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

**Anna Hansen**
*Commissioner, District 2*

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

**Anna T. Hamilton**
*Commissioner, District 4*

**Ed Moreno**
*Commissioner, District 5*

**Katherine Miller**
*County Manager*

# *MEMORANDUM*

**DATE:** *March 13, 2018*

**TO:** *Board of County Commissioners*

**VIA:** *Katherine Miller, County Manager*

**FROM:** *Sandra Ely, Aamodt Project Manager, and Bruce Frederick, County Attorney*

**ITEM AND ISSUE: BCC Meeting March 13, 2018**
***State of New Mexico, ex rel. State Engineer v. R. Lee Aamodt et al.,* U.S. District Court, District of New Mexico, No. Civ. 66-06639 WJ/WPL: Update on Implementation Milestones including the Contributing Funds Agreement Between the United States Department of Interior Bureau of Reclamation and Santa Fe County for Santa Fe County's Share of Costs for Planning, Design and Construction of the Pojoaque Basin Regional Water System. (Public Works Department/Sandra Ely)**

Since last summer Santa Fe County and other parties to the Aamodt Settlement Agreement have achieved significant milestones. The next milestone in the implementation of the Aamodt Settlement Agreement is the consideration and possible approval of the Contributing Funds Agreement (CFA) by the Board of County Commissioners (BCC). The current schedule calls for a presentation on the draft CFA at the BCC's March 13, 2018 meeting, with the BCC considering the CFA for potential action at its March 27, 2018 meeting.

***BACKGROUND:***
On March 14, 2013, the Board of County Commissioners approved and signed the revised Aamodt Settlement Agreement and the Cost-Sharing and System Integration Agreement (Cost-Sharing Agreement) concerning the Regional Water System (RWS) that is a cornerstone of the settlement. These approvals launched efforts by the County, the State, the United States, and the Pueblos of San Ildefonso, Pojoaque, Nambe and Tesuque to plan, design and construct the RWS and negotiate the agreements necessary to own and operate the RWS.

The RWS would divert, treat, and distribute water from the Rio Grande to customers of Santa Fe County (County) and the four Pueblos. It is to be constructed by the Bureau of Reclamation (Reclamation) using federal, State, and County funds. The CFA is an agreement between the County and Reclamation that describes how the County will pay for is cost share of the RWS.

The execution of the CFA is required under the Aamodt Litigation Settlement Act and the Cost Sharing Agreement before Reclamation can begin construction.

***DESCRIPTION OF ATTACHED EXHIBITS:***

The PowerPoint Presentation attached as Exhibit A contains detailed information concerning the Aamodt Settlement Agreement, recent milestones achieved and milestones remaining including the CFA.

The draft CFA is attached as Exhibit B.

***ACTION REQUESTED:***

None; for information only.

Exhibits:

**Exhibit A**- PowerPoint Presentation: Update on the Aamodt Settlement and the Pojoaque Basin Regional Water System

**Exhibit B**- Contributing Funds Agreement Between the United States Department of Interior Bureau of Reclamation and Santa Fe County for Santa Fe County's Share of Costs for Planning, Design and Construction of the Pojoaque Basin Regional Water System, March 8, 2018 Draft

