

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2009-38

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4
5 AN ORDINANCE

6 REPEALING SECTIONS 14-8.11(G)(3), 14-8.13, 14-8.16 AND 14-8.17 SFCC 1987
7 REGARDING ANNUAL WATER BUDGET, WATER RIGHTS TRANSFER
8 REQUIREMENTS AND WATER BANKING; CREATING A NEW SECTION 14-8.13
9 SFCC 1987 REGARDING DEVELOPMENT WATER BUDGET REQUIREMENTS, A
10 NEW ARTICLE 25-9 SFCC 1987 REGARDING THE CITY WATER BUDGET, A NEW
11 ARTICLE 25-10 SFCC 1987 REGARDING THE CITY WATER BANK, A NEW
12 ARTICLE 25-11 SFCC 1987 REGARDING THE WATER RIGHTS TRANSFER
13 PROGRAM, AND A NEW ARTICLE 25-12 SFCC 1987 REGARDING THE WATER
14 CONSERVATION CREDIT PROGRAM; MAKING SUCH OTHER RELATED
15 CHANGES AS ARE NECESSARY.

16
17 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

18 Section 1. [REPEAL.] Section 14-8.11(G)(3) (being Ord. #2005-30(A) §16 as
19 amended) is repealed.

20 Editor's Note: The repeal of Section 14-8.11(G)(3) SFCC 1987 shall be effective on January
21 1, 2010.

22 Section 2. [REPEAL.] Section 14-8.13 SFCC 1987 (being Ord. #2002-29
23 §§5-11 as amended) is repealed.

24 Editor's Note: The repeal of Section 14-8.13 SFCC 1987 shall be effective on January 1,
25 2010.

1 **Section 3. A new Section 14-8.13 SFCC 1987 is ordained to read:**

2 **14-8.13 [NEW MATERIAL.] DEVELOPMENT WATER BUDGETS**

3 **(A) Summary**

4 Section 14-8.13 establishes:

- 5 (1) Procedures for the calculation of water budgets for development projects
6 proposing new City water system demand that must be offset; and
- 7 (2) Thresholds that determine which City water budget program applies to a
8 particular development project. The Water Conservation Credit Program,
9 Article 25-11 SFCC 1987, administers water conservation credits created
10 through conservation contracts or retrofit rebates at existing developed
11 property within the City's water service area which credits may be used
12 to offset new system demands of small development projects. The Water
13 Rights Transfer Program, Article 25-12 SFCC 1987, administers water
14 rights transfers required to offset new system demands of larger
15 development projects.

16 **(B) Development Water Budget**

- 17 (1) The development water budget shall be reviewed and approved by the
18 Engineering Section of the Water Division and shall contain the
19 following information:
- 20 (a) A description of all proposed and existing structures on the
21 subject parcel of land together with a complete description of all
22 proposed and existing water fixtures and other water using
23 devices and equipment to be installed or constructed on the
24 subject parcel (not including water to be used during and for
25 construction);

1 (b) A description of all proposed water uses proposed for the subject
2 parcel of land, separating such uses by indoor and outdoor
3 categories and including the total area of proposed and existing
4 landscaping; and

5 (c) A quantification in gallons and acre-feet of the total proposed
6 water usage on the subject parcel of land on an annual basis. In
7 the case of phased development, the quantification shall also
8 include the proposed water usage by each phase of development.

9 (2) Applicants may choose to:

10 (a) Allow the Water Division to calculate a development water
11 budget based on standard formulas using historical water use
12 data for similar type of development; or

13 (b) Develop a detailed alternative development water budget for the
14 development project supported by reliable data that demonstrates
15 that the anticipated annual water use will be less than if based on
16 the Water Division's standard formulas.

17 (3) When a proposed new structure or use replaces an existing structure or
18 use, and that new structure or use is similar to the existing structure or
19 use, and when the prior structure was occupied or the use active no less
20 than 12 months prior to application for which a development water
21 budget is required, the development water budget may be reduced to an
22 amount equal to the average annual consumption in the previous 24
23 months, or some other time period approved by the Governing Body for
24 a specific development.

25 (4) A development water budget may also be reduced by an amount equal to

1 a specific approved annual water allocation made by the Governing Body
2 for the development project as set forth in Article 25-9.6 SFCC 1987.

3 (5) The City shall allow reduction in the consumptive water rights required
4 to be transferred in this subsection by the amount of consumptive water
5 rights required for any Santa Fe Homes Program unit, a Housing
6 Opportunity Program unit as per a valid Housing Opportunity Program
7 Agreement or any dwelling unit meeting the definition of a low-priced
8 dwelling unit as set forth in Article 26-2 SFCC 1987. The reduction is
9 contingent upon the applicant entering into an agreement or other
10 approved document with the City regarding the low-priced dwelling
11 units. The document shall be recorded with the County Clerk and
12 Recorder's Office.

13 (6) A development water budget may be for a single phase of a multi-phase
14 development project.

15 **(C) Applicability of Development Water Budgets**

16 A development water budget shall be submitted with the following land use
17 applications:

18 (1) Final subdivision plats except:

19 (a) Plats for the purpose of creating tracts of land according to an
20 approved master plan where additional subdivision of land or a
21 more detailed development plan within the various tracts is still
22 necessary before permitting of dwelling units and other
23 buildings according to that master plan; and

24 (b) Plats where the proposed development is included in and
25 consistent with an already approved development water budget

1 and has complied with the water rights transfer program set forth
2 in Article 25-12 SFCC 1987 or the water conservation credit
3 program set forth in Article 25-11 SFCC 1987;

- 4 (2) Development plans, except preliminary development plans;
- 5 (3) Development plans for each phase of a phased development, but each
6 phase shall be subject to Article 25-12;
- 7 (4) Major project plans in the Business Capital District;
- 8 (5) Building permits (whether or not a meter for service has been previously
9 installed) except the following:
- 10 (a) Where covered by and consistent with an already approved
11 development water budget that has complied with the water
12 rights transfer program set forth in Article 25-12 SFCC 1987 or
13 water conservation credit program set forth in Article 25-11
14 SFCC 1987;
- 15 (b) Replacement of 33% or less of an existing building;
- 16 (c) Remodels;
- 17 (d) Additions:
- 18 (i) Where there are no new fixture installations;
- 19 (ii) Where there are up to three new water fixtures provided
20 that the increased building area does not exceed 500
21 square feet; and
- 22 (e) Shell only permits which will later require permits for tenant
23 improvement permits at which time the development water
24 budget is required;
- 25 (6) Secondary plumbing permits (plumbing permits independent of a

1 building permit) resulting in an increase of water use, unless multiple
2 installations in either commercial or multifamily residential uses, except
3 the following:

- 4 (a) A spa not exceeding 500 gallons;
- 5 (b) An oversized tub not exceeding 100 gallons;
- 6 (c) A swamp cooler;
- 7 (d) A recirculating fountain not exceeding 1000 gallons of
8 containment area; and
- 9 (e) A garden pond not exceeding 2000 gallons;

- 10 (7) Changes in permitted land use resulting in an increase in water use;
- 11 (8) Projects located outside the City limits, prior to application for an
12 agreement to construct and dedicate water lines; and
- 13 (9) City of Santa Fe, Santa Fe County, New Mexico, Federal, and any other
14 governmental, or quasi-governmental development not subject to the
15 City's development review or building permit processes which will
16 require water service from the City's water system.

