New Mexico ex rel. State Engineer v. Aamodt,
No. 66cv06639 MV/LCS-ACE (D.N.M.)

SETTLEMENT AGREEMENT

Dated April 19, 2012

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv6639 (D.N.M.)

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1. General Provisions

1.1 Purpose.

1.1.1 The Settlement Parties, as defined herein, desire to resolve the issues and controversies involved in United States District Court for the District of New Mexico lawsuit 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.), in a just manner without needless expenditure of funds and other litigation resources.

1.1.2 The United States of America ("United States") and the State of New Mexico ("State"), as a matter of policy, favor resolution of disputes concerning water rights through negotiation.

1.1.3 This Agreement is intended to be binding on the Settlement Parties and to resolve their objections to each other's water rights. The Settlement Parties agree to jointly move the Court to enter an interim administrative order and a partial final decree conforming to the terms of this Agreement, and to move the Court at an appropriate time to establish an expedited proceeding to resolve any objections to the proposed partial final decree which may be made by water right owners in the Pojoaque Basin who are not Settlement Parties.

1.2 Disclaimers.

1.2.1 Other than with respect to the specific water rights affirmatively identified in this Agreement, this Agreement shall not be construed to establish precedent or to resolve any question of law or fact in any other judicial or administrative proceeding. In particular, because the descriptions of water rights in this Agreement are based upon a negotiated settlement by the Settlement Parties, the procedures and methods used to quantify and describe such rights herein shall not be binding under the law of the case doctrine upon any other water right claimant, the State, or the United States in the adjudication of water rights in other cases and may not be relied upon as precedent under the *stare decisis* doctrine in any other water adjudication suit. Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved water rights, aboriginal claims, or any other Indian claims to water in any other judicial or administrative proceeding.

1.2.2 **Evidentiary Effect of Negotiations.** This Agreement is the result of a process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all Settlement Parties agree that no conduct, statements, offers, or compromises made in the course thereof

shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement, *provided* that any evidence otherwise discoverable shall not be required to be excluded merely because it was presented in the course of compromise negotiations.

1.3 Neutral Construction.

In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Settlement Party. No documents, drafts, memoranda, notes, or statements of any kind exchanged or utilized in the course of the settlement negotiations underlying the Agreement shall be used for purposes of interpreting the Agreement in any forum.

1.4 Prior Agreement.

This Agreement supersedes and replaces the Settlement Agreement executed between the Settlement Parties, excluding the United States of America, on January 19, 2006.

1.5 Jurisdiction

The Final Decree entered by the Decree Court shall incorporate by reference this Agreement and the Decree Court shall retain continuing jurisdiction to interpret and enforce the terms, provisions, and conditions of the Agreement, the Interim Administrative Order, and the Final Decree.

1.6 Definitions.

1.6.1 "Aamodt case" means the civil action entitled 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.).

1.6.2 "Acre-Feet" or "AFY" means acre-feet of water per year.

1.6.3 "Act" or "Settlement Act" or "Aamodt Litigation Settlement Act" means the Indian Water Rights Settlement Act, Pub. L. No. 11-291, tit. VI, §§ 601- 626, 124 Stat. 3064, 3134-56 (2010).

1.6.4 "Agreement" or "Settlement Agreement" means this amended Agreement among the Settlement Parties, and the appendices attached hereto.

1.6.5 "Agricultural uses" means the use of surface or ground water for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agricultural uses shall not include domestic uses, community uses, commercial or industrial uses, or livestock uses.

1.6.6 "City" means the City of Santa Fe, New Mexico.

1.6.7 "Commercial or industrial uses" means the diversion and consumption of water in connection with any activity which provides, or offers to provide, goods or services for consideration. Incidental commercial or industrial uses permitted pursuant to Section 72-12-1 will be considered domestic uses as defined in Section 1.6.13 of this Agreement, when such uses are discontinued at the permitted place of use.

1.6.8 "Community uses" means the diversion and consumption of water by a Pueblo on Pueblo land for indoor and outdoor public purposes, such as schools, community centers, governmental offices, healthcare facilities, and other public services provided by the Pueblo. Community uses shall not include the use of water for domestic, commercial, industrial, irrigated agriculture, or livestock watering purposes.

1.6.9 "Cost-Sharing and System Integration Agreement" means the agreement as defined by Sec. 602(5) of the Act, dated August 27, 2009, to be executed by the United States, the State, the Pueblos, the County and the City, as amended to conform to the Act.

1.6.10 "County" means Santa Fe County, New Mexico.

1.6.11 "County Water Utility" or "CWU" means the water utility organized by the County to –

(A) receive water distributed by the Authority;
(B) provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin; and
(C) carry out any other activities in accordance with the Act and other applicable law.

1.6.12 "Decree Court" means the United States District Court for the District of New Mexico.

1.6.13 "Domestic uses" means the diversion and consumption of water for indoor and outdoor household purposes, including for drinking water, sanitation, and landscaping and gardening incidental to the maintenance of a household and such uses of water incidental to a commercial enterprise. Domestic uses shall not otherwise include the use of water for commercial or industrial uses, community uses, agricultural uses, or livestock uses, as those terms are defined in this Agreement.

1.6.14 "Enforcement Date" means the date upon which the Settlement Agreement becomes enforceable beginning on the date on which the United States District Court for the District of New Mexico enters a partial final decree pursuant to subsection 623(a)(2)(G) of the Act and an Interim Administrative Order consistent with the Settlement Agreement.

1.6.15 "Engineering Report" means the report entitled "Pojoaque Regional Water System Engineering Report" dated September 2008 and any amendments thereto, including any amendments necessary to conform to the Act.

1.6.16 "Final Decree" means the final judgment adjudicating all claims and rights in the Aamodt case consistent with this Agreement.

1.6.17 "Fund" means the Aamodt Settlement Pueblos' Fund established by section 615(a) of the Act.

1.6.18 "Interfere" or "interference" means a material adverse effect on the quality, divertible quantity, or the cost of diversion of surface water historically used to satisfy surface water rights subject to this Agreement.

1.6.19 "Injuries to water rights" means the loss, interference with, impairment, deprivation, or diminution of water rights.

1.6.20 "Livestock uses" means the diversion and consumption of water for the care and feeding of domestic animals, such as cattle or horses, *provided*, however, that livestock uses shall not include the use of water in connection with the operation or maintenance of any feedlots and *provided further* that livestock uses shall not include agricultural uses of water.

1.6.21 "Local Parties" means all Settlement Parties except the United States and the Pueblos.

1.6.22 "Non-Pueblos" means those parties in the Aamodt case who claim water rights other than the Pueblos or the United States acting as trustee for the Pueblos. The United States acting in its proprietary capacity shall be included within the meaning of "Non-Pueblos" for purposes of this Agreement.

1.6.23 "Offset Water" means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.

1.6.24 IN GENERAL.—The term "Pojoaque Basin" means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—

(A) the Rio Pojoaque; or

(B) the 2 unnamed arroyos immediately south; and

(C) 2 arroyos (including the Arroyo Alamo) that are immediately north of the confluence of the Rio Pojoaque and the Rio Grande.

1.6.25 INCLUSION.—The term "Pojoaque Basin" includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).

1.6.26 "Pueblo" means each of the Pueblos of Nambé , Pojoaque, San Ildefonso, or Tesuque.

1.6.27 "Pueblos" means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque.

1.6.28 "Pueblo land" means any real property that is –

(A) held by the United States in trust for a Pueblo within the Pojoaque Basin;

(B)(i) owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or

(ii) acquired by a Pueblo on or after the date on which a court approves the Settlement Agreement if the real property is located –

(a) within the exterior boundaries of the Pueblo, as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(b) within the exterior boundaries of any territory set aside for the Pueblo by law, executive order or court decree;

(C) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(D) within the exterior boundaries of any real property located outside the Pojoaque Basin set aside for a Pueblo by law, executive order or court decree; if the land is within or contiguous to land held by the United States in trust for the Pueblo as of January 1, 2005.

1.6.29 "PVID" means the Pojoaque Valley Irrigation District.

1.6.30 "Regional Water Authority" or "RWA" means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement to operate and maintain the diversion and treatment facilities, certain transmission pipelines and other facilities of the Regional Water System.

1.6.31 "Regional Water System" means the Regional Water System as defined in section 602(18) of the Act.

1.6.32 "Secretary" means the Secretary of the Interior.

1.6.33 "Section 4 protection" means the protection provided to Non-Pueblo water rights from priority enforcement or administration of the Pueblos' First Priority Rights, as specified in Section 4 of this Agreement.

1.6.34 "Section 72-12-1" means NMSA 1978, § 72-12-1 (2001).

1.6.35 "Settlement Parties" means all persons or entities that sign this Agreement or authorize a representative to sign this Agreement and their successors in interest.

1.6.36 "State Engineer" means the State of New Mexico Office of the State Engineer.

1.6.37 "Tributaries" means the Rio Pojoaque, Rio Cuyamungue, Rio Tesuque, Rio Nambé, Rio Chupadero, and Rio en Medio.

1.6.38 "United States" or the "United States of America" in any given reference herein shall mean the United States acting in all of its capacities unless the capacity is set forth in said reference. When the term "United States or "United States of America" is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

1.6.39 "Water right" means any right to the use of water that is specifically described and authorized by a sub-file order, this Agreement, the Interim Administrative Order, or the Final Decree in the Aamodt case.

2. *Pueblo Water Rights*

2.1 Pueblo First Priority Rights.

2.1.1 Priority. Subject to this Agreement, the water rights of each Pueblo quantified in Section 2.1.2 shall be entitled to first or time immemorial priority.

2.1.2 Quantity. The measure of each Pueblo's First Priority Rights to consumptively use (deplete) the surface and ground water of the Pojoaque Basin shall be as follows:

Pueblo	First Priority Rights (AFY Consumptive Use)
Nambé	1,459
Pojoaque	236
San Ildefonso	1,246
Tesuque	719

2.1.3 The Pueblo First Priority Rights shall not be subject to forfeiture or abandonment.

2.1.4 Except as otherwise provided in this Agreement, no Pueblo shall have the right to divert, whether from surface water or ground water, any quantity of water in the Pojoaque Basin, the effect of which shall be to increase the Pueblo's consumptive use to more than the AFY quantity set forth in Section 2.1.2 and Section 2.2.2.

2.1.5 Pursuant to a written agreement and subject to the terms of this Agreement, a Pueblo may lease, for any term up to 99 years, any portion of its First Priority Rights for use within the Pojoaque Basin to (a) another Pueblo, which uses shall be in addition to the quantity specified for the lessee Pueblo in Section 2.1.2 or (b) another water user. No agreement for a period of seven years or more shall be valid unless approved by the Secretary of the Interior or his designee. The duration of a lease for use off of Pueblo lands in accordance with this Section will be exempt from the lease term duration limitation in NMSA 1978, § 72-6-3 (2003) upon enactment of the legislation described in Section 9.4.1.5.

2.2 Supplemental Pueblo Rights.

2.2.1 Priority. The water rights of each Pueblo quantified in Section 2.2.2 shall not be subject to call for purposes of administration of priorities.

2.2.2 Quantity. The measure of each Pueblo's Supplemental Pueblo Rights shall be as follows:

Pueblo	Supplemental Pueblo Rights (AFY consumptive use)
Nambé	0
Pojoaque	475
San Ildefonso	0
Tesuque	0

2.2.3 Each Pueblo's Supplemental Pueblo Rights shall be used on that Pueblo's lands and shall not be subject to forfeiture or abandonment.

2.2.4 Alternative Water, Subordination of Supplemental Pueblo Rights. Four hundred seventy five (475) AFY of the Pueblo of Pojoaque's Supplemental Pueblo Rights shall be subordinated to a right to receive an equivalent amount (475 AFY) of water delivered through the Regional Water System ("Alternative Water"), as follows:

2.2.4.1 The United States shall secure the Pueblo of Pojoaque's Alternative Water and make such water available to the Pueblo of Pojoaque without cost to the Pueblo of Pojoaque.

