



## TAOS COUNTY ORDINANCE 2010-4

### ESTABLISHING AN ADVISORY AND INFORMATIONAL COMMITTEE ON PUBLIC WELFARE IMPACTS OF WATER APPROPRIATIONS AND CHANGES IN POINT OF DIVERSION, PLACE OF USE OR PURPOSE OF USE

WHEREAS, the Board of County Commissioners of Taos County (the "Commission") is the duly authorized governing body of Taos County (the "County"), a New Mexico political subdivision; and

WHEREAS, the Commission has the duty and responsibility to adopt Ordinances for the County pursuant to 4-37-13, NMSA 1978 and the duty and responsibility for the management of the government of the County pursuant to 4-38-1 through 4-38-42, NMSA 1978; and

WHEREAS, the Public Welfare Statement adopted in the Taos Regional Water Plan calls for local government to implement and use the values and criteria of that Public Welfare Statement at a local level; and

WHEREAS, the Commission has found it to be in the best interests of the residents within Taos County area to establish an Advisory and Informational Committee on Public Welfare Impacts of Water Appropriations and Changes in Point of Diversion, Place of Use or Purpose of Use,

WHEREAS, after extensive public input the Taos County Comprehensive Plan identified the highest community values as: protecting irrigated lands and senior water rights and preserving access to clean affordable drinking water,

THEREFORE, BE IT ORDAINED that the BOARD OF COUNTY COMMISSIONERS OF TAOS COUNTY, NEW MEXICO is establishing an Advisory and Informational Committee on Public Welfare Impacts of Water Appropriations and Changes in Point of Diversion, Place of Use or Purpose of Use, as described below, for the purpose of educating and informing itself and the public concerning water appropriations and changes in point of diversion, place of use or purpose of use from and within Taos County.

### TAOS COUNTY ADVISORY AND INFORMATIONAL COMMITTEE ON PUBLIC WELFARE IMPACTS OF WATER APPROPRIATIONS AND CHANGES IN POINT OF DIVERSION, PLACE OF USE OR PURPOSE OF USE

#### ARTICLE 1 GENERAL PROVISIONS

**Section 1.1 Title**

This Ordinance, including all articles and appendices, if any, shall be known and may be cited as the "Ordinance Establishing a Taos County Advisory and Informational Committee on Public Welfare Impacts of Water Appropriations and Changes in Point of Diversion, Place of Use or Purpose of Use."

**Section 1.2 Authority**

- A. This Ordinance is created pursuant to the enabling authority set forth in the laws of the State of New Mexico, including where applicable, but not limited to, the following sections of the New Mexico Statutes Annotated, 1978, as they may be amended:
1. NMSA 1978, Sections 4-37-1 through 4-37-9 (powers granted to counties, including powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of a county and its inhabitants);
  2. NMSA 1978, Sections 4-57-1 through 4-57-3 (planning for purpose of guiding development);
  3. NMSA 1978, Sections 47-6-1 through 47-6-29 (subdivision);
  4. NMSA 1978, Sections 18-6-1 through 18-6-17 (Cultural Properties Act);
  5. NMSA 1978, Sections 3-53-1 through 3-53-5 (water use and water facilities);
  6. NM Const. Art. 10, Section 5 (incorporated counties);
  7. NMSA 1978, Section 72-1-9 (Municipal, county, member-owned community water systems, school district and state university water development plans; preservation of municipal, county and state university water supplies);
  8. NMSA 1978, Section 72-5-5 (Objections to applications; publication of notice; filing of protests; definition of standing);
  9. NMSA 1978, Section 72-5-5.1 (Purposes);

