

**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**Date:** February 11, 2015  
**To:** Board of County Commissioners  
**From:** Penny Ellis-Green, Growth Management Director *PEG*  
**Via:** Katherine Miller, County Manager *KM*  
**Re:** Growth Management Monthly Report January 2015

This report is a summary of projects for Growth Management with statistics from November and December 2014. Growth Management consists of 4 divisions; Planning, Economic Development, GIS and Building and Development Services.

### **Planning Division**

#### **Affordable Housing**

##### **Home Sales**

One existing home sale was made in January for a resale in Rancho Viejo. The County was unable to sell to an affordable buyer so this buyer was a market rate buyer and the County received an \$84,800 payoff from this sale. The money was deposited into the affordable housing fund.

##### **Happy Roofs**

Contractor bids for three additional Happy Roofs were approved by the homeowners and are currently being processed. Construction on these projects will begin in February.

##### **Income Certifications**

One new income certification was performed by staff for a potential future purchase in Rancho Viejo.

#### **Open Space**

Staff is coordinating with the BLM Taos Field Office and the State Land Office to discuss management of lands at Thornton Ranch Open Space.

An RFP was released for Management Plans for three County open space properties, Los Potros in Chimayo, the Santa Fe River Greenway at La Cieneguilla and the San Pedro Open Space

## NCRTD Report

The NCRTD Board met on January 9<sup>th</sup> and February 6<sup>th</sup>, the agendas are attached.

### **Economic Development Division**

The BCC adopted Ordinance 2015-1, approving \$250,000 in Local Economic Development Act (LEDA) funds from the State of NM Economic Development Department, and waiving future development and permit fees from the County, to enable the SF Brewing Co to expand its production capacity and increase its total employment by 64 jobs by Jan. 1, 2020.

Santa Fe County entered into a contract (Locations Agreement) with Paramount Productions for the use of the Old Judicial Complex for a feature film. SF County will earn \$10,055 for use of the facility from Jan. 26-Feb.19. The production is estimating to spend \$350k on hotels, \$250k average daily expenditures, 60 local hires and hundreds of extras per day and \$7 million in local wages.

### **North Central NM Economic Development District (NCNMEDD)**

The next NCNMEDD meeting will be held on March 27, 2015.

### **Building and Development Services Division**

#### **Permits and Development Review**

The following statistics are provided for permits and approvals issued in January 2015:

	January 2015
New Residential Permits - Stick Built Homes	14
New Residential Permits - Manufactured Homes	4
Commercial Building Permits	0
Number of Lots Created – Subdivision	0 lots
Exemptions	4 Lots
Summary Review Subdivisions	2 lots
Commercial Business Licenses	1
Home Occupations Business licenses	2
Film Permits	1

#### **Code Enforcement**

The following statistics are provided for code enforcement actions in January 2015:

	January 2015
Number of Initial Notices of Violation Issued	13
Number of Final Notices of Violation Issued	3
Number of Notices of Violation resolved without court action	10

Attached is a report that covers 2013 and 2014 of projects that were given a timeframe for complying with a condition or approval.

## **GIS Division**

Amanda Hargis received her Certified Public Officer designation from NMSU /NMEDGE.

The GIS / Database Administrator worked with the Assessor's Office to map accounts such as Mobile Homes (on the books as vehicles); livestock accounts (taxed separately from the land account) and multi-story condos.

GIS/Addressing staff put the GIS/Addressing Work Order Tracking system in place on Sharepoint, to better track addressing requests and road name sign requests.

Staff created a custom map for the residences along NP101 for Nambe Pueblo and are coordinating on address verifications and address information update sheets.

The GPS tech staff attended Compass Training to increase their skills in adapting a roads layer for navigation, as well as labels to identify roads through the new hand held GPS devices.

In January the E911 Addressing staff checked 134, and replaced 56 addresses

## **SLDC Update**

Staff has been working on 5 different elements of the SLDC as follows:

### **Community Districts**

The Planning Division provided community outreach to establish planning committees for the Community Districts. Outreach included a press release, information on County website, email communication to contacts database, newspaper advertisements and staff outreach.

The Board of County Commissioners adopted a Resolution to establish 11 Community Planning Committees and authorized the planning committees to work with County staff to develop community plan updates, draft community district zoning and community district overlays for amendments to the SGMP and SLDC as appropriate

An Open House kickoff meeting was held on February 3rd 2015 to initiate the planning process. Approximately 65 community members attended the open house meeting.

Staff is finalizing meeting schedules and will be sending out a postcard to residents in each of the 11 Community Districts to inform community members of the meeting schedules for each community.

### **Fee Ordinance**

The proposed fee ordinance was presented to the BCC in May of 2014. It was also presented at the community meetings that were held in regards to the proposed zoning map. It has been posted on our website for the last 5 months. We have received one public comment related to a home business which stated that the fee schedule and requirements will keep people operating under the radar.

During the course of review, the BCC had several comments and questions about the ordinance. Based on the BCC's comments, staff proposed modifications to the proposed fee ordinance at the BCC's Special Zoning Map Meeting on September 23, 2014. We have revised the fee ordinance to

incorporate those modifications and to add additional fees for reviews of special reports (ie TIAs, Geohydrology reports).

Staff will be prepared to present the revised fee ordinance to the BCC in the spring for further direction.

### **Zoning Map**

Staff is in the process of reviewing proposed changes identified through the zoning map adoption process based on established criteria.

Staff will identify possible alternatives for issue areas and work with Consensus Planning in the areas of Bonus and Incentive options and Transfer of Development Rights.

### **SLDC Changes**

The Legal Department is reviewing case law, other ordinances and public comments regarding wireless communication. Staff is also reviewing all of the public comments received last year for possible additional SLDC amendments. When compiled, the proposed changes will be released for review and comment.

### **DCI**

Consensus Planning has been awarded a contract to develop the Development of Countywide Impact (DCI) section of the SLDC and regulations related to transfer of development rights and density bonuses. The SGMP and the SLDC will both be updated to ensure consistency between the two documents.

As part of the project initiation, staff has provided electronic and hard copies of the SGMP, the SLDC and the Oil and Gas Regulations, met with the consultants on several occasions, and led a tour of the central part of the County for the consultants.

On February 4<sup>th</sup> and 5<sup>th</sup>, the consultants met with a wide array of project stakeholders including County Commissioners, Planning and Development Services staff, County Attorney and Assistant Attorney, Deputy County Manager, citizens concerned with mining, mining proponents, and other proponents of agricultural preservation. These meetings were all held at Santa Fe County offices and were primarily designed to be listening sessions with the goal of obtaining a clear sense of staff, community, and industry concerns regarding these topics.

The consultants will next begin the interactive process of drafting the DCI section and the regulations. The priority focus over the next several months will be on those portions that are relevant to the moratorium. The consultants anticipate further meetings and coordination as the draft documents progress throughout the process.



**NORTH CENTRAL REGIONAL TRANSIT DISTRICT  
BOARD MEETING AGENDA**

**January 9, 2015  
9:00 AM - 1:00 PM  
Jim West Regional Transit Center  
Board Room**

**CALL TO ORDER:**

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – December 5, 2014
7. PUBLIC COMMENTS

**PRESENTATION ITEMS:**

- A. **Presentation of Quarterly Above and Beyond/Safe Driver Awards**  
*Sponsor: Daniel Barrone, Chairman and Anthony J. Mortillaro, Executive Director.*
- B. **Presentation and Discussion of FY 2014 Annual Audit Report**  
*Sponsor: Anthony J. Mortillaro, Executive Director, Pat Lopez, Interim Finance Director. Attachment will be made available at the Board Meeting.*
- C. **Presentation and Discussion of Long Range Transit Service Plan - Land Use, Economic Development, Demographics and Summary of Strategic Visioning Process**  
*Sponsor: Anthony J. Mortillaro, Executive Director.*

**ACTION ITEMS FOR APPROVAL/ DISCUSSION:**

- D. **Discussion and Consideration of Resolution 2015-01 Authorizing the Acceptance of §5309 State of Good Repair Federal Funding for FFY2015**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. Attachment.*
- E. **Discussion and Consideration of Resolution 2015-02 TAP**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. Attachment.*

- F. **Discussion and Consideration of Resolution 2015-03 adopting the North Central Regional Transit District's Annual Inventory**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Pat Lopez, Interim Finance Director. Attachment.*
- G. **Discussion and Review of the Quarterly Investment of District Funds and the State of New Mexico Local Government Investment Pool Report**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Pat Lopez, Interim Finance Director. Attachment.*
- H. **Discussion and Review of Sustainability Plan, Goals and Metrics**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Michael Kelly, Transportation and Facilities Operations Director. Attachment.*

**DISCUSSION ITEMS:**

- I. **Discussion and Review of Ski Santa Fe Service - Update**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist.*
- J. **Financial Report for December 2014:**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Pat Lopez, Interim Finance Director. Attachment.*
- K. **Finance Subcommittee Report:**  
*Sponsor: Chair Tim Vigil and Anthony J. Mortillaro, Executive Director. Minutes from November 21, 2014.*
- L. **Tribal Subcommittee Report:**  
*Sponsor: Chair Lonnie Montoya and Anthony J. Mortillaro, Executive Director.*
- M. **Executive Report for December 2014 and Comments from the Executive Director:**
  - 1) Executive Report
  - 2) Performance Measures for November 2014
  - 3) Ridership Report for November 2014

**MATTERS FROM THE BOARD**

- N. **Authorization for Chair to attend APTA Legislative Conference, Washington, DC March 8-10**

**MISCELLANEOUS**

**ADJOURN**

**NEXT BOARD MEETING:** February 6, 2015 at 9:00 a.m.

If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.



**NORTH CENTRAL REGIONAL TRANSIT DISTRICT  
BOARD MEETING AGENDA**

**February 6, 2015  
9:00 AM - 1:00 PM  
Jim West Regional Transit Center  
Board Room**

**CALL TO ORDER:**

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – January 9, 2015
7. PUBLIC COMMENTS

**PRESENTATION ITEMS:**

- A. **Presentation of Employee Anniversaries**  
*Sponsor:* Daniel Barrone, Chairman and Anthony J. Mortillaro, Executive Director.
- B. **Presentation and Review of Santa Fe Metropolitan Planning Organization (MPO) Transit Master Plan**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Erick Aune, MPO.

**ACTION ITEMS FOR APPROVAL/ DISCUSSION:**

- C. **Discussion and Consideration of Resolution No. 2015-05 Authorizing a Budget Amendment to Increase the FY2015 Budget from the 5309 State of Good Repair Federal Funding, Cash Reserves and Unexpended State Capital Outlay Funds**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Pat Lopez, Interim Finance Director.  
*Attachment.*
- D. **Discussion and Consideration of FY2015 Capital Bus Procurement**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Gary Guinn, Fleet and Facilities Maintenance Manager. *Attachment.*
- E. **Discussion and Consideration of Resolution No. 2015-06 Disposal and Auction of Obsolete Fleet and Miscellaneous District Property**  
*Sponsor:* Anthony J. Mortillaro, Executive Director and Michael J. Kelly, Transit and Facilities Operations Director. *Attachment.*

- F. **Discussion and Consideration of Resolution No. 2015-07 Donation of 2 Obsolete Buses to Taos County Senior Program**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Michael J. Kelly, Transit and Facilities Operations Director. Attachment.*
- G. **Discussion and Review of the North Central Regional Transit District FY2015 Mid-Year Financial Summary Report**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Pat Lopez, Interim Finance Director. Attachment.*

**DISCUSSION ITEMS:**

- H. **Discussion and Review of the Draft North Central Regional Transit District Social Media Policy and Resolution 2015-04**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Jim Nagle, Public Information Officer. Attachment.*
- I. **Discussion and Review of Ski Santa Fe Service - Update**  
*Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist.*
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**MATTERS FROM THE BOARD**

**MISCELLANEOUS**

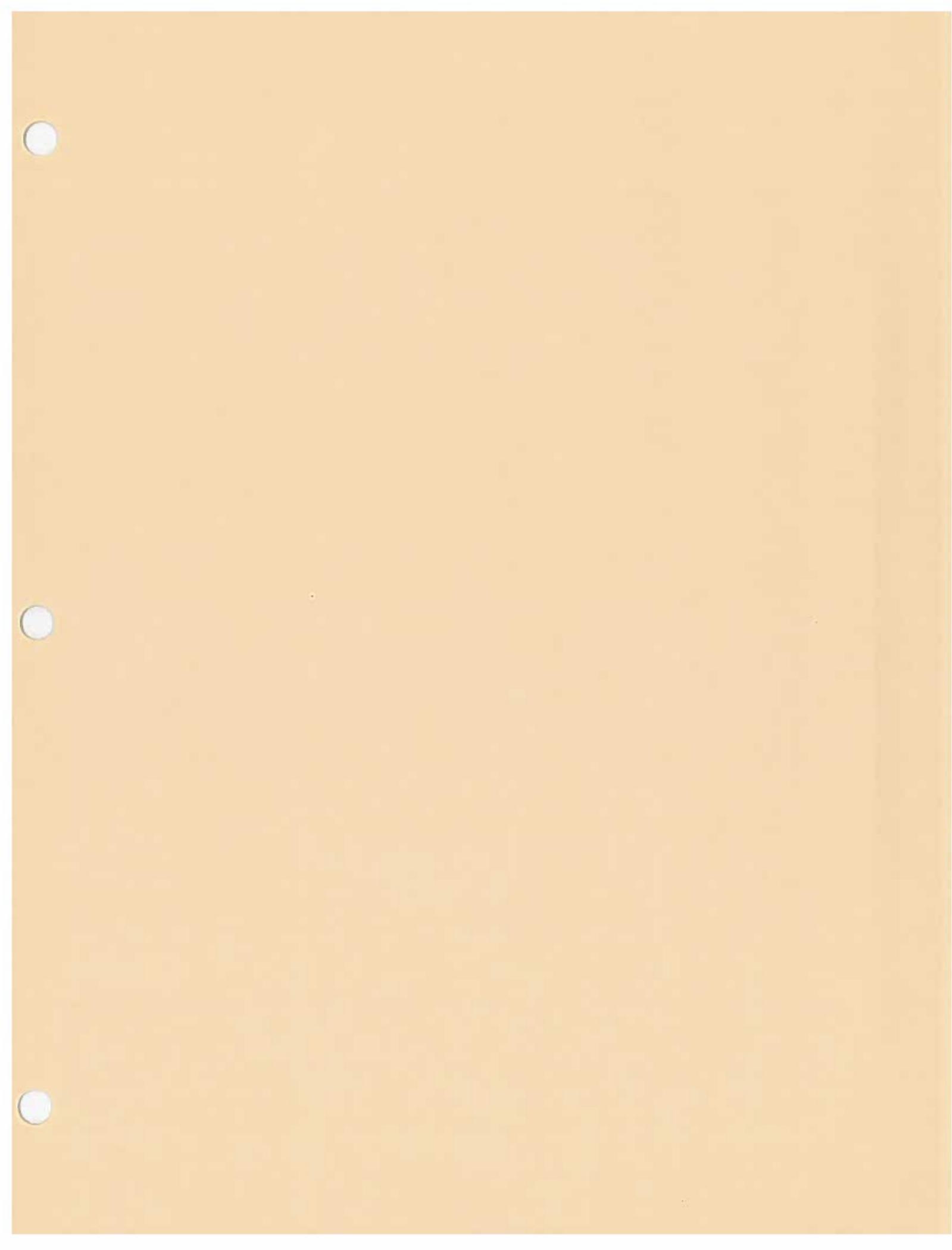
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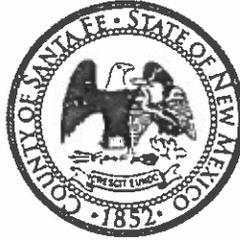




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**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**Pablo Sedillo, III**  
Public Safety Director

**To:** Santa Fe County Board of County Commissioners  
**From:** Pablo Sedillo, III *TRV for*  
Public Safety Department Director  
**Via:** Katherine Miller  
County Manager  
**Date:** February 10, 2015, 2015  
**Re:** SFC Public Safety Department Monthly Report for January 2015

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The purpose of this memo is to provide you information relative to the SFC Public Safety Department for the month of January 2015.

## **CORRECTIONS DEPARTMENT**

### **Adult Detention Facility (ADF)**

- Each week on Wednesday, the Inter-Disciplinary Team (IDT) continues to be conducted.
- ADF Team, led by Department Administrator Naomi Salazar, worked on Budget Preparation Worksheets.
- Met with Cpl. R. Roybal and Compliance Manager A. Martinez to review and discuss facility Uniforms and Badge issuance, etc.
- Training of Trainers Development Course began, will encompass this week. Santa Fe County is hosting in conjunction with New Mexico Association of Counties/Detention Affiliate. Met with Mr. Art Murphy regarding same.
- Met with Behavioral Health Director and employees of the Behavioral Health Unit. Discussed parameters of response to the facility and addressed general questions.
- Interviews conducted for Maintenance Technician.
- Warden Caldwell, Major Abeyta and EM Program Manager Alva attended an Active Shooter briefing organized by Director Sedillo and conducted by Asst. Fire Chief/Emergency Management Coordinator, Martin Vigil.
- Attended County Facility Condition Index Report Meeting with Director Sedillo at Public Works.
- Attended Corrections Advisory Committee Meeting held at YDP.
- Director Sedillo and Warden Caldwell attended the Train the Trainer Course Certificate presentation.
- Detention Officer Academy Class 27 began. Addressed by Director Sedillo, III and Warden Caldwell on various topics, primarily integrity-based expectations, etc.
- Attended meeting conducted by Director Sedillo, III regarding Year 2015. Asst. Fire Chief and RECC Director Martinez in attendance.
- HR on-site to conduct AFSCME Contract Training; two (2) sessions held.
- Conducted ADF/YDP Budget Status Review.

- Met with NMAC Representative Art Murphy regarding future classes for County employee's and how we could be of assistance.
- Mid-Year Budget Preparation Meetings held.
- Attended NMAC Legislative Conference held at the City of Santa Fe Convention Center.
- Attended Mid-Year Budget Review.
- Attended Brown Bag Meeting at Magistrate Court, no issues to report.
- Weekly Inter-Disciplinary Treatment Meeting was conducted.
- Santa Fe County Day held at Roundhouse. All Departments had tables with information related to their respective functions.
- Attended briefing with Procurement/Bill Taylor, on RFP Design/Build Consulting Services for Public Safety Complex.
- "Brown Bag" Meetings with Magistrate were cancelled for the Holidays.

### **Electronic Monitoring Program**

- Providing services to 285 clients.
- There were 40 successful releases for January.
- Clients Financial Obligation – Paying - 38%, Waived - 0%, Unemployed - 59%, Out of County - 3%.
- Other Client Data – Arrests – 28, Absconded – 4, Intakes – 70, Releases – 40, Drug Tested – 584, Surety Bonds – 92, Cash Bonds – 39, Municipal Bonds – 13 and Municipal Fees - \$130.00.

### **Youth Development Program (YDP)**

#### **Special Activities**

- On January 23, 2015, a public opening for the Marcel Pinas/Kukuu Project. This exhibition is at Site Santa Fe located on 1606 Paseo de Peralta. Site Santa Fe volunteers at the Youth Development program during the week. This exhibit includes art work from residents at Santa Fe County Youth Development Program. The residents have been participating in creating ceramic art work for this project. Exhibit runs from January 23, 2015 to February 14, 2015.
- On January 27, 2015, Santa Fe Community Foundation announced partnership with the Santa Fe County Youth Development Program through the Dollars4Schools initiative, as a shared commitment to student success and community collaboration. This initiative will provide financial support for ARTsmart programming within the center for the next 12 months.
- Working with David Setford, Executive Director, with the Spanish Colonial Art Society to have artists, conduct presentations and work on projects with youth at Santa Fe County Youth Development Program.

#### **New Hires/Staffing**

- Currently YDP has a total of 21 security staff.
- There are a total of four positions vacant at YDP. There are Three Life Skill Worker I positions and one Life Skill Worker II.
- Interview list received on January 28, 2015, for the positions of Life Skill Worker I and II. 12 applicants for Life Skill Worker I and 2 applicants for Life Skill Worker II.
- Molly Archuleta, RN, was recognized as the employee of the quarter for the Public Safety Department.

### **Inspections/Audits**

- Midyear budget review 2015 conducted for SFC-YDP January 26, 2015.
- Santa Fe Public Schools Audit for Title I was conducted on January 27, 2015.

### **Day Reporting**

- Day Reporting resumed programing on January 7, 2015 after winter break. Day Reporting scheduled remains from 8:00 am to 3:00 pm until programming is implemented by the City of Santa. Once programming is implemented hours of operation will expand from 8:00 am to 5:00 pm.

## **FIRE DEPARTMENT**

Total Emergency Responses – 614

EMS – 433

Fire Related calls – 57

### **Operations and Administration**

- Cadet class graduation cancelled on January 31<sup>st</sup> due to weather, rescheduled for Feb 12th
- Volunteer Academy (VFA 2015) to start in February
- Advertised for Wildland Urban Interface Specialist position
- Hondo Station 1 apparatus bay addition and roof notice to proceed February 9th
- Pojoaque station remodel and addition project notice to proceed February 23rd
- Glorieta La Joya Station design to go to BCC at end of February
- ISO for rating for Galisteo Fire District went from 6 to 5 which is better for insurance premiums and more funding from State Fire Marshall for the district
- Paramedics continuing schooling with graduation scheduled for Mid-June
- Personal Protective Gear cleaning, repair, and inspection program 98% complete
- New apparatus designs underway for Edgewood, Tesuque, Madrid, Galisteo, Admin
- SCBA fit testing for all staff completed, starting volunteer firefighters and admin staff
- Election of President of Chiefs Association Chief Jean Moya, Galisteo Fire District was re-elected
- Ambulance Revenue \$68,212 (\$442,449 collected so far this fiscal year)
- 48 fleet repair orders processed and completed
- 1 annual pump tests completed
- Fleet staff responded to 2 structure fires for breathing air assistance
- Took delivery of EVT Mechanic truck
- Ordered one EVT Mechanic truck and one Admin truck
- Coordinated major repairs for several district pumpers and tankers
- Breathing Air Compressors delivered and set up for La Cienega and Edgewood Districts

### **Fire Prevention and Wildland**

- Business registrations – 2
- Development Reviews – 11
- Lot line Adjustments/Land Division/Family Transfers – 3
- Burn Permits-17
- School and business inspections – 27

- Pre-school/School fire and injury prevention presentations – 10
- Responded to one brush fire
- 4 Hazmat fuel mitigated acres

### **Volunteer Recruitment and Retention**

- New member applications received and approved – 10 (YTD 10)
- Assisted Deputy County Manager Flores with capital outlay La Puebla District
- Served as a Technical Peer Reviewer for the FEMA Assistance to Firefighters Grant program
- Staffed display table for SFCFD at “Santa Fe Day” at the NM State Legislature
- International Association of Fire Chiefs Board of Directors meeting to present proposal to form a Company Officers Section of the Association

### **Emergency Management**

- Planning meeting Santa Fe Amateur Radio Emergency Services.
- Participation NM Preventative Radiological Nuclear Detection Program Training Workgroup.
- Emergency Management Five Year Plan Review.
- Attended RAND Corp. Community Resilience Workshop.
- Conducted Tech. Rescue Training/Classic Air Medical Meet & Greet.
- Participated in NM Taskforce 1 Full Scale Exercise Planning Meeting.
- Communications Project Meeting Advanced Communications.
- Conducted Tech. Rescue Cold Weather/Night Mountain Aircraft Crash Exercise.
- Hosted meeting with Lawrence Livermore/Dept. of Homeland Security NM PRND Job Aids development.

## **RECC**

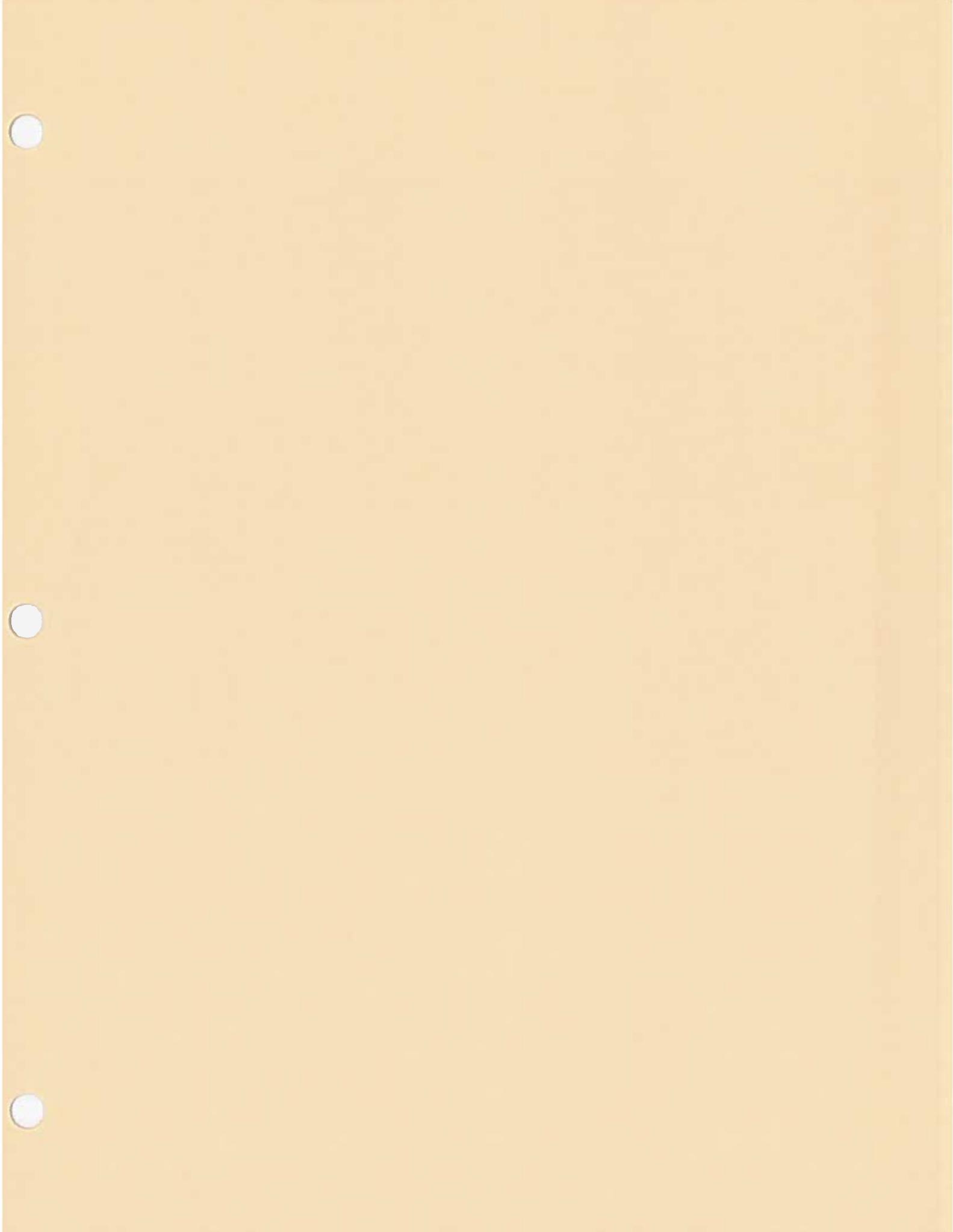
### **Operations**

- Total Telephone Calls Handled (incoming and outgoing)
  - January – 36,959
- Total calls Received via 911
  - January – 6,319
- County calls requiring response agency dispatch
  - January – 7,935
- City calls requiring response agency dispatch
  - January – 10,388
- Town of Edgewood calls requiring response agency dispatch
  - January - 396

### **Staffing**

- Currently awaiting approval from HR for 2 Call Takers and 1 Trainee to start.
- We are in the process of completing reference checks on 2 Call Takers
- Testing will begin for vacant trainee positions
- Vacancies
  - 3 Trainee positions

If you have any questions, I can be contacted at 992-3092. Thank you.





Henry P. Roybal  
Commissioner, District 1

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Commissioner, District 2

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Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: February 10, 2015

TO: Board of County Commissioners

VIA: Katherine Miller, County Manager

FROM: Adam Leigland, Public Works Director *AL*

ITEM AND ISSUE: BCC Meeting February 24, 2015  
Public Works Monthly Report for February 2015

### DISCUSSION

#### Operations and Maintenance

We started the new year with a total of 443 work orders, for a January 94% on-time completion rate. See Table 1, attached, and Chart 1, below.

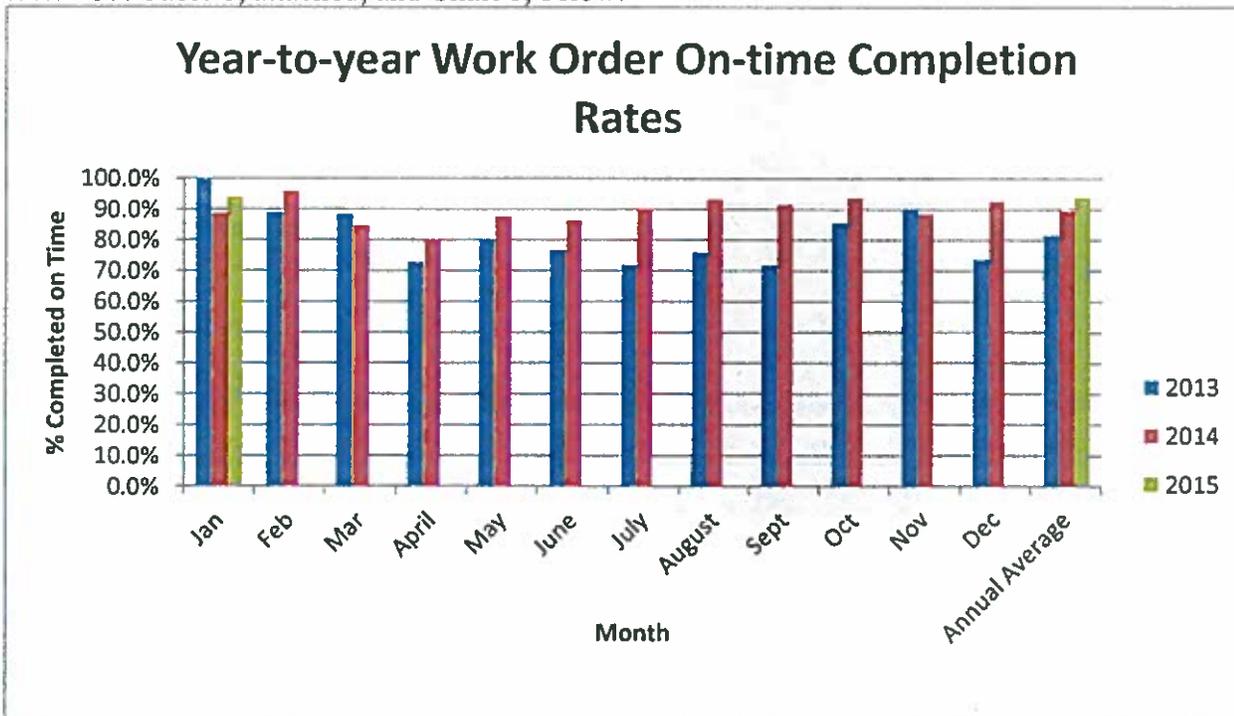
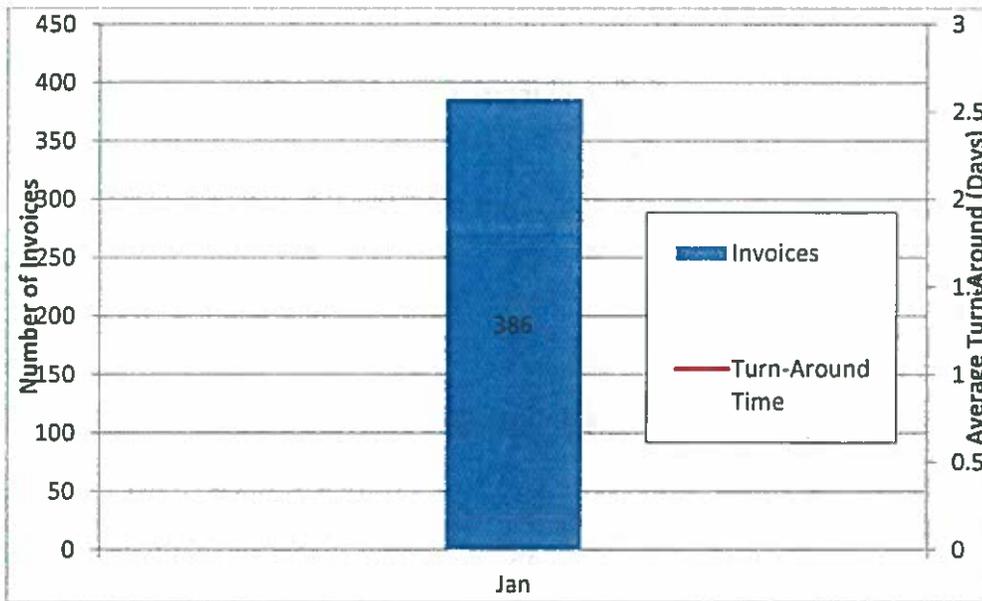


Chart 2 below shows the work order volumes for the month.

**Solid Waste:** The table below shows solid waste permit sales under the new permit schedule.

Number of Solid Waste Permits Sold		
Permit Type	Jan-15	YTD CY15
1-trip	14	14
6-trip	36	36
6-trip/Senior	9	9
6-trip/low income	0	0
6-trip/Veteran	2	2
12-trip	149	149
12-trip/Senior	69	69
12-trip/low income	4	4
12-trip/Veteran	7	7
Bag tags	48	48

**Administration Invoice Processing:** The Public Works Administrative team processed 386 invoices in January. The average turn-around time of 2.4 days stayed below the internal goal of 5 days. See chart below.



4. **CR54 Los Pinos All-Weather Water Crossing:** Staff feels that it is in the County's best interest to construct this all-weather crossing only after the structure on Las Estrellas has been either removed or reconstructed correctly.
5. **Old Santa Fe Tail Multi-Modal Road Improvements/TL2N Water Line:** The land acquisition offers have been accepted by the two property owners. Staff is coordinating final scope and budget requirements to move toward bidding and construction. Meeting with City on waterline connection on February 12, 2015.
6. **Vista Redonda Drainage and Road Improvements:** Meeting with Vista Redonda Water Association on February 16, 2014, on the repairs/relocation of their water line within Santa Fe County ROW. After this meeting, Bid date can be set.
7. **CR50A San Jose Road Drainage and Road Improvements:** Completed progress meeting with Morris Engineering and work on topographic survey and right-of-way mapping. Final submittal for these deliverable scheduled for week of February 12, 2015.
8. **Pinon Hills Subdivision All-Weather Crossing:** Notice-to-Proceed to consultant for design issued week of February 9th.
9. **Richards Avenue Slip Lane Design:** Anticipating putting out to bid in March 2015.
10. **County Road 89 and 89C Drainage and Road Improvements:** Additional 25 feet of roadway area approved at Pueblo Council Meeting held on January 15, 2015. Pueblo is drafting a document for our review. Public meeting on project occurred February 5, 2015. Response was reasonably positive.
11. **CR84D Drainage Improvements and Paving Design:** Met with Mr. and Mrs. Roybal to discuss approval to construct a holding pond on their property along CR84D prior to moving forward with design services. The Roybals are interested in providing the County with an easement for this.
12. **Race Track Subdivision:** Scheduled to begin spring of 2015.
13. **Spruce Road:** Scheduled to begin spring of 2015.
14. **Rancho Allegre:** Scheduled to begin spring of 2015.
15. **Cerros Subdivision:** Scheduled to begin spring of 2015.
16. **TL6S/Lamy Junction Waterline Design:** Acquisition of property for the tank is in progress. SOW prepared and quote obtained for surveyor to prepare final easement descriptions for Rancho Viejo and Ellis property.
17. **Install Master Meters for Utility Department:** Staff is in receipt of a 60% design submittal and have scheduled a design review with City of Santa Fe personnel for February 12, 2015. A formal design review meeting is scheduled for February 19, 2015, with design consultant.

18. **Quill Water Reclamation Plant – Treatment Improvements:**
  - a. **Design Upgrade Entrance Works Bar screen:** Invitations for Bid (IFB) bid opening will take place on Friday, February 6<sup>th</sup>.
  - b. **Design Improvements to Effluent Irrigation System:** 100% design submittal scheduled for February 6<sup>th</sup>.
  - c. **Design Improvements to Access Driveways:** Senior County Management is coordinating directly with the Department of Corrections regarding security system requirements.
19. **Design La Cienega Water Line Improvements:** Staff is addressing utility easement issues with County Attorney's Office.
20. **Chupadero Water System Improvements:** Draft report of right-of-way verification and drainage study submitted on February 6, 2015.
21. **Public Safety Complex Upgrade Design:** Proposals for the Technical Consultant required to develop RFQ/RFP procurement documents were received on January 30<sup>th</sup>. A meeting of the Evaluation Committee to review the three proposals received is scheduled for February 9<sup>th</sup>.
22. **UDV Temple Cost Estimate Verification:** The construction schedule has been established and mobilization is now scheduled for March 15<sup>th</sup>. A meeting with the UDV Project Team is scheduled for February 9<sup>th</sup>.
23. **Install Bar Screen and Modular Building at ADF:** Two proposal responses were received on February 5<sup>th</sup>. One from Bohannon Huston and one from HDR Inc. Both proposals are being evaluated.
24. **Madrid Fire Station – Fire Protection System:** Fire Department is seeking additional funds to perform the planning study phase to evaluate the best design options.
25. **Canoncito at Apache Canyon MDWCA Acquisition:** Staff is generating an RFP to obtain the professional real estate services to address easement issues.
26. **Hyde Park Estate CDWA Acquisition:** Staff is generating an RFP to obtain the professional real estate services to address easement issues.
27. **Chupadero W&SC Acquisition:** Staff is generating an RFP to obtain the professional real estate services to address easement issues..
28. **Stanley Cyclone Center-Phase 2:** Architect, Staff and Fire Marshal met on February 6 at to go over water storage requirements, issues in Stanley regarding fire flows and widening the street to meet code requirements. Staff to confirm that off-site costs (road improvements and fire protection) are included in the projected costs on the project.
29. **Ken and Patty Adam Senior Center/County Community Center:** Due to weather day delays the contractor rescheduled pouring stem walls until February 10.

30. **Glorieta Fire Station:** A meeting was held with DOT officials to discuss and to request approval to access state road at project site.
31. **La Cienega Fire Station #2 Remodel:** Sewer line repair scheduled for week of February 9. Staff is working on quotes for playground fencing and quotes for playground mulch.
32. **Pojoaque Fire Station – Volunteer side interior remodel:** A pre-construction meeting is scheduled for February 9. The Notice to Proceed will be issued with construction to begin on Monday, February 9, 2015.
33. **Hondo Fire Station # 1 Remodel:** A pre-construction meeting is scheduled for February 17. The Notice To Proceed will be issued with construction to begin on Monday, February 23, 2015.
34. **Ken and Patty Adam Senior Center Furnishings:** Partial delivery of 60 chairs was made to the senior center last Friday. The remaining 180 chairs are scheduled to be delivered to the Open Space warehouse for storage until the expansion is complete which will be approximately 5 months. Tables are scheduled to be delivered on February 12.
35. **Eldorado Trails:** Staff has received final signed MOA to allow for inclusion of \$40,000 in ECIA funds for the project. Staff is processing a request bids via the County's on-call road construction contract.
36. **Jacona Transfer Station:** Staff met with the architect on January 26, 2015, to negotiate final contract and schedule. Staff has asked for amendments to fee proposal and is reviewing revised proposal. An approved contract for design is anticipated by approximately February 13.
37. **Southwest Care / Dance Station Remodel:** Staff and SW Care have approved SW Care to fund a preliminary design and anticipate first cost estimate and preliminary design by February 6.
38. **Construct ADA Accessibility from Rodeo Road to Fair Grounds Building:** Bid opening was conducted on January 29. Received two bids and both bids are over budget. Additional funding is being discussed.
39. **Improve Edgewood Senior Center Parking Lot:** Staff is ready to proceed pending two additional quotes.
40. **Edgewood Senior Center Food Storage:** Kick-off meeting and issuance of notice-to-proceed are scheduled with architect for February 6, 2015.
41. **Improve Rio En Medio Senior Center:** Responses are due February 12, 2015.

#### **42. Adult Detention Facility / Youth Development Program Projects**

- a. **Server Rooms:** Site visit and walk-through with contractors held on January 22. Bids due date has been extended to February 20, 2015.

- b. **Repair/ Replace Front Retaining Wall:** Re-bid advertisement moved to February 15.
  - c. **Recreation Yard Concrete Floor and Door Replacement:** Bid opening was held on January 27. Sole bid came in over budget. Project to proceed pending additional funding.
43. **Santa Fe Rail Trail Segments 2 & 3:** Work slowing due to numerous weather delays for snow & cold. Expect to go into winter suspension soon.
44. **Santa Fe Rail Trail Segment 4:** Delivered the Cooperative Project Agreement for Segment 4 to NMDOT on December 12, 2015. Met with NMDOT on February 2, 2015, to review the status of the project.
45. **Santa Fe River Greenway Wayside Exhibits:** Met with consultant on February 5, 2015 to review comments from NPS.
46. **Arroyo Hondo Trail:** Preparing Right to Enter (ROE) agreements for the private properties along the trail alignment. Plan to present the ROEs to the landowners in February.
47. **Mt. Chal:** Tierra presented the offer documents to the property owners the week of December 8, 2014. Counter-offer received in January, and reviewed by County's contract attorney. Scheduling meeting with Mr. Kendrick to discuss.
48. **Pojoaque Sports Fields:** Pre-Construction Conference held February 6, 2015. NTP issued on February 16, 2015. June 15, 2015.
49. **Rio Quemado Watershed Restoration:** Meeting scheduled with Purchasing to review the draft Request for Competitive Sealed Proposals on February 6. The schedule for advertising for construction services is dependent on when additional funding is budgeted for construction.
50. **Thornton Ranch Open Space:** Plan to circulate the Draft Petroglyph Hill Management Plan to committee next week. The CR consultant will submit a draft Preliminary CR Survey Report on February 6.
51. **Agua Fria Monument Sign:** Cornerstones is requesting bids for the structural work that must be completed by a licensed contractor.
52. **El Camino Real Retracement Trail project:** Meeting scheduled with Central Federal Lands Highway Division (CFLHD) on February 2 to discuss project scope and costs. The CFLHD's engineering consultant is revising their scope of work and the construction cost estimate based on the discussion and will submit to CFLHD on February 9.
53. **SF River Property Acquisition:** Offer Packages for Costello, Romero, Nix, Zaporah and Lopez have been submitted to Legal for review. Tierra submitted an estimated value for the City parcel. Staff, Legal, Tierra and attorney Stephen Hamilton have reviewed how to resolve issues with the Overlap Purchase Agreement. Additional offer packages for Boylan and other large parcels nearing completion.

54. **Santa Fe River–Frenchy’s to Siler Permitting:** The detailed proposal from Weston Solutions for additional funds to address new FEMA requirements brought about by the annexation of the project into the City was not received. Staff is following up on this and other issues to prepare for bidding the work for this next leg of the River Greenway.

Information on all active projects can be found in the attached Capital Project Status Update.

**Committee Meetings:**

**BDD Board:** The BDD Board authorized the facilities manager to spend up to \$500,000 out of the Emergency Reserve Fund to inspect and repair the BDD diversion structure. A video assessment has identified that 3 of 5 screens are currently in place. One dislodged screen was found downstream of the intake structure. The facility will not produce water for its partners for approximately 6-8 weeks through out March and April as a result of the assessment/ repair. The assessment and repair includes: 1) a cross-sectional mapping of the cross-sections of the river; 2) the installation of a coffer dam and dewatering of the intake structure area; 3) inspection and repair of the screens and intake chambers; and 4) development of a long-term strategy. CDM-Smith, the projects construction manager, is providing technical expertise and review pro-bono. The BDD continues to divert and produce high quality water for its partners.

**ACTION REQUESTED:**

None; for information only.



Table 1: Janu 2015 Work Order Report

Property Control

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	21	21	20	20
2	10	10	7	10
3	12	12	10	11
4	11	11	10	11
5	3	3	1	1
All	60	60	45	56
<b>TOTAL</b>	<b>117</b>	<b>117</b>	<b>93</b>	<b>109</b>
		<b>100.00%</b>	<b>79.49%</b>	<b>93%</b>

Roads

COMM. DIST.	Overall WO's from public & staff	Overall WO Issued from public & staff	Overall WO Closed from public & staff	Request from public only	On-time request from public only
1	14	14	12	12	8
2	13	13	13	4	4
3	8	8	5	6	3
4	21	21	20	0	0
5	46	46	44	6	5
All	12	12	12	0	0
<b>TOTAL</b>	<b>114</b>	<b>114</b>	<b>106</b>	<b>28</b>	<b>20</b>
		<b>100.00%</b>	<b>92.98%</b>		<b>71%</b>

Building Services

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	8	8	7	3
2	2	2	1	2
3	3	3	3	1
4	4	4	4	4
5	6	6	6	5
All	39	39	37	38
<b>TOTAL</b>	<b>62</b>	<b>62</b>	<b>58</b>	<b>53</b>
		<b>100.00%</b>	<b>93.55%</b>	<b>85%</b>

Open Space

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	31	31	31	31
2	13	13	13	13
3	15	15	14	14
4	10	10	10	10
5	9	9	9	9
All	14	14	14	14
<b>TOTAL</b>	<b>92</b>	<b>92</b>	<b>91</b>	<b>91</b>
		<b>100.00%</b>	<b>98.91%</b>	<b>99%</b>

Traffic

COMM. DIST.	Overall WO's from public & staff	Overall WO Issued from public & staff	Overall WO Closed from public & staff	Request from public only	On-time request from public only
1	10	10	10	0	0
2	2	2	2	0	0
3	13	13	13	3	3
4	2	2	2	0	0
5	15	15	15	1	1
All	15	15	15	1	1
TOTAL	57	57	57	5	5
		100.00%	100.00%		100.00%

Fleet

	WORK ORDER REQUESTS	WORK ORDERS CLOSED	WORK ORDERS SENT OUT FOR REPAIRS
Light Duty	160	155	5
Heavy Equip.	25	24	1
Autobody	10	10	0
TOTAL	195	189	6
		96.92%	

PW Project#	Project Name	Nature of Procurement	% Comp	District	Project Budget	Current Contract Amount	Estimated Start Date	Estimated Completion Date	Project Manager
1	Replace Existing Roof at Nambé Community Senior Center			1	\$20,000.00				PJ Mantano
2	Perform design an all weather crossing for Pinon Hills Subdivision in SFC	Design	15	2	\$50,000.00	\$49,961.34	11/3/2014	4/17/2015	Chuck Vigil
3	Madrid Fire Protection Upgrades	Plan	33	3	\$15,000.00		3/2/2015	5/29/2015	David Madrid
4	Richards Avenue Slip Lane	Design	95	5	\$153,306.52	\$43,667.22	8/21/2014	1/30/2015	Chuck Vigil
5	Improvements of trails for the Eldorado Community Improvement Association	Construction	20	5	\$90,000.00		4/15/2015	5/29/2015	Paul Olafson
6	Public Safety Complex Upgrade Design	Plan	5	5	\$200,000.00	\$17,334.00	1/30/2014	3/6/2015	David Madrid
7	Design and Construction of all roads listed in Phase 2 of annexation		33		\$950,000.00	\$695,987.86	9/22/2014	11/28/2014	Chuck Vigil
8	Replace Existing Roof at County Administration Building			1 2 3 4 5	\$160,000.00				PJ Mantano
9	Evaluation of Heating & Cooling State Health Center,	Design	15	1 2 3 4 5	\$10,000.00		1/15/2015	3/15/2015	Paul Olafson
10	Construct ADA Accessibility from Rodeo Road to Fair Grounds Building(s)	Design	15	1 2 3 4 5	\$30,000.00		2/9/2015	3/27/2015	Joseph Martinez
11	Install Cistern/connection for Youth Shelters	Other	1	3	\$12,000.00		3/2/2015	4/24/2015	Ron Sandoval
12	Install Furniture at Ken and Patty Adams Senior Center the new addition	Other	90	5	\$50,000.00	\$27,548.20	11/21/2014	4/30/2015	Ron Sandoval
13	Replace Existing Garage Doors in Fleet Maintenance Building	Plan	5	2	\$115,000.00		2/9/2015	4/3/2015	Joseph Martinez
14	Romero Park	Design	95	2	\$1,194,082.00	\$163,351.00	5/17/2013	8/31/2015	Colleen Baker
15	Pojoaque Valley Recreation Complex Improve Edgewood Senior Center Parking Lot	Construction	9	1	\$1,785,000.00	\$83,169.00	1/28/2014	5/31/2015	Colleen Baker
16	Edgewood Food Storage	Design	5	3	\$100,000.00		2/23/2015	3/20/2015	Joseph Martinez
17	Vista Grande Library Addition / Construction	Design	5	3	\$7,150.00	\$1,000.00	2/16/2015	3/20/2015	Joseph Martinez
18	Construct Addition to Ken & Patty Adams Senior Center	Construction	100	5	\$1,050,000.00	\$833,808.48	9/20/2013	6/30/2014	Ron Sandoval
19	Plan and Design Improvements to the Santa Fe County Fairgrounds	Construction	20	5	\$1,458,963.00	\$1,363,302.84	8/18/2014	6/13/2015	Ron Sandoval
20	Design Old Santa Fe Trail Multimodal	Design	100	1 2 3 4 5	\$610,000.00		12/16/2014		Paul Olafson
21	Design Hondo Fire Station #1 Addition	Design	3	4	\$264,692.00	\$252,011.10	3/5/2013	1/30/2015	Chuck Vigil
22	Install master meters for Utility Department - Design Phase	Construction	60	4	\$370,000.00	\$280,300.00	2/10/2014	8/7/2015	Ron Sandoval
23	TL6S Water Transmission Line	Design	60	2 5	\$150,000.00	\$85,000.00	12/15/2014	3/13/2015	David Madrid
24		Design	60	4 5	\$333,080.30	\$333,080.30	2/17/2012	12/5/2014	Scott W. Rivers

# SANTA FE COUNTY

## Capital Project Status Update (As of 2/9/2015 9:34:31 AM)

25	1457	Design La Cienega Water Line Improvements	Design	30	3	\$300,000.00	\$51,360.00	1/8/2014	5/29/2015	David Madrid
26	1465	Construct Glorieta MDWCA Water System Improvements	Construction	99	4	\$424,759.00	\$551,630.00	2/28/2014	12/11/2014	Paul Olafson
27	1472	Rio Quemado Watershed Restoration	Construction	57	1	\$306,000.00	\$96,681.75	5/8/2013	3/31/2015	Colleen Baker
28	1473	Quill Water Reclamation Plant – Treatment Improvements	Construction	10	5	\$500,000.00	\$85,000.00	1/1/2014	8/28/2015	David Madrid
29	1474	Old Santa Fe Trail Water Line Design Lanny Junction Water	Design	100	4	\$190,000.00	\$167,154.00	2/15/2013	1/30/2015	Chuck Vigil
30	1474	Upgrade Chupadero Water System	Design	60	4.5	\$411,368.96	\$411,368.96	5/4/2012	12/5/2014	Scott W. Rivers
31	1477	Acquisition Canoncito Water System	Survey	65	1	\$77,656.00	\$24,014.00		2/13/2015	David Madrid
32	1484	Acquisition Hyde Park Estate Water System	Environmental		4	\$80,000.00				David Madrid
33	1485	UDV Waterline Analysis	Environmental							David Madrid
34	1487	Install Bar Screen and Modular Building at ADF	Other	5		\$365,000.00		2/2/2015		David Madrid
35	1860		Plan	5	5	\$200,000.00		1/2/2015	6/12/2015	David Madrid
36	1860	Upgrade server rooms at Adult Detention Facility and Youth Development Program	Design	100	5	\$616,000.00	\$54,834.83	2/23/2015	4/30/2015	Joseph Martinez
37	1860	Repair and replace recreation doors and cement on yard floors	Design	100	5	\$60,000.00		2/10/2015	3/27/2015	Joseph Martinez
38	1860	Replace and Repair Stormwater catchment structures at ADF	Design	100	5	\$30,000.00		2/9/2015	3/27/2015	Joseph Martinez
39	2219	Renovate Old Judicial Courthouse Redevelopment	Design	10	1 2 3 4 5	\$475,000.00		3/31/2015	3/31/2016	Paul Olafson
40	6159	Upgrade County Road 50A - Camino San Jose		20	3	\$178,000.00	\$87,220.76	10/10/2014	4/3/2015	Chuck Vigil
41	6167	CR 54 Los Pinos Road All Weather Structure Design	Design	99	3	\$95,000.00	\$79,411.76	8/12/2013	9/25/2015	Chuck Vigil
42	6170	Install Fence County Road 98	Construction	10	1	\$12,500.00	\$10,451.76	2/2/2015	2/27/2015	Scott Rivers
43	6181	NE-SE Connectors Location Study	Plan	75	5	\$500,000.00	\$454,133.49	2/4/2013	3/13/2015	Chuck Vigil
44	6182	CR 55A General Goodwin Rd Design Upgrade	Design	60	3	\$100,000.00	\$79,452.43	9/23/2013	3/27/2015	Chuck Vigil
45	6183	Torcido Loop - Design/Archaeological Survey	Design	30	3	\$48,683.69	\$48,683.69	7/18/2013	3/27/2015	Chuck Vigil
46	6197	Vista Flendonada Drainage and Road Paving Design	Design	70	1	\$120,000.00	\$90,590.78	12/16/2013	2/27/2015	Chuck Vigil
47	6198	Programming for Drainage and Roadway Improvements on County Road 89.	Design	90	1	\$55,000.00	\$80,629.59	2/12/2014	12/15/2014	Scott W. Rivers
48	6199	Programming for Drainage and Roadway Improvements on County Road 89 C	Design	50	1	\$35,000.00	\$141,283.83	3/28/2014	12/31/2014	Scott W. Rivers
49	6201	Jacana - Northern Santa Fe County Solid Waste Convenience Center	Design	10	1	\$268,498.00		1/12/2015	6/30/2015	Paul Olafson
50	6202	Design drainage and roadway Improvements on County Road 84 D	Design	30	1	\$80,000.00	\$39,526.54	5/21/2014	3/27/2015	Chuck Vigil

SANTA FE COUNTY

Capital Project Status Update As of 2/9/2015 9:34:31 AM

51	6204	Design and construct drainage and pavement improvements for County Road 109 S	Design	15	1	\$260,000.00	10/20/2014	3/27/2015	Chuck Vigil
52	6206	Upgrade Spruce Road Improvements			5	\$156,000.00			Chuck Vigil
53	6207	Upgrade Roco Track Subdivision Chip Seal			3	\$167,700.00			Chuck Vigil
54	6209	Upgrade Rancho Alegre's Subdivision Road up	Construction	10	3	\$264,335.00	6/15/2015	8/15/2015	Paul Olaison
55	6210	Callea Cantando - Cerros Subdivision			4	\$118,500.00			Chuck Vigil
56	6211	Paseo Rincon - Cerros Subdivision			4	\$59,500.00			Chuck Vigil
57	6212	Upgrade Camino Pacifico Road Improvements			4	\$192,000.00			Chuck Vigil
58	6213	Upgrade Puye Road Improvements			4	\$140,000.00			Chuck Vigil
59	7006	La Bajada Ranch Planning, Programming, & Design	Plan	10	3	\$120,000.00	9/28/2012	3/29/2015	Mark Hogan
60	7118	Rio En Medio Senior Center - Improve Site Drainage	Design	5	1	\$25,000.00	2/16/2015	4/17/2015	Joseph Martinez
61	7120	Santa Fe River Greenway: Wayside Exhibit Planning, Design, Fabrication	Other	90	2	\$84,841.50	7/1/2012	9/30/2015	Colleen Baker
62	7121	Design and Construct Stanley Community Wellness Center Phase 2	Design	10	3	\$50,000.00	9/2/2013	12/30/2015	David Padilla
63	7122	Highway 14 Senior/Community Center	Acquisition	10	3	\$350,000.00	11/5/2012	5/1/2014	Agnes Leyba-Cruz
64	7123	District Attorney Complex Energy & Accessibility Upgrades	Design	70		\$850,000.00	12/21/2012	3/31/2015	Paul Olaison
65	7124	Admin Building Computer & Communications Room	Construction	99	1 2 3 4 5	\$275,000.00	3/31/2014	11/25/2014	Paul Olaison
66	7701	Arroyo Hondo Trail	Design	22	5	\$470,572.00	12/13/2012	9/30/2015	Colleen Baker
67	7706	Mt. Chalcihuitl	Acquisition	50	3	\$988,499.00	8/1/2012	6/30/2015	Colleen Baker
68	7707	Santa Fe Rail Trail	Construction	9	4, 5	\$1,476,900.00	9/15/2014	7/31/2015	Scott W. Rivers
69	7708	Santa Fe River Greenway Acquisition	Acquisition	35	2	\$1,814,850.60	10/9/2012	9/30/2016	Scott Kasaman
70	7708	Santa Fe River Greenway: Franchy's Field to Siler Rd.	Archaeology	100	2	\$59,406.47	3/1/2009	6/30/2015	Scott Kasaman
71	7708	Santa Fe River Greenway Engineering Design Services	Design	90	2	\$412,725.85	10/3/2012	3/31/2015	Scott Kasaman
72	7711	Thornton Ranch Open Space	Plan	15	3	\$224,564.00	3/3/2014	7/30/2015	Colleen Baker
73	7732	Agua Fria Gateway Monuments	Construction	12	2	\$83,846.00	4/21/2014	8/31/2015	Colleen Baker
74	7733	Design and Construct El Camino Real Buckman Road Segment Retracement Trail	Other	2	2	\$3,330,000.00	3/1/2015	4/30/2018	Colleen Baker
75	8008	La Clonaga Fire Station No. 2 Apparatus bay expansion and Library remodel.	Construction	100	3	\$494,091.00	3/24/2014	9/30/2014	Ron Sandoval
76	8009	Gloria Fire Station #2 - New Construction	Design	100	4	\$50,000.00	5/16/2014	9/30/2014	Ron Sandoval
77	8010	Pojoaque Fire Station - Interior Remodel Volunteer Side	Construction	3	1	\$346,398.00	2/23/2015	7/20/2015	Ron Sandoval
78	9692	CR67F La Barbara Drainage and Road Paving Design	Design	40	4	\$100,000.00	12/16/2013	3/27/2015	Chuck Vigil



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.* )  
 State Engineer, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 R. LEE AAMODT, *et al.*, )  
 )  
 Defendants, )  
 and )  
 )  
 UNITED STATES OF AMERICA, )  
 PUEBLO DE NAMBE, )  
 PUEBLO DE POJOAQUE, )  
 PUEBLO DE SAN ILDEFONSO, )  
 and PUEBLO DE TESUQUE, )  
 )  
 Plaintiffs-in-Intervention.)  
 \_\_\_\_\_ )

NO. 66cv6639 WJ/WPL

STATE OF NEW MEXICO, SANTA FE COUNTY AND CITY OF SANTA FE'S JOINT  
REPLY TO RESPONSE TO MEMORANDUM IN SUPPORT OF SETTLEMENT

I. Introduction

On November 6, 2014, the State of New Mexico *ex rel.* State Engineer ("State"), Santa Fe County ("County") and City of Santa Fe ("City") filed their *Memorandum in Support of Settlement* ("*Memorandum*") (No. 9913) pursuant to the Court's August 8, 2014 *Case Management Order* (No. 9506). The *Memorandum* addressed each of the previously filed objections to the Settlement Agreement, Partial Final Decree and Interim Administrative Order by category and explained why each category of objection should be overruled or dismissed. The Court allowed sixty days for those parties who had filed objections to respond to all memoranda filed in support of the Settlement. Parties filing responses were required to "describe the specific harm the Objectors would suffer by entry of the Partial Final Decree, [and] address with specificity why approval of the Settlement Agreement and entry of the Partial Final Decree is

'not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law.'" August 8, 2014 *Case Management Order* at 7-8 (No. 9506). On January 5, 2015, two Responses were filed, one by the objectors represented by attorney Blair Dunn ("Dunn Objectors") and the other by the objectors represented by attorney Lorenzo Atencio ("Atencio Objectors"). See January 5, 2015 *Response in Opposition to Motion to Approve Settlement Agreement and Entry of Proposed Partial Final Judgment and Decree* ("Dunn Response") (No. 9972) and January 7, 2015 *Objectors' Response to Motions in Support of Entry of Partial Final Judgment and Decree* ("Atencio Response") (No. 9973). No other responses were filed.

## II. Application of the "Fair and Reasonable" Standard in this Expedited *Inter Se* Proceeding

In 2006, the Settlement Parties moved the Court to consider, hear argument upon, and establish the standard to be applied by the Court in determining whether to approve the Settlement Parties' anticipated request that the Court approve the parties' Settlement Agreement and enter a Partial Final Judgment and Decree on the Pueblos' water rights. On March 24, 2007, the Court, after consideration of the Settlement Parties' arguments and objections thereto, entered its *Memorandum Opinion and Order* adopting the "fair and reasonable" standard:

The burden will be on the objectors to prove that the settlement is not fair, adequate or reasonable. *See, Jones v. Nuclear Pharmacy, Inc.* [cit. omit.] (trial court must approve a settlement if it is fair, reasonable and adequate; listing factors the trial court should consider).

*Id.* (Doc. 6236), at 6. The undersigned parties note that the Court's decision is fully consistent with the recent determination and recommendation by the Special Master in the Rio Taos/Rio Hondo consolidated stream adjudication in her *Special Master's Report and Recommendations Regarding Objections to Partial Final Judgment and Decree on the Water Rights of Taos Pueblo*, Case 6:69-cv-07896-MV-WPL, Doc. 5927, filed January 23, 2015). As in this case, and

as noted by the Special Master, the Taos movants argued for, and the Special Master adopted and analyzed objections based upon, the “fair and reasonable” standard, as further broken down into the four factors analyzed by the Tenth Circuit in *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). With regard to third parties, movants, including the State and United States, argued that the settlement effects on third parties must be “neither unreasonable nor proscribed,” citing *United States v. City of Miami, Fla.*, 664 F.2d 435, 441 (5th Cir. 1981) and the Special Master agreed, also noting that no objector disagreed with this formulation.

The requirement that the effects be “not proscribed,” means, essentially, that they must be in accordance with law, that a third parties’ legal right cannot be taken away, e.g. *See, New England Healthcare Employees Pension Fund v. Woodruff*, 512 F.3d 1283, 1288 (10th Cir. 2008) (A party “suffers plain legal prejudice if the settlement strips the party of a legal claim or cause of action, such as a cross-claim or the right to present relevant evidence at trial.”) Of course, the recognition of senior water rights in an adjudication, whether in a settlement or in a litigated outcome, does not cause a proscribed effect on other water rights in the adjudication. A senior water right, by definition, has the right to affect the exercise of a junior water right, under times of shortage. This right is in accordance with the constitutional mandate that “priority in time shall give the better right.”

In contrast to the above question of whether a settlement agreement may be made binding among the settling parties, the question of whether the Partial Final Decree is binding on all parties after it is entered does not depend on the Court’s evaluation of the settlement agreement and its effects on others – and instead occurs by operation of law in the New Mexico process of *inter se*. In New Mexico water rights adjudications, the State is responsible for prosecuting the adjudication and, in the first instance, litigating or settling water rights claims. Claims that have

been adjudicated by the court in subfile orders as between the State and the claimant are then subject to objection from all other water rights owners on the basis that the water rights in the subfile orders are not in accordance with law, either as to priority, quantity, or the other elements of the water right, a proceeding known as *inter se*. In *State of New Mexico ex rel. Office of State Engineer v. Lewis*, 2007-NMCA, 141 N.M. 1, 17, 150 P.3d 375, 391, the Court of Appeals approved the district court's *inter se* procedure which required objectors to the proposed settlement to show "how the[ir] water rights will be adversely affected by the priority, amount, purpose, periods of use, or other matters as set forth in the Proposed Partial Final Decree." *Id.* 141 N.M. at 7, 150 P.3d at 381. In an expedited *inter se* proceeding, as in this case, the burden of production is on all potential objectors to come forward with evidence of particularized legally cognizable harm, as this Court has required. *Memorandum Opinion and Order, supra*, at 2 ("The Court will require that any person objecting to the settlement agreement must state in their objection how the objector will be injured or harmed by the settlement agreement in a legally cognizable way.").

In *Lewis, supra*, the New Mexico Supreme Court recognized the special role of the State in general stream adjudications. That special role also serves to satisfy the Tenth Circuit's requirements that movants show that the proposed settlement is fair and reasonable and not the product of collusion. *Jones v. Nuclear Pharmacy, supra*. The State, through the Attorney General, is statutorily charged with prosecuting general stream adjudications to final judgments on the water rights of all claimants in a process that has been defined by statute.

Neither the Dunn Objectors nor the Atencio Objectors have objected to the quantification, priority, purposes of use, or other elements of the Pueblo water rights set forth in the proposed Partial Final Decree, or the legal bases for them. Rather, most

objections claim that the groundwater administration provisions of the Settlement Agreement will result in illegal preferences for junior settlers. For example, the Dunn Objectors have made this objection, which is addressed in detail in Section III below. Thus, the only contested question before the Court is whether to approve the Settlement Agreement and make it binding among the settling parties, and no objector has questioned whether the Partial Final Decree should be entered with binding effect on all.

Therefore, the Court should apply the fair and reasonable standard, as described above, to determine whether the Settlement Agreement is fair, reasonable and adequate among the settling parties and whether it will have an unreasonable or proscribed effect on any objecting non-settling party<sup>1</sup>. As noted above, the effect of the Settlement Agreement on a non-settlor cannot be to take away a legal right. However, as this Court has required, objectors must show a particularized harm in order to prevent other parties from entering into their settlement.

### **III. The Dunn Objectors Offer No Legal Or Factual Basis For Precluding Entry of the Decree or Approval of the Settlement Agreement**

The Dunn Objectors argue that the Settlement Agreement and the proposed Partial Final Judgment and Decree violate New Mexico law because: (a) the Settlement Agreement is a

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<sup>1</sup> As noted, the undersigned parties find that the law in New Mexico is that the process and effect of *inter se* in New Mexico is governed by *Lewis, supra*. In particular, the binding effect of the Partial Final Decree on all parties is ensured as a matter of law – no particular evidentiary standard must be met. In this limited respect, these parties disagree with the analysis set forth in *Certain Non-Pueblo Defendants' Memorandum In Support Of Entry Of Partial Final Judgment And Decree Incorporating Settlement Agreement And Adjudicating Pueblos' Water Rights* (Doc. 9912, filed November 6, 2014), at 11-12, where it is argued that, in addition to the “fair and reasonable” standard already adopted by this Court, the Court should require that movants show that the Pueblo water rights to be recognized pursuant to the Settlement Agreement and Partial Final Decree “are no more extensive than the Pueblos would have been able to prove at trial.” Such an addition to the fair and reasonable standard is neither legally required nor factually necessary. In addition, no New Mexico appellate court has imposed such a requirement. However, even if such an additional requirement were imposed, movants have already abundantly satisfied it in this case.

“compact” that must be approved by the New Mexico Legislature; and (b) the settlement is contrary to state law priority administration. As discussed below, the settlement conforms to state law, and respondents can show no factual or legal basis for their claims.

A. **The Settlement Agreement is Not a Compact Requiring Approval by the New Mexico Legislature.**

The Dunn Objectors repeat and restate the objection that the Settlement Agreement is invalid because it was not approved by the Legislature. *Dunn Response* at 19-27. The State, County and City explained in detail in their opening brief that this contention has no merit. *Memorandum* at 39-41. Settlement of this litigation squarely falls within the purview of the New Mexico Attorney General. Instead of responding to this opening argument, however, the Dunn Objectors simply continue to rely on the inapposite case of *State ex rel. Clark v. Johnson*, 120 N.M. 562, 574, 904 P.2d 11, 23, 1995-NMSC-048 (1995). As described in the opening brief, that case simply does not apply here. In *Clark v. Johnson*, the court found the Governor had no express or implied authority to bind the State to terms of a gaming compact falling within an area regulated by the Legislature, inconsistent with existing statutory law. 120 N.M. at 574-76, 904 P.2d at 23-25.

Here, in contrast to the facts and holding in *Clark v. Johnson*, no further legislative approval was needed in order for the Attorney General to execute the Settlement Agreement. The executive action in *Clark v. Johnson* infringed on an area directly regulated by the Legislature without either an express or implied legislative grant of authority to the executive. *Id.* By contrast, the authority of the Attorney General in litigating and settling Indian water rights adjudication claims derives from state law in existence for over a century. NMSA 1978, § 36-1-22 (1876); NMSA 1978, § 8-5-2(B) (1975); NMSA 1978, §§ 72-4-13 to -19 (1907).

The Dunn Objectors give no explanation or reasoning showing how or why the Attorney General lacked authority on behalf of the State of New Mexico to enter into the Settlement Agreement.

**B. The Settlement Complies with New Mexico Law Governing Priority Administration.**

New Mexico is a prior appropriation state. Under both state constitutional and statutory law, priority in time “shall give the better right.” See N.M. Const. art. XVI, § 2; NMSA 1978, § 72-1-2 (1907). Appropriation of water for beneficial use establishes the priority date of a water right in relation to other water rights, and the full right of an earlier appropriator will be protected, to the extent of that appropriator’s use, against a later appropriator. See *State of N.M. ex rel. State Engineer v. Commissioner of Public Lands*, 145 N.M. 433, 441, 200 P.3d 86, 91 (Ct. App. 2008), *certiorari* denied 145 N.M. 531, 202 P.3d 124, (2008), *certiorari* denied 129 S.Ct. 2075, 556 U.S. 1208, 173 L.Ed.2d 1134 (2009) (citing N.M. Const. art. XVI, § 2). The Tenth Circuit summarized this essential tenet of New Mexico water law as follows:

In New Mexico, state law provides for a hierarchy of water users along a river such as the Rio Grande. Those who first appropriate water for beneficial use have rights superior to those who appropriate water later. See N.M. Const. art. XVI, § 2; *Snow v. Abalos*, 18 N.M. 681, 140 P. 1044, 1048 (1914) (affirming that New Mexico follows the “prior appropriation” doctrine). In years of drought or when the water level is otherwise low, those with priority use their appropriation as they wish; those with inferior rights may be left without.

*U.S. v. City of Las Cruces*, 289 F.3d 1170, 1176 (10<sup>th</sup> Cir. 2002) (further citing *A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands*, 29 Nat. Resources J. 347, 350 (1989)). This hierarchy also applies to use of water from domestic wells. See *Bounds v. State ex rel. D’Antonio*, 306 P.3d 457, 466, 2013-NMSC-037 (2013) (curtailment by priority administration authorizes the State Engineer to limit domestic well use administratively in times of water shortage to protect senior water rights).

The Settlement Agreement and the proposed Partial Final Judgment and Decree conform to New Mexico's water laws, and federal law when applicable, governing adjudication and administration of water right priorities. This Court has determined that the historic prior water rights of the Pueblos are entitled to a first or time immemorial priority. *See State of New Mexico v. Aamodt*, 618 F.Supp. 993, 1005-1010, (Dist. Ct. N.M. 1985) (*Aamodt II*); Mem. Op & Order, May 1, 1987 at 3-5; Mem. Op & Order, Apr. 14, 2000 at 8-9 (Dkt. No. 5596). Furthermore, priority dates for water use on Indian reservation lands are based on respective dates of reservation (1939 for 4.82 AFY for San Ildefonso Pueblo and 1902 for 302 AFY for Nambe Pueblo), in compliance with the Federal Reserved or *Winters* Doctrine. *See Aamodt II* at 1010. *See also Memorandum* at 23-25 & n.3. Based on their response briefs, it appears that respondents do not contest the priority dates proposed for the Pueblos' water rights.<sup>2</sup>

Although the settlement does not propose to adjudicate any non-Pueblo water rights, the Dunn Objectors argue the priority administration provisions of the Settlement Agreement violate their rights under state law. They complain "certain non-Pueblo junior rights will become elevated from priority calls irrespective of their priority relation to other non-Pueblo rights[.]" *see Dunn Response* at 2, and will "escape priority administration between non-Pueblo water rights holders in times of shortage." *Id.* at 3. This will force non-settling parties "to bear the curtailment of future priority calls by the Pueblos while rights that are junior are excepted[.]" *Id.* at 10.

These objections are not valid. The Court should reject them for a number of reasons. As discussed below, (1) nothing on the face of the Settlement Agreement can be reasonably

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<sup>2</sup> The Dunn Objectors state: "Defendant-Objectors do not contest that water rights of the Pueblos are and should be adjudicated in accordance with previous decisions of this Court and the 10th

construed to deprive non-settling parties of a right they hold, (2) the forbearance and shortage sharing provisions of the Settlement Agreement can and will be implemented both to conform with the Settlement Agreement and to comply with state law, and (3) any challenge to implementation of regulations that have not yet been promulgated or applied is premature at this time.

**1. The Settlement Agreement is valid on its face.**

Respondents can point to no provision of the Settlement Agreement that will violate state law or deprive them of a right they hold. The groundwater provisions opposed by respondents will not apply to them and will not affect them. In Section 4 of the Settlement Agreement, the Pueblos agree to forbear enforcement of their senior rights against junior groundwater users who join the settlement. Section 4.4 provides in pertinent part:

**4.4 Additional Protection for Non-Pueblo Well Users:**

The Pueblos rights defined in Sections 2.1, 2.2, 2.5, 2.6, and 2.7 shall not be enforced against:

**4.4.1** A Settlement Party who has made an election under Section 3.1.7.2 and is in compliance with that election, to the extent of the use set forth in Sections 3.1.7.4 and 3.1.7.2.5;

*Settlement Agreement* at 35.

The Dunn Objectors claim the Pueblos' agreement to forbear enforcement of their first priority against settling parties penalizes non-settling parties. This belief, however, misapprehends the terms and effect of the Settlement Agreement. Section 4.4 was included in the terms of settlement after groundwater users obtained agreement from the Pueblos to forbear making priority calls against them in exchange for joining the settlement and making one of the three elections under Section 3.1.7.2. The State, County and City believe this Section 4 priority

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Circuit Court of Appeals...." *Dunn Response* at 2.

protection provides an important benefit to settling groundwater users. But in no way does it “extort” or “force” other parties to settle.

In support of their argument, the only specific provision cited by the Dunn Objectors is Section 2.4.4.2.2 of the Settlement Agreement. They claim: “the Agreement is patently against public interest as it includes penalties against non-settling parties, in its effort to extort a Settlement agreement. (See Settlement Agreement at 2.4.4.2.2 in conjunction with Section 4).” *Dunn Response* at 7. They fail, however, to show how Section 2.4.4.2.2 will operate to compel them to settle, or affects them in any way at all. Section 2.4.4.2.2 falls under the broader topic of *Future Basin Use Rights*, Section 2.4. Section 2.4 defines the quantity of each Pueblo’s First Priority Rights for various uses, for example, 2.4.3 addresses 1) new community uses, 2) new domestic uses, and 3) new livestock uses. Section 2.4.4.2 addresses *Other Future Basin Uses on Pueblo Land*. Finally, 2.4.4.2.2, states that the Pueblo “initiating such Future Basin Use shall offset any resulting interference with Non-Pueblo surface water rights entitled to Section 4 protection including any resulting increased stream depletions.” In no way do these sections penalize non-settling parties.

There is nothing on the face of the Settlement Agreement and specifically the forbearance provisions that shifts a new or greater burden to non-settling parties. Respondents merely speculate that the State Engineer will administer the forbearance provisions in a way that will prejudice them. In the *Bounds* case, the New Mexico Supreme Court considered a facial challenge to the state statute that directs the State Engineer to issue permits for domestic wells, finding that “speculation about what the State Engineer may or may not do in the future cannot form the basis of a facial challenge in the present.” 306 P.2d at 467. The court reasoned:

Without specific facts supporting an as-applied challenge, we must assume that domestic wells will be administered as the permits themselves are written: “subject to curtailment by priority administration.” 19.27.5.13(B)(11) NMAC. In

the absence of a record to the contrary, we must assume that the State Engineer will fulfill the responsibility and exercise the authority bestowed on that office by law.

*Bounds* 306 P.2d at 467. The Dunn Objectors likewise show no facts supporting their assumption that implementation of the settlement forbearance provisions cannot be achieved in compliance with state law, including the administration of non-settling water rights in priority.

The flaw in the Dunn Objectors' theory is their mere assumption that an agreement between a senior and junior to forbear priority administration necessarily will violate the rights of non-agreeing parties whose priority dates fall between the dates of the agreeing parties. In approving the Carlsbad Irrigation District's settlement over objections of non-settling parties in the Pecos River adjudication, the New Mexico Court of Appeals held that alternatives to strict application of priority may be lawful, so long as non-settling seniors are protected:

We do not find in the language of the Constitution [N.M. Const. art. XVI, § 2] or the Compact an exclusive right to a priority call. The relevant provisions do not by their terms require strict priority enforcement through a priority call when senior water rights are supplied their adjudicated water entitlement by other reasonable and acceptable management methods.

Although priority calls have been and continue to be on the table to protect senior water users' rights, such a fixed and strict administration is not designated in the Constitution or laws of New Mexico as the sole or exclusive means to resolve water shortages where senior users can be protected by other means.

*State ex rel. Office of State Engineer v. Lewis*, 141 N.M. 1, 12, 150 P.3d 375, 386 (Ct. App. 2006).

Among settling parties, Section 4's forbearance of enforcement of Pueblo senior rights is an agreement in lieu of strict enforcement of priority. It is an agreement to share shortages: the Pueblos agree their senior rights won't be enforced against participating groundwater users and those parties in turn agree to make an election under Section 3.1.7.2, which may include

agreement to connect to the regional water system or to reduce or maintain use below specified levels. The State, County and City acknowledge that Section 4's forbearance and shortage sharing provisions may not be implemented in a way that would cause non-settling parties to suffer greater or more frequent calls than they would otherwise. Under Section 5.3 of the Settlement Agreement the State Engineer will adopt rules and regulations for the administration of water in the basin and under Section 5.2 will serve as Water Master responsible for applying these rules. The State Engineer has not completed and adopted the rules and regulations and they are not before this Court. Nonetheless, the State affirms to this Court that the regulations and rules can and will be structured to respect the priorities of non-settling parties and to assure administration of the shortage sharing provisions so as not to infringe on the rights of non-settling parties. If the State Engineer fails to promulgate and apply the rules in compliance with state law, water users in the basin will have the right at that time to challenge the rules or the Water Master's application of them, as discussed in section III.B.3 below.

2. **Forbearance of priority enforcement can and will be implemented both in conformance with the Settlement Agreement and compliance with state law.**

Implementation of the settlement will require designation and administration of two distinct groups of groundwater users: those who settle and receive Section 4 protection and those who choose not to settle and are still subject to priority enforcement for the benefit of Pueblo senior uses. This latter group will be subject to priority enforcement if a Pueblo senior use is short, but only to the extent such enforcement would apply in the absence of the settlement forbearance and shortage sharing provisions. This will require the Water Master to perform accounting of water use and supply and to structure the call accordingly. In most instances this may simply require calculating the quantity associated with Pueblo forbearance and subtracting it

from the call.

Even though the rules and regulations have not yet been promulgated and certainly have not yet been applied, a simple accounting example may help illustrate how they can be applied both to conform to the Settlement Agreement and to comply with state law. To do this, the example below compares two scenarios. Scenario 1 is a simple illustration of curtailment of junior groundwater uses during shortage with no forbearance or shortage sharing agreements in place, i.e., there is no settlement and strict priority administration applies. Scenario 2 illustrates administration of rights under the settlement, where there are two categories of junior groundwater rights holders, those with enforcement protection under Section 4 and those who have not settled and do not have protection from priority enforcement. Both scenarios assume a total of ten non-Pueblo water users with priority dates spanning from the earliest date 1930 to the most junior date of 2010. Also, both scenarios assume the Water Master has determined that a senior Pueblo surface use is short by 5 acre-feet and is entitled to curtailment of junior groundwater uses to satisfy the senior use.

**Scenario 1. Strict Priority Administration (no settlement shortage sharing or forbearance)**

priority date	junior pumping effects on senior supply (acre-feet)	curtailment running total (acre-feet)
2010	0.5	0.5
2002	1.0	1.5
1995	0.5	2.0
1981	0.5	2.5
1978	1.5	4.0
1970	1.0	5.0
call satisfied / end of curtailment		
1965	3.0	---
1950	0.3	---
1945	1.5	---
1930	1.0	---

**Scenario 2. Settlement Priority Administration (two groups: one exempt from enforcement and the other subject to curtailment)**

priority date	junior pumping effects on senior supply (acre-feet)	exempt from Pueblo call	Replacement water (acre-feet)	curtailment running total (acre-feet)
2010	0.5	yes	0.5	0.5
2002	1.0	no	none	1.5
1995	0.5	yes	0.5	2.0
1981	0.5	no	none	2.5
1978	1.5	no	none	4.5
1970	1.0	yes	1.0	5.0
call satisfied / end of curtailment				
1965	3.0	no	none	---
1950	0.3	yes	0.3	---
1945	1.5	no	none	---
1930	1.0	yes	1.0	---

This comparison illustrates how administration of the Settlement Agreement’s shortage sharing provisions may be implemented with no detrimental effects to non-settling parties. It also shows how settling parties will receive the protection from call they settled for without shifting any burden to non-settling parties. In the example, the non-settling parties are not called upon to curtail their use to any greater extent than they would without any settlement or shortage sharing. For instance, the 1978 water right choosing not to settle is curtailed to the same extent and by the same method with or without settlement. The settlement provisions do not cause the quantity of the call to be shifted to non-settling rights. In both scenarios, the non-settling 1965 right is the first right to be spared from enforcement.

Settling parties avoid curtailment because of the Pueblos’ agreement to share shortages. In effect, the Pueblo call will be reduced by the amount of shortage sharing, and junior settling

parties will be credited with replacement water under the State Engineer rules and regulations. This is illustrated by Scenario 2, in which three of the groundwater rights, 2010, 1995 and 1970, are exempt from call and are credited with a total of 2.0 acre-feet of replacement water. This has the effect of reducing the total Pueblo call from 5.0 acre-feet to 3.0 acre-feet. Because the 2002, 1981 and 1978 rights did not agree to shortage sharing and will not be credited with replacement water, they are subject to curtailment to meet the 3.0 acre-feet, the same amount they would owe without any settlement, as shown in Scenario 1.

Junior settling rights, such as the 1995 right would also be protected from a rebound call by a more senior non-settling right that is curtailed because of a Pueblo call. Neither the non-settling 1978 nor 1981 rights could call on the 1995 right's replacement water, even though they are curtailed and the 1995 right may continue pumping its replacement water. This, however, does not mean a senior non-Pueblo right, regardless of settlement status, could not request enforcement of priority because of its own shortage. The settlement agreement has no bearing on priority administration between and among non-Pueblo users who suffer hydrologic shortage to their supply, as opposed to curtailment as described above.

Undoubtedly, actual administration will be more complex than the example described above. This example, however, illustrates how "reasonable and acceptable management methods" can be employed to implement Section 4 of the Settlement Agreement while also protecting non-settling "senior users' rights." *Lewis*, 141 N.M. at 12, 150 P.3d at 386. Although they may not benefit from the settlement, non-settling parties such as the Dunn Objectors have shown no "plain legal prejudice" and their objections should be overruled. *See New England Healthcare Employees Pension Fund v. Woodruff, supra*, at 1288; *In Re Integra Realty Resources*, 262 F.3d 1089, 1102 (10th Cir. 2001). Furthermore, because they can show no

deprivation of liberty or property, they also fail to show any violation of equal protection or due process, either under federal or state law. *See Bounds*, 306 P.2d at 469 (because petitioner did not show any actual impairment of his water rights, he also could not show deprivation of liberty or property).

3. **Any challenge to implementation of regulations that have not yet been promulgated or applied is premature at this time.**

The State Engineer will promulgate the rules and regulations necessary to administer the Section 4 provisions “pursuant to NMSA 1978, § 72-2-8.” *See Settlement Agreement*, § 5.3. In carrying out this function, the State Engineer will provide public notice of the proposed rules and regulations and will conduct a public hearing at which “any person who is or may be affected by the proposed regulation ... may appear and testify.” NMSA 1978, § 72-2-8(D); *see also* NMSA 1978, § 72-2-8(G). If objectors or any other parties believe the proposed rules would violate their rights in any way, they are free to participate and assert what challenges they deem appropriate. Furthermore, if they disagree with the State Engineer’s rulemaking, they are entitled to seek judicial review. *See Tri-State Generation and Transmission Ass’n, Inc. v. D’Antonio*, 2011-NMCA-015, ¶ 2, 249 P.3d 932, *rev’d* 2012-NMSC-039, ¶¶ 8-10, 289 P.3d 1232. The Settlement Agreement in no way prohibits anyone from participating in the rulemaking or seeking judicial review at that time.

But a request at this time, of this Court, to review the legality of regulations yet to be promulgated is premature and misplaced. Any review of the regulations will be conducted upon final rulemaking and by state court. If state court review of the State Engineer rules were to find a legal defect in the administration provisions contemplated by the Settlement Agreement, Section 5.9 provides: “the remaining provisions of this Agreement shall remain in full and force

and effect notwithstanding a declaration by any court that Section 5, or any provision thereof, is invalid or contrary to law.”

This Court should decline the Dunn Objectors’ request for the federal adjudication court to issue advisory opinions on the legality of future State Engineer rulemaking and regarding state court administrative review. Only entry of the proposed Partial Final Judgment and Decree and approval of the Settlement Agreement are before this Court at this time.

**IV. The Atencio Group Objections Are Meritless  
and Have Been Rejected Repeatedly By this Court.**

**A. Each response must describe the specific harm the Objectors would suffer by entry of the Partial Final Decree**

The Atencio Objectors have failed to describe any specific harm the Settlement Agreement or the Partial Final Judgment and Decree would cause them. The allegations in the *Atencio Response*, that they will be harmed by the Settlement Agreement because it will cause their water rights to be reduced, will limit their right to irrigate, and will negatively impact their property values, have already been raised in the objections, and addressed by the State, County and City. The State, County and City addressed these objections in their *Memorandum*, pp. 47-50, and specifically explained that “[t]he only reduction of use required under the Settlement Agreement is voluntary – a Settlement Party can voluntarily agree to reduce their use in return for receiving certain benefits of the Settlement Agreement.” *Id.* at 49.

Indeed, the Atencio Objectors’ perception that their water rights are somehow “reduced” appears to derive from the fact that the amount adjudicated as a domestic well water right is always the amount of beneficial use, as opposed to the permit limit, which is most often a significantly larger number. However, a permit is not a water right. See e.g., April 17, 2013 *Memorandum Opinion and Order* at 5 (No. 7870) (“New Mexico law is clear that a water right is

based on the amount of water beneficially used, not on the amount permitted.”). As such, the Atencio Objectors’ water rights are not “reduced” as a result of the adjudication, and as objectors, not Settlement Parties, the Atencio Group Objectors are not required to reduce their use of water by the Settlement Agreement.

Finally, the Atencio Objectors assert that they will be harmed because “[a]ll property that does not presently have a well will be reduced in value.” *Atencio Response* at 34. The Atencio Objectors do not explain why or how the property will be reduced in value, or how the reduction in value is connected to the Settlement Agreement. Nor do they provide any citation to authority or evidence, expert or otherwise, in support of the assertion. Nonetheless, their argument here appears to be that property owners without a well have no water rights, and that this – not having a water right – would be the cause of the alleged possible reduction in the value of their property. However, persons who do not have water rights are not parties to this adjudication lawsuit, and the Atencio Objectors do not have standing to raise objections on behalf of these possible third parties. Their arguments on this issue should be disregarded.

In sum, the Atencio Objectors have failed to show any facts or law to support their allegations of harm.

**B. Each response must address with specificity why approval of the Settlement Agreement and entry of the Partial Final Decree is “not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law”**

The Atencio Objectors restate many of their original objections, but fail to address the State, County and City’s response to them in their *Memorandum*. The arguments contained in their *Response* assert that the Settlement Agreement is not fair and not consistent with applicable law. As discussed below, none of their arguments are new, in many cases they have already been rejected by the Court, and in every case they should be denied.

**1. The Settlement Agreement is Consistent With Applicable Law**

The *Atencio Response* argues the Settlement Agreement fails to comply with applicable law because: 1) the Preliminary Injunction violates the Anti-Injunction Act; 2) the Settlement Agreement violates the McCarran Amendment; and 3) the domestic well statute is being violated. As previously demonstrated in the State, County and City's *Memorandum*, none of the Atencio Objectors' arguments here are correct. The Settlement Agreement is consistent with applicable law.

This Court's 1983 Preliminary Injunction is not part of the Settlement Agreement or the Partial Final Judgment and Decree, and is not within the scope of this expedited subproceeding. The Anti-Injunction Act is therefore not applicable law. Further, the State, County and City have already addressed objections relating to the 1983 Injunction in their *Memorandum*, citing the numerous times that the Court has already ruled on the validity of the 1983 preliminary injunction. *Memorandum* at 52-53. The Atencio Objectors do not present any evidence or law to address the arguments of, and authority cited by the City, County and State.

Similarly, the Atencio Objectors' assertion that the Settlement Agreement violates the McCarran Amendment because Pueblo water rights should be decided under state law, has no basis in law, and also has already been addressed in the State, County and City's *Memorandum* at 33-34. The McCarran Amendment is a procedural law. The McCarran Amendment does not require the Pueblos' water rights be adjudicated pursuant to New Mexico law. The Atencio Objectors ignore the *Memorandum*, and the Court record in this case. Their objections should be denied.

Finally, the *Atencio Response* alleges that the Settlement Agreement violates the New Mexico Domestic Well Statute, but fails to state how the Settlement Agreement affects the

statute, or any provisions of the statute, or how the statute is applicable. *Atencio Response* at 7. Apparently in support of this argument, the Atencio Objectors mischaracterize the Settlement Agreement as it pertains to domestic wells by asserting that “[t]he Settlement Agreement calls for the non-Indians’ water rights to be reduced while the Pueblos’ water rights are increased” and “vested non-Indian water rights are being taken from non-Indians and awarded to Pueblos . . . via the water master rules and regulations, the operating agreement, the Joint Powers Agreement.” *Atencio Response* at 9-10. This is untrue. The Settlement Agreement does not do this, and Atencio Objectors cannot cite to any section of it that supports these assertions. Nevertheless, the Atencio Objectors go on to claim that “[t]he settlement agreement will transfer ownership of the Basin water to the Pueblos” and “[t]he preference claim<sup>3</sup> is the legal device used in the settlement agreement to take control of all or almost all the water in the Basin.” *Id.* at 10-11. In fact, the Pueblos’ water rights have been determined by the Court to be defined by federal law, and their senior priority is based on historical priority and use. See *Memorandum* at pp. 46-49.

In sum, the allegations the Atencio Objectors make here – that they are constitutionally entitled to 3 acf for a domestic well, and that the adjudication reduces that amount – are contrary to law. The amount adjudicated is constitutionally based on beneficial use. A permit does not create an entitlement, it allows permittees to develop a water right up to the amount on the permit. The water right developed under the permit is defined by the amount of actual beneficial use, not the amount on the permit. There is no taking of any non-Pueblos’ water rights under the Settlement Agreement.

The Atencio Objectors also assert that they will be deprived of their property in violation of due process because “[t]he Objectors will be required to transfer all [their] adjudicated rights

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<sup>3</sup> It is not entirely clear what the Atencio Objectors mean by “preference claim.”

to the County of Santa Fe by 2024,” citing generally to Section 3 of the Settlement Agreement. *Atencio Response* at 26. Section 3 describes the protections available for non-Indian Settlement Parties, but does not contain any provision that requires objectors to the Settlement Agreement to transfer their water rights to the County. Settling Parties – not objectors – may elect to transfer their water rights to the County Water Utility when service becomes available, but such a choice for them is wholly voluntary. See *Aamodi* Settlement Agreement, Section 3.1.7.4.1 (“Election to Connect to CWU”).

The Atencio Objectors also complain that due process is being violated because objections are susceptible to dismissal for technical deficits, domestic well owners are not being provided a meaningful opportunity to be heard and the procedures the Court has adopted allow a partial final decree to be entered without an *inter se* hearing. *Atencio Response* at 29, 30 and 31. No objections have been dismissed, this very proceeding is the domestic well owners’ opportunity to be heard, and this is the objectors’ opportunity to support their position that further proceedings are required by submitting evidence and detailing the procedures required. See August 8, 2014 *Case Management Order*, pp. 7-8 (No. 9506). The *Case Management Order* provides that:

Objectors should also describe with specificity which of the Settlement Parties’ allegations are disputed, state why their objections should be sustained or not overruled at this time, support their legal positions with materials which demonstrate either that (1) the factual position at issue is not disputed or (2) further proceedings are required to address relevant factual matter. If any party filing a response asserts that additional procedures are required before the Court addresses his/her objections to approval of the Settlement Agreement, those parties shall set forth those procedures and the reasons those procedures are required.

*Id.* (emphasis added). The Atencio Objectors have failed to provide any support for their position.

**2. The Settlement Agreement is Fair**

The Atencio Objectors complain in Section V of their *Response* – entitled “The Settlement Agreement is Not Fair” – that the Settlement Agreement is unfair to those who do not presently have a water right. As discussed above, those who do not have a water right have no standing in this water rights adjudication lawsuit to object to the Settlement Agreement, and the Atencio Objectors have no standing to speak for them.

The Atencio Objectors further argue that the Settlement Agreement is unfair because the regional water system omits portions of the Nambe-Pojoaque-Tesuque stream system from service and the feasibility of the Regional Water System is not a condition precedent to approval of the Settlement Agreement. As already discussed in the State, County and City’s *Memorandum*, and as already held by the Court, issues involving the design or feasibility of the Regional Water System are not presented by the Settlement Agreement, Partial Final Decree or Interim Administrative Order. See *Memorandum* at 61-62 and September 12, 2014 *Memorandum Opinion and Order Overruling Objection to Magistrate Judge’s order Denying Motion for Partial Stay* at 3 (“Defendants have not shown that the requested documents are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law.”) (9674).

In sum, the Atencio Objectors have failed to meet the standard set by the court. They have not shown the Settlement Agreement is inconsistent with applicable law, nor have they demonstrated the Settlement Agreement is unfair, and they have not objected on any other basis. Moreover, they have failed to establish that they would be harmed by the Court’s approval of the Settlement Agreement and entry of the Partial Final Decree and Interim Administrative Order. As such, they have no standing to object, and the arguments contained in their *Response* should

all be rejected.

#### V. Conclusions.

Both the *Dunn Response* and *Atencio Response* fail to describe any specific harm the Objectors would suffer by entry of the Partial Final Decree. They further fail to address with specificity why approval of the Settlement Agreement is “not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law.” The State, County and City have met the fair and reasonable standard for approval of the Settlement Agreement, and no party has objected to the Pueblos’ water rights described in the Settlement Agreement and in the Partial Final Decree, which are in any case no more extensive than could have been arrived at by litigation. The Court should therefore approve the Settlement Agreement and enter the Partial Final Decree and Interim Administrative Order.

WHEREFORE The State of New Mexico *ex rel.* State Engineer, Santa Fe County and the City of Santa Fe request that the Court overrule the objections, approve the Settlement Agreement and enter the proposed Partial Final Decree and Interim Administrative Order.

Respectfully submitted this 4<sup>th</sup> day of February, 2015.

Electronically Filed

/s/ Edward C. Bagley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 4, 2015 I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.* STATE )  
ENGINEER, )

Plaintiff, )

v. )

R. LEE AAMODT, et al., )

Defendants, )

and )

UNITED STATES OF AMERICA, )  
PUEBLO DE NAMBÉ, )  
PUEBLO DE POJOAQUE, )  
PUEBLO DE SAN ILDEFONSO, )  
and PUEBLO DE TESUQUE, )

Plaintiffs-in-Intervention. )

No. 66-CV-6639 WJ/WPL

**CERTAIN NON-PUEBLO DEFENDANTS' REPLY MEMORANDUM  
IN SUPPORT OF ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE**

On behalf of the members of the Rio Pojoaque Acequia and Water Well Association who have accepted the Settlement Agreement, undersigned counsel filed a Memorandum in Support of Entry of Partial Final Judgment and Decree Incorporating Settlement Agreement and Adjudicating Pueblos' Water Rights on November 6, 2014, Doc. 9912 ("Certain Non-Pueblo Defendants' Memorandum"). The memorandum sets forth the proper legal framework for this Court's consideration of entry of the Partial Final Judgment and Decree. On the same date, the Pueblos and the United States, on behalf of the Pueblos, filed a Memorandum of Points and Authorities in Support of Entry of Partial Final Judgment and Decree, Doc. 9910 ("US/Pueblos Memorandum"), and the State of New Mexico, County of Santa Fe and City of Santa Fe filed a

Joint Memorandum in Support of Settlement, Doc. 9913 (“State Memorandum”). On January 5, 2015 and January 7, 2015, two groups of objectors identified, respectively, as Group 1 and the Atencio Group (collectively, “the Objectors”), filed responses in opposition to entry of the Proposed Partial Final Judgment and Decree, Doc. 9972 (“Group 1 Response”) and Doc. 9973 (“Atencio Group Response”). The following memorandum replies to the Objectors’ Responses to demonstrate that under the proper legal framework the US/Pueblos and State Memoranda have made a sufficient showing that the Settlement Agreement to be incorporated into the Proposed Partial Final Judgment and Decree is fair and reasonable. This reply further demonstrates that the Objectors’ Responses have failed to show that the Settlement Agreement will adversely affect their legal rights or interests. Accordingly, the Court should approve the Proposed Partial Final Judgment and Decree in so far as it incorporates the Settlement Agreement by and among the Settling Parties.

### INTRODUCTION

As Certain Non-Pueblo Defendants have shown, in this proceeding, the Court must decide two questions: *first*, whether to approve and enter the Proposed Partial Final Judgment and Decree (Doc. 7970-3) (“PFJD”), in so far as it incorporates the Settlement Agreement dated April 19, 2012 (Doc. 7970-1) (“Settlement Agreement” or “Agreement”) by and among the Settlement Parties as defined therein, *see* Certain Non-Pueblo Defendants’ Memorandum, Doc. 9912 at 3-8; and *second*, whether to enter the PFJD in so far as it adjudicates the Pueblos’ water rights on the merits as to all parties to this adjudication, including the non-settling parties who object to the adjudication of Pueblos’ water rights as set forth in the PFJD, *see Id.* at 8-13.

With respect to the first question, the Court may enter the PFJD in so far as it incorporates the Settlement Agreement as binding between and among the Settlement Parties, provided the Agreement is fair and reasonable, and provided further, that the Agreement does not adversely affect the legal rights or interests of the non-settling parties. With respect to the second question, Certain Non-Pueblo Defendants stand on the argument in their memorandum, which the Objectors have not addressed. As shown, the Court should be circumspect about the finality of a consent judgment with respect to parties who have not consented to it. To be preclusive, such a judgment must satisfy the requirements of a judgment on the merits. *See Nevada v. United States*, 463 U.S. 110, 129-130 (1983); *see also United States v. Skokomish Indian Tribe*, 764 F.2d 670, 671-673 (9th Cir. 1985).

#### ARGUMENT

##### **I. THE PFJD APPROVING THE SETTLEMENT AGREEMENT IS FAIR AND REASONABLE.**

Before the Court may enter the PFJD in so far as it incorporates the Settlement Agreement between and among the Settlement Parties, it must first determine that the Agreement is fair and reasonable. This test requires judicial assessment of the following factors: (i) whether the Settlement Agreement is tainted by improper collusion or corruption of some kind, (ii) whether the Agreement reflects a resolution of the actual claims in the complaint, (iii) whether the terms of the Agreement are clear, and (iv) the basic legality of the Settlement Agreement. *SEC v. Citigroup Global Markets, Inc.*, 752 F.3d 285, 294-95 (2nd Cir. 2014). In addition, when a consent decree provides for injunctive relief, the public interest must not be disserved by the proposed injunction. *Id.* at 296. Each of these requirements has been met. Both the facts of

record and the law fully support the conclusion that the Settlement Agreement is fair and reasonable.

**A. The Settlement Agreement Is Not Tainted by Improper Collusion or Corruption.**

There is no evidence that the Settlement Agreement to be incorporated in the PFJD is tainted by improper collusion or corruption. Neither the Group 1 Response nor the Atencio Group Response makes such a charge. Indeed, the opposite is the case, as this Court has already found: “The numerous oral and written status reports from the Settlement Parties over the past several years support the Settlement Parties’ contention that the settlement agreement is the product of good faith arms-length negotiations.” *State of New Mexico ex rel. State Engineer v. Aamodt*, 582 F. Supp. 2d 1313, 1317 (D.N.M. 2007) (“*Aamodt III*”); *id.* at 1320 (“Based upon the previous proceedings in this adjudication, the nature of the water rights claims of the various parties, the identity of the parties involved with the settlement, and the numerous settlement negotiation status reports, the Court concludes that the negotiations were conducted at ‘arms length,’ meaning that the negotiations were conducted by unrelated parties, each acting in their own self interest.”). In this regard, the US/Pueblos Memorandum summarizes the history of the negotiations leading up to the Settlement Agreement now before the Court. Doc. 9910 at 22-26. As that summary shows, this Court “closely supervised the status of the settlement negotiations” for the seven years preceding its order of May 27, 2007. *Aamodt III*, 582 F. Supp. 2d at 1319. In addition, after the entry of the Court’s 2007 order, Congress authorized the settlement of this action by statute passed in 2010. 124 Stat. 3149. Thereafter, the parties modified the Settlement Agreement to conform to the authorizing legislation in meetings *open to the public*. There is not a hint that the Settlement Agreement is the product of any improper collusion or corruption.

**B. The Settlement Agreement Resolves Actual Claims in the Complaint Among the Settling Parties.**

There is no question that the Settlement Agreement to be incorporated into the PFJD resolves actual claims in this action by and among the Settlement Parties. The US/Pueblos Memorandum recounts both the history of this litigation, Doc. 9910 at 14-21, and the terms of the Settlement Agreement, *id.* at 3-11. As their memorandum makes clear, “the Settlement Agreement defines the Pueblo water rights,” Doc. 9910 at 3, which is the subject matter of the Pueblos’ claims in this action. As important, the Settlement Agreement “is intended to be binding upon the Settlement Parties (that is, on all persons or entities who sign the Agreement, *see* Settlement Agreement, § 1.6.35), and to resolve their objections to each other’s water rights.” Settlement Agreement, § 1.1.3. The Agreement therefore resolves actual claims subject to the complaint in this case.

**C. The Terms of Settlement Agreement Are Clear.**

Because it defines the key terms, *see* Settlement Agreement at §§ 1.6.1 – 1.6.32, and outlines the agreed upon administration and enforcement mechanisms, *see id.* at §§ 1.5 and 5.1 – 5.9, the Agreement to be incorporated into the PFJD does not lack any necessary clarity. *United States v. IBM Corp.*, 2014 WL 3057960, at \*3 (S.D.N.Y. July 7, 2014) (consent decree defining key terms and outlining enforcement mechanisms is “sufficiently specific”). In this regard, the Settlement Agreement provides that it is to be given a neutral construction based on the four-corners of the instrument, *see* Settlement Agreement at § 1.3, and further provides that the Court “shall retain continuing jurisdiction to interpret and enforce the terms, provisions and conditions of the Agreement.” *Id.* at § 1.5. The Court therefore has the authority to resolve any future claims that may raise a question of the Agreement’s clarity. As such, the Settlement Agreement

is consistent with the norm for incorporation of settlement agreements in a consent decree. *EEOC v. Product Fabricators, Inc.*, 666 F.3d 1170, 1173 (8th Cir. 2012) (“Continuing jurisdiction is the norm (and often the motivation) for consent decrees.”). As the Supreme Court has specifically noted, “[p]ublic law settlements are often complicated documents designed to be carried out over a period of years, . . . so any purely out-of-court settlement would suffer the decisive handicap of not being subject to continuing oversight and interpretation by the court.” *Local 93, Int’l Ass’n of Firefighters v. City of Cleveland* (“*Firefighters*”), 478 U.S. 501, 524 n.13 (1986) (internal quotations and citations omitted).

The fact that certain matters contemplated by the Settlement Agreement, such as a Joint Powers Agreement to govern the Regional Water Authority, Water Master Rules, an Operating Agreement for the Regional Water System, an Environmental Impact Statement and Record of Decision for the Regional Water System, and acquisition of rights-of-way, *see* US/Pueblos Memorandum, Doc. 9910 at 65-68 and State Memorandum, Doc. 9913 at 60-65, involve future performance does not create any uncertainty to prevent incorporation of the Settlement Agreement in the PFJD. Rather, each matter is subject to discrete legal requirements that implicate distinct rights and remedies to govern its actualization. *See e.g.* NMSA 1978, § 11-1-1 *et seq.*, Joint Powers Agreements Act; NMSA 1978, §§ 72-3-2 – 72-3-5, Water Masters, *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, 306 P.3d 457 (explaining the State Engineer’s broad authority to regulate domestic wells) and NMAC § 19.27.5 (State Engineer domestic well regulations); NMSA 1978, § 72-2-8 (regulations to govern State Engineer’s administration of non-Pueblo water rights); 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508 (NEPA environmental impact statements); NMSA 1978, § 4-37-1, § 4-36-8, § 4-36-10, § 3-27-1 (A) and (B), § 72-4-2,

and § 72-4-3 (authority of county to own and operate water system, including power of eminent domain to acquire rights-of-way).

As important, incorporation of the Settlement Agreement in the PFJD does not impose any obligation on the Objectors or other non-settling parties with respect to any of these matters. Settlement Agreement at § 1.1.3 (“This Agreement is intended to be binding on the Settlement Parties”); *Firefighters*, 478 U.S. at 529 (“a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree”); *Aamodt III*, 582 F.Supp.2d at 1319 (“Those claimants objecting to the settlement will not be forced to join the settlement but instead will be permitted to adjudicate their water rights via litigation.”). Accordingly, the non-settling parties may exercise all of their legal rights and remedies with respect to any matter in the Agreement subject to future performance.

**D. The Settlement Agreement to Be Incorporated into the PFJD Meets the Test of Basic Legality.**

In *Firefighters*, 478 U.S. 501, 525-26 (1986), the Supreme Court established four requirements for a consent decree to meet the test of basic legality. *First*, the court must have subject matter jurisdiction over the underlying dispute. *Id.* at 525 (“a consent decree must spring from and serve to resolve a dispute within the court’s subject matter jurisdiction”). Here, there is no dispute over the Court’s subject matter jurisdiction. *Second*, the decree must “com[e] within the general scope of the case made by the pleadings.” *Id.* (internal quotations and citation omitted). Here, the Settlement Agreement easily satisfies this requirement because, as shown in Section I. B., above, the Agreement resolves the Pueblos’ actual water rights claims in the complaint.

*Third*, the decree “must further the objectives of the law upon which the complaint was based.” *Id.* (citations omitted). Since the Tenth Circuit’s decision in this case in 1976, it has been clear that the Pueblos’ water rights are to be determined under *federal*, not state law. *State of New Mexico v. Aamodt*, 537 F.2d 1102, 1111 (10th Cir. 1976) (“*Aamodt I*”) (“the United States [ ] has not placed [the Pueblos’] water rights under New Mexico law.”). Thus, in *Aamodt I*, the court concluded that whatever the Pueblos’ rights may have been under the prior sovereigns, Spain and Mexico, they were validated in an act of Congress passed in 1858, following the cession in 1848 of New Mexico to the United States. *Id.* The law on which the Pueblos’ complaint is based is federal law governing the determination of their water rights. Following remand of *Aamodt I*, this Court concluded in 1985 that the Pueblos’ water rights, validated by the 1858 Act, are derived under the *federal* Indian law doctrine of aboriginal title, as modified by Spanish and Mexican law, and were subsequently fixed by another act of Congress, the 1924 Pueblo Lands Act. *State of New Mexico ex rel. Reynolds v. Aamodt*, 618 F. Supp. 993, 1010 (D.N.M. 1985) (“*Aamodt II*”). What the Settlement Agreement before the Court indisputably does is to further the objectives of establishing the priority and quantity of the Pueblos’ water rights through a compromise that is consistent with the law of this case established in *Aamodt I*, and followed in *Aamodt II* and the subsequent orders of this Court building on that decision. US/Pueblos Memorandum, Doc. 9910 at 14-21.

*Fourth*, and perhaps most importantly in light of the Objectors’ Responses, a settlement agreement to be incorporated in a consent decree may not require or sanction the parties to engage in unlawful action. *Firefighters*, 478 U.S. at 525-26. Thus, in *Firefighters*, the Supreme Court explained that the consent decree in that case could not authorize the parties “to take action

that conflicts with or violates” the underlying federal statute upon which the complaint was based. *Id.* at 526. At the same time, however, the Court recognized that “it is the agreement of the parties, rather than *the force of the law upon which the complaint was originally based*, that creates the obligations embodied in a consent decree.” *Firefighters*, 478 U.S. at 522 (emphasis added). Accordingly, in deciding whether to approve a settlement agreement to be incorporated in a consent decree, the court does not determine whether “the plaintiff has established his factual claims and legal theories.” *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971). Nor does the court “reach and resolve the merits of the claims or controversy.” *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983). In addition, the court “is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial.” *Firefighters*, 478 U.S. at 525. Rather, the decree must be “*otherwise* shown to be unlawful.” *Id.* at 526 (emphasis added). In other words, to fail the test of *basic* legality, the Settlement Agreement *itself* must affirmatively require or sanction unlawful action by the Settlement Parties.

Here, the Settlement Agreement does no such thing. Both the US/Pueblos Memorandum and the State Memorandum have clearly shown that the Settlement Agreement neither requires nor sanctions violation by the Settlement Parties of the Constitution, or any federal or state law. US/Pueblos Memorandum, Doc. 9910 at 48-64; State Memorandum, Doc. 9913 at 5-60. By contrast, most, if not all, of the Objectors’ arguments in opposition to approval of the Settlement Agreement are directed, *incorrectly*, at the *merits* of the claims upon which the Pueblos’ complaint was based, *see, e.g.*, Atencio Group Response at 7-19, and the *relief* provided by the

Settlement Agreement, *see id.* at 32-34, which is well within the scope of the rule announced in *Firefighters*.

**E. Incorporation of the Settlement Agreement in the PFJD Will Not Disserve the Public Interest.**

If a consent decree provides for injunctive relief, the Court “must also consider the public interest in deciding whether to grant the injunction.” *Citigroup Global Markets, Inc.*, 752 F.3d at 295. The Court “must assure itself ‘the public interest would not be disserved’ by issuance of a permanent injunction.” *Id.* at 296 (citing *eBay, Inc. v. MercExchange*, 547 U.S. 388, 391 (2006)). Here, the PFJD provides that “[e]ach Pueblo, and its successors, representatives, lessees, and assigns, are permanently enjoined from any diversion, impoundment, or use of the public waters of the Pojoaque Basin except in strict accordance with this Partial Final Judgment and Decree, Settlement Agreement, and other orders entered by this Court in this action.”<sup>1</sup> PFJD at § 3.E.2. The inclusion of that injunction in the PFJD certainly does not disserve the public interest. Indeed, both state and federal law provide for injunctive relief to prohibit the diversion of water without a valid right to do so. NMSA 1978, § 72-5-39, § 72-12-15, and *United States v. Cappaert*, 426 U.S. 128, 141 (1976) (affirming district court injunction limiting junior groundwater diversions adversely affecting senior federal reserved water rights). It is therefore not contrary to the public interest for the PFJD to enjoin the Pueblos’ use of water except in accordance with the Settlement Agreement.

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<sup>1</sup> Certain Non-Pueblo Defendants’ Memorandum inadvertently and mistakenly stated that the proposed PFJD does not provide for injunctive relief. Doc. 9912 at 4. That mistake is corrected here.

**F. Consideration of Other Factors Confirm That the Settlement Agreement is Fair and Reasonable.**

In *Citigroup*, the court recognized the foregoing as minimum requirements for a settlement to satisfy the fairness and reasonableness necessary for incorporation of the agreement in a consent decree. But the court also noted that “depending on the decree a district court may need to make additional inquiry[.]” *Citigroup*, 752 F.3d at 295. In this case, the Court has cited *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984), as listing factors to consider with respect to court approval of the Settlement Agreement. *Aamodt III*, 582 F. Supp. 2d at 1317. Although *Jones* involved the settlement of a shareholder’s derivative suit, not approval of a settlement agreement to be incorporated in a consent decree, the decision has been cited in this district in circumstances involving the latter situation, which also is the case here. *See Wildearth Guardians v. United States Forest Service*, 778 F. Supp. 2d 1143, 1148 (D.N.M. 2011); *cf United States v. State of Colorado*, 937 F.2d 505, 509 (10th Cir. 1991) (stating generally that the court has “the duty to decide whether the [consent] decree is fair, adequate, and reasonable before it is approved”). The Court may, therefore, in the exercise of its discretion, consider the *Jones* factors in deciding whether the Settlement Agreement is fair and reasonable. To the extent it chooses to do so, the US/Pueblos Memorandum establishes that the Settlement Agreement satisfies each of those factors. US/Pueblos Memorandum, Doc. 9910 at 28-36.

Finally, as Certain Non-Pueblo Defendants’ Memorandum pointed out, where, as here, many, but not all parties, in multi-party litigation have entered into a settlement agreement to be incorporated in a consent decree, the Court’s review of the agreement for fairness and reasonableness is in part “intended to protect those who did not participate in negotiating the compromise[.]” *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990). Of course, doing

so is subject to the sound exercise of the Court's discretion, which here is subject to a significant cautionary note. In this case, both the United States and the State of New Mexico are parties to the Settlement Agreement to be incorporated in the PFJD. See Settlement Agreement, signature pages at 49 etc. As a result, "sound policy would strongly lead [the Court] to decline . . . to assess the wisdom of the Government's judgment in negotiating and accepting the . . . consent decree at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting." *Sam Fox Pub. Co. v. United States*, 366 U.S. 683, 689 (1961). In sum, the facts of record and controlling principles of law establish that the Settlement Agreement is fair and reasonable.

**II. THE SETTLEMENT AGREEMENT DOES NOT PREJUDICE THE LEGAL RIGHTS OR INTERESTS OF THE OBJECTORS.**

In *In Re Integra Realty Resources*, 262 F.3d 1089 (10th Cir. 2001), the Tenth Circuit held that non-settling parties, like the Objectors here, have standing to object to a settlement entered into by some, but not all, parties in multi-party litigation *only* if they will suffer "plain legal prejudice" resulting from the settlement. *Id.* at 1102. This standard applies in strictly "ordinary litigation," like this case, as well as in class actions. *Quad/Graphics, Inc. v. Fass*, 724 F.2d 1230, 1232-33 (7th Cir. 1983). The court explained in *Integra Realty* that "[m]ere allegations of injury in fact or tactical disadvantage as a result of a settlement simply do not rise to the level of plain legal prejudice." *Id.* at 1103 (quoting *Agretti v. ANR Freight Sys.*, 982 F.2d 242, 247 (7th Cir. 1992) (italics omitted)). As applicable here, the decision in *Integra Realty* makes clear that the Objectors must show that "the settlement strips the party of a legal claim or cause of action, such as a *cross-claim* or the right to present relevant evidence at trial." *Id.* at 1102-03 (quoting

*Agretti*, 982 F.2d at 247) (emphasis added). In this case, the Objectors have not made and cannot make such a showing.

The “crux” of the Objectors’ “prejudice” argument is that the Settlement Agreement excepts settling non-Pueblo water rights owners from priority enforcement of the Pueblos’ water rights, while subjecting non-settling parties’ water rights to such enforcement. Group 1 Response at 2-3. According to the Objectors, the result is “a new system that effectively punishes objecting water rights owners for failing to agree to settlement by forcing them to bear the curtailment of future priority calls by the Pueblos[,] while rights [of settling owners] that are junior [to the Objectors] are excepted[.]” *Id.* at 10. This argument falls far short of demonstrating “plain legal prejudice.”

To be sure, the Pueblos have agreed in Section 4 of the Agreement to refrain from enforcement of their first priority against settling non-Pueblo groundwater rights owners. Settlement Agreement § 4. But no law or regulation prohibits such an agreement between senior and junior water rights owners, and the Objectors have cited none. Moreover, quite apart from the Settlement Agreement, the law also does not require a senior appropriator, suing for injunctive relief to enforce its priority, to join all junior appropriators who might be wrongfully diverting water away from the senior’s lawfully entitled use. Rather, it is clear that a senior appropriator’s claim for injunctive relief “can be maintained without joinder of all stream users[.]” *La Madera Community Ditch Ass’n v. Sandia Peak Ski Co.*, 1995-NMCA-025, ¶ 6, 893 P.2d 487; accord *Twin Forks Ranch, Inc. v. Brooks*, 1995-NMCA-128, ¶ 3, 907 P.2d 1013 (“priority of water rights between two competing users may be adjudicated without joinder of all other users in system.”) This New Mexico case law is consistent with western water law

generally, which recognizes that a senior water rights holder need not be “concerned in settling the relative priorities between [those] whose rights are junior to its own[.]” *Rogers v. Nevada Canal Co.*, 151 P.2d 923, 927 (Colo. 1915). Rather, “that is a matter which they must settle between themselves.” *Id.*

Here, if a non-settling non-Pueblo water rights owner were to be subjected to a Pueblo priority enforcement action, which is the “prejudice” the Objectors claim, nothing in the Settlement Agreement prohibits the non-settling non-Pueblo defendant from seeking to join as additional defendants other non-Pueblo water rights owners whose rights are junior to its own. Indeed, addressing “the rights of a prior appropriator to join as defendants those whose rights [are] junior” in a priority enforcement action, the Colorado Supreme Court unequivocally has stated that the prior appropriator “may bring and maintain an action jointly against all parties junior in right to himself, whenever the result of their acts, either joint or several, deprives him of his water right to the use of the water, or substantially interferes therewith.” *Rogers*, 151 P. at 927. Thus, the Objectors have not made, and cannot make, any showing that the Settlement Agreement precludes them from exercising their right to bring such a *cross-claim*. As a result, the Objectors have failed to demonstrate they are “prejudiced” by the Settlement Agreement. As the Tenth Circuit has held, a party “suffers plain legal prejudice if the settlement strips the party of a legal claim or cause of action, such as a cross-claim,” which the Agreement before the Court *does not do*. *Integra Realty*, 262 F.3d at 1102-03.

The Objectors also apparently contend that their legal rights or interests are adversely affected purportedly because “[t]he State Engineer as a settling party has agreed to the exception to priority administration” of the water rights of settling *versus* non-settling non-Pueblo

defendants, Group 1 Response at 3, in violation of “current state water law.” *Id.* at 10. But contrary to the Objectors’ argument, the State Engineer has made no such agreement, nor does the Agreement deprive the Objectors of the right to make any such claim.

Under Section 5.3 of the Settlement Agreement, the State Engineer is required to promulgate *rules* for the administration of non-Pueblo water rights in accordance with the Settlement Agreement. Such *rule-making* is to be conducted pursuant to statute, *see* Settlement Agreement at § 5.3, which gives the State Engineer authority to adopt *regulations* to implement any provision of law administered by him. NMSA 1978, § 72-2-8. But in doing so, the State Engineer is duty bound to give public notice of the proposed regulations and to conduct a public hearing at which “any person who is or may be affected by the proposed regulation [] may appear and testify.” NMSA 1978, § 72-2-8(D); *see also* NMSA 1978, § 72-2-8(G). And nothing in the Settlement Agreement deprives the Objectors of the right to assert any claim they may have regarding the lawfulness of any regulation the State Engineer may propose as an “exception to priority administration.” Nor does the Settlement Agreement deprive the Objectors of the right to judicial review of any purportedly illegal regulation the State Engineer might adopt. *See Tri-State Generation and Transmission Ass’n, Inc. v. D’Antonio*, 2011-NMCA-015, ¶ 2, 249 P.3d 932, *rev’d* 2012-NMSC-039, ¶¶ 8-10, 289 P.3d 1232.

Unable to show that the Settlement Agreement *strips* them of any legal claim, what the Objectors actually want from this Court are two impermissible advisory opinions. *First*, the Objectors want the Court to adjudicate the merits of a hypothetical Pueblo priority enforcement action for injunctive relief against a hypothetical non-settling non-Pueblo defendant, including the merits of a hypothetical unasserted cross-claim against a hypothetical settling non-Pueblo

water rights owner. They want the Court to hold that in such an action, the “junior” non-Pueblo water rights holder who signs on to the Settlement “will be given priority over a senior user [] if the latter did not sign onto the Settlement [A]greement.” Group 1 Response at 17. But this Court adjudicates only *actual* controversies, not *hypothetical* lawsuits.

Moreover, a suit for such injunctive relief is an extraordinary remedy that lies *in equity* and requires proof not only of the parties’ relative priorities, but also that the movant will suffer irreparable injury unless an injunction is issued; that the threatened harm to the movant outweighs whatever damage the injunction may cause to the party to be enjoined; and that issuance of the injunction will not be adverse to the public interest. *Southwest Stainless, LP v. Sappington*, 582 F.3d 1176, 1191 (10th Cir. 2009); *see also Resource Associates Grant Writing and Evacuation Services, Inc. v. Maberry*, 2008 WL 4820754 at \* 5-6 (D.N.M. July 14, 2008). Yet, the Objectors want the Court to make this ruling in the absence of any proof of any facts on any of these issues. In other words, what the Objectors want is a decision today that they will not suffer in the future “the loss of some practical or strategic advantage in litigating their [Pueblo priority enforcement] case,” a question that presents this Court with no concrete controversy, and which is insufficient to constitute plain legal prejudice in any event. *Integra Realty*, 262 F.3d at 1102.

*Second*, the Objectors want the Court to hold that the State Engineer will be incapable of adopting regulations to implement his duties for the administration of non-Pueblo water rights in accordance with the Settlement Agreement because any such regulations necessarily will conflict with New Mexico law of prior appropriation. But that too is not for this Court to pre-judge. As New Mexico law recognizes, “although priority calls have been and continue to be on the table

to protect senior users' rights, such a fixed and strict administration is not designated in the Constitution or laws of New Mexico as the sole or exclusive means to resolve water shortages where senior users can be protected by other means." *State of New Mexico ex rel. Office of the State Engineer v. Lewis*, 2007 – NMCA – 008, ¶ 39, 150 P.3d 375. Thus, the Settlement Agreement requires the State Engineer to adopt regulations to ensure compliance of his priority administration with the terms of the Agreement. Settlement Agreement, §§ 5.2-5.3. And, as shown, the Objectors have the right to challenge the legality of any such regulation, which is a matter of state law committed to the New Mexico courts to decide.

As important, even if a regulation adopted by the State Engineer to implement priority administration of non-Pueblo water rights, as provided in Section 5 of the Settlement Agreement, ultimately were held to be unlawful, the Settling Parties nonetheless have agreed "that the remaining provisions of this Agreement shall remain in full and force and effect notwithstanding a declaration by any court that Section 5, or any provision thereof, is invalid or contrary to law." *Id.* at 5.9. There is therefore no reason for this Court to speculate, as the Objectors do, about the legality of regulations that will not and cannot affect the validity of the Settlement Agreement between and among the Settling Parties.

For the foregoing reasons, the Court should hold that the Settlement Agreement is fair and reasonable and that it does not adversely affect the Objectors' legal rights or interests, and it should approve the Proposed Partial Final Judgment and Decree in so far as it incorporates the Settlement Agreement by and among the Settlement Parties.

Dated this 4th day of February, 2015.

Respectfully submitted,

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*s/ Mark F. Sheridan*  
Mark Sheridan

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, <i>ex rel.</i> STATE	)	
ENGINEER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
R. LEE AAMODT, et al.,	)	No. 66cv6639 WJ/WPL
	)	
Defendants,	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
PUEBLO DE NAMBÉ,	)	
PUEBLO DE POJOAQUE,	)	
PUEBLO DE SAN ILDEFONSO,	)	
and PUEBLO DE TESUQUE,	)	
	)	
Plaintiffs-in-Intervention.	)	

**THE RIO de TESUQUE ASSOCIATION, INC.'S REPLY  
IN SUPPORT OF SETTLEMENT AGREEMENT AND ENTRY  
OF A PARTIAL FINAL DECREE ON THE PUEBLOS' RIGHTS**

The Rio de Tesuque Association, Inc. (hereafter "the Association") respectfully submits this Reply in support of the Settlement Agreement dated April 19, 2012 (hereafter "Settlement") and in support of the entry of the proposed Partial Final Judgment and Decree on the Water Rights of the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso (hereafter "Partial Final Decree"). The Association filed its Memorandum in Support of the Settlement on November 6, 2014 (Doc. 9911). That memorandum focused on administration of rights on the Rio Tesuque and demonstrated how non-Pueblo water users there will be better off under the Partial Final

Decree and the Settlement. Only two response briefs were filed in opposition to entry of the Partial Final Decree and approval of the Settlement (Group 1 Response, filed January 5, 2015, Doc. 9972 and the Atencio Group Response, filed January 7, 2015, Doc. 9973). Neither of those response briefs responded in any substance to the Association's opening memorandum. Thus, for its reply, the Association refers to its opening memorandum and also joins in the reply briefs filed by Certain Non-Pueblo Defendants in support of entry of Partial Final Judgment and Decree and by the State of New Mexico, County of Santa Fe and City of Santa Fe's in support of Settlement.

The Association restates its support for the Settlement and submits that the Settlement is in the best interests of its member community ditches and their members and is fair, adequate, reasonable, in the public interest, consistent with applicable law, and it should be adopted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, <i>ex rel.</i> STATE	)	
ENGINEER,	)	
	)	
Plaintiff,	)	CASE NO. 6:66-cv-6639 WJ/WPL
	)	
v.	)	
	)	
R. LEE AAMODT, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA	)	
PUEBLO DE NAMBE,	)	
PUEBLO DE POJOAQUE	)	
PUEBLO DE SAN ILDEFONSO,	)	
and PUEBLO DE TESUQUE,	)	
	)	
Plaintiffs-in-Intervention	)	
_____	)	

**PLAINTIFFS-IN-INTERVENTION THE UNITED STATES, PUEBLO  
DE NAMBÉ, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO,  
AND PUEBLO DE TESUQUE'S MEMORANDUM REPLY BRIEF IN SUPPORT OF  
APPROVAL OF THE SETTLEMENT AGREEMENT AND ENTRY  
OF PARTIAL FINAL JUDGMENT AND DECREE AND  
INTERIM ADMINISTRATIVE ORDER**

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I. INTRODUCTION.

This Memorandum replies to the *Response in Opposition to Motion to Approve Settlement Agreement and Entry of Proposed Partial Final Judgment and Decree*, filed by objecting defendants represented by A. Blair Dunn (Jan. 5, 2015) (Doc. 9972) (“Dunn Resp.”), and the *Objectors’ Response to Motions in Support of Entry of a Partial Final Judgment and Decree*, filed by objecting defendants represented by Lorenzo Atencio (Jan. 7, 2015) (Doc. 9973) (“Atencio Resp.”)<sup>1</sup> (collectively, “Responses”). It also addresses certain points raised in the *Rio de Tesuque Association, Inc.’s Memorandum in Support of Settlement Agreement and Entry of a Partial Final Decree on the Pueblos’ Rights*, filed by settling defendants represented by Larry C. White (Nov. 6, 2014) (Doc. 9911) (“White Mem.”), and *Certain Non-Pueblo Defendants’ Memorandum in Support of Entry of Partial Final Judgment and Decree Incorporating Settlement Agreement and Adjudicating Pueblos’ Water Rights*, filed by settling defendants represented by Mark F. Sheridan (Nov. 6, 2014) (Doc. 9912) (“Sheridan Mem.”). For the reasons set forth here and in the *Memorandum of Points and Authorities in Support of Entry of Partial Final Judgment and Decree* (Nov. 6, 2014) (Doc. 9910) (“U.S. & Pueblos Mem.”) and the *State of New Mexico, Santa Fe County and City of Santa Fe’s Joint Memorandum in Support of Settlement* (Nov. 6, 2014) (Doc. 9913) (“State Mem.”), the Court should approve the Settlement Agreement and enter the Partial Final Judgment and Decree and Interim Administrative Order.

The Court has before it two separate but interrelated tasks. The Court must first determine whether to approve the *Settlement Agreement* (Apr. 19, 2012) (Doc. 7970-1)

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<sup>1</sup> The Atencio Response was filed after the deadline established by the Court, and should not be considered for that reason alone. In the event the Court considers it, this Reply demonstrates why the Court should reject the Atencio Response’s arguments.

("Settlement Agreement")<sup>2</sup> which establishes certain rights and responsibilities among the Settlement parties. Second, it must determine whether to enter the *[Proposed] Partial Final Judgment and Decree of the Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque* (Oct. 2, 2013) (Doc. 7970-3) and the *[Proposed] Interim Administrative Order* (Oct. 2, 2013) (Doc. 7970-2) (collectively, "Partial Final Judgment and Decree"). The Settlement Agreement will be effective as to those parties who voluntarily join the Settlement and will govern the administration of the rights subject to the Settlement Agreement. The Partial Final Judgment and Decree, which will be binding on all parties, (1) establishes the quantity and priority of the water rights for the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque (collectively, "Pueblos"); and (2) provides for the administration of the Pueblos' rights in accordance with the Settlement Agreement.

If entered by the Court, the Partial Final Judgment and Decree is the final order and adjudication of the rights of the Pueblos in this stream adjudication and, as such, will bind all parties. The process established by the Court to consider approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree allowed any party to file an objection where that party believed his or her water right would be specifically harmed by approval of the Settlement Agreement and entry of the Partial Final Decree. *See New Mexico ex rel. State Eng'r v. Aamodt*, 582 F. Supp. 2d 1313, 1315 (D.N.M. 2007) ("*Aamodt III*"). Objecting parties were to file responsive memoranda in support of their objections which "describe the specific harm the Objectors would suffer by entry of the Partial Final Decree . . . ." *Case Management and Service Order* at 7 (Aug. 8, 2014) (Doc. 9506) ("CMO"). Objecting parties were further ordered to "address with specificity why approval of the Settlement Agreement and entry of the Partial

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<sup>2</sup> The Aamodt Litigation Settlement Act, Pub. L. 111-291, §§ 601-26, 124 Stat. 3149, 3134-56 (Dec. 8, 2010) ("Settlement Act"), codified the Settlement Agreement which is now federal law.

Final Decree is not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law.” *Id.* (quotation marks and citation omitted).

As shown below, the objections in the two Responses fail to demonstrate approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree is “not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law” or that Settlement Agreement approval and entry of the Partial Final Judgment and Decree will harm any objectors’ water right in a specific and legally cognizable way. *See Aamodt III*, 582 F. Supp. 2d at 1315; CMO at 7 (quotation marks and citations omitted). The objections and arguments raised in the Responses are either incorrect, irrelevant to the issues before the Court, or premised on a misreading of the Settlement Agreement and applicable law. Accordingly, the Court should (1) approve the Settlement Agreement; and (2) enter the Partial Final Judgment and Decree.

## II. APPLICABLE LEGAL STANDARD.

The standard and procedure for the Court’s consideration of the objections to approval of the Settlement Agreement and entry of a Partial Final Judgment and Decree is long established in this case:

Each response must describe the specific harm the Objectors would suffer by entry of the Partial Final Decree, [and] address with specificity why approval of the Settlement Agreement and entry of the Partial Final Decree is not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law. Objectors should also describe with specificity which of the Settlement Parties’ allegations are disputed, state why their objections should be sustained or not overruled at this time, support their legal positions with legal authority, and support factual positions with materials which demonstrate either that (1) the factual position at issue is not disputed or (2) further proceedings are required to address relevant factual matters. If any party filing a response asserts that additional procedures are required before the Court addresses his/her objections to approval of the Settlement Agreement, those parties shall set forth those procedures and the reasons that those procedures are required. Legal positions must be supported by legal authority; factual positions must be supported by authority which demonstrates that there are no disputed material facts at issue.

CMO at 7-8 (internal quotation marks and citations omitted); *see also Aamodt III*, 582 F. Supp. 2d at 1315 (“The Court will require that any person objecting to the settlement agreement must state in their objection how the objector will be injured or harmed by the settlement agreement in a legally cognizable way.”).<sup>3</sup> The Responses, which do not dispute that the “fair and reasonable standard” applies, *see* Dunn Resp. at 4; Atencio Resp. at 3, fail to demonstrate that the Settlement Agreement and Partial Final Judgment and Decree are not fair, adequate, reasonable, in the public interest, and consistent with applicable law. The Dunn Response is quite limited and does not satisfy the Court’s standard. Its attack focuses primarily on the future administration of water rights that would allegedly occur if the Court enters the Partial Final Judgment and Decree. *See* Section III.A.1.a, III.B, *infra*. Similarly, the Atencio Response does not mount a legally sustainable opposition to the Settlement Agreement, and its attempt to create a factual dispute is both superficial and irrelevant, and even if relevant, fails to demonstrate any issue of fact. *See* Section III.C, *infra*.

The Sheridan Memorandum, filed prior to the objecting Responses, attempts to alter the standard the Court has established for the entry of the Partial Final Judgment and Decree. Although it acknowledges the Court will review the Settlement Agreement under the fair and reasonable standard, Sheridan Mem. at 2, 10, it argues for the imposition of a different, and legally unsupported standard that the Partial Final Judgment and Decree be entered only if “there is a reasonable basis to conclude that the water rights to be adjudicated to each Pueblo are no more extensive than could be secured at a trial, and that the Agreement and the PFJD will reduce or eliminate impacts on junior water rights,” *id.* at 2-3. This requirement is incorrect. Where an

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<sup>3</sup> After opening briefs were filed here, the Rio Taos/Rio Hondo Adjudication Special Master has adopted the fair and reasonable standard established in this case. *See Special Master’s Report and Recommendations Regarding Objections to Partial Final Judgment and Decree on the Water Rights of Taos Pueblo*, No. 69-cv-07896 at 9-10 (Jan. 23, 2015) (Doc. 5927).

objecting party is provided the opportunity “to file written objections to the consent decree in the district court, and to participate in the fairness hearings as a full party to the litigation[,]” the objecting party is “afforded ‘all the process that [it] was due,’” *Johnson v. Lodge #93 of Fraternal Order of Police*, 393 F.3d 1096, 1109 (10th Cir. 2004) (quoting *Local No. 93, Int’l Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986)), and no further merits based inquiry is required. Here, the objecting parties have failed to make a colorable claim that their water rights, which are not determined under either the Settlement Agreement or Partial Final Judgment and Decree, “would be or have been adversely affected by the settlement agreement and decree.” *New Mexico ex rel. Office of State Engineer v. Lewis*, 150 P.3d 375, 394 (N.M. Ct. App. 2006) (“*Lewis*”). Accordingly, as explained below, there is no reason for the Court to decline to approve the Settlement Agreement and enter to the Partial Final Judgment and Decree. *Id.* at 392 (objecting parties must show that they “will be unjustly harmed by not receiving the amount of water to which they are entitled”). As articulated throughout the United States and Pueblos’ Memorandum and in this reply, the Court previously established the correct standard and procedure by which it would review the Settlement Agreement and the Partial Final Judgment and Decree and that should remain unchanged. Nevertheless, the Sheridan Memorandum asks the Court to revisit the issue and argues for application of a new merit-based standard and review procedure. Sheridan Mem. at 10 and Ex. A at 7-8. Notably, in its reliance on the 1990 Arizona Supreme Court Order governing Indian water rights settlements in the Gila River Basin, the Sheridan Memorandum argument ignores the Arizona Supreme Court’s review and application of the very language on which it relies. *See In re the General Adjudication the Rights to Use Water in the Gila River System*, 173 P.3d 440 (Ariz. 2007) (“*Gila VII*”); *In Re The General Adjudication the Rights to Use Water in the Gila River System and*

*Source*, 224 P.3d 178, 187 (Ariz. 2010) (“*Gila VIII*”). This review and application is not consistent with what the Sheridan Memorandum proposes.

The Court has determined the appropriate standard for evaluating the Settlement Agreement and Partial Final Judgment and Decree in this case. The Court need not adopt a new or different standard for the entry of the Partial Final Judgment and Decree which the Sheridan Memorandum represents was applied in other adjudications. Under the established standard in this case, the Court should find the Settlement Agreement and Partial Final Judgment and Decree are fair and reasonable, in the public interest, and consistent with all applicable laws. None of the Responses, nor the objections filed by the April 7, 2014 deadline, demonstrate that approval of the Settlement Agreement or entry of the Partial Final Judgment and Decree do not satisfy this standard or would otherwise harm any water user.

### III. ARGUMENT.

#### A. **Objections to the Future Administration of Water Rights do Not Present a Basis to Disapprove the Settlement Agreement or to Decline to Enter the Partial Final Judgment and Decree.**

The Dunn Response relies on speculative and hypothetical issues that may arise when the Office of the State Engineer (“OSE”) administers water rights in the Nambé-Pojoaque-Tesuque Basin (“Basin”). Based on its speculation, the Dunn Response objects that the Settlement Agreement “create[s] law” on priority administration. Dunn Resp. at 2. What is significant is that the Dunn Response does *not* challenge the determination of the Pueblos’ water rights in the Settlement Agreement and Partial Final Judgment and Decree. *Id.* at 16 (“The issue of the objectors is not the water acreage sought to be established by the United States on behalf of the Pueblos.”). It does not object to the four corners of the Settlement Agreement, the Partial Final Judgment and Decree, or the quantity of the Pueblos’ water rights. *Id.* at 2 (“Defendant-

Objectors do not contest that water rights of the Pueblos are and should be adjudicated in accordance with previous decisions of this Court and the 10th Cir. Court of Appeals . . .”).<sup>4</sup>

1. The Partial Final Judgment and Decree and proposed settlement implementation and administration are not unlawful and fully comply with State law.

While the Settlement Agreement and the administrative provisions of the Partial Final Judgment and Decree provide for the Pueblos to forgo priority calls against non-Pueblo settling parties under certain circumstances, those provisions do not direct that in administering the Partial Final Judgment and Decree, the OSE must administer the Basin so that the Pueblos remain whole despite the concessions to the settling parties in the Settlement Agreement. Rather, those provisions may allow for a sharing of physical shortages among the parties to the Settlement Agreement. The provisions do not require the non-settling parties to fill any shortfall resulting from the Pueblos' concessions to the settling parties; the provisions only require the non-settling parties to make up any deficit resulting from their own junior water use. In other words, there is no requirement to read the Settlement Agreement and Partial Final Judgment and Decree to place the non-settling parties in any different position than they are today—that is, subject to a call by the senior rights of the Pueblos.

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<sup>4</sup> The Court's order is clear: objecting parties were required to address the harm to them from entry of the Partial Final Judgment and Decree and approval of the Settlement Agreement with specificity. Objecting parties were further required to show why the Settlement Agreement was "not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law." CMO at 7 (internal citation omitted). The Dunn Response purports to do so only with respect to its misguided view that the Settlement Agreement wrongly distorts the administration of non-Pueblo water rights and, under that distorted view, is not authorized under state law. As such, it must be rejected, any objections by the Dunn Parties that were not briefed in accordance with the CMO were waived.

- a. The Dunn Response misinterprets the Settlement Agreement terms with regard to State law regarding priority administration.

The Dunn Response's sole challenge is grounded in a hypothetical, and faulty, method of administration of water rights in the future, although Dunn characterizes the challenge as one to the Settlement Agreement under State and Federal law. *Id.* at 3. Regardless, both the Settlement Agreement and proposed future administration under the Partial Final Judgment and Decree fully comport with the doctrine of prior appropriation and all other aspects of state law and no objector, or any water user in the Basin, is harmed.<sup>5</sup> Dunn asks this Court to presume, in the absence of any evidence, that the OSE will adopt regulations to administer the basin that violate applicable law, and this is something a Court should not do. *See United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926) ("The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.").

The Dunn Response has one fundamental complaint about the Settlement Agreement and the Partial Final Judgment and Decree. It mistakenly contends that entry of the Partial Final Judgment and Decree will disadvantage non-settling parties against non-Pueblo settlement parties in the event of a priority call by the Pueblos, or that in administration of Pueblo rights under the Partial Final Judgment and Decree, the priority protections afforded non-Pueblo water users under the Settlement Agreement will result in a detriment to the non-settling parties. Dunn Resp. at 2-3, 16. The hypothetical set forth in the Dunn Response, at 3, underscores the confusion which that Response creates between quantification of the Pueblo water rights in the

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<sup>5</sup> The rules necessary to fully implement the administration are under development and will include a clear accounting mechanism to lawfully effectuate the provisions of the Settlement Agreement, and such rules will comply with all Court rulings and all applicable law, including the law of prior appropriation.

Partial Final Judgment and Decree and ultimate administration of those rights by the OSE consistent with the Settlement Agreement. The hypothetical describes two non-Pueblo parties who made different elections with respect to the Settlement Agreement, and then speculates on the outcome of those different choices under priority administration after the Partial Final Judgment and Decree is entered. This hypothetical ignores the fact that the parties made *choices* to either limit their water right in exchange for protection from strict priority administration, or to not limit their right and remain—as they always have been—subject to priority administration. Moreover, under State administration of the Settlement Agreement, the posed hypothetical need not occur. There is no new law being created “that elevates certain junior water rights over other senior water rights during a priority call.” Dunn Resp. at 10-11.<sup>6</sup> The Settlement Agreement and Partial Final Judgment and Decree do not change the status quo. Both before and after approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree, the Pueblo and non-Pueblo rights in the Basin will be subject to priority administration in accord with the law of prior appropriation embodied in New Mexico law.

- b. The Settlement Agreement provides for administration fully consistent with State law.

The Pueblo rights are the senior rights in the Basin. *See New Mexico ex rel. Reynolds v. Aamodt*, 618 F. Supp. 993, 1010 (D.N.M. 1985) (“*Aamodt II*”). All other rights are junior and subject to a priority call by the Pueblos in times of shortage. *See id.* Under the Settlement Agreement, some junior, non-Pueblo water users have, by choice, limited their water use, thereby decreasing impacts on available water supply, and in exchange will be free from

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<sup>6</sup> The Dunn Response appears to be limited to issues regarding ground water administration. *See, e.g.*, Dunn Resp. at 3 (hypothetical regarding administration of groundwater water rights). Regardless, whether surface or groundwater, the Dunn Response raises no valid argument that the Settlement Agreement is illegal because it violates the doctrine of prior appropriation.

enforcement of any potential priority call by the Pueblos. *See* Settlement Agreement § 3.1.7. However, that amount of water relating to priority-protected non-Pueblo water rights will not be the subject of priority call for the benefit of the Pueblos as against either junior or senior non-Pueblo users who have chosen *not* to join the Settlement and reduce water use so as to be free from priority enforcement. No water user will be injured by not joining the Settlement Agreement, because under the Partial Final Judgment and Decree they will be subject to the same priority administration which exists today, but in a more secure supply, and in an amount relative only to their water rights.<sup>7</sup> “A junior water rights holder cannot complain of deprivation when its water is curtailed to serve others more senior in the system, regardless of whether the junior’s rights have been formally adjudicated. Such are the demands of our state’s system of prior appropriation.” *Tri-State Generation & Transmission Ass’n, Inc. v. D’Antonio*, 289 P.3d 1232, 1243 (N.M. 2012).

Arguing that the Settlement Agreement’s administrative provisions are contrary to the law regarding priority administration, the Dunn Response appears to assume that the OSE will create an administrative scheme of selective enforcement. *See* Dunn Resp. at 27-28. As discussed above, however, this is not the case. Regardless, the Dunn Response is based on mere conjecture. Nothing in the Settlement Agreement violates the New Mexico Constitution or any other provision of New Mexico law, and nothing in the entry of the Partial Final Judgment and Decree will harm any non-settling party. The Settlement Agreement provides for priority administration. The OSE has the right to administer water and the right to do so in a manner

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<sup>7</sup> The Dunn Response, at 17, appears to miscomprehend the result of a non-Pueblo water rights holder joining in the Settlement Agreement. Becoming a settling party does not result in the change in priority date, and does not establish priority dates as between two non-Pueblo water users. If it did, then there would be no need for the Court to continue to enter orders in each separate subfile before it.

which fully protects all water rights. Exactly how the OSE does this can be flexible and is entitled to deference. *See* Settlement Agreement § 5.2.

The New Mexico Court of Appeals' opinion in *Lewis*, is highly instructive on this issue. In *Lewis*, certain stream adjudication parties objected to the entry of a partial final decree, based on a settlement agreement among some, but not all, parties, that incorporated a water conservation plan not unlike the flexible priority administration contemplated by the Settlement Agreement and Partial Final Judgment and Decree in this case. 150 P.3d at 382. The objectors argued, like here, that the decree violated the doctrine of prior appropriation and that the district court did not have the authority to enter a decree based on a settlement agreement. *Id.* The settlement agreement, negotiated between the State, the United States, an irrigation district, and a conservancy district, "placed a priority call in reserve." *Id.* at 380, 392. All defendants in the adjudication, which included members of the irrigation and conservancy districts, were provided "an opportunity to object to the settlement and propose partial final decree" by making "a *prima facie* case showing how their water rights . . . will be adversely affected by the priority, amount, purpose, periods and place of use, or other matters set forth in the Proposed Partial Final Decree." *Id.* at 381 (internal quotation marks and citations omitted). The district court permitted dispositive briefing, and overruled all objections, concluding no objector demonstrated an adverse effect. *Id.* at 381.

The Court of Appeals affirmed the entry of the decree, stating

By their settlement agreement, the negotiating parties sought to cut the water shortage Gordian knot through a process more flexible than strict priority enforcement, yet still comply with the doctrine of prior appropriation. The settlement agreement and decree are constitutional and an otherwise lawful resolution of the longstanding water rights and shortages issues.

*Id.* at 385. Concluding that the settlement agreement was consistent with an applicable statute, the court affirmed the settlement agreement’s “flexible approach” to administration, concluding it “[saw]no reason to read [the prior appropriation provision of the Constitution] . . . to require a priority call as the first and only, and thus exclusive, response to water shortage concerns.” *Id.* at 386. “[A]lthough priority calls have been and continue to be on the table to protect senior users’ rights, such a fixed and strict administration is not designated in the Constitution or laws of New Mexico as the sole or exclusive means to resolve water shortages where senior users can be protected by other means.” *Id.* *Lewis* found important that priority calls remained an option, among others, in the settlement agreement to ensure water delivery. *Id.* at 388.