2.2.4.2 Acquisition of water rights to supply the Pueblo of Pojoaque's Alternative Water shall be given priority in Congressional authorizations and funding of the Settlement and in the implementation of the Settlement. Alternative Water shall be

delivered to the Pueblo of Pojoaque upon completion of construction of the Regional Water System to the Pueblo of Pojoaque and acquisition of an adequate water supply.

2.2.4.3 The Pueblo of Pojoaque's Supplemental Pueblo Rights shall be subordinated to the Pueblo's right to receive Alternative Water, and may not be diverted from ground water within the Pojoaque Basin, whenever, and to the extent that, Alternative Water is available for delivery to the Pueblo of Pojoaque pursuant to Section 2.2.4.2. Until Alternative Water is available for delivery to the Pueblo, the Pueblo of Pojoaque shall have the right to divert the entirety of its Supplemental Pueblo Rights from ground water through wells located on Pueblo of Pojoaque lands, subject to an agreement between the Pueblos of Nambé and Pojoaque, or as provided by Section 2.2.4.4. The Pueblo of Pojoaque shall cease diversion of its Supplemental Pueblo Rights to the extent Alternative Water is available to the Pueblo from the Regional Water System. In the event the Regional Water System is unable to deliver the full supply of Alternative Water to the Pueblo of Pojoaque, the Pueblo of Pojoaque may obtain the deficiency in delivery of Alternative Water from ground water through wells located on the lands of the Pueblo of Pojoaque; *provided* the total amount of Supplemental Pueblo Rights water exercised by the Pueblo of Pojoaque shall not exceed 475 A.F.Y.

2.2.4.4 Until Alternative Water is available for delivery to the Pueblo of Pojoaque, that Pueblo may divert all or a part of its Supplemental Pueblo Rights from surface water allocated to the Pueblos and released from Nambé Reservoir, provided the Pueblos of Pojoaque, San Ildefonso, and Nambé, and the PVID agree after conferring with the United States Bureau of Reclamation.

2.2.4.5 The Pueblo of Pojoaque shall not make a priority call for the purpose of exercising its Supplemental Pueblo Rights. The Supplemental Pueblo Rights shall not be subject to call for purposes of priority administration as set forth in Section 2.2.1.

2.2.4.6 During any period when the Pueblo of Pojoaque exercises its Supplemental Pueblo Right from ground water, the owner of any Non-Pueblo ground water right which suffers impairment as a result of such use shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.2.4.7 Forbearance Agreement with the Pueblo of San Ildefonso. Until Alternative Water is made available through the Regional Water System pursuant to Section 2.2.4.2 the Pueblo of Pojoaque shall maintain in effect a forbearance agreement with the Pueblo of San Ildefonso for the use of at least 475 AFY of the First Priority Rights recognized for the Pueblo of San Ildefonso in Section 2.1 of this Agreement. During the tenure of the forbearance agreement, the

Pueblo of San Ildefonso shall forgo use of 475 AFY of its First Priority Rights.

2.2.4.8 Nothing in this section shall preclude the Pueblo of Pojoaque from acquiring and exercising additional rights to divert and consume water through lease, purchase, or other agreements consistent with the terms of this Agreement, including transactions with other Pueblos subject to Sections 2.4.4.3 and 5.6.3.

2.3 Existing Basin Use Rights.

2.3.1 The portions of each Pueblo's First Priority Rights to be designated as Existing Basin Use Rights are as follows:[1]

Pueblo	Existing Basin Use Rights (AFY consumptive use)
Nambé	522
Pojoaque	236
San Ildefonso	288
Tesuque	345

2.3.2 Each Pueblo shall be entitled to continue to use that quantity of water designated as its Existing Basin Use Rights. Any use in excess of Existing Basin use Rights shall be deemed a use pursuant to Section 2.2 or 2.4.

2.3.3 Each Pueblo may change the point of diversion, place of use, or purpose of use of that Pueblo's Existing Basin Use Rights on that Pueblo's land, *provided* that the owner of any Non-Pueblo ground water right which suffers impairment as a result of such change shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.3.4 Each Pueblo may change the point of diversion, place of use, or purpose of use, of that Pueblo's Existing Basin Use Rights to a location off that Pueblo's land, *provided* that such change shall not impair Pueblo or Non-Pueblo ground water rights. The Pueblo making such change shall offset any interference with Pueblo surface water rights and Non-Pueblo surface water rights entitled to Section 4 protection, including any resulting increased stream depletions caused by the change. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall also offset any

[1] These numbers were derived from estimates of the Pueblos' respective agricultural, community and domestic, livestock, and commercial and industrial consumptive uses as of the year 2000. The figures that were developed for each Pueblo were: **Nambé**: 151 acres agricultural – 278 AFY; community and domestic – 193 AFY; livestock – 51 AFY; commercial or industrial – 0 AFY; **Pojoaque**: 9 acres agricultural – 17 AFY; community and domestic – 84 AFY; livestock – 48 AFY; commercial or industrial – 87 AFY; **San Ildefonso**: 70 acres agricultural – 129 AFY; community and domestic – 101 AFY; livestock – 58 AFY; commercial or industrial – 0 AFY; **Tesuque**: 70 acres agricultural – 129 AFY; community and domestic – 88 AFY; livestock – 48 AFY; commercial or industrial – 80 AFY.

interference with Non-Pueblo surface water rights entitled to Section 4 protection, or with Pueblo surface water rights, resulting from the Pueblo's provision of Offset Water. A third party, pursuant to a written agreement that shall be filed with the Water Master, may assume the obligations under this Section of the Pueblo making the change.

2.4 Future Basin Use Rights.

2.4.1 The portions of each Pueblo's First Priority Rights to be designated as Future Basin Use Rights are as specified in the following table:

Pueblo	Future Basin Use Rights (AFY consumptive use)
Nambé	937
Pojoaque	0
San Ildefonso	958
Tesuque	374

2.4.2 Each Pueblo with Future Basin Use Rights may use any portion of such rights for the purposes set forth in Sections 2.4.3 and 2.4.4, subject to the limitations described in those sections and Sections 2.5.3 and 2.7.2.

2.4.3 Future Basin Domestic, Community, and Livestock Uses. Each Pueblo shall be entitled to divert and consume on that Pueblo's lands ground water for: (1) new community uses, (2) new domestic uses by Pueblo members or their households, and (3) new livestock uses. In the alternative, surface water may be used for such uses, subject to Section 4 protection. The owner of any Non-Pueblo ground water right which suffers impairment as a result of such new uses shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein. The place of use, purpose of use, and point of diversion for any new Pueblo use pursuant to this section shall not be changed, *provided* that in the event such use is discontinued, the Pueblo shall not be prohibited from otherwise using the Future Basin Use Rights applied to the discontinued use in accordance with the terms of this Agreement.

2.4.4 Future Basin Agricultural and Commercial or Industrial Uses of Pueblo First Priority Rights.

2.4.4.1 New Agricultural Uses Upon Loss of Section 4 Protection for Non-Pueblo Rights. Each Pueblo shall be entitled to divert and consume on that Pueblo's lands water for new agricultural uses and to assert a priority call for such new agricultural uses to the extent that any Non-Pueblo water rights lose Section 4 protection. The Pueblos shall agree among themselves which Pueblo shall be entitled to irrigate additional lands under this subsection, *provided*, however, that any agricultural uses newly developed pursuant to this section shall utilize

water from the same Tributary used to irrigate the Non-Pueblo water rights acreage that lost Section 4 protection. After consultation with the four Pueblos, the Secretary of the Interior or her designee shall, in her sole discretion, resolve any dispute among the Pueblos over which Pueblo shall be able to irrigate additional lands under this section. Changes in the point of diversion, the place of use, or the purpose of use for such Pueblo uses shall be in accordance with Sections 2.3.3 and 2.3.4.

2.4.4.2 Other Future Basin Uses On Pueblo Land. Each Pueblo shall be entitled to divert and consume on that Pueblo's lands water for new agricultural uses and for new commercial or industrial uses, *provided*:

2.4.4.2.1 That such Pueblo shall not make a priority call for any such Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection;

2.4.4.2.2 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. Any Offset Water shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection resulting from the Pueblo's provision of Offset Water; and

2.4.4.2.3 The owner of any Non-Pueblo ground water right that suffers impairment caused by such Future Basin Use on the Pueblo's land, including impairment resulting from the provision of Offset Water, shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.4.4.3 Other Future Basin Uses Off Pueblo Land. A Pueblo may divert and consume water for new agricultural uses and new commercial or industrial uses off that Pueblo's lands, *provided*:

2.4.4.3.1 That such Pueblo shall not make a priority call for any such Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection;

2.4.4.3.2 The Pueblo initiating such Future Basin Use off that Pueblo's land shall offset any resulting interference with Non-Pueblo surface water rights entitled to Section 4 protection or Pueblo surface water rights, including any increased stream depletions resulting from the offset. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo's First Priority

Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection, or with Pueblo surface water rights, resulting from the Pueblo's provision of Offset Water; and

2.4.4.3.3 Such Future Basin Use shall not impair Pueblo or non-Pueblo ground water rights.

2.4.4.4 Change in Point of Diversion, Place or Purpose of Use of New Uses Under Sections 2.4.4.2 and 2.4.4.3. A Pueblo may change the point of diversion, place or purpose of use of ("transfer") Future Basin Uses initiated pursuant to Sections 2.4.4.2 and 2.4.4.3 or transferred pursuant to this Section 2.4.4.4, *provided*:

2.4.4.4.1 Neither the transferee nor the transferring Pueblo shall make a priority call for any such transferred Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection.

2.4.4.4.2 The Pueblo making such a transfer shall offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection or with Pueblo surface water rights, including any resulting increased stream depletions. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection resulting from the Pueblo's diversion of Offset Water. If the transferred use is off the land of the Pueblo making the transfer, the Pueblo shall also offset any interference with Pueblo surface water rights resulting from the Pueblo's diversion of Offset Water. A third party, pursuant to a written agreement that shall be filed with the Water Master, may assume the obligations under this section of the Pueblo making the transfer.

2.4.4.4.3 A transfer to a use located off that Pueblo's land shall not impair any Pueblo or Non-Pueblo ground water right.

2.4.4.4.4 The owner of any Non-Pueblo ground water right that suffers impairment caused by such a transfer to a use located on the Pueblo's land, including impairment resulting from the diversion of Offset Water, shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.4.4.5 Non-Pueblo Rights Entitled to Section 4 protection Have Priority over New Pueblo Uses. Notwithstanding the Pueblos' first priority set forth in Section 2.1.1, new Pueblo uses of the Pueblos' Future Basin Rights initiated under Sections 2.4.4.2 and 2.4.4.3 or

transferred pursuant to Section 2.4.4.4 shall be subordinated in priority administration to Non-Pueblo rights entitled to Section 4 protection.

2.5 Acquired Water.

2.5.1 Subject to Section 2.8, each Pueblo shall in addition to its First Priority Rights, be entitled to 375 AFY consumptive use from the water supply made available for Pueblo use by purchase, lease, or otherwise pursuant to Section 9 of this Agreement. The Pueblo may use such water for any purpose, including uses off that Pueblo's lands; *provided*, however, that uses off that Pueblo's lands shall be in the Pojoaque Basin.

2.5.2 Pursuant to a written agreement, a Pueblo may lease, for any term up to 99 years, any portion of the 375 AFY to another water user served by the Regional Water System for use within the Pojoaque Basin. No such agreement for a period of seven years or more shall be valid unless approved by the Secretary of the Interior or her designee. The duration of a lease for use off of Pueblo lands in accordance with this Section will be exempt from the lease term duration limitation in NMSA 1978, § 72-6-3 (2003) upon enactment of the legislation described in Section 9.4.1.5.

2.5.3 As soon as the Regional Water System is capable of delivering to a Pueblo all or any portion of its portion of the water supply of 2500 AFY available to the Pueblos, that Pueblo shall use that water supply to the maximum extent feasible prior to exercising its Future Basin Use Rights described in Section 2.4. This provision shall be subject to the payment of the operation, maintenance and replacement costs allocated to the Pueblos' participation in the Regional Water System as provided in Section 617(c)(1)(B) of the Act.