10. NMSA 1978, Section 72-5-6 (Hearing; approval; permit); and
  11. NMSA 1978, Section 72-5-7 (Application; rejection; noncompliance with rules; conservation and public welfare).
- B. Further, this Ordinance and the Committee it provides for are created pursuant to repeated calls at the state and local level for local input and guidance concerning implementation of the public welfare and conservation criteria under New Mexico state law, including but not limited to the following instances:
1. The New Mexico State Water Plan acknowledges the need for regional water plans to provide as much substantive input as possible on public welfare and conservation, and calls for such input from regional water plans. See New Mexico Interstate Stream Commission, New Mexico State Water Plan § C.1 (2003) (<http://www.ose.state.nm.us/water-info/NMWaterPlanning/2003StateWaterPlan.pdf>); id. at app. C (<http://www.ose.state.nm.us/water-info/NMWaterPlanning/AdHocCommitteeRpt.pdf>);
  2. The Regional Water Planning Handbook also calls for regional water plans to address and provide “substantive elements for use by the State Engineer in ‘public welfare’ and ‘conservation’ determinations in actions before the State Engineer within the regional planning area or affecting the area.” New Mexico Interstate Stream Commission, Regional Water Planning Handbook, pt. I, at I (1994) (<http://www.ose.state.nm.us/doing-business/water-plan/rwp-handbook.html>); and
  3. Historic acknowledgements by the State Engineer that the Office of the State Engineer is ill-equipped to assess the local values, concerns, and priorities that make up the local public welfare. See In re Application of El Prado Water & Sanitation Dist. for Permit to Change Point of Diversion & Place & Purpose of Use, File No. 057,0932,0933, at 9 (Apr. 30, 1992); In re Application of Intel Corp. to Appropriate Underground Waters, File No. RG-57125, RG-5715-S-2, at 14 (June 10, 1994).
  4. The Taos Regional Water Plan’s identification of Public Welfare criteria and encouragement of local implementation of the Public Welfare Statement reflects numerous public comments in the Taos Regional Water Planning Process that requested a process for providing more informed input on local public welfare implications of proposed water appropriations and transfers

### Section 1.3 Findings

#### **A. General Findings Regarding Need for Local Education, Information, and Advice Concerning Water Resources in Taos County and the Public Welfare Implications of Water Rights Applications for Water from Taos County**

The Taos County Commission participated actively in the regional water planning process that generated the Taos Regional Water Plan. From the input provided by residents of every part of the County during that planning process, the County Commission finds that:

1. Residents from every part of Taos County have repeatedly called for a procedure or mechanism to educate and provide information and advice to local governmental entities and residents of Taos County concerning the County's water resources and the local public welfare and conservation implications of proposed new appropriations and changes in point of diversion, place of use or purpose of use, where State law requires the public welfare and conservation implications of such proposed actions to be evaluated;
2. Traditional communities within Taos County have a long history of managing water as a shared community resource and living within the means of the local naturally occurring water supply, while providing good quality water for domestic, agriculture, and industrial uses and maintaining healthy watershed conditions and wildlife habitat to a high degree;
3. Taos County has limited surface and groundwater resources to meet the County's economic, recreational, environmental, public health, and cultural needs for water;
4. There is need for a systematic procedure to educate and provide information and advice to the County Commission and residents of Taos County concerning water resources and uses in the County and proposed appropriations and changes in point of diversion, place of use or purpose of use that may affect those resources and uses;
5. There is increasing pressure for transfers of water from its area of origin and natural occurrence in Taos County to different areas within the County, to other counties and regions in New Mexico, and potentially to other states;

6. New Mexico water law affirms that water rights are appurtenant to land, which reflects the fact that in northern New Mexico water historically has been understood to be rooted in the land and communities within its area of origin;
7. In most years the majority of irrigation water rights in Taos County are not fully met (i.e., the water rights holders do not receive enough water to supply the number of irrigations within a season to which they have an adjudicated right). Within Taos County and the Taos Region it generally is agreed that the public welfare requires that existing water rights within the County and within the subregions defined in the Taos Regional Water Plan be fully met before water is transferred out of a subregion or the County.
8. The economy of Taos County has expanded consistently since the decline during World War II. The County's economy continues to show increases in various sectors and in the number of seasonal residents who choose to extend their residence throughout the year. So, the public welfare requires that all residents of the County, including supposedly seasonal residents, be considered and provided for as full-time water users.
9. The cultural wealth of Taos County includes water to supply the varied agricultural, recreational, and environmental uses of water in the County, including large and small family farms and gardens, ranching operations, the ski industry, and the County's important fisheries and wildlife populations.
10. There is the potential for additional appropriations to be sought in Taos County, including areas of the County that do not appear to have any additional water available for appropriation from either surface water sources or groundwater sources;
11. There is great concern throughout Taos County that applications for such appropriations and changes in point of diversion, place of use or purpose of use are not adequately publicized under existing State Engineer procedures to make inhabitants of the County aware of those applications and the potential need to take action to protect local and regional interests affected by such appropriations and changes in point of diversion, place of use or purpose of use;

