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Meeting Date: August 17, 2016

Staff Contact: Kristopher Cadena, Principal Engineer, Utility Development

**TITLE: R-16-8 – Approving a Development Agreement with Montecito Vistas Units 1-4**

**ACTION: Recommend Approval**

**SUMMARY:**

The development is located along the north side of Vista Vieja Ave., west of Quivira Dr. within the City Limits. The project consists of 136 residential lots.

The property lies within Pressure Zone 4W in the Volcano Trunk.

Water and wastewater service is contingent on the Developer constructing internal distribution and collector lines that tie to the existing infrastructure proximate to the property.

All services provided within the development will be subject to current Utility Expansion and Water Supply Charges.

**Fiscal Impact:**

None.



**DEVELOPMENT AGREEMENT**  
**Montecito Vistas Units 1-4**

**Albuquerque Bernalillo County Water Utility Authority**, a New Mexico political subdivision, (“Water Authority”) and Pulte Homes of New Mexico, Inc., a Michigan corporation, (“Pulte Homes”) (together, “Parties”), agree as follows:

**1. Recitals**

- A.** Pulte Homes is the developer and owner of certain real property located at Montecito West subdivision (collectively, the “Property”). The Property is more particularly described and as shown on **Exhibit A** attached hereto and incorporated herein by reference. The Property at full development will consist of **136** residential lots. The Property is located in the former New Mexico Utilities, Inc. (“NMUI”) service area, outside the Water Authority’s currently adopted Water Service Area.
- B.** The Property is located in Pressure Zone 4W of the Volcano Trunk.
- C.** The Parties desire to agree upon terms and conditions pursuant to which the Water Authority will provide water and sanitary sewer service to the Property. Pulte Homes desires to construct, or cause to be constructed, extensions of existing public water and sanitary sewer lines and appurtenant infrastructure (collectively, “Line Extensions”) under all applicable plans, specifications, requirements, and standards of the Water Authority. The Serviceability Statement for the Property reflecting the line extensions and other matters referred to in this Agreement is attached hereto as **Exhibit B** and incorporated herein by reference and made a term of this agreement.
- D.** The expansion of the existing water distribution system to the Property will require additional arsenic treatment and water storage capacity within the Pressure Zone 4W distribution system. As such, the Property will be assessed a Facility Fee that reflects their proportional costs of the required additional system capacities.

**2. Design and Construction of the Waterlines and Sanitary Sewer Line**

- A.** Pulte Homes will cause definitive designs and plans of the Line Extensions to be produced which will include estimates of all costs and expenses. Pulte Homes will not connect the extension lines to the existing water and sanitary sewer lines within the City of Albuquerque (“City”) public right-of-way until the Water Authority has approved the line extensions. Pulte Homes will convey, at no expense to the Water Authority, all Line Extensions that have been approved and accepted by the Water Authority and all necessary easements for the Line Extensions

at locations reasonably acceptable to Pulte Homes, free and clear of all liens, claims, and encumbrances for the construction, operation, and maintenance of the line extension. Pulte Homes will obtain all necessary permits, assurances, and approvals from the Water Authority and City, and Pulte Homes will deliver a copy of such permits, assurances, and approvals to the Water Authority prior to the start of construction. Construction will be handled through the City work order process.

- B.** Pulte Homes will complete, or cause to be completed, construction of the Line Extensions as approved by the City of Albuquerque Design Review Committee and the Water Authority, and in conformance with all applicable plans, specifications, and standards of the City and the Water Authority.
- C.** Pulte Homes will be responsible for close coordination of the project with the Water Authority during the design and construction phases, including review of design details, during the design process, and the approval of specifications and contract documents. The Water Authority will review and approve in a timely manner the design plans for construction and estimated cost, to ensure the designs meet Water Authority standards and follow the guidance provided in the City's Development Process Manual ("DPM") and/or applicable Water Authority Design Manuals.
- D.** To the extent relevant and applicable and to the extent there is no conflict with the terms of this Agreement, the usual procedures and documentation, including the Procedure "B", as defined in the Subdivision Ordinance and the DPM of the City, will be followed and used for the Line Extensions.