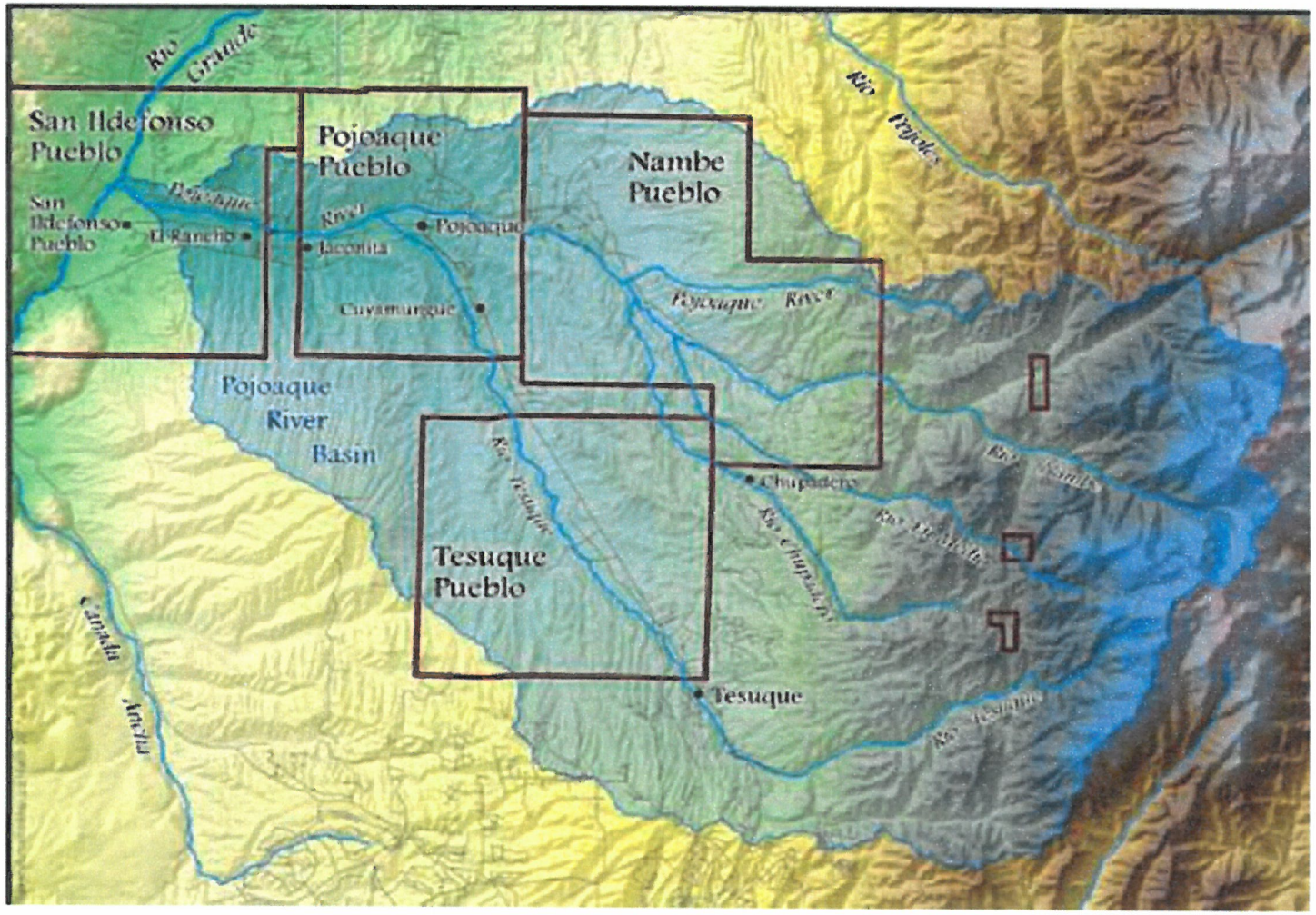
# Update on the Aamodt Settlement, and the Pojoaque Basin Regional Water System

