

COOPERATIVE AGREEMENT
BETWEEN
UNITED STATES OF AMERICA
AND
SANTA FE COUNTY, NEW MEXICO

COOPERATIVE AGREEMENT NO. [A12PG00054](#)

This Cooperative Agreement (“Agreement”) is entered into by and between the United States of America (“United States”), by and through the U.S. Department of the Interior, Bureau of Indian Affairs (“BIA”), on behalf of the Pueblos of San Ildefonso, Pojoaque, Tesuque and Nambe (“Pueblos”), and the Santa Fe County, New Mexico (“County”), to acquire water rights from the County to be held in trust for the Pueblos.

Recitals Of Understanding That Support This Agreement

WHEREAS, the Parties to this Agreement are the United States and the County (collectively “Parties,” and singularly, referring to either, “Party”). This Agreement is intended to benefit only the Parties and the Pueblos.

WHEREAS, the Aamodt Settlement, pursuant to the Aamodt Litigation Settlement Act settles, with finality, the water rights of the Pueblos.

WHEREAS, the anticipated final decree associated with the State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66cv6639 (D.N.M.) is expected to be entered by the court and will establish the water rights of the Pueblos as well as the other parties to the case.

WHEREAS, pursuant to the Act and the Settlement Agreement, as defined in Section 602 (22) of the Act (Agreement), a water delivery system will be constructed by the United States Department of the Interior, United States Bureau of Reclamation that will provide water for domestic, commercial and municipal demands to Pueblo communities and non-Pueblo communities throughout the Rio Pojoaque Basin.

WHEREAS, water and water rights in sufficient quantity are required in order to lawfully divert, pump, and deliver water to communities as required by the Act and the Settlement Agreement. Approximately 2,500 acre-feet of water rights are required to serve the Pueblo portion of the water delivery pipeline water demand.

WHEREAS, the County owns 1,752.5 acre-feet per year of consumptive use (AYF) water rights appurtenant to 1,788.3 acres, as described by the Deeds appended hereto as Attachment A (“Top of the World water rights.”).

WHEREAS, the Act authorizes the Secretary to purchase 1,141 AFY of the Top of the World water rights owned by the County and provides funding for the purchase of said water rights.

TERMS AND CONDITIONS OF THIS AGREEMENT

ARTICLE 1 – Authority for the United States to Enter Into this Agreement

This agreement is entered into pursuant to the authority in the Federal Grant and Cooperative Agreement Act (31U.S.C. 6301-6308) and the Aamodt Litigation Settlement Act (“Act”). Sections 613 (a) (1) (B) and 617 (b) of the Act direct the United States to acquire 1,141 AYF of Top of the World water owned by the County.

ARTICLE 2 – Terms and Conditions of the United States to the County

2.1 The United States acting through the BIA will:

2.1.1 pay five million four hundred thousand (\$5,400,000) dollars to the County for the 1,141 AFY of Top of the World water rights (“1,141 AFY water rights”);

2.1.2 assume lessee responsibilities as successor-in-interest for any leases through which the County is leasing the 1,141 AFY water rights to others;

2.1.3 honor the terms of existing leases through which the County is leasing the 1,141 AFY water rights to others; and

2.1.4 file a change of ownership with the Office of State Engineer of New Mexico to establish the United States, for the benefit of the Pueblos, as owner of the 1,141 AFY water rights.

ARTICLE 3 – Terms and Conditions of the County to the BIA

3.1 The County will:

3.1.1 sell to the United States, for the benefit of the Pueblos, the 1,141 AFY water rights;

3.1.2 certify, by entering into this Agreement, that the value of the 1,141 AFY water rights is consistent with the Act;

3.1.3 relinquish all ownership rights and interest in the 1,141 AFY water rights upon purchase by the United States;

3.1.4 assist with the change in ownership filings associated with the 1,141 AFY water rights and acknowledge the change in ownership to the United States for the benefit of the Pueblos;

3.1.5 transfer any existing leases associated with the 1,141 AFY water rights from the County to the United States; and

3.1.6 reserve and exclusively use the funds received as a result of this Agreement to fulfill any one or combination of the following purposes: (1) the County's monetary commitments described the Cost Sharing and System Integration Agreement, as defined in Section 602 (5) of the Act; (2) the County's other costs of implementing the Aamodt settlement; and (3) the County's cost of OM&R of the County Water Utility serving the Pojoaque Basin. If the County determines that all or a portion of the funds is not needed for the purposes described above, the County may use the funds for any other purpose authorized by the County.

ARTILCE 4 – Closing of Transaction

4.1 Consummation of the purchase and sale of the 1,141 AFY water rights will occur at a time and place mutually agreed to by the Parties ("Closing").

4.2 Prior to Closing the Parties will prepare and agree on the form of documents necessary to carry out their respective obligations described in paragraphs 2.1 and 3.1.

4.3 At Closing, Santa Fe County will present an invoice to the BIA in the amount of \$5,400,000.00 and BIA will enter the invoice into its accounting system so payment can be processed as described in paragraph, 2.1.1. The County will deliver the executed deed conveying the 1,141 AFY water rights to the United States as described in paragraphs 3.1.3 and 3.1.5, and the Parties will execute the other closing documents prepared pursuant to paragraph 4.2 and otherwise necessary to consummate and close the transaction contemplated hereby.

ARTICLE 5 - Additional Terms and Conditions of this Agreement

5.1 This Agreement shall become effective upon the date of the last signature affixed hereto and shall continue in force and effect until the obligations of the Parties to each other have been fulfilled.

5.2 Except as otherwise provided herein or as otherwise negotiated on a case-by-case basis, any expenses incurred by either Party in the performance of this Agreement, including termination expenses, if any, shall be borne by the Party incurring the expense.

5.3. Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. The Parties acknowledge that this Agreement is and shall be binding upon the Parties, and their successors, heirs and assigns.

5.4 Duties and actions undertaken by personnel of either Party pursuant to this Agreement shall be deemed as occurring within the course and scope of their employment, and liability for such actions and duties shall be limited to claims allowed under the Federal Tort Claims Act, 28 U.S.C. Section 2671-2676 or the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as applicable. Each Party hereby expressly does not assume any liability for the actions or duties undertaken or directed by the other, or any of the other Party's employees, agents, contractors, or representatives, in connection with this Agreement.

5.5 Pursuant to 31 U.S.C. § 1341 *et seq.*, nothing herein contained shall be construed as binding the BIA to expend in any one fiscal year any sum in excess of, or in advance of, appropriations made by Congress for that fiscal year, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriation.

5.6 This Agreement may be amended only in writing and by mutual consent of the Parties.

5.7 This Agreement may be executed in duplicate counterparts, each of which will constitute an original and have equal force and effect

5.8 This Agreement and Attachments A and B of this Agreement constitute the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties concerning the subject matter of this Agreement.

THIS AGREEMENT IS ENTERED INTO BETWEEN THE PARTIES BY THEIR AUTHORIZED REPRESENTATIVES WRITTEN BELOW.

United States Bureau of Indian Affairs

Santa Fe County, New Mexico

Regional Director, SW Region

Chair, Board of County Commissioners

Date: _____

Date: _____

Contracting Officer, SW Region

Date: _____

Reviewed:

Department of Interior Solicitor

Approved:

County Attorney