2.6 Reserved Water.

2.6.1 The Pueblo of San Ildefonso shall have a water right reserved under federal law for the San Ildefonso Eastern Reservation to deplete 4.82 AFY of water for grazing purposes with a 1939 priority date.

2.6.2 The Pueblo of Nambé shall have a water right reserved under federal law for the Nambé Reservation to deplete 302 AFY with a 1902 priority date, which may be used only as follows:

2.6.2.1 The Pueblo of Nambé shall sell such water right to the United States as set forth in section 613(a)(1)(A) and 617(c)(1)(A)(ii) of the Act.

2.6.2.2 The United States shall use such water right to assist in providing the water supply required by Sections 2.5 and 2.7.

2.6.2.3 The use of such water right shall not impair Pueblo or Non-Pueblo ground water rights.

2.6.2.4 Any interference with surface rights, including any increased stream depletions, caused by the use of the water right or by the provision of offset water, shall be offset. The United States shall cooperate with the Regional Water Authority and the Pueblos to address the requirements of this subsection; provided, however, that in no event shall the United States be obligated to secure or acquire any water supply except as provided in Section 613 of the Act.

2.6.2.5 Such use of water shall not be subject to, nor benefit from, priority administration.

2.6.2.6 If the water supply described in Sections 2.5 and 2.7 is not available to the Pueblos after the entry of the Final Decree and the satisfaction of the contingencies in Section 10, this water right may be used for the benefit of the Pueblos, *provided* that (a) the use of this water right shall not impair Pueblo or Non-Pueblo ground water rights, and (b) any interference with Pueblo or Non-Pueblo surface rights, including any increased stream depletions, caused by the use of the water right or by the provisions of offset water is offset. Priority administration shall apply to the use of such water right pursuant to this Section 2.6.2.6, *provided*, however, that the user of the right shall not make a priority call against any surface water right for the benefit of this right.

2.7 Economic Development Water.

2.7.1 Subject to Section 2.8, the Pueblos shall be allocated 525 AFY consumptive use for economic development uses or to offset interference or avoid impairment as required by this Agreement ("Economic Development Water"). Each Pueblo shall be allocated 131.25 AFY of Economic Development Water. The Pueblos of San Ildefonso and Nambé agree that in exchange for a pro rata distribution of the Pueblo of Pojoaque's share of the Fund they shall release their allocation of Economic Development Water to the Pueblo of Pojoaque, and the Pueblo of Tesuque agrees that in exchange for a pro rata distribution of Pojoaque's share of the Fund it shall release 7 AFY of its Economic Development Water to the Pueblo of Pojoaque, *provided* that the portion of the Fund described in Sections 615 and 617(c)(1)(A)(i) is, in total, no less than $8 million, and that such exchange and release is consistent with an agreement between the Pueblos of Nambé and Pojoaque. The Pueblos shall execute and the United States shall approve a Pueblo Economic Development Water agreement addressing the terms of allocation of the Economic Development Water as set forth herein.

2.7.2 The Economic Development water supply of 525 AFY shall be subject to the requirements of Section 2.5.3.

2.8 Pueblo Water Supply for Regional Water System

In order to satisfy the requirements of Sections 2.5 and 2.7 and to permit the provision of Alternative Water in accordance with Section 2.2.4, the Secretary shall secure the water supplies identified in Section 613 (a)(1) and (2) of the Act. The Pueblo water rights secured under this Section shall be held by the United States in trust for the Pueblos. The nonuse of the water supply secured by the Secretary for the Pueblos shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof.

2.8.1 The Secretary shall:

2.8.1.1 Acquire water rights to 302 AFY of Nambe reserved water described in section 2.6.2.

2.8.1.2 Acquire water rights to 1,141 AFY from the Top of the World water rights as described in Sections 2.7.3 and 3.3 of the Cost-Sharing and System Integration Agreement.

2.8.1.3 Enter into a contract with the Pueblos for 1,079 AFY in accordance with Section 11 of the San Juan Chama Project Act (Act of June 13, 1962 (76 Stat. 96, 97)) and Section 613(e) of the Settlement Act.

2.8.2 By application to the State Engineer, the Secretary shall seek approval to divert the water acquired and made available under Section 2.8.1 at the points of diversion for the Regional Water System consistent with this Agreement, the Act and the Cost-Sharing and System Integration Agreement. The Secretary, the County and the Pueblos shall request the New Mexico Interstate Stream Commission serve as a co-applicant in the transfer of the water rights described in Section 2.8.1.2 and Section 9.6.4. The Secretary, the County and the Pueblos shall cooperate in securing the transfer of the water described in Sections 2.8.1 and Section 9.6.4 to the points of diversion for the Regional Water System.

2.8.2.1 The issuance of permits by the State Engineer to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of at least 2,381 AFY by the Pueblos as part of the Regional Water System shall satisfy the requirements of Section 623(a)(2)(E) of the Act; provided, however, that the permits shall be free of any condition that materially adversely affects the ability of the Pueblos or the Regional Water Authority to divert or use the Pueblo water supply, including water rights acquired in addition to those described in Section 2.8.1.

2.8.2.2 For purposes of this Section and Section 623 (a)(2)(E) of the Settlement Act, the following permit conditions shall not constitute material adverse affects provided that the conditions do not result in a diminishment of the available water supply to less than 2,381 AFY of consumptive use in accordance with the provisions of Sections 2.2.4, 2.5 and 2.7:

2.8.2.2.1 a requirement that the permit may not be exercised to the detriment of existing water rights;

2.8.2.2.2 a requirement that the permit may not be exercised in a manner contrary to conservation of water within the state;

2.8.2.2.3 a requirement that the permit may not be exercised in a manner detrimental to the public welfare of the state;

2.8.2.2.4 Requirements for measurement and reporting of diversions acceptable to the State Engineer;

2.8.2.2.5 a requirement that the permittee utilize the highest and best technology available to ensure conservation of water to the maximum extent practical;

2.8.2.2.6 restrictions on the time or rate of diversion of the permitted water supply, or requirements for delivery of offset water;

2.8.2.2.7 a requirement that the amount of water approved for transfer, diversion and consumptive use at the permitted point of diversion shall not exceed the consumptive use amount less conveyance losses between the move-from and move-to locations;

2.8.2.2.8 a requirement that irrigation water rights appurtenant to move-from lands are severed from those lands and that they shall not be irrigated with water from any source without a separate permit approved by the State Engineer;

2.8.2.2.9 a requirement that a survey of the move-from lands from which the irrigation water rights are severed shall be filed with the State Engineer prior to any diversion of water at the move-to location;

2.8.2.2.10 a requirement that a water conservation plan be filed with the State Engineer;

2.8.2.2.11 a requirement that Proof of Application to Beneficial Use be filed with the State Engineer and request that a license be issued;

2.8.2.2.12 a requirement that the diversion of water under the permit comply with any applicable federal or state law, including any Biological Opinion prepared and issued pursuant to the Endangered Species Act (16 U.S.C. §§ 1531-1544, December 28, 1973, as amended 1976-1982, 1984 and 1988); and

2.8.2.2.13 a requirement that the diversion of water under the permit

comply with the Settlement Agreement, any rules promulgated pursuant to Section 5 of the Settlement Agreement, the Interim Administrative Order, the Cost-Sharing and System Integration Agreement, and the Final Decree.

2.8.2.2.14 None of the above enumerated general conditions concede or waive the right to challenge any more specific permit conditions regarding detriment to existing water rights, conservation of water, or public welfare as a material adverse effect.

2.8.2.3 The Pueblos, the County and the Secretary shall cooperate reasonably and in good faith to address any permit conditions to ensure the ability of the Pueblos to fully divert and consume at least 2,381 AFY as part of the water supply of the Regional Water System.

2.8.3 In the event that the water supply acquired and made available pursuant to section 2.8.1 for the Pueblos' use through the Regional Water System permitted by the State Engineer is less than 2,500 AFY but equal to or greater than 2,381 AFY of consumptive use, then the Operating Agreement required by Section 612 of the Act shall include provisions to ensure that (a) such reduction below 2,500 AFY shall not affect the right of the Pueblo of Pojoaque to obtain Alternative Water from the Regional Water System as provided by Section 2.2.4, and (b) the total diversion by the Regional Water Authority for the Pueblos' use does not exceed the total quantity permitted by the State Engineer.

2.8.4 Compliance with Sections 613 (a) through (f) of the Act shall satisfy any and all obligations of the Secretary to acquire or secure a water supply for the Pueblos pursuant to this Agreement.

2.8.5 Nothing in this Agreement or the Act prohibits the Pueblos from securing or acquiring additional water rights or rights to water for use through and in the Regional Water System to ensure that the Pueblos receive the full allocation of 2,500 AFY through the Regional Water System as provided for in this Agreement. To the extent any such additional water becomes available for use by the Pueblos through the Regional Water System, Sections 2.2.4, 2.5 and 2.7 shall govern its use. The Pueblos, the County, or the Regional Water Authority may apply to increase diversions using return flow credits for the Regional Water System based upon measured return flows to the stream system above the Otowi gage.

2.9 After-Acquired Pueblo lands.

Lands within the Pojoaque Basin acquired by the Pueblos, or by the United States in trust for the Pueblos, after the date when the Decree Court approves this Agreement shall have only those water rights decreed as appurtenant to those lands. The Pueblos, or the United States acting as trustee for the Pueblos, shall be entitled to exercise any state law water rights acquired with such lands, including any remedies or procedural rights provided by law to the

owner of such state law water rights. Such state law water rights shall be subject to Section 2.10.2.

2.10 General Provisions.

2.10.1 Consumptive use of the water supply provided to a Pueblo pursuant to Section 2.2 (Supplemental Pueblo Rights), Section 2.5 (Acquired Water), Section 2.6 (Reserved Water), and Section 2.7 (Economic Development Water) shall be in addition to consumptive use of the Pueblo First Priority Rights quantified in Section 2.1.

2.10.2 A Pueblo may acquire additional water rights over and above the quantity set forth in this Agreement in accordance with, and subject to, New Mexico law and regulation. Such rights shall not be subject to forfeiture or abandonment so long as title to the water right remains in the Pueblo or in the United States acting as trustee for the Pueblo, but shall be subject to priority administration in accordance with the state law priority of such rights, but only in accordance with this Agreement.

2.11 Summary.

The stipulated quantities of the Pueblos' rights to consumptively use water are summarized as follows:

Summary of Pueblo Rights†				
	Nambé	**Pojoaque**	**San Ildefonso**	**Tesuque**
Existing Basin Use	522	236	288	345
Future Basin Use	937	0	958	374
Supplemental Pueblo	0	475	0	0
Acquired Water	375	375	375	375
Reserved Water	302	0	4.82	0
Economic Development Water††	131.25	131.25	131.25	131.25

†This table is provided for summary purposes only and does not supersede any provision of this Agreement. All quantities are AFY of consumptive use.

††Subject to redistribution pursuant to Section 2.7 of this Agreement.

3. Non-Pueblo Water Rights.

3.1 Ground Water Rights.

3.1.1 Pre-Basin (pre-November 29, 1956) and Permitted Wells, Other Than Section 72-12-1Wells.

3.1.1.1 Priority: The priority for each pre-basin or permitted well shall be the priority adjudicated in the sub-file order for each such well.

3.1.1.2 Quantity: The quantity of the right for each pre-basin or permitted well shall be the quantity adjudicated in the sub-file order for each such well.

3.1.2 Section 72-12-1 Wells (Domestic and Commercial/Sanitary Wells Permitted Pursuant to Section 72-12-1, Including Post-Moratorium Wells).

3.1.2.1 Priority: The priority for each Section 72-12-1 well, including all wells subject to the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* adopted by the Decree Court on October 4, 1999 ("Post-1982 Well Agreement") shall be the priority adjudicated in the sub-file order for each such well, or the date of filing of the application to drill such well if priority is not adjudicated in a sub-file order.

