

MINUTES OF THE
SANTA FE COUNTY
WATER POLICY ADVISORY COMMITTEE

April 10, 2014

Santa Fe, New Mexico

This meeting of the Santa Fe County Water Policy Advisory Committee (WPAC) was convened at approximately 6:00 p.m. by Chair Charles Nylander on the above-cited date at the Santa Fe County Public Works Building Conference Room, 424 NM 599, Santa Fe, New Mexico.

A quorum was established as follows:

Members Present:

Charles Nylander, District 2
Shelley Winship, Northern Planning Area
Consuelo Bokum, BDD Board
Bill King, Soil & Water Conservation
Steve Rudnick, District 5
Neal Schaeffer, District 4
Sigmund Silber, Central Water Planning Area
Rita Loy Simmons, District 3
Gil Tercero, Mutual Domestic Water Consumers Assoc.

Member(s) Excused:

Mukhtiar S. Khalsa, District 1
Martha Trujillo, Acequia Association
[One vacancy]

Staff Present:

Claudia Borchert, Public Utilities Division Director

Others Present:

Anna Hamilton, Greater Glorieta Water Association
Shannon Jones, BDD Interim Facility Director
Ramon Lucero, El Valle Water Alliance
Richard Rose, Director, Water Resource Allocation Program - OSE

WATER POLICY ADVISORY
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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of August, 2014 at 10:32:01 AM
And Was Duly Recorded as Instrument # 1744007
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

Deputy

Marcella [Signature]



III. Approval of Agenda

Upon motion by Mr. Tercero and second by Mr. King, the agenda was unanimously approved. [Ms. Simmons was not present for this action.]

IV. Approval of Minutes: January 9, 2014

A series of corrections were offered. [Those corrections were incorporated and the corrected minutes filed with the County Clerk's Office.]

Mr. Tercero moved to approve the January 9, 2014 minutes as corrected. Ms. Bokum seconded and the motion passed by unanimous voice vote. [Ms. Simmons was not present for this motion.]

V. Action Items

None were presented.

VI. Discussion Items: Report Assignments

Ms. Winship contacted Karen Nichols, project manager, Lower Rio Grande Public Water Works Authority (LRGPWWA) who has been with the project since inception and they discussed a wide spectrum of topics regarding the authority. Upon Ms. Nichols' recommendation she contacted Sue Padilla, former Doña Ana County Manager, who continues to play a key role in the operations of CRRUA (Camino Real Regional Utility Authority). CRRUA was not established by statute and avoided the legislative procedure; instead it was formed by a JPA (joint powers agreement) between Doña Ana County and the City of Sunland.

Ms. Winship offered the following points:

LRGPWWA

- The district is no longer contiguous – there are gaps in their service area
- They were required to combine and commingle their water rights as part of statute language by the OSE
- An amendment to a statute is a time-consuming process
- Ms. Nichols recommended Santa Fe County consider a JPA as preferable because the counties and cities already have bonding authority and thus avoid the legislative process
- The authority is governed by people elected by district constituents within the authority
- They have experienced challenges proving beneficial use and there has been overdiverting

CRRUA

- The board is made up of elected officials – state senators, state representatives, city councilors, county commissioners or their designees
- There is a plan to pursue a statute to become a statutory authority rather than running it as a JPA
- The county utility operates the CRRUA

- Their biggest issue has been the rate structure with economic imparities
- Growth and development are occurring quickly in the service area and they are experiencing power outages and mechanical problems
- Providing water for fire suppression has been a burden

Both representatives were familiar with the proposed Utton bill and cautioned that a one-size-fits-all uniform water authority statute is not workable. The LRGPPWA was originally comprised of mutual domestics although they are now talking with a private water association.

A discussion regarding the power of eminent domain ensued.

Mr. Schaeffer investigated the regulatory citations to determine the powers and authorities of a sanitation district versus a cooperative, etc., outlining the features and benefits [*Exhibit 1*].