### **3. Service**

- A.** Pulte Homes shall comply with the Water Authority's Water and Sewer System Expansion Ordinance, as amended from time to time. Connection for water service shall require the concurrent connection of sanitary sewer service to the Water Authority's wastewater system.
- B.** Pulte Homes or its successor shall pay Utility Expansion Charges (UEC) and the Water Supply Charges (WSCs) at the rates that are imposed at the time of a service connection, as provided in the Water Authority's Water and Sewer Rate Ordinance, as amended from time to time.
- C.** Pulte Homes shall pay a Facility Fee to the Water Authority in the amount of \$141,331. This fee reflects the proportional costs associated with the increase of arsenic water treatment systems and reservoir capacities associated with providing potable water service to the Property. No utility services will be sold to the Property until the Facility Fee is paid in whole. As the expansion of system capacity is classified as Master Plan Facility Improvements, this Facility Fee is reimbursable by the Water UEC's

collected as services are established for the **136** residential lots within the Property. The UEC reimbursements will total no more than the Facility Fee amount. Reimbursement will be on a Fiscal Year basis. The Reimbursement request must be initiated by Pulte Homes or its successor.

**D.** Pursuant to Water Authority Resolution No. R-05-13, Pulte Homes agrees that it will incorporate water conservation guidelines that will seek to achieve water usage of no more than 180 gallons per household which is equivalent to seventy-five (75) gallons per capita per day.

- 4. Termination.** If construction of the waterline extensions and sanitary sewer extensions by Pulte Homes has not been completed and accepted by the Water Authority within seven years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and Pulte Homes shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.
- 5. Water for Construction.** During the construction of the waterline extensions and sanitary sewer line extensions, water for construction may be obtained from a hydrant designated by the Water Authority as set forth on **Exhibit C** attached hereto and incorporated herein by reference. If economically feasible, the Contractor is encouraged to utilize alternative methods for dust abatement and control including compost from the Water Authority.
- 6. Indemnification.** Pulte Homes will defend, indemnify and hold harmless the Water Authority and its officials, agents, and employees on demand from any claims, actions, suits, or other proceedings arising from the acts or omissions of Pulte Homes, its agents, representatives, contractors, or subcontractors, or arising from the failure of Pulte Homes, its agents, representatives, contractors, or subcontractors to perform any act or duty required of Pulte Homes in this Agreement. The indemnification by Pulte Homes will not extend to the negligent acts of the Water Authority.
- 7. Representations and Warranties of Pulte Homes.** Pulte Homes represents and warrants that:
  - A.** Pulte Homes is a validly existing limited liability company under the laws of the State of Michigan.
  - B.** Pulte Homes has all the requisite power and authority to enter into this Agreement and bind Pulte Homes under the terms of the Agreement; and
  - C.** The undersigned officer of Pulte Homes is fully authorized to execute this Agreement on behalf of Pulte Homes.
- 8. Notices.** Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited with the United States Postal Service, postage prepaid and addressed as follows:

If to the Water Authority:

Mark S. Sanchez  
Executive Director  
Albuquerque Bernalillo County  
Water Utility Authority  
One Civic Plaza, Room 5012  
Albuquerque, New Mexico 87102

If to Pulte Homes:

Pulte Homes of New Mexico, Inc., a Michigan corporation  
Attn: Garret Price  
7601 Jefferson NE Ste 320  
Albuquerque, NM 87109

- 9. Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and Pulte Homes.
- 10. Miscellaneous.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of the Agreement. This Agreement binds and benefits the Water Authority and their successors, assigns, and transferees and Pulte Homes and their successors, assigns and transferees. Time is of the essence of each term of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, that portion will be severed from this Agreement and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.
- 11. Integration; Interpretation.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Agreement and supersedes all prior negotiations. This Agreement may only be modified in writing executed by both parties.
- 12. Approval.** This Agreement is subject to the approval of the Board of Directors of the Water Authority and will not become effective until approved by the Water Authority.
- 13. Effective Date.** The effective date of this Agreement is the date last entered below.

In Witness Whereof, the parties hereto have executed this Agreement on the dates entered below.