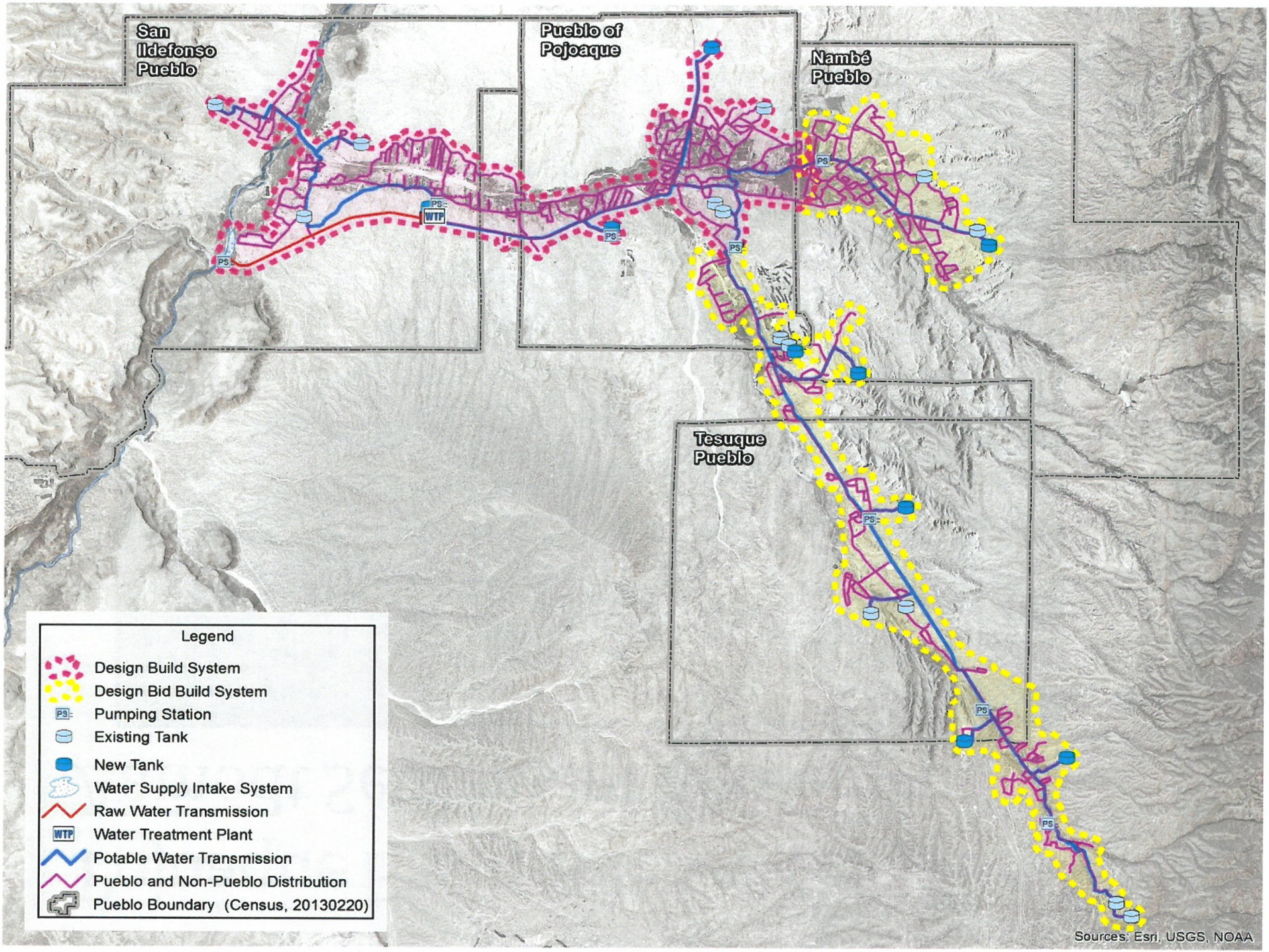
Sandra Ely, Santa Fe County Utilities

# Overview

- Recent Milestones Reached
- Milestones Remaining
- Contributing Funds Agreement

# Pojoaque Basin and Area of Aamodt Settlement Agreement




San Ildefonso Pueblo
Pueblo of Pojoaque
Nambé Pueblo
Tesuque Pueblo
PS
WTP
Legend
Design Build System
Design Bid Build System
Pumping Station
Existing Tank
New Tank
Water Supply Intake System
Raw Water Transmission
Water Treatment Plant
Potable Water Transmission
Pueblo and Non-Pueblo Distribution
Pueblo Boundary (Census, 20130220)
Sources: Esri, USGS, NOAA

# Aamodt Litigation Act Construction Cost Share

| Party | 2006 Dollars (in Millions) | Future Value (Indexed through 2024) | Remaining to be Appropriated |
|---|---|---|---|
| Federal | $106.4 | $144.7 | $53.2 |
| State* | $45.5 | $68.5 | $53.5 |
| County** | $7.4 | $10.2 | $10.2 |
| **Total*** ** | **$159.3** | **$223.4** | **$116.9** |

*Does not include $4M for connection fee fund or $0.5 M for impairment fund.

# Milestones and Deadlines cont.

**July, 2017**

- Final decree issued by the U.S. District Court that sets forth all water rights in the Pojoaque Basin.
- Office of State Engineer (OSE) issued permit changing the point of diversion for water rights to supply the Pojoaque Basin Regional Water System (RWS).

**September, 2017**

- Secretary of Interior published in the Federal Register that certain requirements were met.

# Milestones and Deadlines, cont.

**September, 2017**

- **Joint Powers Agreement** establishing the Pojoaque Basin Regional Water Authority signed by each Pueblo, Santa Fe County, Department of Interior and NM DFA
- Promulgation of **Water Master Rules**- Governs the administration of water rights in the basin by the Office of the State Engineer (OSE) in accordance with the Settlement Agreement.

# Milestones and Deadlines, cont.
# Water Master Rules

Conveyance of Groundwater Rights (Section 109)

- A household electing to connect to CWU when available may:
  1. Convey the full amount adjudicated to the County and abandon the use of their well; or
  2. Convey 0.3 afy to the County and use the remaining amount for outdoor purposes.

# Milestones and Deadlines, cont.

**October, 2017**

- **Metering Order** issued by OSE requiring meters to be placed on all wells in the Pojoaque Basin by October, 2018. The well owner is responsible for the installation, maintenance and operation of the meter as well as quarterly reporting requirements to OSE.

# Milestones and Deadlines, cont.

**January, 2018**

- Final Environmental Impact Statement Published

# Milestones and Deadlines, cont. Contributing Funds Agreement

**April, 2018**

**What is the Contributing Funds Agreement (CFA)?**

- An agreement between U.S. and Santa Fe County for Santa Fe County's Cost Share of the RWS.
- The County's contribution is $ 7.4 million which is indexed to approximately $10.2 million.

# CFA cont. ...

**When must the CFA be executed?**

- The Aamodt Litigation Settlement Act requires the CFA to be in place prior to the start of construction.
- The Pueblo rights-of-way agreements require the CFA to be entered into by April 2, 2018.

# CFA cont. ...

## I. County's Cost-Share for the RWS

- The County's total cost allocation for construction of the RWS is $7.4 million( $2006), which is estimated to be $10.2 million in $2024.
- County's remaining cost allocation is indexed annually to account for inflation.
- Exhibit C to CFA shows the County's annual funding contribution, which will be revised annually to account for indexing, reductions in the County water system, or early payment.

