



November 30, 2018
Transmitted Via Email

Albuquerque/Bernalillo
County Water Utility Authority Board
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Re: Water and Sanitary Sewer Serviceability Letter #180108 Santolina Level A and Level B.1

Dear Water Authority Board Members,

The New Mexico Environmental Law Center ("NMELC"), on behalf of the SouthWest Organizing Project, including its individual and group members, the New Mexico Health Equity Working Group, including its individual and group members, the Pajarito Village Association, including its individual and group members, South Valley Coalition of Neighborhood Associations, including its individual and group members, Center for Social Sustainable Systems, including its individual and group members, South Valley Regional Association of Acequias, including its individual and group members, Daniel Richard "Rip" Anderson, Marcia Beauregard Fernandez, Santiago James Maestas, Rod Mahoney, Roberto Roibal, Dr. Virginia Necochea, and Kristine Suozzi (collectively, NMELC's clients), provides the following comments on the Albuquerque/Bernalillo County Water Utility Authority's ("Water Authority") recently issued Water and Sanitary Sewer Serviceability Letter #180108 Santolina Level A and Level B.1 ("Santolina Serviceability Letter") for your consideration.

Introduction.

NMELC is a non-profit, public interest law firm that provides free and low-cost legal services on environmental matters throughout New Mexico. Founded in 1987, NMELC works with clients – often individuals, neighborhood associations, environmental organizations, Tribes and Pueblos – seeking to protect the environment. NMELC’s mission is to protect New Mexico’s natural environment and achieve environmental justice for New Mexico’s communities through legal representation, policy advocacy and public education. NMELC has worked with clients for thirty years to protect New Mexico’s ground and surface water quantity and quality.

NMELC represents the following community organizations and individuals in several pending appeals pertaining to Bernalillo County Board of County Commissioners’ approvals of the proposed Santolina development: the SouthWest Organizing Project, including its individual and group members, the New Mexico Health Equity Working Group, including its individual and group members, the Pajarito Village Association, including its individual and group members, South Valley Coalition of Neighborhood Associations, including its individual and group members, Center for Social Sustainable Systems, including its individual and group members, South Valley Regional Association of Acequias, including its individual and group members, Daniel Richard “Rip” Anderson, Marcia Beauregard Fernandez, Santiago James Maestas, Rod Mahoney, Roberto Roibal, Dr. Virginia Necochea, and Kristine Suozzi.

NMELC’s clients have the following concerns with the Water Authority’s Santolina Serviceability Letter. First, the Water Authority is violating its own policy by determining that an Availability Statement need not be completed before entering into a Development Agreement with the Santolina developers. Second, the Santolina Serviceability Letter is based upon contradictory assumptions regarding population, water demand, infrastructure capacity and costs.

Third, the Santolina Serviceability Letter is based upon an unlawful return flow credit. Fourth, the Santolina Serviceability Letter's proposed water and wastewater scheme is speculative primarily because it relies upon, without Water Authority Board approval, modifying the purpose of a major new water reuse facility solely intended for irrigation of turf areas, limited industrial use, and aquifer storage recovery. Finally, the Santolina Serviceability Letter's proposed water and wastewater scheme would violate the no net expense requirement.

Section I of these comments provides the relevant procedural history of the Santolina developers' water and sanitary sewer requests with the Water Authority that was omitted from the October 1, 2018 Santolina Serviceability Letter. Sections II through V provide substantive comments on how the Santolina Serviceability Letter violates Water Authority policy, is based upon contradictory population, water demand, infrastructure projections and an unlawful return flow credit, relies upon a speculative water and wastewater service scheme, and violates the no net expense requirement. NMELC and its clients reserve the right to submit additional comments regarding the technical feasibility of the Santolina Serviceability Letter's water and wastewater scheme.