Mr. Schaeffer provided definitions and citations for: regional water authority, special district, mutual domestic, sanitation district and co-op. He offered the following:

- Special districts (chapter 4) are required to go through a special district board. Legislation for the generic special district is urban oriented
- The Utton proposal did a lot for mutual authorities to become a regional water authority.
- Sanitation districts appear to be a mechanism for NMED to provide funding and mutual domestics are similar to sanitation districts in how they can receive funding
- Co-ops are autonomous associations
- An incorporated co-op can enter into contracts. And can receive grants with little government oversight
- Mutual domestics and regional water authorities can levy fees and have the power of eminent domain
- The Utton proposal contemplates planning
- A regional water authority does not have special NMED oversight, unlike a mutual domestic.
- A mutual domestic can become a water authority as proposed by Utton
- A regional water authority is not subject to the PRC
- Mutual domestics are subject to the PRC
- Regional water authorities perhaps could be organized under Chapter 4 special district – not requiring special legislation
- The Utton proposal includes the word “contiguous”

Mr. Rudnick reviewed the situation in District 5 and offered the following information:

- Eldorado Area Water & Sanitation District (EAWSD) is the only water system within District 5
- Eldorado is pumping its own water from the aquifer
- The community’s desire to tie in to the County system has not been vetted
- There was a contentious rate increase hearing earlier
- The only say the area voters have is electing the directors of the Eldorado Area Water & Sanitation District.

Mr. Rose said EAWSD was formed as a water and sanitation district under the Water and Sanitation District Act. Special legislation created three water authorities: Albuquerque Bernalillo County Water Utility Authority, LRGPPWA and the Eastern NM Water Authority/Ute water project. He mentioned that JPAs are extremely weak because an entity can join and un-join. Without a guaranteed membership, a JPA is a bad risk for lenders.

Ms. Simmons commented that JPAs can work very nicely for specific sites and can evolve into something else.

Mr. Tercero said he has seen Eldorado's wells go dry and water rights challenges and it is imminent that Eldorado will join a regional system. Mr. Rudnick said further complicating the water issue is a previous Glorieta GeoScience stating there is plenty of water in Eldorado. In the past the concern of some of the Eldorado residents was they would tie into the pipeline and Eldorado's aquifer would be tapped to supply other areas.

Mr. Tercero asserted that when the water dries up the politics go out the window.

Ms. Bokum said the worst case scenario may be that nobody has water. She said the assumption that creating a new infrastructure will create water is faulty thinking.

Speaking as an environmental scientist, Mr. Rudnick said he recognizes he is at odds with others but he wants to downplay the lack of water in northern New Mexico. The times are going to be different and he supported tapping surface water supplies.

Mr. Tercero said in pockets of Santa Fe County water tables are dropping and wells are going dry. It was his understanding that the County Commission wants to be in a position where there is a plan for it.

Mr. Silber researched the Albuquerque Bernalillo County Water Utility Authority and distributed an analysis [*Exhibit 2*] of the ABCWUA (Albuquerque Bernalillo County Water Utility Authority). He spoke with ABCWUA representatives John Stump and Mark Sanchez. He offered the following points:

- A water authority is a fairly permanent structure and somewhat inflexible, not in a negative sense
- There are pros and cons for having a fairly inflexible and permanent arrangement that can be amended
- ABCWUA is fairly insulated from politics and can run their authority based on "their fiduciary responsibility to the ratepayers and bond holders"
- ABCWUA has a high credit rating even though they can only issue revenue bonds, whereas a JPA relies on their sponsors who can issue GOBs
- A consideration in creating a water authority needs to that of bond rating
- A water authority is a jurisdiction of the State of New Mexico

The strength of the ABCWUA is a result of the enabling legislation and Mr. King doubted a bill granting that much authority would pass again.

Mr. Silber said once a water authority is created there is no longer the full commitment of sponsors – it's not the sponsors' job anymore. A water authority requires strong leadership.

Ms. Bokum distributed a fact sheet on the BDD [*Exhibit 3*] and highlighted that the project was built to treat, divert, and deliver water and does not own water rights. The permits contain limits on the amount of water that can be diverted and the amount that can be treated; in fact, it was her understanding that the facility is close to capacity. The treatment plant is situated on federal land. Originally, there were three partners: the City, the County and Las Campanas who would treat their own water. Las Campanas is a partner in the BDD up to Booster Station 2A.

Ms. Borchert said the project was designed to meet the water rights that were available at the time. The plant has a higher treatment capacity than the water rights and the permits that are associated with the project.

