



Pojoaque Basin Regional Water Authority Joint Powers Agreement

Fact Sheet – March 11, 2015

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

What is a Joint Powers Agreement? It is an agreement authorized by State law, pursuant to which two or more public agencies agree to jointly exercise a common power. Joint powers agreements must be approved by the New Mexico Secretary of Finance and Administration, a member of the New Mexico Governor's Cabinet. The Joint Powers Agreements Act authorizes the parties to create a commission or board separate from the parties to exercise the common powers in the agreement. Santa Fe County (County) has entered into such agreements in the past, such as the ones with the City of Santa Fe that created the Buckman Direct Diversion Board and Solid Waste Management Agency.

What would the Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA) do? Generally speaking, it would create the Authority, define its membership, define its powers, and prescribe the manner in which those powers are exercised. The Authority would consist of directors appointed by the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque and the County.

What is the process for developing the JPA? Santa Fe County Resolution No. 2012-53 provides, in part, as follows: "Once the County Attorney and Pueblo representatives have negotiated a draft of the JPA, the County shall consult with representatives of potential customers to receive comments regarding any additional provisions that may be needed. Once a final proposed JPA is prepared, it shall be placed on a meeting agenda of the Board of County Commissioners for consideration and action."

County staff has been in negotiations with Pueblo representatives for some time and received comments from representatives of some potential customers concerning an earlier draft of the JPA. In addition, on March 6, County staff provided Pueblo representatives with a new draft JPA, a copy of which is available on this webpage. Currently, County staff is actively soliciting additional comments on the draft JPA at this time.

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

Is the JPA the only agreement that affects the RWS? No. There is the Settlement Agreement (and federal act approving it), the Cost-Sharing and System Integration Agreement, and the Operating Agreement, which has not yet been negotiated.

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

1. **Board Representation:** The current draft JPA contemplates a five member Board with special majority voting provisions, where each party appoints one director (and one alternate) to the Board. County staff feels that such a Board is workable in size and equitable in representation, given the parties to the JPA, their respective interests in the system, and the special majority voting provisions. In particular, the current draft requires the concurrence of the County director and Pueblo de San Ildefonso director to a) approve the annual budget, b) hire or terminate the RWS general manager, c) approve delegation of any power of the Authority, d) borrow money in excess of \$125,000 or convey any of the Authority's assets and, e) enter into or terminate a contract greater than \$125,000 (Article 6.G). In addition, the offices of Chair and Vice-Chair will rotate among the parties (Article 6.C).

2. Reliability of Service: Congress, the Pueblos, the County, and potential customers of the RWS have a common interest in reliable service. The draft JPA and other agreements attempt to achieve this common interest in the following, among other, ways:
 - a. Easements and rights of way for the RWS – whether acquired from the United States, a Pueblo, the County, or private landowners – are required to last “for so long as required for construction, use, operation, maintenance, repair and replacement of the [RWS].” (Cost-Sharing Agreement, Section 2.3.)
 - b. The United States, Pueblos, and County are required to grant easements and rights of way for the RWS at no cost. (Cost-Sharing Agreement, Section 2.3.)
 - c. County and Pueblo de San Ildefonso director approval is necessary to convey any of the Authority’s assets. (JPA, Article 6.G.)
 - d. Ownership of any portion of the RWS can only be transferred pursuant to a subsequent act of Congress. (Cost-Sharing Agreement, Section 2.4.) Among other things, this means that the parties could not convey the RWS (or their individual systems) to a private utility company, for instance.
 - e. The JPA does not allow one party to unilaterally withdraw. Instead, agreement by all parties and an act of Congress is required for the JPA to terminate. (JPA, Article 24.)
3. Individual Utilities Establish Customer Water Rates: Under the current draft JPA, the Authority does not establish water rates charged to customers of the County Water Utility or a Pueblo Water Facility. Instead, the current draft requires that the billing of County and Pueblo customers must conform to the policies of the County and applicable Pueblo Water Facility (Article 5.E). In other words, the current draft JPA embodies the concept that the Authority is a wholesale supplier of water to the County Water Utility and Pueblo Water Facilities. Each utility decides how to pay for that supply of water. When setting rates it charges its customers, the County follows industry standards, consistent with those established by the American Water Works Association, and includes an analysis of the cost of service.
4. Transparency and Accountability: The current draft JPA makes explicit what was always implicit: namely, that the Authority is subject to all of the laws that are applicable to the County. (JPA, Article 27.) In addition to that general statement, the JPA specifically notes applicability of the New Mexico Open Meetings Act, requiring all meetings to be held in the Pojoaque Basin or elsewhere in Santa Fe County (JPA, Article 6.F), the New Mexico Inspection of Public Records Act (JPA, Article 13), the New Mexico Audit Act (JPA, Article 9.B), and the New Mexico Procurement Code (JPA, Article 8.A).
5. County to Serve as Initial Fiscal Agent and System Operator. The current draft JPA includes language designating the County as the Fiscal Agent and System Operator (JPA, Articles 10.B and 12.A) and contemplates that the County will contract with the Authority for these services. In essence, this means that the County will initially be responsible for the Authority’s fiscal and administrative functions as well as the operation, maintenance, and repair of the RWS.
6. Capital Expenditures: Capital expenditures are subject to the special majority voting provisions, requiring County and Pueblo of San Ildefonso director approval of budgets and contracts in excess of \$125,000. (JPA, Article 6.C). In addition, the Authority will be required to follow the New Mexico Procurement Code (JPA, Article 8.A).
7. Dispute Resolution: Article 19 includes binding and enforceable dispute resolution mechanisms.

How can potential customers provide additional comments on the latest draft JPA? If you would like to provide comments, please email them to sely@santafecountynm.gov or mail them to Sandra Ely at 424 NM HWY 599, Frontage Rd, Santa Fe, NM 87507 by March 31. This will help ensure that County staff can timely consider them during negotiations with Pueblo representatives. For questions you may email or call Ms. Ely at 505-986-2426.

For additional information about the Regional Water System, please visit the following websites:

http://www.santafecountynm.gov/county_commissioners/henry_roybal/aamodt_outreach,
<http://uttoncenter.unm.edu/ombudsman/npt.php>, <https://sites.google.com/site/pbwatereis/>, and
http://www.ose.state.nm.us/legal_ose_aamodt_info.html