I. Procedural History of the Santolina Developers' Water and Sanitary Sewer Requests.

The Water Authority's recently issued Santolina Serviceability Letter claims that the Santolina developers submitted a water and sanitary sewer serviceability request on January 11, 2018. Santolina Serviceability Letter, Attachment 1, p. 1 (October 1, 2018). In fact, the Santolina developers submitted their first water and sanitary sewer serviceability request on March 21, 2014 (attached as Exhibit 1). The Santolina developers' request was for the following three properties owned by Western Albuquerque Land Holdings, LLC ("WAHL"): Santolina, Estrella, and Del Rio. *Id.*

During this time period, the Santolina developers had also submitted the Santolina Level A Master Plan and Level A Zone Map Amendment Request with Bernalillo County. The County Planning Commission requested comments from the Water Authority regarding the Santolina Level A Master Plan and its technical documents pertaining to water and wastewater treatment. Water Authority Chief of Operations, John Stomp, in an email to Water Authority Executive Director, Mark Sanchez, stated, “I don’t know that we can provide comments just on the Santolina development separately and pretend somehow they are not linked.” *See* attached Exhibit 2. The Water Authority, however, proceeded to “pretend” that Santolina is not linked to the proposed Estrella and Del Rio developments and provided comments to the County Planning Commission on just the Santolina Level A Master Plan’s water and wastewater planning sections. *See* attached Exhibit 3.

A few years later, on January 25, 2016 the Santolina developers submitted a second water and sanitary sewer serviceability request solely for the proposed Santolina development. *See* attached Exhibit 4. It is unknown whether the Santolina developers also submitted a second water and sanitary sewer serviceability request solely for the proposed Estrella development. However, the Water Authority issued a Water and Sanitary Sewer Serviceability Statement¹ #160104 for the proposed Estrella development (Exhibit 5) on March 28, 2016, but refrained from issuing a Santolina Serviceability Letter #160103 that had been prepared and sent for processing on March 25, 2016 (Exhibit 6).

The Water Authority never proceeded to draft an Estrella Development Agreement within a year of the Estrella Serviceability Statement’s issuance, therefore the Estrella

¹ The proper term pursuant to Water Authority policy is “Serviceability Letter” and not “Serviceability Statement.” http://www.abcwua.org/Availability_Statements.aspx, last accessed November 29, 2018.

Serviceability Statement is no longer in effect.² The Santolina developers did however submit a third Santolina water and sewer serviceability request on January 11, 2018. *See* attached Exhibit 7. Supplemental information was provided by the Santolina developers in support of its January 11, 2018 request on February 13, 2018. *See* attached Exhibit 8. It appears that the Water Authority contracted with CDM Smith to prepare an Availability Statement for Santolina. CDM Smith provided a draft Santolina Availability Statement to the Water Authority Chief Operations Officer on September 5, 2018. *See* attached Exhibit 9. It is unclear why the Water Authority dismissed this draft Santolina Availability Statement and instead issued a Santolina Serviceability Letter on October 1, 2018. *See* attached Exhibit 10.

Though the Water Authority Chief Operations Officer, John Stomp, advised against treating the Estrella, Santolina and Del Rio developments separately, the Water Authority has processed Serviceability Letters for these related developments in a piecemeal manner. Mr. Stomp, in an email to Water Authority staff Kristopher Cadena and David Price, explained how the impacts of the proposed Estrella and Santolina developments are interrelated:

1. Sanitary Sewer – the load from Estrella is important when combined with Santolina as it relates to downstream capacity. We need to understand the land use so that we can determine the combined loading and what impact either separately and both collectively have on the existing interceptor and lift stations.
2. Potable Water – the developer has proposed to cross trunk transfer water from the Estrella to Santolina and if we are designating a certain demand to Estrella then that same water can't be designated for Santolina too. We need to know what the actual demand is in both. As Dave points out, hey we can serve the south and then just cut them off when they need the water for the north because it's long after the WAHL boys are gone.

² The Estrella Serviceability "Statement" provides that, "For service to be provided, a Board approved development agreement must supplement this serviceability, therefore causing this serviceability to be in effect for a period of one year upon approval of the development agreement." Exhibit 5, p. 4. The Santolina Serviceability Letter states, "The serviceability letter will remain in effect for a period of one year from the date of issue and applies only to the development identified herein." Exhibit 10, p. 4. It is unclear what legal authority is being relied upon for a Serviceability Letter being effective for a period of one year.

Water Authority email from John Stomp to Kristopher Cadena and David Price (May 26, 2016).

See attached Exhibit 11.

II. The Water Authority Board Has Failed to Satisfy Its Statutory Mandate of Promulgating Policy and Regulations for Serviceability Letters, Availability Statements and Development Agreements.