*Lewis* held New Mexico’s stream adjudication statutes were not “inconsistent with the authority of the district court to adjudicate water rights as has occurred through the settlement agreement and decree.” *Id.* at 391. *Lewis* also held the district court did not err in finding no fact issues prevented approval of the settlement agreement or entry of the decree, as “[t]he court presumably could have rejected the settlement agreement if it *unfairly and adversely* affected the water rights of third parties who were allowed to object to it.” *Id.* at 392 (emphasis added). Because the objecting parties made no *prima facie* showing of harm, however, the settlement agreement and decree was properly approved. *Id.* at 394.<sup>8</sup> *Lewis* demonstrates the Settlement Agreement and Partial Final Judgment and Decree are consistent with New Mexico law.

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<sup>8</sup> Because the Settlement Agreement and any administration following therefore fully complies with New Mexico law, the argument by the Dunn Response, at 3, that it “drafts” new law and therefore requires any additional State approval must be rejected.

2. Concerns regarding the administration of the Settlement Agreement are speculative and do not provide a basis to disapprove the Settlement Agreement or to decline to enter the Partial Final Judgment and Decree.

As demonstrated in Section III.A.1.b, *supra*, the Settlement Agreement and its administration should fully comply with all provisions of State law. Speculative challenges to that future administration and implementation of the Partial Final Judgment and Decree do not present a ripe challenge to the Settlement Agreement. “A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks and citations omitted). Until the Court approves the Settlement Agreement and the OSE begins administering water rights in accordance therewith, no challenge to administration is ripe. *See Utah v. U.S. Dep’t of Interior*, 535 F.3d 1184, 1196 (10th Cir. 2008) (holding a challenge to future administrative action not ripe where it was speculative, as the court “would be resolving a nullity if further administrative action would have afforded the settlement a less dire interpretation”); *see also N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm’n*, 808 P.2d 592, 599-600 (N.M. 1991) (“The basic purpose of ripeness law is and always has been to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.”) (internal quotation marks and citations omitted).

To the extent the Responses rest solely on hypothetical constructs regarding future administration by the OSE, those issues are not ripe for ruling by the Court and do not present any reason for the Court to disapprove the Settlement Agreement or to decline to enter the Partial Final Judgment and Decree. Dunn Resp. at 3; Atencio Resp. at 9 (arguing the OSE will have a “dual system of administration . . . resulting in a double-standard that treats the Pueblos and non-Indians differently”). The Dunn Response’s hypothetical depiction of injury to non-settling

parties does not comply with the directive of the Court to describe in detail the specific “harm” that would occur to such parties from entry of the Partial Final Judgment and Decree. Indeed, the Dunn Response provides no specifics at all. It does not (1) describe whether the rights at issue are from surface supplies or groundwater, (2) identify whether the issue it is raising supposedly occurs on the main stem of the Pojoaque or on the Tesuque, (3) state which Pueblo needs the additional water at issue, (4) identify the location of the Non-Pueblo Settlement Party water use supposedly causing the problem, and, (5) perhaps most importantly, does not identify which of the Dunn Parties’ rights are allegedly being injured.

Similarly speculative, the Atencio Response incorrectly assumes that, if the OSE administers water consistent with the Settlement Agreement and Partial Final Judgment and Decree, the OSE will be acting *ultra vires*. Atencio Mem. at 23-24. N.M. Admin. Code § 19.27.5.13(B)(6) expressly states that administration can be limited by court-imposed restrictions and obviously nothing can authorize the OSE to act in an *ultra vires* manner.<sup>9</sup> And the Atencio Response wrongly ignores the broad authority of the OSE. *See New Mexico ex rel. Reynolds v. Aamodt*, 800 P.2d 1061, 1062 (N.M. 1990) (“The legislature granted the State Engineer broad powers to implement and enforce the water laws administered by him.”). Administering water rights consistent with this Court’s order would not transform the OSE’s role to an adjudicator. *See* N.M. Stat. Ann. § 72-2-8(H) (“Any . . . order issued by the state engineer is presumed to be in proper implementation of the provisions of the water laws administered by him.”). Any

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<sup>9</sup> The Settlement Agreement does not violate the Domestic Well Statute, N.M. Stat. Ann. § 72-12-1.1 (“DWS”), *see* Atencio Resp. at 7, as established in the unrefuted argument in the United States’ and Pueblos’ Memorandum at 41-48; *id.* at 46 (water permitted under the DWS is subject to court-imposed limitations). *See also Bounds v. State ex rel. D’Antonio*, 306 P.3d 457, 466 (N.M. 2013) (stating the DWS “do[es] not create an absolute right to take water”).

speculation that the OSE's administration would violate State law or this Court's order is unfounded and otherwise not ripe for consideration.

**B. The Settlement Agreement and Entry of the Partial Final Judgment and Decree Do Not Unfairly Impact Non-Settling Parties.**

The Dunn Response devotes substantial effort to arguing the Settlement Agreement "negatively harms and impacts non-settling parties." Dunn Resp. at 7.<sup>10</sup> This appears to be based on an interrelated, two-fold argument that, (1) the implementation of the Settlement Agreement will violate the doctrine of priority administration; and (2) water users are harmed by priority administration. The Settlement Agreement, however, in addition to providing many protections and benefits to settling non-Pueblo water users, merely confirms the status quo, and in no way penalizes non-settling parties. The argument that the Settlement Agreement subjects non-settling parties to priority enforcement remarkably ignores that these water users, as all water users in the Basin, have always been subject to priority administration. Approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree will not change this and, as described above, need not result in any more onerous priority enforcement as against non-settling parties. Indeed, through the Settlement Agreement, the Pueblos are compromising a significant amount of the water to which they likely would be awarded at trial. Accordingly, if the Settlement Agreement and Partial Final Judgment and Decree are not approved, the risk of a priority call would be substantially greater for all non-Pueblo users. Not only are both settling and non-settling water users not harmed by the Settlement Agreement, they are significantly

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<sup>10</sup> The citation to Settlement Agreement § 2.4.4.2.2 does not demonstrate any harm to non-settling parties. That section is part of the consideration provided to settling parties with surface water rights: it requires the Pueblos to offset any interference with Non-Pueblo surface water rights, in accordance with Section 4, which provides limitations on enforcement of priority rights for non-Pueblo well users who elected to join the Settlement Agreement. These provisions are not penalties against non-settling parties; they represent a compromise among the settling parties.

benefited by the Settlement Agreement and its implementation as a result of greater security and certainty of water supply.

In the end a crucial point is missed by the Responses: the Settlement Agreement and Partial Final Judgment and Decree adjudicate and settle the water rights of the Pueblos. Neither adjudicates the quantity, priority, or any other aspect of any non-Pueblo rights. The Settlement Agreement itself does not “cram it[s terms] down the Objectors’ collective throats.” Atencio Resp. at 28. The benefits of the Settlement Agreement to settling non-Pueblo water rights owners cannot be overstated. It provides ample consideration, in the form of protection from Pueblo priority calls, for domestic well owners who choose to join. *See* Settlement Agreement § 3.1; *see generally* U.S. & Pueblo Mem. at 39-41 (discussing benefits to domestic well owners). Indeed, the offer and acceptance of the consideration in Section 3.1.7.2 is a crucial aspect of the Settlement Agreement for all. The Settlement Agreement does not prevent an *inter se* between the non-Pueblo parties. It does, however, protect all parties from an *inter se* challenge by the United States or the Pueblos. Settlement Agreement § 6.1; *see* White Mem. at 9 (noting a benefit of the Settlement Agreement is dismissal with prejudice of the 1983 *inter se* challenges). As between the non-settling parties, the status quo remains; settling parties, in consideration for reduction in use, receive protection from priority enforcement by the Pueblos with no harm to non-settling non-Pueblo water users.

The White Memorandum properly recognizes that the Settlement Agreement provides the Pueblos with substantially less water than is available under the Court’s prior rulings, and demonstrates the Settlement Agreement fairly balances the surface water rights of Pueblo and non-Pueblo users. *See* White Mem. at 7-8. Under the Settlement Agreement, a surface water right “is not ‘forfeited,’ it only loses priority protection *which protection it would not even have*

without the Settlement.” *Id.* at 8 (emphasis added). The Settlement Agreement does not unfairly harm non-settling non-Pueblo ground or surface water rights holders and none of the objections or Responses substantiate any harm.

**C. The Responses Fail to Substantiate Any Legal or Factual Objections to the Settlement Agreement or Partial Final Judgment and Decree.**

**1. The Settlement Agreement and Partial Final Judgment and Decree properly utilize federal law to quantify the Pueblos’ water rights.**

The objections that federal law has no role in the adjudication of the Pueblos’ rights are incorrect and must be rejected for at least two reasons. *See* Atencio Resp. at 8. First, it is beyond debate that Pueblo water rights are determined under and controlled by federal law. *See New Mexico v. Aamodt*, 537 F.2d 1102, 1112 (10th Cir. 1976) (“*Aamodt I*”); U.S. & Pueblo Mem. at 15-19. Second, this Court’s rulings in the adjudication comport with the McCarran Amendment, 43 U.S.C. § 666, a statute that is procedural in nature and does not affect the substantive rights of the parties to a stream adjudication or otherwise direct that the Pueblos’ federal water rights should be determined under anything but federal law.

The Responses ignore the Tenth Circuit’s ruling in this case that “[t]he rights of the non-Indians are subject to the water laws of New Mexico. The water rights of the Pueblos are not subject to the laws of New Mexico because the United States has never surrendered its jurisdiction and control.” *Aamodt I*, 537 F.2d at 1112. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 812-13 (1976), only instructs that federal Indian water rights, the quantity of which are governed by federal law, may be adjudicated in a stream adjudication. *Cf.* Atencio Resp. at 9, 13. *Morton v. Mancari*, 417 U.S. 535, 554 (1974), does not require the Court to apply state law to quantify the Pueblos’ water rights as argued in the Atencio Response, at 9-10. The Atencio Response ignores that *Morton* is in the line of cases which

“establishes that the Pueblos have aboriginal title, Indian rights or original Indian rights to their lands and the use of them including appurtenances.” *Aamodt II*, 618 F. Supp. at 1009. Furthermore, there is no limitation on the uses to which the Pueblos may put the water to which they have water rights. *Compare Memorandum Opinion and Order* at 3-4 (Dec. 1, 1986) (Doc. 2879) (“Congress did not abrogate the Pueblo’s right to transfer water to unenumerated uses.”) *with Atencio Resp.* at 10 (“Leasing the water was not the primary purpose for reserving the Pueblos’ water in this case.”).

The use of Federal law and State law in the same adjudication does not violate equal protection. *See Atencio Resp.* at 24-26; *Dunn Resp.* at 15-18. To accept the Responses’ allegations of a “double standard” of treatment for Pueblo and non-Pueblo water claimants, the Court must ignore that treatment of Native Americans as a separate class is “not violative of the Equal Protection principle.” *Jicarilla Apache Tribe v. United States*, 601 F.2d 1116, 1126 (10th Cir. 1979). Adjudicating the Pueblos’ water rights under federal law and the non-Pueblo rights under state law does not require a “compelling reason”; rather, it needs to be rationally related to “furthering Indian self-government . . . .” *Morton*, 417 U.S. at 550. The goal of federal law governing Pueblo water rights, is exactly this, *see Aamodt I*, 537 F.2d at 1108, and thus application of two sets of laws in this adjudication does not violate equal protection.<sup>11</sup> *See U.S. & Pueblo Mem.* at 14-20.

Finally, the Responses confuse the procedural protections of the McCarran Amendment for a substantive requirement of stream adjudications involving federal law. *Atencio Resp.* at 6, 8-9. The McCarran Amendment waives the United States’ sovereign immunity for stream

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<sup>11</sup> The Atencio Response argues the United States and Pueblos should be realigned as defendants. *Atencio Resp.* at 8, 26. The Court has already rejected this argument. *Memorandum Opinion & Order* (July 29, 2011) (Doc. 7454); *see also Order* (Feb. 13, 1967) (Doc. 143) (realigning the United States and the Pueblos as plaintiffs).

adjudications and, to a limited extent not relevant here, administration. It does not discuss, much less direct, the law that must be used to determine the quantity and type of water rights. *See Gila VII*, 173 P.3d at 446 (rejecting the contention that the settlement of federal water rights claims of the Tohono O’odham Nation violates the McCarran Amendment). The Atencio Response argues that the McCarran Amendment subjects the adjudication of the United States’ and Pueblos’ water rights claims to state law. Atencio Resp. at 8. The Pueblo water rights are plainly determined under and controlled by federal law, and nothing in the McCarran Amendment alters that substantive law. *Aamodt I*, 537 F.2d at 1112; U.S. & Pueblo Mem. at 15-19.

Moreover, the McCarran Amendment permits, but does not require federal law-based claims to be adjudicated in state court. *See* U.S. & Pueblos’ Mem. at 55; *see Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 566-67, 571 (1983). But even if this was a stream adjudication in a New Mexico state court addressing the claims in the Basin, that would not alter the fact that the United States’ and Pueblos’ claims must be adjudicated under federal law, regardless of the forum. It is incorrect as a matter of long established law to assert that “the McCarran Amendment places the U.S.A. and the Pueblos under a single legal standard as all other claimants.” Atencio Resp. at 9. The United States’ and Pueblos’ claims must be adjudicated under a different legal standard than claims asserted under state law, regardless of the forum in which the claims are adjudicated, because those claims arise under a different legal standard. *See* U.S. & Pueblos’ Mem. at 50. The Supreme Court has emphasized that its opinions “in no way change[] the substantive law by which Indian rights in state water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law.” *San Carlos Apache Tribe*, 463 U.S. at 571. Administration of the United States’ and Pueblos’ rights under a legal regime that is different from the administration of rights claimed

under New Mexico law is the correct result of the settlement of the Pueblos' claims under the Settlement Act and long-standing federal law.

2. The State properly executed the Settlement Agreement and is a proper party.

Relying on its baseless argument that the Settlement Agreement creates new law, *see* Section III.A.1, *supra*, the Dunn Response argues the State does not have the authority to enter into the Settlement Agreement. Dunn Resp. at 8-9, 23-24. The Settlement Agreement was negotiated pursuant to Court-ordered mediation to resolve this longstanding litigation among the parties including the State of New Mexico. Subsequently the parties and the State properly executed the result of that mediated resolution and ultimately the Settlement Agreement was approved by federal legislation. *See* Settlement Act. The Dunn Response now attempts to convert the Settlement Agreement into something it is not: a federal water compact. In *New Mexico ex rel. Clark v. Johnson*, on which the Dunn Response, at 23, relies, the New Mexico governor negotiated and entered into a number of gaming compacts with New Mexico Pueblos. 904 P.2d 11, 16 (N.M. 1995). The New Mexico Supreme Court concluded that by doing so, the governor violated state constitutional separation of powers principles by changing existing law without legislative approval. *Id.* at 26. The Dunn Response fails to explain why this Court should treat a settlement agreement between numerous parties, in a stream adjudication nearing its fifth decade, as a unilateral compact negotiation by the State of New Mexico. The settlement of litigation is wholly within the purview of the executive branch.<sup>12</sup> And, as explained in Section III.A.1.b, *supra*, nothing in the Settlement Agreement changes State law.

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<sup>12</sup> The New Mexico Supreme Court recently denied a Writ of Mandamus raising the same issue with regard to the settlement of the Navajo Nation water rights claims in the context of the San Juan River stream adjudication. *See Order, New Mexico v. Interstate Stream Comm'n*, No. 34,702 (N.M. May 30, 2014).

Moreover, under New Mexico law, “only the courts are given the power and authority to adjudicate water rights.” *New Mexico ex rel. Reynolds v. Lewis*, 508 P.2d 577, 581 (N.M. 1973); see N.M. Stat. Ann. § 72-4-17 (providing courts with exclusive jurisdiction over stream adjudications). Thus, converse to the argument presented in the Dunn Response, separation of powers principles would be violated if the New Mexico Legislature were to attempt to assert authority over any aspect of this litigation or its settlement.<sup>13</sup> Furthermore, it is the inherent right of a party to litigation to enter into a settlement agreement. *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1173 (10th Cir. 2007) (“It has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation.”) (quoting *Local No. 93*, 478 U.S. at 528–29). The State, through the Attorney General, was fully authorized to enter into the Settlement Agreement. See N.M. Stat. Ann § 72-4-15 (stating the Attorney General is authorized to prosecute stream adjudications); *id.* § 36-1-22 (stating the Attorney General is authorized to settle claims in litigation). The attempt to characterize the Settlement Agreement as a compact requiring legislative approval is groundless.

3. The Settlement Agreement does not violate any property rights.

In New Mexico, a water right is a real property right. *Walker v. United States*, 162 P.3d 882, 893 (N.M. 2007). This does not mean, however, that limitation of the amount a well owner may use, whether by consensual settlement or by an administrative rebuttable presumption, violates a property right, contrary to the Atencio Response’s contentions, at 19-21. See U.S. &

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<sup>13</sup> The New Mexico House of Representatives has, however, issued House Memorials in support of the settlement of the claims in this litigation on multiple occasions, including prior to the signing of the Settlement Agreement in the 2006 Regular Session. See H.M. 3, Native American Water Rights Settlement Funds, Reg. Sess. (N.M. 2006); see also H.J.M. 22, Indian Water Rights Disputes Funding, Reg. Sess. (N.M. 2013).

Pueblo Mem. at 44-48, 55; State Mem. at 46-50. Indeed, the New Mexico Supreme Court's holding in *Bounds*, 306 P.3d at 466, forecloses such an argument. No New Mexico statute or regulation creates an "entitlement" to 3.0 acre-feet per year ("afy"), as the Atencio Response, at 22-23, insists. Indeed, N.M. Admin. Code § 19.27.5.9(D), upon which the Atencio Response relies, expressly provides that a diversion is limited to 1.0 afy, unless an applicant demonstrates that a larger diversion will not impair existing rights. See U.S. & Pueblo Mem. at 43; *Memorandum Opinion & Order* at 7 (Mar. 30, 2012) (Doc. 7579) (rejecting the argument that a permit creates an "entitlement" and concluded that the DWS "does not grant a domestic well permit holder an absolute right to use one acre-foot of water for noncommercial irrigation"). Because permit holders have no entitlement to a specific quantity of water, the Settlement Agreement, by allowing a *presumption* of .5 afy for a domestic well right subject to demonstrating a higher beneficial use, does not violate due process by depriving the objectors of a protected property interest. *Id.* at 8; see also *Bounds*, 306 P.3d at 469. There is no protected property interest in 3 afy absent a demonstration of beneficial use.

Regardless, neither the Settlement Agreement nor the Partial Final Judgment and Decree adjudicates any domestic well right, or any other water right other than the rights of the Pueblos. The water rights of non-Pueblo users are quantified under State law, which permits a water claimant to set forth evidence of beneficial use to establish a priority date. See N.M. Stat. Ann. § 72-1-2.<sup>14</sup> Section 3.1.2.2 provides all DWS wells "shall be limited to the historic beneficial use from such well" of no greater than 3 afy, with the presumption of historic beneficial use of .5 afy per household, "unless a greater historic beneficial use is shown or unless a more restrictive

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<sup>14</sup> The Atencio Response posits that "non-Indians residing in the Pojoaque Basin also acquired rights before 1956 and before 1848" and argues that pre-1848 wells are omitted from the Settlement Agreement. Atencio Resp. at 16-17. The Settlement Agreement, however, expressly permits priority to be adjudicated for a pre-1956 well. Settlement Agreement, § 3.1.1.1.

diversion limit applies pursuant to court order, covenant or ordinance.” All non-Pueblo well owners are entitled to an adjudication of their water right fully in accord with existing state law.

Nor has procedural due process been violated, and the Settlement Agreement is not *fait accompli*, as the Atencio Response, at 28-30, suggests.<sup>15</sup> A substantial opportunity to file objections, and briefs supporting those objections, was provided through the CMO. The statement that, “[i]f the [S]ettlement [A]greement is approved, the Objectors will be required to immediately transfer equitable title to their water rights to the County of Santa Fe, and to commit to transfer their ownership of all water rights to the County, or agree to reduce their use to 0.3 cfs,” Atencio Resp. at 30, is patently false. The Settlement Agreement does not require any transfer let alone “immediate” transfer. Rather, based on a voluntary choice to connect to the County Water Utility, discontinuation of the use of the domestic well and the actual connection to the utility, then, and only then is there a voluntary transfer of the settling parties’ former rights to its well in consideration for service from the Regional Water System. Settlement Agreement § 3.1.8.1.

The Atencio Response lists a number of additional reasons the Settlement Agreement is allegedly unfair.<sup>16</sup> The Atencio Response argues that: (1) the Settlement Agreement would declare the basin closed to new permits for domestic wells; (2) there is no showing that the Basin

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<sup>15</sup> The Dunn Response, at 18-19, concedes that procedural due process has been satisfied, and the United States and the Pueblos do not see the relevance of the Dunn Response’s sole authority in support of its due process argument, *Mugler v. Kansas*, 123 U.S. 623, 675 (1887) (holding a statute prohibiting beer production did not violate the due process rights of a beer producer).

<sup>16</sup> The Atencio Response also argues—albeit with improperly cited statutes—the Court’s Order dated January 13, 1983 (Doc. 641) violates the Anti-Injunction Act, 28 U.S.C. § 2283, and the statute requiring three-judge panels in limited circumstances, 28 U.S.C. § 2284. Atencio Resp. at 4-5. For the reasons stated in *Plaintiffs-in-Intervention Response Opposing Defendant Trujillos’ Motion to Quash the Preliminary Injunction Or, Alternatively, For Three Judge Court* at 2-3 (Nov. 18, 2014) (Doc. 9927), neither statutory provision is applicable in this case.

is entirely appropriated; (3) the Settlement Agreement does not address use of unappropriated water; (4) the proposed regional water system will not cover the entire Basin; (5) the construction of the regional water system is not guaranteed; (6) domestic well owners are not allowed to irrigate; (7) the preliminary injunction on outdoor irrigation is made permanent by the Settlement Agreement without a hearing; and (8) Basin water will be leased to the City and County, when they could have taken the water by eminent domain and provided just compensation. Atencio Resp. at 32-33. Each objection may be briefly addressed and disposed.

The first, second, and third arguments essentially argue that the Basin is not fully appropriated, and thus there is no need for limitations on water use. The Settlement Agreement, however, declares that the Basin is fully appropriated. Settlement Agreement § 5.1.1. The OSE has full discretion to declare a basin closed. *See* N.M. Stat. Ann. § 72-2-9. Furthermore, the decades of litigation over water supports that this is a water-short Basin, and that in order to properly recognize Pueblo senior water rights, and protect *all* existing water rights, the OSE acted within its discretion in declaring the Basin closed. The Atencio Response's proffered "uncontroverted" evidence cannot create an issue of fact. Atencio Resp. at 23, and Ex. 1. The single page conclusory letter from Francis West, dated August 30, 2012, states, without analysis, that the surface water and ground water in the Basin is not hydrologically connected, and the aquifer contains 55 million acre feet of water. This "evidence" is disproven by the Court's findings made on record evidence. Hydrology issues were thoroughly litigated before Special Master Harl Byrd in the early 1990s. *See Order Re Hydrology Matters* (July 17, 1991) (Doc. 3783); *Order Re Hydrology Segment* (Aug. 19, 1991) (Doc. 3826); *Order to Show Cause* (Aug. 6, 1992) (Doc. 4006). Counsel and hydrologists for the State, the United States, the Pueblos, and certain non-Pueblo parties participated in the creation of the proposed findings. The Special

Master submitted his report to the Court recommending adoption of the findings a year later. *Special Master's Report to the Court Recommending Adoption of Findings of Fact Pertaining to Hydrology* (April 6, 1993) (Doc. 4163) ("Hydrology Report"). The Report details the extensive legal and hydrological work that was done at that time and all of the responses of various parties to the Order to Show Cause, including hearings on February 16 and March 11, 1993, where evidence was presented. *Id.*, Appendix A at 8. It concluded that the Basin's groundwater and surface water are hydrologically connected, *id.* at 6, ¶ 8, and that groundwater storage contains approximately five to ten million acre feet, *id.* at 14, ¶ 42. The Court adopted the Findings of Fact. *Order* (May 6, 1993) (Doc. 4178). The Findings establish that the issues raised by the Atencio Response were addressed at that time.

The fourth and fifth arguments concern the regional water system, and are essentially identical objections which were addressed in the United States and Pueblos' Memorandum, at 67-69, and referenced and incorporated herein. The sixth and seventh arguments concern limits on outdoor irrigation, and are addressed in the States' Memorandum, at 51-54, and referenced and incorporated herein. The eighth argument addresses the Pueblos' leasing rights and argues that the County should use its power of eminent domain to obtain necessary water, essentially conceding that the Settlement Agreement does not effectuate a taking. The leasing provisions are fair, reasonable, and consistent with the law, thus there is no need for the Court to rewrite them. *See States' Mem.* at 34-37.

The Atencio Response also seems to argue that rulings made prior to the time water rights holders were joined as parties are not binding on those parties. *Atencio Resp.* at 31-32. This is not legally supportable. The Partial Final Judgment and Decree adjudicates only the water rights of the four Pueblos. The water right of each individual party is adjudicated in a

separate sub-file. Because a stream adjudication is “in the nature of an *in rem* proceeding,” each separate sub-file order binds the water right owner and subsequent owners of those adjudicated water rights. *Nevada v. United States*, 463 U.S. 110, 144 (1983). Furthermore, while a water right owner’s right is adjudicated in a sub-file, that right is subject to limitations on its exercise as determined in the adjudication and by all applicable laws. *See* N.M. Stat. Ann. § 72-4-19. A water right owner has no right to relitigate how a water right may be exercised. If the Court enters the Partial Final Judgment and Decree, it will be binding on all current parties to this adjudication. *See United States v. Bluewater-Toltec Irr. Dist.*, 580 F. Supp. 1434, 1438 (D.N.M. 1984) *aff’d sub nom. U.S. for & on Behalf of Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist. of N.M.*, 806 F.2d 986 (10th Cir. 1986) (“Before a decree as provided in section 72-4-19, can be entered, known claimants must be impleaded. That is not to say, however, that all potential claimants must be made parties at the time the complaint is filed.”) (internal citations omitted).

The objections set forth in the Atencio Response asserting the Court’s established procedure is infirm and that the Settlement Agreement and Partial Final Judgment and Decree are unfair should be overruled.

**D. No Response Establishes the Need for Additional Procedures.**

The procedures established by the Court in the CMO have proved more than satisfactory for presenting all objections to the Settlement Agreement. The Atencio Response asserts, in passing only, that the lack of discovery has limited their ability to support their arguments. *See* Atencio Resp. at 22 (“[D]iscovery on the amounts of groundwater and use amounts has been severely restricted.”) (citing Doc. 7967, an order limiting the scope of a single deposition); *id.* at 27-28. As discussed above, significant litigation occurred, however, prior to the Court’s

adoption of the Hydrology Report, and need not be revisited. Regardless, any discovery the Atencio Response may believe is necessary appears to be related to individual subfile proceedings and those proceedings are unrelated to the Settlement Agreement and thus the request for discovery is irrelevant.<sup>17</sup>

The Atencio Response argues the Federal Rules of Civil Procedure are not being applied by the CMO's procedures. Atencio Resp. at 29-30. This argument ignores that a settlement agreement is *not* a complaint, and also ignores the inherent control the Court has over the case which has been before it since 1966. *See Ratzlaff v. Seven Bar Flying Serv., Inc.*, 646 P.2d 586, 591 (N.M. Ct. App. 1982);<sup>18</sup> *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (noting "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). Objecting parties are not "entitled to a trial on the merits of their objections," Atencio Resp. at 30; the procedure established in the CMO provides ample opportunity for objections to be made, evidence to be presented, and the Court to consider whether approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree would harm the objecting parties and whether that action and approval of the Settlement Agreement is not fair and reasonable, not in the public interest or inconsistent with applicable law. *See Johnson*, 393 F.3d at 1109.

No further proceedings are needed. The Responses have not articulated any harm to any individual objectors' water right or otherwise shown why the Settlement Agreement and Partial

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<sup>17</sup> The Pueblos' existing water rights, and uses, are set forth in the Partial Final Judgment and Decree, and thus no discovery is necessary on that point. The multi-decade litigation in this case provides ample technical and related information regarding all aspects of the Pueblos' rights and water use in the basin.

<sup>18</sup> The Dunn Response objects to reliance on *Ratzlaff*. Dunn Resp. at 6-7. The effort of the Dunn Response's attack on *Ratzlaff* is puzzling, as it was cited to demonstrate New Mexico's policy of favoring settlements, a point not disputed. U.S. & Pueblo Resp. at 27.

Final Judgment and Decree are not fair, adequate, reasonable, not in the public interest, or not consistent with applicable law. The deadline for objections and supporting briefs has passed, the objectors have not established that they are specifically harmed by the Settlement Agreement or entry of the Partial Final Judgment and Decree. There is absolutely no rational justification legally, factually or procedurally, for further briefing on the same subject, nor an evidentiary hearing, nor for oral argument beyond any the Court schedules in conjunction with the present briefing.

#### IV. CONCLUSION.

For the reasons set forth in the United States and Pueblos' Memorandum, the States' Memorandum, and herein, the Court should overrule all objections, approve the Settlement Agreement, and enter the Partial Final Judgment and Decree and further orders as the Court deems necessary.