3.1.2.2 Quantity: The quantity of the right for each Section 72-12-1 well, including all wells subject to the Post-1982 Well Agreement, shall be limited to the historic beneficial use from such well, *provided*, however, that in no event shall the total diversion from any such well exceed 3 AFY, and *provided further* that the State agrees, and the Settlement Parties will not oppose, to move the Court to presume that historic beneficial use from a well is .5 AFY per household, unless a greater historic beneficial use is shown or unless a more restrictive diversion limit applies pursuant to court order, covenant or ordinance.

3.1.3 Priority and quantification of Non-Pueblo wells shall not be subject to any *inter se* challenges by the Pueblos or by the United States acting as trustee for the Pueblos, except as provided by Section 2.9.

3.1.4 Permits For New Ground Water Points of Diversion. Subject to Section 5.7, with respect to Regional Water Authority ground water diversions, after the Enforcement Date of this Agreement, the State of New Mexico shall not issue any permit for a new ground water point of diversion in the Pojoaque Basin except on the condition that the diversion be metered and only as set forth below.

3.1.4.1 Change in Point of Diversion, Purpose and Place of Use for Domestic, Commercial or Industrial Uses. The State of New Mexico may issue such permits for new ground water points of diversion for domestic, commercial or industrial uses, *provided*:

3.1.4.1.1 Water rights within the Pojoaque Basin are purchased, leased or otherwise acquired and are transferred in accordance with applicable law and this Agreement to the new points of diversion;

3.1.4.1.2 The priority and quantity of any water right transferred to such new point of diversion shall be determined under state law and shall reflect reductions in quantity to account for the historic supply at the original surface point of diversion for the transferred or retired right;

3.1.4.1.3 Diversions permitted under this Section 3.1.4.1 shall cease from such new point of diversion and shall be connected to the County Water Utility (CWU) for water service as soon as it is available. The requirement to connect to the CWU pursuant to this section shall not be dependent on access to the Pojoaque Valley Water Utility Connection Fund.

3.1.4.1.4 Existing Mutual Domestic Water Consumer Associations ("MDWCA") or existing commercial users who transfer rights under Section 3.1.4.1 shall be required to cease the newly permitted diversions from the permitted new point of diversion and connect those uses to the CWU; *provided*, however, that such MDWCA or commercial user, respectively, may continue such new water uses from the permitted new point of diversion pursuant to an election under Section 3.1.7.2.4 or 3.1.7.2.5.

3.1.4.2 Change in Point of Diversion for Agricultural Uses. The State of New Mexico may issue permits to change the point of diversion of an agricultural use to ground water *provided*:

3.1.4.2.1 Water rights within the Pojoaque Basin are transferred to the new point of diversion;

3.1.4.2.2 The priority and quantity of any water right transferred to such new point of diversion shall be determined under state law and shall reflect reductions in quantity to account for the historic supply at the original surface point of diversion for the transferred or retired right; and

3.1.4.2.3 The water right shall be administered in priority as though still diverted from that water right's original surface point of diversion, such that, in the event of a priority call or other administrative action that would require that right to cease

diversions at its original surface point of diversion, the right at its newly permitted point of diversion shall also be required to cease diversions.

3.1.4.3 Supplemental Ground Water Points of Diversion. The State of New Mexico may issue permits to supplement existing points of diversion for an agricultural use from ground water, *provided*:

3.1.4.3.1 The total diversion from surface and any ground water to supplement the surface supply is limited to the historic supply of the surface water diversion being supplemented.

3.1.4.3.2 If the surface water diversion is permitted to continue and is not metered, the combined acreage served by the supplemented and supplemental points of diversion must be reduced by the percentage of deficiency in the historic surface water supply.

3.1.4.3.3 If all diversions are metered, the combined total of the metered diversions may not exceed the historic surface water diversion.

3.1.4.3.4 In the case of a ground water point of diversion used to supplement another ground water point of diversion, all diversions must be metered and the total diversion under the permit must be limited to the decreed amount of the right.

3.1.5 Replacement Well Permits for Section 72-12-1 Wells. Notwithstanding the restriction in Section 3.1.4, the State of New Mexico may issue replacement well permits, or permits to deepen or repair a well, to existing 72-12-1 well owners until such time as they are required to connect to the CWU pursuant to Sections 3.1.4.1.3, 3.1.7.2.1 or 3.1.7.2.3. The State may also issue such permits for wells allowed under Section 3.1.8.4. A Settlement Party who makes an election pursuant to Section 3.1.7.2.2, 3.1.7.2.3, 3.1.7.2.4 or 3.1.7.2.5, shall, as a prerequisite to obtaining a permit from the State Engineer, pay the CWU $1,000.00 for any permit to replace their wells. This fee shall be adjusted annually after the first year of the Enforcement Date of this Agreement in an amount not to exceed the percentage increase in the consumer price index for the Urban Wage Earners and Clerical Workers (CPI-W) for the 12 month period preceding the end of the previous year's third quarter as published by the U.S. Bureau of Labor Statistics. The proceeds from these payments shall be used to increase connections to the CWU by non-Pueblo water users.

3.1.6 Metering. Each well owner shall install a meter of the type described in the rules promulgated pursuant to Section 5.3 to measure the quantity of water diverted annually from such well.

3.1.7 Use of Wells and Protection from Enforcement and Administration of Priorities.

3.1.7.1 In General: Except for ground water diversions permitted under Section 3.1.4.1, a Settlement Party who is an owner of a water right from a well shall not be required to connect to the CWU water system and shall not be required to cease use of the well. Ground water diversions permitted under Section 3.1.4.1, shall be required to connect in accordance with that Section.

3.1.7.2 Freedom from Enforcement and Administration of Priorities Within the Pojoaque Basin: Notwithstanding Section 3.1.7.1, in order to be protected from the enforcement and administration of priorities within the Pojoaque Basin, a Settlement Party who is an owner of a water right from a well must elect either:

3.1.7.2.1 To Connect to CWU: Subject to Section 3.1.7.3 and upon written notice from the CWU, to connect to the CWU for domestic water service as soon as such service is available, transfer any Section 72-12-1 well permit to the CWU, and discontinue the use of such well for domestic purposes upon connection to the CWU. Those making this election shall be permitted to continue to use such well in accordance with Section 3.1.7.4 until they are able to connect to the CWU and obtain service. Only those electing to connect under this Section shall have access to the Pojoaque Valley Water Utility Connection Fund established pursuant to Section 3.1.7.3; or

3.1.7.2.2 To Keep Well with Reduced Use: To continue the use of such well for domestic purposes in perpetuity with no obligation to connect to the CWU *provided*, however, that the quantity of water diverted annually from such well for domestic use shall be limited or reduced in accordance with Section 3.1.7.4; or

3.1.7.2.3 To Connect to CWU upon Transfer of Property: To continue the use of water from such well for domestic purposes until ownership of the property is transferred *provided*, however, that the quantity of water diverted annually from such well for domestic use shall be limited or reduced in accordance with Section 3.1.7.4; and *further provided* that upon transfer of ownership, the owner of the property shall connect to the CWU upon receiving notice from the CWU that service is available, transfer any Section 72-12-1 well permit to the CWU, and discontinue the use of water from such well for domestic purposes upon connection to the CWU. Those making the election under this Section shall notify the CWU in writing upon transfer of the property. Service shall not be considered available under this section if the well user's cost to connect to the CWU is greater

than $7,000 adjusted annually after the year 2006 in an amount not to exceed the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12 month period preceding the end of the previous year's third quarter, as published by the United States Bureau of Labor Statistics.

3.1.7.2.4 Commercial or Industrial Uses: Must elect either to : a) discontinue well use and connect to the CWU as soon as such service is available to serve all existing water uses and reasonably expected uses under permits or other authorities; b) continue to exercise its authorized uses in perpetuity with no obligation to connect to the CWU *provided* the annual quantity of water diverted from the well(s) shall be reduced in an amount equal to the reductions described in Section 3.1.7.4.2.5; or c) continue to exercise any part or all of its uses without reduction or obligation to connect to the CWU subject to the commercial or industrial user first entering into a separate written agreement with the Pueblos and the United States outlining terms and conditions for such continued use.

3.1.7.2.5 Mutual Domestic Water Consumer Associations: Each of the four currently existing Mutual Domestic Water Consumer Associations ("MDWCA") in the Pojoaque Basin shall have the right, but not the obligation, to become a party to this Agreement by making the following election: a) to discontinue well use and connect to the CWU as soon as such service is available to serve all existing water uses and reasonably expected uses under the MDWCA's permits or other authorities; b) to continue to exercise authorized uses in perpetuity with no obligation to connect to the CWU where the MDWCA reduces its existing annual use by 15% and limits the future diversion of unexercised rights to serve additional customer hook-ups to no more than 85% of authorized use; *provided* that the MDWCA shall not be required by this Agreement to reduce its annual consumptive use below a quantity equal to 0.5 AFY times the number of customer hook-ups served by the MDWCA; or c) to continue to exercise all or any part of its authorized uses without reduction or obligation to connect to the CWU subject to first entering into a separate written agreement with the Pueblos and the United States setting forth the terms, provisions and conditions of such continued use. A MDWCA that does not make such an election shall be considered a non-settling party.

3.1.7.3 Connection Fund: For those electing under Section 3.1.7.2.1 to connect to the CWU for water service when such service is available, the State shall establish the Pojoaque Valley Water Utility Connection Fund described in Section 9.4.1.3. The State Engineer in

consultation with the CWU shall promulgate rules respecting the administration of the Water Connection Fund. Any entitlement to payment from the fund pursuant to this Agreement and such rules shall be subject to appropriations by the New Mexico State Legislature. No well user making the election to connect under Section 3.1.7.2.1 shall be required to cease use of such well and connect to the CWU unless all connection expenses are paid by the Pojoaque Valley Water Utility Connection Fund or other third party.

3.1.7.4 Uses Allowed For Different Elections Under 3.1.7.2.

3.1.7.4.1 Election to Connect to CWU: For an owner of a water right from a well who elects under Sections 3.1.7.2.1 or 3.1.7.2.4 to connect to the CWU for water service as soon as such service is available, the following uses shall be protected from enforcement and administration of priorities:

3.1.7.4.1.1. Pre-Basin Wells: Shall be permitted to continue to use water from such well in an amount equal to the historic beneficial use from that well but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.1.2. Section 72-12-1 wells permitted prior to January 13, 1983: 3.0 AFY or historic beneficial use, whichever is less, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.1.3. Wells exempted from the Court's January 13, 1983 Order because the well user, or the well user's predecessor, entered into the Post-1982 Well Agreement: 0.7 AFY or historic beneficial use, whichever is less, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.1.4. Wells subject to permit restrictions imposed under the Court's January 13, 1983 Order: 0.7 AFY or historic beneficial use, whichever is less, but in no event will use be required to be less than 0.5 AFY. Such use may be for indoor and outdoor use combined.

3.1.7.4.2 Election to Keep Well and Reduce Use: For an owner of a water right from a well who elects under Sections 3.1.7.2.2 or 3.1.7.2.4 to continue the use of water from such well in perpetuity with no obligation to connect to the CWU, the following uses shall be protected from enforcement or administration of priorities within the Pojoaque Basin:

3.1.7.4.2.1. Pre-Basin Wells: Shall be permitted to continue to use water from such well in an amount equal to the historical beneficial use with a 15% reduction, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.2.2. Section 72-12-1 wells permitted prior to January 13, 1983: 3.0 AFY or historic beneficial use, whichever is less, with a 15% reduction, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.2.3. Wells exempted from the Court's January 13, 1983 Order because the well user, or the well user's predecessor, entered into the Post-1982 Well Agreement: 0.7 AFY or historic beneficial use, whichever is less. Use in excess of 0.5 AFY is subject to enforcement and administration of priorities.

3.1.7.4.2.4. Wells subject to permit restrictions imposed under the Court's January 13, 1983 Order: Indoor use only or up to 0.3 AFY for indoor and outdoor use combined.

3.1.7.4.2.5. Commercial/industrial uses: Unless the subject of a separate agreement in accordance with Section 3.1.7.2.4, wells for commercial/industrial uses shall be entitled to continue to use water from such wells in an amount equal to the authorized use as of January 1, 2005 with a 15% reduction.