The Water Authority's enabling act mandates that the Water Authority "shall set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo County" and "is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules." NMSA 1978, Sections 72-1-10.B, -E. However, the Water Authority's Water and Wastewater System Expansion Ordinance ("Expansion Ordinance") is silent regarding the distinction between a Serviceability Letter and an Availability Statement, the purpose of these documents, the procedures for completing these types of documents, and how these documents do not commit the Water Authority to provide services. Water and Wastewater System Expansion Ordinance, Section 7-1-9. The Expansion Ordinance is also silent regarding whether a Serviceability Letter is sufficient to proceed to a Development Agreement, considering that Serviceability Letters are used "Where a proposed project is not sufficiently defined to provide all of the information required for an Availability Statement" and "...in no case shall a Serviceability Letter replace the need for an Availability Statement."

The Expansion Ordinance also fails to identify the procedures for requesting a Development Agreement, the administrative and technical requirements of a Development Agreement, and whether a Development Agreement serves to codify a Serviceability Letter and/or an Availability Statement. Section 7-1-15(A)(2) of the Expansion Ordinance states:

Petitioners must comply with policies regarding land use, water supply sustainability, and other policies as adopted in other documents. Established procedures for approving new

development such as subdivision agreements, development agreements, and other methods for determining capital improvements needs and financial responsibility shall continue to be followed using existing governmental procedures.

Id. However, the “established procedures” for approving new development agreements is not identified and no reference is provided to other Water Authority policy or rules.

The Water Authority has ultimately failed to comply with its statutory mandate to set policy and promulgate regulations to supervise and administer water and wastewater utility services for the city of Albuquerque and Bernalillo County. The Water Authority’s lack of substantive policy and regulations for developments like Santolina has resulted in arbitrary and capricious actions by the Water Authority’s executive director. The Water Authority Board should satisfy its statutory mandate and promulgate substantive policy and rules pertaining to Serviceability Letters, Availability Statements and Development Agreements for expanding services to developments like Santolina.

Substantive policy and procedural rules would provide notice to the Water Authority’s rate payers, members of the public, and petitioners regarding the process and requirements for Serviceability Letters, Availability Statements and Development Agreements. The Water Authority Board therefore should stay any consideration of a Santolina Development Agreement until the necessary policy and regulations are promulgated.

III. Water Authority’s Limited Policy Mandates that an Availability Statement be Completed for the Proposed Santolina Development Before the Water Authority Board May Consider a Development Agreement.

Though the Water Authority has not yet promulgated substantive policy or regulations pertaining to Serviceability Letters, Availability Statements, and Development Agreements, there is limited Water Authority guidance regarding Serviceability Letters and Availability Statements. Moreover, the Water Authority has violated its own guidance for the following reason.

The Water Authority appears to have adopted the City of Albuquerque's policy regarding Serviceability Letters and Availability Statements. *See* Water Authority webpage, http://www.abcwua.org/Availability_Statements.aspx (Exhibit 12). According to Water Authority policy, a Water and Sanitary Sewer Availability Statement ("Availability Statement") is required for any proposed development, subdivision plat, or site plan within Albuquerque or "for anyone contemplating service in Bernalillo County." *Id.* The purpose of an Availability Statement is to "identify the water and sanitary sewer infrastructure needs (public/private, on/off site) to provide a proposed development with services and fire protection." *Id.* Time constraints for development plans and/or requirement for annexation to receive services is also identified in an Availability Statement. *Id.* The Water Authority also advises that, "In cases of complicated or very large development proposals, additional study time may be required to prepare an Availability Statement." *Id.*

As for Serviceability Letters, Water Authority policy mandates the following:

Where a proposed project is not sufficiently defined to provide all of the information required for an Availability Statement, the developer may request a Serviceability Letter in an effort to identify the water and sewer utilities nearest to the property and to ascertain the general feasibility of the project. However, in no case shall a Serviceability Letter replace the need for an Availability Statement.

Id.

The Water Authority's policy mirrors the City of Albuquerque's policy provided in the City of Albuquerque Development Process Manual, Chapter 24, pp. 1-2. Both the Water Authority's and the City of Albuquerque's policies make clear that "in no case shall a Serviceability Letter replace the need for an Availability Statement." Yet Water Authority Executive Director, Mark Sanchez, has determined that the Water Authority need only provide a Serviceability Letter to the Santolina developers and that the Water Authority will now proceed to draft a Development Agreement for the proposed Santolina development. Santolina

Serviceability Letter, p. 1 (October 1, 2018) (Exhibit 10). The development process Mark Sanchez is implementing in regards to Santolina therefore violates Water Authority policy pertaining to Serviceability Letters and Availability Statements.