**Albuquerque Bernalillo County  
Water Utility Authority**

**Pulte Homes of New Mexico, Inc.,  
a Michigan corporation**

By: \_\_\_\_\_  
Mark S. Sanchez  
Executive Director

By: \_\_\_\_\_  
Garret Price  
VP Land

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO     )  
  ) ss  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on, June 10, 2014 by Garret Price, VP Land of Pulte Homes of New Mexico, Inc., a Michigan corporation, on behalf of said Company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

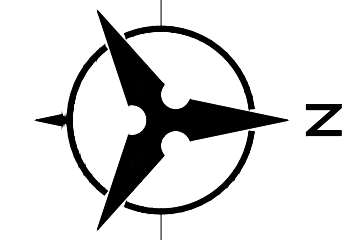
STATE OF NEW MEXICO     )  
  ) ss  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

# EXHIBIT 'A' MONTECITO VISTAS UNITS 1-4

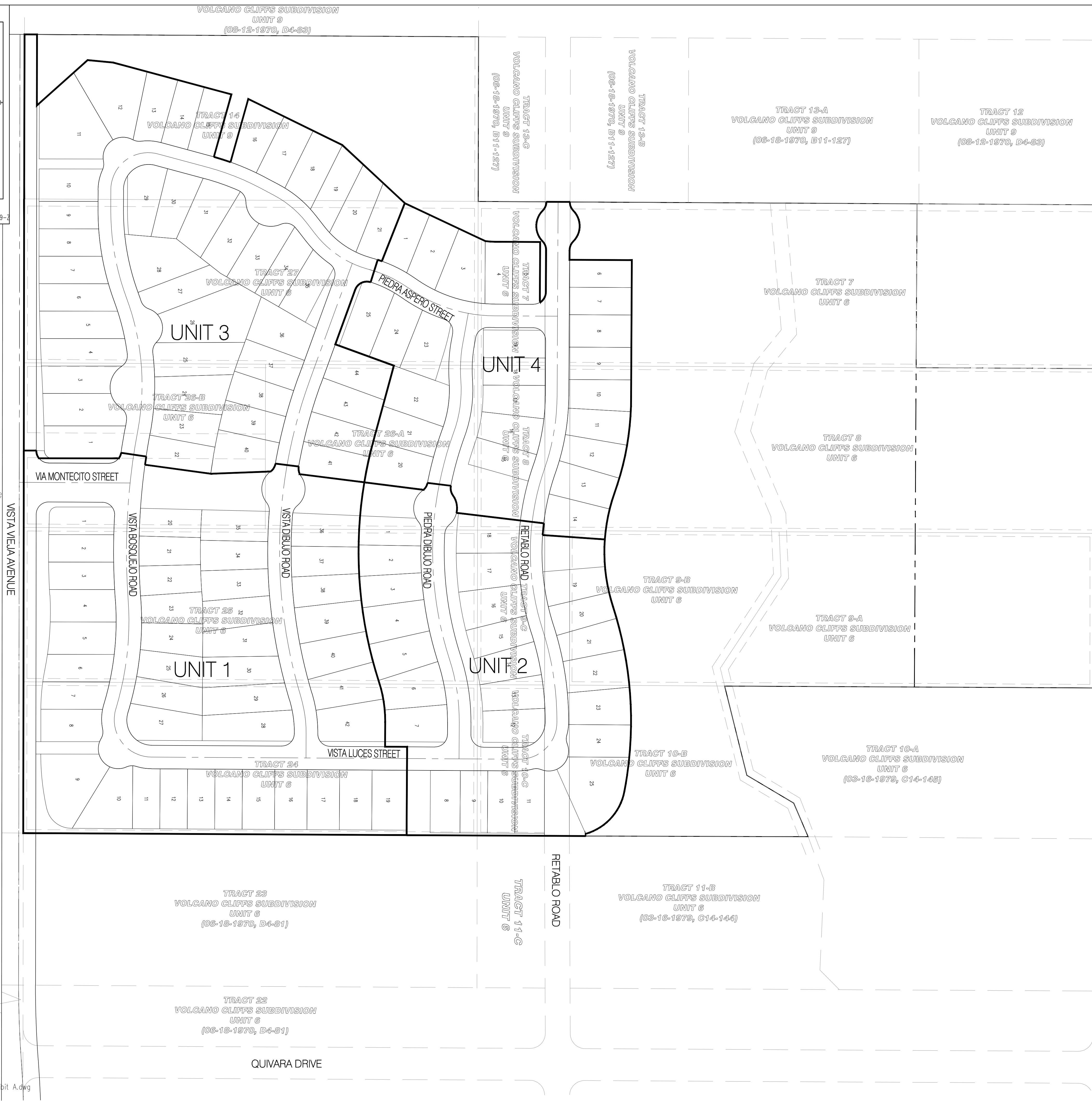


**LEGAL DESCRIPTION**

- MONTECITO VISTAS UNIT 1, LOTS 1-42
- MONTECITO VISTAS UNIT 2, LOTS 1-25
- MONTECITO VISTAS UNIT 3, LOTS 1-44
- MONTECITO VISTAS UNIT 4, LOTS 1-25