17 **(D) Monitoring, Violations, Penalties, Remedies, and Disclosure**

18 The following shall apply to alternative development water budgets, as set forth
19 in §14-8.13(B)(2)(b) and to water conservation contracts as set forth in the water
20 conservation credit program, §25-11.3(C)(1):

- 21 (1) Beginning the first year that a customer's water service is subject to
22 usage restrictions from an alternative development water budget or a
23 contract for water conservation the Water Division shall monitor water
24 customer's water usage on an annual basis.
- 25 (2) If a water customer exceeds water usage allowable under the customer's

1 alternative development water budget or conservation contract in any
2 annual period measured from the commencement of the restriction, the
3 Water Division shall monitor the customer's water usage on a monthly
4 basis and compare current monthly use to the previous year's use in the
5 same month to determine whether the customer has returned to
6 compliance. The Water Division shall, at the same time, notify the
7 customer that the alternative development water budget or conservation
8 contract has been exceeded, that the customer's usage will be monitored
9 monthly to determine whether the customer has reduced water usage to
10 the amount permitted under the alternative development water budget or
11 the conservation contract, and the consequences that will ensue if the
12 customer does not return to compliance. Water customers shall be
13 charged a fifty percent surcharge over the base rate of water on the
14 excess water delivered over annual budgeted or contracted amount for
15 that year.

16 (3) If, after four months of monitoring, the customer is in compliance with
17 the alternative development water budget or conservation contract, the
18 customer shall be so informed and shall then be monitored on an annual
19 basis.

20 (4) If, after four months of monitoring, the customer's water usage still
21 exceeds the alternative development water budget or conservation
22 contract by 10% or more on a monthly pro-rata basis, the Water Division
23 shall immediately notify the customer that the customer has exceeded the
24 alternative development water budget or conservation contract. The
25 Water Division shall re-calculate the alternative development water

1 budget or the conservation contract for the customer based on actual
2 consumption over the period of noncompliance and shall notify the
3 customer of the additional water rights, water credits or conservation
4 credits needed to meet the new budget or contract. If the customer does
5 not transfer sufficient water rights, water credits or conservation credits
6 to the city within 90 days to make up the difference, the water division
7 shall transfer sufficient water conservation credits to the customer to
8 offset the net difference and shall include in the customer's next billing
9 the current cost of those water conservation credits. In addition, the city
10 shall bill the customer the fifty percent surcharge for the water delivered
11 during this second year over the budgeted or contracted amount. A
12 customer may, at any time, transfer additional water rights, water credits
13 or conservation credits to the city to increase the customer's alternative
14 development water budget or conservation contract restriction in order to
15 forestall the imposition of further surcharges for excess water usage.

16 (5) Customers that fail to provide sufficient water rights, water credits or
17 conservation credits or to pay the cost of the water conservation credits
18 and the imposed surcharges shall have water service disconnected in
19 accordance with Rule No. 9, Exhibit A of Chapter 25 SFCC 1987.

20 (6) Representatives of a development project that have adopted an
21 alternative development water budget and property owners that have
22 agreed to a conservation contract shall provide disclosure statements to
23 prospective buyers which shall be included on all recorded plats and
24 development plans. The statements shall include the amount of water to
25 which each lot, unit or other portion of the project is limited under the

1 alternative development water budget or conservation contract and shall
2 include a description of the penalties set forth in this paragraph.

3 **(E) Dedication of Water to Development**

4 (1) A building permit application shall not be approved until the applicant
5 has dedicated water to meet the approved development water budget for
6 the development project plus a 9.8% contingency that covers water
7 utility delivery requirements, as documented by the Water Division
8 dedication form and complied with the conditions thereof. This
9 contingency water is comprised of water used for community health and
10 safety purposes, such as fire fighting and fire hydrant testing, water used
11 in production for flushing of water distribution and sewer lines, and also
12 results from meter errors, line leaks, and losses from water main breaks.

13 (2) Based on the approved water budget for a development project, the
14 applicant shall obtain water through either the water rights transfer
15 program (Article 25-12 SFCC 1987) or the water conservation credits
16 program (Article 25-11 SFCC 1987) to meet the development water
17 budget according to the following criteria:

18 (a) Applications for residential uses which have a development
19 water budget equal to or greater than ten acre-feet per year shall
20 obtain water through the water rights transfer program;

21 (b) Applications for residential uses which have a development
22 water budget less than ten acre-feet per year, designated as small
23 development projects, shall obtain water through the water rights
24 transfer program or the water conservation credit program or
25 through a combination of both;

1 (c) Applications for non-residential uses which have a development
2 water budget equal to or greater than five acre-feet per year shall
3 obtain water through the water rights transfer program;

4 (d) Applications for non-residential uses which have a development
5 water budget less than five acre-feet per year, designated as
6 small development projects, shall obtain water through the water
7 rights transfer program or the water conservation credit program
8 or through a combination of both;

9 (e) Applications with both residential and non-residential uses each
10 in substantial amounts which have a development water budget
11 equal to or greater than seven and one half (7½) acre feet per
12 year shall obtain water through the water rights transfer program;
13 and

14 (f) Applications with both residential and non-residential uses each
15 in substantial amounts which have a development water budget
16 less than seven and one half (7½) acre feet per year shall either
17 obtain water through the water rights transfer program or the
18 water conservation credit program or through a combination of
19 both.

20 **(F) Variances**

21 Variances to the requirements set forth in §14-8.13 shall be heard by the
22 Governing Body according to the procedures set forth in §14-3.16.

23 **(G) Appeals**

24 Appeals of decisions of the City staff regarding §14-8.13 shall be heard as set
25 forth in §14-3.17.

1 **Editor's Note: Section 14-8.13 SFCC 1987 shall be effective on January 1, 2010.**

2 Section 4. **[REPEAL.]** Section 14-8.16 SFCC 1987 (being Ord. #2005-29 §2
3 as amended) is repealed.

4 **Editor's Note: The repeal of Section 14-8.16 SFCC 1987 shall be effective on January 1,**
5 **2010.**

6 Section 5. **[REPEAL.]** Section 14-8.17 SFCC 1987 (being Ord. #2006-40 §3
7 as amended) is repealed.

8 **Editor's Note: The repeal of Section 14-8.17 SFCC 1987 shall be effective on January 1,**
9 **2010.**

10 Section 6. **[REPEAL.]** The following definitions in Article 14-12 SFCC 1987
11 (being Ord. #2001-38, §2 as amended) are repealed:

12 **CONSUMPTIVE WATER RIGHTS**

13 As used in §14-8.16, means that portion of the consumptive use amount determined by the State
14 Engineer upon transfer that is divertible by the City under an approved permit.

15 **EXCESS WATER RIGHTS**

16 The water rights which have been designated for a particular site water budget but which would
17 exceed the requirements of that budget.

18 **LINE LOSS**

19 As used in §14-8.16, means water escaping or leaking from the City's water distribution system.

20 **TRANSFEROR**

21 The person or entity seeking to transfer water rights into the water rights bank.

22 **UNDESIGNATED WATER RIGHTS**

23 The water rights which have not been designated for credit on a site water budget.

24 **WATER RIGHT BANK**

25 That collection of consumptive use water rights approved for transfer to the City but which have

1 not been assigned to any site water budget and which remain held in the name of the transferor or
2 assigns.

3 **Editor's Note: The repeal of the preceding definitions in Article 14-12 SFCC 1987 shall be**
4 **effective on January 1, 2010.**

5 **Section 7. The following definitions in Article 14-12 SFCC 1987 (being Ord.**
6 **#2001-38, §2 as amended) are amended to read:**

7 **DESIGNATED WATER RIGHTS**

8 The water rights which have been designated to be applied in complete or partial fulfillment of a
9 development water budget.

10 **FIXTURE**

11 Luminaire.

12 **Editor's Note: The amendments to the preceding definitions in Article 14-12 SFCC 1987**
13 **shall be effective on January 1, 2010.**

14 **Section 8. [NEW MATERIAL.] The following definition is added to Article**
15 **14-12 SFCC 1987 (being Ord. #2001-38, §2 as amended):**

16 **DEVELOPMENT WATER BUDGET**

17 A written document demonstrating the anticipated annual water demand on the City's water
18 system by a proposed structure or development project resulting from both indoor and outdoor
19 water use.

20 **Editor's Note: This preceding definition in Article 14-12 SFCC 1987 shall be effective on**
21 **January 1, 2010.**

22 **Section 9. Section 25-1.1 SFCC 1987 (being Ord. #1991-4, §1 as amended) is**
23 **amended to read:**

24 **25-1.1 Definitions.**

25 As used in this section:

1 *Affordable housing* means housing meeting the criteria for affordability as certified by the
2 city's office of affordable housing including, but not limited to, housing opportunity program
3 units, Santa Fe homes program units, low priced dwelling units as defined in Chapter 26 SFCC,
4 affordable units located in city sponsored projects.

5 *Applicant* means the person or entity seeking to transfer water rights to the city's permit
6 for dedication to a development in satisfaction of its water budget or for deposit in the city's
7 water bank.

8 *Building* means a structure or parts of a structure covered and connected by a permanent
9 roof and intended for shelter, housing or enclosure. As defined here, a building may be attached
10 to other buildings provided it is separated from other buildings by fire resistive construction.

11 *City manager* means the city manager of the city of Santa Fe or his designee.

12 *Construction* means any new residential, commercial or industrial construction and/or
13 renovation, including but not limited to any townhouse, hotel, motel or commercial unit not
14 completed or under construction on the effective date of this Ordinance.

15 *Consumptive use water rights* means that portion of the consumptive use amount
16 determined by the office of the state engineer upon transfer that can be put to beneficial use by
17 the city under an approved permit.

18 *Cool-season grass* means grass species that have active growth between fifty (50) and
19 eighty (80) degrees Fahrenheit, earlier germination, later dormancy and higher water
20 requirements. Species include but are not limited to: Kentucky Bluegrass, Ryegrass, Tall Fescue
21 and Bentgrass.

22 *Development project* means an application for a development or a phase of development
23 for which an infrastructure financial guarantee has been posted requiring compliance with Article
24 25-12 SFCC 1987.

25 *Dwelling unit* means one (1) room, or rooms connected together, constituting a separate,

1 independent housekeeping establishment for owner occupancy, or rental or lease and physically
2 separated from any other rooms or dwelling units that may be in the same structure and
3 containing independent cooking and sleeping facilities. A dwelling unit may include, but is not
4 limited to, a single family house, an apartment unit, condominium unit, mobile home, or a guest
5 house. It does not include a motel or hotel unit or similar transient lodging or rest homes, nursing
6 homes or similar institutional facilities.

7 *Effluent* for purposes of this chapter means treated wastewater whether publicly or
8 privately owned.

9 *Excess water rights* means water rights which have been designated for a particular
10 development water budget but which would exceed the actual requirements of that development.

11 *Golf course* means the turf area used primarily for golf that includes play areas such as
12 greens, tees, fairways, and roughs.

13 *Grey water* means household wastewater other than from water closets and kitchen sinks.

14 *Irrigation* means the intentional application of water for purposes of sustained plant
15 growth and/or optimized production.

16 *Irrigation meter* means an additional meter installed primarily for irrigation or other
17 outdoor uses such as, but not limited to, pool or spa filling or vehicle washing.

18 *Occasional flow* means weekly residential or commercial applications of water for
19 specific washing or cleaning purposes where the water specifically used for that purpose is
20 monitored through the use of quick-acting positive shutoff hose nozzle by the responsible party
21 and allowed to flow into adjacent property or public or private right-of-way or easement.

22 *Private right-of-way* means paved or unpaved streets, alleys, drainage or other private
23 easements and lined or unlined drainage channels, which comprise or impact the local or
24 municipal storm drainage system.

25 *Public right-of-way* means paved or unpaved streets, alleys, drainage, or other public

1 easements and lined or unlined drainage channels, which comprise the municipal storm drainage
2 system.

3 *Responsible party* means the owner, manager, supervisor, or person in charge of the
4 property, facility or operation during the period of time the violation(s) are observed.

5 *Santa Fe watershed* means that area owned by the city or the U.S. Forest Service lying
6 east of the Santa Fe grant, maintained for the city's water supply.

7 *Sports field* means a turf area used primarily for organized sports such as football, soccer,
8 baseball, etc.

9 *Transferor* means a person or entity to which the city has issued a water transfer
10 certificate following successfully transferred water rights to the city's permit and conveyance of
11 water rights title to the city.

12 *Undesignated water rights* mean water rights which have not been designated for credit
13 on a development water budget.

14 *Warm season grass* means grass species that have active growth above seventy (70)
15 degrees Fahrenheit, later germination, earlier dormancy and less water required. Species include
16 but are not limited to: Buffalo Grass, Blue Grama Grass, Zoysiagrass, St. Augustine Grass and
17 Bermudagrass.

18 *Wastewater* for purposes of this chapter means the liquid and water carried waste or
19 sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities
20 and institutions whether treated or untreated.

21 *Water* means water provided through any system through which the residents of the city
22 receive their water or any extensions thereof over which the city has jurisdiction.

23 *Water credit* means a consumptive use water right that has been transferred to the city's
24 permit, title to which has been conveyed to the city, and which is held in the city's water bank in
25 the name of a transferor.

1 *Water service connection* means the physical connection of a property to the city water
2 system.

3 *Water shortage* means a condition wherein the real availability of the supply of water is
4 less than the projected demand for water as defined by the city upon review of available data.

5 **Editor's Note: The definitions affordable housing, applicant, consumptive use water rights,**
6 **development project, excess water rights, transferor, undesignated water rights and water**
7 **credit in Section 25-1.1 SFCC 1987 shall be effective on January 1, 2010.**

8 **Section 10. A new Article 25-9 SFCC 1987 is ordained to read:**

9 **25-9 [NEW MATERIAL.] CITY WATER BUDGET.**

10 **Section 11. A new Section 25-9.1 SFCC 1987 is ordained to read:**

11 **25-9.1 [NEW MATERIAL.] Short Title.**

12 Article 25-9 SFCC 1987 shall be referred to as the City Water Budget Ordinance.

13 **Section 12. A new Section 25-9.2 SFCC 1987 is ordained to read:**

14 **25-9.2 [NEW MATERIAL.] Authority.**

15 A. This Article 25-9 SFCC 1987 and related Articles 25-10, 25-11 and 25-12 SFCC
16 1987 are enacted pursuant to the express statutory authority conferred upon municipalities to
17 enact ordinances pursuant to its police power (NMSA §3-17-1 B (1978)) and the power of
18 municipalities to acquire and hold water rights in order to plan for reasonable development
19 pursuant to NMSA §72-1-9 (2006).

20 B. Such articles are also adopted pursuant to the city of Santa Fe's powers under its
21 municipal charter, adopted effective March 15, 1998, as amended effective May 5, 2008, pursuant
22 to the Municipal Charter Act, sections 3-15-1 to 3-15-16 NMSA 1978, and Article 10, §6 of the
23 Constitution of New Mexico.

24 C. A reasonable exercise of municipal authority includes planning for the operation
25 and growth of the municipal water utility, and planning for orderly urban development in

1 furtherance of the public health, safety and welfare. Such planning includes the regulation of the
2 amount and types of uses of water from the city's system to ensure that a reliable source of water
3 exists to meet water requirements of the existing customers and that any additional supplies of
4 water in the system are allocated in a manner consistent with priorities established by the
5 governing body.

6 **Section 13. A new Section 25-9.3 SFCC 1987 is ordained to read:**

7 **25-9.3 [NEW MATERIAL.] Legislative Findings.**

8 A. The city has the responsibility to consider the nature of its water supplies. Some
9 of the city's water supplies are dependent on annual precipitation, and in times of shortage or
10 drought, this dependence may create significant variability in the seasonal and annual water
11 supply. The city's groundwater supplies are reliable if not over used.

12 B. The governing body recognizes that it is in the best interest of the health, safety
13 and welfare of all citizens of Santa Fe that the city take the steps necessary to accurately
14 determine the level of demand on the city's water system to ensure that the current and future
15 water needs and priorities of the city and its citizens are met and that the legal obligations of the
16 city in operating the city water system are being and will continue to be met.

17 **Section 14. A new Section 25-9.4 SFCC 1987 is ordained to read:**

18 **25-9.4 [NEW MATERIAL.] Purpose.**

19 The purpose of adopting Article 25-9 SFCC 1987 is to promote the following principles:

20 A. The city should not allow increased demand on the water system without
21 adequate supply to meet this demand.

22 B. The city's water supplies should be used as efficiently as possible.

23 C. Anyone seeking new land use development should be responsible either for
24 offsetting new demand through conservation measures or transferring to the city an equivalent
25 amount of water rights that can be diverted through the city's infrastructure.

1 D. Water that is made available as a result of the city's water rights purchases,
2 leases, offsetting conservation measures such as retrofitting high-use fixtures and appliances with
3 low-use fixtures and appliances and increased water supply from city-related infrastructure
4 projects allowing reuse of water or return flow credits should be allocated to uses and projects
5 meeting the city's priorities including creation of a living Santa Fe River.

6 E. The city should use in its water planning accurate quantifications of the city's
7 water supply and the demands upon the city's water supply.

8 F. The city should manage its water resources to maintain its ability to provide a
9 stable, predictable, and adequate water supply.

10 G. [→]The city shall make every reasonable effort to maintain a minimum flow in the Santa
11 [^]Fe River and to sustain a healthy riparian ecosystem.

12 **Section 15. A new Section 25-9.5 SFCC 1987 is ordained to read:**

13 **25-9.5 [NEW MATERIAL.] Annual Water Budget.**

14 On an annual basis, the water division shall conduct an evaluation of the city's total water
15 system supply and total water system demand, effective for the twelve month period from April 1
16 to March 31. The water division shall summarize this evaluation in the water budget report and
17 present the report to the public utility committee at the regularly scheduled April meeting and to
18 the governing body at the regularly scheduled May meeting. The report shall include:

19 A. The city's current total water supplies, under the present water resource
20 management policies, including:

- 21 (1) Water rights available to the city;
- 22 (2) Long-term sustainable yield from those water rights;
- 23 (3) Effect that a range of drought conditions would have on that
24 sustainable yield; and
- 25 (4) Wet water available that year;

1 B. The total water demand including:

2 (1) Actual demands upon the city's water service itemized into
3 amounts to serve current customers, city uses, line loss and other actual current
4 demands;

5 (2) Utility reserve;

6 (3) Anticipated demands upon the city's water service from future
7 customers with valid written agreements that will require water service within the
8 twelve month period;

9 (4) Special contractual demands (e.g. Las Campanas, county of
10 Santa Fe); and

11 (5) Non-revenue water demands including total system losses set out
12 by categories of loss;

13 C. Water system annual operating plan estimating water production from
14 the city's various supplies to meet projected annual demand;

15 D. Water resource annual management plan describing the impacts on the
16 city's water resources resulting from the annual operating plan, as well as any planned
17 actions to mitigate those impacts;

18 E. 20-year supply-demand projection, including near- and long-term
19 anticipated demands upon the city's water service based on current growth projections
20 and anticipated demands of future customers with valid written agreements;

21 F. The quantity of water, if any, by which the sustainable water supply
22 exceeds committed demand;

23 G. Status of the city's water conservation credit and water rights transfer
24 programs; and

25 H. Quantification of all water credits held in the city water bank, pursuant to

1 Article 25-10 SFCC 1987, including water rights belonging to the city resulting from
2 water rights purchases and leases, water conservation credits pursuant to Article 25-11
3 SFCC 1987, water held for affordable housing, and water held to meet the anticipated
4 long-range surface water supply gap resulting from water right permit offset
5 requirements.

6 **Section 16. A new Section 25-9.6 SFCC 1987 is ordained to read:**

7 **25-9.6 [NEW MATERIAL.] Allocation of City's Available Water.**

8 A. Upon review of the annual water budget, the governing body shall determine if
9 water is available for allocation. Water available for allocation shall be derived only from the
10 following sources:

11 (1) The portion of surplus sustainable water supply in excess of committed
12 demand that the governing body has transferred to the city water bank;

13 (2) City's water rights purchases and leases deposited in the city water bank;

14 (3) Retrofit rebate conservation credits deposited in the city water bank
15 under the water conservation credit program set forth in Article 25-11 SFCC 1987;

16 (4) Conservation credits donated to the city rebates under the water
17 conservation credit program set forth in Article 25-11 SFCC 1987; and

18 (5) Infrastructure projects allowing reuse of water or return flow credits.

19 B. The water available for allocation shall be held in the city water bank established
20 pursuant to Article 25-10 SFCC 1987.

21 C. The governing body may allocate by resolution some or all of the water available
22 for allocation to both city and other uses and projects that meet the city's priorities.

23 D. In making allocations, the governing body shall give priority to the following
24 uses:

25 (1) Annual allocations of water to affordable housing shall be made for at

1 least three consecutive future years, and each year's allocation shall be set aside in a
2 separate affordable housing account in the city water bank. When a specific development
3 receives final approval, the water division shall debit the appropriate year's affordable
4 housing account in the city water bank, as set forth in Article 25-10 SFCC 1987, for the
5 water necessary to serve the affordable housing in the development and issue a water
6 allocation approval form for that project. At the time of each annual allocation, the
7 governing body shall adjust allocations made in previous years to account for changes
8 that may have occurred in previously identified affordable housing projects in the
9 intervening year and return to the city's pool of available water any water that is not
10 being used as a result of proposed affordable housing project's being withdrawn or a
11 reduction in its anticipated water demand.

12 (2) Water available from retrofit rebate conservation credits in the water
13 bank shall be allocated for sale to developers of small development projects as set forth in
14 Section 14-8.13(E)(3)(b) and (d). The city shall maintain in the water bank a reserve of
15 25 AFY from retrofit rebate conservation credits for sale to water customers to remedy
16 violations of restrictions under alternative development water budgets or water
17 conservation contracts pursuant to Section 14-8.13(D)(4).

18 (3) Water right permit offset requirements, accounted for in the long-range
19 surface water supply gap account held in the city's water bank;

20 (4) City projects including, but not limited to, parks and open space,
21 affordable housing, water for the Santa Fe River, city buildings and other city facilities;

22 (5) Other projects in which the city is a partner; and

23 (6) Private or non-city public uses and projects which recognize other
24 city priorities such as economic development and stability, energy efficiency, job
25 growth and community health.

