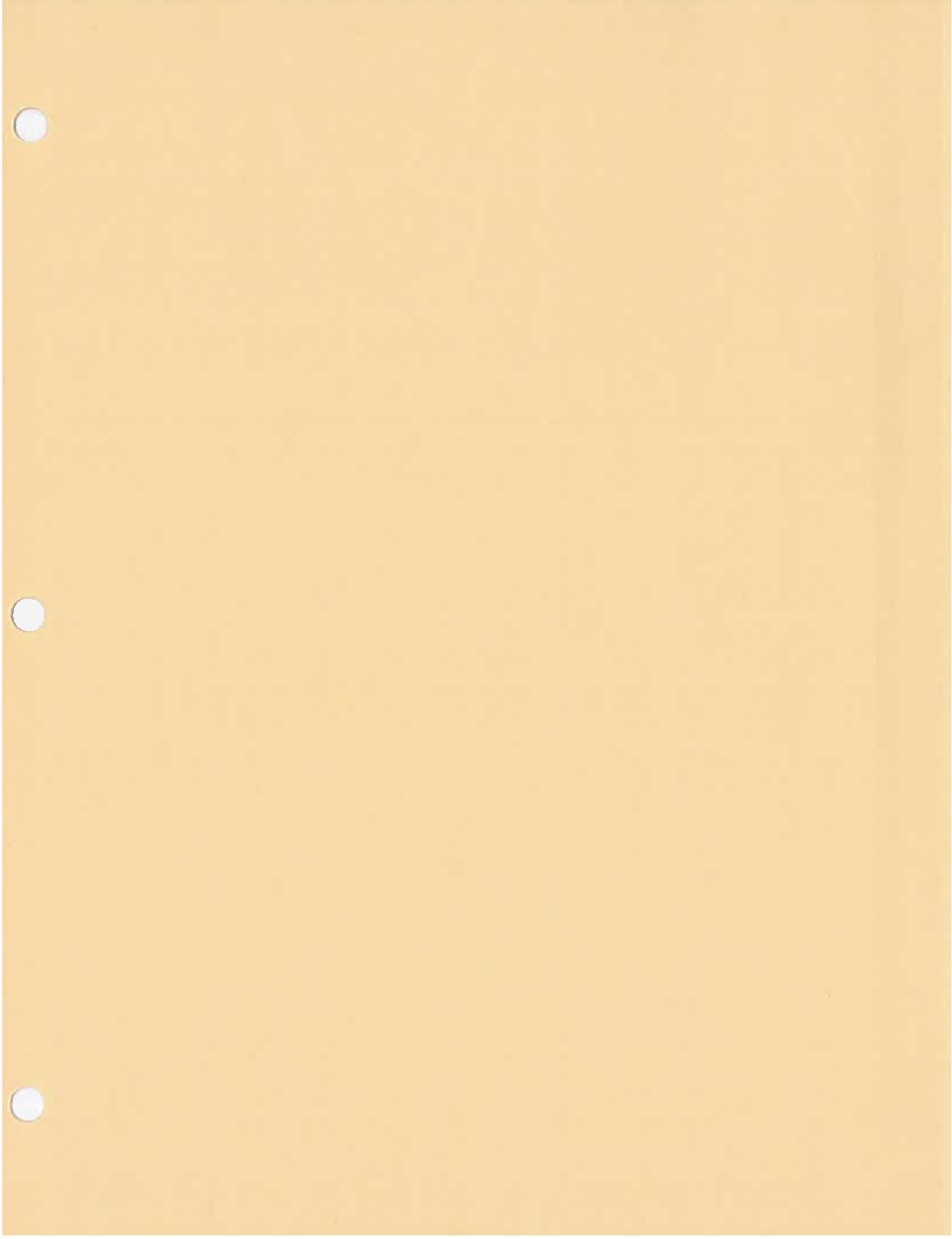


**NO PACKET MATERIAL FOR THIS ITEM**







Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5


Katherine Miller  
County Manager

## MEMORANDUM

DATE: May 6, 2014

TO: Board of County Commissioners

FROM: Adam Leigland, Public Works Director

VIA: Katherine Miller, County Manager 

ITEM AND ISSUE: *BCC Meeting May 13, 2014*  
SUMMARY OF AND UPDATE ON THE AAMODT SETTLEMENT AGREEMENT

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### SUMMARY:

The Aamodt litigation is a federal lawsuit involving Pueblo and non-Pueblo water rights in the Pojoaque Valley. The case has been in federal court since 1966, and was very contentious and complicated. In 2000, the parties involved began talks on a settlement agreement, as an alternative to pursuing the court case until a final judgment. Negotiations on the settlement agreement continued until 2006, when all parties agreed on a finalized agreement. The County conceptually agreed to the Settlement Agreement in June 2005 with Resolution 2005-78 (attached) and agreed, along with the other parties, to the draft Agreement in January 2006. Congress was sent the Settlement Agreement in 2006 and approved it in 2010.

