa Fe County or whether this would extend to, for example, maybe up where I live. The possibility of somebody going and trying to purchase acequia water rights in Taos County, and whether this would still extend to that and I think at least in terms of our drafting group we thought it should extend to all of those acequia groups.

COMMISSIONER SULLIVAN: That makes it quite a task then.

MR. LOPEZ: I think some of these things might become a little clearer as we—or maybe just more murky as we go through the rest of the ordinance.

COMMISSIONER SULLIVAN: On that section 6, the clearly articulated

2477525

findings that the transfer would have an injurious or adverse effect, is all in the eyes of the acequia association I'm seeing. And not seeing any criteria for what constitutes that, I think that as Commissioner Trujillo said, the answer is going to be no. So why don't we just do a ban on acequia water rights.

CHAIRMAN DURAN: I don't think you can do that.

COMMISSIONER SULLIVAN: If you can't do that, how can you do this?
What's the difference?

CHAIRMAN DURAN: Representative King was here several months ago and made some statements relative to how difficult it is these days to really make a farm profitable. How difficult it is to be a farmer. Thirty, forty years ago it was a lot easier and there are some farmers out there that have found it impossible to sustain a family using their agricultural traditions. And they have had, in order to preserve that way of life they've had to sell some of their lands. They've had to sell some of their water rights just in order to sustain a family. I think that if you just say across the board there's no—we can't transfer acequia rights, I think that you are forgetting that there are some people out there that need the value and need the money that's derived from these water rights. So I mean I understand the whole concept of wanting to preserve acequia rights and traditional values and lifestyles but there are some people that can't live that way anymore. This is a changing world and it's not as much an agricultural world that we live in here in northern New Mexico as it was in the past.

I just think that we need to remember that when we try to reach some kind of balance and develop an equitable situation here for all of us to live within.

MR. BENAVIDES: And if I could, Mr. Chairman, I think that's exactly the kind of balance we are trying to strike here, not having an outright ban, putting acequias in the position of being part of that chain. And I think it is important to know about how water rights transactions occur right now and this will partially answer your question, Commissioner Sullivan. Of course we all probably know that a proposed transfer right now goes straight to the State Engineer. It would be different under this ordinance. And there can be protestants and the State Engineer can actually deny the transfer based on impairment considerations, even broad public welfare considerations, conservation considerations that are statutory.

So it's important to know that there is no such thing as a guaranteed transferability of a water right. You could be denied. And that goes for the person who's transferring the 12 acre-foot. I forget how much you said it was. There's no guarantee there. So when we talk about—it's something to think about in terms of the nature of the property rights of a water right. I don't want to—I'm certainly not the expert on it but there are parts of your water rights that are more protectable than others. For example, your right to receive water when you pay your dues. That's a fairly protected part of your water right and the courts have held that. This Commission can't mess around with that. You can't deny that.

But transferability, the courts are a lot more ambivalent about that, because they understand that acequias came about in the first place because as a mutual project there were mutual rights and responsibilities and part of that mutuality is set forth in the bylaw provisions which everyone adopts in the governance. So I don't want to get really legally obsessed but just

to say that the idea that someone out there can be evaluating proposed water rights transfers in terms of their impact, that's well established in law, that water rights transactions can't have negative impacts or impairments on public welfare grounds. And what this ordinance is doing and I don't want to repeat myself too much, is it is not placing the decision in the hands of the acequia. It is in effect, of course, I don't want to be naïve and say that that's not the case, so much as the County is saying that we value our relationship with the acequias and when we work together, when we come together to agreement on what this transaction will look like and what the buyer may do in terms of keeping the acequia whole and preventing that injury from happening, that's when the County is most comfortable going forward with these transactions when there's been that kind of discussion. And I think that this ordinance will, in terms of the balance we talked about, Commissioner Duran, will create that balance and will create that standard that is not there.

Part of the answer that I wanted to make a minute ago to your question is that no one has actually tried historically to go to acequia communities and say, You know, we want something that you have but maybe we have something that you want, and talk to them as equals in that kind of way. And that's what I see this ordinance doing. And because it hasn't happened that's why there's going to be a lot of mistrust and suspicion about water and the way in which people are talking about acquiring water has been very underground. Publishing in obscure publications and that kind of thing and that has created the atmosphere of mistrust. But I think that that doesn't have to be that way. I think there can be a different kind of dynamic when we go to acequia communities and say we want to work with you.