# CFA cont. ...

## I. County's Cost-Share for the RWS

- Early payments do not stop indexing unless expended for construction.
- The County's Cost Allocation cannot be increased except by amendment of the CFA.
- Reclamation may charge interest if the County fails to make a required contribution and Reclamation expends federal funds on the non-Pueblo portion.

# CFA cont. ...

## II. Additional Responsibilities of the Parties

**The County shall:**

- Maintain a Special Fund for contributions.
- Acquire easements, rights-of-way, land or other real property for the RWS as may be agreed upon by the Parties. The County's costs will be credited against the County's Cost Allocation.

# CFA cont. ...

**II. Additional Responsibilities of the Parties**

**Reclamation shall:**

- Provide quarterly reports.
- Index construction costs annually.
- County funding contributions at the beginning of each FFY will be based on final design, cost estimate and construction schedule.

# CFA cont. ...

**II. Additional Responsibilities of the Parties**

**Reclamation shall:**

- Initiate negotiations pursuant to the Aamodt Litigation Act to address current cost estimate overruns with the intent of executing an agreement to allocate excess costs prior to commencement of construction.
- If County funding contributions are no longer needed for any reason, they will be refunded to the County.

# CFA cont. ...

## II. Additional Responsibilities of the Parties

**Joint Responsibilities:**

- By February 1 of each year, Reclamation will provide a yearly written cost accounting and proposed revisions to Exhibit C.
- By April 1 of each year the Parties will agree to a revised Exhibit C.

# CFA cont. ...

## III. Contingencies

The County may temporarily withhold an annual funding contribution if:

- The U.S. or the State are unable to make a required funding contribution for a given FFY.
- The Secretary of the Interior issues a written determination that the RWS will not meet the criteria for substantial completion.

# CFA cont. …

**EXHIBIT C**

**County's Estimated Cost-Share of PBRWS Project Costs**
**($ Millions)**

| Fiscal Year (FY) | Index Factor | Annual Payment amount | Remaining County Contribution |
|---|---|---|---|
| 2006 | 1.000 | | 7.400 |
| | | | |
| 2018 | 1.344 | 0 | 9.946 |
| 2019 | 1.380 | 5.000 | 5.080 |
| 2020 | 1.418 | 2.000 | 3.164 |
| 2021 | 1.456 | 3.164 | 0.000 |
| 2022 | 1.496 | 0.000 | 0.000 |
| 2023 | 1.537 | 0.000 | 0.000 |
| 2024 | 1.578 | 0.000 | 0.000 |
| **TOTAL** | | **10.164** | |

Note: the Index Factors for 2020 and subsequent years are estimates and the payment amounts shown in 2020 and 2021 will need to be re-calculated based on the actual index factor for each of those years.

# Milestones and Deadlines, cont.
# Well Election

**2018**

- **Well Election** (no deadline set yet)- Domestic well owners may elect to:
  - Connect to the County Water Utility,
  - Keep well in perpetuity,
  - Connect to the CWU upon transfer of property, or
  - Connect to CWU and keep well for outdoor use.

# Milestones and Deadlines cont.

**April, 2018**

- Record of Decision to be signed.

**July, 2018**

- Final RWS design complete.

**Fall 2018**

- Construction of the RWS begins.
- PBRWS Operating Agreement executed and submitted to the Secretary of Interior.

# Milestones and Deadlines, cont.

**June 30, 2021**

- Bureau of Reclamation (BOR) verifies that RWS is complete or will be by June 30, 2024.

**March, 2022**

- Phase 1 of RWS complete and in operation.

**June 30, 2024**

- RWS construction substantially complete.


Questions?
9/21/2015

**FUNDING AGREEMENT**

BETWEEN

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

and

SANTA FE COUNTY

for

SANTA FE COUNTY'S SHARE OF COSTS

for

PLANNING, DESIGN, AND CONSTRUCTION

of

THE POJOAQUE BASIN REGIONAL WATER SYSTEM

THIS FUNDING AGREEMENT for Santa Fe County's Share of Costs ("Agreement"), is made this _____ day of _____, 2018, by and between the United States of America, hereinafter called "United States", acting through the Secretary of the Interior, hereinafter called "Secretary", acting through the Bureau of Reclamation, Upper Colorado Region, hereinafter called "Reclamation", acting pursuant to the Act of June 17, 1902 (32 Stat. 388) as amended or supplemented, particularly, the Aamodt Settlement as authorized by the Claims Resolution Act of 2010 [P.L. 111-291], hereinafter called "Act", and the Contributed Funds Act of May 4, 1921 (43 U.S.C. § 395), and Santa Fe County, hereinafter called "County"; the County and Reclamation are hereinafter collectively referred to as "the Parties".