3.1.7.4.3 Election to Connect Upon Transfer of the Property: For an owner of a water right from a well who elects under Section 3.1.7.2.3 to continue the use of water from such well for domestic purposes until ownership of the property is transferred, the following uses from such well shall be protected from enforcement or administration of priorities within the Pojoaque basin until (a) ownership of the property being served by such well is transferred and (b) water service for that owner is available from the CWU:

3.1.7.4.3.1. Pre-Basin Wells: Until required to connect as set forth above, pre-basin well users shall be permitted to continue to use water from such well in an amount equal to the historical beneficial use with a 10% reduction, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.3.2. Section 72-12-1 wells permitted prior to January 13, 1983: Until required to connect as set forth above, 3.0 AFY or historic beneficial use, whichever is less, with a 10% reduction, but in no event will use be required to be less than 0.5 AFY;

3.1.7.4.3.3. Wells exempted from the Court's January 13, 1983 Order because the well user, or the well user's predecessor, entered into the Post-1982 Well Agreement: Until required to connect as set forth above, 0.7 AFY or historic beneficial use, whichever is less. Use in excess of 0.5 AFY is not protected from enforcement and administration of priorities.

3.1.7.4.3.4. Wells subject to permit restrictions imposed under the Court's January 13, 1983 Order: Until required to connect as set forth above, Indoor use only or up to 0.3 AFY for indoor and outdoor use combined.

3.1.7.4.4 Below is a table summarizing the various elections available to Settlement Parties under Section 3.1.7.2 and the water use not subject to the administration or enforcement of priorities thereunder. Where there is more than one household connected to a well, the quantities set forth below are "per household," not per well.

Category of well	Use allowed from well until required to connect when service from CWU available	Use allowed from well in perpetuity	Use allowed from well until required to connect upon transfer of property
Pre-Basin Wells (prior to 1956)	Historic Beneficial Use, but in no event will use be required to be less than .5afy Access to Water Utility Connection Fund No water cost, but pay service cost	Historic Beneficial Use with 15% reduction, but in no event will use be required to be less than .5afy	Historic Beneficial Use with 10% reduction, but in no event will use be required to be less than .5 afy No Access to Water Utility Connection Fund

Category of well	Use allowed from well until required to connect when service from CWU available	Use allowed from well in perpetuity	Use allowed from well until required to connect upon transfer of property
1956-1982 Wells	3.0 afy or Historic Beneficial Use, whichever is less, but in no event will use be required to be less than .5 afy Access to Water Utility Connection Fund No water cost, but pay service cost	Historic Beneficial Use with 15% reduction, but in no event will use be required to be less than .5 afy	Historic Beneficial Use with 10 % reduction, but in no event will use be required to be less than .5 afy No Access to Water Utility Connection Fund
Post-1982 Wells – Signed Post-1982 Well agreement	.7 afy or Historic Beneficial Use, whichever is less, but in no event will use be required to be less than .5 afy Access to Water Utility Connection Fund No water cost, but pay service cost	.7 afy or Historic Beneficial Use, whichever is less. Use in excess of 0.5 AFY is subject to Priority Enforcement.	.7 afy or Historic Beneficial Use, whichever is less., Use in excess of 0.5 AFY is subject to Priority Enforcement No Access to Water Utility Connection Fund

Category of well	Use allowed from well until required to connect when service from CWU available	Use allowed from well in perpetuity	Use allowed from well until required to connect upon transfer of property
Post-1982 Wells - Did Not Sign Post-1982 Well Agreement	.7 afy or Historic Beneficial Use, whichever is less, but in no event will use be required to be less than .5 afy Water Utility Connection Fund No water cost, but pay service cost	Indoor Use only, or up to .3afy for indoor & outdoor use combined	Indoor Use Only, or up to .3 afy for indoor & outdoor use combined No Access to Water Utility Connection Fund

3.1.7.4.5 Filings with the Decree Court. The State Engineer agrees to file with the Decree Court the following documents in order to facilitate the efficient implementation of this Agreement: (a) all elections made pursuant to Section 3.1.7.2; (b) determinations of Historic Beneficial Use; and (c) certification of the metering of individual wells in compliance with Sections 3.1.6 and 5.3.

3.1.7.5 Agricultural Uses: For agricultural uses, no owner of a water right from a pre-basin well or well permitted pursuant to authorities other than Section 72-12-1 prior to the Enforcement Date of this Agreement shall be required to connect to the CWU or make an election under 3.1.7.2, in order to have the protection provided in Section 4.2. The State Engineer shall not issue a permit to repair, deepen, or replace such a well unless the well is being metered and operated in compliance with any conditions of the applicable permit. The State Engineer shall annually file with the Decree Court a report describing any failure to meter or any non-compliance with permit conditions. In addition to Section 4.2 protection, in order to be exempt from enforcement and administration of priorities within the Pojoaque Basin, the owner of a water right for agricultural purposes from a well shall: 1) make an election for the agricultural use of the well as if it were a domestic use described in Section 3.1.7.2; and 2) for those making such an election under either Section 3.1.7.2.2 or 3.1.7.2.3, the owner shall first demonstrate to the Water Master that the applicable corresponding reductions in water use described in Sections 3.1.7.4.2 or 3.1.7.4.3 has occurred. Water Master rules shall be developed in

accordance with Section 5.3 to implement this section. For those making an election that corresponds to Sections 3.1.7.2.2 or 3.1.7.2.3, the corresponding replacement well fee conditions set forth in Section 3.1.5 shall apply.

3.1.7.6 Livestock Use: The owner of a water right from a pre-basin or permitted 72-12-1 well shall be entitled to continue to use such well for livestock purposes without reduction to the extent authorized or permitted, *provided* that such livestock use shall be separately metered and reported. Such use shall not be subject to the administration and enforcement of priorities within the Pojoaque Basin.

3.1.7.7 Protection from Enforcement of Administration of Priorities. An owner of a water right from a well who makes an election under Section 3.1.7.2 and who is in compliance with the water usage allowed for that election under Sections 3.1.7.2.5 or 3.1.7.4, shall not be subject to enforcement or administration of priorities within the Pojoaque Basin to the extent of such usage. Non-compliance with the amounts of reduction required by Sections 3.1.7.2.5 or 3.1.7.4 shall be addressed through rules promulgated pursuant to Section 5.3.

3.1.8 Transfer Of Water Right And Point Of Diversion For Those Connecting to the CWU.

3.1.8.1 Upon connection to the CWU lines and the discontinuance of domestic use from a Section 72-12-1 well under the terms of this Section, the owner of the well shall convey title to and shall transfer that water right to the CWU for use in providing water to its customers within the Pojoaque Basin. The owner of a pre-basin or permitted right, other than one permitted under Section 72-12-1, may convey title to and transfer that water right to the CWU for use in providing water to its customers within the Pojoaque Basin. In exchange for a conveyance and transfer pursuant to this Section 3.1.8.1, the transferor, as well as any successors acquiring title to the property being served, shall not be billed by the CWU for the cost to the CWU of its acquisition of water but such transferor or successor shall be billed for the cost of service.

3.1.8.2 Where a well owner connects to the CWU and transfers the water right to the CWU, such right shall not be subject to or benefit from priority administration within the Pojoaque Basin

3.1.8.3 For purposes of transfer to the CWU, beneficial use for domestic purposes from Section 72-12-1 wells shall be the quantity, per household, recognized pursuant to Section 3.1.2.2, which quantity may be fully consumptively used by the CWU.

3.1.8.4 Use of Original Domestic Well After Connection to the CWU

3.1.8.4.1 By Reason of Failure of Supply. In the event that the CWU becomes unable to deliver water to a transferor through no fault of the transferor, the transferor may, at no cost, reacquire from the CWU title to the previously conveyed water right and recommence diversion thereunder at the original ground water point of diversion. In such event the State of New Mexico shall, consistent with state law, issue such permit(s) as are necessary to enable such transferor or successors to recommence such diversions or drill a replacement well for the purpose of diverting water to satisfy such water right in the amount approved for transfer and conveyance pursuant to Section 3.1.8.3. In the event the CWU is again able to deliver water to the transferor, the transferor shall reconvey their right and recommence use from the pipeline.

3.1.8.4.2 By Reason of Shortage of Supply. In the event of a shortage of supply from the Regional Water System, the parties agree that the supply to each Distribution System shall be reduced on a pro-rata basis, in proportion to each respective system's most current annual use.

3.1.9 Non-responding Owners of Water Rights from Well(s). If an owner of a water right from a well does not file an objection to this Agreement with the Court or become a Settlement Party by making an election under Section 3.1.7.2, such owner shall be deemed a non- responding owner. The Pueblos, United States and State shall move the Decree Court requesting issuance of Orders to Show Cause as to why each non-responding owner should not be required to comply with Section 3.1.7.2.1 of this Agreement and otherwise be bound by and receive the benefits of this Agreement and thereafter be deemed to be a Settlement Party. The proposed Order to Show Cause shall include the ability of the non-responding owner to make an election under Section 3.1.7.2 notwithstanding the previous failure to do so.

3.2 Surface Water Rights.

3.2.1 Priority. The priority of all sub-file surface rights shall be the priority, other than time immemorial or "first priority," agreed to between the State and the owner of the right. In the event the priority of the right cannot be agreed to between the State and the owner of the right, the priority shall be the priority adjudicated between the State and the owner of the right. Subsequent to the priority determination as between the State and the owners of all sub-file surface rights, the Decree Court shall conduct an *inter-se* phase for the filing and determination of *inter-se* challenges by other parties.

3.2.2 Quantity. The quantity of each surface right shall be the quantity adjudicated for that sub-file.

3.3 Change in Point of Diversion, Purpose or Place of Use – Section 4 Protection upon Change.

3.3.1 Current Use: The "current use" of a water right is the calculated average yearly use of the right for the five-year period preceding a change in the point of diversion, purpose or place of use of that right.

3.3.2 Ground Water Rights.

3.3.2.1 Pre-basin or Permitted, Other than under Section 72-12-1, Ground Water Rights. The point of diversion, purpose or place of use of a pre-basin or permitted right, other than one permitted under Section 72-12-1, may be changed in accordance with state law and the terms of this Agreement. Upon any such change, however, Section 4 protection shall no longer apply unless the point of diversion, purpose or place of use is changed pursuant to Section 3.1.4. Replacing, repairing, or deepening of such a well shall not be considered a change in point of diversion, purpose or place of use.

3.3.2.2 Section 72-12-1 Rights. The point of diversion, purpose or place of use of Section 72-12-1 ground water rights may only be changed in accordance with Section 3.1.8, above.

3.3.3 Surface Water Rights.

3.3.3.1 Change in Point of Diversion or Place of Use of Current Surface Rights. Section 4 protection, and the non-interference provisions described in Sections 2.4.4.2, 2.4.4.3, and 2.4.4.4 shall apply to a change in the point of diversion to another surface source within the same Tributary or change in the place of use of a surface right, so long as any return flows from the use remain within the same Tributary, but only to the extent of the current use of the right, not to exceed the quantity of the right permitted under state law. The priority of the transferred right shall be determined under state law.

3.3.3.2 Other Changes in Point of Diversion, Purpose or Place of Use of Surface Rights. Except as otherwise provided in Section 3.1.4, any changes in the point of diversion, purpose or place of use of Non-Pueblo surface rights, other than those governed under the provisions set forth above, shall be governed under state law and shall not be entitled to Section 4 protection, and the non-interference provisions described in Sections 2.3.3, 2.4.4.2, 2.4.4.3, and 2.4.4.4. The priority of the transferred right shall be determined under state law.

3.4 Federal Agency Rights.

The United States' water rights on its own behalf were adjudicated in the Decree Court's January 24, 1986 Memorandum Opinion and Order, which was certified as a final judgment on April 29, 1986, and through the July 11, 1991 Special Master's Report and Recommended Order, adopted by the Decree Court on November 5, 2003. The United States may obtain additional water rights on its own behalf consistent with this Agreement and applicable law.