CHAIRMAN DURAN: I agree.

MR. KOPELMAN: Mr. Chairman and members of the Commission, I think it's important also to follow up on what David said, that there's a real difference between the right to alienate and transfer real property, which is pretty much absolute. You can certainly transfer real property and the appurtenant water rights if you're not moving the water rights there's no issue here. The issue is, and it's really different than a traditional property right and real property when you're trying to move the water right. And as David said there are a lot of implications. I think this is an incredibly progressive ordinance and I think it a way it's cutting-edge, because it's finally, after all these years codifying something that is really the heart and soul of a lot of these communities. And I think that it's a very, very progressive approach and it's an open-minded approach and it's a way of working with the acequias rather than in opposition to them.

MR. GONZALEZ: Mr. Chairman, if I could come at this from the flip-side. The question was asked, what is to prevent an acequia association from saying No transfers. Period. That's our policy. That's it. What mitigates that is the nature of acequia associations, ditch associations. There more than simply small, local governmental entities. They also have complex familial and community relationships embedded in them. So it's not just a question of the five members of the acequia commission sitting down and saying, No, we're not going to do that. Somebody on that Commission is going to be related in some way to the person that's trying to sell the water rights, whether it's a direct family relationship, whether it's a business

2477527

relationship or whatever.

They have to live with each other along the acequia. They have to get along in order to have a viable community. If you have people feuding with each other in very intense ways, it means the acequia can't function. And so there has to be a balancing of the external social and community relationships with what's going on internally in terms of the strict economics of the ditch itself. So there are mitigating factors that would tend not to cause a sort of universal or blanket thing, which an acequia association could say No transfers. And you probably know that from your own experience.

Many of these ditch associations are just one family and if they get in a fight with one another it can be pretty bad.

CHAIRMAN DURAN: I really think that the use, the transfer of these water rights, the use of our resources are only going to be accomplished if we approach it from a socially responsible point of view in the development community, from our elected officials. It all has to be socially responsible and I think that incorporating the needs and desires of the acequia communities is critical to that process. It's very similar to development within the urban areas, going to the neighborhoods and asking them, having a process where they're informed and having their buy-in and their participation in the process. I think this is very similar to that.

MR. GONZALEZ: If there are no other questions at this point I'll move on to part number 2 on page 3. This is the language that addressed non-County, non-public improvement district transfers. And it begins by saying When the County exercises its zoning or land use development authority involving water rights, an applicant will not receive approval if the proposed water right involves an acequia right unless the applicant has obtained and provides proof of approval consistent with the acequia's bylaws or governing rules, by the acequia from which the water right will be transferred. The applicant shall also provide proof of compliance with the requirements in this section that acequia approval must precede application to the Office of State Engineer. So this is what puts everyone on notice that they've got to go through the acequia before going to the State Engineer. It says the requirement applies to but is not limited to both acceptance by the County water rights by a development applicant for dedication to the County water system as well as any other new development.

And then it provides that the process that applies here under subsection a. Applicant required by this section to obtain acequia approval cannot have applied for and obtained a permit for transfer from the State Engineer prior to seeking and gaining approval from the acequia. That's to prevent their using the State Engineer approval as leverage, and b provides that the provisions here don't apply if the application for permit to transfer an acequia water right was filed with the State Engineer prior to the effective date of this ordinance. So there's the cut-off provision that's embedded in it. Provided that the acequia approval requirement set forth elsewhere remain applicable in that event, and provided further that the applicant shall obtain acequia approval prior to preliminary or further approval of any zoning, land use or development application by the County.

So even if you have had a transfer, if you're going to apply them, you still have to come back to the County for any change in the plans in terms of how you're going to apply that

2477528

water right. Then, and I don't know if there are any questions at this point, the next section addresses public improvement districts that I mentioned earlier and says that any public improvement district or other entity created or authorized by the County subsequent to adoption of the ordinance—and I think the County has only approved one to date.

For the purpose of levying taxes or constructing or financing public improvements, shall as a condition of County approval and prior to applying to the State Engineer for a water right similarly obtain approval of the proposed transfer from the acequia. And this condition is to be incorporated into development agreements or agreements between that entity and the County, establish the obligation to the owner, developer or district. Those districts have to come to the County for approval of their charter, in essence, before they can proceed. So what this says is that the County will make sure that they incorporate in those organic documents, the requirement that they comply with this ordinance. No questions so far.