VICINITY MAP  
NOT TO SCALE ZONE ATLAS C-09-7





June 6, 2016

**Chair**

Trudy E. Jones  
City of Albuquerque  
Councilor, District 8

**Vice Chair**

Art De La Cruz  
County of Bernalillo  
Commissioner, District 2

Richard J. Berry  
City of Albuquerque  
Mayor

Pat Davis  
City of Albuquerque  
Councilor, District 6

Maggie Hart Stebbins  
County of Bernalillo  
Commissioner, District 3

Debbie O'Malley  
County of Bernalillo  
Commissioner, District 1

Ken Sanchez  
City of Albuquerque  
Councilor, District 1

*Ex-Officio Member*  
Pablo R. Rael  
Village of Los Ranchos  
Board Trustee

*Executive Director*  
Mark S. Sanchez

*Website*  
[www.abcwua.org](http://www.abcwua.org)

Scott Steffen  
Bohannon Huston  
7500 Jefferson St. NE  
Albuquerque, New Mexico 87109

**RE: Water and Sanitary Sewer Serviceability Statement #160316  
Montecito West Phase 2 - Gila Rd / Quivara Drive NE  
Zone Atlas Map: D – 9 (Revised #151008)**

Dear Mr. Steffen:

A previously issued serviceability statement (#151008) dated December 23, 2015 was for 117 single-family residential homes on 31.4 acres. The scope of the development has increased to 136 single family homes on 53.2 acres.

**Project Information:** The subject site is located north of Vista Vieja Ave. (Gila Rd.) and west of Quivara Drive. The property consists of approximately 53.2 acres and is currently zoned SU-2 for residential development. The property lies within the Pressure Zone 4W in the Volcano trunk. The request for information indicates developing 136 single family detached homes.

**Existing Conditions:** Water infrastructure in the area consists of the following:

- 12 inch PVC distribution new main in Vista Vieja Ave. (Project # 26-7639.81-15) at the west end of Montecito West Unit 1
- Six inch PVC distribution main in Largo Vista St. Looped to Piedra Lumbre Rd. (Project # 26-7639.82-15) via Retablo Road at the north side of Montecito West Unit 1.

Sanitary sewer infrastructure in the area consists of the following:

- Eight inch PVC collector line in Vista Vieja Ave. (Gila Rd.) at the south side of Montecito West Unit 1 (Project #26-7639.81-15)

**Development Agreement:** Pursuant to the System Expansion Ordinance, this property is outside of the Water Authority service area and the Water Authority Board must approve a Development Agreement to serve this property and establish requirements as a condition of service. Contact the Utility Development Office for draft Development Agreements.

**Water and Sewer Service:** Water service to the subdivision can be provided via a 12 inch main line extension connecting to the existing 12 inch PVC main in Vista Vieja Ave. (Gila Rd.) at the west end of Montecito West Unit 1. The request for serviceability proposed the 12 inch distribution extension internal to the development and not covering its property frontage along Vista Vieja Ave. This is an acceptable alignment as a waterline extension along Vista Vieja Ave. is not needed as no development will take place south of this roadway as the properties are classified as open space. Furthermore, extension along Vista Vieja Ave. is not required as properties west of the subject development are located in Pressure Zone 5W. This extension shall provide a looped connection by connecting to the existing six inch distribution main along Largo Vista St. A 12 inch distribution main shall be installed along the western boundary of the development, near the pressure zone boundary to serve as a top of Pressure Zone

4W waterline. This top of zone waterline shall be situated to allow for future extension to the north via a 12 inch waterline stub. The maximum service slab elevation for the 4W service zone is 5,485ft (NAV27/29). Service is also contingent upon compliance with the Fire Marshal's instantaneous fire flow requirements. Water service will not be sold without adequate fire protection. Water service will only be sold in conjunction with sanitary sewer service.

Sanitary sewer service can be provided contingent upon a developer funded project to extend the existing sanitary sewer along Vista Vieja Ave., west to serve the development. The sizing shall be adequate to serve the upstream basins. Internal public collector lines will ultimately discharge to this extended sanitary sewer line.