3.5 Municipal and County Offset Rights.

Wet water will be provided to offset surface depletion effects on the Rio Tesuque and Rio Nambé-Pojoaque of City of Santa Fe and County of Santa Fe out of Pojoaque Basin groundwater pumping. The location(s), timing, and amounts of these deliveries shall be addressed in the Cost Sharing and System Integration Agreement and shall be determined by the State, City, County, and the Pueblos; *provided*, however, that offset water on the Rio Tesuque must be provided to a location on Tesuque Pueblo at a time acceptable to Tesuque Pueblo. Nothing in this wet water offset mechanism shall preclude the use for offset purposes of existing City and County offset rights, including the County's 4.49 AFY water rights under subfile 20.10.

4. Exceptions to Priority Enforcement for the Pueblos' First Priority Rights

Under the administration of the water rights subject to this Agreement, or in the event of a priority call, the first or time immemorial priority of the Pueblos' First Priority Rights set forth in Section 2.1 shall be enforced against Non-Pueblo water rights in accordance with this Section.

4.1 Pueblo Existing Basin Use Rights Entitled to Priority Enforcement.

4.1.1 The first or time immemorial priority of the Pueblo Existing Basin Use Rights set forth in Section 2.3 shall be enforced against all Non-Pueblo water rights, except as set forth in Sections 4.1.2, 4.4, and 7.2.

4.1.2 Limitations on Priority Enforcement of Tesuque Pueblo's Existing Basin Use Rights; Notwithstanding Section 2.3.3, and subject to the conditions set forth below, enforcement of the first or time immemorial priority of Tesuque Pueblo's Existing Basin Use Rights for irrigation purposes on the surface flows of the Rio Tesuque against the water rights of upstream users entitled to protection under this Section 4 shall be limited to the diversion amount equal to that calculated for the irrigation of 71 acres at the Pueblo, (71 acres x 4.65 AFA/Y=330.15 diversion). The conditions for this limitation are:

4.1.2.1 The establishment of baseline irrigated acreage for the Rio de Tesuque Acequias (or ditches) for purposes of protection under this Section 4 from the Pueblo to account for: (a) acreage on each of the

ditches for which the point of diversion of the water right has been transferred from that ditch; and (b) acreage in adjudicated sub-file orders on the ditch in which the Rio de Tesuque Acequias (or ditches) and Tesuque Pueblo agree has been "built upon" since the sub-file orders were entered; and

4.1.2.2 The installation of measuring devices so that the amount of water diverted into the Rio de Tesuque Acequias (or ditches) can be monitored and limited so as not to exceed that needed for irrigation of the baseline irrigated acreage under that ditch.

4.2 Existing Non-Pueblo Rights Entitled to Protection from Priority Enforcement of the Pueblo Future Basin Use Rights.

4.2.1 The first or time immemorial priority of the Pueblo Future Basin Use Rights set forth in Section 2.4 shall not be enforced against a Non-Pueblo water right subject to this Agreement, except as provided in Section 4.2.2.

4.2.2 The protection provided by Section 4.2.1 shall not apply if a Non-Pueblo water right:

4.2.2.1 Is not beneficially used for more than five consecutive years after the Enforcement Date of this Agreement, unless the owner of the water right demonstrates that (1) such non-use is due to circumstances beyond the control of the water right owner and (2) that the water could not be placed to beneficial use by the owner's diligent efforts; or

4.2.2.2 Is transferred to a new point of diversion or new place or purpose of use, except as provided in Sections 3.1.4.1, 3.1.8, and 3.3.3.1.

4.2.3 Water rights retired or transferred to offset the effects on the Tributaries caused by ground water diversions shall be deemed to be beneficially used for purposes of this Section 4.2.

4.3 Limitation on Priority Call Upon Loss of Protection Against Priority Enforcement

To the extent a Non-Pueblo water right loses protection against priority enforcement pursuant to Section 4.2.2, the owner of that right may not assert a priority call for the portion of the right for which protection has been lost against another water right still entitled to protection under Section 4.2, including any such water rights which may be junior to the right that has lost protection.

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;

4.4.2 A well user whose rights are permitted under Section 3.1.4.1 until that use is required to connect to the CWU under that Section.

4.5 Priority Call Defense

In the event a Pueblo shall make a priority call to enforce its Existing Basin Use Rights, it shall be an affirmative defense, in whole or in part, to such priority call or related priority enforcement action, that the divertible supply of surface water, which would otherwise be available for diversion to the Pueblo, has been reduced as a result of the diversion of ground water on Pueblo of Pojoaque lands to satisfy Supplemental Pueblo Rights for the Pueblo of Pojoaque.

5. Administration

5.1 General Principles.

5.1.1 The Pojoaque Basin is fully appropriated and there shall be no new appropriations in the basin after the Enforcement Date of this Agreement.

5.1.2 In accordance with the terms of this Agreement, water rights within the basin may be transferred for the purpose of providing the right to divert water from a new well in accordance with Section 3.1.4.1 and the other terms of this Agreement. The State Engineer may issue permits for replacement wells in accordance with Section 3.1.5.

5.1.3 For agricultural uses, the diversion amount shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the surface source of water, 3.35 AFY per acre delivered at the farm headgate or well head, or a consumptive irrigation requirement of 1.84 AFY per acre, whichever is less.

5.1.4 For non-agricultural uses, consumptive use shall be deemed equal to the amount of diversion unless a return flow plan is approved consistent with this Agreement.

5.2 State Engineer.

Pursuant to his statutory authorities, the State Engineer shall administer the Non-Pueblo water rights adjudicated by the Decree Court as set forth in this Agreement and the Final Decree. Additionally, separate and apart from his duties under State law, the State Engineer also agrees to perform the functions of Water Master set forth in this Section 5.2 and in Section 5.6. Performance by the State Engineer of these Water Master functions shall be solely in accordance with, and limited by, this Agreement, the Final Decree, and further orders of the Decree Court.

5.2.1 General Provisions.

5.2.1.1 The State Engineer has the authority, pursuant to state law, to curtail non-Pueblo surface and groundwater diversions and shall exercise his authority as necessary in order to ensure compliance with the terms of, and the delivery of water in accordance with, this Agreement, the Interim Administrative Order, and the Final Decree.

5.2.1.2 The Water Master shall have the authority to curtail Pueblo surface and groundwater diversion in order to ensure compliance with the terms of, and the delivery of water in accordance with, this Agreement, the Interim Administrative Order, and the Final Decree.

5.2.2 Annual Report

The State Engineer shall, by March 1 of each calendar year, file with the Decree Court a report on all administrative actions taken under or required by this Agreement in the previous calendar year.

5.3 Rules.

In consultation with counsel for the other Settlement Parties, counsel for the State Engineer, the United States, and the Pueblos shall agree on a set of rules to be proposed for adoption by the State Engineer to govern his responsibilities in his various capacities set forth in Section 5.2 of this Agreement and the Interim Administrative Order. The rules shall include the provisions of Section 5 of the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* adopted in the Aamodt case by Order of the Court dated October 4, 1999 (Docket No. 5549). The State Engineer shall then promulgate the proposed rules pursuant to NMSA 1978 § 72-2-8, prior to entry of the Final Decree.

5.3.1 The rules adopted by the State Engineer shall, at a minimum, provide for:

5.3.1.1 The identification and reporting of irrigated acreage which may lose Section 4 protection;

5.3.1.2 The metering, monitoring, and reporting of Pueblo and non-Pueblo wells, including scheduling of meter installation, calibration, and operation;

5.3.1.3 The measurement of diversions into Pueblo and non-Pueblo ditches and monitoring of all Pueblo and non-Pueblo surface water uses;

5.3.1.4 Maintenance of a record of all administrative and judicial changes to decreed water rights;

5.3.1.5 Maintenance of an official list of owners of record for all Pojoaque Basin water rights;

5.3.1.6 Maintenance of records of the elections made by Settling Well Owners pursuant to Section 3.1.7 and subsequent compliance with such elections;

5.3.1.7 The provision of notice under the Interim Administrative Order and this Section to the Water Master and other water users who may be affected by administrative or judicial actions related to water rights, *provided* that to the extent practical, such rules shall be consistent with statutory provisions for providing notice of any change to a water right;

5.3.1.8 Establishment of procedures for implementing his responsibilities under this Agreement and the Interim Administrative Order to determine surface water offset requirements, impairment of ground water uses, and the impact on surface and ground water supplies of administrative actions;

5.3.1.9 Establishment of procedures in accordance with Section 3.1.4.3 to ensure that new supplemental wells do not result in an increase in the amount of water diverted from the source of supply that is to be supplemented; and

5.3.1.10 Establishment of procedures to administer existing supplemental wells consistent with their decreed rights;

5.3.1.11 Establishment of replacement well procedures in accordance with Section 3.1.5;

5.3.1.12 Establishment of penalties for violations of the rules;

5.3.1.13 Determination of Historical Beneficial Use for purposes of Section 3.1.7.4; and

5.3.1.14 Informal dispute resolution procedures, where appropriate.

5.4 Administration of State Law Water Rights Within Pueblo Lands.

State law water rights on Pueblo Lands, when subsequently transferred within that Pueblo's lands, shall be subject to administration in accordance with Section 5.6 and such rights shall not be subject to abandonment or forfeiture for so long as title to the water rights remains in the Pueblo.

5.5 Impairment Fund.

The State shall create and administer in accordance with this Agreement a fund to be used to mitigate impairment to Non-Pueblo groundwater rights as a result of new Pueblo water use. The fund may be used to provide an alternative water supply. The State Engineer shall promulgate rules for the administration of the fund. Any entitlement to payment from the fund pursuant to this Agreement and such rules shall be subject to appropriations by the New Mexico State Legislature. The unavailability of funds under this Section shall not affect the right of the Pueblos to utilize their water rights as provided in this Agreement.

5.6 Administration of Pueblo Rights.

Each Pueblo shall administer that Pueblo's First Priority Rights, its Federal Reserved Rights, and water rights created under state law but approved for use on that Pueblo's Lands, in accordance with this Agreement, the Interim Administrative Order, the Final Decree, and the rules promulgated pursuant to this Agreement.

5.6.1 The Water Master's Duties under Pueblo Administration.

5.6.1.1 Pursuant to Sections 2.3.4, 2.4.4.2.2, 2.4.4.3.2, and 2.4.4.4.2, the Water Master shall determine whether a new or changed Pueblo use of its First Priority Rights will interfere with Non-Pueblo surface water rights entitled to Section 4 protection, and the amount of any offsets required.

5.6.1.2 Pursuant to Sections 2.3.4, 2.4.4.3.2, and 2.4.4.4.2, the Water Master shall determine if a new or changed Pueblo use of its First Priority Rights interferes with Pueblo surface water rights and the amount of any offsets required.

5.6.1.3 Nothing in Sections 5.6.1.1 or 5.6.1.2 shall affect the right of the Pueblo to make such new or changed use of its First Priority Rights in accordance with the Agreement, *provided* that any offsets required by the Agreement are made.

5.6.1.4 For all applications made to him pursuant to Section 5.6.3.1, the Water Master shall determine the hydrological effect on Non-Pueblo and Pueblo surface and ground water rights resulting from new or changed uses of Pueblo First Priority Rights, including a determination of: a) interference with Non-Pueblo surface water rights entitled to Section 4 protection, and the amount of any offsets required; and b) interference with Pueblo surface water rights and the amount of any offsets required.

5.6.1.5 The Water Master shall carry out his obligations under this Section 5.6.1 in accordance with the rules promulgated pursuant to Section 5.3.

5.6.1.6 The Water Master's duties with respect to transfer of Pueblo-owned state law water rights within the lands of a Pueblo shall include evaluation of any impairment or interference with water rights and preparation of a written report thereon. Any transfer of state law water rights within the lands of a Pueblo shall be conditioned so that no impairment of, or interference with, water rights shall occur.

5.6.1.7 Any determination of projected hydrologic effects of transfers of state law water rights within a Pueblo shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment.

5.6.2 The State Engineer's Duties Under Pueblo Administration.

5.6.2.1 New or Changed Uses of a Pueblo's First Priority Rights on that Pueblo's Lands.

5.6.2.1.1 Nothing in this Section 5.6.2.1 shall affect the right of a Pueblo to make a new or changed use of its First Priority Rights on its lands in accordance with this Agreement.