The next section 4, we referred to occasionally but says in the event the acequia has no bylaws or governing rules then any approval has to be by majority vote of the acequia commissioners at a duly called meeting. So in essence it's saying that a majority of vote of the commissioner if they have none of these procedures in place, bylaws and so forth, will constitute the response of the acequia.

COMMISSIONER CAMPOS: Mr. Chairman, what about the finding that, if they don't have bylaws, they're not required to make those findings, just make a majority vote? How about keeping a record of the meeting? Things like that?

MR. GONZALEZ: I think that subsection 6 requires that majority votes be based on some sort of formal finding. So they don't have to have bylaws, they don't have to have governing rules, but when they do sit and deliberate, they have to make a finding and I know that in talking to Paula, she's been working with all the acequia associations so that they're aware of this requirement. There may be a few that fall through the cracks, but basically, if that happens, then the County would say We have not received your findings. You need to come back and bring them forward before we can do anything.

COMMISSIONER CAMPOS: This would require, essentially, some kind of record keeping by the acequia association at the meeting. Who was present, who voted, what the issues were, what the discussion was, what the motion was, in order to have the documentation necessary to present here.

MR. GONZALEZ: That's correct. There would have to be some record created of that meeting and the approval or disapproval, including findings. Subsection 5 refers to instances where the acequia may not have responded. It indicates that if a person or entity has sought approval and the acequia has not made a decision on the request within 120 days, that person or the entity may proceed to seek approval from the Office of the State Engineer. However, in that event they have to provide written notice by certified mail to the acequia that they've applied to the State Engineer. They also may come to the County and seek approval, but again, they have to provide certified mail notification to the acequia that they're going to do so.

If at that point the acequia does not respond within 45 days, then the County can

proceed and deem that the transfer has occurred. So this does cover to some extent what happens when inactivity on the part of the acequia sort of hinders the person that's coming forward with the application.

Subsection 6 we've referred to also. To be considered an action of an acequia for purposes of this requirement, a decision by an acequia denying the acequia's approval for a transfer must incorporate a clearly articulated finding the transfer would have an injurious or adverse effect upon the acequia, and defining the nature of the effect. So they can't just say it's bad or it's wrong or we're going to be injured. They have to specify what the injury is. And then it says a decision by an acequia shall be considered final unless rescinded within 30 days in accordance with its bylaws or governing rules. So we receive an approval or a disapproval from an acequia. There's a 30-day period and if no further action has been taken, it constitutes the final action of the acequia.

And then, and here my finger hit the wrong number but this is subparagraph 7. In the event that an acequia denies approval for a transfer to a third party other than an acequia member and the acequia member nevertheless transfers the water right, the acequia member or third party or both can request mediation to try to resolve the dispute. Failure to enter into mediation can be considered bad faith by the County on the part of the acequia association's part. That last sentence needs to be slightly rewritten. It's not clear, but that's the effect. It's basically saying that the County can consider the failure of the acequia association to enter into mediation evidence of bad faith which would undermine their disapproval of the transfer or boost the position of the owner or the developer of the water right.

Now, we had considerable discussion as I said concerning how the deal with sort of the tail-end issues of what happens in terms of if there is a dispute or inactivity. I think we've addressed the inaction of the acequia but certainly would like to have input from the Commission with regard to the final clean-up. And as I had indicated earlier, we also had looked at the possibility of giving acequias the right of first refusal somewhere along the way but didn't build it in as a formal process because that kind of relates to the discussion that we also had here this morning about creating some sort of a trust or some other mechanism that the County could participate in in order to further assure that those water rights were not lost to the acequia or acequia association.

COMMISSIONER TRUJILLO: What's the intent, Gerald, of number 7? It seems convoluted. I'm trying to grasp what you're planning to do here.

MR. GONZALEZ: The idea was to kind of address the question that I think the Chair raised and which the County Attorney may have referred to a little earlier too, is to make sure that there really is a good faith attempt to resolve a dispute between someone who's trying to purchase the water rights and the acequia itself, and also balance the equities, when you have a situation where with a family this is their major asset. The parents have died, the grandparents have died, they've left a couple kids and they really don't, they're essentially income poor but the majority of their assets are tied up in the water and the land.

In those instances we wanted to make sure that another step was taken to kind of protect the people in that position so that at least it made sure that the acequia would deal with them in

2477530

good faith in the face of kind of adverse economic circumstances.