12. The provision of local advisory information under the public welfare and conservation criteria of New Mexico State law would be an effective means of protecting the County's economic, recreational, environmental, public health, and cultural needs for, uses of, and values relating to water;
13. Absent meaningful, systematic input at the local and regional level, the public welfare and conservation criteria of New Mexico's water law have not been and will not be implemented in a manner that effectively recognizes and evaluates the potential impacts of proposed appropriations and changes in point of diversion, place of use or purpose of use on economic, recreational, environmental, public health, and cultural aspects of Taos County's need for and use of water;
14. The creation and operation of the Committee provided for by this Ordinance will be an effective means of informing and educating residents of Taos County and the County Commission about proposed appropriations and changes in point of diversion, place of use or purpose of use from or within Taos County and the implications of such appropriations and changes in point of diversion, place of use or purpose of use for the local and regional public welfare; and
15. The creation and operation of the Committee provided for by this Ordinance will be an effective means of ensuring that the State Engineer's application of the public welfare and conservation criteria to appropriations and changes in point of diversion, place of use or purpose of use from Taos County is informed by meaningful, systematic input concerning the local and regional public welfare and conservation implications of such appropriations and changes in point of diversion, place of use or purpose of use.

**B. Findings Regarding Individual Criteria of Public Welfare and Conservation of Water for Taos County**

The County Commission finds that the individual criteria described in the Taos Regional Water Plan provide a general starting point in identifying and defining the components of the public welfare and conservation of water that are appropriate for the local and regional level review provided by this Ordinance. The County Commission further finds that those criteria must be defined more precisely and meaningfully for Taos County's review of local and regional public welfare and conservation implications. Accordingly, this Ordinance more precisely defines the specific, individual criteria to be considered in Article 3, and adds the following three general considerations to be incorporated in the local and

regional public welfare and conservation review process provided for by this Ordinance.

### **1. Conservation of Water**

The County Commission finds that Taos County, like all of New Mexico, has limited water resources. In the interest of promoting the greatest public welfare to be derived from these scarce waters, and the conservation of these waters, an appropriation or change in point of diversion, place of use or purpose of use of water from the Taos Region should meet the following criteria:

- a. The appropriator or applicant for change in point of diversion, place of use or purpose of use has developed an enforceable conservation plan that uses best management practices applicable for the proposed water use;
- b. The appropriator or applicant for change in point of diversion, place of use or purpose of use has committed to using the lowest quantity of water necessary for the proposed use, i.e., only that amount of water necessary to achieve the proposed beneficial use at the proposed place of use;
- c. The appropriator or applicant for change in point of diversion, place of use or purpose of use has committed to use the best practicable technology and methods to reduce water use;
- d. The appropriator or applicant for change in point of diversion, place of use or purpose of use has shown that there is actual, reasonable demand for the proposed water use in the proposed area of use;
- e. No reasonably available alternative to, or modification, or limitation of, the proposed use of water that would use less water can be identified; and
- f. A proposed appropriation or change in point of diversion, place of use or purpose of use, in combination with existing appropriations and changes in point of diversion, place of use or purpose of use does not exceed the perennial yield – or sustainable rate of recharge – of the groundwater basin from which the water is proposed to be appropriated or changed.

### **2. Conjunctive Management**

In light of current levels of water use and growth trends in Taos County and the rest of the State, and the repeated requests of Taos County residents, the County Commission finds that the surface and groundwater resources within the County should be managed conjunctively in order to prevent excessive diversions of any surface water or groundwater from depleting related surface and groundwater resources. The County Commission further finds that in the absence of conjunctive management, there is a significant risk that too many wells could be permitted, cumulatively lowering the water table, negatively affecting pre-existing wells and depleting surface flows in hydrologically connected stream systems. Such a pattern of water diversion would be to the detriment of the public welfare and conservation of water. Therefore, review of proposed water uses, including appropriations and changes in point of diversion, place of use or purpose of use should incorporate the principle of conjunctive management by taking into account the interconnections between groundwater and surface water resources in the County and the potential for diversions from one type of water source to have impacts on the other.