1 E. After the governing body has approved an annual water allocation for a specific
2 project, the water division shall debit the city's account in the city water bank and credit a special
3 account for that specific project. When the specific project is ready to obtain building permits,
4 the developer shall withdraw the water credits from the special account, dedicate them to meet all
5 or part of the approved development water budget for the development, as documented by a
6 dedication form from the Water Division, and provide that water dedication form to the land use
7 department. That dedicated water shall become a permanent portion of total water system demand
8 calculations unless it shall expire or be relinquished as provided in Section 25-9.6(F)(3) SFCC
9 1987 below.

10 F. A water allocation by the Governing Body:

11 (1) only satisfies a development water budget; it creates no other land use
12 approvals or right to approval of the requested number of lots, units or commercial
13 development, or commercial buildings, building permits or water meters for a proposed
14 development project. The actual number of lots or units, or the amount and type of
15 commercial development or the number of building permits or water meters that may be
16 approved shall be determined by the appropriate development, permit or meter
17 application review process.

18 (2) is issued for specific developments, building permits or water hook-ups
19 and specific geographic sites and they shall not be moved, sold, traded, transferred or
20 exchanged in any way for different developments, building permits or water hookups.

21 (3) if not dedicated to an approved development plan or building permit
22 within two years of the allocation approval, or by some other date approved by the
23 governing body, shall revert back the city's credit in the water bank. An applicant may
24 reapply for the previously allocated water credits when the previously designated
25 development project is ready to proceed to the appropriate stage in the development

1 permitting process. An applicant may relinquish allocated water credits at any time and
2 the water credits shall revert back the city's credit held in the city's water bank.

3 **Editor's Note: Article 25-9 SFCC 1987 shall be effective on January 1, 2010.**

4 **Section 17. A new Article 25-10 SFCC 1987 is ordained to read:**

5 **25-10 [NEW MATERIAL.] CITY WATER BANK.**

6 **Section 18. A new Section 25-10.1 SFCC 1987 is ordained to read:**

7 **25-10.1 [NEW MATERIAL.] Short Title.**

8 Article 25-10 SFCC 1987 shall be referred to as the City Water Bank Ordinance.

9 **Section 19. A new Section 25-10.2 SFCC 1987 is ordained to read:**

10 **25-10.2 [NEW MATERIAL.] Purpose; Creation of City Water Bank.**

11 A. The purpose of the City Water Bank Ordinance is to establish a city water bank
12 consisting of various accounts holding water rights, water credits and water conservation credits.

13 B. In the city's account shall be placed consumptive use water rights purchased by
14 the city or leased by the city, water conservation credits obtained by the City under the water
15 conservation credit program pursuant to Article 25-11 SFCC 1987, and consumptive use water
16 rights obtained through infrastructure projects allowing reuse of water or return flow credits.

17 C. In separate accounts in the name of the person or entity transferring water to the
18 city shall be placed consumptive use water rights transferred to the city pursuant to Article 25-12
19 SFCC 1987 the water rights transfer program and office of the state engineer policies, guidelines
20 and procedures, and water conservation credits transferred to the bank by customers pursuant to
21 Article 25-11 SFCC 1987.

22 **Section 20. A new Section 25-10.3 SFCC 1987 is ordained to read:**

23 **25-10.3 [NEW MATERIAL.] Water Bank Transactions.**

24 A. Consumptive use water rights, water credits and water conservation credits may
25 be transferred to the city water bank by any of the following entities:

1 (1) The city to hold consumptive use water rights derived from water rights
2 purchases, leases and water conservation credits obtained from retrofit rebates and from
3 donation from customers signing conservation contracts; and infrastructure projects
4 allowing reuse of water and return flow credits;

5 (2) Water customers to hold water conservation credits transferable within
6 the city of Santa Fe's water system obtained through water conservation contracts as set
7 forth in the water conservation credit program pursuant to Article 25-11 SFCC 1987; and

8 (3) Water rights transfer program transferors to hold water credits consisting
9 of consumptive use water rights transferred to the city as set forth in Article 25-12 SFCC
10 1987 and pursuant to the office of the state engineer policies, guidelines and procedures
11 which credits may be applied to new development projects requesting service from the
12 city's water system.

13 B. All water rights, water credits and water conservation credits held in the city
14 water bank shall be accounted for in units of acre feet per year.

15 C. Upon request of an entity in whose name water rights, water credits or water
16 conservation water credits are on deposit in the city water bank, the city water bank shall:

17 (1) Transfer the water rights, water credits or water conservation credits to
18 another entity as directed;

19 (2) Issue a water dedication form that applies those water rights, water
20 credits or water conservation credits to a specific development water budget, or

21 (3) Issue a water dedication form that applies the water rights, water credits
22 or water conservation credits to the public purpose as directed.

23 D. Water rights or water conservation credits in the city's account may be
24 designated for specific purposes pursuant to resolution of the governing body adopted under the
25 city water budget process set forth in Section 25-9.5(B)(1) SFCC 1987 and applied to that

1 purpose by a water dedication form .

2 E. Banked water credits or water conservation credits may be sold or assigned at
3 any time by the owner, providing the owner notifies the city in writing of such a change in
4 ownership. If the owner's assign does not have a water bank account established, the city shall
5 establish a water bank account in the assign's name for the purpose of water credit or water
6 conservation credit assignment.

7 F. If, in the event the city no longer requires developers to offset the anticipated
8 demand of their development project, water credits held by water rights transfer program
9 transferor and water conservation credits held by water customers under the water conservation
10 credit program in the city water bank can be sold to the city at current market value.

11 **Section 21. A new Section 25-10.4 SFCC 1987 is ordained to read:**

12 **25-10.4 [NEW MATERIAL.] Water Bank Public Posting.**

13 The water division shall post on the city's website a public listing of the identity of each
14 person or entity that holds water rights on deposit in the water bank that requests listing and the
15 amount of water rights held by that person or entity.

16 **Editor's Note: Article 25-10 SFCC 1987 shall be effective on January 1, 2010.**

17 **Section 22. A new Article 25-11 SFCC 1987 is ordained to read:**

18 **Section 25-11. [NEW MATERIAL.] WATER CONSERVATION CREDIT**
19 **PROGRAM.**

20 **Section 23. A new Section 25-11.1 SFCC 1987 is ordained to read:**

21 **25-11.1 [NEW MATERIAL.] Short Title.** Article 25-11 SFCC 1987 shall be referred
22 to as the Water Conservation Credit Program Ordinance.

23 **Section 24. A new Section 25-11.2 SFCC 1987 is ordained to read:**

24 **25-11.2 [NEW MATERIAL.] Purpose.**

25 The purpose of the city water conservation program is to increase system-wide water

1 conservation, to facilitate offsetting impacts on the city's water supply system from new
2 development and to supply water for other municipal uses.

3 **Section 25. A new Section 25-11.3 SFCC 1987 is ordained to read:**

4 **25-11.3 [NEW MATERIAL.] Water Conservation Credits.**

5 A. A water conservation credit represents a fixed quantity of water expressed in acre
6 feet per year (AFY) that is transferable within the city of Santa Fe for annual usage.

7 B. Upon the request of a water customer, the city may schedule and conduct an on-
8 site water conservation audit to determine ways that the customer may reduce water usage and
9 provide an estimate of the quantity of water that can be conserved.

10 C. Water conservation credits may be created through either of the following two
11 methods:

12 (1) *Water Conservation Contract.* Water customers with a minimum current
13 uninterrupted five year history of water usage and water customers subject to an
14 alternative development water budget may agree to a water conservation contract with the
15 city water division to reduce the customer's annual water usage at a property the
16 customer owns from the past five year average or from the amount permitted under the
17 alternative development water budget by a fixed quantity in AFY, with a minimum
18 reduction of two one-hundredths (.02) of an AFY or 6,517 gallons per year. Conservation
19 measures shall be shown to consist of: for commercial customers, a change in the nature
20 of the business, a change in commercial process, retrofit of older commercial appliances
21 or fixtures with newer, more water-efficient units, or installation of new water
22 conservation technology; and for residential customers, retrofit of older appliances of
23 fixtures with newer, more water-efficient units or installation of new water conservation
24 technology. Changes from residential uses to commercial uses shall not be eligible for a
25 water conservation contract.