RECITALS:

WHEREAS, Congress approved, ratified, and confirmed the Aamodt Settlement by enactment of the Act, which was signed into law by the President on December 8, 2010; and

WHEREAS, the Secretary and the County executed the settlement agreement ("Settlement Agreement"), as revised to conform to the Act, together with a 2009 Cost-Sharing and System Integration Agreement ("Cost-Sharing Agreement") on March 14, 2013; and

WHEREAS, on March 23, 2016 the Court entered an order approving the Settlement Agreement in *New Mexico ex rel. State Engineer v. Aamodt*, No. 66cv06639 MV/LCS-ACE (D.N.M.); and

WHEREAS, pursuant to the Act and the Settlement Agreement, Reclamation will plan, design and construct the Pojoaque Basin Regional Water System ("RWS"), which will provide service to the Pueblos of Nambé, Pojoaque, Tesuque, and the Pueblo de San Ildefonso ("Pueblos") in the amount of 2,500 acre-feet of water per annum (afy) and up to 1,500 afy to the County Water Utility; and

WHEREAS, Section 611(d)(1)(B) of the Act prohibits the Secretary from commencing construction of the RWS until after the State and the County enter into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction in accordance with the Cost-Sharing Agreement; and

WHEREAS, pursuant to Section 3.1.3 of the Cost-Sharing Agreement, the State and County agreed to contribute $45.5 million and $7.4 million, respectively, to construct the non-Pueblo portion of the RWS ("Non-Pueblo Portion"); and

WHEREAS, on January 30, 2018, the Board of County Commissioners approved four (4) road right-of-way settlement agreements resolving disputes with the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso, which require that the County and Reclamation execute this Agreement prior to April 2, 2018; and

WHEREAS, in accordance with Section 3.1.6 of the Cost-Sharing Agreement, the County and Reclamation desire to enter into this Agreement to set forth the manner in which the County will contribute its share of costs.

NOW THEREFORE, the Parties agree:

I. COUNTY'S COST-SHARE FOR THE RWS

A. Generally

1. This Agreement satisfies the County's obligation under Section 3.1.6 of the Cost-Sharing Agreement.

2. Pursuant to Section 3.1.3 of the Cost-Sharing Agreement, the County's total cost allocation for construction of the RWS was $7.4 million as of October 1, 2006 ("County Cost Allocation"). The County Cost Allocation shall be subject to indexing in accordance with Section 3.1.5 of the Cost-Sharing Agreement and this Agreement. Pursuant to Section 3.1.2, 3.1.3, and 3.1.5 of the Cost-Sharing Agreement, the County may reduce the County Cost Allocation by reducing the Non-Pueblo Portion. Other than as expressly permitted under this Agreement and the Cost-Sharing Agreement, the County Cost Allocation may not be changed except by amendment of the Cost-Sharing Agreement or other written agreement by the Parties.

3. All of the County's funding contributions and approved land-acquisition credits under this Agreement, whether made at or before the deadline for such contributions, shall be applied toward the County Cost Allocation.

4. This Agreement does not amend the Cost-Sharing Agreement. In the event of a conflict between the language of this Agreement and that of the Cost-Sharing Agreement, the Cost-Sharing Agreement shall control. In the event of a conflict between this Agreement and the Act, the Act shall control.

B. Indexing

1. Indexing shall be based on the federal Fiscal Year (FFY) beginning on October 1, of the preceding year and ending September 30 of the stated year. For instance, the first day of FFY 2016 is October 1, 2015.

2. The basis for the annual indexing shall be the latest published Reclamation Construction Cost Trends Indices (the indices) as specifically described in Exhibit A based on the applicable feature of, or major cost associated with, the RWS.

3. The County Cost Allocation shall be indexed from October 1, 2006, annually, in accordance with this Paragraph and the example set out in Exhibit B.

4. Reclamation's latest published report for the indices may be obtained at www.usbr.gov/tsc/techreferences/mands/cct.html.

5. Before the total remaining construction cost estimate for the RWS, including the County's remaining Cost Allocation, is indexed at the beginning of each FFY, all expenditures made by Reclamation and County expenditures for land acquisitions under Paragraph II(A)(3) during the previous FFY shall be subtracted from the remaining

unexpended construction cost estimate as of October 1 of the previous calendar year. Funds are "expended" upon disbursement by Reclamation.

C. Annual Funding Contributions

1. Exhibit C sets out the County's estimated annual funding contribution schedule for FY 2019 through FY 2024. Exhibit C shall be subject to annual revisions in accordance with Paragraph II(C)(1) below to account for annual indexing and the agreed upon construction schedule for each upcoming FFY. In addition, Exhibit C shall be revised to decrease the County's future funding contributions if the County reduces the Non-Pueblo Portion in accordance with the Cost-Sharing Agreement or, in its discretion, makes an early funding contribution over and above its required funding contributions. Exhibit C may also be revised to reflect unanticipated changes in the construction schedule, expenses, or for other reasons, but only in accordance with a written agreement between the Parties.

2. The County shall make its annual funding contributions from the Special Fund defined below in accordance with Exhibit C, as the same may be revised annually and from time to time in accordance with Paragraph II(C)(1) below; *provided*, however, that County Cost Allocation shall not be increased except by amendment of this Agreement, or as otherwise agreed to by the Parties in writing.

