

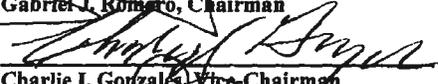


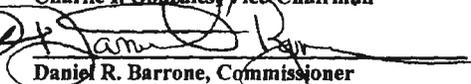
5. This notice is published pursuant to Section 4-37-7 NMSA 1978, as amended.
6. All interested citizens are invited to attend this public hearing.
7. The County Attorney shall make the necessary arrangements for publication of such notice in the Taos News edition of November 29, 2007.

PASSED, APPROVED AND ADOPTED THIS November 20, 2007.

TAOS COUNTY BOARD OF COMISSIONERS

  
Gabriel J. Romero, Chairman

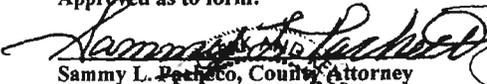
  
Charlie I. Gonzales, Vice-Chairman

  
Daniel R. Barrone, Commissioner

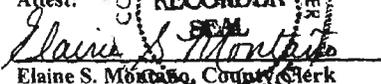
  
Joe Mike Duran, Commissioner

  
Nicklos E. Jaramillo, Commissioner

Approved as to form:

  
Sammy L. Pacheco, County Attorney

Attest:

  
Elaine S. Montano, County Clerk

Vote Record:

G. Romero	<input checked="" type="checkbox"/>	No	Abstain	Absent
G. Gonzales	<input checked="" type="checkbox"/>	No	Abstain	Absent
D. Barrone	<input checked="" type="checkbox"/>	No	Abstain	Absent
J.M. Duran	<input checked="" type="checkbox"/>	No	Abstain	Absent
N. Jaramillo	<input checked="" type="checkbox"/>	No	Abstain	Absent



**TAOS COUNTY ORDINANCE  
2007-16**

TAOS COUNTY  
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11/20/2007 02:29:47 PM  
BY DIANAD

**AN ORDINANCE ESTABLISHING A TAOS REGIONAL ADVISORY AND INFORMATIONAL COMMITTEE ON PUBLIC WELFARE AND CONSERVATION OF WATER AND FOR OVERSEEING AND INFORMING THE PUBLIC ABOUT ALL WATER APPROPRIATIONS AND TRANSFERS FROM WITHIN THE TAOS REGIONAL WATER PLAN BOUNDARIES**

**BE IT ORDAINED BY THE GOVERNING BODY OF TAOS COUNTY**

**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 Regional Advisory and Informational Committee on Public Welfare and Conservation of Water" and shall be referred to elsewhere herein as the "Water Advisory Committee Ordinance."

**Section 1.2 Authority**

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:

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);

NMSA 1978, Sections 4-57-1 through 4-57-3 (planning for purpose of guiding development);

NMSA 1978, Sections 47-6-1 through 47-6-29 (subdivision);

NMSA 1978, Sections 18-6-1 through 18-6-17 (Cultural Properties Act);

NMSA 1978, Sections 3-53-1 through 3-53-5 (water use and water facilities).

NM Const. Art. 10, Section 5 (incorporated counties);

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);

NMSA 1978, Section 72-5-5 (Objections to applications; publication of notice; filing of protests; definition of standing);

NMSA 1978, Section 72-5-5.1 (Purposes);

NMSA 1978, Section 72-5-6 (Hearing; approval; permit); and

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Regional Advisory and Informational Committee for Water Appropriations and Transfers  
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NMSA 1978, Section 72-5-7 (Application; rejection; noncompliance with rules; conservation and public welfare).

Further, this Ordinance and the Committee it provides for are created pursuant to repeated calls at the state level for local and regional 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:

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) ("Public welfare has both regional and state contexts. The OSE and ISC believe the public welfare is best informed by reference to the individual regional water plans."); id. app. at C. (recommendations of Ad Hoc Committee on Regional Water Plans - State Water Plan); id. app. at C(III)(B)(3) (noting that the State Water Plan Act requires regional water plans to "provide for ... adequate review of ... the effect of public welfare").

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); and

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).

### Section 1.3 Findings

#### **A. General Findings re Need for Local Review, Information, and Advice Concerning Public Welfare and Conservation of Water Implications of Water Rights Applications for Water Originating within the Taos Region:**

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

During the regional water planning process residents from every part of the Taos Region stated clearly and repeatedly that it is necessary to create a procedure or mechanism by which local governmental entities and citizens within the Taos Region may systematically obtain information and provide input concerning the local public welfare and conservation implications of proposed appropriations and transfers where State law requires that the public welfare and conservation implications of such appropriations and transfers be evaluated.



The creation and operation of the Committee provided for by this Ordinance will be an effective means of ensuring that the application of the public welfare and conservation criteria to transfers and appropriations of water from the Taos Region is informed by meaningful, systematic input concerning the regional public welfare and conservation implications of such transfers and appropriations.

**B. Findings re Individual Components of Public Welfare and Conservation of Water for the Taos Region**

The County Commission finds that the individual components identified and defined in the Taos Regional Water Plan as making up the public welfare and conservation of water at the local and regional level in the Taos Region constitute accurate and appropriate definitions of the public welfare and conservation of water for the local and regional level review of those criteria that is provided for by this Ordinance. Therefore, the County Commission hereby adopts those individual components as defining elements of the public welfare and conservation of water at the local and regional level for the Taos Region.

Specifically, the County Commission finds that the following individual components of the public welfare and conservation of water must be considered in the review of local and regional public welfare and conservation implications of proposed appropriations and transfers provided for by this Ordinance:

**1. Cultural Protection:**

The residents of the Taos Region's multicultural communities have always had a deep cultural and spiritual connection with the local waters around which their communities were first organized and in relation to which these communities have developed their distinctive social and cultural fabric. Our cultural heritage is one of the Taos Region's and the State's greatest assets. The diversity and mutual enrichment of the Region's multiple cultures have been nurtured over centuries and millennia by the Region's scarce water resources. The Taos Region's cultural wealth and diversity, especially its acequia-based communities, have made it a magnet for people from around the United States and the world. As such, they are an essential component of the Region's and State's economic and social vitality. In order to sustain and enhance this cultural wealth of the Region's communities, local water resources must be maintained in terms of water quality and available water supply sufficient to support the local communities and enable them to grow over the long term.

**2. Agrarian Character:**

The traditional agrarian character of the Region's land and communities is a vital part of the Taos Region's social and cultural fabric. Traditional land-based communities keep water connected to the land and within the local watershed. Subsistence and pastoral agriculture have provided local sustainability for many years. Small scale farming and ranching continue to be a vital part of the local culture and economy, providing income and sustenance for many residents of the Region. Local agriculture provides food security for some of the most impoverished communities in the State. In order to maintain this local agrarian character, residents of the Region have a strong policy preference for maintaining the connection between land and water for agricultural uses. Acequias have existed in the Taos Region for hundreds of years, they are part of the historical environment, and contribute to its local sustainability.







- E. 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 and transfer application received by the Office of the State Engineer for water from the Taos Region.

#### **Section 1.5 Jurisdiction**

The Committee shall review and provide advisory and informational input and recommendations concerning all proposed appropriations and transfers of water from the Taos Region, as that Region is defined in the Taos Regional Water Plan.

This Committee will act in an advisory and informational capacity, to provide information to the public in the Taos Region, and to make recommendations to local governmental entities and political subdivisions, local citizens, and the State Engineer regarding any implications such appropriations and transfers may have for the public welfare and conservation of water on the local and regional level.

The Committee shall not exercise its authority under this Ordinance in any way that conflicts with the authority of any acequia commission under NMSA 1978, Section 73-2-21(E) (amended 2003).

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 REGIONAL ADVISORY AND INFORMATIONAL COMMITTEE**

#### **Section 2.1 Committee Title**

A Committee shall be formed pursuant to this Ordinance and shall be titled the Taos Regional Advisory and Informational Committee for Water Appropriations and Transfers.

#### **Section 2.2 Committee Membership**

The Committee shall be composed of an odd number of members, not less than nine (9) in number, five (5) members to serve a term of three years, and four (4) members to serve a term of two (2) years. The Committee shall include representatives from each of the four sub-regions within the Taos Region described in the Taos Regional Water Plan. The Committee's membership shall be as representative as possible of the full range of water interests and stakeholders in the Region. The membership shall be comprised of local residents who are knowledgeable about the surface and groundwater resources and issues in their respective sub-regions and the Taos Region as a whole, and who are committed to performing their duties in a nonpartisan, unbiased manner. ~~It is recommended that each County Commissioner choose one such person from their District to serve on the committee.~~ The four (4) remaining members shall be chosen by the Standing Regional Water Plan Steering Committee, after any member of the public residing in one of the four (4) sub-regions have submitted Letters of Interest to the steering committee.









**D. 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 transfer is likely to have an effect on the potential for long-term economic development in any part of the Taos Region. To be consistent with the public welfare and conservation a proposed appropriation or transfer from within the Taos Region 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 Region and the sub-region from which the water is proposed to be appropriated or transferred. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed transfer or appropriation appears likely to affect the long-term economic development potential of the Taos Region and the sub-region from which the water is proposed to be appropriated or transferred.

**E. Recreational Tourism:**

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

**F. 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 and conservation a proposed appropriation or transfer from within the Taos Region should be supported by the best available information concerning the capacity and condition of the water sources from which the water is proposed to be appropriated or transferred and that information should be made publicly available to residents of the Taos Region. Accordingly, the Committee should evaluate and provide advisory information regarding the extent to which a proposed transfer or appropriation is based on the best available information and the need, if any, for additional or better information concerning the transfer or appropriation and its potential public welfare and conservation implications.

**G. Water Supply Management:**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or transfer is likely to have an effect on the relationship between water supply and demand in the Taos Region, and if so what that effect appears likely to be. To be consistent with the public welfare and conservation a proposed appropriation or transfer of water from within the Taos Region should fit within the balance of water supply and demand in the Taos Region and the sub-region from which the water is proposed to be appropriated or transferred. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or transfer appears likely to affect the balance

between water supply and demand in the Taos Region and the sub-region from which the water is proposed to be appropriated or transferred.

**H. Conservation:**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or transfer 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 and conservation a proposed appropriation or transfer of water from within the Taos Region should meet the six criteria contained in the findings section on conservation in Article 1, Section 1.3.B of this Ordinance and in the Conservation Statement of the Taos Regional Water Plan. Accordingly, the Committee should evaluate and provide advisory information regarding the extent to which a proposed appropriation or transfer appears to meet those conservation criteria.

**I. Conjunctive Management:**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or transfer is likely to have an effect on conjunctive management efforts in the Taos Region, and if so what that effect appears likely to be. To be consistent with the public welfare and conservation a proposed appropriation or transfer of water from within the Taos Region should be evaluated in accordance with principles of conjunctive management and should not unreasonably reduce surface flows in hydrologically connected stream systems or 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 transfer 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.

**J. Minimizing Water Contamination:**

With regard to this criterion, the Committee should use the best available information to determine whether a proposed appropriation or transfer is likely to have an effect on water quality, and if so what that effect appears likely to be. A proposed appropriation or transfer of water that would improve or do no harm to water quality generally should be considered consistent with the public welfare and conservation, whereas a proposed appropriation or transfer that would degrade water quality generally should be considered inconsistent with the public welfare and conservation. In addition, to the extent such an appropriation or transfer is otherwise permitted under state law, the transfer of valid existing water rights, including domestic well water rights, to community water systems and mutual domestic water consumer associations within the same watershed, sub-watershed, or drainage basin generally should be considered to be consistent with the public welfare and conservation. Accordingly, the Committee should evaluate and provide advisory information regarding the extent, if any, to which a proposed appropriation or transfer appears likely to affect water quality of any surface or groundwater resource or drinking water supply in the Taos Region and the sub-region from which the water is proposed to be appropriated or transferred.

**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, APPROVED, AND ADOPTED BY THE GOVERNING BODY OF TAOS COUNTY THIS 18<sup>TH</sup> DAY OF DECEMBER, 2007.**

\_\_\_\_\_  
Gabriel J. Romero, Chairman

\_\_\_\_\_  
Charlie I. Gonzales, Vice-Chairman

Approved as to form:

\_\_\_\_\_  
Sammy L. Pacheco, County Attorney

\_\_\_\_\_  
Daniel R. Barrone, Commissioner

Attest:

\_\_\_\_\_  
Joe Mike Duran, Commissioner

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Elaine S. Montaño, County Clerk

\_\_\_\_\_  
Nicklos E. Jaramillo, Commissioner

Vote Record:				
G. Romero	Yes	No	Abstain	Absent
G. Gonzales	Yes	No	Abstain	Absent
D. Barrone	Yes	No	Abstain	Absent
J.M. Duran	Yes	No	Abstain	Absent
N. Jaramillo	Yes	No	Abstain	Absent