### **3. Minimizing Water Contamination**

The contamination of surface and groundwater resources and drinking water supplies from a variety of sources, including the proliferation of septic systems and nearby domestic wells, is a matter of considerable concern in Taos County. The County Commission finds that the better the water quality of all water resources in the County, the greater the public welfare that will be derived from the County's waters. The Commission further finds that actions that would improve water quality in the County are more likely to increase, than to diminish, the public welfare. By the same token, actions – including some appropriations and changes in point of diversion, place of use or purpose of use of water – that would degrade water quality in the County will tend to diminish the public welfare. Therefore, the potential effects of a proposed water appropriation or change in point of diversion, place of use or purpose of use on water quality in the County should be taken into account in the local review process established by this Ordinance.

#### **Section 1.4 Purpose**

The Committee provided for by this Ordinance will serve the following purposes:

- A. To provide for and protect the public health, safety, and general welfare of Taos County;
- B. To inform residents of the County about proposed appropriations and changes in point of diversion, place of use or purpose of use of water from and within Taos County;



- C. To evaluate the public welfare and conservation implications of proposed water appropriations and changes in point of diversion, place of use or purpose of use of water from and within Taos County;
- D. To provide informational and advisory input to the Taos County Commission regarding the local and regional public welfare and conservation implications of such appropriations and changes in point of diversion, place of use or purpose of use;
- E. By improving the quality of information and evidence included in protests to problematic proposed appropriations and changes in point of diversion, place of use or purpose of use, to ensure that a more meaningful, locally informed application of the public welfare and conservation criteria in New Mexico water law occurs for each appropriation or change in point of diversion, place of use or purpose of use application received by the Office of the State Engineer for water from and within Taos County;
- F. To complement the State Engineer's oversight of water rights applications by providing a more informed basis for the decision-making process of local governmental entities and members of the public regarding whether to protest a proposed appropriation or change in point of diversion, place of use or purpose of use on public welfare and/or conservation grounds; and
- G. To complement the State Engineer's water rights decision-making process by providing more and better information concerning the local and regional public welfare and conservation implications of proposed appropriations and changes in point of diversion, place of use or purpose of use of water, which will better enable the State Engineer to perform his statutorily mandated duty to evaluate the public welfare and conservation implications of a proposed appropriation or change in point of diversion, place of use or purpose of use.

### **Section 1.5 Jurisdiction**

- A. The Committee shall review and provide advisory and informational input and recommendations concerning proposed appropriations and changes in point of diversion, place of use or purpose of use of water from and within Taos County.
- B. The Committee will act in an advisory and informational capacity, to provide information and make recommendations to the County Commission, the public in Taos County, and, through protests that may be filed, the State Engineer regarding any implications such appropriations and changes in point of diversion, place of use or purpose of use may have for the public welfare and conservation of water on the local and regional level.

- C. The Committee shall not exercise its authority under this Ordinance in any way that conflicts with the authority of an acequia or community ditch commission under NMSA 1978, Section 73-2-21(E) (amended 2003).
- D. The Committee shall not exercise its authority under this Ordinance in any way that conflicts with the sovereignty of either Taos Pueblo or Picuris Pueblo over their water rights within the bounds of their sovereign jurisdiction.

**ARTICLE 2 ESTABLISHMENT OF THE TAOS COUNTY ADVISORY AND INFORMATIONAL COMMITTEE ON PUBLIC WELFARE AND CONSERVATION IMPACTS OF WATER APPROPRIATIONS AND CHANGES IN POINT OF DIVERSION, PLACE OF USE OR PURPOSE OF USE**

**Section 2.1 Committee Title**

A Committee shall be formed pursuant to this Ordinance and shall be titled the Taos County Advisory and Informational Committee on Public Welfare and Conservation Impacts of Water Appropriations and Changes in Point of Diversion, Place of Use or Purpose of Use.