3. The County shall submit its annual funding contribution to Reclamation on or before October 1 of each year in accordance with Exhibit C, as the same may be revised from time to time. If the County fails to make a scheduled contribution in accordance with Exhibit C by November 30, and Reclamation thereafter incurs additional expenses for the Project after all prior County contributions have been expended, Reclamation may assess interest on the County's unpaid share of such actual expenses for the Project at the Interest During

Construction (IDC) rate in effect on the date that construction commences. The IDC rate will compound annually.

4. In the event the funds contributed by the County pursuant to Exhibit C are insufficient to complete the agreed upon scheduled work items for a given FFY, the Parties shall meet and confer within two (2) weeks of notification provided to the County pursuant with Paragraph VII(A). If the Parties do not agree to additional requested amounts, the Parties may agree in writing to stop work or, alternatively, they may agree that Reclamation will continue the scheduled work without any additional County funding contribution for that FFY, in which case IDC will be applied to any Reclamation expenditures applicable to the County's cost share.

II. ADDITIONAL RESPONSIBILITIES OF THE PARTIES

A. The County shall:

1. Upon execution of this Agreement, establish and maintain a special segregated County fund ("Special Fund") from which it will make all funding contributions required under this Agreement. The Special Fund shall consist of all proceeds the County derived from the sale of the Top of the World ("TOW Proceeds") water rights and farm. In addition, before the TOW Proceeds are completely depleted, if ever, the County will deposit into the Special Fund such additional monies as may be required to cover the County Cost Allocation; *provided*, however, that such additional monies shall be derived exclusively from revenues generated by the one-quarter of one percent capital outlay gross receipts tax imposed by the County under NMSA 1978, Section 7-20E-21, or the first one-eighth increment of the County hold harmless gross receipts tax under NMSA 1978, Section 7-20E-28 (collectively, "Special Funding Source"). If for any reason the TOW Proceeds and Special Funding Source are not

sufficient to meet the County's funding obligations under this Agreement, the County may use such other then-existing funds to cover the remaining County Cost Allocation as may be approved and appropriated by the Board of County Commissioners, in its discretion, to the Special Fund.

2. Deposit all County funding contributions in a U.S. Treasury account by electronic funds transfer, as directed by Reclamation. Upon execution of the Agreement, the County shall furnish Reclamation with the County's taxpayer's identification number (TIN).

3. Acquire such easements, rights-of-way, land, or other interests in real property for the RWS as may be agreed upon by the Parties. The County's reasonable costs of such acquisitions will be credited against the County's Cost Allocation, upon satisfaction of the following:

i. The County and Reclamation agree in writing in advance on the real property interest(s) to be obtained and the total estimated acquisition cost;

ii. After the acquisition, the County provides Reclamation with documentation of the actual acquisition cost;

iii. The County shall receive a credit only for the actual acquisition cost, exclusive of staff time; and

iv. The County provides Reclamation with such easements, permits, or other instruments as may be necessary to assure Reclamation obtains access for each interest in land the County acquires.

B. Reclamation shall:

1. Beginning on November 1 in the year the Parties execute this Agreement and during each quarter of the calendar year thereafter, Reclamation will provide the County

written reports (quarterly reports) with an itemized list of expenditures Reclamation allocated to the Project and the County's cost share, including total County funding contributions and land acquisition credits to date, the County's total allocated amount of expenditures to date, and the remaining balance of the County Cost Allocation.

2. Prior to commencing construction of any phase or stage, Reclamation shall provide the County with the 30%, 60%, and final design for construction and cost estimate for the phase or stage, and include with the final design a proposed construction schedule. The cost estimate shall include the non-federal share and describe the portions or features being constructed with non-federal contributions. Reclamation shall in good faith consider the County's comments on the design and construction schedule. The cost estimate and the County's cost share shall be broken down into the system components set out in the HKM Engineering Report or other agreed upon formats. The County shall have the opportunity at the 60% and final design levels to reduce or modify the Non-Pueblo Portion within that phase or stage and, at the County's discretion, thereby reduce or re-allocate the County Cost Allocation accordingly. The County's funding contribution at the beginning of each FFY shall be based upon the final design and cost estimate and the construction schedule; provided, however, that the County's funding contribution and construction schedule may be revised by agreement of the Parties.

3. Index the construction cost annually, on or before December 31 of each year, to recalculate the future values shown in Exhibit C and adjust the funding contribution schedule accordingly for the purpose of revising Exhibit C in accordance with Paragraph II(C)(1) below.

4. Initiate negotiations with the County pursuant to Section 611(g)(1) of the Act, if the Secretary determines that the cost of constructing the RWS exceeds the amounts described in the Cost-Sharing Agreement, for an agreement regarding non-Federal contributions to ensure that the RWS can be completed as required by Section 623(3) of the Act. Because current cost estimates are in excess of the amounts made available pursuant to the Act the Secretary will initiate negotiations with the parties to the Cost-Sharing Agreement pursuant to Section 611(g)(1) as soon as practicable with the intent of executing an agreement to allocate the excess costs prior to commencement of construction. The Parties acknowledge that, pursuant to Section 611(g)(2) of the Act, the United States shall not bear the entire amount of any cost overrun associated with construction of the RWS.

5. If County funding contributions are no longer needed by Reclamation for any reason, Reclamation will immediately notify the County in writing pursuant to Paragraph VII(A), and Reclamation's Finance Officer in consultation with the County Finance Director, will determine the amount of funds to be refunded to the County and return any remaining funds to the County within 90 days of Reclamation's notice to the County.

C. Joint Responsibilities

1. On or before February 1 of each year, Reclamation shall provide the County with a written cost accounting report. The report shall present a detailed account of all County funding contributions and land acquisition credits to date, an itemized list of total expenditures and the County's share of such expenditures, remaining unexpended funds previously contributed by the County, the remaining indexed County Cost Allocation, the estimated construction costs for the next FFY, and such other information as may be pertinent to revising Exhibit C. Reclamation shall provide proposed revisions to Exhibit C along with

its cost accounting report to the County. If the County does not request an explanation of Reclamation's proposed revisions to the Exhibit within ten (10) calendar days thereafter, the revisions shall be deemed approved by the Parties. If the County timely requests an explanation, the Parties shall meet and confer within ten (10) days of such request to agree upon revised Exhibit C.

2. By April 1st of each year, the Parties shall agree to revise Exhibit C.

3. The Parties will meet as necessary to address matters relevant to this Agreement including, but not limited to, Reclamation's quarterly reports, cost indexing, construction schedules, and substantial completion of RWS.

III. CONTINGENCIES

The County may temporarily withhold an annual funding contribution if:

A. Either the United States or the State has provided notice of or otherwise demonstrated an unwillingness or inability to make a required funding contribution for a given FFY. The County shall cease withholding and make its required funding contribution for that FFY within ten (10) days of receiving notice that the United States and State have made the required funding contribution(s). If Reclamation incurs project expenses during the period in which the County withholds its funding contribution, IDC may be applied in accordance with Paragraph I(C)(3).

B. The Secretary issues a written determination pursuant to Sec 623(e)(2) of the Act that the RWS will not meet the criteria for substantial completion.

IV. TERM OF THE AGREEMENT

A. Effective Date

This Agreement shall be effective upon the date of execution by both Parties.

B. Termination

1. The Agreement shall terminate automatically upon termination of the Settlement Agreement, termination of the Cost-Sharing Agreement, or upon voiding of the Final Decree, whichever occurs first.

2. Upon termination of this Agreement for any reason, the United States shall complete a final accounting of the project to date, return unexpended non-Federal funds to the contributing Party in accordance with Paragraph II(B)(5), and enter into negotiations with the Parties of the Cost-Sharing Agreement to determine the disposition of the constructed portions of the RWS and any real and personal property acquired to date in order to make those assets available to the intended beneficiaries

V. AMENDMENT

This Agreement may be amended only through written mutual agreement of the Parties.

VI. STANDARD ARTICLES

These Standard Articles are made part of this Agreement, pursuant to Reclamation Manual requirements:

A. Notices

Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the County, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, Attention: UC-443, 125 South State Street, Salt Lake City, UT 84138, and on behalf of the United States, when mailed, postage prepaid, or delivered to the County Manager, Santa Fe County Manager's

Office, 102 Grant Avenue, Santa Fe, NM 87504. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this paragraph.

B. Contingent on Appropriation or Allocation of Funds

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allocation of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

C. Official Not to Benefit

No Member of or Delegate to the Congress, Resident Commissioner, or official of Santa Fe County shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

D. Assignment Limited-Successors and Assigns Obligated

The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein by either party shall be valid until approved in writing by the other party.

E. Rules, Regulations, and Determinations

Reclamation shall have the right to make determinations necessary to administer this Agreement that are consistent with its provisions, the laws of the United States and the State of New Mexico, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the County.

F. Medium for Transmitting Contributions

All contributions from the County to the United States under this Agreement shall be by the medium requested by the United States on or before the date the contribution is due. The

required method of contribution is deposit of funds in a U.S. Treasury account by electronic funds transfer as directed by Reclamation.

G. Agreement Drafting Considerations

This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Paragraphs I-VII of this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one party shall be considered to have drafted the stated articles.

H. Books, Records, and Reports

Subject to applicable Federal laws and regulations, the Parties shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Agreement.

VII. TECHNICAL POINTS OF CONTACT FOR THIS AGREEMENT

*Bureau of Reclamation*
Area Manager
555 Broadway Blvd NE (ALB-800)
Albuquerque, NM 87102
(505) 462-3555

*Santa Fe County*
Director, Public Works Department
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276
(505) 827-3023
email@santafecounty.org

WHEREFORE, we agree to be bound by the terms and conditions contained in this Agreement:

*Bureau of Reclamation*

By:_____ Date: _____, 2018
Brent Rhees
Regional Director

By:_____
Joshua Mann
Attorney-Advisory

*Santa Fe County*

By:_____ Date: _____, 2018
Anna C. Hansen
Chair, Board of County Commissioners

By:_____
R. Bruce Frederick
County Attorney

DRAFT

**EXHIBIT A**

**Reclamation's Construction Cost Trend Indices Selected for each Major Feature of the Pojoaque Basin Regional Water System that has Costs Allocable to Santa Fe County**

The current published report of each construction cost trend and an explanation of how the trends are calculated may be found at www.usbr.gov/tsc/techreferences/mands/cct.html

| MAJOR FEATURE | CONSTRUCTION COST TREND INDEX |
|---|---|
| Intake and Pump Station (Raw Water) | Pumping Plants |
| Water Treatment Plant | Pumping Plants |
| Pipelines | Distribution Pipelines |
| Pump Stations | Pumping Plants |
| Storage Tanks | Pumping Plants – Structures and Improvements |
| Hybrid (Aquifer Storage and Recovery) Wells | Pumping Plants |
| Service Connections | Distribution Pipelines |
| Pressure Reducing and Control Valves | Distribution Pipelines |
| SCADA System | Pumping Plants, Equipment, Accessory Electric and Miscellaneous Equipment |
| Electrical Improvements | Pumping Plants, Equipment, Accessory Electric and Miscellaneous Equipment |
| Operation and Maintenance Assets | Machinery and Equipment |

# EXHIBIT B

Numbers are shown as integers but are rounded only when the calculation is complete.

***(Pumping Plants, Base Authorized Amount - 1,238)***
1,238 (201/136) = 1,830 ***(New ceiling before 1-76 expenditures are deducted)***
-788 ***(Expended amount in 1-76***
1,042 (214/201) = 1,109 ***(New remaining ceiling for P. Plants)***
-1,109 ***(Partial expended amount in 1-77)***
0 (227/214) = 0 ***(Remaining ceiling avail.)***
+1,897 ***(Total expenditures)***
Over expenditure assigned below – 1,897 ***(Total ceiling for P.lants)***

***(Canals, Base Authorized Amount - 9,556)***
9,556 (202/133) = 14,514 ***(New ceiling before 1-76 expenditures are deducted)***
-7,090 ***(Expended amount in 1-76)***
7,424 (209/202) = 7,681 ***(New remaining ceiling for Canals)***
-7,457 ***(Over expenditure for P.Plants in 1-77)***
224 (219/209) =235 ***(Remaining ceiling avail.)***
+14,547 ***(Total expenditures)***
14,782 ***(Total ceiling for Canals)***

***(Concrete Pipe, Base Authorized Amount - 7,997)***
7,997 (190/128) = 11,871 ***(New ceiling before 1-76 expenditures are deducted)***
-5,179 ***(Expended amount in 1-76)***
6,692 (197/190) = 6,938 ***(New remaining ceiling for C. Pipe)***
-880 ***(Over expenditure for Land/Rights in 1-77)***
800 acres of land assigned 6,058 (205/197) = 6,304 ***(Remaining ceiling avail.)***
+6,059 ***(Total expenditures)***
12,363 ***(Total ceiling for C. Pipe)***

These may also be calculated in the form –

***(General Property, Base Authorized Amount - 1,067)***
| ***(Expended amount in 1-75)***
| | ***(Expended amount in 1-76)***
| | | ***(Total expenditures)***
| | | |
1,067 (233/143) - 861 (233/193) - 325 (233/201) + 1,186 = 1,508 ***(Total ceiling for G. Prop.)***

***(Roads, below, are calculated same as general property in above scenario, but shows use of special local indexes, e.g., "3250/1285.")***
3,269 (3250/1285) - 1,007 (3250/2153) - 648 (3250/2838) + 1,655 = 7,661

# EXHIBIT C

## County's Estimated Cost-Share of PBRWS Project Costs ($ Millions)

| Fiscal Year (FY) | Index Factor | Annual Payment amount | Remaining County Contribution |
|---|---|---|---|
| 2006 | 1.000 | | 7.400 |
| 2018 | 1.344 | 0 | 9.946 |
| 2019 | 1.380 | 5.000 | 5.080 |
| 2020 | 1.418 | 2.000 | 3.164 |
| 2021 | 1.456 | 3.164 | 0.000 |
| 2022 | 1.496 | 0.000 | 0.000 |
| 2023 | 1.537 | 0.000 | 0.000 |
| 2024 | 1.578 | 0.000 | 0.000 |
| **TOTAL** | | **10.164** | |

Note: the Index Factors for 2020 and subsequent years are estimates and the payment amounts shown in 2020 and 2021 will need to be re-calculated based on the actual index factor for each of those years.

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