

Albuquerque Bernalillo County Water Utility Authority Governance Study

University of New Mexico Water Resources Program Policy Report 2018-01
by John Fleck, Director, UNM WRP

New Mexico and the western United States has a tradition of municipal water and wastewater services directly a part of, or closely attached to, municipal government. Proposals in recent years to change the governance structure of the Albuquerque Bernalillo County Water Utility Authority to management by a directly elected board separate from either city or county government raise questions about the effectiveness of various models of municipal water and wastewater system governance. The purpose of this study is threefold:

- To analyze current municipal water governance structures in New Mexico and elsewhere in the arid southwestern United States, providing a comparative framework.
- To discuss strengths and weaknesses of the three basic municipal water and wastewater governance structures:
 - Direct Municipal Control: Direct municipal ownership and management of water and wastewater services through city or county government
 - Special District, Appointed: Semi-independent water agencies set up as special purpose districts, but governed by boards selected by city or county elected officials
 - Special District, Elected: Special purpose water agencies with directly elected boards that are entirely separate from municipal government
- To evaluate the current performance of the Albuquerque Bernalillo County Water Utility Authority in the context of the above governance questions, as well as the agency's performance in meeting customer water and wastewater needs in the near and long term.

Key Findings:

- Municipal water and wastewater agencies the size of Albuquerque's that are Special Districts with elected boards - separate from municipal government and overseen by directly elected boards of directors - are rare in the western United States. It is far more common for water agencies to be run as departments of city or county governments (primarily city governments) or, like the Albuquerque Bernalillo County Water Utility Authority, to be Special Districts with appointed

boards - stand-alone agencies governed by boards whose members are either members of or appointed by city councils or county commissions.

- When water agencies are separate from city or county governments and operated by directly elected boards, a form of governance most commonly found in California, it is often in areas where large municipal water agencies span many smaller cities and/or county jurisdictions.

Advantages of a water utility run by or directly connected to a general-purpose municipal government:

- Direct connection between water management and city and/or county governance allows coordination across related functions of municipal governance, especially in the areas of land use planning and municipal infrastructure management and maintenance.
- Regional “diplomacy” – interactions among a region’s municipal governments regarding shared boundary issues – is more straightforward when a city speaks with a single voice.
- Water systems with governance structures more directly tied to general-purpose city and county governments, rather than special districts with directly elected boards, have more quickly and successfully responded to drought conditions and more generally have been better able to manage the politically difficult task of setting rates.
- Voters can consider water management as part of a bundle of related issues in their voting decisions.
- Covered by state statute allowing for acquiring and holding water rights to meet demands over a 40-year planning horizon.

Advantages of special-purpose government with separate board of directors:

- Board members can specialize, having only to learn about and manage a water utility rather than water management having to compete for policymaker attention with police, fire, transportation, land-use planning and other issues managed by a general-purpose government.
- In the case of a directly elected board, voters can focus their attention specifically on water issues, rather than on higher-attention issues (roads, crime), with water management an electoral afterthought.

Disadvantages of special-purpose government with directly elected boards:

- Low-attention democratic process in which voters pay little attention to an agency and its board have in some cases led to electoral governance being captured by special interests, especially developers.

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- Rate increases, critical for managing water supplies in the face of scarcity and ensuring adequate long-range funding for maintaining capital infrastructure, have proven more politically difficult for directly elected boards.
- Mandatory conservation measures can be politically unpopular, and have therefore proven more difficult for directly elected boards to implement.
- Fragmentation of land-use decision making creates multiple competing political arenas for development decision-making.
- Special-interest capture of government agency elected board via campaign contributions.

John Fleck, University of New Mexico Water Resources Program

Water and Municipal Governance

Water, sewer, street maintenance, and similar municipal governmental functions are ordinarily low-visibility and low-interest issues that seldom become politicized.... Citizens expect government to perform these functions in the same way they might expect a dental clinic to perform. While they suppose that the techniques are complicated, they really do not want to hear about them. If more than the expected pain is involved, they concluded that the job is not being done right and simply find a new dentist.

William Martin et. al, *Saving Water in a Desert City*, 1984

Water and wastewater services have been closely connected with broader municipal governance in the United States since the 19th century. In fact, the modern model for U.S. municipal governance grew in significant part out of the need for managing water and wastewater services during the rapid urbanization of the late 19th and early 20th centuries in the East, as communities came together to form unitary municipal governments to manage water delivery and sewage. The institutions created to manage those tasks then evolved into a broader model for municipal governance, tackling other tasks, such as law enforcement and transportation.¹

At the same time general-purpose municipal governments were evolving, a second type of local government structure known most commonly as “special districts” arose when communities had special needs that required a separate or additional layer of government. The most common of these are school districts, with the job of educating our children performed by a government agency separate from the municipality, which is in charge of things like roads, transit, police, fire protection, water and wastewater. The scope of special districts is vast, from the operation of airports and libraries to mosquito abatement and the nation’s 1,692 cemetery districts.²

Special districts are common throughout the United States, but their use varies from state to state. They are not unheard of in New Mexico. The US Census Bureau reports 631 such special districts, with responsibilities ranging from flood control and irrigation to cotton boll weevil control. But in New Mexico they tend to perform small, specialized functions with few large special district units of governance other than school districts.