Moreover, it appears that technical consulting firm CDM Smith prepared an Availability Statement for the proposed Santolina development for the Water Authority on September 5, 2018. *See* attached Exhibit 9. It is unclear why the Water Authority first proceeded to prepare an Availability Statement for Santolina, but then discarded the draft Availability Statement and issued a Serviceability Letter. The issuance of a Serviceability Letter indicates, pursuant to Water Authority policy, that the Executive Director, Mark Sanchez, determined that the proposed Santolina development is not sufficiently defined to provide all of the information required for an Availability Statement, and that a Serviceability Letter was issued instead to identify the water and sewer utilities nearest to the property and to ascertain the general feasibility of the project. Water Authority policy states in no uncertain terms that a Serviceability Letter cannot replace an Availability Statement.

IV. The Santolina Serviceability Letter is Based Upon Contradictory Projections Regarding Population, Water Demand, Infrastructure Capacity and Costs.

A. The Santolina Serviceability Letter is Based Upon Contradictory Population and Water Demand Projections.

The Santolina Water and Sewer Serviceability Documentation of Methodology Memorandum states that, “Infrastructure requirements noted herein have been established based on population projections and demands as projected by the developer and reviewed or revised by the Water Authority.” Santolina Water and Sewer Serviceability Documentation of Methodology Memorandum, p.26 (October 11, 2018). *See* attached Exhibit 13. However, it is clear that the Executive Director, Mark Sanchez, dismissed the population, water demand,

infrastructure capacity and cost projections prepared by Water Authority technical consultants and based the Santolina Serviceability Letter upon contradictory projections provided by the Santolina developers.

For example, the Santolina Serviceability Letter is based upon a contradictory population projection of around 22,000 by 2040, for the full buildout of Santolina Level B.I Master Plan Area. Santolina Serviceability Letter, pp. 2, 4. However, Water Authority Technical Consultant, Rene Santin, advised the Chief Operations Officer, John Stomp, that, “We have a [sic] 39,000 people by 2040, (4,700 AFY).” *See* Exhibit 14, p. 3. The Executive Director, Mark Sanchez, dismissed the technical consultant’s population projection of 39,000 people, with a water supply projection of 4,700 AFY, and based the Santolina Serviceability Letter upon a contradictory population projection of 22,000 people, with a water supply projection of 2,700 AFY, provided by the Santolina developers. Santolina Serviceability Letter, p. 4 (Exhibit 10).

B. The Santolina Serviceability Letter is Based Upon Contradictory Infrastructure Capacity and Cost Projections.

The Santolina Serviceability Letter is also based upon contradictory infrastructure capacity and cost projections for several infrastructure requirements. For example, the Santolina Serviceability Letter proposes a required river diversion with only a 5 million gallons per day (“MGD”) capacity. Santolina Serviceability Letter, p. 17 (Exhibit 10). Water Authority technical consultants Rene Stantin and Wendy Christofferson both advised Chief Operations Officer, John Stomp, that the 5 MGD river diversion capacity was not sufficient “to manage TDS [total dissolved solids],” and that the required river diversion for Phase III of the development should have a minimum capacity of 10 MGD. *See* Exhibit 15, p. 19, and Exhibit 14, p. 17.

In other words, the Santolina developers would have a serious water quality issue if it were to build a river diversion with an insufficient 5 MGD capacity.³ Executive Director, Mark Sanchez, and Chief Operations Officer, John Stomp, dismissed their technical consultants' infrastructure capacity projections and based the Santolina Serviceability Letter upon an insufficient 5 MGD river diversion. Santolina Serviceability Letter, p. 17 (Exhibit 10).

Another example of contradictory infrastructure capacity projections is the Santolina Serviceability Letter's proposed 1 MGD water reclamation plant for Phase II of the development. Executive Director, Mark Sanchez, determined that a water reclamation plant with a mere 1 MGD capacity would be sufficient for Santolina's Phase II because:

The construction of the new 1 MGD water reuse system will reduce flows into the existing sewer interceptor system in the summer time. During the winter time, the effluent will be partially used for irrigation and will be discharged to the SWRP [Southside Water Reclamation Plant] until the larger water reclamation facility and associated reservoir are constructed in Phase III.

