



Aamodt Water Rights Adjudication Settlement Agreement Pojoaque Basin Regional Water Authority Joint Powers Agreement Fact Sheet – December 1, 2016

What is the Pojoaque Basin Regional Water Authority (Authority)? The entity that will partially own and operate the Regional Water System (RWS) that will deliver water to Santa Fe County (County) Water Utility and Pueblo Water customers. The Authority is required to be created by the Aamodt litigation settlement agreement.

What is a Joint Powers Agreement (JPA)? It is an agreement under State law that allows two or more “public agencies”, including counties and Indian pueblos, to enter into agreements to “jointly exercise any power common” to the agencies. Often times, joint powers agreements create a separate “administrating agency” to exercise the parties’ common powers. The 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 JPA do? Generally speaking, it would create the Authority as the “administering agency,” define its purposes and powers, and prescribe the manner in which those powers are exercised. The Authority would be managed by a Board of Directors (Board), described below.

Has the public been involved in developing the draft JPA? Yes. The public has commented on previous County drafts of the JPA as well as the draft considered by the Board of County Commissioners (BCC) at its October 25 and November 29, 2016, public meetings. Public comment is partially responsible for changes to the draft JPA that:

- Strengthen the requirement that the Authority conform to County policies with respect to County customer billings, collections, and suspensions of service (JPA, Articles 5(D)-(E));
- Require the governing Board of the Authority to hold its meetings in the Pojoaque Basin (JPA, Article 6(F));
- Require advisory committees of the Board to comply with the NM Open Meetings Act (JPA, Article 6(J));
- Strengthen the dispute resolution and waiver of sovereign immunity provisions, so as to ensure that disputes under the JPA (and future agreements) are subject to binding resolution (JPA, Article 19);
- Clarify the organizational structure of the Authority (JPA, Article 7));
- Require core public documents to be maintained on the Authority’s website (and the County’s website until the Authority has one) (JPA, Article 13(B));
- Require an Operational Stability Fund to protect against budget shortfalls, which must contain a minimum of one-year’s operating costs after twenty years (JPA, Article 11(F)(3)); and
- Require the Parties to appropriate for operations and maintenance money made available to them from the federal government (JPA, Article 26).

Where are we in the JPA approval process? The BCC held two public meetings on the JPA, on October 25 and November 29, 2016, and currently intends to take action on the JPA at its December 13, 2016, meeting. The JPA must also be approved by the Pueblos and the New Mexico Secretary of Finance and Administration.

At the November 29, meeting, Commissioner Henry P. Roybal introduced two alternative proposals concerning the Board in the form of separate, standalone drafts of the JPA. ***Neither of these proposals has been agreed to by the Pueblos.*** Those two alternative proposals are posted on the County’s website.

Is the JPA the only agreement that affects the RWS? No. The completed agreements include the Settlement Agreement (and federal act approving it) and the Cost-Sharing and System Integration Agreement. Yet to be negotiated are the Operating Agreement and the System Operator and Fiscal Services agreements described below.

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

1. **Board Composition:** Under both of Commissioner Roybal’s proposals, there would be a seven member Board that includes one director appointed by each Pueblo and one County Commissioner. Under one proposal, two actual or potential customers of the County Water Utility would be appointed by the BCC. Under the other, the State Senator for the State Senate District encompassing the largest geographic portion of the RWS Service Area and the State Representative for the State House District encompassing the largest geographic portion of the RWS Service Area would each appoint one (1) current or potential County customer. The offices of Chair and Vice-Chair would rotate among the non-customer directors. (JPA, Article 6(C).)

2. Special Voting Power of the County and San Ildefonso Director: The current draft requires the concurrence of the County Commissioner 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 (except that a party may not vote on its own contract). (JPA, Article 6(G)-(H).)
3. Reliability of Service: Congress, the Pueblos, the County, and potential RWS customers all want reliable service. The draft JPA and other agreements attempt to ensure reliable service 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 on their land at no cost. (Cost-Sharing Agreement, Section 2.3; JPA, Article 14(B).)
 - c. Article 14 of the draft JPA would assure that the Authority has access to all lands covered by the system, as necessary for operations, maintenance and repair; it would also provide for the granting of easements for customers to access the RWS.
 - d. The County Commissioner and Pueblo de San Ildefonso directors must approve the conveyance of any of the Authority's assets. (JPA, Article 6(G).)
 - e. 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.
 - f. The JPA does not allow one party to unilaterally withdraw. Instead, agreement by all parties and an act of Congress (or failure of a statutory condition) is required to terminate the JPA. (JPA, Article 24.)
 - g. The JPA would require an Emergency Fund for unforeseen infrastructure failure, and an Operational Stability Fund to provide funds in the event of a revenue shortfall. (JPA, Article 11(F).)
4. Individual Utilities Establish Customer Water Rates: Under the draft JPA, the Authority would not establish water rates charged to customers of the County Water Utility or a Pueblo Water Facility. Instead, the billing of County and Pueblo customers would conform to the policies of the County and applicable Pueblo Water Facility (JPA, Article 5.D). The County sets water rates through a public process, as rates must be approved by the BCC.
5. Transparency and Accountability: The current draft JPA makes explicit that the Authority is subject to all of the laws that are applicable to the County. (JPA, Article 27.) In addition, the JPA specifically notes applicability of the New Mexico Open Meetings Act (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)). The current draft JPA would require all Board meetings to be held in the Pojoaque Basin (JPA, Article 6.F).
6. County May Serve as Initial Fiscal Agent and System Operator: The draft JPA would enable the County to serve as the initial Fiscal Agent and System Operator (JPA, Articles 10(A) and 12(A)) and contemplates that the County would endeavor to contract with the Authority to provide those services. If the County and Authority successfully negotiate and execute such contracts, the County would be responsible for the Authority's fiscal and administrative functions as well as the operation, maintenance, and repair of the RWS. The County Commissioner Director would have to approve of the County's replacement under either contract, unless the Authority resolved to be its own system operator or fiscal agent.
7. Capital Expenditures: Capital expenditures are subject to the special majority voting provisions, requiring County and Pueblo de San Ildefonso director approval of budgets and contracts in excess of \$125,000. (JPA, Article 6(G).) The Authority would also have to follow the New Mexico Procurement Code (JPA, Article 8(A)).
8. Dispute Resolution: Article 19 of the draft JPA establishes binding and enforceable dispute resolution mechanisms, which include a waiver of tribal sovereign immunity for purposes of enforcing those mechanisms.

How can people comment on or ask questions about the draft JPA? Comments on Commissioner Roybal's alternative proposals may be submitted at or before the BCC's December 13 meeting. Written comments may be submitted to Sandra J. Ely by email at sely@santafecountynm.gov or by mail at Santa Fe County Public Works Department, PO Box 276 Santa Fe, NM 87504. You can ask Ms. Ely questions about the JPA by email, by calling 505-986-2426, or by going to the Pojoaque Satellite Office, 5 West Gutierrez, Suite 9, Pojoaque, during her office hours.