Respectfully submitted this 4th day of February, 2015.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on February 4th, 2015, the **PLAINTIFFS-IN-INTERVENTION REPLY IN SUPPORT OF ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on February 4th, 2015, copies of the foregoing were mailed by first-class United States mail to the following non-CM/ECF Participants:

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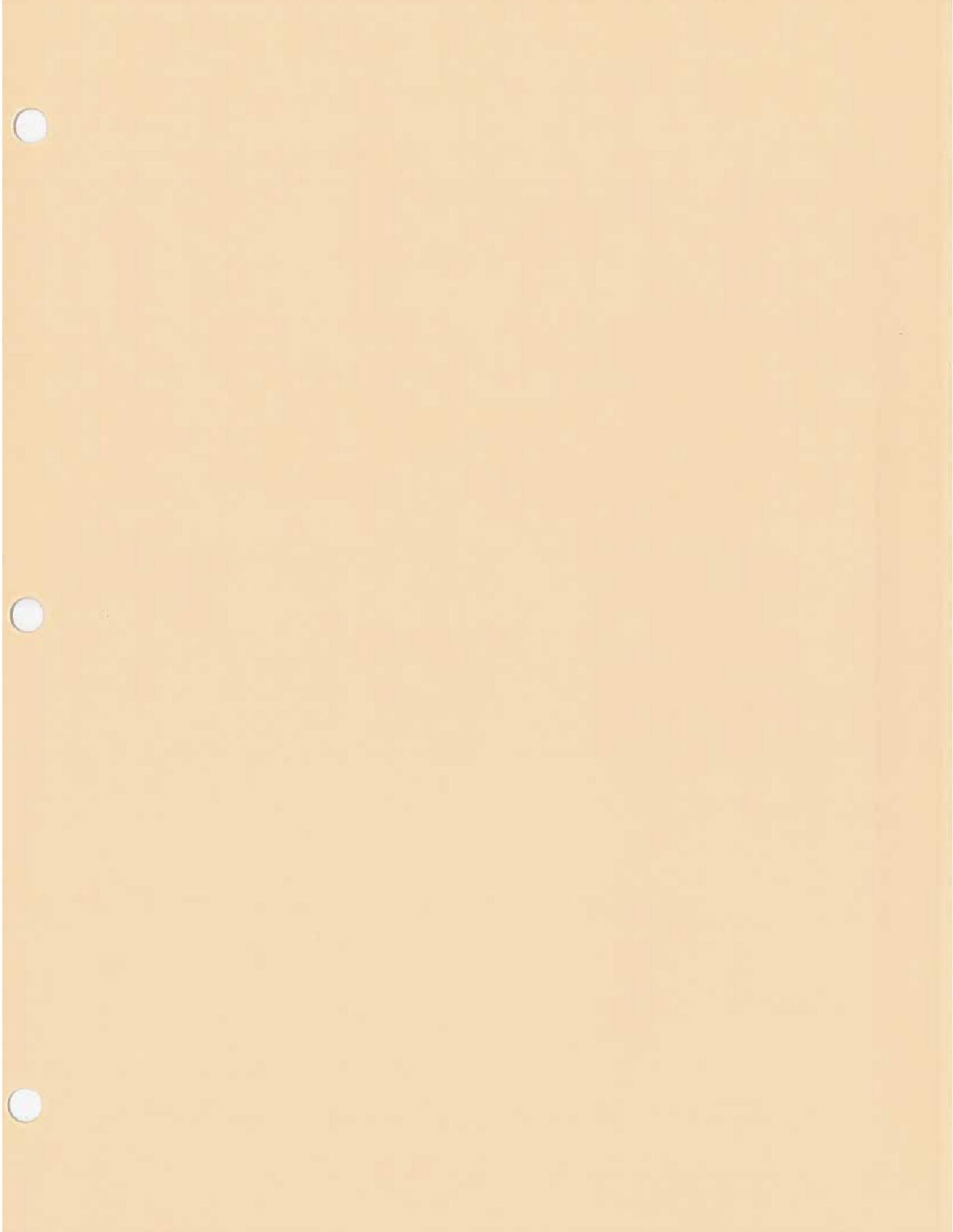
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Commissioner, District 1

**Miguel M. Chavez**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## MEMORANDUM

To: Board of County Commissioners

Via: Katherine Miller, County Manager  
Bernadette Salazar, Human Resources Director *BAS*

Date: February 9, 2015

Re: HR Monthly Report January 2015

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### Topic:

The HR Division provides the Santa Fe County Board of County Commission with a monthly report regarding highlighted HR information and events.

### Information:

The purpose of this memo is to provide you with information relative to various HR functions and statistics for the month of January. Throughout the month of January, HR coordinated/ conducted fourteen training sessions. Ninety-seven employees attended these training sessions. During the month of January, HR received one application for tuition assistance and it was approved for a total of \$870.00. This is a great program that provides a supportive environment for employees to obtain a job related degree. Also in January HR supported one-hundred and eight New Mexico Edge classes for thirty-five Santa Fe County employees. This resulted in a total of \$5,650.00 of financial support for New Mexico Edge courses not inclusive of per diem costs. This is another great opportunity for employees to attend courses specifically related to their jobs as local government employees and also provides them with the resources to obtain nationally recognized certifications. The following employees graduated from the NM Edge program with the following certifications:

- Lillian L. Armijo- Certified Public Official, New Mexico Certified Treasury Official
- Adam J. Bailey- New Mexico Certified Treasury Official
- Amanda Hargis- Certified Public Supervisor
- Adam Leigland- Certified Public Supervisor
- Danielle Miera- Certified Public Official

- Adamina Pino- Certified Public Supervisor
- Theresa Romero- Certified Public Supervisor
- Ardis Thomas- Certified Public Official
- Gabriella Trujillo- Certified Public Supervisor
- Patrick J. Varela- Certified Public Official

In the month of January, HR processed forty-one open/switch enrollment forms and entered them with 100% accuracy. During this open/switch enrollment, the employee plus child tier was expanded to employee plus children. This resulted in a cost savings for all employees who have children only as dependents. The savings for employees who qualify for this new tier is approximately \$1,698.00 annually and Santa Fe County will save approximately of 5,000.00 annually.

On January 29, 2015 the Human Resources office participated in Santa Fe County day at the Round House. We had HR staff on hand with employment applications, a listing of all job openings and information about Santa Fe County benefits. On January 29, 2015 the Human Resources office also participated in a job fair for students at Santa Fe High School. Over 200 students were able to speak with HR staff about job opportunities and benefits at Santa Fe County.

The Santa Fe County Sheriff's Office promoted Deputy Joshua David and Justine Calabaza during the month of January. Deputy David began his employment with the Sheriff's Office January 11, 2010 as a Sheriff Deputy II. On January 24, 2015 Deputy David was promoted to Sheriff Deputy III. Justine Calabaza began her employment with Santa Fe County April 24, 2006 as a Sheriff's Record Clerk. She was promoted to a Sheriff Records Clerk Lead on January 10, 2014. The Public Safety Corrections department also promoted Robert Martinez II. Mr. Martinez began employment with Santa Fe County January 3, 2012 as an IT Desktop Support Specialist. On January 24, 2014 he was promoted to an Accountant Senior. We congratulate our employees for their great accomplishments.

In January we conducted Detention Officer testing. We had seventeen qualified applicants and eight participated in the testing process. Those who successfully passed are moving forward with the hiring process in accordance to SFC procedures. The Sheriff's Office had lateral deputy testing twice in January as well as Sheriff Sergeant testing. Candidates selected will continue with the hiring process. The Corrections Department also conducted Corporal testing and two employees have been recommended for promotion.

Attached are the HR Statistics Report, the New Hire Report and the Labor Statistics Report for January 2015 and the list of Years of Service for Santa Fe County Employees for February 2015. If you have any questions, I can be contacted at 992-9886. Thank you.

# SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF JANUARY 2015

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
MANAGER'S OFFICE	01-COUNTY MANAGER ADMINIS.	8		8			1	9
	02-COMMISSION	4		4	5		1	5
	15-HUMAN RESOURCES	10		10			1	11
	21-FINANCE	22		22			3	25
<b>CMO TOTAL</b>		<b>44</b>		<b>44</b>	<b>5</b>		<b>6</b>	<b>50</b>
	01-LEGAL ADMINISTRATION	8		8			1	9
<b>LEGAL TOTAL</b>		<b>8</b>		<b>8</b>			<b>1</b>	<b>9</b>
ADMINISTRATIVE SERVICES DEPARTMENT	00-ADMINISTRATION	3		3				3
	02-INFORMATION TECHNOLOGY	15		15			2	17
	12-PURCHASING	6		6			2	8
	16-MAIL ROOM	1		1				1
	17-RISK MANAGEMENT	3		3				3
<b>ASD TOTAL</b>		<b>28</b>		<b>28</b>			<b>4</b>	<b>32</b>
COMMUNITY SERVICES DEPARTMENT	01-ADMINISTRATION	3		3				3
	20-INDIGENT HOSPITAL FUND	3		3				3
	21-EMS-HEALTH CARE	3		3				3
	74-MOBILE HEALTH FAIR VAN	4	2	2			1	5
<b>TOTAL</b>		<b>13</b>	<b>2</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>14</b>
	04-DWI LOCAL	8		8			1	9
<b>TOTAL</b>		<b>8</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>

# SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF JANUARY 2015

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	09-DWI TEEN COURT	2		2				2
<b>TOTAL</b>		2	0	2	0	0	0	2
	89-SENIOR PROGRAMS - ADMIN.	12		12			1	13
	90-SR SVCS-CONGREGATE MEALS	7	2	5				7
	92-SR SVCS - HOME DELIVERED	7		7		2		7
	93-SR SVCS - TRANSPORTATION	2		2				2
<b>TOTAL</b>		28	2	26	0	2	1	29
	01-POJOAQUE SATELLITE OFFICE					1		
	02-EDGEWOOD SATELLITE OFFICE					1		
<b>TOTAL</b>						2		
<b>CSD TOTAL</b>		51	4	47	0	4	3	54
<b>HOUSING TOTAL</b>		13		13			2	15
GROWTH MANAGEMENT DEPARTMENT	01-LAND USE ADMINISTRATION	4		4				4
	02-PLANNING	7		7			1	8
	08-REGIONAL PLANNING AUTHRTY							
	14-GIS	9		9				9
	15-AFFORDABLE HOUSING-COUNTY	2		2				2
	16-BUILDING & DEVELOPMENT	15		15				15
<b>GMD TOTAL</b>		37		37			1	38
PUBLIC WORKS DEPARTMENT	01-PUBLIC WORKS ADMIN.	13	1	12			1	14

# SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF JANUARY 2015

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	02-FLEET SERVICE	8		8		1	1	9
	03-TRAFFIC ENGINEERING	5		5			2	7
	05-SOLID WASTE	19		19			2	21
	11-ROAD MAINTENANCE	39		39			3	42
	02-PROPERTY CONTROL	11		11			4	15
	03-BUILDING SERVICES	18	1	17				18
<b>TOTAL;</b>		<b>113</b>	<b>2</b>	<b>111</b>	<b>0</b>	<b>1</b>	<b>13</b>	<b>126</b>
	18-PROJECT DEVELOPMENT DIV	9		9			1	10
	26-OPEN SPACE	3		3			2	5
	08-SANTA FE RIVER GREENWAY	1		1				1
		<b>13</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>16</b>
	10-WATER	16		16			3	19
	15-AAMODT						1	1
	20-WASTEWATER	1		1				1
<b>TOTAL</b>		<b>17</b>		<b>17</b>			<b>4</b>	<b>21</b>
<b>PWD TOTAL</b>		<b>143</b>	<b>2</b>	<b>141</b>	<b>0</b>	<b>1</b>	<b>20</b>	<b>163</b>
PUBLIC SAFETY DEPARTMENT	01-FIRE ADMINISTRATION	28		28		9	3	31
	09-FOREST RESTORATION	2		2			1	3
	11-FIRE REGIONS	73		73			1	74
<b>TOTAL</b>		<b>103</b>		<b>103</b>		<b>9</b>	<b>5</b>	<b>108</b>

**SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF JANUARY 2015**

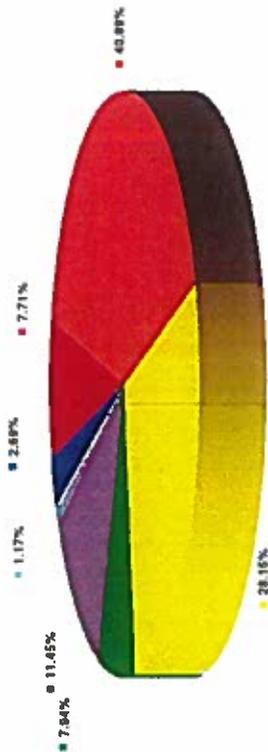
Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vadancies	Total Positions
	01-ADMINISTRATION	6		6			2	8
	60-ADULT FACILITY	129		129			27	156
	62-MAINTENANCE DIVISION	6		6			1	7
	63-MEDICAL SERVICES	26		26			3	29
	65-ELECTRONIC MONITORING	9		9				9
	70-YOUTH DEVELOPMENT FAC.	23		23			6	29
<b>TOTAL</b>		<b>199</b>		<b>199</b>			<b>39</b>	<b>238</b>
	RECC-ADMINISTRATION	38		38			10	48
<b>TOTAL</b>		<b>38</b>	<b>0</b>	<b>38</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>48</b>
<b>PSD TOTAL</b>		<b>340</b>	<b>0</b>	<b>340</b>	<b>0</b>	<b>9</b>	<b>54</b>	<b>394</b>
COUNTY CLERK'S OFFICE	01-REPORTING & RECORDING	18	3	15	1		3	21
	02-BUREAU OF ELECTIONS	11	1	10			2	13
<b>CLERK'S OFFICE</b>		<b>29</b>	<b>4</b>	<b>25</b>	<b>1</b>		<b>5</b>	<b>34</b>
COUNTY TREASURER'S OFFICE	01-COUNTY TREASURER ADMIN.	13		13	1			13
COUNTY ASSESSOR'S OFFICE	01-COUNTY ASSESSOR ADMIN.	26		26	1		3	29
	11-PROPERTY VALUATION	14		14				14
<b>COUNTY ASSESSOR'S OFFICE</b>		<b>40</b>		<b>40</b>	<b>1</b>		<b>3</b>	<b>43</b>
<b>COUNTY SHERIFF'S OFFICE</b>		<b>110</b>		<b>110</b>	<b>1</b>		<b>13</b>	<b>123</b>
COUNTY PROBATE OFFICE	01-COUNTY PROBATE JUDGE				1			
<b>COUNTY WIDE TOTAL</b>		<b>856</b>	<b>10</b>	<b>846</b>	<b>10</b>	<b>14</b>	<b>112</b>	<b>968</b>



# LABOR STATISTICS FOR JANUARY 2015

Union Status		Percentage of Union Status				Percentage of Employees Paying Union Dues			
AFSCME Employees	241	AFSCME Employees	28.15%	AFSCME Employees	55	AFSCME Employees	23%		
NMCPPO (Sheriff) Employees	60	NMCPPO (Sheriff) Employees	7.94%	NMCPPO (Sheriff) Employees	35	NMCPPO (Sheriff) Employees	51%		
AFSCME (Corrections) Employees	98	AFSCME (Corrections) Employees	11.48%	AFSCME (Corrections) Employees	63	AFSCME (Corrections) Employees	64%		
AFSCME (Medical) Employees	10	AFSCME (Medical) Employees	1.17%	AFSCME (Medical) Employees	5	AFSCME (Medical) Employees	50%		
NMCPPO (RECC) Employees	23	NMCPPO (RECC) Employees	2.80%	NMCPPO (RECC) Employees	17	NMCPPO (RECC) Employees	53%		
IAFF (Fire) Employees	66	IAFF (Fire) Employees	7.71%	IAFF (Fire) Employees	63	IAFF (Fire) Employees	55%		
<b>Total Number of Union Employees</b>	<b>506</b>	<b>Total Percentage of Union Employees</b>	<b>59.11%</b>	<b>Total Number of Employees Paying Dues</b>	<b>223</b>				
Non-Union Employees	350	Non-Union Employees	40.89%						
<b>Total Number of Employees</b>	<b>856</b>	<b>Total Percentage of Employees Paying Dues</b>	<b>100%</b>						

## Paying Members



## Union Status

## Paying Members

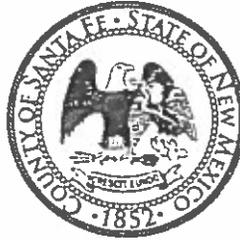




Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

Date: February 6, 2015  
To: Board of County Commissioners  
From: Jeffery Trujillo, ASD Director   
Via: Katherine Miller, County Manager  
Subject: Administrative Services Monthly Report – January 2015

Below is an informational report in regards to the Administrative Services Department for the month of January 2015.

### Information Technology

Work Orders/Technical Support														
All IT requests are captured using a work order tracking system located on SharePoint.	247 work orders were completed/resolved in January 2015.													
Systems and Network Uptime														
<table border="1"><thead><tr><th colspan="3">January Unscheduled Downtime</th></tr><tr><th>Date</th><th>Description</th><th>Hours</th></tr></thead><tbody><tr><td></td><td></td><td></td></tr><tr><td></td><td>Total</td><td>0.00</td></tr></tbody></table>		January Unscheduled Downtime			Date	Description	Hours					Total	0.00	Q1 2015 Actual: 100% Q2 2015 Actual: 99.03% FY 2015 YTD: 99.52%
January Unscheduled Downtime														
Date	Description	Hours												
	Total	0.00												

### Legal

Legal has processed 285 contracts, 66 resolutions, and reviewed or drafted (or participated in drafting) 5 ordinances this fiscal year. In addition, Legal hired a new Assistant County Attorney, Robert Bruce Frederick. Bruce's first day was Monday, February 2, 2015.

## Mailroom

The Mailroom processed the following in the month of January

Name	Items
Co. Manager (Commissioners)	25
DWI	40
MCH	0
PFMD	0
Clerks	118
Elections	2555
Assessors	487
Treasurers	1587
Probate Judge	0
Attorney or Legal	27
Sheriff	152
Human Resources	47
Corrections Admin	4
Home for Good Program	0
Purchasing	8
PW-Solid Waste	0
Care Connection	0
HHS Admin	2
Sobering Center	0
Adult Jail	0
Teen Court	69
ASD	0
Fire Department	626
E-911	1
RECC	4
Senior Services	0
YDF	0
Natural Resources	0
Affordable Housing	0
Section 8	110
Finance/Payroll	773
Utilities (Water Resources)	263
Public Works	19
Land Use	16
Housing	111
Indigent/HAP	1





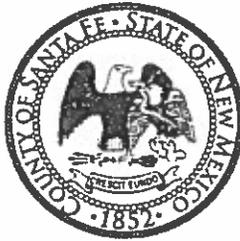




**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

### Memorandum

**To:** Santa Fe County Board of County Commissioners

**From:** Katherine Miller, County Manager, SFC  
Rachel O'Connor, Director, Community Services Department, SFC

**Date:** February 10, 2015

**Subject:** Community Services Monthly Report

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#### Health Services

- Health Care Assistance Program. (1) Low Birth Weight Prevention RFP. We released the RFP for the Low Birth Weight Prevention Initiative and will host the pre-proposal conference later this week.
- We submitted an abstract to present at the Public Health statewide conference in April. We would be co-submitting with La Familia to present on the opiate treatment program for pregnant women.
- Last week's HPPC meeting was devoted to prenatal and early childhood issues, with representatives from DOH Public Health presenting all the programs they provide in the County. Commissioner Holian attended. People were impressed by the breadth and depth of the services offered. Michael Weinberg of the Thornburg Foundation also talked about their early childhood initiatives.
- HPPC and Legislative Session. The \$900,000 health council funding bill, Senate Bill 79, sponsored by Senator Howie Morales and House Bill 99, sponsored by Rep. Clahchhischilliage, passed their respective committees on Wednesday and Thursday this week. Ron Hale, executive director of the NM Alliance of Health Councils, testified, and health council and staff representatives spoke in support from Los Alamos, Rio Arriba, Sandoval, and Grant counties, as did I.

HSD and Legislative Session. The Legislative Finance Committee heard from Brent Earnest/HSD on Monday, including re: the Safety Net Care Pool. Brent talked about county support being critical to funding hospital payments. Senator Rodriguez said that the sunset clause, vetoed by the Governor, was part of the 1/12 agreement with the counties last

session. Her bill, SB 117, inserts a four-year sunset clause and was passed by the Senate Public Affairs Committee on Friday afternoon.

### **Community Safety**

- Dr. Reid Hester of Behavioral Therapy Associates will be presenting this month at the DWI Planning Council meeting. Dr. Hester will be providing a progress report on the SBIRT program that the DWI program implemented. Dr. Hester's staff conducted follow-up interviews with DWI participants that have completed the program, data from the interviews will be provided to the Council.
- The LDWI Distribution/Grant and LDWI Detox grant remain the primary focus of the DWI program. The deadline date for both applications is March 6, 2015. The goal is to have both applications completed by February 23, 2015, providing ample time for Rachel and the Planning Council to review.
- Jennifer met with Jeff Mahan, General Manager at the Sage Inn and Suites this week to discuss a mural request. There is a large wall facing Don Diego Ave. off Cerrillos Rd. that has been vandalized over the years. We will be working with the Sage Inn to beautify the wall and deter graffiti vandalism. The Sage Inn will be covering the cost of the paint and Teen Court will compensate the artists. The artists are currently working on suggestions for the theme and plan to start painting in April when the weather is more suitable.
- Teen Court is working on the Youth RFP for release in March.

### **Senior Services**

- AAA would like for Senior Services to participate in a pilot transportation project with CHRISTUS. They have drafted an MOU for our review and consideration.
- We began our senior strategic planning with Michelle Lis. We have set a date of March 4 to hold a public meeting of stakeholders to discuss senior needs and future growth. We are also planning a specific strategic planning session for Commissioners to provide their input into the plan. We are expecting this to occur in April.
- Senior Services has begun their process of completing the application for AAA capital. Dates and times have been selected to meet with each Center and notices have been sent out to Commissioners.
- Staff met with James Martinez (PW projects) this week. He is the project manager that will oversee the pavement and pantry project at Edgewood. We will have a follow up meeting with architect and construction contractor in next couple of weeks.

### **Community Operations**

- Imagination Library was kicked off last week with a press conference and enrollment event. Over 300 children have been enrolled to date.

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**HEALTH POLICY & PLANNING COMMISSION**

**December 5, 2014**

**Santa Fe, New Mexico**

This regular meeting of the Santa Fe County Health Policy & Planning Commission (HPPC) was called to order by Vice Chair Catherine Kinney at approximately 9:00 a.m. on the above-cited date at County Community Services Department Conference Room, 2052 Galisteo Street, Suite B. A quorum was achieved with the following members present:

**Members Present:**

Catherine Kinney  
AnnaMaria Cardenalli  
Don Reece  
Shirlee Davidson [telephonically]  
Vivian Heye  
Bonnie Keene  
Carolyn Roberts

**Member(s) Absent:**

Judith Williams, Chair  
Bryan Conkling  
John Abrams  
Reena Szczepanski

**County Staff Present:**

Rachel O'Connor, Director, Community Services Department  
Patricia Boies, Health Services Division Director  
Katie Schwartz, RN, Mobile Health Van  
Kyra Ochoa, Health Care Assistance

**Others Present:**

Amy Sandoval, DOH  
Kristen Carmichael, CSV  
Bob DeFelice, First Choice  
Monica Briones, First Choice  
Michelle Melendez, First Choice  
Fred Nathan, Think New Mexico  
Jeff Thomas, Southwest Care Center  
Orit Tamir, Highlands University

**III. Introductions**

Those present introduced themselves.

**IV. Approval of Agenda**

Upon motion by Commissioner Reece and second by Commissioner Roberts the agenda was unanimously approved as published. [Commissioner Heye was not present for this action.]

**V. Approval of Minutes – November 7, 2014**

Commissioner Reece moved for approval as presented. His motion was seconded by Commissioner Roberts and passed unanimously. [Commissioner Heye was not present for this action.]

**VI. Matters of Public Concern**

None were offered.

**VII. Presentations**

**B. First Choice Edgewood Health Commons**

CEO Bob DeFelice outlined the background of First Choice Community Healthcare, noting it was a federally qualified health system based in the South Valley of Albuquerque with locations throughout the Mid-Rio Grande Valley. These consist of five centers in Bernalillo County, two in Valencia County and one in Edgewood. Additionally, there is a school program in the South Valley. The organization was begun 43 years ago and now has a staff of over 400, with 56,000 people having it as their medical care home. There are 75 providers – medical, dental and behavioral health. Their budget now exceeds \$30 million.

In addition to primary care they offer integrated behavioral health services, sub-specialties in telemedicine with UNM, Suboxone services, rheumatology, diabetes, endocrinology, and hepatitis-C. He gave a history of the facility in Edgewood.

Dr. Monica Briones, assistant medical director, stated the Edgewood site has been in operation since 2003. In addition to the three primary care providers there are two dentists, and two hygienists. Over 6,000 patients are served, some coming great distances.

Mr. DeFelice described the plans for expanding into a “healthcare commons,” a 42,000 square foot facility in Edgewood which will triple their capacity. As in the case of South Valley, there are plans for urgent care services available 24/7, tie-in with WIC and numerous community partnerships. He encourage the commission to visit the website [fcch.com](http://fcch.com) to see more details. Using an architectural plan Mr. DeFelice showed the proposed location of the health center, nearby wellness center and a building for auxiliary leased space.

The health commons is planned for seven acres of Edgewood’s 640-acre master plan for town services. There is additional room for adjunct activities such as manpower development, farming, education, demonstration kitchen, childhood learning, etc. There is to be an “ecosystem of activity” to create new products focused on wellness in community. Edgewood has already placed a fire station and animal control facility on this town commons and is anticipating housing, equestrian use, a war memorial, and other civic properties.

Michelle Melendez spoke of the economic development aspects. The health center will cost \$13.5 million and provide 111 construction jobs. Once up and running the facility will employ 129 people with salaries totaling \$8.5 million, which will generate \$42 million per year in economic activity.

Ms. Boies passed along regrets from John Abrams that he could not be present but is aware of the plans for Edgewood. Commissioner Reece said he used to run cattle on that part of the county. He added there have been companies moving into the area and this need for medical services will grow.

Ms. Sandoval asked if talks had begun relating to partnership with the DOH. Mr. DeFelice said they have, and they are already partnering in the South Valley.

Commissioner Reece asked about a timeline and Mr. DeFelice said as soon as possible. Full built-out will take a couple years.

Commissioner Kinney asked about funding plans and Mr. DeFelice said they are in the phase of setting up financing. There is a fund development committee and they have been talking with foundations. The town is providing infrastructure. "We would hope that the County would see this as a high priority."

In response to a question from Commissioner Roberts, Ms. Melendez said the wellness center would have demonstration kitchens for diabetes prevention and management, fitness facilities and classrooms. Mr. DeFelice said the entire community will be able to access the fitness facilities. He said the commons will be a driver to draw private investors.

Ms. O'Connor said the County Manager suggested this presentation be made to the HPPC before the County Commissioners are contacted.

Jeff Thomas, executive director for Southwest Care Center, stated he has visited the South Valley commons and commended the progressive approach to what a community health center can do. He said the current proposal is admirable and achievable.

Dr. Briones indicated the South Valley operation has been inspirational with its emphasis on education and partnership with UNM. They have been successful in getting doctors to stay in the area. She said there is a nurse practitioner on staff as well.

Commissioner Roberts moved to support this initiative and concept. Commissioner Cardenalli seconded. The motion carried without opposition.

Commissioner Kinney proposed having a meeting at the South Valley facility at some time in the future.

## VII. A. Recommendations for Making Health Care More Affordable by Increasing Transparency

Fred Nathan described the goal of Think New Mexico as working to improve the state's standing in rankings. He said the board of directors crosses the political spectrum. The think tank has been instrumental in instituting full-day kindergarten, repealing tax on groceries, establishing reserves in rivers and reforming the Public Regulation Commission. This year they are focusing on health care transparency. Fourteen states currently have websites on pricing. Since there is a trend toward high deductibles it is important that consumers be aware of price and quality. Some websites have been overwhelmingly lengthy and complex.

Think New Mexico's plan includes:

- Legislation to promote a user-friendly website with the 50 most common in-patient and out-patient procedures, with cost and quality information
- Establishment of risk-adjusted quality metrics

It has been shown that transparency contributes to lowering of overall health costs in some states. The initial focus would be on the 44 hospitals in the state.

A discussion ensued regarding problems in establishing quality ratings; Leap Frog, the New Mexico Coalition for Healthcare Quality and the CMS are already involved in data collection. Mr. Nathan said he believed the hospitals could be convinced; transparency would show that they are patient-centered. Hospitals will be represented on the rating committee. He advocated collaboration among all parties in data collection.

Commissioner Kinney pointed out she was interested in transparency in charity care and community benefit in a state with many for-profit hospitals in monopoly settings. There are huge variations between for-profit and non-profit hospitals in how they write-down charity care. Currently only non-profits have to report their policies to the IRS.

Commissioner Keene brought up access being a driver in pricing in a rural state. Mr. Nathan agreed there were many variables but overall, more information is better. The for-profit hospitals have hired a lobbyist to fight transparency. If this proposal succeeds they will have to change their business model, which could help bring prices down.

Commissioner Heye mentioned some doctors are invested in keeping old equipment and procedures to make more money. Mr. Nathan said published metrics would be an incentive to modernize. He speculated that eventually all states will have transparency websites on price and quality. He added they are looking for allies in addition to newspapers and the League of Women Voters and would like to have the support of the BCC.