In municipal water service in the western United States, special district management with entirely separate governance for water and wastewater services on the scale of Albuquerque is rare. A review of the largest water agencies in Colorado, New Mexico, Utah, Arizona, and California, found only two municipal water districts serving more than

¹ Smith, Carl. *City water, city life: water and the infrastructure of ideas in urbanizing Philadelphia, Boston, and Chicago*. University of Chicago Press, 2013

² Census Bureau. *Individual State Descriptions: 2012, Census of Governments*, U.S. Department of Commerce, 2013

500,000 people - that is, similar in size to the Albuquerque Bernalillo County Water Utility Authority - that are fully independent from municipal governments - the East Bay Municipal Utility District in the San Francisco Bay Area and the Eastern Municipal Water District in suburban Southern California.

East Bay MUD, Eastern Municipal Water District, and a number of other smaller California water agencies with similar structures as independent agencies with directly elected boards, grew up to meet similar needs - consolidating water services across a rapidly growing suburban landscape with a large number of separate cities. That model is unique in the western United States to California, which has by far the largest number of government agencies that operate as separate municipal institutions rather than as general-purpose city and county governments.³

New Mexico Municipal Water Governance

Water and wastewater service in New Mexico's cities is predominantly a municipal function, provided directly by city governments, usually as an enterprise fund, and under the direction of elected city councilors or a board appointed by the city council.

The two exceptions among New Mexico's 10 largest cities are Clovis and Albuquerque.

Clovis

In Clovis, the privately-owned EPCOR Water New Mexico, Inc., a subsidiary of the Canadian firm EPCOR Utilities Inc., provides water service under the regulation of the New Mexico Public Regulation Commission (PRC). The City of Clovis provides wastewater services as part of its municipal government functions.

Albuquerque

Albuquerque was a traditional municipal water and wastewater agency, operated as an enterprise fund department of the City of Albuquerque, until the New Mexico Legislature in 2003 approved creation of an independent special municipal district to provide water and wastewater services in Albuquerque and Bernalillo County. The transition to the Albuquerque Bernalillo County Water Utility Authority as a full separate entity was completed in 2007.

³ Census Bureau. 2012 Census of Governments, Table 9

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	Governance type	board	Waste-water	Population served
Albuquerque	Special District	City councilors, county commissioners, and mayor	yes	606,780
Santa Fe	City	City council	yes	78,000
Las Cruces	City	City council/board hybrid, with some board members appointed by city council	yes	102,308
Rio Rancho	City	City council	yes	87,000
Roswell	City	City Council	Yes	49,000
Farmington	City	City Council	Yes	47,000
Clovis	Private	Corporate management, regulated by Public Regulation commission	city	39,508
Hobbs	City	City Council	yes	37,877
Alamogordo	City	City Council	yes	38,500
Carlsbad	City	City Council	yes	31,865

Two other New Mexico water agencies with hybrid governance structures including a mix of city and county elected officials also are worthy of note.

The Camino Real Regional Utility Authority was created through a joint powers agreement among the city of Sunland Park and Doña Ana County. It provides municipal water and wastewater services directly to 21,000 municipal customers, and is governed by a hybrid board that includes two elected city officials, two elected county officials, two state legislators, and a seventh member chosen by the other six members.⁴

⁴ Joint Powers Agreement for a Joint Water and Wastewater Operating Authority, Feb. 24, 2009, approved by Doña Ana County Commission and Sunland Park City Council

In Eastern New Mexico, the Eastern New Mexico Water Utility Authority is the local partner in the development of the Eastern New Mexico Rural Water System which, if/when it is completed, would stretch from Ute Lake in the north to Elida in the south. Created by the New Mexico state legislature, its governing board includes representatives of Curry county, the city of Clovis, the city of Portales, the city of Texico, the town of Melrose, the town of Elida, and the village of Grady.

