



County Staff and Commissioners,

This email serves as Northern New Mexicans Protecting Land, Water and Rights comments to the latest draft of the *Joint Powers Agreement, Pojoaque Basin Regional Water Authority*, dated March 6, 2015. We wish the County to know that our goal in making these comments is to assure an efficient, responsibly run and cost-effective water utility, with transparent governance.

We now present these comments by order of priority for clarity.

1. The five member board is wholly unacceptable to the community. This lack of balanced representation has no basis. Nothing in the settlement documents limits the number of board members to five. The imbalance of representation also makes no allowance for the large monetary contribution by the County to funding the Authority. We believe we have been consistent in voicing this, but it remains the top priority for the community to have equitable representation.

The lack of term limits for directors is a formula for entrenching a static bureaucracy. Mandatory term limits for all directors would prevent the development of ingrained favoritism to contractors, and would enhance community confidence. There should be mandatory term limits for directors. We, as a community, need to see a term limit of approximately three years.

Article 6.B -- It is not understood why if a director's seat is vacated due to failure to attend, and the party that director represented fails to name a new director, it is provided that "the number of directors constituting a quorum.....shall be reduced", given the provisions for alternates. This entire section is confusing, and the community needs clarification of these provisions.

It does not seem unreasonable that the Party would be responsible for appointing a new director prior to the next Board meeting. If the party cannot have the alternated fill the seat under those circumstances, and the party fails to appoint a new director, it would be more reasonable to have the board name a new director for that party's seat, rather than to reduce the quorum number.

Article 6.F doesn't require that the Board hold any meetings pursuant to the statement "monthly or as may be determined by the Board". This utility is of primary importance to the entire Basin community. It is important that its governance be both responsible and transparent. A board with no regularly scheduled meetings does not inspire confidence in either, and despite a requirement for a form of public notice is not easy for the public to be aware of or to able to plan ahead to attend. This coupled with no term limits for directors creates a very strong impression of an Authority with no transparency.

We need to clarify the JPA's provision that Board meetings can be held in a location outside of the NPT basin. Since water users will all live in the Pojoaque Basin, we need meetings be held there and that the term "convenient location" should be amended to read "publicly accessible, convenient location".

Article 6.G -- The provision for telephone or video conference needs to be amended slightly from "present either in person or by telephone or video conference" by adding the statement, "except that at least one director must be present in person at a meeting place announced to the public" to comply with requirements of the Open Meetings Act.

Also in Article 6.G -- We wish to have some clarification on the Special Majority provisions with regard to County contracts. Since there will at least initially be at least a some number of large contracts (Fiscal Agent and System Operator contracts) that will be awarded to Santa Fe County, we wish to clarify how that can comply with both the Special Majority requirement of 6.G and the conflict of interest provisions in 6.H.

Article 6.J -- We suggest that the bylaws of the Board specify that advisory committees also follow the Open Meetings Act for transparency.

2. Fiscal Agent and System Operator Agreement contracts -- What exactly is meant by "terminates the Fiscal Services Agreement with the County for convenience"? This terminology is found in numerous places in the document (10.B,12.B). We are aware of no legal means by which a contract is terminated "for convenience".

12.E -- The list given as possible providers makes no sense. Isn't "1) one of the Pueblo Parties; 2) the Authority or 3) another entity" everyone in the world, anyhow? This should be removed.

The idea that a new Fiscal Agent or System operator is "ready, willing and able" without a new contract being in place must be removed from 10.B and 15.B. The entity taking over fiscal and system operations should be more than ready, willing and able. They must have a new contract in place and take over all of the roles and responsibilities of that contract. We need to change the term "diligence" to "due diligence" in this section, and that the last clause "the Authority shall be responsible for" should be deleted, as it seems reasonable on something as big as these contracts that you would not terminate them without having another agreement in place.

The Operator Agreement referenced many times, but not in existence -- The financial responsibilities of the Parties are repeatedly said to be defined in the Operating Agreement, but no such agreement exists. We need the County to add requirement in Article 22 the execution of the agreement by the Parties and the existence of a valid Operating Agreement prior to the Agreement being in force.