1 (a) Upon execution of the contract, the city's water division shall:

2 (i) Track that customer's usage annually to ensure that the
3 promised water conservation savings are achieved and maintained; and

4 (ii) Issue to the customer, water conservation credits
5 reflecting the volume of city-transferable water that the customer has
6 committed to conserve.

7 (b) These credits shall be deposited in the city water bank in the
8 customer's name.

9 (2) *Water Conservation Retrofit Rebate.* The city may obtain water
10 conservation credits through direct payment to residential and commercial customers of a
11 rebate upon the customers' replacement (retrofit) of a high-water-usage appliance, fixture
12 or landscaping with a qualifying water-saving appliance, fixture or landscaping, including
13 a rebate for the installation of rain barrels, or through the city's direct installation of water
14 saving devices provided that the following are met:

15 (a) The city shall require satisfactory proof to confirm the retrofit of
16 the high water usage appliance, fixture or landscaping with the qualifying
17 appliance, fixture or landscaping; and

18 (b) Participating customers shall allow the city to conduct an
19 inspection prior to, during, and after the installation of any retrofits and to
20 provide for collection and disposition of old appliances to ensure that the old
21 appliances do not return to service.

22 (c) Upon payment by the city of the retrofit rebate to a customer, the
23 city shall deposit in city water bank in the city's name the appropriate amount of
24 water conservation credits.

25 D. Water conservation credits shall be placed in the city's water bank.

1 (1) Water conservation credits realized through a water conservation
2 contract may be held in the customer's name for use by the customer to offset the impact
3 on the city's water system of new development projects as set forth in Section 14-
4 8.13(E)(3) SFCC 1987, donated to the city for a specified public purpose, transferred to
5 the city or, if the city chooses not to purchase the conservation credit, be transferred to
6 another individual.

7 (2) Water conservation credits realized through a retrofit rebate shall be held
8 in the city's name for resale to water customers who exceed their allowed water usage
9 under an alternative development water budget or a water conservation contract as set
10 forth in Section 14-8.13(D)(4) SFCC 1987, for purchase from the bank to offset the
11 impact on the city's water system of certain small development projects as set forth in
12 Section 14-8.13(E)(3)(b) and (d) SFCC 1987, or for any other public purpose.

13 (3) Certified retrofit credits generated from the previous retrofit program,
14 and held in the name of various persons or entities, shall be deposited in the water bank in
15 the holder's name and may be sold from there by the holder to fulfill an applicant's
16 approved development water budget.

17 **Section 26. A new Section 25-11.4 SFCC 1987 is ordained to read:**

18 **25-11.4 [NEW MATERIAL.] Administrative Procedures.**

19 A. The city shall establish administratively minimum standards of water-use
20 efficiency for qualifying retrofit rebate fixtures, appliances and landscaping, including but not
21 limited to toilets, waterless urinals, faucets, showerheads, clothes washers, dishwashers, and
22 weather-based irrigation controllers.

23 B. The city shall also establish administratively the quantity of water conserved by
24 each retrofit and the price that it will pay for each water conservation retrofit rebate credit.

25 **Section 27. A new Section 25-11.5 SFCC 1987 shall be ordained to read:**

1 **25-11.5 [NEW MATERIAL.] Monitoring, Violations, Penalties, and Remedies.**

2 Conservation contract water budgets shall be monitored and violations dealt with
3 pursuant to the provisions of Section 14-8.13(D) SFCC 1987.

4 **Editor's Note: Article 25-11 SFCC 1987 shall be effective on January 1, 2010.**

5 **Section 28. A new Article 25-12 SFCC 1987 is ordained to read:**

6 **25-12 [NEW MATERIAL.] WATER RIGHTS TRANSFER PROGRAM.**

7 **Section 29. A new Section 25-12.1 SFCC 1987 is ordained to read:**

8 **25-12.1 [NEW MATERIAL.] Short Title.**

9 Article 25-12 SFCC 1987 shall be referred to as the Water Rights Transfer Ordinance.

10 **Section 30. A new Section 25-12.2 SFCC 1987 is ordained to read:**

11 **25-12.2 [NEW MATERIAL.] Purpose.**

12 The purpose of the city's water rights transfer program is to administer water right
13 transfers designated for development projects as required by Section 14-8.13 SFCC 1987 and
14 water rights transfers designated for the city water bank as provided for in Article 25-10 SFCC
15 1987

16 **Section 31. A new Section 25-12.3 SFCC 1987 is ordained to read:**

17 **25-12.3 [NEW MATERIAL.] Designating Water Right Transfers.**

18 A. The applicant shall notify the city, in writing, at the time of the initial tender of
19 water rights for city review and possible acceptance, whether the water rights are to be dedicated
20 to a development water budget or whether the water right is designated for the city water bank. At
21 any time after their tender, water rights initially designated for the water bank can be dedicated to
22 a development by written notification provided by the applicant to the city.

23 B. Article 25-12 SFCC 1987 shall not apply to development for which an
24 annexation agreement has been approved by the governing body prior to July 27, 2005, which
25 specifically addresses water demand offset and the transfer of water rights to meet such water

1 demand.

2 **Section 32. A new Section 25-12.4 SFCC 1987 is ordained to read:**

3 **25-12.4 [NEW MATERIAL.] Tender of Water Rights.**

4 A. Water rights proposed to be transferred to the city's water system for dedication
5 to a development shall be tendered to the city attorney at whichever review stage is applicable
6 and occurs first in the review of a particular development, according to the following
7 requirements:

8 (1) Not later than 60 days after the final approval by the land use
9 department, the planning commission or the governing body of the final subdivision plat,
10 except for parcels within a commercial subdivision for which actual use with attendant
11 water budget has yet to be determined;

12 (2) Not later than 60 days after the final land use approval of the final
13 development plan by the land use department, the planning commission or the governing
14 body; or

15 (3) For developments located outside the city limits, prior to execution of an
16 agreement with the city to construct and dedicate water lines.

17 B. In the case of phased development, water rights tendered for the first
18 development phase shall adhere to Section 25-12.4(A) SFCC 1987 above, and water rights for a
19 subsequent phase of the development shall be tendered to the city attorney at the time that the
20 infrastructure financial guarantee is posted for that phase of development.

21 C. Water rights designated for the city's water bank may be tendered at any time.

22 D. The information contained in the tender shall include:

23 (1) The name and address of the current owner(s) and/or seller(s) of the
24 water rights;

25 (2) A description of the development project(s) for which the water rights

1 are designated, or direction that the water rights are designated for the city's water bank;

2 (3) Proof of ownership of the water rights in the form of: a declaration of
3 water rights; the most recent change of ownership form for the water rights; and any
4 deeds regarding the water rights in the county where the water rights are located;

5 (4) A title search or title report for the property to which the water rights are
6 appurtenant;

7 (5) Any permits, licenses, or court orders for the water rights, together with a
8 description of the place and purpose of use and point of diversion for the water rights;

9 (6) A copy of the agreement between the seller(s) and applicant under which
10 the applicant intends to acquire the water rights; a copy that redacts the price may be
11 acceptable; however, if the applicant uses a letter of credit or escrow pending application
12 approval, however, the city may require an unredacted copy;

13 (7) An affidavit from the seller(s) to the effect that the water rights are free
14 and clear of all encumbrances and liens, or that encumbrances shall be released before or
15 at closing and furthermore an affidavit to the effect that no part of the water rights has not
16 been lost through abandonment or forfeiture; and

17 (8) Such other documentation as the city may reasonably require related to
18 the water rights.