California

Because of New Mexico's long history of embedding water management and much of its other municipal-like governance functions in city governments rather than turning to the formation of special districts,⁵ it is useful to look at other states that more commonly use alternative governance structures for the delivery of municipal water services. One of the best examples is California, which has no less than ten different statutory authorities under which water supply and water conservation districts can be created. California in 2012 had 334 such special purpose water supply municipal agencies, the most of any state in the nation.⁶ In most cases, such water districts are created by a resolution of the county government of the region for which water will be supplied. Some are "dependent" special districts, structured like the Albuquerque Bernalillo County Water Utility Authority – corporately a separate legal entity, but with board oversight either directly by elected city and county officials or a board chosen by city or county elected officials. But most of these California entities are governed by elected boards of directors.⁷

While many of these specially created water districts function routinely with relatively good management and little difficulty, separating water management from municipal governance has in some cases led to significant difficulties. As a result, California has long struggled with management problems posed by its proliferation of special-purpose government agencies that function separately from city and county governments, not only water agencies:

Independent special districts often lack the kind of oversight and citizen involvement necessary to promote their efficient operation and evolution. And without robust mechanisms of public accountability, inefficiency can become routine and the occasional scandal inevitable.⁸

A review by state analysts found that as democratic governance splinters into smaller units with more specialized duties, fragmented electoral attention means such agencies "often operate in relative obscurity, hidden from the scrutiny of the public they were created to serve." The problem is not agency secrecy, so much

⁵ Barbara, Coyle McCabe. "Special-District Formation Among the States." *State and Local Government Review* 32.2 (2000): 121–131.

⁶ Census Bureau. *Individual State Descriptions: 2012*. U.S. Department of Commerce, 2013. Table 9

⁷ Census Bureau. *Individual State Descriptions: 2012*. U.S. Department of Commerce, 2013; Little Hoover Commission. *Special Districts: Relics of the Past or Resources for the Future?* 2000.

⁸ Little Hoover Commission. *Special Districts: Relics of the Past or Resources for the Future?* 2000

as a lack of voter attention. Electoral processes are “less vigorous”, with fewer voters, more seats filled by appointments, fewer members of the public attending meetings than when similar functions are subsumed under general-purpose city and county governments.⁹

In one notable example, the powerful Irvine Ranch Water District, which provides water service for a territory spanning all or part of eight cities as well as unincorporated areas of Orange County in Southern California, was accused of a pattern in which elected board members would resign, allowing the existing board to appoint a replacement. Once appointed to a seat, board members tended to easily win reelection. A 2008 investigation by the Orange County Register newspaper found this was a widespread problem, with nearly half of the region’s water board members initially appointed to fill a vacancy before then standing for reelection.¹⁰

The Irvine Ranch Water District also has been noted as one of a handful of water-providing special districts that offered substantial benefits packages to elected board members, including health, dental, and vision insurance, averaging more than \$45,000 per board member in 2016.¹¹ Board compensation has in some cases posed a challenge for management of dispersed water agencies when proposed agency mergers, pursued to create water management efficiencies in growing suburban communities, have been blocked because of fears that some board members would lose their compensation.¹²

Special district water governance separate from the rest of municipal management also has resulted in difficulties in land use planning and development policy development and implementation. (See Growth and Municipal Water Governance below.)

Drought and Long-Term Scarcity Response

Response to water scarcity — short term droughts as well as long term risks of shortfalls — has been a major policy driver for Albuquerque’s water system, under direct city management and since the agency was spun off into the independent Albuquerque Bernalillo County Water Utility Authority. Since the development of the city of Albuquerque’s 1994 *City of Albuquerque Water Conservation Strategy*, water conservation has been one of Albuquerque’s primary strategies for responding to drought and scarcity risks. As such, it is important to investigate both what evidence there is about the impact of water agency governance on water conservation success, as well as to independently evaluate Albuquerque’s water conservation performance under its current system of governance.

⁹ Little Hoover Commission. *Special Districts: Relics of the Past or Resources for the Future?* 2000

¹⁰ Sforza, Teri. Are elections purposefully avoided at Irvine Ranch Water District? Orange County Register, Jan. 6, 2009

¹¹ Irvine Ranch Water District, Board and Senior Staff Compensation, Calendar Year 2016: <http://www.irwd.com/about-us/board-and-senior-staff-compensation>

¹² Little Hoover Commission. *Special Districts: Relics of the Past or Resources for the Future?* 2000.

Drought response – the ability for a water utility to respond to drought through voluntary or mandatory water use reductions - is a critical area of municipal water management in the arid western United States. Water utilities have a variety of tools at their disposal, including publicity and education, incentive programs (such as toilet rebates and lawn buybacks), price increases, and mandatory water use controls that range from even-odd day watering restrictions to complete prohibition of outdoor watering. Some of these tools are most useful in dealing with long-term scarcity issues, while others generate more immediate results, though there is overlap between the two categories of response.

Large scale comparative studies looking at performance by a broad range of utilities and governance types has concluded first and foremost that scarcity itself is one of the main drivers of water conservation. When water becomes scarce, utilities of all sort have, in general, succeeded at the task of water conservation. But there are variations among governance types that are worthy of note.