COMMISSIONER TRUJILLO: Isn't that the intent of the ordinance as a whole for everybody?

MR. GONZALEZ: That's correct. And I think the discussion we had towards the tail-end of the hardship kind of situations and how to deal with those. So it was a cut at it but I'm sure in terms of drafting we certainly would be open to the thoughts the Commission may have about that.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: A question for Mr. Gonzalez. So basically, you have a denial, let's say. And they ask for mediation. You go to mediation. At the mediation there's still no resolution. The answer is still no. At that point the County would respect that decision?

MR. GONZALEZ: As long as they clearly articulated the reasons, that's correct.

COMMISSIONER SULLIVAN: Mr. Chairman, Gerald, is it the County's decision that they have or haven't clearly articulated a reason? Whose decision is it that the reasons have been clearly articulated?

MR. GONZALEZ: It's the County's and David and Paula may have a different point of view but I take the position that it's the County's authority to make that determination because it really is kind of a liability shifting mechanism. The County is looking at a means for making sure that it's protected in approving whatever actions the acequia commission has made. If somebody brings a lawsuit they're going to name the County, they're going to name the acequia. The acequia commission members and the defense for the County in this instance, and this is sort of lawyering on our part, but the defense for the County in this instance would be to say these were the findings that we had. We acted on those findings based on the ordinance and that's our defense.

COMMISSIONER SULLIVAN: I read the paragraph that says decision by the acequias is final, so I don't see any appeal process or review process by the County Commission.

MR. GONZALEZ: The review process would be the actual consideration of the decision presented by the acequia commission. This Commission could look at it and say, Those findings were insufficient and maybe we need to spell that out that there's a process for you to go through if that's what that implies. If the Commission deems the findings to be insufficient, it can send it back to the acequia commission or it can deny the action taken by the commission.

COMMISSIONER SULLIVAN: I'm just thinking in these kind of personal situations that you describe where you have perhaps feuding families and those kinds of concerns and if there was to be a sale, what would happen? Where's the appeal process? I don't see any check and balance.

MR. GONZALEZ: Well, part of the check and balance is the requirement to

2477531

mediate. So we did put that step in, but I know I'm certainly open to any thoughts you may have about this.

COMMISSIONER SULLIVAN: And I had one other question for you about the banking, while it's on my mind, and that is if the idea of banking is to preserve the rights, much like municipalities can do now, municipalities can bank water rights for 40 years if they have a 40-year water plan which Santa Fe County just passed a few months ago. Municipalities and other public entities. If the idea is to bank the water or to redistribute it among the beneficiaries of the acequia, why do they need more water? Let's assume they have adequate water to start off with and someone retires a tract of land and then you redistribute the water. If they've got enough water to irrigate a given amount of lands, isn't that wasting water to just use more of it on those same lands?

MS. GARCIA: Mr. Chairman, Commissioner Sullivan, typically, in most of the stream systems in New Mexico the streams will tend to be what they call historically short, meaning that they don't get—if they were to get 100 percent historical supply they would have the water they needed to irrigate all the lands that are served by the acequia. Hydrologically, most range between 60 and 80 percent historical supply. And so as any parciante will tell you in any given year, in a typical year, acequias are short water. So the banking mechanism would allow water that's not being used by one parciante to allow that water to be used by the remaining parciantes.

That's not the only use. That's the first option. That's the one option that can be done through the banking mechanism that wouldn't have to go through the State Engineer. If that acequia decided that it was better to possibly lease that to another entity—a community well system, a local town, a municipality, whatever it might be, they might decide to do that. But it's the acequia's call. If they feel like they're water-short they might exercise the option to keep the water in the acequia.

COMMISSIONER SULLIVAN: If they decide to lease it then that would have to go through the State Engineer.

MS. GARCIA: That's correct.

COMMISSIONER SULLIVAN: Okay. I see. Thanks.

MR. BENAVIDES: And Commissioner Sullivan also, Mr. Chairman, on Paula's first point. One of the elements of your adjudicated water right is called the duty of water. That's the amount of water per acre that your water right represents. That number varies with the elevation and the climate, where you are in the state. So let's say it's 3.0 acre-feet for a one-acre tract. What Paula was saying is that in most stream systems in New Mexico they'll get 1.5, 2 acre-feet, even though they have a legal right to take up to three if it ever becomes available to them. So anything above three on that acre would be a waste but anything that brings you from where you are up to three would not be a waste; it would be water that could be beneficially used.

CHAIRMAN DURAN: Is that it?

MR. GONZALEZ: That's it, Mr. Chairman. Except for any other questions or thoughts that the Commissioners may have or anyone else.

2477532

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: A question for staff generally. What about moving this on to the next study session or to the next hearing? What ideas do you have? What time lines were you considering?

MR. LOPEZ: Mr. Chairman, that's pretty much the exact question I was going to ask in a different way. I guess having heard now the intent of this and had an opportunity to walk through it, I guess is it the feeling of this Commission that it's at a point right now that we could bring it forward, perhaps at the next regular meeting for authorization? And then move it through? I guess one of the considerations that we gave in drafting this whole thing and actually making the decision to bring this forward is we are sensitive to the fact that as we create this sort of ordinance we don't want to create a rush either. And I think that our intent would be that if the Commission wants to move forward with this thing, certainly we want to try and move it forward and make sure that we've gotten everything right or as right as we can at this point but we also don't want it just to drag out for another year or whatever the case might be.

And yet I think this is of such importance that there clearly has to be an adequate public participation process. I guess if the Commission is ready, we could put on the authorization to publish title and general summary even at the meeting of the 20th, and then begin a public hearing process soon after that.

CHAIRMAN DURAN: The 20th of what?

MR. LOPEZ: The 20th of December or whenever this Commission would feel it would be appropriate.

COMMISSIONER TRUJILLO: Do we have a meeting on the 20th?

MR. LOPEZ: Yes.

COMMISSIONER CAMPOS: Mr. Chairman, I feel comfortable moving forward with authorization of title. I think there's been a lot of thought given to the ordinance. It looks like—I still have a lot of questions. I think we all do but this is the purpose of the discussions that we can have once we authorize. I think it's important to move it forward. I think there are good ideas here. So I would suggest that on 12/20 we put that on the agenda.

CHAIRMAN DURAN: I agree. And I think that have Commissioners-elect Anaya and Montoya attend this was good. I'm glad they were here to listen to the discussion because now they're pretty much up to speed on what it is we're trying to do here.

MR. LOPEZ: Mr. Chairman, with that direction we'll put authorization on the 20th. But there is, I guess I'd like to hear, perhaps from David and Paula as to their concerns about the pace of the process at this point because we did have a little bit of discussion on this. I know that once the legislature picks up their involvement in that process and so forth, I know that they want to remain tied into enactment of this as it goes forward and I was wondering if this created any sort of problems.

MS. GARCIA: Mr. Chairman, Estevan, I'm very happy to see that the ordinance has gotten to this point. I think it's taken a lot of work and I want to thank Commissioner Trujillo for involving us and asking for some input. The point you raise about

2477533

the timing is from our perspective, it's something that we would be a little bit concerned with because we do spend quite a bit of time at the state legislature and it's my strong desire to be engaged with this process as much as possible through the public hearing process and to be available to the Commission if there are questions and to perhaps be a contact to make other contacts in the community to get more input. So that is a consideration in terms of timing from my perspective, from our organization's perspective. We want to put our full effort behind this initiative of the Commission and doing both at the same time might present a little bit of a problem logistically for our organization. But I understand that's just one consideration that the Commission would look at. If you're ready to move forward I certainly wouldn't want to be an obstacle to that because this is a positive thing. So that being said, I'd also like to run it by a few of the acequia leaders. The most recent language I just read for the first time today, number 7, and I think it looks really good, but given that it's up to the Commission when you want to move forward.

CHAIRMAN DURAN: I think Estevan, we move forward as quickly as we can and coordinate that effort with their organizations. If they can make it, that's great and if it they can't we postpone it until they can join us.

COMMISSIONER CAMPOS: Mr. Chairman, is it possible that we could authorize notice at this meeting? I know when we approved the agenda earlier we took it off. Could we put it back on? It was properly noticed.

MR. LOPEZ: Mr. Chairman, I believe that you could reconsider that earlier tabling and if you wanted to undo that and authorize at this meeting.

COMMISSIONER CAMPOS: I would like to do that and I would so move if it's okay with the Chair.

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? That is to bring the authorization back on the agenda for consideration and action.

COMMISSIONER SULLIVAN: I'd like to see myself, this is the first time I've seen the ordinance and we discussed it I think pretty well here today but I certainly would like to see a revised version. How many hearings would this have?