Mr. Jones said it is correct that the plant can treat more than current 8,730 acre-feet limitation. However, 15 mgd is a peak day capacity and the facility lacks redundancy at that point.

Ms. Borchert said including the safety factor, the capacity of BDD is an unknown. The City's long-range water supply plan identified a gap between available supply and demand. One of the ways to provide that supply was to obtain supplemental permits to the permit limitations at the BDD and to be able to acquire additional water rights to be sent through the BDD.

Chair Nylander said Santa Fe County and Las Campanas Water & Sewer Co-op have an agreement whereby Las Campanas purchases water through the County that is treated by the BDD and Las Campanas provides water rights to backstop every acre-foot of water that they divert. He said 327 acre-feet is being diverted for Las Campanas' drinking water and 327 acres of water rights have been transferred over to the County to backstop that amount. The County retains ownership of those water rights until they stop delivering that water and then they would revert back. The Club at Las Campanas uses all its reclaimed wastewater, 70 afy, and they divert Rio Grande water which is a mixture of San Juan Chama water and native water rights under a contract with the County and, again, they're paying the county to send them raw untreated water to mix with the effluent to irrigate the golf courses. The County has two contracts with Las Campanas.

Chair Nylander confirmed there is a pipeline that delivers untreated water from Booster Station 2A to Las Campanas. Las Campanas paid \$3 million to build that project. From station 2A, Las Campanas pumps the water through its own pipeline to the golf course.

Mr. Silber appreciated Ms. Bokum's report and pointed out that while BDD management may shift, the two parties are in a permanent relationship.

Ms. Bokum concurred with a comment Mr. Tercero made earlier that some places are going to be running out of water and the County will need solutions. She advocated delineating the

problems that the Advisory Committee needs to address. Recognizing the diversity of the county, Ms. Bokum said the solutions may not work for all the segments of the county.

Mr. Jones said the JPA between the County and City created the BDD Board and the Board hired the City of Santa Fe to manage the project through construction into operation and maintenance. The City provides all of the services. He noted that the facility manager is different from the project manager. The city is the project manager and Mr. Jones is the facility manager. Ms. Winship said that arrangement is similar to the CRRUA with Doña Ana County.

Ms. Bokum advocated people coming to agreement rather than imposing a solution.

Mr. Tercero reviewed the history of the Agua Fria Mutual Domestic and distributed the Water Service Agreement between Santa Fe County and the Agua Fria Community Water Association dated May 30, 2006 along with three associated amendments. The agreement delineated the relationship between the City, County and Public Service Company when they created the Metropolitan Water Board. Through the leadership of Max Coll legislation was passed creating the MWB with the specific task of planning the region's future in terms of water and its delivery. The MWB was instrumental in securing the San Juan Chama water rights even though the infrastructure did not yet exist. The water rights were acquired well before a delivery method was conceived.

Mr. Tercero discussed the $\frac{3}{4}$ mile pipeline from Agua Fria school to the tank that the community built stating it was controversial and money was borrowed from governmental entities. The Association had to increase water rates and a relationship was forged between lifelong adversaries. The AFCWA, Sangre de Cristo/PNM and City of Santa Fe had been adversaries for over 100 years because of the ditches and rivers which were drying up which affected the Village of Agua Fria in a devastating way.

Mr. Schaeffer remarked on a recurring theme he hears: forward vision, drought plan, hazard mitigation planning, and agriculture. He questioned whether a regional water authority is the right path and suggested it should comport with County planning.

Ms. Bokum lauded the Jemez y Sangre de Cristo Water Plan that provides a basis for understanding what the relationship between supply and demand is. The study group developed alternatives that were analyzed by subject matter experts. The region was divided into sub-regions. She said there is an incredible wealth of problem-solving information with white papers on each of the 18 alternatives.

In regards to sustainability, Mr. Schaeffer asked whether lot-based infiltration of precipitation to maintain groundwater supplies should be contemplated. Ms. Bokum said that would require the City or County imposing its political will.

Mr. Silber said the ABCWUA sees it as their responsibility to develop the plans necessary to meet the needs of their ratepayers. Ms. Bokum added that the City and County water companies have been doing that.

Ms. Borchert said the City and County are putting together on a sub-basin basis the Santa Fe Basin Climate Change Study. She said utilities can mandate that for new customers to hook up one has to do something – abandon the well, implement infiltration, etc. Mr. Schaeffer advocated recommending that to the County.