In 2011, drought swept across Texas, leaving more than 90 percent of the state in extreme drought condition by the end of that year, with serious problems plaguing the state's water utilities for three years before rainfall began to break the drought. Because Texas has a rich variety of municipal governance structures, including a history of municipal water systems operated by special districts rather than cities, and because the Texas Commission on Environmental Quality (TCEQ) collected extensive data on municipal water system performance during the drought, the state provides useful insights into the relative performance of different forms of water system governance.

Political scientists Megan Mullin and Meghan Rubado found that water utilities directly connected to city and county governments and overseen by those governments' city councils and/or county commissions were more likely to respond early to the signs of drought, anticipating problems and imposing measures before drought conditions became extreme. Special districts with their own boards, separate from municipal government, responded more slowly. "City councils will have more experience and more legitimacy than other types of water governing boards in issuing mandates," they concluded. "As more visible members of their communities, they also likely have more persuasive power for promoting compliance."¹³

Albuquerque's scarcity response

Beginning with the City of Albuquerque *Water Conservation Strategy* in 1994, when the municipal water and wastewater utility was still a part of city government, and continuing through the recently completed *Water 2120* water resources management strategy, Albuquerque has made conservation as an anticipatory response, in the form of early and sustained conservation measures, a central water policy goal. This, therefore, offers one of the most important benchmarks against which to evaluate the success of the current governance structure and management policies.

¹³ Mullin, M, and M E Rubado. "Local Response to Water Crisis: Explaining Variation in Usage Restrictions During a Texas Drought." *Urban Affairs Review* (2016)

Albuquerque ranked ninth nationally among the nation’s 200 largest cities for its implementation of water conservation policies, behind cities in coastal California, Austin and San Antonio in Texas, and ahead of peers in the inland West, including Denver, Phoenix, Las Vegas, Tucson, and Salt Lake City, according to a survey by researchers at Vanderbilt University.¹⁴

An analysis for this study of data collected by the U.S. Geological Survey for peer communities in the Colorado River Basin since 1995 shows that those policies have translated into a successful reduction in water use. The time period was chosen to coincide with Albuquerque’s conservation programs and aquifer preservation efforts, and is a period in which most other communities in the Colorado River Basin were confronting similar challenges of declining aquifers and limits to available supplies of Colorado River water. In terms of community water policies, both gallons per capita per day (GPCD) and total water use are important measures, though GPCD is the measure that most directly responds to water agency policies.

By these measures, Albuquerque has been extraordinarily successful. A reduction in per capita use of 45 percent since 1995, and a reduction in total water use of 28 percent, represent the largest conservation success of any major metropolitan area in the southwest.¹⁵

	Percent reduction/increase in GPCD	Percent reduction/increase in total water use
Albuquerque/Bernalillo County	45% reduction	28% reduction
Santa Fe	42% reduction	23% reduction
Los Angeles	22% reduction	15% reduction
Orange County	16% reduction	2% increase
San Diego County	18% reduction	1% increase
Phoenix/Tucson	17% reduction	38% increase
Las Vegas, NV	38% reduction	28% increase
Denver and Colorado Front Range	13% reduction	43% increase
Salt Lake City and Wasatch Front	8% increase	65% increase

¹⁴ Hess, David J et al. “Measuring Urban Water Conservation Policies: Toward a Comprehensive Index.” JAWRA Journal of the American Water Resources Association 53.2 (2017): 442–455

¹⁵ Data from Solley, Wayne B., Robert R. Pierce, and Howard A. Perlman. Estimated use of water in the United States in 1995. US Geological Survey, 1998; Dieter, Cheryl A, and Molly A Maupin. Public Supply and Domestic Water Use in the United States. US Geological Survey, 2015.

Municipal Water Rates

Setting water rates is one of the greatest challenges facing municipal water and wastewater service providers. Questions of fairness and equity in diverse communities, the struggle to generate sufficient revenue to while at the same time encouraging conservation, and the difficulty funding long term capital needs all create a political and institutional balancing act among competing interests and needs.

As recently as the early 1990s the American Water Works Association, in its influential series of water utility management manuals, argued that rates should be based entirely on the cost of delivering water.¹⁶ This tended to lower rates for large water users, who because of economics of scale were relatively less expensive to serve. Flat rates or rates per unit of water that declined with increasing use were common. But as issues of scarcity rose in importance in water system management, especially in arid areas such as the Western United States, combined with the high capital costs of additional supplies in areas where water was not scarce, a shift toward pricing policies that more directly priced scarcity and recognized the cost of future capital expenditures for expanding supply, became increasingly common, both in the United States and around the world.¹⁷

This was especially important in the arid southwestern United States, where population growth was beginning to push demand to levels that threatened the long-term sustainability of municipal water supplies.

