



TAOS COUNTY ORDINANCE 2007-16

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

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 Regional Water Plan's Public Welfare Statement includes recommendations for implementing the public welfare criteria. The process recommended in the Regional Water Plan and established through this Ordinance is intended 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 transfer on public welfare and/or conservation grounds. This process also will 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 transfers 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 transfer or appropriation.

The Taos Water Planning Region (hereinafter "Taos Region") has 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 preserving healthy watershed conditions and wildlife habitat to a high degree;

The Taos Region has limited surface and groundwater resources to meet the Region's economic, recreational, environmental, public health, and cultural needs for water;

There is increasing pressure for transfers of water from the Taos Region to different areas within the Region, to other regions in New Mexico, and potentially to other states;

There is the potential for additional appropriations to be sought in the Taos Region, including in areas of the Region that do not appear to have any additional water available for appropriation from either surface water sources or groundwater sources that historically have been utilized;

There is great concern throughout the Taos Region that such transfers and appropriations of water are not sufficiently publicized for the inhabitants of the Region to be aware of them and to take action to protect local and regional interests that may be affected by such transfers and appropriations;

The provision of local advisory information under the public welfare and conservation criteria of New Mexico state law would be an effective mechanism for protecting the Region's economic, recreational, environmental, public health, and cultural needs for, uses of, and values relating to water;

Absent meaningful, systematic input at the 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 transfers and appropriations of water on vital aspects of the Taos Region's economic, recreational, environmental, public health, and cultural needs for, uses of, and values relating to water;

The creation and operation of the Committee provided for by this Ordinance will be an effective means of ensuring that the inhabitants of Taos County are adequately informed about proposed transfers and appropriations of water from the Taos Region; and

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.

3. Ecological Health: Vitality of Watersheds and Ecosystems:

The natural environment of the Taos Region, particularly the health of the Region's watersheds, is central to the physical, cultural, and spiritual health of local residents. The watersheds of the Sangre de Cristo Mountains are the primary source of water for the Taos Region. As such, they underpin the diversity of living things and the quality of the environment in the Region and in neighboring regions. The residents of the Taos Region have repeatedly affirmed that protecting and enhancing the long-term health and sustainability of these watersheds, and the ecosystems they support, is essential to the public welfare and conservation of water in the Taos Region. In addition, the health of the Region's watersheds and aquifers allows them to perform vital ecological services that sustain the human communities as well as the flora and fauna of the Region. Among the ecological services performed by our healthy watersheds are flood, drought, and fire mitigation, and the provision of wildlife and fish habitat. Acequias are a vital part of the Taos Region's landscape and watersheds that contribute to the Region's ecological health.

4. Long-Term Economic Development Potential:

The Taos Region has grown rapidly over the past few decades and clearly is on a path towards continued growth, in terms of both residential and commercial development. The protection of adequate local water supplies to support the Region's likely long-term growth and economic development, including increased residential, commercial and industrial use, is essential to the Region's continued vitality.

5. Recreational Tourism:

The stunning beauty of the Taos Region has long played a major role in the physical, cultural, and spiritual life of people residing in the Region's communities, and in making the Taos Region a destination for tourists. Recreational tourism that depends on adequate quantities and quality of water is a major, growing component of the Region's economy. Visitors from around the State of New Mexico, the rest of the United States, and the world flock to the Taos Region for such outdoor pursuits as skiing, snowshoeing, whitewater rafting, kayaking, fishing, birding, hiking, and hunting. The Region's continued ability to attract and support these activities is vital to ensuring that the Region has an economically and socially healthy future. These recreational opportunities are directly dependent on the protection of our local waters, both in terms of quality and quantity.

6. Public Information:

The water resources of the Taos Region bind the individual communities within the Region together and sustain them all. The viability of all communities in the Region depends on our limited interconnected local waters, which reflect the interconnectedness and interdependence of our communities. The ability of local communities within the Taos Region to gather and share information concerning water resources on which they depend is critical to our communities' ability to use and protect those waters effectively. Thus, the gathering and dissemination of high quality information about the capacity and condition of local water resources within the Region would significantly enhance the public welfare and conservation of the Region.

7. Water Supply Management:

Assessments of the balance between water supply and demand should be prepared for each watershed, sub-watershed, and drainage basin within the Taos Region, as those hydrologic units are identified in Section 5.2.1 of the Taos Regional Water Plan. These assessments are needed in order to ensure that accurate evaluations can be made of the ecological and human needs in each watershed, sub-watershed, and drainage basin in the Region, and of the potential for a proposed appropriation or transfer to interfere with the fulfillment of those needs. Hydrologic studies, aquifer mapping, and a comprehensive system of monitoring and measurement should be developed and implemented throughout the Region to accurately assess the water supply and demand in each watershed, sub watershed, and drainage basin within the Region. At the state level no such effort currently is underway for the Taos Region.