VII. Informational Items

A. Speakers (invited) to discuss concept of Regional Water and Wastewater Authorities

Richard Rose, Director, Water Resource Allocation Program, OSE, noted that his comments are his own and not those of the State Engineer nor the State of New Mexico. He said he has seen a need for regionalization and he cited El Valle Water Alliance as an excellent example where there were many small systems, which is not economically viable. He outlined the costs associated with running a system and the requirements regarding regulations from the EPA which include sampling, analysis and reporting. The concept of regionalization was to address and deal with these economic problems. Under the Sanitary Projects Act the organizational structure of mutual domestics allows them to function as a public entity under state statute thus opening up funding avenues. There are more funding mechanisms for a public entity than a private entity, stated Mr. Rose. Co-ops are private entities and not eligible for public funds. A limitation of mutual domestics is they have a service area. He mentioned that in the southern part of the state there is a service issue of who serves whom when a mutual domestic grows into the boundary of another mutual domestic. A mutual domestic as an entity has little defense or authority to protect its service area. Mutual domestics are basically membership associations and can be joined and un-joined making them a poor loan candidate; they also lack an assessment or taxing authority and thus their revenues are solely derived from user fees. The positive thing is that they're easy to form.

Water and Sanitation Districts are either formed by petition of the County Commission or petition of 25 percent of the taxpaying electorate. The petition goes to district court and thence to a special commission. A water and sanitation district is a public entity with taxation authority and is a powerful organization similar to a city or county with the exception of zoning ability. An election of the taxpaying electorate is necessary and a bond needs to be created: it's a complex, cumbersome, lengthy process requiring an attorney.

The Utton model came about via the task force that made recommendations to change the Water and Sanitation Act. Having structure is beneficial when forming an organization. Utton provides a means to create an organization without having to go through the legislature. Relying on special legislation is uncertain and the only way to modify that legislation is to go back to the legislature.

There are a lot of issues that have to be addressed in creating a regional authority. He mentioned that the LRGPWVA had mutual domestics with USDA loans and consolidating those loans under a single entity was a difficult process as is the water rights issues with the OSE. If an Authority is the recommendation of this body, he encouraged them to build into the legislation ways to streamline the consolidation.

Mr. Rose discussed the practical matters of the operation, maintenance, and sustainability of systems under the current mutual domestic format. Small mutual domestics are usually run by volunteer boards that may lack the necessary skill sets. Operating a volunteer-based system is neither practical nor efficient. The law requires that there be a certified operator. Retaining a professional bookkeeper keeps the arrears down.. One of the primary advantages to combining mutuals is the economies of scale.

Ramon Lucero, president El Valle Water Alliance, a regional water association in San Miguel County said he has worked for over 14 with small mutual domestic water consumer associations and as regulations increase and funding conditions worsen those associations are having difficulties. El Valle was organized in 2006 under an MOA between 13 water associations spread out over 60 miles. El Valle was serving as an umbrella to assist in replacing aging water systems. When El Valle got involved none of the associations had financial reserves and monthly rates were between \$5 and \$10 for unlimited water usage within a failing infrastructure. The alliance prioritized needs and began allocating funding that came from capital outlay. Through the years the mutual domestics have dissolved and merged into El Valle Water Alliance. There are three types of contractual arrangements with the 13 mutual domestics allowing for more efficient bookkeeping and certified operator services which keeps the systems in compliance with the State thus maintaining eligibility for funding to continue infrastructure repair. The current charge is \$36/monthly for up to 6,000 gallons and a progressive rate scale applies thereafter. As mutual domestics they report to seven agencies.

Mr. Lucero stated that during this recent short session they introduced legislation emulating the LRGPWWA that was unsuccessful. However, after the session they have received support from the OSE, NMED and several communities. Ten water associations have signed a water sharing agreement. They are working to “combine and commingle” water rights to justify a use for the amount of water needed. He noted there were water associations that they were trying to work with to figure out how to create consensus, form stronger bonds and provide water security for the communities into the future. Culturally that has been a real challenge because the communities are very autonomous with a strong identify.

