

SOCORRO COUNTY
RESOLUTION No. 2012-40

**A DECLARATION OF A PUBLIC WELFARE POLICY FOR RETAINING WATER
USE AND CONSERVATION IN SOCORRO COUNTY**

WHEREAS, the State of New Mexico has enacted laws which empower the Board of County Commissioners to develop plans for water conservation and use to protect the public health, safety, convenience, and welfare (NMSA 1978, § 72-1-9 (2006)); and,

WHEREAS, the Socorro County Board of Commissioners has a vested interest to (1) protect and enhance the public health, safety, and welfare of the citizens of the County of Socorro, (2) protect the tax base and encourage the economic stability of the County of Socorro; (3) protect the quantity and quality of water resources in the county for its citizens, base industries of agriculture and forestry industries and other businesses for future growth; and (4) ensure that all water users in the county are secure in their water rights; and,

WHEREAS, public welfare of water resources is safeguarded by the State Engineer through active management of the state's limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. Prior to any transfer of water rights, the State Engineer must assess the potential impacts on the public welfare (NMSA 1978, §§ 72-5-5.1; 72-5-6; 72-5-7; 72-5-23; 72-12-3; 72-12-7); and,

WHEREAS, NMSA 1978, Section 72-14-44 (1987) provides in part that the State of New Mexico requires regional water plans to give an "adequate review of . . .the effect on the public welfare" (NMSA 72-14-44); and,

WHEREAS, the Board of County Commissioners has determined that the existing public welfare statement in the Southwest Regional Water Plan does not sufficiently address the specific public welfare for Socorro county; and,

WHEREAS, the Board of County Commissioners has determined that inter-basin water transfers, exported from inside the county to outside the boundaries of Socorro county, may be detrimental to the health, safety and public welfare of Socorro county; and,

WHEREAS, the Board has determined that an immediate need exists to secure and protect the beneficial users of the water resources located within Socorro county, New Mexico by formulating the Socorro County Public Welfare Policy, designed to provide consistency with the Southwest Regional Water Plan; and, to assist the State Engineer decision-making by providing more specificity for evaluating and protecting public welfare within Socorro County.

THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, hereby, adopts the Socorro County's Public Welfare Policy attached as Exhibit "A"; and,

BE IT FURTHER RESOLVED, Public Welfare Policy is herein defined as that which promotes, sustains and improves the quality and quantity of water resources within the boundaries of Socorro county, and therefore, the quality of life of the citizens and property owners and the natural environment of the County; and,

BE IT FURTHER RESOLVED, the purpose of this Socorro County water policy is to declare and specify Socorro County Public Welfare statements as a supplement to the Southwest Regional Water Plan (SWRWP). The Socorro County Public Welfare policy is consistent with the SWRWP and provides further specificity and guidance regarding Socorro County's Public Welfare policy; and,

BE IT FURTHER RESOLVED, that the Socorro County Public Welfare Policy is set forth to provide guidance to the State Engineer decision-making when considering inter-basin water rights transfers to outside the boundaries of Socorro County; and,

BE IT FURTHER RESOLVED, the Board of Socorro County Commissioners asserts that the County's Public Welfare should be safeguarded by the State Engineer when evaluating new inter-basin water rights transfers to outside the county in order to protect water resources quantity and quality, prevent impairment and promote conservation. Socorro County petitions the State Engineer to consider Socorro County's Public Welfare Policy in the following sections, attached:

1. Socorro County Public Welfare Guiding Principles;
2. Socorro County Public Welfare Policy Positions; and
3. Socorro County Public Welfare Criteria for Evaluation Consideration


BE IT FURTHER RESOLVED, the Board of County Commissioners incorporates the public welfare policy a necessary part of a Socorro County Water Plan; and,

BE IT FURTHER RESOLVED, that the State Engineer be notified of adoption of Socorro County Public Welfare Resolution; and,

BE IT FURTHER RESOLVED, that Socorro County may in the future develop basin-specific public welfare statements to be incorporated into the Socorro County Public Welfare Policy; and,

APPROVED, ADOPTED, AND PASSED on this 14th day of February, 2012.