Thus, water rates became one of the most significant areas in which the structure of governance influenced water management. Economists have found that an increase in the price of water can be the simplest tool for decreasing water use. In the United States, research suggests that a 10 percent price increase on average translates to a 3 to 4 percent decrease in water use.¹⁸ But for a variety of reasons, water utilities of all types long hesitated to use price as a water conservation policy tool.

In theory, what is commonly called an “increasing block rate”, in which the price per unit of water is low for the amount of water needed to meet minimum household needs, and

¹⁶ Mullin, Megan. *Governing the tap: Special district governance and the new local politics of water*. MIT Press, 2009; American Water Works Association. *Water rates*. Vol. 1. AWWA, 1991

¹⁷ Herrington, Paul. "Household water pricing in OECD countries." (1999).

¹⁸ Olmstead, Sheila, W Michael Hanemann, and Robert Stavins. *Water Demand Under Alternative Price Structures*. Cambridge, MA: National Bureau of Economic Research, 2007

then rises per unit of water as usage increases, could therefore serve as an effective conservation tool both in situations of water scarcity and in situations in which additional supplies were increasingly costly because of the capital required.¹⁹

As recently as the early 1990s, the American Water Works Association advised against pricing water with increasing block rates, arguing that they violated principles of good management in which rates should directly reflect the cost of delivering water.²⁰

But governance structures posed a problem for early experiments in the use of increasing block rates, with the political unpopularity of rate changes that disproportionately impacted large water users - often more affluent and politically powerful members of communities. One of the first examples of the adoption of a rate structure designed to rise in response to scarcity happened in Tucson in the late 1970s, in response to drought. The move was politically unpopular, with the entire city council voted out of office in response. This sent a message to other municipal utilities that increasing block rates and other structures where the cost per unit water rose in response to larger use posed political costs for elected officials. The next major attempt did not happen until the early 1990s, in Los Angeles in response to the major drought of 1986-91. Again, strong political opposition doomed an initial effort, though a second attempt with rates adjusted in response to perceived questions of unfairness eventually succeeded.²¹

Eventually the use of increasing block rates became the norm, used in Albuquerque and many other cities as a way of ensuring water to meet minimal needs while discouraging high use. But the problems in their initial adoption demonstrate one of the difficulties faced by systems in which direct election of water agency board members creates disincentives for necessary rate increases.

Albuquerque's performance

Albuquerque's water conservation success (see Drought Response discussion above) has posed special challenges to the local utility budget planning process as water use has dropped more quickly than projected in its budget planning process. This was most notable in 2014, when a 9 percent reduction in per capita water use more than offset a 5 percent rate increase. The current Albuquerque governance structure was successful in managing the necessary rate increases to keep the utility on a sound fiscal footing.²² (See *Measures of Financial Health* below.)

¹⁹ Kenney, Douglas S. "Understanding Utility Disincentives to Water Conservation as a Means of Adapting to Climate Change Pressures." *Journal (American Water Works Association)* 106.1 (2014): 36-46

²⁰ Mullin, Megan. *Governing the tap: Special district governance and the new local politics of water*. MIT Press, 2009.

²¹ Hall, Darwin C. "Public choice and water rate design." *The political economy of water pricing reforms* (2000): 189-212

²² Fleck, John. Water rate hike likely — because use is down. *Albuquerque Journal*, April 22, 2014

Measures of utility financial health

One of the primary measures of a utility's fiscal health is the relationship between revenue and debt. A debt ratio that is too low means that the utility is at risk of having insufficient revenue to meet its debt service obligations. A debt service ratio that is too high means a utility is not taking sufficient advantage of its bonding capacity to finance long term capital needs, with resulting rates that are higher. A 2013 survey of utilities by the bond rating company Fitch found a median debt ratio of 2.0x. The Water Research Foundation, a think tank that provides utility guidance on sustainable fiscal management for water utilities, recommends debt coverage ratios between 1x and 2x.²³

While no significant correlation emerged between governance type and this measure of utility financial health in a review of peer agencies analyzed for this study, the Albuquerque Bernalillo County Water Utility Authority debt coverage ratio of 1.60x was within the Water Research Foundation's recommendation range and typical for the group of peer agencies surveyed. It has consistently been in the 1.5x-2.0x range.