**Fire Protection:** The instantaneous fire flow requirements for the subject property were not submitted in this request and will be required in the availability request prior to future construction. All new required hydrants as well as their exact locations must be determined through City of Albuquerque Fire Marshal's Office and verified through the Utility Development Office prior to sale of service.

**Easements:** Exclusive public water and sanitary sewer easements are required for all public lines that are to be constructed outside of any dedicated rights-of-way. A minimum width easement of 20 feet is required for a single utility and 25 feet for water and sewer both within the same easement. Easements for water meters need to be five feet by five feet and include the length of the water service if located on private property. Actual easement widths may vary depending on the depth of the lines to be installed. Side yard easements are not acceptable for either water or sanitary sewer. Acceptable easements must be documented prior to approval of service.

**Pro Rata:** As described in this Availability Statement, the extension of public water and sanitary sewer lines may be eligible for partial reimbursement through the Pro Rata process as detailed in the Water Authority Water and Wastewater System Expansion Ordinance.

**Design and Construction** of all required improvements will be at the developer / property owner's expense. Improvements must be coordinated through the City of Albuquerque Work Order process. Designs must be performed by a licensed, New Mexico registered, professional engineer. Construction must be performed by a licensed and bonded public utility contractor.

**Costs and Fees:** In addition to installation and construction costs of any new distribution mains and collector lines the metered water services will be subject to both water and sanitary sewer Utility Expansion Charges (UEC) payable at the time of service application. All charges and rates collected will be based on the ordinances and policies in effect at the time service is actually requested and authorized.

**Water Supply Charge:** All developments located outside of the Water Authority's service area will be assessed a Water Supply Charge (WSC) as provided in the Water Authority's Water and Sewer Rate Ordinance for the development of new water resources, rights and supplies necessary to serve the development. The WSC shall not be used for reimbursement of master planned facilities.

**Water Use:** All new development shall be required to meet the standard water usage of 180 gallons per household per day which is equivalent to 75 gallons per capita per day.

**Closure:** This statement only provides details of infrastructure that is available and potential precursors to development for the proposed development. Under no

Scott Steffen  
Bohannon Huston  
June 6, 2016  
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circumstances does this serviceability commit to service without the a Water Authority Board approved development agreement. Changes in the proposed development may require reevaluation and should be brought to the attention of the Utility Development Section of the Water Authority as soon as possible.

Please feel free to contact the Water Utility Development Office at (505) 289-3307, or by fax at (505) 289-3303 if you have questions regarding the information presented herein or need additional information.

Sincerely,



Mark S. Sanchez  
Executive Director

Enclosures: Infrastructure Maps (2)

f/ Serviceability 160316

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**Legend**

**WATER.WATER\_PIPE**  
-all other values-

**SUBTYPE**

- Distribution Main
- Drain Line
- Hydrant Leg
- In Zone Transmission
- Out Zone Transmission
- SJC Transmission
- Sleeve
- Well Collector Line
- Well Wash Line