19 E. Upon tender of water rights for the city's review, the applicant, and not the
20 applicant's representative, shall sign an agreement prepared by the city attorney acknowledging
21 that the applicant shall abide with the conditions of this Article 25-12 SFCC 1987.

22 F. Upon tender of water rights to the city for review, the applicant shall pay a
23 deposit of \$1000 to be applied against the hydrologic due diligence review of the tendered water
24 rights.

25 **Section 33. A new Section 25-12.5 SFCC 1987 is ordained to read:**

1 **25-12.5 [NEW MATERIAL.] Due Diligence Review Procedure and City Fee.**

2 A. The city shall review the documentation provided within a 60 day due diligence
3 review period and determine in its sole discretion whether the water rights are acceptable to the
4 city for its use in its system and whether the transfer of the rights to a point of diversion
5 acceptable to the city is feasible.

6 B. During the review period, the city may request from the applicant additional
7 documentation to aid in the city's determination. Upon such request, the review period shall be
8 tolled until the additional documentation is provided to the city.

9 C. If the city determines that any or all of the water rights are acceptable to the city
10 for purposes of the transfer, the city shall notify the applicant in writing of the total amount of
11 consumptive use acre-feet per year acceptable to the city and the parties shall proceed to Section
12 25-12.6 SFCC 1987.

13 D. If the city determines that the water rights are not acceptable, then it shall notify
14 the applicant in writing, specifying the reason(s) for the city's determination and whether the city
15 believes the applicant can cure the reason for unacceptability. Upon notice to the applicant that
16 any or all of the water rights may be cured, a new review period shall commence, and the
17 applicant shall within the new review period provide a cure as specified by the city in its written
18 notice. If the city rejects the water rights, the applicant may tender other water rights for transfer.
19 Upon such tender, a new review period shall commence for the city. This process may be
20 repeated until the city accepts tender of all water rights required by the city.

21 E. Applicant shall reimburse the city for its hydrologic due diligence review of the
22 tendered water rights by paying the actual costs as evidenced by invoices from consultants prior
23 to the city's final written acceptance of water rights into the water rights transfer program.

24 **Section 34. A new Section 25-12.6 SFCC 1987 is ordained to read:**

25 **25-12.6 [NEW MATERIAL.] Acceptance of Water Right into the City Water Right**

1 **Transfer Program.**

2 Upon payment of the fees due from the applicant for the city's due diligence review and
3 determination that tendered water rights are acceptable to the city, the city shall issue to the
4 applicant the final written acceptance of the water rights into the water rights transfer program,
5 specifying the total amount of consumptive use in acre-feet per year that the city has approved.

6 **Section 35. A new Section 25-12.7 SFCC 1987 is ordained to read:**

7 **25-12.7 [NEW MATERIAL.] Water Right Transfer Application Procedure and**
8 **Payment of Fees and Costs.**

9 A. After city acceptance of water rights into the water rights transfer program, the
10 applicant shall prepare a draft application to the office of the state engineer to transfer the water
11 rights to the city's designated point of diversion. The draft application shall show the city as a co-
12 applicant. The draft application shall include no less than the total number of consumptive use
13 acre-feet accepted by the city. The applicant shall publish all necessary legal notices in
14 appropriate newspapers.

15 B. The content of the water rights transfer application shall be determined by the
16 applicant and the city and completed in a manner acceptable to the office of the state engineer.
17 The final water rights transfer application shall be executed by the seller, if applicable, the
18 applicant, and the city. Following the execution and submittal of the transfer application to the
19 office of the state engineer by the applicant, the applicant shall not file any subsequent office of
20 the state engineer application with regard to those water rights without the written consent of the
21 city.

22 C. The city and the applicant shall reach mutual agreement regarding the
23 application. The city shall have the discretion to modify or withdraw the application and to
24 discontinue the transfer process if proceeding threatens exercise of the city's water rights under
25 Permit No. RG-20516 *et al.* The applicant may also withdraw the application, provided the

1 applicant notifies the city in writing one week in advance of any such withdrawal.

2 D. The applicant shall pay applications fees required by the office of the state
3 engineer and legal notice publication fees and costs incurred in any administrative hearing as well
4 as subsequent appeals, if pursued. The city shall receive notice of any hearings and may
5 participate in the hearings as it deems appropriate. The city has ultimate decision-making
6 authority regarding any conditions of approval that any protestant or the office of the state
7 engineer may offer that affect the city's existing permit, RG-20516 *et al.* The applicant has
8 ultimate decision-making authority regarding any conditions of approval that any protestant or the
9 office of the state engineer might offer that affect the validity and extent of the water rights being
10 transferred.

11 **Section 36. A new Section 25-12.8 SFCC 1987 is ordained to read:**

12 **25-12.8 [NEW MATERIAL.] Financial Guarantee Procedure for Issuance of a**
13 **Building Permit Prior to Completion of Water Rights Transfer and Conveyance.**

14 A. These financial guarantee provisions shall apply to all water rights designated for
15 development projects within the city limits. These financial guarantee provisions may also apply
16 to water rights designated for development projects connecting to the city water system outside
17 the city limits.

18 B. No building permit shall be issued before water rights transfer completion and
19 the conveyance of water rights to the city, as set forth in Sections 25-12.10 and 25-12.11 SFCC
20 1987, except as provided in this section.

21 C. The applicant may apply for a building permit before water rights transfer
22 completion and conveyance of water rights to the city if the city has accepted the water rights as
23 set forth in Section 25-12.6 SFCC 1987 and a water right transfer application has been filed with
24 the office of the state engineer as set forth in Section 25-12.7 SFCC 1987. The applicant may
25 obtain such a building permit only if escrow funds or an irrevocable letter of credit is provided to

1 the city in a manner acceptable to the city. The purpose of this provision is to secure the
2 applicant's obligation to transfer water rights that can either be used for the city's water right
3 permit compliance or diverted and delivered by the city water utility in such a manner that the
4 development, based upon the approved development water budget, does not increase the demand
5 on the city's water utility.

6 D. The escrow funds or irrevocable letter of credit shall be in the amount of 100% of
7 the current value of the water rights sought to be transferred by the applicant and shall be
8 provided at the time of building permit application.

9 E. The current value of the water rights shall be presumed to be the current fair
10 market value of pre-1907 consumptive use water rights from the Middle Rio Grande Basin. The
11 city shall have the sole discretion to determine the current value of the water rights, which
12 determination shall be reasonably made based upon the known market for such rights and upon
13 the purchase price of the water rights, as evidenced by the purchase agreement required in Section
14 25-12.4(D) SFCC 1987.

15 F. Upon completion of the water right transfer and issuance of the city's water
16 rights transfer certificate as set forth in Section 25-12.10 SFCC 1987 for the full amount accepted
17 by the city, the city shall release the irrevocable letter of credit. In the case of escrow, upon
18 completion of the water right transfer of the full amount accepted by the city and issuance of the
19 city's water rights transfer certificate as set forth in Section 25-12.10 SFCC 1987 the city shall
20 return to the applicant the balance of escrow funds, as well as any accrued interest on this
21 amount.