MR. LOPEZ: Mr. Chairman, I think given the impact of this or the potential impact of such an ordinance, I just spoke about this to Steve and he recommends two public hearings given the magnitude of the impact.

COMMISSIONER SULLIVAN: So it really doesn't matter if we authorize today or the 20th, because the first hearing would be at our first land use meeting, right?

MR. LOPEZ: I believe the first hearing then, if we were on a regular meeting schedule would probably be in January land use meeting and the second probably in February.

COMMISSIONER SULLIVAN: So it doesn't matter if we authorize today or the 20th. The first hearing will be in January, the second one will be in February. Is that the plan.

The motion to remove the authorization question from the table passed by unanimous [5-0] voice vote.

2477534

VI. Request authorization to publish title and general summary of an ordinance amending Article VII, Section 6.2 of the Santa Fe the Land Development Code to provide for acequia protection

CHAIRMAN DURAN: The Chair will entertain now a motion to request authorization to publish title and general summary.

COMMISSIONER CAMPOS: So moved.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Any further discussion?

The motion to authorize publication of title and general summary of an acequia protection ordinance passed by unanimous [5-0] voice vote.

COMMISSIONER CAMPOS: I would suggest, Mr. County Manager, that we put this ordinance on our website and get information out on our newsletter, the Commission newsletter to disseminate this information as quickly as possible for discussion. Disseminate it to organizations that are involved in public issues throughout the county as soon as possible.

The other question is do we need another study session before the first public session? Is the Commission comfortable at this point with proceeding to first public hearing?

CHAIRMAN DURAN: I am.

COMMISSIONER CAMPOS: Okay. The last question is the City? What track is the City following? Because the City is a big player in this region and it seems that we need some coordination with the City to be more effective.

CHAIRMAN DURAN: Give me a situation where they even get involved in a water right transfer.

COMMISSIONER CAMPOS: There may be folks that are developing in the city that would be buying acequia water rights and I think that's how it would be applicable.

MR. LOPEZ: Or another way that it's even more directly applicable to them is I think the City has, or at least some at the City at this point have kind of acknowledged that they probably, in terms of their 40-year water planning may need to look at acquiring additional water rights for their utility. So the City itself may be looking at trying to acquire water rights. That's one of the things that we've discussed with David and Paula and Judy about that ideally we do this in some sort of a coordinated fashion such that we don't either put ourselves at some sort of competitive disadvantage or otherwise create an unintended consequence.

CHAIRMAN DURAN: Do you think you could send the Mayor and each Councilor a copy of this with a cover letter stating that we're considering doing this, adopting this?

MR. LOPEZ: We certainly could, Mr. Chairman.

CHAIRMAN DURAN: And to suggest that they—but send it to them individually so that we don't have to worry about distribution.

MR. BENAVIDES: Mr. Chairman, and for the Commission's information, the

2477535

City has discussed doing something like this for some time, for many years but it was initially just discussion in the form of resolutions. But more recently we were contacted by Councilor Karen Heldmeyer and she has introduced an ordinance which is very similar, not 100 percent identical but identical in the most important respects to this, without section 7 included in there and some of the latest language at the very end that was included. And that has been introduced. And that has been recommended for approval by the first committee that it went to, which is the Public Works Committee. And it's slated to be heard by at least a couple more committees and that process will take some time, I think, because the Councilors want to do what you're doing and give a lot more consideration to it. So it's kind of at its initial stage but it is something that's happening. I didn't know if the Commission was aware of it.

CHAIRMAN DURAN: Do you think you could get a copy of it and highlight those areas of conflict between the two? I think it would be ideal if we could adopt something that is identical or that has some similarity, that is similar.

MR. BENAVIDES: I'd be happy to do that, Mr. Chairman.

COMMISSIONER TRUJILLO: Mr. Chairman, I think there's a difference between how the City looks at protection of traditional water rights in the county, specifically because out in the county the acequias are still in viable condition and the continue to serve and sustain life in the community. In the city they don't get that perspective. In the city developers are trying to get water rights for other purposes so there's some distinct differences between the efforts of the City and the efforts of the County. So I think that we should proceed with our ordinance, invite the City to comment and provide input, but not try to do it in a simultaneous way.

CHAIRMAN DURAN: Estevan.