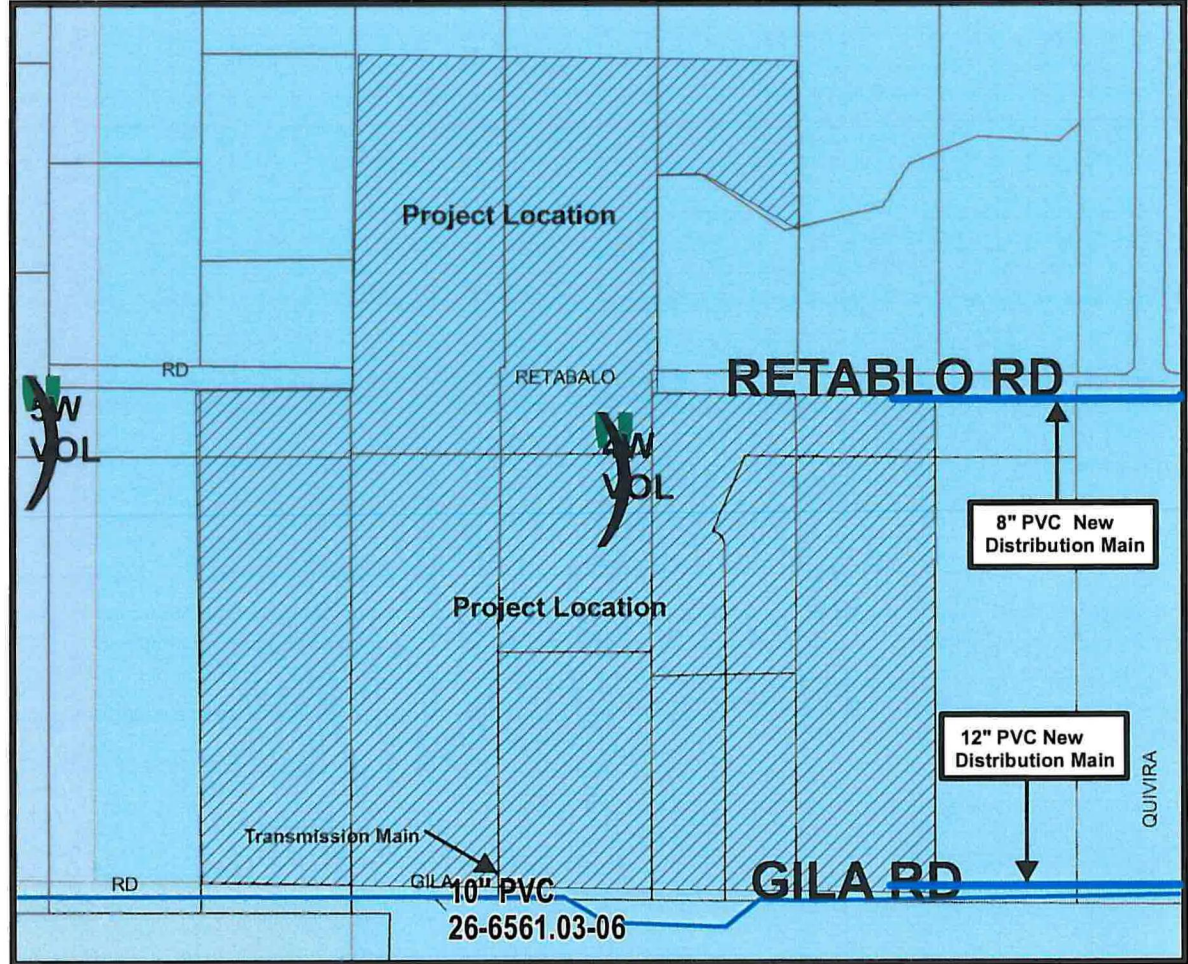
**Type**

- Hydrant
- all other values-

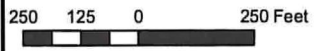
**Water Pipe**

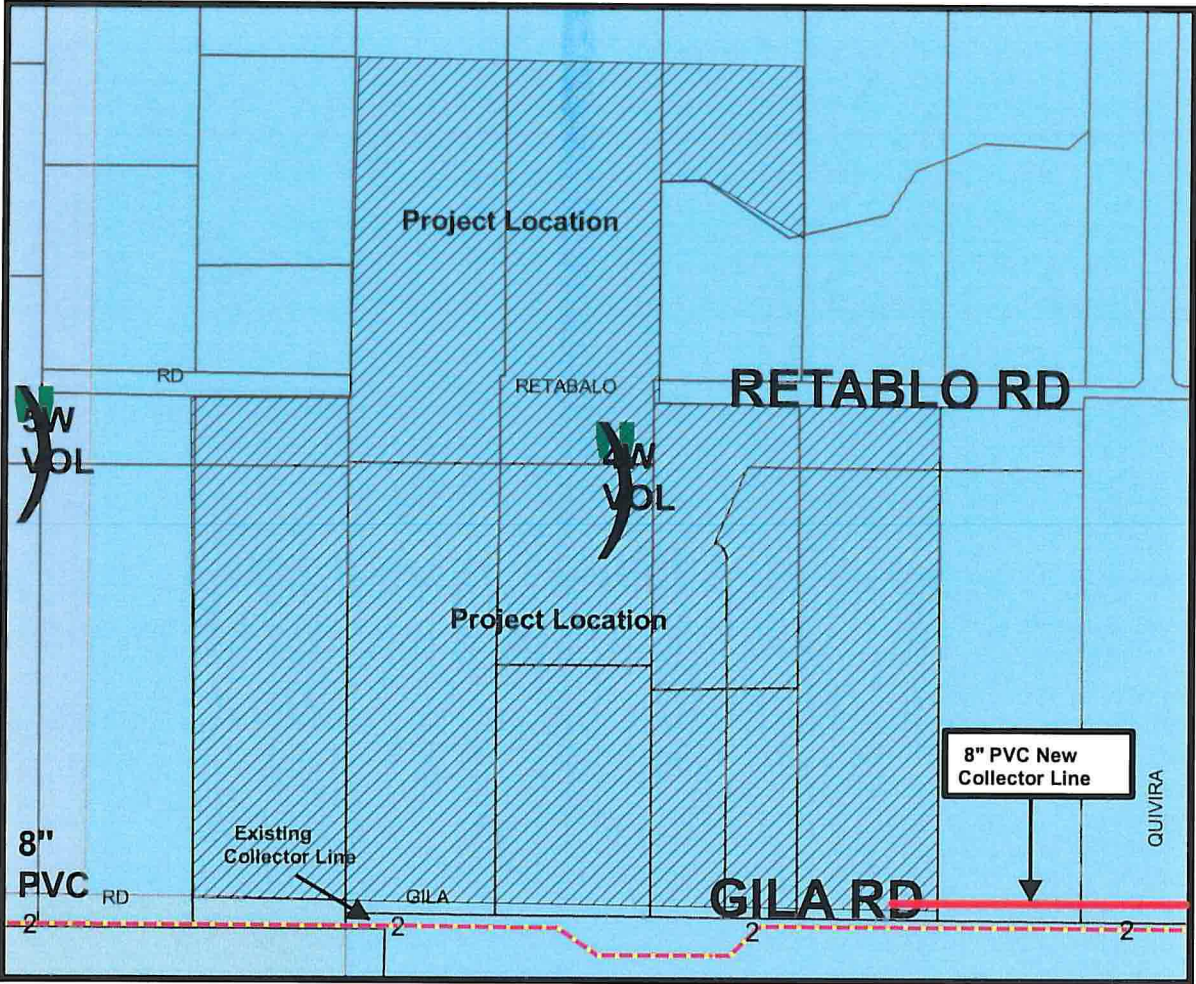
**SUBTYPE**

- In Zone Transmission
- Out Zone Transmission
- COUNTY Zone Parcels 2014



Statement # 160316  
Water Infrastructure





**Legend**

**Type**

- <all other values>
- Hydrant
- <all other values>

**Water Pipe**

**SUBTYPE**

- In Zone Transmission
- Out Zone Transmission
- Sewer Manhole

**Sewer Pipe**

<all other values>

**SUBTYPE**

- COLLECTOR
- FORCE MAIN
- INTERCEPTOR
- VACUUM LINE

COUNTY Parcels 2014



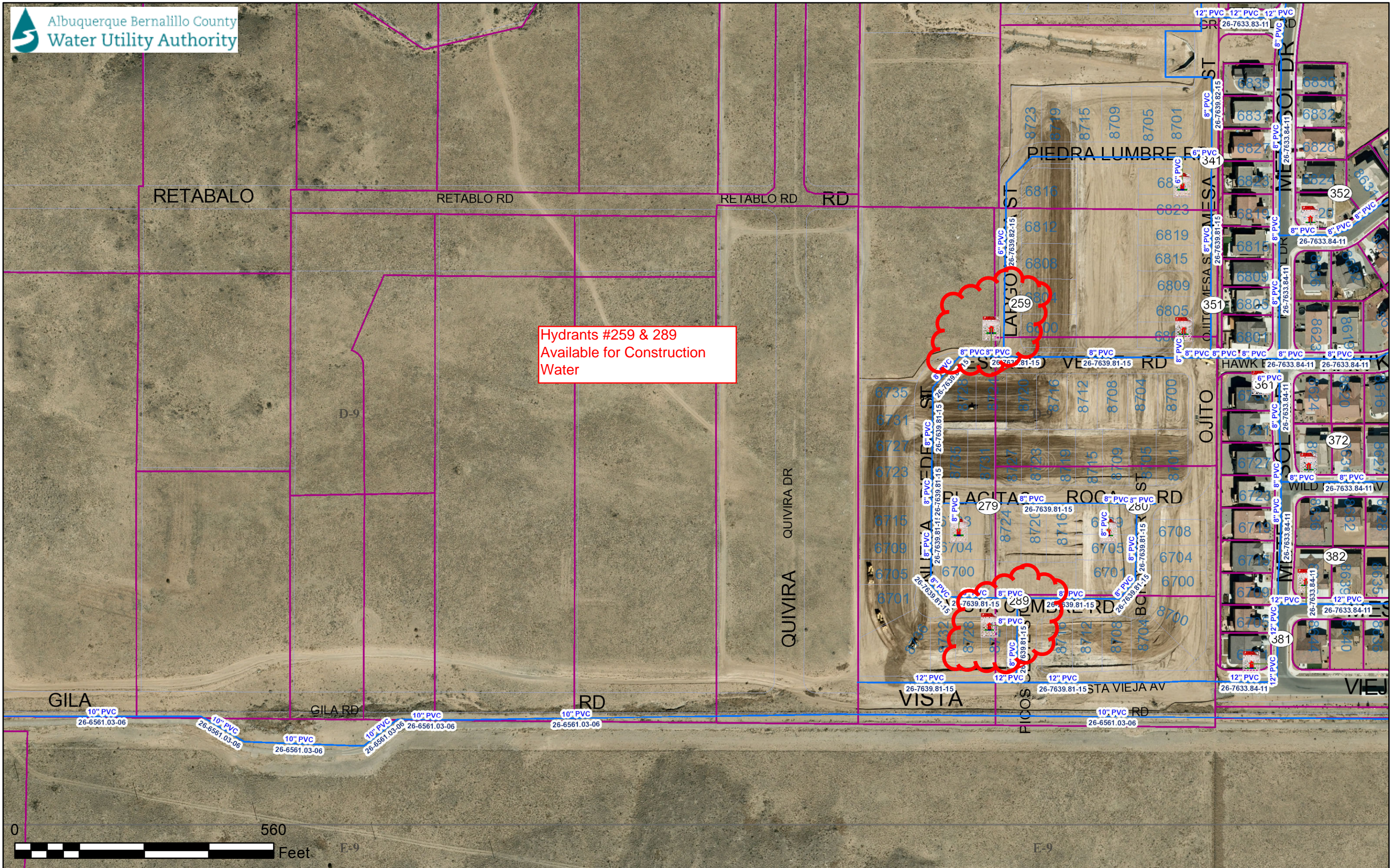
**Statement # 160316**  
**Sanitary Sewer Infrastructure**



# EXHIBIT C - HYDRANTS AVAILABLE FOR CONSTRUCTION WATER



Hydrants #259 & 289  