22 G. If the amount of water rights approved by the office of the state engineer for
23 transfer is less than the amount of water rights the tender of which was accepted by the city, the
24 applicant shall have 90 days from a final, non-appealable order within which to make up the
25 difference by conveying to the city the balance of required water rights or water credits. If the

1 applicant does not convey the required water rights or water credits within this time, the city shall
2 transfer to the water division's operating budget a portion of the applicant's escrow fund or
3 irrevocable letter of credit equal to the proportion of the water rights for which the office of the
4 state engineer denied transfer. The transfer of the funds shall be in lieu of the requirement on the
5 applicant to transfer any additional water rights. Upon such transfer of funds to water division,
6 the applicant shall be deemed to have fulfilled its requirement to transfer water rights and the city
7 shall release the portion of the letter of credit or return to the applicant the portion of the escrow
8 fund that represents the percentage of the accepted water rights required to be transferred for the
9 development water budget as compared to the amount of water rights that were actually
10 transferred to the city, less any unpaid transaction costs owed by the applicant, as well as any
11 accrued interest on this amount.

12 **Section 37. A new Section 25-12.9 SFCC 1987 is ordained to read:**

13 **25-12.9 [NEW MATERIAL.] Office of State Engineer's Approval of the Water**
14 **Right Transfer, Appeals, and Conveyance of Water Rights Title to City.**

15 A. A water right transfer shall be deemed complete once the office of the state
16 engineer has approved a transfer of all or a portion of the water right to the new point of
17 diversion(s) and the new place and purpose of use and has issued a final permit for the transfer
18 that is not appealed, or the permit is appealed but the permit becomes a non-appealable, final
19 order by the office of the state engineer.

20 B. The city, as the lead applicant, shall have final decision-making authority
21 regarding appealing any conditions of approval that affect Permit No. RG-20516 *et al.* unless the
22 applicant or the city chooses to withdraw the application and can do so in such a way that there
23 will be no effect from the application process on Permit No. RG-20516 *et al.* The applicant shall
24 have final decision-making authority regarding appealing any decisions affecting the validity and
25 extent of the water rights being transferred. The party that decides to appeal shall pay the cost of

1 the appeal.

2 C. If the application is denied and is not appealed, then a new tender period shall
3 commence for the applicant.

4 D. When water rights are dedicated to a specific development water budget under
5 Section 25-12.3(A), upon completion of the water right transfer, the applicant shall within 90
6 days, convey to the city all right, title and interest to the transferred water rights, at no additional
7 cost, free and clear of all encumbrances and with special warranty covenants. Within this same 90
8 day period, the applicant shall execute and file all appropriate documentation with the Santa Fe
9 county clerk and with the office of the state engineer in order to effectuate timely issuance of the
10 office of the state engineer final permit, pursuant to NMSA 1978, § 72-1-2.1. If the applicant fails
11 to do so, the city shall disallow use of water from the city's system for the applicant's
12 development unless the applicant has provided a letter of credit or escrow funds as set forth in
13 Section 25-12.8 SFCC 1987 in which case the letter of credit or the escrow funds shall be retained
14 by the city. The applicant shall reimburse the city for all water rights transfer application
15 transaction costs borne under Section 25-12.6 SFCC 1987. Unpaid transaction costs shall be
16 treated as utility charges as set forth in Sections 15-1.4 and 15-1.5 SFCC 1987.

17 E. When water rights have not been designated for a specific development water
18 budget, upon completion of the water right transfer, the water rights shall be held as undesignated
19 water rights in the water bank in the applicant's name. At such time as the water rights are
20 designated for a specific development water budget, the applicant shall convey legal title to the
21 city and file an appropriate change of ownership with the OSE and the Santa Fe County Clerk as
22 required in subsection D above.

23 **Section 38. A new Section 25-12.10 SFCC 1987 is ordained to read:**

24 **25-12.10 [NEW MATERIAL.] Issuance of City of Santa Fe Water Rights Transfer**
25 **Certificate.**

1 Upon completion of the transfer of the water rights to the city's permit as set forth in
2 Section 25-12.9 SFCC 1987 and issuance of the office of the state engineer's final permit, the
3 water division shall deposit the water rights in the city water bank in the applicant's name and
4 issue to the applicant a water rights transfer certificate evidencing the deposit. If the water rights
5 were tendered for application to a specific development under Section 25-12.3(A), that shall be
6 indicated on the water rights transfer certificate and the water bank's records. Upon issuance of
7 the water division's water rights transfer certificate, the water rights transfer applicant shall then
8 be referred to as the water rights transferor.

9 **Section 39. A new Section 25-12.11 SFCC 1987 is ordained to read:**

10 **25-12.11 [NEW MATERIAL.] Water Rights Dedication to Obtain a Building**
11 **Permit.**

12 A. The water rights transferor or assigns may withdraw banked water rights from the
13 bank for dedication to a development water budget. To dedicate water rights from the city's water
14 bank to a development water budget, the transferor shall obtain a water dedication form from the
15 water bank for the amount of water rights necessary for the development water budget and
16 present that dedication form to the land use department.

17 B. For the purpose of issuing a building permit, the land use department shall accept
18 the dedication of transferred water rights to meet an approved development water budget as
19 shown on the water dedication form. That dedicated water shall become a permanent portion of
20 total water system demand calculations.

21 **Section 40. A new Section 25-12.12 SFCC 1987 is ordained to read:**

22 **25-12.12 [NEW MATERIAL.] Sale of Water Rights.**

23 At any time before or during the approval and transfer process, the applicant may sell and
24 assign any or all of the applicant's interest in tendered water rights to the city or any other party,
25 based upon a fair market price to be negotiated between applicant and the purchaser, providing

1 the applicant notifies the city in writing of such a change in ownership. Sale and change of
2 ownership of a water right tendered to the city for a particular project shall not change the
3 designation of the water right for dedication to that development water budget, as specified in
4 Section 25-12.3(A) SFCC 1987, without written city approval. A water rights transferor may sell
5 or assign to another any or all of the transferor's water rights on deposit in the water bank that are
6 not designated for a particular project. The water bank shall transfer the water rights to the
7 account of the assignee.

8 **Section 41. A new Section 25-12.13 SFCC 1987 is ordained to read:**

9 **25-12.13 [NEW MATERIAL.] Relation to other Requirements and**
10 **Approvals.**

11 A. The transfer of water rights to the city, whenever applicable, in no way limits,
12 abolishes, or in any way mitigates any other requirements imposed by the city such as, but not
13 limited to, utility expansion charges, impact fees, connection fees, or any other requirements
14 related to the city's water delivery system.

15 B. The successful transfer and conveyance of water rights to the city does not
16 guarantee approval of other city development requirements. Water rights which have been
17 successfully transferred for developments that fail to meet other required approvals shall not be
18 rescinded, but shall be remain in the city's water bank in the name of the transferor or the
19 transferor's assigns as set forth in Article 25-10 SFCC 1987.

20 **Editor's Note: Article 25-12 SFCC 1987 shall be effective on January 1, 2010.**

21 **Section 42. Effective Date.** This Ordinance shall become effective on January 1,
22 2010. City water division staff shall prepare administrative procedures by the effective date.

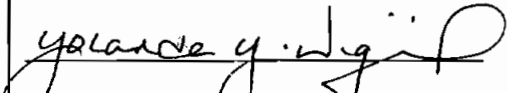
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1 PASSED, APPROVED, and ADOPTED this 12th day of August, 2009.


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4 DAVID COSS, MAYOR

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6 ATTEST:

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9 YOLANDA Y. VIGIL, CITY CLERK

10
11 APPROVED AS TO FORM:

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14 FRANK D. KATZ, CITY ATTORNEY

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25 *Fk/ca/jpmb/2009 ordinances/water budget banking transfer request to publish*