To the degree they were available, the Taos Regional Water Plan incorporated by reference initial assessments of the water supply and demand for each watershed, sub-watershed, and drainage basin within the Taos Region. The Regional Water Plan also called for all governmental entities and political subdivisions within the Region to cooperate in providing for those water supply and demand assessments to be completed and updated every five (5) years.

Proposed appropriations and transfers of water from the Taos Region should conform to these assessments of water supply and demand, and maintain the balance between water supply and demand in order to protect and promote the public welfare and conservation of water in the Taos Region.

8. Conservation:

The Taos Region, 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 transfer of water from the Taos Region should meet the following criteria:

- a. The appropriator or transferee has developed an enforceable conservation plan that uses the best practices applicable for the proposed water use;
- b. The appropriator or transferee 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 transferee has committed to use the best practicable technology and methods to reduce water use;
- d. The appropriator or transferee has shown that there is 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. The proposed appropriation or transfer of groundwater, in combination with existing appropriations and transfers, does not exceed the perennial yield of the groundwater basin from which the water is proposed to be appropriated or transferred.

9. Conjunctive Management:

In light of current levels of water use and growth trends in the Region and the rest of the State, the residents of the Taos Region have repeatedly requested that surface and groundwater resources within the Region should be managed conjunctively in order to prevent excessive diversions from any surface or groundwater resource from depleting related surface and groundwater resources. 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. Therefore, measures should be adopted by the appropriate governmental agencies or entities to ensure that surface and groundwater resources are managed conjunctively and well permits are not issued without demonstration that they will not have unreasonable negative impacts on related surface stream flows or pre-existing wells.

10. 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 the Taos Region. The better the water quality of all water resources in the Region, the greater the public welfare and conservation derived from the Region's water. Actions that would improve water quality in the Region are more likely to increase, than to diminish, the public welfare. By the same token, actions – including some transfers and appropriations of water – that would degrade water quality in the Region will tend to diminish the public welfare. The promotion of mutual domestic water consumer associations and community water systems as an alternative to domestic wells is one means of lessening the incidence of groundwater contamination. As a general matter, the consolidation of domestic well water rights into mutual domestic water consumer associations and community water systems would tend to enhance the public welfare. Therefore, local governmental entities in the Region and the State Engineer should take all lawful actions to promote such processes. Further, the State Legislature should modify New Mexico statutory law to permit such processes, where not already permitted.

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 the Taos Region;
- B. To inform residents of the Region about proposed appropriations and transfers of water from the Taos Region;
- C. To evaluate the public welfare and conservation implications of proposed water appropriations and transfers of water from the Taos Region;
- D. To provide informational and advisory input to local governmental entities, political subdivisions, and residents of the Taos Region, and to the Office of the State Engineer regarding the local public welfare and conservation implications of such appropriations and transfers; and

- 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.

Section 2.3 Application Review

A. Committee Role:

The Committee shall review each application for a proposed appropriation or transfer of water from and within the Taos Region. The Committee shall first assess whether an appropriation or transfer appears likely to have significant public welfare or conservation implications. To facilitate this assessment, the Committee shall establish a quantitative threshold beneath which a proposed appropriation or transfer generally will be considered de minimis and unlikely to present significant public welfare or conservation concerns.

If the Committee's initial assessment indicates that a proposed appropriation or transfer raises significant public welfare or conservation concerns, the Committee shall evaluate the likely impact of the appropriation or transfer under each applicable public welfare and conservation criterion set forth in the Taos Regional Water Plan and this Ordinance. Based on that evaluation, the Committee shall make findings as to the likely impact of the appropriation or transfer under each of those criteria, and balancing the implications under the various criteria, a finding as to the appropriation or transfer's likely overall public welfare and conservation implications. The Committee shall transmit these findings, along with its recommendation about the extent to which the appropriation or transfer should be considered consistent with the public welfare and conservation of water, to the local governmental entities, political subdivisions, and the public in the Taos Region.

B. Procedure:

1. Submission:

To ensure that the Committee is made aware of proposed appropriations and transfers from within the Taos Region in a timely fashion, any person or other entity who files an application with the State Engineer for approval of an appropriation or transfer of water originating in the Taos Region shall submit a copy of such application to the Committee on the same date as it is filed with the State Engineer. If the applicant fails to submit a copy of the application to the Committee, the Committee will proceed to present its findings to the Taos County Commission, other local governmental entities, political subdivisions, and the public without 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 and conservation impacts of the proposed appropriation or transfer.

3. Timing:

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 transfer's likely impact on the public welfare and conservation of water. Upon initial review, if the Committee is of the opinion that a proposed appropriation or transfer raises significant public welfare and conservation concerns, the Committee shall provide the applicant with an opportunity to submit additional information before the Committee makes its findings and recommendations.

As soon as the Committee has made its findings and recommendations, it shall transmit them to the local governmental entities and political subdivisions within the Region that have requested the Committee's input, the applicant, and the State Engineer, and it shall make them available to the public. The Committee shall transmit its findings and recommendations to local governmental entities, political subdivisions, and the public in time to allow them to make an informed decision regarding whether to protest the appropriation or transfer on public welfare and conservation grounds within the statutorily provided period.

4. Written Decisions

Upon its review of any proposed transfer or appropriation of water, the Committee shall make available to the public in written form any findings and/or recommendations concerning such appropriation or transfer's public welfare and conservation implications.

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

The Board of County Commissioners shall give the findings and recommendations of the Committee great weight in determining whether a proposed appropriation or transfer is consistent with the public welfare and conservation of water requirements under New Mexico law. The Board of County Commissioners recommends that other local governmental entities and political subdivisions within the Region, and the State Engineer, also give the findings and recommendations of the Committee great weight in determining whether a proposed appropriation or transfer is consistent with the public welfare and conservation of water requirements under New Mexico law.

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.

1. Local Government Protests:

The Board of County Commissioners shall protest a proposed appropriation or transfer if the Committee finds it to be inconsistent with the public welfare or conservation of water, unless there is a compelling reason not to protest the appropriation or transfer. The Board of County Commissioners recommends that other local governmental entities and political subdivisions within the Region also should protest a proposed appropriation or transfer if the Committee finds it to be inconsistent with the public welfare or conservation of water, unless there is a compelling reason not to protest the appropriation or transfer.

2. State Engineer Evaluation:

The Board of County Commissioners recommends that, in determining whether to permit a proposed appropriation or transfer of water from within the Taos Region, the State Engineer evaluate and make findings as to each of the individual public welfare and conservation criteria set forth in the Taos Regional Water Plan and this Ordinance.

The Board of County Commissioners joins the Taos Regional Water Plan in recommending that the State Engineer should only make findings and conclusions that are contrary to the Committee's findings and recommendations if there is a reasonable basis for doing so, in which case the State Engineer should make specific findings, in writing, to support that conclusion.

ARTICLE 3 COMMITTEE'S REVIEW FUNCTION

Section 3.1 General Considerations

In evaluating the public welfare and conservation implications of a proposed appropriation or transfer, the Committee shall bear in mind the limits of the sustainability capacity of the Region's surface and groundwater resources.

In evaluating the public welfare and conservation implications of a proposed appropriation or transfer, the Committee shall consider the direct, indirect, and long-term effects of the proposed appropriation or transfer.

In evaluating the public welfare and conservation implications of a proposed appropriation or transfer, the Committee shall consider the priority of senior water rights.

Because the Taos Region will continue to experience local growth a proposed appropriation or transfer of water from the Region shall only be considered consistent with the public welfare and conservation of water to the extent that it tends to satisfy the public welfare and conservation criteria set forth in this Ordinance and the Public Welfare and Conservation Statements of the Taos Regional Water Plan.

Section 3.2 Consideration of Specific Components

In performing its function of informing and advising the County's residents, the County Commission, and other governmental entities about the local and regional public welfare and conservation implications of a proposed water transfer or appropriation, the Committee shall evaluate the potential effect of the transfer or appropriation on each of the components identified in the Taos Regional Water Plan and found in this Ordinance to make up the public welfare and conservation of water for the Taos Region at the local and regional level.

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

A. Cultural Protection:

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 water supply of any traditional community within the Taos Region, and if so what the nature and extent of that effect appears likely to be. To be considered consistent with the public welfare and conservation a proposed appropriation or transfer from within the Taos Region should not reduce the water supply of any traditional community in the Region to such an extent as to jeopardize its continued vitality. 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 water supply of any traditional community within the Taos Region.

B. Agrarian Character:

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 local water supply for traditional agricultural land uses within the sub-region from which the water is proposed to be appropriated or transferred, and if so what the nature and extent of 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 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 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 water supply of any traditional agricultural land uses within the sub-region from which the water is proposed to be appropriated or transferred.

C. Ecological Health: Vitality of Watersheds and Ecosystems:

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 any river, creek, or spring in the Taos Region, and if so what the nature and extent of that effect appears likely to be. To be consistent with the public welfare and conservation, and recognizing the role and contribution of acequias to the ecology of the Taos Region, a proposed appropriation or transfer of water from within the Taos Region should not diminish the flow rate or water quality of any river, creek, or spring in the Taos Region 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 Region 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 transfer or appropriation appears likely to affect the river, creek, or spring in the Taos Region.

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 18TH 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

Elaine S. Montaña, 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