Utility	Governance type	Board structure	Wastewater	Debt service coverage
Denver Water	SD	appointed by Denver mayor	N (done by city and county of Denver)	3.45x
Phoenix	C	City Council	Y	WW 1.92x W 2.4x
Tucson	C	City Council	Y	1.82x
Albuquerque Bernalillo County Water Utility Authority	SD	appointed by county commission and city council	Y	1.60x
Santa Fe	C	City Council	Y	W: 1.24x WW: 1.61x
El Paso	SD	appointed by El Paso City Council, Mayor	Y	2.22x

²³ Jeff Hughes et. al, Defining a Resilient Business Model for Water Utilities. Water Research Foundation, 2013

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Las Cruces	C	Utilities Board, includes two city councilors, the rest appointed by city council	Y (also includes gas)	1.04x (all utilities)
Rio Rancho	C	City Council	Y	1.9x
Scottsdale, AZ	C	City Council	Y	15.05x
Salt Lake City	C	City Council	Y	2.64x
Fort Collins	C	City Council	Y	W: 5.38x WW: 6.85x
East Bay MUD	SD	elected	Y	W: 1.65x WW: 1.98x
Las Vegas, NV	SD	County Commission	N	2.36x
Colorado Springs Utilities	SD	City Council	Y (also includes gas and electric utilities)	1.91x
Irvine Ranch Water District	SD	Elected board	No	3.0x

Source: Agency Comprehensive Annual Financial Reports, "SD"="Special District", "C"="City"

A second measure of utility financial health is "days cash on hand", which represents a utility's ability to meet near-term spending obligations. The Water Research Foundation recommends that utilities meet a benchmark of 180 days' cash on hand. The Albuquerque Bernalillo County Water Utility Authority's cash on hand levels dropped as low as 130 days in recent years, in 2013 as greater than anticipated conservation success reduced water sales revenue. Steps taken since then to stabilize revenue brought the 2016 year-end level to 309.7 days, well above the WRF benchmark.²⁴

Land Use Planning and Municipal Water Governance

Separation of land use planning and water service provision has led in some places to a "governance gap", a disconnect between decisions about the future shape and structure of communities – where homes, businesses, schools, parks, and streets will be built – and the provision of water and wastewater services. In the arid western United States,

²⁴ Jeff Hughes et. al, Defining a Resilient Business Model for Water Utilities. Water Research Foundation, 2013

that has led to conflicts between environmental interests, development, and growth in the face of scarce water supplies.²⁵

Alignment between municipal services and water management, either through direct municipal control (as when the water and wastewater utilities are operated as an enterprise of the city itself) or when the special municipal district providing the services is governed by a board of directors made up of city councilors or county commissioners, or a separate board chosen by the local city council or county commission (as is the case, for example, with the Albuquerque Bernalillo County Water Utility Authority and El Paso Utilities) means that land use and water management decisions are being made by the same or closely related policymakers. Separation of the two functions has in some notable cases allowed competing political institutions and factions leverage in political battles over land use development decisions.

In Albuquerque, in separating the Water Utility Authority from the city government, an effort was made to create linkages to land use planning. The agency's Water and Wastewater System Expansion Ordinance, for example, requires that approval of any service expansion "conforms to the provisions of applicable comprehensive plans and/or adopted planning documents or policies" and that the expansion be done "at no net expense" to the Water Utility, in an effort to ensure that existing customers do not subsidize new development.²⁶

"Policy L" in the Water Utility's Water 2120 long range water resources management strategy, approved in 2016, explicitly calls for linking long range water planning with Albuquerque and Bernalillo County city-county comprehensive planning efforts.²⁷

The following case studies illustrate some of the advantages and disadvantages of different governance approaches.

Las Vegas, Nevada

The story of Las Vegas, Nevada's, struggle to match water supplies with exploding growth in the early 1990s illustrates the advantage of having a close connection between municipal government, with its responsibility for land use planning, and water management.

In the late 1990s, the Las Vegas metropolitan area – the driest large city in the United States – was experiencing explosive growth, peaking at 175 new residents per day in 1990, a nearly 10 percent per year growth rate. With the Las Vegas Valley's modest aquifers largely depleted, the valley was almost entirely dependent on water from nearby Lake Mead, which stores Nevada's share of Colorado River water along with supplies for Arizona, California, and New Mexico. With that supply capped by the Colorado River Compact and related laws governing the river's allocation, fears were

²⁵ Bates, Sarah. "Bridging the Governance Gap: Emerging Strategies to Integrate Water and Land Use Planning." *Natural Resources Journal* (2012): 61–97

²⁶ The legislation creating the Water Utility Authority authorized the agency's board to approve policy ordinances. Requirements connecting the Water Utility's operations to city and county land use planning policies are contained in section 7-1-9 of the Utility's ordinances, approved in 2007.

²⁷ ABCWUA 2016: Water 2120:Securing our Water Future, Policy L

growing that Las Vegas's water supply was insufficient to meet the growing metropolitan area's needs.