There were discussions on price discrimination, gag clauses and bundling. In response to a question from Ms. Boies, Mr. Nathan said their main focus legislatively is the website database.

In response to questions from Ms. O'Connor, Mr. Nathan said the bill is currently being written by Legislative Council Services. When the draft is complete they plan to arrange a number of sponsors from both parties. They will not be pre-filing. He hopes the website will be hosted by the New Mexico Health Insurance Exchange. They are going to try to avoid an appropriations bill, piggybacking on software and staffing already in place.

Commissioner Roberts volunteered to connect Mr. Nathan with the New Mexico Nurses Association. He offered to send copies of the bill draft to commission members when it was complete.

Mr. Nathan said Think New Mexico's website has a pre-scripted letter to legislators.

Commissioner Davidson moved to conceptually support the concepts of transparency and an all-payer database for cost and quality. Commissioner Heye seconded and the motion carried unanimously.

### **VIII. Matters from the Commission and Staff**

#### **A. Update on Health Action Plan**

Commissioner Keene said the low birth weight RFP is being worked on. Ms. Ochoa said low birth weight is a complex indicator. Ms. Boies said Santa Fe County is part of the Early Childhood Steering Committee which is working on a report with their priorities.

Ms. Boies reported on several developments within the "increasing consumption of healthy food" goal in the Health Action Plan. The BCC officially adopted the Food Policy Council's Food Plan for the County. The BCC also passed a resolution in support of New Mexico grown fresh fruits and vegetables for school meals, seeking state funding for their purchase. Following up on the HPPC's request during the November meeting, Ms. Boies brought before the Food Policy Council the issue of the proposed Human Services Department rule change concerning employment and training requirements for SNAP recipients, and the Food Policy Council sent a letter to the Secretary of HSD, recommending that rather than change the rule, HSD should focus on improving SNAP participation rates and supporting "double bucks" legislation. These are also recommended actions within the food priority of the Health Action Plan.

After speaking with Dan Green, epidemiologist on the Youth Risk and Resiliency Survey, Commissioner Heye proposed tweaking the drug abuse indicators to emphasize the most serious drugs: heroin, cocaine, methamphetamines and prescription drugs. Commissioner Kinney pointed out that the Health Action Plan has already been endorsed, but it could be seen as a focus of work. The metric can be changed in the next three-year cycle of planning, if determined.

On the insurance enrollment priority, Ms. Boies spoke of PSAs in Spanish going out on radio stations regarding the NMHIX open enrollment, as well as enrollment efforts for people within the DWI and Teen Court programs at Community Services Department.

**B. Director's Report**

Ms. O'Connor stated they are finishing up the revised mobile crisis team RFP with more diversified funding sources. She attended a meeting of parties interested in establishing a regional crisis center/triage assessment program for Albuquerque. Santa Fe County will not be specifically involved and the issue is really long-term care which is lacking in the state. Commissioner Davidson pointed out this is not a new concept and references can be found in the literature from the sixties and seventies. Commissioner Kinney mentioned the ACT model.

**IX. Future Agenda Items**

Michael Weinberg will speak on early childhood development, and the DOH will present an overview of the public health programs they provide in Santa Fe County, including early childhood programs.

**XI. Announcements**

A. Next HPPC meeting Friday, February 6, 2014, 9 a.m., 2052 Galisteo St.

**XII. Adjournment**

This meeting was declared adjourned at approximately 11:00 a.m.

Approved by:

\_\_\_\_\_  
Catherine Kinney  
Health Policy & Planning Commission

Respectfully submitted by:

Debbie Doyle, Wordswork

# DRAFT

SUBJECT TO APPROVAL

## Santa Fe County Health Action Plan FY 2015-2017 Goals and Indicators

GOAL	INDICATOR	BASELINE YEAR	BASELINE DATA *
Increase enrollment of residents in health insurance	Percentage of residents with health insurance*	2012	75%
Reduce alcohol abuse	Percentage of youth (6th through 8th grades) using alcohol during the past 30 days**	2013	13.9%
	Percentage of adults engaging in binge drinking during the past 30 days†	2013	12.8%
Reduce drug abuse	Rate of deaths due to drug overdose††	2013	34.4 (per 100,000) (age-adjusted rate)
	Percentage of youth (6th through 8th grades) using illicit drugs during the past 30 days**	2013	See separate page for illicit drug categories
Reduce low birth weight	Percentage of babies weighing less than 2,500 grams (about five and a half pounds)††	2013	9.9%
Reduce suicides	Percentage of middle- and high-school students who have seriously thought of killing themselves**	2013	Middle school: 21.1% High school: 17.0%
	Rate of deaths due to suicide††	2013	19.1 (per 100,000) (age-adjusted rate)
Increase consumption of healthy food	Percentage of adolescents who consume five or more fruits and vegetables per day**	2013	27.0%
	Percentage of adults who consume five or more fruits and vegetables per day†	2013	19.4%

\*Source: United States Bureau of Labor Statistics/Census Bureau Current Population Survey <http://cms.hhs.gov/Outreach-and-Education/Outreach/HIMarketplace/Census-Data-.html>

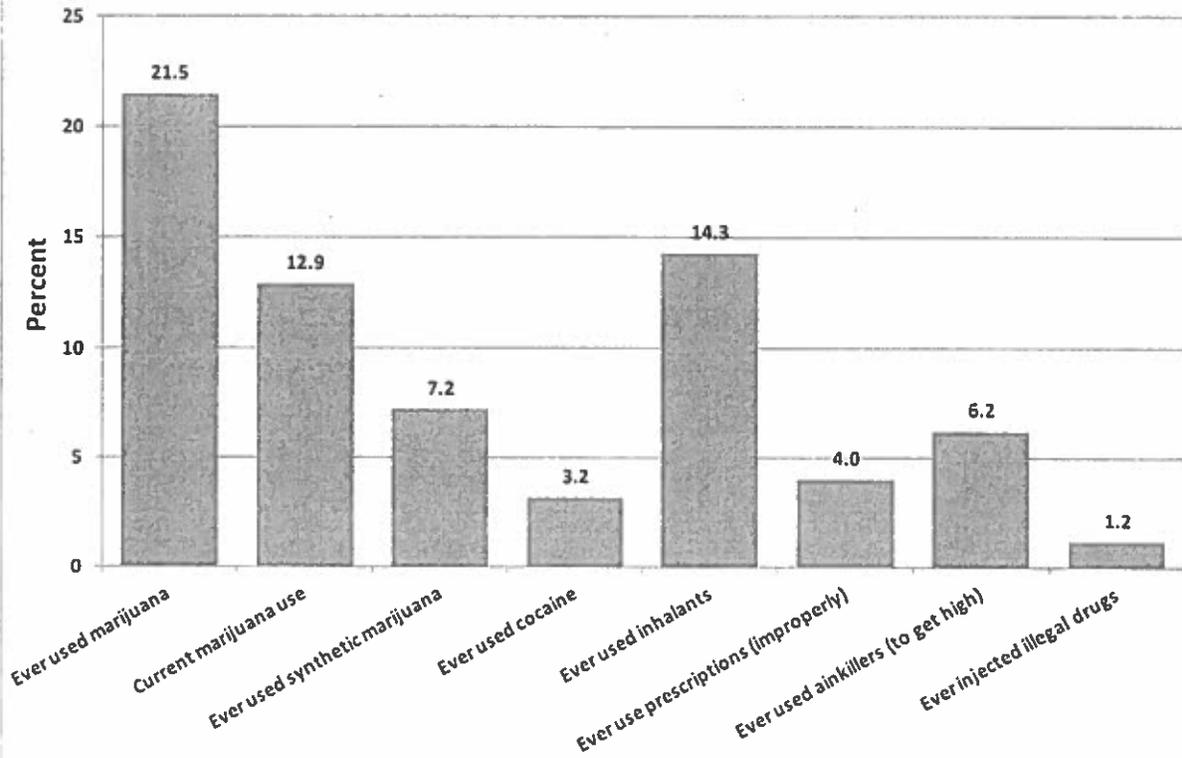
\*\*Source: New Mexico Youth Risk and Resiliency Survey (YRRS), New Mexico Department of Health and Public Education Department

† Source: Behavioral Risk Factor Surveillance System Survey (BRFSS) Data, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, together with New Mexico Department of Health, Injury and Behavioral Epidemiology

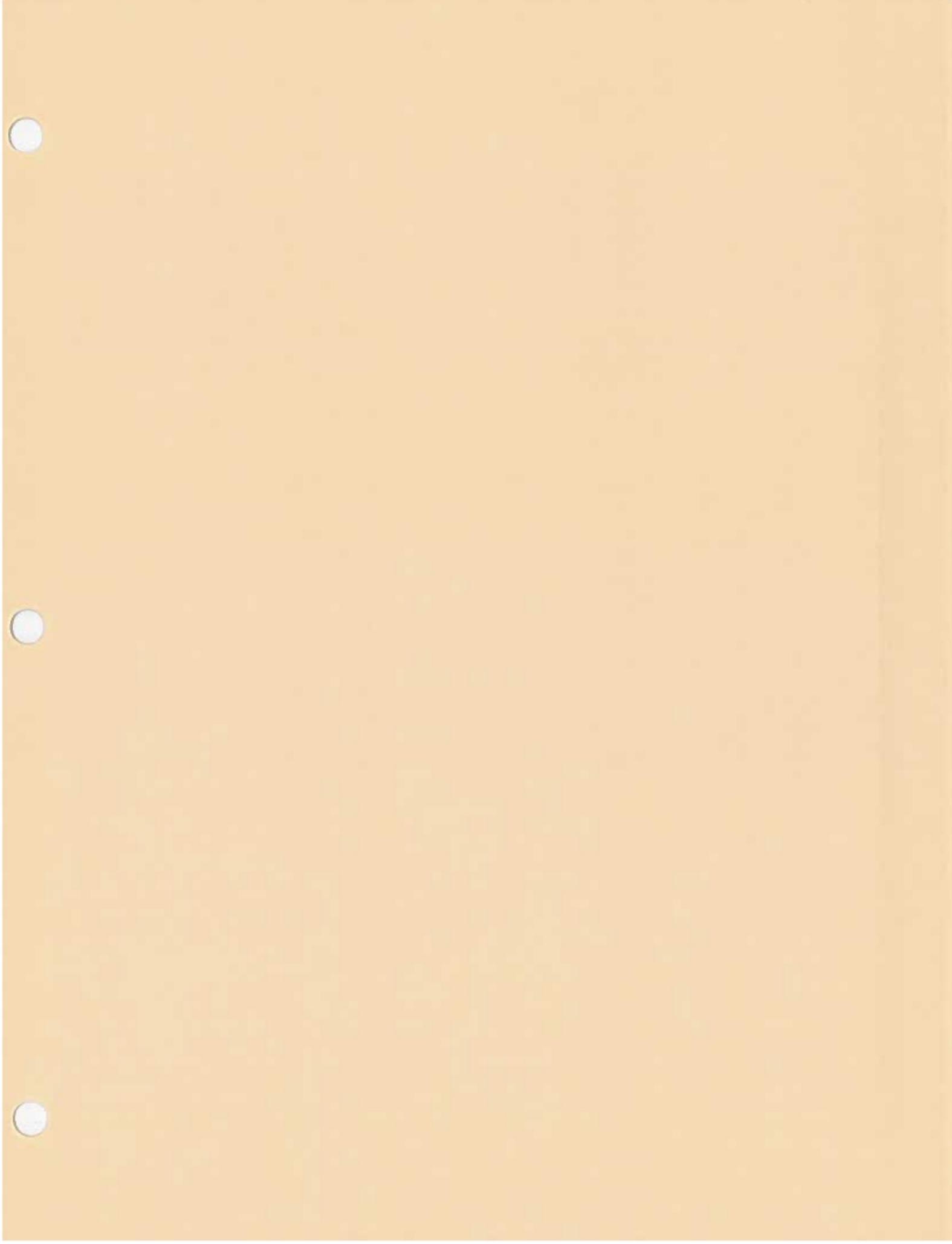
††Source: Bureau of Vital Records and Health Statistics (BVRHS), NMDOH

\* Data prepared by Kelly Gallagher, Community Health Epidemiologist, Department of Health, Health Promotion Program, Northeast Region, 605 Letrado Street, Suite D, Santa Fe, NM 87505  
(505) 476-2660 [Kelly.Gallagher@state.nm.us](mailto:Kelly.Gallagher@state.nm.us)

Percent of youth (6th through 8th grades) using illicit drugs,  
by drug type (Santa Fe County, 2013)









# Memorandum

Santa Fe Board of County Commissioners

From: Teresa C. Martinez, Finance Director

Via: Katherine Miller, County Manager

Date: November 11, 2014

Re: *Financial report for the month ending 1/31/2015*

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## ISSUE:

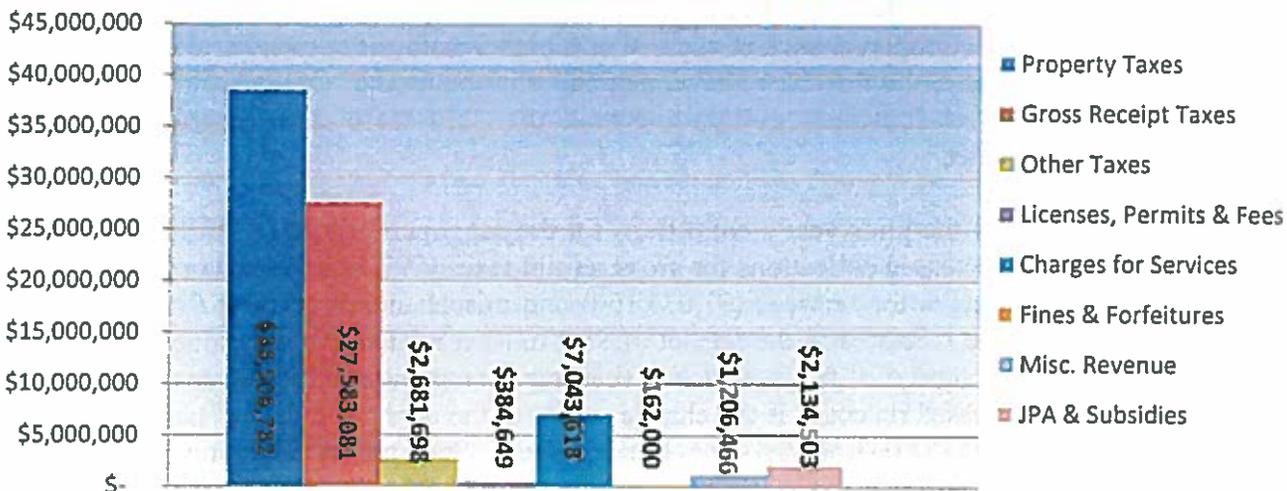
Enclosed is a report summarizing the financial activities of the County through the month ending January 31, 2015.

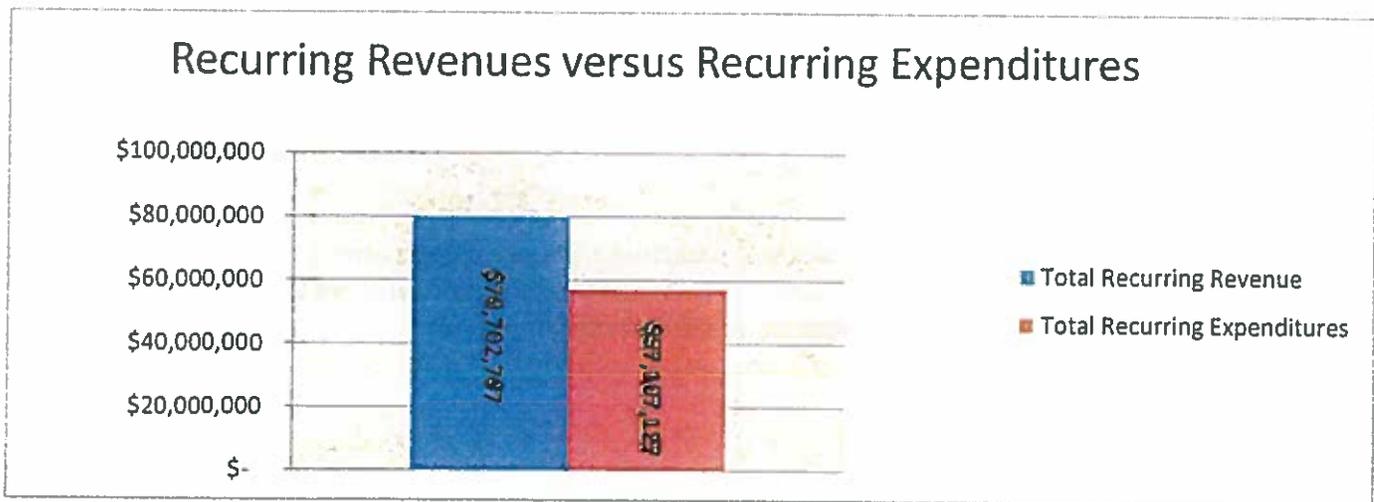
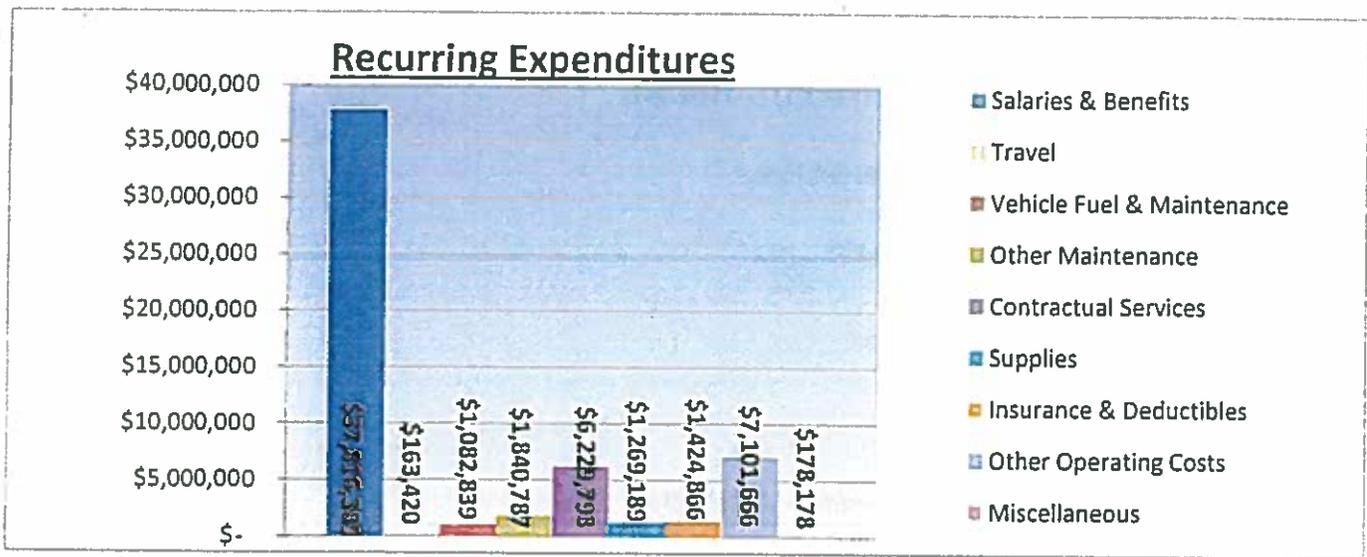
## BACKGROUND:

This is a comparison of revenues and expenditures on a recurring versus non-recurring basis. The monthly report will still highlight major revenue sources. Below are several charts that identify 1) the recurring revenue sources, 2) the recurring expenditures and 3) a comparison of the two side by side.

## CURRING VERSUS NON-RECURRING

### Recurring Revenue Type





Through the month of January, as noted in the charts above, the revenues collected totaled \$79.7 million and the expenditures total \$57.1 million. Expenditures exceeding revenue collections at the start of each fiscal year is normal. Typically, the collection of property taxes is cyclical and higher within the months of December – January and May – June. As witnessed by the chart above, beginning in the month of December the revenue collections will materialize at a level sufficient to sustain expenditures. In those earlier months, it is the budgeted cash that balances the budget.

The revenue collections were below the prior year's collections for the same period by \$6.6 million or 7.3%. The decrease can be attributed to decreased collections for gross receipt taxes (\$97,572), other taxes (\$50,959), JPAs and subsidies (\$358,647), charges for services (\$1,074,160) and miscellaneous revenue (\$6.5 million). The biggest portion of the difference is related to the receipt of \$5.4 million related to the Aamodt Settlement during FY 2014. This is a one-time receipt of funds, which is skewing the comparison from year to year. The other factor contributing to the decreased revenues is the changes made to the expiration date of transfer station permits. The permit sales are down \$154,063 or 48% from the prior year. Staff witnessed an increase in sales

in both November and December. These increases may be attributed to the fact that users may have purchased 24 trip passes before they were no longer offered beginning in January.

**NON-RECURRING EXPENDITURES**

Capital expenditures are non-recurring expenditures funded by non-recurring sources. Such sources include bond proceeds, special appropriations, grants and cash balances from excess revenues of prior years.

The following is a listing of some of the major capital expenditures incurred thru the month of January:

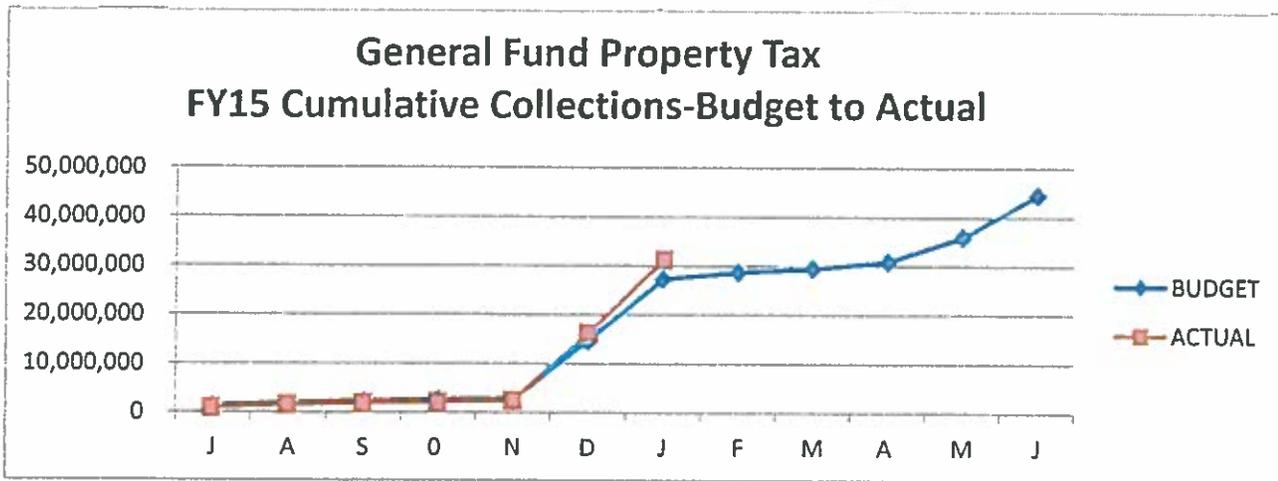
La Cienega Fire #2/CC/Library	\$ 334,691	Glorieta Estate MDWA	\$224,944
Adm Building Upgrades	\$ 61,763	TCSP Road Grants	\$298,412
Sheriff Vehicle Purchases	\$ 288,638	Torcido Loop	\$ 34,282
Eldorado/Canoncito/SE Sector	\$ 126,072	Santa Fe Rail Trail	\$411,668
Herrada Road	\$1,300,893	Phase 2A Road Annexation	\$944,495

Also included for your information are the charts reflecting major revenue sources and collections through January.

**REVENUE:**

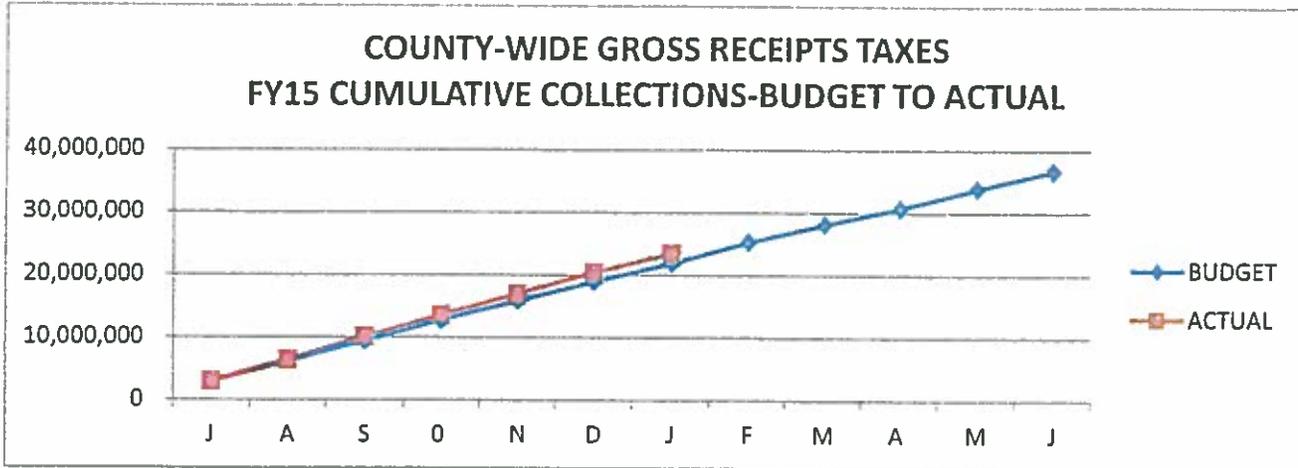
Property tax is recorded monthly and compared to the actual monthly budget forecasts. Property tax revenue budget estimates are conservative, as a budget shortfall in tax receipts would have a serious impact on various County operations.

Actual property tax collections of \$31.3 million through the end of January exceeded the budget of \$27.3 million by \$4.0 million. The collections are \$1.3 million greater than the prior year's collections for the same period.

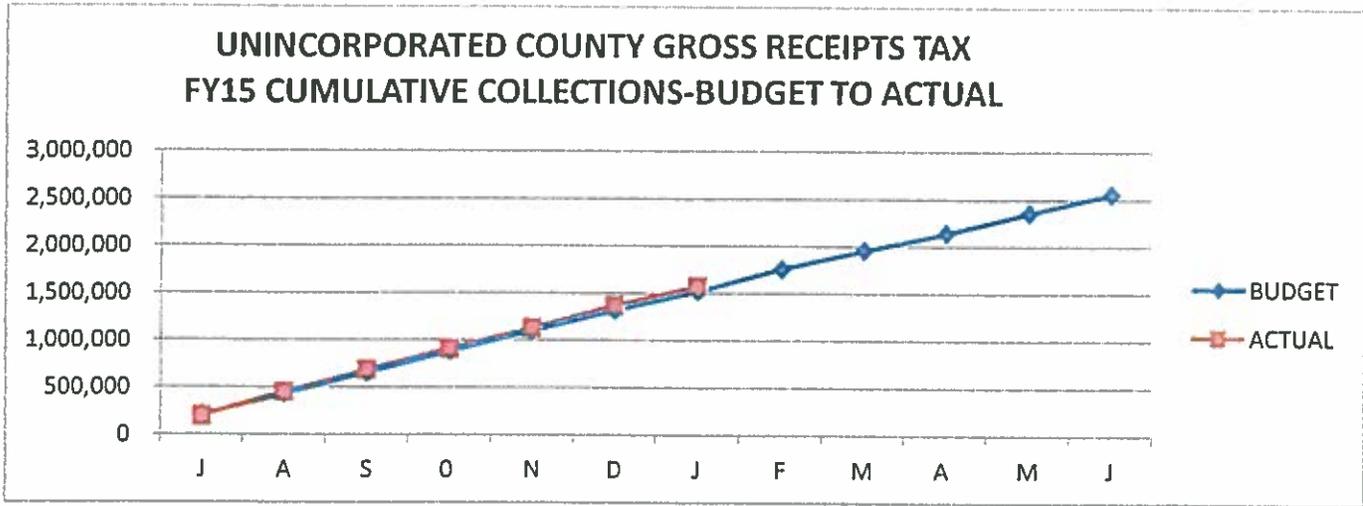


The gross receipts taxes are estimated from trend data and from economic analysis of the business activities in the areas of construction, wholesale, retail and service sectors. Combined, both the county-wide and the unincorporated gross receipt taxes collected through January total \$25.1 million and are \$1.7 million above the

budgeted amount of \$23.4 million. Total year-to-date collections were below the collections of the prior year by \$73,590 for the same time period.



The unincorporated GRT collections total \$1.6 million for the month of January and are \$53,095 above the budgeted amount of \$1.5 million. The collections are \$146,209 above the prior year collections. The increase is mainly attributable to the enacted Fire Excise Tax which began receiving monthly collections in September of FY 2014 resulting in an average monthly amount of \$100,000 to \$115,000. Through January, the Fire Excise GRT collections total \$780,614.



**SUMMARY:**

In summary, the property tax collections exceeded budget through the month of January. The GRT collections exceeded the monthly budget and the prior year collections through January. Finance just completed the mid-year budget reviews and found that departments/offices have managed their respective budgets well resulting in a small mid-year resolution. Lastly, Finance has begun to plan for the FY 2016 fiscal year and has scheduled the budget kick-off for February 23<sup>rd</sup> and will begin scheduling meetings with the commissioners as well.