Santolina Serviceability Letter, p. 12 (Exhibit 10). However, Water Authority technical consultant Rene Santin advised Chief Operations Officer, John Stomp, that the Southside Water Reclamation Plant in the winter "will see full flows." Exhibit 14, p. 12. In other words, the Southside Water Reclamation Plant will have zero capacity to receive any discharges from Santolina and the Santolina developers would actually need to build a new water reclamation plant with a substantially greater capacity than 1 MGD. Moreover, the estimated infrastructure cost of \$12,000,000 for a new water reclamation plant is insufficient considering that Phase II requires a water reclamation plant with more than 1 MGD capacity. Santolina Water and Sewer Serviceability Basis of Cost Memorandum, p.3 (Exhibit 16).

³ Confusingly, the Santolina Water and Sewer Serviceability Basis of Cost Memorandum provides a line item cost estimate for a river diversion with a 10 MGD capacity, yet the Santolina Serviceability Letter itself does not propose that the developers build a 10 MGD river diversion. Compare Santolina Serviceability Letter, p. 17 (Exhibit 10) with Santolina Water and Sewer Serviceability Basis of Cost Memorandum, p. 3 (Exhibit 16).

V. The Santolina Serviceability Letter is Based Upon an Unlawful Return Flow Credit.

As previously discussed, the Santolina Serviceability Letter determined that Santolina's Phase III would require a new surface water diversion. Specifically, "water supply to the water treatment plant will be a blend of reclaimed water from the Southwest Mesa WRP and river water. The river water will be provided by diverting the flows discharged from the Bosque WRP, *provided the State of NM changes existing regulations regarding consumptive use.*" Santolina Water and Sewer Serviceability Documentation of Methodology, p. 23, emphasis added (Exhibit 13).

In other words, the Water Authority is basing its ability to provide water and wastewater services to Santolina upon a return flow credit that would increase the Water Authority's authorized consumptive use amount, which is unlawful under current New Mexico Office of the State Engineer regulations. Furthermore, several of the Water Authority's technical experts advised Chief Operations Officer John Stomp of this unlawful assumption. *See* Exhibit 17 and Exhibit 15, p. 9.

Pursuant to New Mexico Office of the State Engineer regulations, return flow credit is:

Surface water return flow is that percentage of the total diversion of surface water that has been applied to beneficial use pursuant to a water right or permit and returned to the same surface water stream from which it was appropriated. In no instance may a return flow credit allow an increase in the authorized consumptive use amount, impair existing water rights, be contrary to the conservation of water within the state, or be detrimental to the public welfare of the state. A permit from the state engineer is required to receive return flow credit.

19.26.2.11.E NMAC. The Water Authority and/or the Santolina developers would have to successfully petition the Office of the State Engineer for a regulatory change to 19.26.2.11.E NMAC in order to receive return flow credit that would result in an increased consumptive use amount. Basing a Serviceability Letter upon an unlawful return credit demonstrates the Water

Authority Executive Director's and Chief Operations Officer's unrealistic disregard of the law. The Water Authority Board should therefore direct that the Santolina Serviceability Letter be revised to comply with state and federal law.

VI. The Santolina Serviceability Letter's Proposed Water and Wastewater Scheme for Santolina Relies on a Speculative Water Reclamation Plant Intended to Serve Only Non-Potable Non-Residential and Limited Industrial Needs.

In the Water Authority's October 1, 2018 Santolina Serviceability Letter, the following key determinations were made:

1. Because of the Water Authority's no net expense requirement and current infrastructure limitations, the Santolina developers would need to build new infrastructure to support the Santolina development (Santolina Serviceability Letter, p. 1) (Exhibit 10);
2. The Water Authority's current legal commitments for groundwater are 56 million gallons a day ("MGD"), which is in excess of all current groundwater capacity (*Id.* at p. 4);
3. The available surface water from the San Juan-Chama Drinking Water Project is currently accounted for to meet existing demands, or in other words is legally committed (*Id.*);
4. The capacity of the existing Southside Water Reclamation Plant is 76 MGD. With a legally committed capacity of approximately 71 MGD, coupled with the Water Authority's policy to not expand the Southside Water Reclamation Plant (Policy R-07-06), the Water Authority would need additional wastewater treatment capacity to serve Santolina (*Id.* at p. 5); and
5. Water, wastewater and reuse service is available for Santolina with the construction of the required master plan water, wastewater and reuse infrastructure. (*Id.* at p. 6).