The largest water agency in the region, the Las Vegas Valley Water Authority (LVVWA), is an independent municipal district. While it is technically a separate agency, it is closely affiliated with the region's county government because the LVVWA's governing board is made up of the seven publicly elected Clark County Commissioners. This connection between the two entities gave the LVVWA the legal and political authority to take decisive action in early 1991, issuing a moratorium on new building permits until a plan could be put into place to ensure that sufficient water was available to meet the region's water needs.²⁸

East Bay Municipal Utility District

California's East Bay Municipal Utility District (EBMUD), serving a population of 1.4 million people on the east side of San Francisco Bay, is the largest retail water agency in California to be governed as a separate municipal agency with a directly elected board, and one of the largest such agencies in the country. Struggles over development there in the early 1990s, in the midst of rapid regional population growth that coincided with a severe drought, provide one of the clearest examples of the tensions between land use planning and water service when the two are handled separately.

EBMUD's service territory spans more than 30 cities in two counties, reaching from the San Francisco Bay cities of Richmond and Oakland to the suburban fringes of Walnut Creek and San Ramon. In the early 1990s, Contra Cost County government was supportive of an 11,000-home development in Dougherty Valley, which at the time was agricultural land. In the midst of a significant drought EBMUD argued that it did not have enough water to meet the new community's needs. At loggerheads, the two independent government agencies ended up in court. But the separate electoral forum of an elected water agency board gave the project's developers an advantageous forum to pursue their agenda. With relatively low general voter attention to the water agency, a well-funded political alliance between the project's developers and the Buildings Industry Association, a trade group, captured a majority of the seats on the EBMUD's board. The new board settled the agency's lawsuit with Contra Costa County and created an opening for the development to move forward.²⁹

The examples above highlight one of the most common criticisms of the establishment of separate special-purpose government agencies, whether for water or other municipal services, separate from city or county governments. Such government agencies have frequently been implicated in furthering economic agendas of political elites, especially the development community, who have the resources to dominate elections for boards of agencies for which voter attention and public interest is low.³⁰

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²⁸ Harrison, Christian S. "Las Vegas in an Era of Limits: Urban Water Politics in the Colorado River Basin." University of Nevada, Las Vegas, 2014

²⁹ Mullin, Megan. *Governing the Tap*. The MIT Press, 2009

³⁰ Barbara, Coyle McCabe. "Special-District Formation Among the States." *State and Local Government Review* 32.2 (2000): 121–131.

The Process of Governance Change

The non-municipal water agencies among Albuquerque's peer agencies in the western United States have all existed in their current governance form for decades, so there is little experience to be gained elsewhere that might be applied to the process of converting Albuquerque Bernalillo County Water Utility Authority from its current governance structure to one run by an independently elected board, completely separate from municipal or county government. The East Bay Municipal Utility District in Northern California, the largest such completely independent agency, was formed in 1923. The Eastern Municipal Water District and the Irvine Ranch Water District in Southern California were formed in the 1950s and '60s during a period of municipal growth to manage the importation of Colorado River water to the region. In all three cases, the water management entity was created early (in the case of EBMUD) or at a point when an entity was needed spanning many different cities, as in the case of Irvine Ranch and Eastern, to manage the challenge of large scale water importation.

The closest example to a transition from municipal to independent elected governance happened over the last several years happened in Colorado Springs, since 2011 conducted a formal review of the governance structure of its municipal utilities. The Colorado Springs experience offers a useful case study for the citizens of Albuquerque in considering the question of a governance change. Colorado Springs is slightly smaller than Albuquerque, but the two communities' water utilities are similar in size. In addition to water and wastewater services, Colorado Springs Utilities also provides electricity and natural gas.

Colorado Springs Utilities, in its current form, is a relatively unusual form of municipal government agency, with some characteristics of a city department but important differences that are more like a special district. It is wholly owned by the city of Colorado Springs, is operated as a quasi-independent agency, with board that functions separately but is made up of members of the Colorado Springs City Council. As such, it is functionally separate from the city government, with a separate budget and financial structure. Its manager reports directly to the Utilities Board rather than the Colorado Springs city manager, as other city departments do. But with the board made up of publicly elected city councilors, its overall management and direction is closely linked to the rest of city government operations.

Over the last several years, the community engaged in an extensive discussion of the possibility of changing its governance structure. The discussion was driven by a belief

by some in the community that Colorado Springs Utilities would be better served by a specialized board. The City Council met four times per month, while the city councilors would meet just once a month in their capacity as the independent Utilities Board. Council members were term limited to two four-year terms, meaning that just as they were developing the necessary expertise to oversee a complex multi-function utility, they had to step down. Because utility issues drew little public interest or involvement, city councilors' constituent-driven concerns left little time for utility matters.³¹

The process by which Colorado Springs approached the discussion of the possibility of a governance change was very different from that being discussed with regard to a possible change in the Albuquerque Bernalillo County Water Utility Authority. While in the Albuquerque case the possible change is being driven by state legislators and the discussion has happened primarily at the state Legislature, Colorado Springs' process was entirely community driven and involved extensive research and public discussion among community members at the local level. A Utilities Policy Advisory Committee was formed to study the issue, there were a total of six community surveys conducted, town hall meetings were held across the city, and the utilities hired a consultant to review management and governance structures at peer agencies across the country. The promise of the process was that a robust public and stakeholder involvement was critical to the success of any governance change.³²