3. Articles 7, 10 Fiscal Agent/Employees

There is a concern presented by the relationship of the County to the Authority by reason of the County's position as Fiscal Agent. The interaction of various provisions is not clearly understood, and without more insight raises questions of County liability and adds to the already great concern about expense which would in turn would be passed on to the County's water customers.

Article 7 sets out the responsibilities and authority of a General Manager (GM) if the County were not the Fiscal Agent. Under Article 7 the GM is hired by the Board, is an at-will employee of the Authority and has broad authority "...to oversee and manage the Authority's day-to-day affairs; to hire, supervise, discipline, and fire employees of the Authority,...." The General Manager is also given the broad power "to perform such other duties and tasks as the Board may from time to time delegate to the general manager".

Article 10 sets out the employee status, responsibilities and authority of the GM where the County is the Fiscal Agent. 10.F.1. provides the following: The Board of the Authority "...shall recommend to the County employment of the General Manager, who shall be an exempt employee of the County."

“The General Manager shall report solely to the Board.”

“The Board shall have supervisory authority over the General Manager”

The Board “.....shall have the sole right to recommend any necessary personnel decisions concerning the General Manager to the County.”

Article 7 also gives the GM has the authority to manage the Fiscal Services agreement with the County, although the GM is a County employee.

The kind of questions that are of concern are whether the County can discipline or terminate the GM without the recommendation of the Board? What happens if the County deems such action necessary but the Board declines to make the recommendation? What if the General Manager is found to have discriminated against or sexually harassed an employee? As a County employee, although he reports solely to the Board, and the Board exercises supervisory authority over the GM, is the County liable?

The draft JPA states that “employees of the Authority shall be employees of the County.”(10.F.1) Is this intended to mean only those employed for the purpose of fulfilling the Fiscal Agent Agreement, or does the language necessarily include persons hired by the Authority for positions outside the scope of the Fiscal Services Agreement? Given the inclusive language that employees of the Authority are employees of the County, what is the County’s liability for such employees and their actions? For the provision that they are employees of the County “....and entitled to the same benefits and privileges as customarily provided by the County,.....” If they are employees of the Authority and not the County, will the County manage their benefits, and if so, where is the provision by which the Authority reimburses the County for these benefits?

We also note section 17.E, insurance requirements. This section says that the Authority provides health care, but given the confusion as to whether these employees are County employees or Authority employees, we do not fully understand the provisions set forth here. In 17.G, it says that the insurance is provided throughout the duration of the Agreement, however, if the Authority replaces the County as System Operator or Fiscal Agent it would make sense that the County would no longer be required to carry such insurance. The wording in this section should be changed to "maintained **by the Authority** in full force and effect"

We would welcome an exploration of how all of this works together without exposing the County Water customers to pass-through charges related to County employer liability.

4. Budget and Finance – Please define "proportionate contribution" as written in 11.C. Proportionate by Board members? by water system users? At the end of this same section, a Party is required to "appropriate funds to meet its financial obligations... or (ii) give notice to the Authority and other Parties that it has failed to do so." And then what? Is the shortfall made up by the other parties? Does the Authority lend the shortfall to the Party?

4. Sovereignty provisions -- Please define for us "legal rights" as written in 5.N.

Article 14 does not specifically call out wastewater extensions as cost free under the RoW provisions. These need to be added to this section.

In 15.B, please add “except in cases of gross negligence or malfeasance”.

Other small and not so small things:

- Wastewater facilities are listed in Article 5 Powers, but not in Article 3 Purposes
- 5.I Seems to imply that **ALL** assets of the Authority could be leased. Does this imply that the Authority could lease to an outside company all its operations?
- Suggest adding General Accounting Practices (GAP) to 9.A

- Suggest records and statements listed in 9.C and 11.H be available on the Authority's website
- Article 18 question -- what about utility customers?

We welcome conversation with the County in order to make this document better for all parties and to avoid vague provisions that could cause uncertainty and cost to the Authority's customers.

Please don't hesitate to contact NNM Protects with any questions or for an in person meeting to discuss these issues.

Sincerely,

NNM Protects