5.6.2.1.2 The State Engineer shall determine whether a new or changed use of a Pueblo First Priority Right on its lands pursuant to Sections 2.3.3, 2.4.3, 2.4.4.2, or 2.4.4.4 causes impairment to a Non-Pueblo ground water right.

5.6.2.1.3 The State Engineer shall further determine the extent to which any Non-Pueblo ground water user whose right is impaired shall be entitled to compensation from the Impairment Fund established pursuant to Section 5.5.

5.6.3 New or Changed Uses of Pueblo First Priority Rights Off that Pueblo's Lands. A Pueblo that seeks to use its First Priority Rights, or to transfer a portion of such rights to a use off of that Pueblo's lands pursuant to Sections 2.3.4, 2.4.4.3, or 2.4.4.4 shall proceed as follows:

5.6.3.1 If the new or changed use will be on the lands of another Pueblo, the Pueblo owning the right shall file an application with the Water Master, who shall approve the application, conditioned by any offsets required by this Agreement, unless the proposed use would impair Pueblo or Non-Pueblo ground water rights.

5.6.3.2 If the new or changed use will not be on Pueblo lands, the Pueblo owning the right shall file an application with the State Engineer. The State and the other Settlement Parties agree that approval of such applications is not detrimental to the public welfare or contrary to the conservation of water in the State, *provided* that such approval is conditioned by any offsets required by this Agreement and the proposed use does not impair Pueblo or Non-Pueblo ground water rights.

5.6.3.3 Any determination of impairment shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment.

5.7 Regional Water Authority Diversions.

Any state law water rights, out of basin federal law rights, or contractual rights to the use of water transferred for diversion by the Regional Water Authority shall be transferred and administered at the point of diversion in accordance with state law and regulation. Such water may be diverted by the Regional Water Authority from the Rio Grande or from groundwater sources

within the Pojoaque Basin only in compliance with state law and regulation. In operating and managing well fields within the Pojoaque Basin that are part of the Regional Water System, the Regional Water Authority shall not impair Pueblo or non-Pueblo water rights and shall offset interference with water rights subject to this Agreement, including any resulting increased tributary stream depletions caused by pumping of Regional Water Authority wells and any interference resulting from the Regional Water Authority's provision of Offset Water. Any provision of Offset Water shall not constitute use of a consumptive right. Any determination of projected hydrologic effects of transfers of water rights for diversion by the Regional Water Authority shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment. In acting on any application to implement the provisions of this Section, the State Engineer shall consider that the purpose and intent of this Agreement, and of the Cost Sharing and System Integration Agreement, are to provide a firm supply of water for all uses served by the Regional Water Authority.

5.8 Development of Model and Historic Supply Study for Administration.

5.8.1 Within one year of the Enforcement Date of this Agreement, the State and the United States shall develop a set of administrative tools, including a model or models for determining the hydrological effects of administrative actions governed by this Agreement. As part of this task, the State and the United States shall develop a strategy for implementing a more comprehensive model to replace the interim models now in place.

5.8.2 Within eight months of the Enforcement Date of this Agreement, the State Engineer, in consultation with the United States, shall complete a new study of the historic supply of surface water for all of the tributaries within the Pojoaque Basin and shall formulate a process whereby this study will be jointly updated by these parties.

5.9 Modification of Administration Provisions.

The Settlement Parties have negotiated the provisions of Section 5 in a good faith attempt to avoid future disputes about administration of water rights in the Pojoaque Basin, but recognize that experience gained through implementation, and presently unanticipated considerations of law, science, or sound judicial case management, may require those provisions to be amended. Accordingly, the Settlement Parties agree that the remaining provisions of this Agreement shall remain in full force and effect notwithstanding a declaration by any court that Section 5, or any provision thereof, is invalid or contrary to law. The Settlement Parties further agree to meet to negotiate recommendations to the Decree Court for modifications to Section 5 within 90 days of any such judicial declaration invalidating a provision of Section 5. The Settlement Parties further agree to meet to consider modifications to Section 5 at any time prior to the Certification of Satisfaction of Conditions pursuant to Section 9.9, and to recommend any such modifications to the Decree Court.

6. *Waivers and Release of Claims*

6.1 Dismissal of *Inter se* Challenges.

All Settlement Parties shall dismiss all pending *inter se* challenges against other Settlement Parties with prejudice and shall be barred from asserting further *inter se* challenges against such Settlement Parties.

6.2 Waiver and Release of Claims by the Local Parties.

Except as otherwise provided in this Agreement, the Final Decree, or the Act, the Local Parties agree to waive and release:

6.2.1 All claims that they asserted, or could have asserted, in the Aamodt case;

6.2.2 All claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Enforcement Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown.

6.2.3 The right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and

6.2.4 Their defenses in the Aamodt case to the claims previously asserted therein by the Pueblos and the United States.

6.3 Waiver and Release of Claims by the Pueblos and the United States Acting in its Capacity as Trustee for the Pueblos.

The Waivers and Releases executed by each of the Pueblos and the United States pursuant to section 624(a) of the Act are attached hereto as Appendices A, B, C, and D and are incorporated and made a part hereof as though fully set forth herein.

6.4 Waiver and Release of Claims by the Pueblos Against the United States.

The Waivers and Releases executed by each of the Pueblos pursuant to section 624(b) of the Act are attached hereto as Appendices A, B, C, and D and are incorporated and made a part hereof as though fully set forth herein.

6.5 Effectiveness of Waivers.

6.5.1 Nothing herein acknowledges the existence or validity of any claims that are being waived and released.

6.5.2 The waivers and releases from all Settlement Parties will become effective as of the date that the Secretary publishes the notice required by subsection 623(a)(1) of the Act.

6.6 Reservation of Rights and Retention of Claims.

6.6.1 Notwithstanding the waivers and releases described in Sections 6.2, 6.3, and 6.4, and except as otherwise provided in this Agreement, all Settlement Parties shall retain:

6.6.1.1 All claims for water rights or injuries to water rights arising out of activities occurring outside the Pojoaque Basin except insofar as such claims are specifically addressed in the Cost Sharing and System Integration Agreement executed pursuant to Section 9.1;

6.6.1.2 All claims for enforcement of this Agreement, the Final Decree, or the Act through such legal and equitable remedies as may be available in any court of competent jurisdiction;

6.6.1.3 To the extent not inconsistent with the Final Decree and this Agreement, all rights to use and protect water rights acquired pursuant to state law;

6.6.1.4 All claims relating to activities affecting the quality of water;

6.6.1.5 All rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement; and

6.6.1.6 Priority administration initiated for the protection of water rights subject to this Agreement shall be governed by the Final Decree and by the terms of this Agreement as between the water rights holders. Nothing in this Agreement shall be construed to limit the authority of the State Engineer to administer water rights by priority on the Rio Grande, or in the Pojoaque Basin, for the protection of senior water rights outside the Pojoaque Basin, or to ensure compliance with the Rio Grande Compact.

6.6.2 Notwithstanding any provision in this Agreement, the Pueblos and the United States reserve and retain all rights, claims remedies, privileges, immunities, and powers described in subsection 624(c) of the Act.

6.6.3 Nothing in this Agreement affects the United States' ability to take actions described in subsection 624(d) of the Act.

6.6.4 Nothing in this Agreement confers jurisdiction on any State court:

6.6.4.1 to interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or

6.6.4.2 to conduct judicial review of Federal agency action.

6.6.5 Nothing in this Agreement affects the land and water rights, claims, or entitlements to water of any Indian tribe, pueblo, or community other than the Pueblos.

7. Miscellaneous

7.1 Nambé Falls Dam and Reservoir.

7.1.1 The Pueblo of Nambé, the Pueblo of San Ildefonso and the Pueblo of Pojoaque may use water from the Nambe Falls Dam and Reservoir in accordance with the contract with PVID dated November 2, 1972 (Pueblos/PVID Contract). Pursuant to Section 3 of the Pueblos/PVID Contract, as of the Enforcement Date of this Agreement, the allocation of available Unit water shall be adjusted and remain as follows: Nambé, 20%; San Ildefonso, 18%; Pojoaque, 2%; and PVID, 60%.

7.1.2 Pursuant to Section 1(a)-(c) of the Pueblos/PVID Contract, each of those Pueblos may use its allocation of available Unit water from the Nambé Falls Dam and Reservoir for the surface water offsets required under this Agreement or for any other purpose authorized by this Agreement.

7.1.3 Concurrent with the adjustment of the annual allocation of water pursuant to Section 7.1.2, the care, operation and maintenance costs for the operation of the Nambé Falls Dam and Reservoir shall be allocated on the same percentage basis.

7.1.4 If in any water year, the United States does not use the full amount of the San Juan - Chama Project annual water supply allocated to Nambé Falls Dam and Reservoir for the replacement of the depletion of flows on the Rio Grande caused by the storage and use of water from Nambé Falls Dam and Reservoir, the unused allocation of the San Juan - Chama annual water supply shall be assigned to the PVID and the United States. The United States shall be entitled to 50% of any such water supply to provide a portion of the water supply described in Sections 2.5 and 2.7. PVID shall be entitled to subcontract 50% of any such water supply to (1) the CWU to meet water demands within the Pojoaque valley, or (2) to the United States for use in providing a portion of the water supply described in Sections 2.5 and 2.7, provided, however, that nothing herein shall affect the total annual amount of water available under the terms of the October 30, 1972 Repayment Contract between the United States and the PVID.

7.1.5 This Agreement does not affect any other provisions of the agreements among the United States, PVID, and the Pueblos.

7.2 Priority Enforcement and Acquired and Economic Development Water.

The Pueblos shall not use Acquired Water, provided for by Section 2.5, or Economic Development Water, provided for by Section 2.7, in a manner so as to increase Pueblo surface water diversions for which a Pueblo may make a priority call against non-Pueblo water users entitled to Section 4 protection.

7.3 Export of Pojoaque Basin Water Prohibited.

No surface or ground water physically diverted within the Pojoaque Basin may be delivered for use outside of the Pojoaque Basin, *provided* that, the Pueblos may use such water within their exterior boundaries as recognized and confirmed by patent issued under the Act of December 22, 1858, 11 Stat. 374, as amended, or on Pueblo land owned by or held in trust for the Pueblo of San Ildefonso. Diversions from the Rio Grande shall not be considered to be diversions within the Pojoaque Basin.

8. Enforcement Date and Effectiveness of the Agreement

8.1 Enforcement Date

This Agreement shall become enforceable beginning on the date on which the Decree Court enters (1) a partial final decree pursuant to subsection 623(a)(2)(G) of the Act and (2) an Interim Administrative Order consistent with this Agreement.

8.2 Effectiveness

This Agreement shall no longer be effective if (1) the conditions precedent described in subsection 623(a)(2) of the Act have not been fulfilled by September 15, 2017, in accordance with subsection 623(a) and (b) of the Act or (2) the Final Decree is voided as provided in subsection 10.2. The date by which the conditions precedent described in subsection 623(a)(2) must be fulfilled may be extended pursuant to Section 623(g) of the Act.

9. Conditions

9.1 Cost-Sharing and System Integration Agreement.

The United States, the State acting through the State Engineer, each of the Pueblos, the County of Santa Fe, and the City of Santa Fe shall execute the Cost-Sharing and System Integration Agreement. In the event of a conflict between this Agreement and the Cost-Sharing and System Integration Agreement, this Agreement shall control.

9.2 Pueblo Agreements.

9.2.1 The United States and the Pueblo of Nambé shall execute a purchase agreement for the Pueblo of Nambé's water right described in Section 613(a)(1)(A) of the Act, and Section 2.6.2.

9.2.2 The Pueblo Economic Development Water agreement referred to in Section 2.7 shall be executed and approved.

9.3 Federal Appropriations.

Prior to entry of the Final Decree, all federal funds authorized by the Act must have been appropriated, except for the portion of such funding required under Section 617 (a)(1) of the Act.