**Section 2.2 Committee Membership**

**A. Number and Terms of Members:**

The Committee shall be composed of nine (9) members. Five (5) members to serve a term of three (3) years, and four (4) to serve a term of two (2) years. To the maximum extent possible, consistent with ensuring that members of the Committee are best qualified to serve on it, the Committee should include representatives from each of the four subregions defined in the Taos Regional Water Plan. The membership shall be comprised of local residents who are knowledgeable about the surface and groundwater resources and issues in their respective subregions and Taos County as a whole, and who are committed to performing their duties in a nonpartisan, nonpolitical, unbiased manner.

**B. Selection of Initial Members:**

- 1. Within two weeks after the adoption of this Ordinance, a notice shall be published in the Taos News inviting all local residents and stakeholders, which includes Municipalities, Acequia Associations, Mutual Domestic Water Associations and other water interests, who wish to be members of the Advisory Committee, to submit a

Letter of Interest to the County Manager. The notice shall inform the public that such Letters of Interest must be submitted to the County Manager within thirty (30) days after the date of the notice's publication.

2. The Board of County Commissioners shall appoint a panel of five (5) people who understand the County's water concerns, to consider each Letter of Interest submitted pursuant to Paragraph 2.2.B.1 above and to provide the County Commission with a list of all candidates ranked in accordance with their qualifications under the criteria described above. This panel is to be chaired by the County Manager. The other four (4) members of this panel shall be drawn from the Regional Water Plan Steering Committee, at least two (2) of whom shall be Steering Committee members who also served as members of the Public Welfare Subcommittee.
  3. From the list provided by the panel, each County Commissioner may choose one person from their district to serve on the Committee or, consistent with the goal of selecting the most qualified members for the Committee, may choose a candidate from another district or refer the choice of that Committee member to one or more of the other Commissioners. The County Commission as a whole shall choose the four (4) remaining Committee members from the list, and in accord with Paragraph 2.2.A above should strive to choose one (1) from each of the four (4) subregions within Taos County, defined in the Taos Regional Water Plan.
  4. Upon its initial selection, at its first meeting, the Committee shall produce and agree to a set of bylaws and procedural rules that will control the Committee's operation. These bylaws and rules shall be subject to and become operative upon the approval of the County Commission.
- C. Selection of Subsequent Members:
1. At the discretion of the County Commission, existing Committee members may have their terms renewed, or new members may be selected to serve in that position on the Committee. No later than two months prior to the end of a member's term, the member shall advise the Committee and the County Commission as to whether he or she desires to renew his or her term.
  2. If the Committee member does not want to renew his or her term, or if the County Commission determines that a new member should fill that position regardless of the current member's desire, then a notice, comparable to the notice described in Paragraph

2.2.B.1 above, shall be published announcing the impending vacancy and inviting Letters of Interest from people interested in serving in that position on the Committee.

3. The current members of the Committee together with the County Manager shall consider the Letters of Interest and provide the County Commission with a list of all of the candidates ranked in accordance with their qualifications, in order to fill the position that is opening up, in a manner comparable to that described in Paragraph 2.2.B.2 above.
4. The County Commissioners shall choose the new member for that position on the Committee from the list provided by the Committee and the County Manager, in the same manner as described in Paragraph 2.2.B.3 above.

## **Section 2.3 Application Review**

### **A. Committee Role**

1. The Committee shall review each application for a proposed appropriation or change in point of diversion, place of use or purpose of use of water from and within Taos County. The Committee shall first assess whether an appropriation or change in point of diversion, place of use or purpose of use appears likely to have significant public welfare implications. To facilitate this assessment, the Committee shall recommend a quantitative threshold (in terms of acre-feet per year) beneath which a proposed appropriation or change in point of diversion, place of use or purpose of use generally will be considered de minimis and unlikely to present significant public welfare concerns. Upon approval of the Board of County Commissioners, that, or an alternative, quantitative de minimis threshold shall be effective.
2. If the Committee's initial assessment indicates that a proposed appropriation or change in point of diversion, place of use or purpose of use raises significant public welfare concerns, the Committee shall evaluate the likely impact of the appropriation or change in point of diversion, place of use or purpose of use under each applicable public welfare criterion set forth in this Ordinance. Based on that evaluation, the Committee shall make findings as to the likely impact of the appropriation or change in point of diversion, place of use or purpose of use under each of those criteria, balance the implications under the various criteria, and make a finding as to the appropriation or change in point of diversion, place of use or purpose of use's likely overall public welfare implications. The Committee shall transmit these findings, along with its recommendation about the extent to which the

appropriation or change in point of diversion, place of use or purpose of use should be considered consistent with the public welfare of water, to the County Commission and the public in Taos County.

3. The Committee should seek technical assistance from the Taos County Regional Water Plan Technical subcommittee to query the hydrologic assumptions of adjudication settlements and potential transfers.

## **B. Procedure**

### **1. Submission**

To ensure that the Committee is made aware of proposed appropriations and changes in point of diversion, place of use or purpose of use from and within Taos County in a timely fashion, any person or other entity who files an application with the State Engineer for approval of an appropriation or change in point of diversion, place of use or purpose of use of water originating in Taos County shall file a copy of such application with the Taos County Clerk on the same date as it is filed with the State Engineer. Failure to submit a copy of the application shall constitute a violation of this Ordinance. In addition to any other potential penalties for such a violation, if the applicant fails to submit a copy of the application to the County Clerk, the Committee may proceed to present its findings to the Taos County Commission and the public without providing an opportunity for any further input from the applicant.

### **2. Notice and Comment**

During the three week notice period provided for by state law, the Committee shall accept comment from the applicant and any interested member of the public concerning the potential public welfare impacts of the proposed appropriation or change in point of diversion, place of use or purpose of use.

### **3. Timing**

- a. As soon as possible within the time limit provided under state law for filing protests, the Committee shall make its findings and recommendations regarding an appropriation or change in point of diversion, place of use or purpose of use's likely impact on the public welfare of water. Upon initial review, if the Committee is of the opinion that a proposed appropriation or change in point of diversion, place of use or purpose of use raises significant public welfare concerns, the Committee shall provide the applicant with an opportunity to submit additional

information before the Committee makes its findings and recommendations.

- b. As soon as the Committee has made its findings and recommendations, it shall transmit them to the County Commission, and the applicant, and it shall make them available to the public. The Committee shall transmit its findings to the County and public in time to allow them to make an informed decision about whether to protest the appropriation or change in point of diversion, place of use or purpose of use on public welfare grounds within the statutory period.

#### **4. Written Decisions**

Upon its review of any proposed appropriation or change in point of diversion, place of use or purpose of use of water, the Committee shall make available to the public in written form any findings and/or recommendations concerning such appropriation or change in point of diversion, place of use or purpose of use's public welfare implications.

### **C. Weight Accorded to the Committee's Findings and Recommendations**

1. The Board of County Commissioners should give the findings and recommendations of the Committee great weight in determining whether a proposed appropriation or change in point of diversion, place of use or purpose of use is consistent with the public welfare requirement under New Mexico law. The Board of County Commissioners recommends that other local governmental entities and political subdivisions within the County, and the State Engineer, also give the findings and recommendations of the Committee great weight in determining whether a proposed appropriation or change in point of diversion, place of use or purpose of use is consistent with the public welfare requirement under New Mexico law.
2. The integrity and persuasiveness of the Committee's findings and recommendations will depend on the degree to which the Committee adheres to an evenhanded, disinterested, and apolitical approach.
3. **Local Government Protests**  
In general, the Board of County Commissioners should protest a proposed appropriation or change in point of diversion, place of use or purpose of use if the Committee finds it to be contrary to the public welfare, unless they find that there is good reason not to protest the appropriation or change in point of diversion, place of use or purpose of use.

#### **4. State Engineer Evaluation**

The Board of County Commissioners recommends that, in determining whether to permit a proposed appropriation or change in point of diversion, place of use or purpose of use of water from within Taos County, the State Engineer evaluate and make findings as to each of the individual public welfare criteria set forth in this Ordinance.