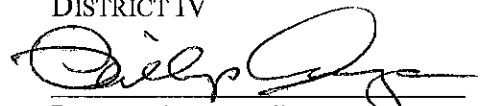
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SOCORRO



DANIEL P. MONETTE, CHAIR
DISTRICT IV

Absent

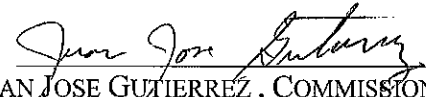
PAULINE JARAMILLO, VICE-CHAIR
DISTRICT I



PHILLIP ANAYA, COMMISSIONER
DISTRICT III

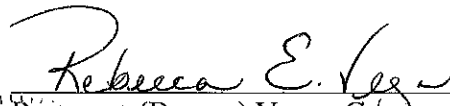
Absent

RUMALDO J. GRIEGO, COMMISSIONER
DISTRICT II



JUAN JOSE GUTIERREZ, COMMISSIONER
DISTRICT V

ATTEST BY:



REBECCA (BECKY) VEGA, COUNTY CLERK

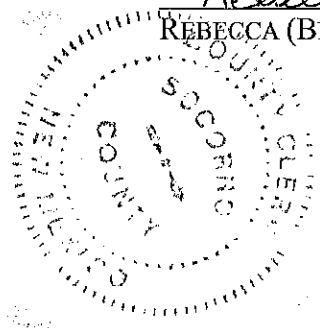


Exhibit: "A"

Socorro County Public Welfare Policy for Water Use and Conservation

-Supplement to the Southwest Regional Water Plan -

A. Introduction

The purpose of this Socorro County Water Policy is to declare and specify Socorro County Public Welfare statements as an addendum to the County's existing water plans and policies and as a supplement to the Southwest Regional Water Plan (SWRWP). The Socorro County Public Welfare policy is consistent with the SWRWP and provides further specificity and guidance regarding Socorro County's Public Welfare policy, following the same format of the State Engineer's regional water plan public welfare statements.

Socorro County shares the same purposes and objectives as stated in the State Engineer's Regional Water Planning Handbook:

- Water planning, the budgeting of an essential and finite resource, is, of course, valuable in itself. In addition, these regional water plans may have specific applications, which will affect how they are developed.
- New Mexico has taken a unique approach to planning to protect and preserve its water supply. The Legislature recognized and directed that water planning is most effectively done at the local level.
- The planning process should encourage local people to express local concerns and discuss the difficult decisions faced by every community in New Mexico.
- The State Engineer's mandate is to supervise the measurement, appropriation and distribution of the state's water. The State Engineer's mandate includes considering the public welfare of the state. Public welfare and conservation considerations may differ, depending upon local conditions and factors, as well as statewide impacts.

The Socorro County public welfare statement is set forth to provide guidance to the State Engineer when considering inter-basin water rights and/or water resources transfers outside the boundaries of Socorro County. Public Welfare policies should promote, sustain, and improve the quality and quantity of water resources, and therefore the *quality* of life of the citizens and property owners and the natural environment of Socorro. This is not a static statement, but an iterative and evolving declaration, that is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

B. GENERAL STATEMENT

Water has many important values to the people, which need to be appreciated and fairly balanced to ensure the overall safety, security and well being for Socorro County citizens. The Socorro County Board of Commissioners' primary legal responsibility is to protect the health, safety and welfare of its citizens. As such, the Socorro County Commission declares this Public Welfare Policy statement for managing the water resources for the beneficial use for the County. Quality of life and public welfare include, but are not limited to local customs and cultures, the agrarian character of community, the health of the natural environment, and the immediate and long-term socio-economic well being of Socorro County, for conservation and use of natural resources.