Colorado Springs weighed the strengths and weaknesses of three different governance structures:

- An independent board, appointed by the city's elected officials
- An independent board, directly elected by voters
- A continuation of the current system, with the city council members also serving as the Utilities Board

In reviewing "best practices" among peer utilities, Colorado Springs found that utilities with an appointed board were more common than those with elected boards among those operated as a separate entity rather than as city departments. In particular, the Colorado Springs team working on the project pointed out the risks that a directly elected board might be more influenced by special interest groups; that while direct election might make the utility more directly accountable to the citizenry, it also raised the risk that political pressure might make it more difficult to raise rates to cover the cost

³¹ Colorado Springs Utilities. Governance Alternatives White Paper. 2011

³² Utilities Policy Advisory Committee, Government Structure Review, presented to Colorado Springs Utilities Board Feb. 22, 2012; Colorado Springs Utilities Governance, undated, <https://www.csu.org/Pages/governancereview.aspx>

of service, and that a directly elected board might emphasize public input over best business practices.³³

In the end, Colorado Springs decided against making any change.³⁴

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³³ Utilities Policy Advisory Committee, Government Structure Review, presented to Colorado Springs Utilities Board Feb. 22, 2012

³⁴ Anleu, Billie Stanton; Council to Maintain Utilities governance; Colorado Springs Gazette; June 30, 2016

Appendix I: Peer Agencies

Survey of peer agency governance structures in Arizona, Southern Nevada, Colorado, California, and Utah. The ten largest utilities in each state were selected based on size of population served, as reported to the Environmental Protection Agency. In some cases smaller agencies of interest were also included, but in all cases agencies close to or exceeding ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY were included in order to allow analysis of peer agencies. In some cases, where population size discrepancies were found between numbers reported in the EPA's Safe Drinking Water Information System database and agencies' self-reported numbers elsewhere, the agencies' self-reported numbers were used.

Arizona

	Governance type	board	wastewater	population
Phoenix	City	City council	yes	1,526,000
Tucson	city	City council	yes	675,686
Mesa	city	City council	yes	466,000
Chandler	city	City council	yes	247,328
Gilbert	city	City council	yes	235,000
Glendale	city	City council	yes	234,766
Scottsdale	city	City council	yes	230,000
Tempe	city	City council	yes	165,000
Peoria	city	City council	yes	135,975
Yuma	city	City council	yes	103,264

Southern Nevada

	Governance type	board	wastewater	population
Las Vegas Valley Water District	Special district	County Commissioners	No (provided by Clark County Water Reclamation District, a special district with Clark County Commissioners also serving as its board)	1,347,550
North Las Vegas Utilities	city	City council	yes	311,932
Henderson	city	City council	yes	275,000
Boulder City	city	City council	yes	15,000

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Colorado

	Governance type	board	wastewater	population
Denver water	Special district	Appointed by Denver mayor	no	1,400,000
Colorado Springs Utilities	Special District	City council serves as special district board	yes	424,171
Aurora	city	City council	yes	325,000
Westminster	city	City council	yes	178,250
Boulder	city	City council	yes	166,080
Thornton	city	City council	yes	136,977
Fort Collins	city	City council	yes	129,100
Arvada	city	City council	yes	126,552
Pueblo	Special district	Elected board	No (managed by city)	109,532
Greeley	city	City council	yes	101,000

California

	Governance type	board	wastewater	population
Los Angeles	city	Board of Water and Power Commissioners, appointed by mayor	yes	4,061,504
East Bay MUD	Special district	Elected board	yes	1,379,000
San Diego	city	City council	yes	1,339,958
San Jose Water Company	private		No (provided by city)	924,954
San Francisco Public Utilities Commission	Special district	Appointed by mayor, confirmed by count commissioners	Yes (also power)	837,442
Eastern Municipal Water District	Special district	Elected board	Yes (for only a portion of its service area)	546,146
Fresno	city	City council	yes	524,320
Sacramento	city	City council	yes	486,189
Long Beach	city	Water Board,	No (provided by	472,779

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		Appointed by mayor, approved by city council	Sanitation Districts of Los Angeles County)	
Anaheim	city	City council	No (provided by Orange County Sanitation District)	450,000
Irvine Ranch Water District	Special district	Elected board	No (provided by Orange County Sanitation District)	380,000

Utah

Salt Lake City	city	City council	yes	312,880
Granger-Hunter Improvement District	Special district	Elected board	Shared facilities with neighboring communities	118,083
Provo	city	City council	yes	115,000
West Jordan	city	City council	yes	108,000

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