MR. LOPEZ: Mr. Chairman, Commissioners, I just wanted to bring up one thing that we've discussed as we've developed this ordinance and just to make sure that you're aware of this as well. The County already owns some water rights that I believe are associated with, I believe it's the Guicú ditch down in La Cienega. These were acquired as part of a land use approval a few years back. It's not a large amount or anything like that but they are an asset that we hold right now today and the way this is drafted, it wouldn't preclude us necessarily from using those water rights because this is prospective in nature, but I do want to make sure that you're aware of that fact and how that might play in with this.

CHAIRMAN DURAN: We also own water rights in Socorro that we've had some discussion about transferring up here. And I think they're associated with agricultural use.

MR. LOPEZ: Mr. Chairman, Commissioner Duran, that's correct. They are agricultural water rights. Frankly, I'm not certain whether those are acequia water rights as defined in this ordinance but in that case I think we actually have an application that has been filed with the State Engineer.

CHAIRMAN DURAN: We're trying to get them up here?

MR. LOPEZ: Yes.

COMMISSIONER SULLIVAN: Mr. Chairman, I would like to re-emphasize, I still think we'd like to get a handle on the amount of water that we're talking about. It kind of

2477536

makes it difficult when you throw in Taos and Rio Arriba County and everything else but if there's some way that we can comb through those State Engineer records and give us a general feel. Are we talking about half the water rights that could be used in the next 40 years in Santa Fe County? Or are we talking about one tenth of one percent of the water rights? I think it makes a big difference in how much flexibility we put into the ordinance and how much authority we give to the acequia associations to make those decisions.

MR. BENAVIDES: I'll get that to the Commission as soon as possible, or to the Commission's staff.

COMMISSIONER SULLIVAN: Okay. Great. Appreciate that.

CHAIRMAN DURAN: Commissioner Varela.

COMMISSIONER VARELA: Mr. Chairman, I just wanted to say for Commissioner Sullivan's edification, when we talk about acequia water rights in Santa Fe County I think it's very easy to say or guess that we're talking about thousands of acre-feet that are owned by the acequias. I don't know what it is as far as what the total water rights are out there but it is an important number.

COMMISSIONER SULLIVAN: Substantial.

COMMISSIONER VARELA: Definitely. And also as we were talking here, I think the acequias have to have more of a right without any pressure from the County looking for their water because the more people that sell their water rights off an acequia, the less viable the acequia becomes. Because if you have 15 members and then people sell them and you go down to four or five members and they happen to be at the end of the ditch, whatever water those four people are left with, it doesn't become feasible to get the water all the way from its source all the way down to the property so therefore it becomes basically a moot issue and the acequia dies. That's why it's important that the acequia does have power and the County backs up the wishes of the acequia so we can ensure the long-term viability of acequias have they have been for the last 300, 400 years.

COMMISSIONER SULLIVAN: And as I said earlier, no one's left to maintain the acequia, let alone not enough water, but no one's left to physically maintain the acequia if there's only four members left.

COMMISSIONER VARELA: Yes. That's why we have to have some impetus to make sure that it's strong and it survives.

COMMISSIONER CAMPOS: Mr. Chairman, just a last suggestion as far as disseminating information. Instead of simply distributing the ordinance as is, perhaps sending a cover letter of some sort explaining the context, the reasons for it so that the ordinance might be more understandable. I think that's important if we're going to communicate with the community.

CHAIRMAN DURAN: Can you e-mail this to us?

COMMISSIONER CAMPOS: All of us, yes. That would be great.

MR. GONZALEZ: We could do that, Mr. Chairman.

COMMISSIONER SULLIVAN: And provide a copy to the Friends of Santa Fe County.

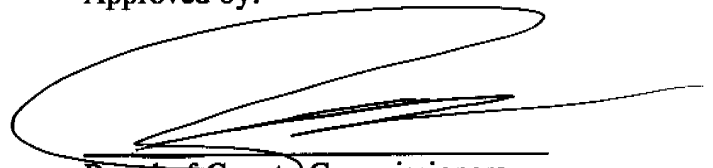
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MR. GONZALEZ: Be glad to do that.
MR. BENAVIDES: Thank you very much.

ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 11:45 a.m.

Approved by:

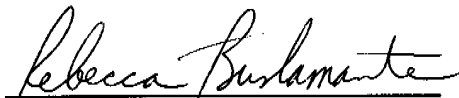


Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:

Karen Farrell, Commission Reporter

ATTEST TO:



REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK

