

Abeyta pact draws critics as water transfers take shape

By J.R. Logan

The Taos News, July 21, 2011

As one of the first steps in the implementation of the \$66 million Abeyta water settlement, El Prado Water and Sanitation District is asking for more than 22 times its existing water rights.

The El Prado Water and Sanitation District has asked the Office of the State Engineer to approve an assortment of ground and surface water transfers that would take the domestic water supplier's allowable well production from 25 acre-feet per year (about 8.3 million gallons) to 575 acre feet per year (more than 187 million gallons).

District officials say the boost would bring the district in line with its actual consumer usage and ensure sustainable growth 40 years into the future.

But some wonder if moving vast amounts of water around Taos County is logical, or even necessary. There are also worries that two wells proposed by El Prado Water and Sanitation District — with a deeper reach and far greater production allowances — could prove dangerous to the region's overall water supply.

The shuffling of water rights is directly tied to the Abeyta Settlement — a major water rights compromise that was meant to end years of water disputes in the Taos Valley. For nearly two decades, Taos Pueblo and the Taos Valley Acequia Association (and later other stakeholders including the state and town of Taos) worked on a deal to divvy up water rights to satisfy everyone.

The parties agreed to a draft settlement in 2006 but needed the federal government to approve \$66 million in funds to put the plan into action. Congress passed legislation that included the Abeyta in November 2010, and President Barack Obama signed the agreement — also known as the Taos Pueblo Indian Water Rights Act — into law days later.

The recent applications from El Prado Water and Sanitation District are the some of the first Abeyta-related actions to move forward.

The El Prado district currently serves around 1,000 customers with its 25 acre-feet allocation. But John Painter of El Prado Water and Sanitation District told *The Taos News* Tuesday (July 19) that the district has been pumping between 100 and 130 acre-feet a year to meet the demand of its customers — far more than its allotted amount.

As a result, El Prado Water and Sanitation District owes the state a debt of about 800 acre-feet of water. To pay off that debt, and to have enough water for future growth, the district says it needs more water rights. But water that's pumped out of the ground must be "offset" by surface and ground water already in use elsewhere. Offsets are intended to balance the total amount of allocated water so that the watershed remains whole. Such changes must be approved by the state engineer.

As a part of its plan under the Abeyta, El Prado Water and Sanitation District wants to initially shuffle a total of 284 acre-feet of ground water rights on the R'o Grande in northern Taos County and add them to the pumping schedule in El Prado. El Prado Water and Sanitation District has also worked out arrangements with property owners to buy about 70 acre-feet of surface water on the Rio Lucero, Rio Hondo, Arroyo Seco and Rio Pueblo de Taos. The water rights will be "retired" so that a corresponding amount of ground water can be pumped from El Prado's wells downstream.

Painter was among those who sold private surface water rights to the district, cashing in 13.6 acre-feet on the Rio Lucero.

The Taos News has asked to see actual prices paid by El Prado Water and Sanitation District to landowners for water rights, but documents showing purchase amounts were not made available by press time. Painter said the district paid around \$7,500 an acre-foot for surface water rights.

In total, the surface offsets and groundwater swaps would allow El Prado Water and Sanitation District to pump about 350 acre-feet of groundwater into its system every year — well short of the 575 acre-feet allocation it is asking for.

Painter said El Prado would continue to look for offsets to match its pumping allocation. He insisted that the district would not exercise the full extent of that allocation until it had acquired enough offsets to balance that kind of usage. Painter said consolidation of these rights would benefit Taos County in the long run. "The only way you can keep water from going south is if you own it," he said.

'Peace in the valley'

When Gilbert Suazo of Taos Pueblo testified to a Senate Committee about the Abeyta Settlement in 2008, he told legislators that the settlement would finally bring "peace in the valley." But now that the terms of the deal are being put into motion, that peace is already in jeopardy.

Some, like Kay Matthews of El Valle, claim that the Abeyta Settlement only satisfies those who had a seat at the bargaining table and disregards the needs of the community at large.

“They (the Abeyta stakeholders) did all this hard work and they came up with what they say was the best deal for the parties to this settlement, and so any attempt by anybody else to look over their shoulder, or have a say-so, or protest what they’re doing, is just forbidden,” Matthews told *The Taos News*

Friday (July 15) Matthews is the chairperson of a water advisory board appointed by the Taos County Commissioners. The nine-member committee created last year is charged with reviewing all proposed water transfers in the county and offering advice to the Taos County Commission on the effects of those transfers.

Palemòn Martinez, president of the Taos Valley Acequia Association, publicly voiced his opposition to the creation of the advisory board, arguing that it might undo what had been accomplished by the Abeyta parties. Painter with El Prado Water and Sanitation District is also wary of the board, contending that it will make it difficult for the legitimate transfer of water.

Matthews and other members of the Public Advisory Board worry that hydrologic juggling could have unforeseen consequences on the stability of the region’s water resources. And because the deal was fleshed out in private, there are concerns that stakeholders promised one another water rights that the watershed couldn’t sustain. Matthews wonders if there is enough science to back up these kinds of appropriations. “They don’t know what’s going to happen,” Matthews said.

Painter, of El Prado Water and Sanitation District, said the terms of the settlement were well thought out and that the deal would serve as a “blueprint” for future water use.

A small chorus of opposition in rural Taos County isn’t the only hitch the in the Abeyta implementation. Meetings are ongoing between Abeyta parties and representatives of the U.S. Department of Justice and the U.S. Department of the Interior to mold the settlement to fit the legislation passed by Congress. Painter said there are no fundamental changes to the deal, but he said there has been “a considerable amount of argument and discussion” over some of the details. The town of Taos also met in closed session last week to discuss “pending litigation” regarding the Abeyta implementation.

‘A vast unknown’

The objections of Matthews and others are rooted in worries that no one knows how new wells pumping millions of gallons from aquifers will impact the region as a whole. But the Abeyta parties, backed by a study conducted by the Office of the State Engineer, argue that these allocations are based on reliable information.

“In the opinion of the (Office of the State Engineer), the Taos Area Calibrated Groundwater model does give enough data to allow us to implement the Abeyta Settlement safely,” wrote Peggy Barroll, a hydrologist with the state engineer, in an email to *The Taos News* .

Barroll co-authored the 2006 groundwater model that was commissioned by the Abeyta parties for the settlement. Barroll said in her email that the model was developed using “extensive new hydraulic data,” which tells scientists whether new pumping will affect other water resources.

Barroll did allow that all hydrological models have “some degree of uncertainty” and she said the Office of the State Engineer would keep an eye on groundwater data and “revise the model if necessary.”

The notion of uncertainty was echoed by Peggy Johnson, a hydrologist with the New Mexico Bureau of Geology and Mineral Resources at New Mexico Tech. Johnson and her husband, geologist Paul Bauers, have done extensive studies on small pieces of the Taos region. The pair was recently commissioned by Taos County to map the Miranda Canyon area. According to Johnson, the realm beneath the Taos Valley — fractured by ubiquitous faults and riddled with complex geology — is not an easy place to understand.

“The subsurface is a vast unknown,” Johnson told *The Taos News* . “What we know about it is based on about a dozen holes placed around the valley over a huge area.”

Johnson said the team that put together the 2006 model “did the best they could at the time,” but she wouldn’t go so far as to call the report “comprehensive.”

She bemoaned a general lack of data in the Taos area and said few are will to share their information with others.

Still, Johnson said the proposed locations of El Prado Water and Sanitation District’s two new wells — off U.S. 64 between the old blinking light intersection and Gorge Bridge — appear to be logical. “I think that it’s a relatively good place if you have to make a decision right now and put a well in,” Johnson said. “But can you predict all the consequences? You never can. It’s all a grand science project.”