

PAGOSA AREA WATER AND SANITATION DISTRICT

**A RESOLUTION AMENDING RULES AND REGULATIONS AND ADOPTING
A COST RECOVERY POLICY**

WHEREAS, the Pagosa Area Water and Sanitation District ("District") is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Article 1 of Title 32, Colorado Revised Statutes (the "Special District Act"); and

WHEREAS, pursuant to the Special District Act, the District is authorized to amend its Rules and Regulations and adopt policies from time to time; and

WHEREAS, the Board of Directors ("Board") of the District hereby finds and determines that changes in policy, adoption of new policies and/or clarifications of existing policies from time to time is appropriate and necessary to the function and operation of the District; and

WHEREAS, the Board wishes to adopt Rules and Regulations and Policies governing the circumstances under which a private party that finances the design, acquisition, installation, or construction of District facilities may recover a portion of its expenses from other private parties who use such facilities; and

WHEREAS, the Board hereby finds and determines that it is appropriate and necessary to the function and operation of the District to amend the Rules and Regulations and adopt the Cost Recovery Policy provided herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Pagosa Area Water and Sanitation District as follows:

1. **Amendment to Rules and Regulations Section 8.13.** The current Section 8.13 "No Cost Recovery Allowed" of the District's Rules and Regulations is hereby replaced in its entirety by the following:

8.13 Cost Recovery: Any time an Applicant funds an extension of a water line (but not including a fire hydrant line), sewer line or trunkline that will benefit property owners who are not currently receiving service from the District, the Applicant shall be eligible for reimbursement from the property owners who will benefit from such extension, to the extent indicated in a Main Line Extension Permit and as further provided in any policies which may be adopted by the District. The District agrees to expend its reasonable efforts to collect the reimbursable costs and remit them to the Applicant, but the District shall not bear any liability for any negligent or inadvertent failure to collect the reimbursable costs from the property owner(s) benefited by the extension. No reimbursement

obligation shall extend more than ten(10) years from the date of completion of the extension. No Applicant shall have or make a claim for reimbursement unless reimbursement has been expressly provided for in the Main Line Extension Agreement.

2. **Adoption of Cost Recovery Policy.** In connection with the amendment above of Section 8.13 of the District's Rules and Regulations, a new Cost Recovery Policy is hereby adopted as follows:

(a) **General.**

(i) Unless expressly waived by the terms of a Cost Recovery Agreement, the terms of this Cost Recovery Policy are hereby incorporated in and applicable to all agreements and permits for Cost Recovery between the District and any Applicant.

(ii) For purposes of this Cost Recovery Policy, the term "Cost Recovery" means: reimbursement to an Applicant of a portion of its costs connected with an extension of a water line (but not including a fire hydrant line), sewer line or trunkline from property owners who are not then currently receiving service from the District, with such reimbursement to occur when and if such other property owners connect to the District's system through the facilities funded by the Applicant as provided in the District's Rules and Regulations, this Cost Recovery Policy, a Main Line Extension Permit, and any Cost Recovery agreement.

(iii) Cost Recovery for any facilities other than line extensions and appurtenances incidental thereto shall be allowed only upon a compelling showing and the District's determination that such recovery can be administered with a reasonable degree of accuracy and without increasing the District's difficulty of administering the fee. Cost Recovery for facilities other than line extensions are disfavored.

(iv) Cost recovery for out-of-District service is available on a case-by-case basis in the sole discretion of the District.

(v) Cost Recovery shall not be required at the end of a ten-year period from the date of the adoption of any Cost Recovery Agreement.

(vi) Cost recovery is permitted, but only if it is acknowledged in a Main Line Extension Permit prior to commencement of the project.

(b) **Calculation of Cost Recovery Amount.**

(i) Applicant's recovery will be based on the number of equivalent units ("E.U.'s") a connecting party uses times the dollar value of an E.U.

(ii) Applicant's Engineer shall calculate the total amount of equivalent units capable of being served by the facilities.

(iii) Applicant shall calculate the total amount of E.U.'s expected to be used by its project.

(iv) The dollar value of an E.U. shall be equal to the total E.U. capacity of a facility divided by the total cost of the improvements (including without limitation design, permitting, land, materials, and labor costs). For example, if Applicant's project will need 100 E.U.'s at full build-out, and the facilities have capacity for 150 E.U.'s, and the cost of the improvements is \$2,000,000, then the value of each E.U. shall be equal to \$13,333 ($\$2,000,000/150$ E.U.'s).