### **ARTICLE 3 COMMITTEE'S REVIEW FUNCTION**

#### **Section 3.1 General Considerations**

- A. In evaluating the public welfare implications of a proposed appropriation or change in point of diversion, place of use or purpose of use, the Committee shall bear in mind the limited sustainable capacity of the County's surface and groundwater resources.
- B. In evaluating the public welfare implications of a proposed appropriation or change in point of diversion, place of use or purpose of use, the Committee shall consider the direct, indirect, and long-term effects of the proposed appropriation or change in point of diversion, place of use or purpose of use.
- C. In evaluating the public welfare implications of a proposed appropriation or change in point of diversion, place of use or purpose of use, the Committee shall consider the priority of senior water rights.
- D. In evaluating the public welfare implications of a proposed appropriation or change in point of diversion, place of use or purpose of use, the Committee shall consider the degree to which the proposal is consistent with and would advance the goals, priorities and implementation strategies identified in the Taos Regional Water Plan.
- E. Because Taos County will continue to experience local growth, a proposed appropriation or change in point of diversion, place of use or purpose of use that would remove water from the County shall only be considered consistent with the public welfare to the extent that it tends to comport with the public welfare criteria set forth in this Ordinance.
- F. The determination of an acequia or community ditch commission that a proposed change in point of diversion or place or purpose of use of a water right served by that acequia or community ditch would be detrimental to the acequia or community ditch or its members shall be considered prima facie evidence that the proposed change is contrary to the public welfare.

- G. Transfers or changes of water rights within an acequia or community ditch are presumed to be consistent with the public welfare.

**Section 3.2 Consideration of Specific Criteria**

- A. The Committee shall evaluate the potential effect of a proposed appropriation or change in point of diversion, place of use or purpose of use under each of the criteria identified in the Taos Regional Water Plan and this Ordinance as making up the public welfare at the local and regional level in Taos County.

- B. Specifically, the Committee shall evaluate each of those components as follows:

- 1. **Cultural Protection**

- With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on the water supply of any traditional community within Taos County, and if so what the nature and extent of that effect appears likely to be. To be considered consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use should not reduce the water supply of any traditional community in the County to such an extent as to jeopardize its continued viability. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect the water supply of any traditional community within Taos County.

- 2. **Agrarian Character**

- With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on the local water supply for traditional agricultural land uses within the sub-region, as defined in the Taos Regional Water Plan, from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed, and if so what the nature and extent of that effect appears likely to be. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should not reduce the local water supply to such an extent as to jeopardize the continued viability of traditional agricultural land uses within the sub-region



from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect the water supply of any traditional agricultural land uses within the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed.

**3. Ecological Health: Vitality of Watersheds**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on any river, creek, or spring in Taos County, and if so what the nature and extent of that effect appears likely to be. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should not diminish the flow rate or water quality of any river, creek, or spring in Taos County to such an extent as to jeopardize: (a) the ecosystems that are dependent on such river, creek, or spring; or (b) watershed or ecological restoration activities within the County that have been identified through the Watershed Restoration Action Strategies (WRAS) process or through any other process authorized by local, state, or federal law. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect the river, creek, or spring in Taos County. Recognizing the historical role and contribution of acequias to the ecological vitality of Taos County, a change of point of diversion, place of use or purpose of use within an acequia or community ditch shall be presumed not to have a negative effect on any river, creek or spring in the same watershed as that acequia or community ditch.

**4. Long-Term Economic Development Potential**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on the potential for long-term economic development in any part of Taos County. To be consistent with the public welfare a proposed appropriation or

change in point of diversion, place of use or purpose of use should not reduce the local water supply to a level below that which is reasonably necessary to support the long-term economic development of the County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect the long-term economic development potential of Taos County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed.

**5. Recreational Tourism**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on water-dependent recreational tourism. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should not reduce the local water supply below levels reasonably necessary to support currently available water dependent recreational opportunities in the County and sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect water-dependent recreational tourism opportunities in Taos County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed.