The Water Authority also determined that Santolina Phase I "will require 6 MGD of groundwater infrastructure to provide redundant capacity to meet peak demands and for times when surface water is not available" (*Id.* at p. 11) and that Santolina's Phase I potable and non-potable water demands would be met "by constructing the Bosque Water Reclamation Plant and associated pipelines." *Id.* at p. 9. According to the Water Authority, the proposed Bosque Water Reclamation Plant would free up 4 MGD of potable water for Santolina Phase I's use by

providing a supply of non-potable water for existing non-potable water uses that are currently being met with potable water. *Id.* at p. 11. However, the Water Authority has yet to secure funding for the proposed Bosque Water Reclamation Plant and the plant's intended use is for providing non-potable water for irrigation of parks, recreational turf areas and golf courses, limited industrial uses, and for aquifer storage recovery projects. The construction and operation of a Bosque Water Reclamation Plant and its use to meet Santolina's Phase I potable and non-potable water demands are therefore speculative for the following reasons.

A. The Purpose of the Speculative Bosque Reuse Project Is to Provide Non-Potable Water to Existing Users for Irrigation of Large Turf Areas, Limited Industrial Use, and Aquifer Storage Recovery.

First, the Water Authority's "Water 2120 Plan," Feasibility Study for the Bosque and Tijeras Reuse Projects (January 2012), and Southwest Water Reuse Technical Memorandum (March 5, 2018, revised October 11, 2018) all state that the proposed Bosque Water Reclamation Plant (or "Bosque Reuse Project") "would provide non-potable water to users in western and southern Albuquerque for irrigation of large turf areas and limited industrial use" and would also be used "during the non-irrigation season for ASR [aquifer storage recovery] in the Calabacillas Arroyo" to address the Water Authority's existing, legally committed future growth. Water 2120 Plan, Chapter 5, p. 15 (Exhibit 23); Feasibility Study for the Bosque and Tijeras Reuse Projects, ES-1 (January 2012) (Exhibit 21); Southwest Water Reuse Technical Memorandum, p. 1 (March 5, 2018, revised October 11, 2018) (Exhibit 22). None of these documents state that the proposed Bosque Reuse Project could be used to meet the potable and non-potable water demands of a proposed large-scale residential development that is not an existing Water Authority legal commitment. *Id.* Water Authority technical consultant, Gregory Gates with Hazen and Sawyer, also advised Water Authority Chief Operations Officer, John Stomp, that the

Water 2120 Plan does not state that the Bosque Reuse Project would be used for large-scale residential developments like Santolina. *See* attached Exhibit 14, p. 11.

Moreover, the 2012 Feasibility Study for the Bosque Reuse Project did not include the proposed Santolina development in its estimate for reuse water demands. Feasibility Study, pp. 2-8 through 2-12. The Southwest Water Reuse Technical Memorandum also did not include the proposed Santolina development in its revised update to the 2012 Feasibility Study for the Bosque Reuse Project. Southwest Water Reuse Technical Memorandum, pp. 3 – 12 (Exhibit 22). The Water Authority's use of this proposed project to meet the needs of Santolina's Phase I is therefore speculative.

B. The Water Authority Has Yet to Secure the Numerous Permits from State and Federal Agencies Required to Operate the Speculative Bosque Reuse Project.

Second, the proposed Bosque Reuse Project would require significant new infrastructure, New Mexico Office of the State Engineer ("OSE") permitting for aquifer storage recovery projects, a groundwater discharge permit from the New Mexico Environment Department ("NMED") for reuse application, and possible additional National Pollutant Discharge Elimination System ("NPDES") permits from the federal Environmental Protection Agency ("EPA"). Water 2120 Plan, Chapter 5, p. 15. As of the date of these comments, the Water Authority has yet to submit applications with OSE, NMED or the EPA for permits necessary to operate this proposed reuse project. The lack of pending applications therefore demonstrates the speculative nature of the proposed Bosque Reuse Project.

