

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY**

RESOLUTION NO. 2015-_____

**A RESOLUTION REQUIRING THE LEGAL STATUS OF SANTA FE COUNTY
ROADS WITHIN THE EXTERIOR BOUNDARIES OF THE PUEBLOS OF NAMBE,
POJOAQUE, SAN ILDEFONSO, AND TESUQUE TO BE RESOLVED PRIOR TO THE
BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY APPROPRIATING
FUNDS FOR THE CONSTRUCTION COSTS OF THE REGIONAL WATER SYSTEM
CONTEMPLATED BY THE AAMODT SETTLEMENT**

WHEREAS, the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has asserted that Santa Fe County (“County”) roads within the exterior boundaries of the Pueblo de San Ildefonso (“San Ildefonso”) are in trespass; and

WHEREAS, the BIA asserted that the County Roads within San Ildefonso are in trespass without due consideration of the Pueblo Lands Act, the proceedings of the Pueblo Lands Board, subsequent agreements between San Ildefonso and the County, or the history surrounding San Ildefonso; and

WHEREAS, the County has and continues to strongly dispute the assertion of trespass based upon the facts to which BIA failed to give due consideration; and

WHEREAS, Congress enacted the Pueblo Lands Act to finally and firmly fix the title of Pueblos and non-Pueblo members; and

WHEREAS, the Pueblo Lands Board expressly recognized that San Ildefonso’s lands were burdened by easements for some of what are now County Roads; and

WHEREAS, even if not expressly recognized by the Pueblo Lands Board, access is necessarily implied by its decisions, since confirming title without access would frustrate the purpose of the Pueblo Lands Act by rendering the title confirmed meaningless and the finality intended illusory; and

WHEREAS, San Ildefonso and the County are parties to a 1989 Right of Way Agreement that expressly grants rights of way to the County for County Roads; and

WHEREAS, although the BIA has since stated that it “is now undertaking actions” to clarify and determine the scope and effect of certain documents, including the 1989 Right of Way Agreement, and has not re-asserted the trespass claim, its initial unsubstantiated trespass assertion is nonetheless causing title companies to stop insuring access to property accessed by such County Roads; and

WHEREAS, lenders are unwilling to fund purchase money mortgages, construction, and other loans when access to the property serving as collateral for the loan is not insured; and

WHEREAS, even though the BIA has asserted trespass only as to County Roads located within San Ildefonso, the BIA’s assertion has influenced title companies to stop insuring access to property in the Pojoaque Valley whenever access to such property depends upon a County Road running through any Pueblo in the Valley; and

WHEREAS, lack of willing lenders has the potential to negatively impact the market for, and, thus, the value of, effected properties; and

WHEREAS, a decline in property value for property tax purposes in one area of the County may cause property tax rates to rise for properties in other areas of the County; and

WHEREAS, the County does not have unlimited resources and largely depends upon property taxes to fund its operations and capital projects; and

WHEREAS, the County is a party to (i) that certain Settlement Agreement, dated April 19, 2012, the purpose of which is to settle the Pueblos' claims to water in the matter of *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.) (the "Aamodt Litigation") and (ii) that certain Cost-Sharing and System Integration Agreement ("Cost-Sharing Agreement"); and

WHEREAS, the Settlement Agreement and Cost-Sharing Agreement contemplate construction and operation of a Regional Water System to serve the water customers of the independent water systems of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque (collectively, the "Settling Pueblos") and the County; and

WHEREAS, the Cost-Sharing Agreement contemplates that the County will contribute at least \$7,400,000 toward the planning, design, and construction of the Regional Water System, including the acquisition of necessary rights-of-way and service connection costs (collectively, "construction costs"); and

WHEREAS, when indexed for future cost increases, the County's construction cost contribution is currently estimated to be at least \$23,000,000; and

WHEREAS, among other contingencies, the County's contribution toward construction costs of the Regional Water System is contingent upon appropriations being made by the Board of County Commissioners ("Board") of the County for such costs; and

WHEREAS, questions concerning the legal status of County Roads running through the Settling Pueblos is creating unrest and mistrust among non-Pueblo residents of the Pojoaque Valley; and

WHEREAS, this unrest and mistrust may deter residents from becoming County water customers; and

WHEREAS, an inadequate customer base would undermine the long-term viability of the Regional Water System; and

WHEREAS, although BIA's erroneous assertion of trespass was limited to County Roads within San Ildefonso, market forces have necessitated that the status of County Roads within all of the Settling Pueblos be resolved at this time; and

WHEREAS, it would be imprudent to invest in the Regional Water System before the legal status of all County Roads within the exterior boundaries of the Settling Pueblos has been resolved, since (i) the County faces an unknown, contingent liability related to such County Roads, including, but not limited to, potential litigation costs associated with defending its title in County Roads; (ii) the unresolved questions concerning such County Roads could negatively impact property valuations for property tax purposes, thereby decreasing property tax revenue or

increasing property taxes for property owners in other parts of the County and undermining support for the Regional Water System among such property owners; and (iii) the unresolved questions concerning such County Roads may reduce the number of County water customers to be served by the Regional Water System, thereby undermining the long-term viability of the Regional Water System; and

WHEREAS, the Board wishes (i) to formally express its intention to not appropriate funds for the construction costs of the Regional Water System unless and until the legal status of County Roads running through the Settling Pueblos has been resolved and (ii) to allocate the resources necessary to timely resolve the legal status of such roads.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. The Board will not appropriate funds for the construction costs of the Regional Water System unless and until the legal status of County Roads running through the Settling Pueblos has been resolved.
2. The Board may not appropriate funds for the construction costs of the Regional Water System if the cost of resolving the legal status of County Roads running through the Settling Pueblos is too great.
3. The County Manager is directed to allocate necessary resources to work with each of the Settling Pueblos to evaluate and resolve the legal status of County Roads within each Pueblo's boundaries in time for the Aamodt Settlement to be timely implemented. Any negotiated resolution or the initiation of any litigation on behalf of the Board concerning County Roads within the Settling Pueblos must be approved by the Board.
4. The County Manager is directed to send a copy of this Resolution to the State's Congressional delegation, the Governor of the State of New Mexico, the Governor of each of the Settling Pueblos, the Secretary of the Interior, and the State Engineer.

PASSED, APPROVED, AND ADOPTED this 28th day of August, 2015.

**THE BOARD OF COUNTY
COMMISSIONERS OF SANTA FE COUNTY**

Robert A. Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney