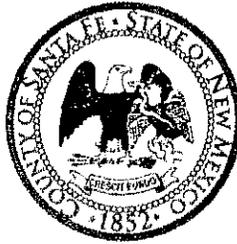


Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *March 22, 2012*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

acc 4/11/12

ITEM AND ISSUE: *BCC Meeting April 10, 2012*

RESOLUTION AUTHORIZING AMENDMENTS TO THE AAMODT SETTLEMENT AGREEMENT, AUTHORIZING EXECUTION OF A COST-SHARING AND A COOPERATIVE AGREEMENT, AND DIRECTING COUNTY STAFF TO PREPARE ANALYSIS FOR THE DESIGN OF COUNTY WATER SYSTEM THAT WILL SERVE THE POJOAQUE BASIN, AS WELL AS INFORMING COUNTY RESIDENTS OF THE ANTICIPATED AVAILABILITY AND CONDITIONS OF WATER UTILITY SERVICE THAT WILL BE PROVIDED AS PART OF THE AAMODT WATER RIGHTS SETTLEMENT WITH THE PUEBLOS OF TESUQUE, POJOAQUE, SAN ILDEFONSO AND NAMBE, IN THE CASE OF NEW MEXICO EX REL. STATE ENGINEER V. AAMODT.

BACKGROUND AND SUMMARY:

On April 25, 2006, the Board of County Commissioners of Santa Fe County approved the Settlement Agreement in the case of New Mexico ex rel. State Engineer v. Aamodt, N0. 66cv06639 MV/LCS-ACE (D.N.M.). This agreement will ultimately settle the disputes related to water rights among the State of New Mexico, Santa Fe County, the City of Santa Fe, and the Pueblos of Nambe, San Ildefonso, Pojoaque, and Tesuque. The agreement provides for the construction of a regional water system in the Pojoaque Basin based on surface water diverted from the Rio Grande. The water system will include diversion, treatment, and distribution, and will stretch from the western edge of San Ildefonso Pueblo to the southern edge of Tesuque Pueblo and perhaps beyond. Most of the necessary capital funding and a portion of the operational funding come from the federal government, and the US Bureau of Reclamation (USBR) is the execution agent. The agreement also provides for water service to non-Pueblo residents of the Pojoaque Basin using up to 1,500 acre-feet of additional water diversion, treatment, and distribution capacity that could be built into the system.

Congress approved the 2006 Settlement Agreement in 2010 with the passage of the Aamodt Litigation Settlement Act (copy attached), but the original Agreement needed amendment to conform to the federal law. Further, the 2010 Act authorized the US Secretary of the Interior to execute a Cost-Sharing Agreement with the County and also authorized the US Bureau of Indian Affairs to acquire 1,141 acre-feet of water rights from the County under a Cooperative Agreement.

The new regional system will serve Pueblo and non-Pueblo customers with infrastructure that will run through Pueblo and non-Pueblo lands. Some of the lines will be designated as Pueblo-owned and they will not be available for direct connection by non-Pueblo users, and vice-versa. Any non-Pueblo customers will be County clients, and even though as executive agent the USBR will be designing the entire system, the County has the responsibility to determine the size of the non-Pueblo customer base so that the USBR can appropriately size the facilities.

The subject Resolution both approves and authorizes the Board chair to sign the Settlement Agreement Amendments, the Cost-Sharing Agreement, and the Cooperative Agreement. Further, the Resolution lays out a data collection effort to collect and analyze the information that the USBR designers will use to determine the extent and size of the new system, and directs County staff to accomplish the tasks while keeping the non-Pueblo public in the Pojoaque Basin informed on the data collection.

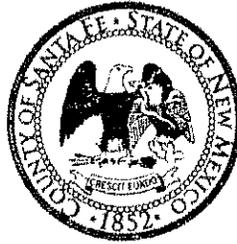
ACTION REQUESTED:

Adopt subject Resolution, and allow staff to begin their work immediately.

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *March 30, 2012*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

MC 4/1/12

ITEM AND ISSUE: *BCC Meeting April 10, 2012*

SUPPLEMENTAL MATERIAL IN SUPPORT OF RESOLUTION FOR APPROVAL OF THE AMENDED AAMODT SETTLEMENT AGREEMENT AND RELATED AGREEMENTS

Item Number	Item Name	Description
1	Settlement Overview	Brief timeline and overview of the Settlement terms.
2	Cost-Sharing Agreement	Agreement among US Department of the Interior, the State of New Mexico, the Pueblos, the City, and the County of Santa Fe describing the cost sharing and the design, construction, and operation and maintenance of the Regional Water System, including roles and responsibilities of the various parties. Required by the Settlement Act.
3	Cooperative Agreement	Agreement between Santa Fe County and the US Bureau of Indian Affairs wherein the BIA purchases 1,141 acre-feet/year of water rights from the County for \$5.4M. These water rights are currently attached to Top of the World ranch.
4	Summary List of Significant Changes	A brief list of the significant changes to the 2006 Settlement Agreement to conform to the 2010 Settlement Act.
5	Amended Settlement Agreement	The text of the amended Settlement Agreement. This copy is a "track changes" copy, clearly showing all the changes made.
6	Settlement Act	The text of the 2010 federal legislation approving the Aamodt Settlement Agreement and the reason that the 2006 Agreement required amendment.

Aamodt Settlement Overview

Timeline

1966 – Suit filed to adjudicate Pojoaque stream system.

2001 – Federal court orders settlement discussions.

2004 – PBWA began participating.

2006 – Settlement Agreement – signed by State, County, City and four Pueblos. Resolves claims of the four Pueblos and provides protections for non-Pueblo water users.

2009 – Congress enacts legislation providing a source of funding for the Aamodt water rights settlement.

2010 – Congress enacts the Aamodt Litigation Settlement Act.

Overview of Settlement

- Settlement resolves longstanding disputes and 44 year litigation over water in the basin involving four Pueblos and several thousand non-Pueblo parties.
- It calls for construction of regional water system serving both Pueblo and non-Pueblo residents:
 - up to 2,500 acre-feet for Pueblos
 - up to 1,500 acre-feet for Non-Pueblos.
- It provides for quantification of Pueblo water rights, reliability of supply, and economic development for the Pueblos.
- It addresses impacts on aquifer and surface flows of future water development both in the basin and affecting the basin.
- It protects existing agricultural uses from priority enforcement of entire Pueblo right.
- It protects existing non-Pueblo domestic wells.

Cost Sharing – Project Construction (2006 \$)

Federal	106,400,000
State	49,500,000
County	<u>7,400,000</u>
	163,300,000

County System Sizing and Operating Costs

Maximum: 1,500 acre-feet; Operating Costs: To be determined by the County

<u>Source of Supply</u>	<u>Move-from afy</u>	<u>Move-to afy</u>	<u>County</u>	<u>Pueblos</u>
Domestic well transfers	750	750	750	
Santa Fe County TOW	1,752	1,577	550	1,027
Nambe Pueblo transfer	302	302		302
San Juan-Chama	<u>1,079</u>	<u>1,052</u>	<u> </u>	<u>1,052</u>
	3,883	3,681	1,300	2,381

COST-SHARING AND SYSTEM INTEGRATION AGREEMENT

This Cost-Sharing and System Integration Agreement is made and entered into by and among the United States, acting through the Secretary of the Interior, the State of New Mexico, acting through the State Engineer, the Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of Tesuque, the City of Santa Fe and the County of Santa Fe (“the Parties”). This agreement is the August 27, 2009 Cost Sharing and System Integration Agreement referenced in Section 602(5) of the Aamodt Litigation Settlement Act (Act) as amended to conform thereto pursuant to Section 621(a) and Section 621(b) of the Act.

NOW, THEREFORE, in consideration of mutual and dependent covenants and conditions contained herein, and in the Settlement Agreement, which each Party acknowledges inures to its respective benefit, the Parties agree as follows:

1. **DEFINITIONS** The following terms shall have the following meanings when capitalized in this Cost Sharing Agreement:
 - 1.1 “Acre-Feet” or AFY” means acre-feet of water per year.
 - 1.2 “Act” or “Settlement Act” or “Aamodt Litigation Settlement Act” means the Indian Water Rights Settlement Act, Pub. L. No. 111-291, tit. VI, §§ 601 – 626, 124 Stat. 3064, 3134-56 (2010).
 - 1.3 “Cost Sharing Agreement” means this Cost-Sharing and System Integration Agreement.
 - 1.4 “County” means Santa Fe County, New Mexico.
 - 1.5 “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.
 - 1.6 County Water Utility or “CWU” means the water utility organized by the County to:
 - 1.6.1 receive water distributed by the Regional Water Authority;
 - 1.6.2 provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin; and
 - 1.6.3 carry out any other activities in accordance with the Act and other applicable law.

March 29, 2012

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- 1.7 “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” and dated September 2008 and any amendments thereto including any amendments necessary to conform to the Act.
- 1.8 “Operating Agreement” means the agreement between the Pueblos and the County executed under Section 612(a) of the Act.
- 1.9 “Pojoaque Basin”
 - 1.9.1 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:
 - 1.9.1.1 the Rio Pojoaque; or
 - 1.9.1.2 the 2 unnamed arroyos immediately south; and
 - 1.9.1.3 2 arroyos (including the Arroyo Alamo) that are immediately north of the confluence of the Rio Pojoaque and the Rio Grande.
 - 1.9.1.4 INCLUSION.—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).
- 1.10 “Pueblo” means each of the Pueblos of Nambé, Pojoaque, San Ildefonso, or Tesuque.
- 1.11 “Pueblos” means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque.
- 1.12 “Pueblo land” means any real property that is:
 - 1.12.1 held by the United States in trust for a Pueblo within the Pojoaque Basin
 - 1.12.1.1 owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or
 - 1.12.1.2 acquired by a Pueblo on or after the date on which a court approves the Settlement Agreement, if the real property is located:
 - 1.12.1.2.1 within the exterior boundaries of the Pueblo, as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or
 - 1.12.1.2.2 within the exterior boundaries of any territory set aside for the Pueblo by law, executive order, or court decree;
 - 1.12.2 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 a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

March 29, 2012

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1.12.3 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.

1.13 “Pueblo Water Facility”

1.13.1 IN GENERAL.—The term “Pueblo Water Facility” means:

1.13.1.1 a portion of the Regional Water System that serves only water customers on Pueblo land; and

1.13.1.2 portions of a Pueblo water system in existence on the date of enactment of the Act that serve water customers on non-Pueblo land, also in existence on the date of enactment of the Act, or their successors, that are

1.13.1.2.1 depicted in the final project design, as modified by the drawings reflecting the completed Regional Water System; and

1.13.1.2.2 described in the Operating Agreement.

1.13.2 INCLUSIONS.—The term “Pueblo Water Facility” includes:

1.13.2.1 the barrier dam and infiltration project on the Rio Pojoaque described in the Engineering Report; and

1.13.2.2 the Tesuque Pueblo infiltration pond described in the Engineering Report.

March 29, 2012

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- 1.14 “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.
- 1.15 “Regional Water System”
The term “Regional Water System” means the Regional Water System as defined in section 602(18) of the Act.
- 1.16 “Secretary” means the Secretary of the Interior.
- 1.17 “Settlement Agreement” means the agreement among the State, the Pueblos, the United States, the County, and the City dated January 19, 2006, and signed by all of the government parties to the Settlement Agreement (other than the United States) on May 3, 2006, as amended in conformity with the Act.

2. REGIONAL WATER SYSTEM

2.1 Planning and Construction

- 2.1.1 Subject to the other terms and conditions of this Cost Sharing Agreement and the Act, the Parties agree to fund and the United States agrees to plan, design and construct the Regional Water System.
- 2.1.2 The following shall be given the highest priority for construction: the portion of the Regional Water System consisting of the surface water diversion, treatment and transmission facilities at San Ildefonso Pueblo, the Pueblo Water Facilities at San Ildefonso Pueblo, including the barrier dam and infiltration project on the Rio Pojoaque, and that part of the Regional Water System providing 475 AFY of water to the Pueblo of Pojoaque.
- 2.1.3 The Regional Water System shall be designed and constructed in conformity with the requirements of Section 611(a) of the Act. The Parties shall not be required to expend construction funds if a record of decision, after compliance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (“NEPA”), would require an alternative that does not conform to the Act.
- 2.1.4 The Parties agree to complete planning for, and obtain necessary approvals for, the Regional Water System.
- 2.1.5 After completion of construction of the Regional Water System by the United States, members of the Regional Water Authority may construct such further infrastructure at their own expense as may be necessary to fully utilize water delivered by the Regional Water System.
- 2.1.6 Nothing in this Cost Sharing Agreement affects the outcome of any analysis conducted by the Secretary or any other Federal official under NEPA.

March 29, 2012

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2.2 Well Locations

2.2.1 The Parties shall cooperate in locating any wells that are part of the Regional Water System.

2.2.2 The Bureau of Reclamation, or its contractor, shall conduct additional field testing, study, and modeling related to the locations of any wells prior to the preparation of an environmental impact statement or environmental assessment for the Regional Water System. Such testing, study and modeling shall address, among other things, the yield of potential wells and the suitability of the proposed re-injection process with the underlying localized aquifer and an analysis of the impacts of the proposed wells on Pueblo and non-Pueblo water uses.

2.2.3 Any environmental impact statement or environmental assessment addressing the locations of any wells required for the Regional Water System shall assess the impact of such locations on both Pueblo and non-Pueblo lands and water uses.

2.2.4 Prior to final design of the Regional Water System, the Bureau of Reclamation shall consult with the Regional Water Authority, or the County and the Pueblos, if the Regional Water Authority is not yet formed, in determining whether the proposed well sites are adequate for their intended uses and purposes.

2.2.5 The location of any well on Pueblo lands shall be further subject to the provisions of Sections 2.2.5.1 through 2.2.5.3.

2.2.5.1 The Secretary shall conduct government to government consultation with the Pueblos throughout the well location process. Such consultation shall be initiated prior to the field testing, study and modeling described in section 2.2.2 and shall continue during the development of the required environmental compliance documents until a final record of decision is issued with regard to the location of the wells. Throughout the consultation process, the Secretary shall preserve confidentiality regarding potential sites that are integral to long-standing traditional cultural practices at a Pueblo, where the location of the well site itself possesses historic, cultural, or archeological value ("HCA site") regardless of the value or existence of any formal structure at the location and would be culturally inappropriate to publicize.

2.2.5.2 No well may be located on Pueblo lands without the consent of the Pueblo. In addition to the requirements of Section 5.7 of the Settlement Agreement, the location and operation of the well fields shall not interfere with (1) HCA sites identified through government-to-government consultation between the Secretary and each Pueblo; (2) existing, or reasonably anticipated future uses of Pueblo land, including, among other things, uses for traditional

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cultural practices; or (3) uses of water by a Pueblo in accordance with the Settlement Agreement.

2.2.5.3 In the event a well is to be located on Pueblo lands, the Secretary shall negotiate and enter into an agreement with the affected Pueblo governing the construction of and access to said well field. The operation of the well field shall be addressed and governed by the Operating Agreement which shall also address access to the well field and jurisdictional issues.

2.3 Easements and Rights of Way Easements, including rights of way for the benefit and use of the Regional Water Authority, the CWU and the Pueblo Water Facilities, shall be acquired consistent with the Act. The Parties agree that:

2.3.1 The United States shall obtain easements and rights of way across non-Pueblo land for so long as required for construction, use, operation, maintenance, repair and replacement of the Regional Water System. The County shall acquire such rights of way for any subsequent CWU infrastructure construction across non-Pueblo land to deliver water to CWU customers. All easements and rights of way may be used for wastewater purposes, provided the right of way is not increased in width or changed in location due to the use for wastewater purposes.

2.3.2 The United States shall obtain easements and rights of way across Pueblo land as required for construction, use, operation, maintenance, repair and replacement of the Regional Water System. Each Pueblo agrees to consent to the grant of such easements and rights of way by the Secretary to the United States pursuant to the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. 323-328), and 25 C.F.R. Section 169. The term of each easement and right of way shall begin on the date the easement and right of way is granted by the Secretary and consented to by the Pueblo and shall continue as long as it is used for the purposes set forth in this Section 2.3.2. In consideration for the funding of the Aamodt Settlement Pueblos' Fund described in Section 617(c)(1)(B) of the Act, each Pueblo agrees to consent to the United States' grants of easements and rights of way for the System, at no cost. Each Pueblo also agrees that the grants of easements and rights of way for the System may be used for wastewater purposes at no additional cost, provided the easement or right of way is not increased in width or changed in location due to such use. For the purposes of determining the easements necessary for the well fields located on Pueblo lands, such easements shall be obtained in compliance with Section 2.2.

2.3.3 To the extent the United States, State or County owns the land or any interest therein that may be used for the Regional Water System, each agrees to grant easements or rights of way, at no cost, for so long as required for the construction, use, operation, maintenance, repair and replacement of the Regional Water System, and each agrees that the grants of easements or rights of way for the Regional Water System, at no cost, may be used for wastewater

March 29, 2012

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purposes, provided the right of way is not increased in width or changed in location due to the use for wastewater purposes.

- 2.4 Conveyance of Regional Water System In accordance with the Act, the United States shall convey the Regional Water System as follows:
- 2.4.1 That portion of the Pueblo Water Facilities that is located within each respective Pueblo's lands, including easements and rights of way therefor, to each Pueblo. No Pueblo shall transfer ownership of its part of the Pueblo Water Facilities unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.
- 2.4.2 The County Distribution System, including easements and rights of way therefor, to the County Water Utility. The County shall not transfer ownership of the County Distribution System unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.
- 2.4.3 All remaining portions of the Regional Water System, including easements and rights of way therefor, to the Regional Water Authority. The Regional Water Authority shall not transfer ownership of the Regional Water System unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.
- 2.4.4 Prior to the conveyance of the Regional Water System, the Operating Agreement shall be executed and approved in accordance with the Act.
- 2.4.5 After conveyance of the Regional Water System, the United States shall have no further right, title, or interest in the Regional Water System.
- 2.4.6 Nothing in any transfer of ownership provided for in sections 2.4.1 through 2.4.3 or any conveyance pursuant thereto shall extinguish the right of any Pueblo, the CWU or the Regional Water Authority to the continued use and benefit of such easement for right of way for the use, operation, maintenance, repair and replacement of Pueblo Water Facilities, the County Distribution System or the Regional Water System, or for wastewater purposes as provided in the Settlement Agreement and Section 2.3 of this Agreement.
- 2.5 Operation, Maintenance, Repair and Replacement (OM&R), and Management
- 2.5.1 The CWU shall have authority over OM&R and management of the County Distribution System. Pursuant to County policies and procedures, the County shall establish a citizens' advisory board to provide local public input into the decisions on the operations of the CWU.
- 2.5.2 Each Pueblo shall retain its authority over OM&R and management of its portion of the Pueblo Water Facilities.

March 29, 2012

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2.5.3 The Regional Water Authority shall have authority over OM&R and management of the remaining portions of the Regional Water System, including the surface water diversion facilities on the Rio Grande at San Ildefonso Pueblo.

2.5.4 The County and the Pueblos hereby delegate to the Regional Water Authority responsibility for the OM&R and management under Sections 2.5.1 and 2.5.2. The Regional Water Authority shall have the right to contract for OM&R of all or part of the Regional Water System with the CWU, a Pueblo, or another entity.

2.5.5 Notwithstanding Section 2.5.4, the Operating Agreement shall include provisions pursuant to which the County may exercise the right to operate, maintain and manage the County Distribution System and each Pueblo may exercise the right to operate, maintain and manage its portion of the Pueblo Water Facilities.

2.5.6 If the County or any Pueblo determines to exercise its right under Section 2.5.5 to operate its portion of the distribution system, that entity may still contract with the Regional Water Authority pursuant to section 2.5.4 to operate all or part of the Regional Water System.

2.5.7 Nothing contained in sections 2.5.1 through 2.5.6 shall determine the allocation of cost or funding relating to the OM&R costs of the Regional Water System or to the allocation of cost or funding related to the County's or any Pueblo's exercise of its option to operate its portion of the distribution system. Such allocations of cost and funding shall be addressed in the Operating Agreement and in any additional or necessary agreement among the Pueblos relating to the allocation of OM&R funding.

2.6 City of Santa Fe and Santa Fe County

2.6.1 In order to reduce and mitigate the effects of groundwater pumping by the City of Santa Fe on the ground and surface water supplies of the Pojoaque Basin, the City shall develop and implement, in consultation with the Pueblos, a conjunctive management strategy with regard to its ground and surface water resources which (1) utilizes surface water supplies to the maximum extent feasible in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin; and (2) otherwise utilizes both surface and groundwater in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin. The location(s), timing, and amounts of water deliveries provided by the City of Santa Fe to offset surface depletion effects on the Rio Tesuque in accordance with Section 2.5 of the Settlement Agreement shall be addressed in a separate agreement between the City and the Pueblo of Tesuque.

2.6.2 In order to reduce and mitigate the effects of groundwater pumping by Santa Fe County on the ground and surface water supplies of the Pojoaque Basin, the

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County shall develop and implement in consultation with the Pueblos, a conjunctive management strategy with regard to its ground and surface water resources which (1) utilizes surface water supplies to the maximum extent feasible in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin; and (2) otherwise utilizes both surface and groundwater in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin. To that end, the County adopted on January 13, 2009 the "Santa Fe County Conjunctive Management Plan for the Santa Fe Basin." Consistent with that plan, 4.49 AFY consumptive use water rights owned by the County under subfile 20.10 shall be deemed existing County offset rights under Section 2.5 of the Settlement Agreement and are available, subject to State Engineer approval, to offset the effects on the Rio Tesuque, Rio Nambe and Rio Pojoaque of future County pumping in the Santa Fe Basin, provided no more than 1.82 AFY of the 4.49 AFY will be used to offset effects on the Rio Tesuque.

2.7 Return Flows and Water Rights Acquisition and Transfer Cooperation

- 2.7.1 The Pueblos, the County, or the Regional Water Authority may apply to the State Engineer for return flow credits for the Regional Water System based upon measured return flows to the stream system above the Otowi gage.
- 2.7.2 The Pueblos and the County shall agree in the Operating Agreement on a method to account for return flows or reuse of treated effluent, in an effort to increase the supply available to the Regional Water Authority.
- 2.7.3 Of the 1,752 AFY of consumptive-use water rights appurtenant to the Top of the World Farm owned by the County, the County shall convey to the United States 1,141 AFY at the price of \$5,400,000, and the County shall retain the remaining 611 AFY for the CWU.
- 2.7.4 The United States, the Pueblos and the County will cooperate to secure the transfer of the Top of the World Farm water rights to the Regional Water System on behalf of the four Pueblos and the County, including requesting the Interstate Stream Commission and the United States to serve as co-applicants.
- 2.7.5 The United States, the Pueblos and the County will cooperate to secure the transfer of the Nambe reserved water rights and the San Juan-Chama Project water, both described in Section 613(a) of the Act, to the Regional Water System point of diversion.
- 2.7.6 The Parties shall cooperate regarding the acquisition of a firm reliable supply of up to 4,000 AFY for the Regional Water System. The Operating Agreement shall provide for the joint and cooperative use of the water rights to maximize the supply from the Regional Water System to the Pueblos and the County.

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3. COST SHARING. The Parties agree to share the costs required to implement the Settlement Agreement as follows:

3.1 Regional Water System Construction Cost Allocation

3.1.1 Of the \$177,300,000 in estimated Regional Water System construction costs as of October 1, 2006, the United States shall pay an estimated \$106,400,000 and the State and County shall pay the non-Federal share estimated to be \$70,900,000. These cost share estimates are based upon the Engineering Report and subject to indexing in accordance with Section 617(a)(4) of the Act. Any cost increase above the indexed amounts estimated by the Engineering Report will be allocated based upon the incremental cost difference method used therein, and any such increase in the cost of the shared portion of the Regional Water System shall be allocated to the non-Federal share in substantially the same proportion(s) set forth in Tables 5-1 through 5-11 of the Engineering Report, as applicable, in order to avoid the necessity for multiple design efforts. In the event that revisions to the final project design incorporate substantially different assumptions than those underlying Tables 5-1 through 5-11, the parties agree to meet and consult in order to agree upon an appropriate cost allocation in accordance with the incremental cost difference method. No federal funds shall be available for the construction of the Regional Water System until the Court enters an order approving the Settlement Agreement; provided, that federal funds may be used for planning, design and environmental compliance prior to entry of an order approving the Settlement Agreement.

3.1.2 The Secretary pursuant to Section 611(g) will consult with the Parties, at the following milestones:

- 3.1.2.1 Completion of feasibility level design and cost estimates;
- 3.1.2.2 Prior to selection of the preferred alternative during the NEPA/EIS process.
- 3.1.2.3 Prior to issuance of a Record of Decision pursuant to the NEPA process;
- 3.1.2.4 Completion of Final Design and Cost Estimates; and
- 3.1.2.5 Upon any major unforeseen change during construction that would significantly affect cost allocation.

The purpose of the milestone consultation will be to inform and allow review by the Parties of the potential designs and cost estimates. Upon each milestone, the County may elect to continue funding its non-Federal share of the project costs, or reduce the County's portion of the Regional Water System through modifications of either extent, size or capacity, pursuant to Section 611(d)(2) of the Act.

March 29, 2012

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3.1.3 County and State construction cost allocations for the Regional Water System, exclusive of service connection costs described in Section 3.1.4, shall be as follows:

\$ 45,500,000 State
\$ 7,400,000 County

Any reductions in these County and State construction costs resulting from modifications, as authorized by Section 611(d)(2) of the Act, to the extent, size, or capacity of the County Distribution System, including its diversion, treatment and transmission facilities, shall be allocated based on the proportion of County and State construction costs, so that 86 (eighty-six) percent of the reductions shall be credited to the State and 14 (fourteen) percent of the reductions shall be credited to the County.

3.1.4 Non-Pueblo service connections costs of \$18,000,000 over the projected life of the Regional Water System shall be paid as follows:

3.1.4.1 The State shall contribute to the service connection costs of all those well owners who elect pursuant to Section 3.1.7.2.1 of the Settlement Agreement to connect to the Regional Water System as soon as service is available to them. The State shall appropriate \$4,000,000 to the Pojoaque Valley Water Utility Connection Fund to be established pursuant to Section 9.4.1.3 of the Settlement Agreement for this purpose. In the event that this sum exceeds that needed to pay for service connections for such well owners, the remaining funds shall be made available to the County first for construction of the County Distribution System, and then for any additional non-Pueblo service connection costs. In the event that service connection costs for such well owners exceed this sum, the County shall pay the excess.

3.1.4.2 The County shall provide all other service connection costs for CWU customers over the life of the RWS, pursuant to the CWU's then-applicable policies and procedures.

3.1.5 Regional Water System construction costs, and the cost shares of the United States and State and County set forth in Section 3.1.1, are estimates and shall be indexed and adjusted in accordance with Section 617(a)(4) of the Act; provided, however, that the State appropriation of \$4,000,000 referred to in Section 3.1.4.1 shall not be subject to indexing or adjustment. To anticipate and provide for these indexed costs, the State and County shall endeavor to appropriate and reserve their expected cost shares in interest-bearing accounts. In the event that actual construction costs exceed these indexed and adjusted costs, the State shall not be responsible to pay any of such excess. In accordance with Section 611(g)(2) of the Act, in the event construction cost estimates allocated to the non-Federal share are above the estimates set forth in Paragraph 3.1.1, the County may elect to reduce its portion of the Regional Water System through modifications of either the extent, size or capacity, pursuant to Section 611(d)(2)

March 29, 2012

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of the Act in order to reduce the non-Federal share to an amount consistent with the estimates of non-Federal cost share set forth in Paragraph 3.1.1.

3.1.6 Within two years after the execution of this agreement, the State and County shall each enter into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction pursuant to Section 611(d)(1)(B) of the Act. Execution by the State and the Secretary of such an agreement shall satisfy the condition that the State provide funding as described in Section 623(a)(2)(F) of the Act.

3.2 Aamodt Settlement Pueblos Fund

3.2.1 Prior to the entry of the Final Decree, the United States shall deposit in the Aamodt Settlement Pueblos Fund \$15,000,000, as adjusted according to the CPI Urban Index beginning on October 1, 2006, which, together with any post-deposit interest thereon, shall be allocated for the rehabilitation, improvement, operation, maintenance and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the Pueblos, in accordance with Section 617(c)(1)(A)(i) of the Act.

3.2.2 Within a reasonable time after execution of this agreement the United States shall deposit in the Aamodt Settlement Pueblos Fund \$5,000,000, as adjusted according to the CPI Urban Index beginning on January 1, 2011, and any post-deposit interest on that amount, which shall be allocated to the Pueblo of Nambé for the Nambé reserved water rights in accordance with Section 613(a)(1)(A) and section 617 (c)(1)(A)(ii) of the Act. The Secretary and the Pueblo shall execute an agreement providing for the remaining terms for the acquisition of the Nambé reserved water rights, including the application of Sections 9 and 10 of the Settlement Agreement. These funds may be used by the Pueblo of Nambé only for the acquisition of land, other real property interests, or economic development.

3.2.3 Prior to the entry of the Final Decree, the United States shall deposit in the Aamodt Settlement Pueblos Fund \$37,500,000 which, together with any interest thereon, shall be allocated to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining and replacing the Pueblo Water Facility and the Regional Water System.

3.3 Water Acquisition The United States shall pay to the County \$5,400,000 for the acquisition of 1,141 AFY of consumptive-use water rights appurtenant to the Top of the World Farm pursuant to Sections 2.8.1.2 and 9.7 of the Settlement Agreement and in accordance with Sections 613(a)(1)(B) and 617(b) of the Act. Federal funds may be used under this section prior to entry of an order approving the Settlement Agreement.

3.4 Pueblo de San Ildefonso Considerations In consideration for the unique contribution that the Pueblo de San Ildefonso provides to the Settlement, and the

March 29, 2012

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related water project, the following special considerations are provided to that Pueblo: (a) to the extent authorized by law, employment preference and training to qualified members of the San Ildefonso Pueblo community and second priority to members of other Pueblos for construction, operation and maintenance of facilities located within San Ildefonso Pueblo; (b) the diversion and connected facilities shall be located as specified by Pueblo de San Ildefonso, consistent with the Engineering Report, or other suitable alternative; (c) design and construction of a community waste water system using money from the Pueblo de San Ildefonso's portion of the Aamodt Settlement Pueblos Fund described in Section 617(c)(1)(A)(i) of the Act and shall be done in conjunction with San Ildefonso's portion of the Pueblo Water Facilities; and (d) unless otherwise agreed by San Ildefonso Pueblo, that Pueblo will have one board member more than each of the other Pueblos on the Regional Water Authority.

- 3.5 Impairment Fund Prior to the entry of the Final Decree, the State shall appropriate \$500,000 to the Impairment Fund to be established pursuant to Section 9.4.1.4 of the Settlement Agreement.
- 3.6 City Offset Water The City of Santa Fe shall provide offset water deliveries on the Rio Tesuque pursuant to Section 3.5 of the Settlement Agreement, either through its own facilities or, at its discretion, through the facilities of others.
- 3.7 Operation and Maintenance, Repair and Replacement Costs The County Water Utility and each of the Pueblos shall pay its share of the operations, maintenance, repair and replacement costs as specified in the Operating Agreement.
- 3.8 State Administration The State of New Mexico shall be responsible for the costs of administration required of it by the Settlement Agreement.
- 3.9 Delivery of Certain Water to Tesuque Pueblo

The County shall deliver, or shall pay for the delivery of 20 AFY to Tesuque Pueblo from the CWU water supply for ten years beginning in the year after the Regional Water System begins making deliveries to the Pueblo. The time(s) and location(s) for delivery of the water shall be set forth in the Operating Agreement. This delivery obligation to Tesuque Pueblo shall continue for ten years, regardless of the number of non-Pueblo connections made to that portion of the Regional Water System serving Tesuque Village, Upper Tesuque Village, and Lower Bishop's Lodge and shall not be reduced as a result of any non-Pueblo connections to that portion. Any quantity of water delivered by the County to offset effects on the Rio Tesuque of future pumping by the County in the Santa Fe Basin (pursuant to Section 3.5 of the Settlement Agreement and Section 2.6.2 of this Cost Sharing Agreement) shall be in addition to the quantity of water required to be delivered by Section 3.9.

March 29, 2012

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4. GENERAL PROVISIONS

- 4.1 Condition of Appropriations The requirements of Section 4.0 of this Cost Sharing Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Commission, the Santa Fe City Council, the Legislature of the State of New Mexico and the United States Congress. Each Party is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure.
- 4.2 Amendments This Cost Sharing Agreement shall not be altered, changed or amended except by an instrument in writing executed by the Parties.
- 4.3 Neutral Construction In construing or interpreting any ambiguity in this Cost Sharing Agreement, no presumption shall be made in favor of, or against, any Party or Parties.
- 4.4 Term and Effective Date This Cost Sharing Agreement shall be effective upon the date of execution by the last of the Parties. This Cost Sharing Agreement shall continue in effect so long as the Final Decree remains a binding final order settling all claims in 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 the event the Final Decree is not entered in accordance with the Settlement Agreement and the Act, or is determined to be void, this Cost Sharing Agreement shall automatically terminate and be of no further effect.
- 4.5 Settlement Agreement Controls In the event of any conflict between this Cost Sharing Agreement and the Settlement Agreement, the Settlement Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Cost Sharing Agreement as of the dates written below.

FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF THE INTERIOR

SECRETARY OF THE INTERIOR

DATE: _____

UNITED STATES DEPARTMENT OF JUSTICE

March 29, 2012

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DATE: _____

FOR THE STATE OF NEW MEXICO:

Unknown, STATE ENGINEER
DATE: _____

GARY KING, ATTORNEY GENERAL
DATE: _____

DL SANDERS, CHIEF COUNSEL
JOHN STROUD
EDWARD C. BAGLEY
OFFICE OF THE STATE ENGINEER
DATE: _____

FOR THE PUEBLO OF NAMBÉ:

GOVERNOR OF THE PUEBLO OF NAMBÉ
DATE: _____

FOR THE PUEBLO OF TESUQUE:

GOVERNOR OF THE PUEBLO OF TESUQUE
DATE: _____

FOR THE PUEBLO OF POJOAQUE

GOVERNOR OF THE PUEBLO OF POJOAQUE
DATE: _____

FOR THE PUEBLO DE SAN ILDEFONSO

GOVERNOR OF THE PUEBLO DE SAN ILDEFONSO
DATE: _____

March 29, 2012

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FOR THE COUNTY OF SANTA FE:

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

DATE: _____

Approved:

SANTA FE COUNTY ATTORNEY

DATE: _____

Attest:

SANTA FE COUNTY CLERK

DATE: _____

FOR THE CITY OF SANTA FE

CITY OF SANTA FE, MAYOR

DATE: _____

Approved as to form:

CITY OF SANTA FE, CITY ATTORNEY

DATE: _____

Attest:

CITY OF SANTA FE, CLERK

DATE: _____

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

COOPERATIVE AGREEMENT NO. A12PG00054

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

Recitals Of Understanding That Support This Agreement

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

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

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

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

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

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

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

TERMS AND CONDITIONS OF THIS AGREEMENT

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

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

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

2.1 The United States acting through the BIA will:

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

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

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

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

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

3.1 The County will:

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

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

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

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

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

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

ARTILCE 4 – Closing of Transaction

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

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

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

ARTICLE 5 - Additional Terms and Conditions of this Agreement

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

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

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

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

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

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

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

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

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

United States Bureau of Indian Affairs

Santa Fe County, New Mexico

Regional Director, SW Region

Chair, Board of County Commissioners

Date: _____

Date: _____

Contracting Officer, SW Region

Date: _____

Reviewed:

Department of Interior Solicitor

Approved:

County Attorney

**Aamodt Settlement Agreement
Summary List of Significant Changes
from 2006 Agreement
Approved by Board of County Commissioners**

March 29, 2012

1. Section 1.6. Changes to definitions to conform the Settlement Act.
2. Sections 1, 2 and 9. References to the non-potable or “Red Pipeline” are deleted because the Settlement Act did not authorize that portion of the regional water system.
3. Section 2.8. A new section was added that quantifies and identifies the water rights the US will acquire for the Pueblos for use from the regional water system.
4. Section 6. Revised the litigation waivers to be executed by the Pueblos to conform to the Settlement Act. The waivers are being made a separate document that will be attached to the Settlement Agreement.
5. Section 7.1.2. The 2006 Settlement Agreement had called for federal waiver of the Pojoaque Valley Irrigation District’s remaining repayment obligation to the US, but the Settlement Act did not approve that provision, and therefore it has been deleted.
6. Section 9. Updated the conditions of the Agreement to reflect passage of the Settlement Act and the final version of the Cost Sharing and System Integration Agreement (Cost Sharing Agreement). The proposed terms of State legislation were also revised to eliminate unnecessary provisions and to provide for a definite description of State appropriations.
7. Sections 9.5 and 9.6. Revised to clarify requirements for formation of the regional water system and regarding water supply for the system.
8. Section 9.6.3. Removed the County’s obligation to acquire 750 acre-feet of water rights and acknowledges that the 611 acre-feet already acquired by the County satisfies this requirement.
9. Section 10. Extends the original deadlines set in the 2006 Agreement as follows:
 - a. Entry of Decree from 2012 to 2017
 - b. Completion of construction of regional water system from 2016 to 2024
10. Technical and other minor changes. Throughout the document are numerous technical and minor changes that were made to conform the Settlement Agreement to the Settlement Act or that were requested by legal counsel for the US or other parties.

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

SETTLEMENT AGREEMENT

Dated: March 29, 2012

Disclaimer. It is expressly understood that the proposed signatories, or their governing bodies or authorities, have not approved this Settlement Agreement unless and until they, or an authorized representative, execute it. This Settlement Agreement is provided during and for compromise negotiations, and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

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

SETTLEMENT AGREEMENT

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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, Civil Action et al., No. 66-6639, 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.

1.4.1.5 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.

1.5.1.6 Definitions

1.5.1.6.1 “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.).

1.5.21.6.2 “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.

1.5.31.6.5 “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.

~~1.5.41.6.7~~ 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.

~~1.5.51.6.8~~ 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 “CWU” means the “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 ~~described~~” 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 Section ~~the~~ Pojoaque Basin; and

(C) carry out any other activities in accordance with the Act and other applicable law.

~~1.5.61.6.12~~ 1.6.12 “Decree Court” means the United States District Court for the District of New Mexico.

~~1.5.71.6.13~~ 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.

~~1.5.8~~ “Effective Date” means ~~the date specified by Section of 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.

~~1.5.91.6.16~~ “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.

~~1.5.101.6.18~~ “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.

~~1.5.111.6.19~~ “Injuries to water rights” means the loss, interference with, impairment, deprivation, or diminution of water rights.

~~1.5.121.6.20~~ “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.

~~1.5.131.6.21~~ “Local Parties” means all Settlement Parties except the United States and the Pueblos.

~~1.5.141.6.22~~ “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.

~~1.5.151.6.23~~ “Offset Water” means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.

~~1.5.161.6.24~~ IN GENERAL.—The term “Pojoaque Basin” means thatthe 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 the Rio Pojoaque, or to the two unnamed arroyos immediately south, and two arroyos, including the Arroyo Alamo, immediately north, of the

confluence of the Rio Pojoaque with the Rio Grande, and shall also include, for purposes of this Agreement, all of the San Ildefonso Eastern Reservation recognized by the Act of September 14, 1961, 75 Stat. 505, Sec. 8, tributaries that eventually drain to—

~~1.5.17~~ “Potable Pipeline” means that part of the Regional Water System which shall carry potable water. All water conveyed through the Potable Pipeline shall meet applicable federal and state requirements for drinking water.

~~“Pueblos” means (i) the Rio Pojoaque; or~~

~~(ii) the 2 unnamed arroyos immediately south; and~~

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

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

~~1.5.18~~ ~~1.6.26~~ “Pueblo” means each of the Pueblos of Nambé, Pojoaque, Tesuque, and 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 ~~(1) that is —~~

~~(A) held by the United States in trust for a Pueblo within the Pojoaque Basin; or (2):~~

~~(B)(i) owned by a Pueblo within the Pojoaque Basin, provided that for property before the date on which a court approves the Settlement Agreement; or~~

~~(ii) acquired by a Pueblo on or after the date the Decree Court on which a court approves this the Settlement Agreement, if the real property is located (a)—~~

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

~~(II) within the exterior boundary boundaries of any territory set aside for the Pueblo pursuant to statute by law, executive order or court decree; (3)~~

~~(C) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin which 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, as amended, or (4) within the exterior boundary of any property outside the~~

~~1.5.19~~ Pojoaque Basin set aside for a Pueblo pursuant to statute, executive order or court decree; *provided* that such property must be within or contiguous to land held by the United States in trust for that Pueblo as of January 1, 2005; (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.

~~1.5.19~~1.6.29 "PVID" means the Pojoaque Valley Irrigation District.

~~1.5.20~~ "Red Pipeline" means that part of the Regional Water System which shall carry untreated water.

~~1.5.21~~1.6.30 "Regional Water Authority" or "RWA" means the ~~nonprofit corporation created pursuant to Section of this Agreement~~ 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.

~~1.5.22~~ "Regional Water System" means the ~~proposed Pojoaque Regional Water System that will consist of surface water diversion facilities at the Pueblo of San Ildefonso, including completion of the barrier dam and infiltration project on the Rio Pojoaque, together with treatment, transmission, and distribution facilities, including distributions systems at each Pueblo substantially in conformance with the Settlement Study necessary to supply a minimum of 4,000 AFY of water within the Pojoaque Basin. The Regional Water System shall include the Red Pipeline, the Potable Pipeline, and well fields, all of which shall be designed, constructed, 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.~~

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.

~~1.5.23~~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.

~~1.5.24~~1.6.34 "Section 72-12-1" means NMSA 1978, § 72-12-1 (2001).

~~1.5.251.6.35~~ "Settlement Parties" means all persons or entities that sign this Agreement or authorize a representative to sign this Agreement and their successors in interest.

~~1.5.26~~ "Settlement Study" means the ~~Aamodt Settlement Study Report prepared by the U.S. Bureau of Reclamation and dated May 2004, completed pursuant to Public Law 107-66.~~

~~1.5.271.6.36~~ "State Engineer" means the State of New Mexico Office of the State Engineer.

~~1.5.281.6.37~~ "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.

~~1.5.291.6.39~~ "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 ~~area served by the Regional Water System~~ 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 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 1.1.1.1.

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 ~~and construction of the Red Pipeline~~ 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 ~~from the Red Pipeline~~ upon completion of construction of ~~that portion of the Regional Water System~~ to the Pueblo of Pojoaque and acquisition of an adequate water supply. ~~Upon completion of construction of the Potable Pipeline, and thereafter, the Pueblo of Pojoaque may take delivery of Alternative Water from either the Red Pipeline or the Potable Pipeline, dependent on need as determined by the Pueblo.~~

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 the Red Pipeline is constructed and~~ 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. ~~After construction of the Red Pipeline,~~ 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 the Red Pipeline is constructed and~~ 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

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.

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 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.