C. PROCESS

As a background to Public Welfare policy, there are key legal principles to consider. Water in New Mexico belongs to the public of the State of New Mexico (72-12-18 NMSA 1978); owners of water rights have a usufructuary right; i.e., the right to appropriate the water to beneficial use, as defined by the State of New Mexico. Another important principle is the Doctrine of Prior Appropriation, which is a State of New Mexico Constitutional provision. It states that prior or earlier appropriations have seniority or priority over later appropriations, otherwise stated as "first in-kind, first in-use." The first appropriator on a water source has the right to use the water in the system necessary to fulfill his/her water right. A junior appropriator cannot use water to satisfy his water right if it will injure or impair the senior appropriator (72-1-2 NMSA 1978). Priority in time shall be given the better right. Finally, Beneficial Use: Article XVI of the NM Constitution, Section 3, and NMSA 72-1-2 state that beneficial use shall be the basis, the measure and the limit of the right to the use of water.

1. State of New Mexico Public welfare Policy:

Public Welfare is safeguarded by the State Engineer through active management of the state's limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports public welfare. Public Welfare is equal in importance to the other two statutory criteria: impairment and conservation. Transfer of water rights must be open to all affected stakeholders and use the best available science. The process must provide reasonable and timely notice to allow participation by all parties. The evaluation of water rights appropriation by the State Engineer must consider both the positive and negative impacts of such water rights appropriations.

In 1985, the New Mexico Legislature amended the water code to mandate that the State Engineer review water appropriations, such as new water rights or water right transfers, to insure proposals are not contrary to conservation of water or detrimental to the public welfare of the State (NMSA 72-5-5.1; 72-5-6; 72-5-7; 72-5-23; 72-12-3; 72-12-7). Should a water right application appear to be contrary to a regionally defined public welfare criterion, the State Engineer could rely on this

criterion to deny or place a condition on an application? In this way, the public welfare statement is a potential mechanism for protecting regional values.

2. Southwest Regional Water Plan Public Welfare Policy:

In 1987, the New Mexico Legislature passed a law that established a process for regional water planning. That law required regional water plans to give an "adequate review of . . . the effect on the public welfare" (NMSA 72-14-44). The local governments of Southwest New Mexico completed their latest Southwest Regional Water Plan in 2004, adopting the following definition of Public Welfare for the Southwest Planning Region:

The Southwest Regional Water Planning Steering Committee recognizes the unique values of the diverse ecology of the Gila Basin and other surface water resources in the region. In implementation of the alternatives and recommendations put forth in this plan, the Steering Committee recommends use of the best available science to fully assess the ecological impacts of any water utilization project in Southwest New Mexico, including the Gila River, its tributaries and associated riparian corridors, and to also consider the traditions, cultures and customs affecting historic uses of and future demands for water in the Region.

3. Socorro County Public Welfare Policy:

In 1985, the New Mexico Legislature enacted NMSA 72-1-9, which provides local water planning by counties that promotes the public welfare at the local level. It is supported by Consuelo Bokum's paper, *Implementing the Public Welfare Requirement in New Mexico's Water Code*, which states "public welfare as defined in the regional and state plans or by elected officials in land use planning." Socorro County Public Welfare Policy is designed for County decisions, and to provide consistency with the SWRWP, and, to assist the State Engineer, by providing more specificity for evaluating and protecting public welfare within Socorro County.

D. FUTURE USE OF SOCORRO COUNTY WATER RESOURCES CONSISTENT WITH THE PUBLIC WELFARE

Socorro County believes the Public Welfare should be safeguarded by the State Engineer through active management of its limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights.

The Public Welfare criterion is of equal importance to the other two statutory criteria, no impairment, and conservation. Socorro County requests that the State Engineer consider:

1. Socorro County Public Welfare Policy Guiding Principles;
2. Socorro County Public Welfare Policy Positions; and
3. Socorro County Public Welfare Policy Criteria for State Engineer Evaluation Consideration

1. Socorro County Public Welfare Guiding Principles

Water rights are essential for use and enjoyment of the citizens of Socorro County, as well as to Socorro County government. Possession and exercise of these rights affect the cultural, social and economic welfare of our people and determine the future of the County. As such, Socorro County Public Welfare requires that the use of the water resources in Socorro County be consistent with six guiding principles. The Socorro County Board of Commissioners:

- a. Has a vested interest in seeing all water users in the county are secure in their water rights to protect and enhance the public health, safety, and welfare of the citizens of the County of Socorro; protecting the tax base, encouraging the economic stability of the County of Socorro; and, encouraging the agriculture and forestry industries and other businesses for the future growth;
- b. Declares that the Doctrine of Prior Appropriations as the primary means for safeguarding the Public Welfare of the citizens of Socorro County;
- c. Respects the essential role of water in maintaining our customs and cultural values;
- d. Strives to maintain and improve the health of our region's water resources. A major benefit to water users in Socorro County is to slow the rate of flow and keep as much water within Socorro County as possible;
- e. Encourages conservation and efficient use of our limited water resources;
- g. Supports the rural agricultural economy, the base industry in the county.

2. Socorro County Public Welfare Policy

- a. Government actions should ensure that water rights remain in their respective water basins; and, not impair or destroy pre-existing water rights that remain in the county.
- b. Proper management of watersheds is critical because it supplies the majority of the agricultural, domestic, and industrial water use in this water-short area.
- c. An adequate supply of clean water is essential to the health of the County's residents and to the continued growth of the County's economy. Every aspect of the County's economy depends on a dependable and clean supply of water.
- d. Agencies must analyze the effects of their actions on water quality, watershed yields, and timing of the yields. Action, lack of action, or permitted uses that result in significant or long-term decreases in water quality or quantity will be opposed by the County.
- e. It is imperative that the quality and quantity of water are not reduced below current levels.

f. The County supports projects that will improve water quality and increase the amount and dependability of the water supply.

g. All potential reservoir sites and delivery system corridors shall be protected from any federal or state action that would inhibit their future use for such purposes.

h. There should be no net loss of the private water rights base.

i. The County supports livestock grazing, timber production and other managed uses of watersheds and holds that, if properly managed; multiple use is compatible with watershed management.

j. Beneficial use is the basis for the appropriation of water in the state of New Mexico.

k. An immediate need exists to secure, protect, and expand current and future irrigation uses in the basins and watersheds located within Socorro County, New Mexico.

l. In its effort to meet the needs of all water demands, Socorro County has recognized the need for water conservation and has developed policies for the conservation of water. The objective of these policies include extending the water supply for current and future generations of county residents, reducing risk of water shortages, and maintaining and improving the health of rivers, groundwater, and watersheds.

3. Socorro County Public Welfare Criteria for State Engineer Evaluation Consideration

Socorro County requests that the State Engineer consider the following competing water demands when evaluating new appropriations and transfers of water rights and/or resources to outside Socorro County boundaries, including, but not limited to, health and safety concerns, economic interests, agricultural interests, environmental interests, social and cultural interests, aesthetic interests, recreational interests, and municipal and domestic interests.

a. When considering public welfare in proposed inter-basin water transfer applications within Socorro county to outside the county, the State Engineer should review and consider the Southwest Regional Water Plan Public Welfare statements.

b. When considering public welfare in proposed inter-basin water transfer applications within Socorro county to outside the county, the State Engineer should review and consider Socorro County Public Welfare statements specified in section "D-1" and D-2" above.

c. When considering public welfare in proposed water inter-basin transfer applications within Socorro county to outside the county, the State Engineer should review and consider the water-related policies and plans of the Quemado, Rio Salado and San Francisco Soil and Water Conservation Districts, Socorro County Acequias Commission, specific community ditches and acequias, and, the Village of Reserve.