**6. Public Information**

With regard to this criterion, the Committee should base its recommendations on the best available information and should make this information available to the public. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use should be supported by the best available information concerning the capacity and condition of the water source and watershed from which the water is proposed to be appropriated or from which the point of diversion or place or purpose of use is proposed to be changed, and that

information should be made publicly available to residents of Taos County and the general public. Accordingly, the Committee should evaluate and provide advisory information regarding the extent to which a proposed appropriation or change in point of diversion, place of use or purpose of use is based on the best available information, the extent to which such information is publicly available, and the need, if any, for additional or better information concerning the appropriation or change in point of diversion, place of use or purpose of use and its potential public welfare implications.

**7. Water Supply Management**

With regard to this criterion, the Committee should use the best available information to determine what, if any, effect a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have on the relationship between water supply and demand in Taos County. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should fit within the balance of water supply and demand in Taos County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect the balance between water supply and demand in Taos County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed.

**8. Conservation**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on the conservation of water, and if so what that effect appears likely to be. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should meet the six criteria contained in the findings section on conservation in Section 1.3.B.1 of this Ordinance. Accordingly, the Committee should evaluate and provide advisory information regarding the extent to which a proposed appropriation or change

in point of diversion, place of use or purpose of use appears to meet those conservation criteria.

**9. Conjunctive Management**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on conjunctive management efforts in Taos County, and if so what that effect appears likely to be. To be consistent with the public welfare a proposed appropriation or change in point of diversion, place of use or purpose of use of water should be evaluated in accordance with principles of conjunctive management and should not unreasonably reduce surface flows in hydrologically connected stream systems or unreasonably lower the water level of any pre-existing well. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to be consistent with principles of conjunctive management and to affect surface flows in hydrologically connected stream systems or the water level of any pre-existing well.

**10. Minimizing Water Contamination**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or change in point of diversion, place of use or purpose of use is likely to have an effect on water quality, and if so what that effect appears likely to be. A proposed appropriation or change in point of diversion, place of use or purpose of use of water that would improve or do no harm to water quality generally should be considered consistent with the public welfare, whereas a proposed appropriation or change in point of diversion, place of use or purpose of use that would degrade water quality generally should be considered inconsistent with the public welfare. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or change in point of diversion, place of use or purpose of use appears likely to affect water quality of any surface water or groundwater resource or drinking water supply in Taos County and the sub-region from which the water is proposed to be appropriated or point of diversion or place or purpose of use changed.

ELAINE S. MONTAÑO  
 TAOS COUNTY CLERK  
 BY Palme W Paul Deputy

**ARTICLE 4. SEVERABILITY**

The provisions of this Ordinance are severable, and if any provision, sentence, clause, section, or part hereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability of that provision, sentence, clause, or section, or any part thereof shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the intent of Taos County that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part thereof had not been included herein, and if the person or circumstance to which this Ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

**PASSED, ADOPTED AND APPROVED THIS 26<sup>th</sup> DAY OF October , 2010, AND EFFECTIVE THIRTY DAYS THEREAFTER.**

**BOARD OF COUNTY COMMISSIONERS.  
 OF TAOS COUNTY, NEW MEXICO**

TAOS COUNTY  
 ELAINE S. MONTAÑO, CLERK  
 00036 6358  
 Book 732 Page 243  
 21 of 21  
 10/26/2010 11:52:52 AM  
 BY AMR

[Signature]  
 Daniel R. Barrone, Chairman

**ABSENT**

Joe Mike Duran, Vice-Chairman

[Signature]  
 Nickfos Jaramillo, Commissioner

[Signature]  
 Andrew Chavez, Commissioner

[Signature]  
 Larry Sanchez, Commissioner



[Signature]  
 Elaine Montaña, County Clerk

Vote Record:

A. Chavez	<input checked="" type="radio"/>	no	abstain	absent
L. Sanchez	<input checked="" type="radio"/>	no	abstain	absent
N. Jaramillo	<input checked="" type="radio"/>	no	abstain	absent
D. Barrone	<input checked="" type="radio"/>	no	abstain	absent
J.M. Duran	yes	no	abstain	<input checked="" type="radio"/> absent