Available for Construction  
Water



# Legend

## Water Pipes

- <all other values>
- Active - other
- Abandoned Line
- Distribution Main, Not Imaged
- Distribution Main, As-Built Image Exist
- Hydrant Leg, Not Imaged
- Hydrant Leg, As-Built Image Exist
- Transmission, Not Imaged
- Transmission, As-Built Image Exist
- Over Flow Drain Line, Not Imaged
- Over Flow Drain Line, As-Built Image Exist
- Sleeve, Not Imaged
- Sleeve, As-Built Image Exist
- Well Collector Line, Not Imaged
- Well Collector Line, As-Built Image Exist
- Well Wash Line, Not Imaged
- Well Wash Line, As\_Built Image Exist

## Water Hydrants

- <all other values>
- Air Release Hydrant, <Null>
- Air Release Hydrant, NO
- Air Release Hydrant, Y
- Standard Hydrant, <Null>
- Standard Hydrant, NO
- Standard Hydrant, Y

## Water Reservoirs

- Round Reservoir
- Square Reservoir

## Transmission Mains

- In Zone Transmission
- Out Zone Transmission

## San Juan-Chama Pipes

- <all other values>

- Treated, Y
- Treated, NO
- Treated, <Null>
- Raw Transmission Lines, Y
- Raw Transmission Lines, <Null>
- Drain Line, Y
- Drain Line, NO
- <Null>, Y

## Non-Potable Pipe

- <all other values>
- Distribution Main
- Hydrant Leg
- Over Flow Drain Line
- Sleeve
- Well Wash Line

## County Assessor Parcels 2014

- County Assessor Parcels 2014

## ABCWUA\_Facilities

- ABCWUA\_Facilities

## Airports

- Airports

## Runways

- Runways

## Base Map

- Base Map

## Parks

- Parks

## Federal Lands

- CIBOLA NATIONAL FOREST
- KIRTLAND AIR FORCE BASE
- PETROGLYPH NATIONAL MONUMENT

## Page Grid

- Page Grid

## Water Service Areas

- Water Service Areas