(v) Where the District and the Applicant agree that an alternative formula for calculating a Cost Recovery fee does not increase the District's difficulty of administering the fee and failure to use such alternative would be grossly unfair, the District and the Applicant may adopt such alternative means of calculating the Cost Recovery fee. In the event the parties cannot agree to use an alternative formula, the formula contained within the Policy shall govern. In determining whether the formula is grossly unfair, the District Board shall consider in its sole discretion, in addition to any relevant facts placed before it, the burdens to the District of administering an alternative regime, the general impact to the District from departing from the standard formula with respect to other Applicants seeking Cost Recovery, and any other items deemed relevant to the District.

(vi) The E.U. dollar value amount may be adjusted based on the Denver/Boulder Consumer Price Index.

(c) Limitation on Recovery. Applicant shall recover no more than the difference between the total amount of equivalent units capable of being served by the facilities and the total amount of E.U.'s expected to be used by its project.

(d) Cost Recovery Agreement.

(i) No Cost Recovery shall be assessed or paid until the District and the Applicant enter into a Cost Recovery Agreement. Prior to executing such an Agreement, the Applicant shall deposit with the District sufficient funds to cover the District's costs in reviewing the Cost Recovery Agreement, including without limitation staff, legal and other consultants.

(ii) Unless waived by the District, a Cost Recovery Agreement shall be entered into at or on the same day as a Bill of Sale conveying the facilities to the District.

(iii) The Applicant shall provide proof of all payments made, and copies of invoices related to the facilities prior to execution of the Cost Recovery Agreement.

(iv) Applicant shall provide a map of all parcels contiguous to the extension or improvement and any other documentation required by PAWSD.

(v) Any Cost Recovery Agreement shall not be in conflict with the District's New Development Water or Sewer Infrastructure Policy or other applicable policies in effect at such time as an Agreement is executed.

(vi) Cost Recovery Agreements shall contain such additional terms as deemed advisable by the District and its legal counsel.

(e) Administration; Miscellaneous.

(i) Third parties shall pay Cost Recovery reimbursements to the District, which shall then pay such fees over to the Applicant subject to the terms of the District's Rules and Regulations, the Cost Recovery Policy, the Main Line Extension Permit, and any Cost Recovery agreement.

(ii) Any fees or assessments collected from any party shall first be applied to District fees or assessments, with any remaining proceeds to be allocated to Cost Recovery.

(iii) The District can withhold or divert Cost Recovery reimbursements to pay for necessary repairs to the improvements caused by defective design, materials or workmanship, regardless of whether any applicable warranty period has passed.

(iv) The District Manager may withhold from any Cost Recovery payment an administrative fee to offset any staff or consultant costs in administering a Cost Recovery Agreement at the then current rates.

(v) The District shall be indemnified and held harmless for any failure to properly execute the provisions of a Cost Recovery Agreement.

(vi) The District's obligations shall be subject to annual appropriation of funds necessary for the performance thereof, which appropriation shall be made in the sole discretion of the District's Board of Directors.

(vii) Cost Recovery fees shall constitute a perpetual lien on affected properties pursuant to the Special District Act.

(viii) An approved Cost Recovery Agreement may not be further assigned or delegated without the written consent of both the Applicant and the PAWSD.

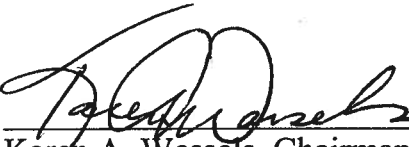
(ix) An Applicant who has an approved Cost Recovery Agreement in place may appeal to the PAWSD Board of Directors for review of his Agreement if subsequent development contiguous to the extension line or other qualified improvements makes the initial recovery plan grossly unfair. The Board may, at its discretion, consider an alternative formula for calculating the recovery amount.

3. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

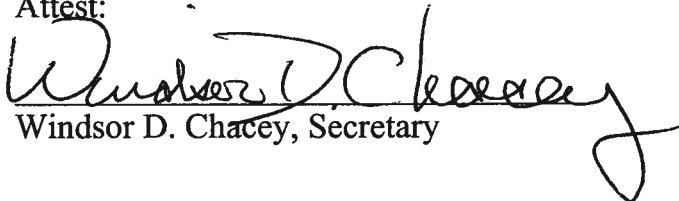
4. **Effective Date.** This Resolution shall take effect and be enforced immediately upon its approval by the District Board.

ADOPTED this 11th day of March, 2008.

PAGOSA AREA WATER AND SANITATION DISTRICT

By 
Karen A. Wessels, Chairman

Attest:


Windsor D. Chacey, Secretary