C. The Water Authority Has Yet to Secure the \$103,340,000 Necessary to Construct the Speculative Bosque Reuse Project.

Third, the proposed Bosque Reuse Project would cost Water Authority rate payers upwards of \$103,340,000 for construction and an additional \$3,230,000 per year for operation

and maintenance costs. Feasibility Study, p. ES-5 (Exhibit 21). The Feasibility Study states that the cost of constructing the proposed Bosque Reuse Project “will be funded through several sources as determined by the Water Authority. The Water Authority hopes to obtain funding for construction of the facilities from Reclamation [United States Bureau of Reclamation] through a Title XVI grant.” *Id.* As of the date of these comments the Water Authority has not submitted a request or application for funding from the Bureau of Reclamation. The Water Authority is, however, meeting with various developers regarding proportionate share costs for the proposed Bosque Reuse Project. *See* attached Exhibit 18, email to Water Authority Chief Operations Officer John Stomp discussing a meeting with the developers for Ceja Vista regarding the proposed Bosque Reuse Project. The lack of funding secured for this proposed project therefore demonstrates the speculative nature of the proposed Bosque Reuse Project.

D. The Water Authority Board, in approving the Water 2120 Plan, Intended for the Speculative Bosque Reuse Project to Provide Services in 2055.

Finally, the Water 2120 Plan contemplated the proposed Bosque Reuse Project to come online in 2055. Water 2120 Plan, p. 4. Under the Water 2120 Plan, the Water Authority would have 39 years to secure over \$100 million needed for construction of the proposed Bosque Reuse Project and obtain the numerous permits required for the project’s operation. The Water Authority, however, is now considering modification of the scope and phasing of the Bosque Reuse Project in order to provide water to the proposed Santolina development – a residential water demand that the Bosque Reuse Project was never intended to meet. Southwest Water Reuse Technical Memorandum, p. 2 (Exhibit 22). This means that the Water Authority would be required to secure over \$100 million needed for construction of the proposed Bosque Reuse Project and obtain the numerous permits required for the project’s operation within the next few years – a herculean task to be sure. This expedited timeline therefore demonstrates the

speculative nature of the proposed Bosque Reuse Project and its ability to provide water and sanitary sewer services to Santolina's Phase I.

VII. The Santolina Serviceability Letter's Proposed Water and Wastewater Scheme for Santolina Would Violate the Water Authority's No Net Expense Requirement.

The Water and Wastewater Expansion Ordinance mandates the following regarding the Water Authority's no net expense requirement:

Development shall be at no net expense to the ABCWUA [Water Authority] such that revenue generated from any expansion or improvement of the water and/or wastewater system shall be sufficient to support the costs of water and wastewater facilities in any expansion or improvement of the system and related infrastructure needed to serve any expansion or improvement of the system. In keeping with this 'no net expense' policy, the ABCWUA and Petitioner agree:

- (1) Facilities provided must meet the level of service standards adopted in a development agreement so that the development is concurrent with infrastructure service levels to ensure that public facilities exist to serve the development concurrent with its impacts.
- (2) Any interim revenue generation shortfall related to the expansion or improvement shall be borne by the Petitioner.
- (3) Revenues generated by and collected from the expansion or improvement shall reflect growth related operational and maintenance expenditures for such expansion or improvement.

Water and Wastewater Expansion Ordinance, 7-1-9(A)(c). The Water Authority's proposed water and wastewater scheme provided in the Santolina Serviceability Letter would violate the Water Authority's no net expense requirement in the following ways.

A. The Santolina Developers Would Not Be Required to Pay for the Speculative Bosque Reuse Project, the Primary Source of Water for Santolina's Initial Development.

First, the Santolina developers would not be required to pay for the proposed Bosque Reuse Project that would be the primary source of potable and non-potable water for Santolina's

Phase I.⁴ As previously discussed, the Water Authority has determined that the Bosque Reuse Project would free up 4 MGD of potable water for Santolina's Phase I potable water demands.⁵ Santolina Serviceability Letter, p. 9 (Exhibit 10). The projected construction cost for the Bosque Reuse Project is \$103,340,000. 2012 Feasibility Study, p. 4-21 (Exhibit 21). The Santolina Serviceability Letter and supporting documents fail to address whether the Santolina developers would be required to contribute a proportionate share for the Bosque Reuse Project construction costs. *See generally*, Santolina Serviceability Letter (Exhibit 10); 2012 Bosque Reuse Project Feasibility Study (Exhibit 21); Southwest Water Reuse Technical Memorandum (revised October 11, 2018) (Exhibit 22).⁶ The cost of the proposed Bosque Reuse Project would therefore be passed onto existing Water Authority rate payers, resulting in a net expense in regard to the Santolina development.