9.4 State Legislation and Funding.

9.4.1 Prior to the entry of the Final Decree, the State must, by legislation, regulation or administrative order:

9.4.1.1 Confirm, if the constituting documents of the RWA so provide, that the RWA is not subject to the New Mexico Procurement Code, §§ 13-1-28 through 13-1-199, NMSA 1978, New Mexico Audit Act, §§ 12-6-1 through 12-6-14, NMSA 1978, or any successor to either such law, or to any law governing or relating to public officers and employees, and authorize the RWA to adopt procurement, audit, and personnel policies;

9.4.1.2 Authorize the retirement and transfer of existing, and limitation on further, Non-Pueblo wells within the Pojoaque Basin as required by Section 3;

9.4.1.3 Authorize the establishment of a Pojoaque Valley Water Utility Connection Fund pursuant to Section 3.1.7.3 in the amount specified in the Cost-Sharing and System Integration Agreement, which fund shall be used to connect Non-Pueblo well users to the CWU;

9.4.1.4 Authorize the establishment of an Impairment Fund pursuant to Section 5.5 in the amount specified in the Cost-Sharing and System Integration Agreement; and

9.4.1.5 Exempt leases of Pueblo water rights for use outside Pueblo lands from the term duration limitation in NMSA 1978, § 72-6-3 (2003).

9.4.2 State Appropriation.

Prior to the entry of the Final Decree, the State shall have executed the contributed funds agreement required by Section 3.1.6 of the Cost Share and System Integration Agreement, for the purpose of satisfying the requirements of Section 623(a)(2)(F) of the Act.

9.5 Formation of Regional Water Authority.

The Regional Water Authority to be known as the Pojoaque Basin Regional Water Authority shall have been established by the County and the Pueblos in accordance with the provisions of this Agreement and the Cost-

Sharing and System Integration Agreement, with authorization to commence operations.

9.6 Water Supply.

9.6.1 The Regional Water System shall be managed and operated consistent with this Agreement for the purpose of ensuring a reliable firm supply of water to all users of the Regional Water System.

9.6.2 All water conveyed through the Regional Water System shall meet applicable federal and state requirements for drinking water.

9.6.3 The Board of Commissioners of Santa Fe County shall authorize the CWU to receive water from the Pojoaque Basin Water Authority and to provide service within the Pojoaque Basin.

9.6.4 The County has acquired 611 AFY of water rights appurtenant to the Top of the World Farm. The County, in conjunction with the Secretary shall apply, pursuant to Section 2.8.2, for a State Engineer permit to transfer the rights to the Regional Water System for the benefit of future Non-Pueblo water utility customers in the Pojoaque Basin consistent with NMSA 1978, § 72-1-9 (2003).The County may temporarily use these water rights for other purposes until they are needed for the purposes described in this paragraph. In the event additional diversion rights are needed to provide water for the CWU, then, subject to appropriations, the capacity of the CWU, and its policies and procedures, the County will secure sufficient rights to meet the demand of the CWU.

9.7 Pueblo Water Supply.

Prior to the entry of the Final Decree, the United States in cooperation with the State of New Mexico, and in consultation with the Pueblos, shall have secured the water supply pursuant to Section 2.8.

9.8 Adoption of Rules

Prior to the entry of the Final Decree, the State Engineer shall have adopted rules to govern his responsibilities under this Agreement and the Interim Administrative Order that are in substantial conformity with the agreed proposed rules described in Section 5.3.

9.9 Certification of Satisfaction of Conditions.

9.9.1 Prior to entry of the Final Decree, counsel for the United States, the State of New Mexico acting through the State Engineer, each of the Pueblos, the County of Santa Fe, and the City of Santa Fe, and active counsel for Non-Pueblo Settlement Parties shall file a Certification of Satisfaction of Conditions with the Decree Court, stating that the conditions described in Sections 9.1 through 9.5 have been met in a manner acceptable to each of the certifying parties.

9.9.2 In conjunction with such certification, the same Settlement Parties shall jointly move the Decree Court to enter a Final Decree that shall be consistent with this Agreement and the Certification of Satisfaction of Conditions. Finally, the Settlement Parties shall request the Decree Court to give appropriate notice and hold the necessary hearings to consider and rule on any objections to the proposed Final Decree.

10. Contingencies

10.1 Entry of Decree.

If the Final Decree has not been entered by September 15, 2017, in accordance with subsection 623(a)(2)(H) of the Act, the Settlement Parties shall not be bound by this Agreement, including any waiver and release of claims provided pursuant to Section 6 of this Agreement. The date by which the Final Decree must be entered may be extended if the parties to the Cost-Sharing and System Integration Agreement agree that such an extension is reasonably necessary.

10.2 Voiding of Final Decree

The Final Decree may be voided pursuant to subsection 623(e) of the Act. Subsection 623(f) of the Act shall apply if the Final Decree is void under subsection 623(e)(5) of the Act, and any waivers and releases of claims provided pursuant to Section 6.2 of this Agreement shall no longer be effective.

10.3 Contingent on Appropriation of Funds.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this title (including any such obligation under this Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111-11 or the "Emergency Fund for Indian Safety and Health" established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

11. Amendment

No addition to or waiver or modification of any provision of this Agreement shall be binding unless in a writing specifically referencing this Agreement and signed by a duly authorized representative of each Settlement Party. Whenever this Agreement provides for the agreement of one or more Settlement Parties, any such agreement shall be in writing, specifically refer to this Agreement, and be signed by duly authorized representatives of each agreeing Settlement Party.

12. Signatures

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

FOR THE UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF THE INTERIOR

Ken Salazar

Ken Salazar
Secretary

Date: 3-14-13

FOR THE PUEBLO OF NAMBÉ:

Phillip A. Perez
Governor

Date: 3/14/2013

FOR THE PUEBLO OF TESUQUE:

Mark Mitchell

Date: 03.14.13

Mark Mitchell
Governor

FOR THE PUEBLO OF POJOAQUE:

George Rivera
Governor

Date: 3/14/13

FOR THE PUEBLO OF SAN ILDEFONSO:

Terry Aguilar
Governor

Date: 3/14/13

FOR THE COUNTY OF SANTA FE:

Kathy Holian

Date: 3-14-2013

Kathy Holian
Chair, Board of County Commissioners

Approved:

Date: 3-14-2013

Stephen C. Ross
County Attorney

Attest:

Geraldine Salazar

Date: 3/14/2013

Geraldine Salazar
County Clerk

FOR THE CITY OF SANTA FE:

David Coss
Mayor

Date: 3-14-13

Approved as to form:

Geno Zamora
City Attorney

Date: 3/14/13

Attest:

Yolanda Y. Vigil
Clerk

Date: 3-14-13

FOR THE STATE OF NEW MEXICO:

Susana Martinez
Governor

Date: 3-27-13

Scott A. Verhines, P.E.
State Engineer

Date: 3-14-13

Gary K. King
Attorney General

Date: 3/14/13

D.L. Sanders, Chief Counsel
John Stroud
Edward C. Bagley
Special Assistant Attorneys General
Office of the State Engineer

Date: 14 March 2013

WAIVERS AND RELEASES OF CLAIMS BY THE PUEBLO OF NAMBÉ AND THE UNITED STATES.

In return for recognition of the Pueblo of Nambé's water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and the Aamodt Litigation Settlement Act, Public Law 111-291, title VI, 124 Stat. 3134 (2010) (Act), the Pueblo of Nambé, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo waive and release —

(1) all claims for water rights in the Pojoaque Basin that the Pueblo of Nambé, or the United States acting in its capacity as trustee for the Pueblo of Nambé, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Nambé, or the United States acting in its capacity as trustee for the Pueblo of Nambé, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of

Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

UNITED STATES OF AMERICA

By: Ken Salazar Date: 3/14/13

Ken Salazar
Secretary
U.S. Department of the Interior

FOR THE PUEBLO OF NAMBÉ

By: Phillip A. Perez Date: 3/14/2013

Phillip A. Perez
Governor
Pueblo of Nambé

WAIVER AND RELEASE OF CLAIMS BY THE PUEBLO OF NAMBÉ AGAINST THE UNITED STATES

The Pueblo of Nambé, on behalf of itself and its members, waive and release:

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO OF NAMBÉ

Phillip A. Perez Date: 3/14/2013

Phillip A. Perez
Governor
Pueblo of Nambé

WAIVERS AND RELEASES OF CLAIMS BY THE PUEBLO OF TESUQUE AND THE UNITED STATES.

In return for recognition of the Pueblo of Tesuque's water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and the Aamodt Litigation Settlement Act, Public Law 111-291, title VI, 124 Stat. 3134 (2010) (Act), the Pueblo of Tesuque, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo waive and release —

(1) all claims for water rights in the Pojoaque Basin that the Pueblo of Tesuque, or the United States acting in its capacity as trustee for the Pueblo of Tesuque, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Tesuque, or the United States acting in its capacity as trustee for the Pueblo of Tesuque, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin, provided that this waiver shall not be effective by the Pueblo of Tesuque unless there is a water resources agreement executed between the Pueblo of Tesuque and the City of Santa Fe; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

UNITED STATES OF AMERICA

By: Ken Salazar Date: 3/14/13

Ken Salazar
Secretary
U.S. Department of the Interior

FOR THE PUEBLO OF TESUQUE

By: Mark Mitchell Date: 03.14.13

Mark Mitchell
Governor
Pueblo of Tesuque

WAIVER AND RELEASE OF CLAIMS BY THE PUEBLO OF TESUQUE AGAINST THE UNITED STATES

The Pueblo of Tesuque, on behalf of itself and its members, waive and release:

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO OF TESUQUE

Mark Mitchell Date: 05.14.13

Mark Mitchell
Governor
Pueblo of Tesuque

WAIVERS AND RELEASES OF CLAIMS BY THE PUEBLO OF POJOAQUE AND THE UNITED STATES

In return for recognition of the Pueblo of Pojoaque's water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and the Aamodt Litigation Settlement Act, Public Law 111-291, title VI, 124 Stat. 3134 (2010) (Act), the Pueblo of Pojoaque, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo waive and release —

(1) all claims for water rights in the Pojoaque Basin that the Pueblo of Pojoaque, or the United States acting in its capacity as trustee for the Pueblo of Pojoaque, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Pojoaque, or the United States acting in its capacity as trustee for the Pueblo of Pojoaque, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of

Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

UNITED STATES OF AMERICA

By: Ken Salazar Date: 3/14/13

Ken Salazar
Secretary
U.S. Department of the Interior

FOR THE PUEBLO OF POJOAQUE

By: Date: 3/14/13

George Rivera
Governor
Pueblo of Pojoaque

WAIVER AND RELEASE OF CLAIMS BY THE PUEBLO OF POJOAQUE AGAINST THE UNITED STATES

The Pueblo of Pojoaque, on behalf of itself and its members, waive and release:

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO OF POJOAQUE

Date: 3/14/13

George Rivera
Governor
Pueblo of Pojoaque

WAIVERS AND RELEASES OF CLAIMS BY THE PUEBLO DE SAN ILDEFONSO AND THE UNITED STATES

In return for recognition of the Pueblo de San Ildefonso's water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and the Aamodt Litigation Settlement Act, Public Law 111-291, title VI, 124 Stat. 3134 (2010) (Act), the Pueblo de San Ildefonso, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo waive and release —

(1) all claims for water rights in the Pojoaque Basin that the Pueblo de San Ildefonso, or the United States acting in its capacity as trustee for the Pueblo de San Ildefonso, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo de San Ildefonso, or the United States acting in its capacity as trustee for the Pueblo de San Ildefonso, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of

Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

UNITED STATES OF AMERICA

By: Ken Salazar Date: 3/14/13

Ken Salazar
Secretary
U.S. Department of the Interior

FOR THE PUEBLO DE SAN ILDEFONSO

By: Date: 3/14/13

Terry Aguilar
Governor
Pueblo of San Ildefonso

WAIVER AND RELEASE OF CLAIMS BY THE PUEBLO DE SAN ILDEFONSO AGAINST THE UNITED STATES

The Pueblo de San Ildefonso, on behalf of itself and its members, waive and release:

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO DE SAN ILDEFONSO

Date: 3/14/15

Terry Aguilar
Governor
Pueblo of San Ildefonso