- d. When considering application health and safety concerns, the State Engineer should:
- Strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
 - Prevent public nuisance, herein defined as creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: (1) Injurious to public health, safety or welfare; or (2) interferes with the exercise and enjoyment of public rights, including the right to use groundwater within the boundaries of Socorro County.
 - Recognize that Socorro County suffers from the effects of prolonged drought conditions, which may continue into the indefinite future. The County recognizes the connection between prolonged drought conditions and increased risk of catastrophic wildfires, as well as other emergency conditions that may occur due to insufficient access to immediate water needs.
 - Assess the effects on the ability to obtain sufficient water for large structural and wildfires and that sufficient water to fight wildfire and to address other drought-caused emergencies must be secured, and funds to do so must be available, in order to protect the welfare of the citizens of Socorro County.
 - Assess the effects on the possibility of depletion and subsidence of groundwater, especially in areas of the county where there is no surface water, and, where residents and livestock producers rely exclusively on ground water. Any substantial draw down of the ground waters can have significant adverse effects on resident water availability, water flow, and associated water quality.

e. When considering economic interests, the State Engineer should:

- Evaluate both the positive and negative impacts of the transfer of water rights on the area of origin. Any reduction of existing water supplies in the county could have a significant negative impact on public welfare, and would severely limit future growth potential for the county.
- Consider any new diversion of water at the proposed level to be a significant cost to Socorro County, not only to the existing water rights holders but for the future of the County. Will there be any water available for economic development in Socorro County—a low-income county—in the future? Will there be any water available for future private domestic use? This is not simply an issue of availability of water rights for the future, but the availability of the water itself.

f. When considering agricultural interests, strive to foster a vibrant and efficient agricultural ecosystem, recognizing that agriculture has economic, ecologic, historic and cultural values.

g. When considering environmental interests, the State Engineer should consider:

- Socorro County Land Plan policies for protecting the environment.
- Consider potential effects on groundwater depletion, sedimentation, and other water quality problems. Reduction of groundwater impacts natural springs, as their recharge sources are eliminated, and it additionally negatively impacts riparian areas. Lowering of the water table reduces water available to vegetation. These groundwater depletions have direct negative/adverse impacts on the health of wildlife

and wildlife habitat and therefore have impacts on wildlife-based industries, such as guiding, outfitting, hunting and other recreational uses of the forest. Such depletions also impact forests and woodlands, rendering these already drought-stricken areas even more vulnerable to catastrophic wildfire.

h. When considering social and cultural interests, the State Engineer should:

- Protect water use that supports the diversity of communities, cultures and traditions existing in our region.
- Recognize that the most senior water rights holders in New Mexico are typically acequias and agricultural water users. This is true with respect to water rights holders in Socorro County. Typically junior water right holders include municipalities, residential and recreational water users. All water rights in Socorro county existing today, whether acequias, agricultural users, municipality, residential or other rights holders, are senior to new applications by virtue of having been appropriated and put to beneficial use prior to any water rights which may be obtained by new applicants.

i. When considering aesthetic interests, the State Engineer should strive to support Socorro County's aesthetic values as a part of the county's customs and cultures and as defined in the County's Comprehensive Land Plan, to maintain and improve the agriculture along the flowing waters and ditches in our communities.

j. When considering municipal and domestic needs, the State Engineer should strive to sustain an adequate water supply to meet those needs. The State Engineer should make water-use decisions based on local land-use policies.

k. When considering any changes in water appropriations associated with inter-basin water transfers to outside of Socorro County, the State Engineer should:

- Consider its obligation to protect pre-existing water rights before impairment occurs in Socorro County.
- Consider that existing water rights impairment cannot be remedied by offsetting or replacing water if there is not enough water elsewhere to offset or replace water removed from any of the county's water basins. New Mexico is a desert state. Water that is removed from a New Mexico basin is not necessarily replenished as it is in other states. Note, the 1973 State Engineer Hydrology Report #57 states that the San Agustin Basin is a "leaky" basin that discharges water to the Rio Grande, as well as to the Gila Basin, and that the basin is not necessarily fully recharged by rainwater. Thus, sufficient water withdrawal above a certain amount will not only negatively impact the total volume of water in the San Agustin or San Francisco basins but that of adjacent basins as well.

l. When considering public welfare in proposed inter-basin water transfers from within the county to transfer water outside the county, Socorro County Commission requests that the State Engineer inform the County and cooperates with the County in the evaluation of public welfare.