B. The Water Authority Rate Payers Would Likely Have to Pay for Additional Groundwater Rights to Serve the Santolina Development.

The Albuquerque Journal reported on October 17, 2018 that, "Water Utility Authority officials have told developers that groundwater is available on the property, but no additional water capacity within the Water Utility Authority's current infrastructure is available for the area." Albuquerque Journal Article (October 17, 2018) (Exhibit 19). Neither the Santolina

⁴ The Water Authority has interpreted Phase I of the Santolina development as covering the "initial growth of the Santolina development." Santolina Serviceability Letter, p. 9. The initial growth of the Santolina development would be the full build-out of the Santolina Level B.I Master Plan Area, which covers approximately 4,243 acres and is projected to house 22,000 potential residents (Santolina Serviceability Letter, p. 4) (Exhibit 10), or when non-potable demand within the development reaches 1 MGD (*Id.* at p. 12).

⁵ However, neither the Water 2120 Plan nor the 2012 Bosque Reuse Project Feasibility Study provide that this proposed plant would be used to deliver potable and non-potable water for a large-scale residential community. See Exhibits 23 and 21, respectively.

⁶ Though the "Santolina Water and Sewer Serviceability Basis of Cost" memorandum prepared by Jacobs and CDM Smith provides a line item of \$49,000,000 for "Bosque WRP" under Phase I estimated cost of infrastructure, it appears that this cost is for Santolina to connect to the Bosque WRP and is not an estimate of Santolina's proportionate share of construction costs. Santolina Water and Sewer Serviceability Basis of Cost Memorandum, Table 1, p. 2 (October 11, 2018) (Exhibit 16).

Serviceability Letter nor supporting documents discuss water rights necessary to serve the proposed development. *See generally*, Santolina Serviceability Letter (October 1, 2018) (Exhibit 10); Santolina Water and Sewer Serviceability Documentation of Methodology Memorandum prepared by Jacobs and CDM Smith (October 11, 2018) (Exhibit 13); and Santolina Water and Sewer Serviceability Basis of Cost Memorandum prepared by Jacobs and CDM Smith (October 11, 2018) (Exhibit 16). It is therefore unclear what Water Authority documentation is the basis for the claim that groundwater is available on the Santolina property.

Moreover, a Santolina draft Development Agreement provided to the Water Authority by the developers for Development Agreement negotiations includes a provision stating the following, in pertinent part:

The Authority represents and warrants that it has sufficient ground and/or surface water rights to serve the Project, including the First County Level B, upon which Owner relies in entering into this Agreement.

Draft Santolina Development Agreement, Section 5.4, p. 6 (September 28, 2017) (Exhibit 20).

In other words, the Santolina developers and the Water Authority both recognize that the developers do not have their own water rights sufficient to serve the proposed development. In the event that the Water Authority would need to acquire additional water rights (either surface or groundwater) to serve the Santolina development, the Water Authority rate payers would be responsible for those costs and not the Santolina developers, therefore resulting in a net expense to existing Water Authority rate payers.

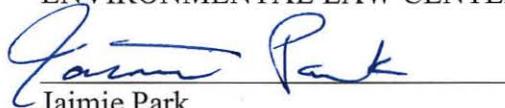
Conclusion.

For the above reasons, the Water Authority Board should direct the Water Authority Executive Director and Chief Operations Officer to explain why population, water demand, infrastructure capacity and cost projects provided by technical consultants were dismissed. The

Water Authority Board should also direct the Executive Director and Chief Operations Officers to revise the Santolina Serviceability Letter to comply with existing state law regarding return flow credits and consumptive use. Moreover, the Water Authority Board should direct the Executive Director and Chief Operations Officer to comply with existing, albeit limited, Water Authority policy and complete an Availability Statement for the proposed Santolina development before negotiating a Development Agreement. Finally, the Water Authority Board should satisfy its statutory mandate and promulgate substantive policy and rules regarding Serviceability Letters, Availability Statements and Development Agreements before consideration of any Development Agreement for the proposed Santolina development.

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