Mentioning that there were fewer grants available and funding was mostly low interest loans, Chair Nylander asked what the alliance saw in the future for financing. Mr. Lucero said they have to take it slow. They have loans with three agencies and are maxed out with their debt capacity. Forming an authority may expand the group and gain more funding to finance infrastructure at a quicker pace.

Mr. Rose said the challenges for small systems will continue to increase. He noted that last year the Water Trust Board changed the criteria for their evaluation to make it a pass-fail, which includes compliance with a series of regulations and acts.

A discussion ensued on vested and inchoate rights vis a vis beneficial use.

Ms. Winship said according to NMED’s rate setting process water user on her mutual domestic would be charged \$100 a month. Mutual domestics are charging enough to run their system but are unable to create a money reserve.

Responding to Ms. Borchert's question, Mr. Rose said he could envision the Utton proposal being expanded to include other utilities although too many things in the proposal will cause it to lose effectiveness. He encouraged combining water and wastewater entities. Ms. Borchert suggested a menu of options would be helpful in the general legislation.

**VIII. Matters from the Committee
White Paper Conceptual Outline Discussion Draft [Exhibit 4: Outline]**

Chair Nylander said he expected the white paper developed by the committee to serve as an educational component containing a perspective on the concept of regional authorities, mutual domestics, sanitation districts, etc. With approximately 30 mutual domestics in Santa Fe County and the upcoming Pojoaque Valley project it will be a complicated issue.

In response to Ms. Borchert's question of whether there weren't already white papers or studies regarding the feasibility of regional authorities, Mr. Rose recalled a case study when the state provided seed money to sponsor business management for Rio Arriba County's 43 mutual domestics. With the change in Rio Arriba County administration it didn't achieve the sustainability hoped for. Ms. Winship said there has been residual benefit in Rio Arriba from that program.

Circuit rider was mentioned as a resource for assisting mutual domestics.

Mr. Lucero commented that some mutual domestics are unable to prove beneficial use of their water rights. Additionally, in northern New Mexico they are over diverting. He encouraged developing policies for water rights management on a regional level versus an autonomous level.

Mr. Rose said counties can be in three different watersheds involving three different planning processes

Chair Nylander proposed using the committee reports as background on existing state organizations and briefly identifying the authorities, powers and duties and determining whether they solve or create more problems. This could be used as the introduction followed by a description of entities that exist in the state, the different methods they use for organizing, and the positive and negative attributes of each. Guidance would include the potential use anywhere in Santa Fe County and the rationale for applying it. He envisioned small groups working on different components of the report and emailing copies for comments rather than having formal meetings.

Mr. King said the Bernalillo plan is good for real control over the regional water system. He pointed out that people will not voluntarily give over their water; somebody has to hold a hammer over their head. Government is looking at an authority because it's hard to get people to agree voluntarily.

Mr. Schaeffer cautioned that the board was getting too deep into the weeds. What is needed is a conceptual framework to develop regional water authorities. The committee should identify red

flags and inform the BCC. He supported the straw man proposed by the chair in the conceptual paper.

There was agreement that Chair Nylander would create and email out a straw man document following the template framing the information for discussion at the June meeting. The document would include a list of what might work and what might not.

Ms. Simmons pointed out Estancia Basin was a different story and the Commission needs to recognize the south has to do its own thing. There is a fear that the County will pump out of the Estancia Basin for the benefit of the north. She said more than one concept is necessary.

The following points were mentioned:

- In the white paper solutions should be matched to problems
- Identify unique situations within Santa Fe County to illuminate that a one-size-fits-all will not work here
- Wastewater is an important component that should be fleshed out in the narrative
- Regional boundaries should make sense from a water standpoint
- The original task is to describe one framework; an alliance could be the framework
- What is a regional authority and does it have a place in Santa Fe County? Could it be used as a tool?


The committee agreed to network in May, meet in June and prepare for presentation in July. Thursday, June 12th at 6 p.m. was selected as the next meeting date.

X. **Matters from the Public** - None was presented.

XI. **Adjournment**

Having completed the agenda and with no further business to come before this Committee, Chair Nylander declared this meeting was adjourned at approximately 9:30 p.m.

Approved by:


Charles Nylander, Chair

Respectfully submitted by:

Karen Farrell, Wordswork

4/10/2014 10:00:00 AM