The Settlement Agreement is a negotiated alternative to a court decision. In fact, the opening paragraphs of the Settlement Agreement state:

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 Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66cv6639 (D.N.M.), in a just manner without needless expenditure of funds and other litigation resources. 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.

### Agreements:

The entire Aamodt settlement is governed by four key documents.

1. Settlement Act. In 2010, Congress passed the *Claims Resettlement Act of 2010*, which addressed four separate Native American water rights cases. Title VI of the Claims Resettlement Act deals with the Aamodt litigation and is called the *Aamodt Litigation Settlement Act* (attached). This Settlement Act sets the general framework for the Settlement Agreement and describes the federal role in constructing the Regional Water System, including allocating federal funds. It also spells out the other agreements necessary for implementing the Regional Water System. It states that the US Bureau of Reclamation (BOR) will be the agent for implementing the Regional Water System.
2. Settlement Agreement. The Settlement Agreement (attached) was finalized in January 2006 and formally signed by all parties in March 2013. The Settlement Agreement is ultimately about Pueblo water rights, but it involves a number of other factors in order to meet the water right provisions, such as disposition of wells of non-Pueblo well owners in the Valley. The Settlement Agreement is very complicated and involved (50 pages long). The key aspect in the Agreement for non-Pueblo residents is what to do with their wells. Non-Pueblo residents have several options with regard to their wells, one of which is to abandon the well and hook up to the Regional Water System. Making this decision is known as the "well election."
3. Cost-Sharing and System Integration Agreement (CSSIA). This agreement (attached) is specifically mentioned in the Settlement Act. As the title suggests, this agreement discusses many of the technical details of the Regional Water System, addressing such things as phasing, easements, well locations, and operation and maintenance responsibilities. It also spells out construction cost sharing among the US, State, and County. Paragraphs 3.1.1 and 3.1.3 of the CSSIA break the cost responsibilities out as shown below:

Party	Construction Cost Share (excluding connection costs)
US	\$106,400,000
State of NM	\$45,500,000
Santa Fe County	\$7,400,000
Total	\$159,300,000

Paragraph 3.1.4 of the CSSIA says that service connections costs, the costs to actually hook up non-Pueblo customers to the new water system, could be as high as \$18,000,000. Of this, the State has dedicated \$4,000,000. The remainder will be paid by the County, according to policies that the County develops. The BOR estimates that the actual County obligation will be \$5,696,000 for connections.

Paragraph 3.1.5 of the CSSIA says that the costs shown above will be adjusted for inflation on an annual basis. Paragraph 3.1.6 of the CSSIA says that the County will enter into an agreement with the BOR describing how the County cost share will be paid. That

agreement is currently being drafted, but the BOR has submitted a draft payment schedule (attached) that indicates both the timeline for payment and the new adjusted amounts. The BOR estimates that after adjusting for inflation (using an inflation rate of 3.9%), the actual County share, including both construction costs and connection fee costs, will be \$23,460,000.

The CSSIA is also where the County's sale of the Top of the World water rights for \$5,400,000 was specified.

The CSSIA was finalized in August 2009 and formally signed by all parties in March 2013.

4. Operating Agreement. The Operating Agreement (OA) is also specifically required by the Settlement Act. The OA will be an agreement between the County and the four Pueblos describing the details of how the Regional Water System will be operated. Paragraph 612 of the Act has a list of items that the OA must address, including delineation of water lines, allocation of system capacity, and cost and payment procedures. Drafting of the OA has not started yet, but the Act does state that the OA must be completed 180 days after the submission of the Environmental Impact Statement (EIS).
5. Joint Powers Agreement (JPA). The JPA between the County and the four Pueblos is not specifically mentioned in any of these four key documents described above. Further, the JPA is separate from the Operating Agreement. Rather, a JPA is needed to implement Paragraph 9.5 of the Settlement Agreement, which says that the County and Pueblos shall establish a Regional Water System. The JPA will describe the governance of the Regional Water System. It will create and describe the duties of a board of directors, describe voting procedures, and describe the role of the general manager. It will be similar to the 1998 JPA between the City of Santa Fe and the County that created the Solid Waste Management Agency and the 2006 JPA that created the Buckman Direct Diversion Board. This agreement is still in draft form; the most recent draft is attached.

#### Court Process:

The Aamodt litigation is a federal court case, and the federal court is the lead agency in the Settlement Agreement. All the parties signed the Settlement Agreement in March 2013. The court then reached out to the non-Pueblo well owners of the Pojoaque Valley who would be affected by the Settlement Agreement to see if they had any objections to the Agreement. The outreach was in the form of a mailed affidavit whereby the well owner had to indicate if they objected to the Agreement and the nature of the objection. The forms were mailed out in January 2014 and the court-determined deadline for submission was April 7, 2014. The County, in partnership with the State and the BOR, led a public information campaign to help the well owners make an informed decision.

Now that the April 7 deadline has passed, the court will evaluate any and all objections received and make a determination, based on the objections, if the Settlement Agreement is valid or has some fundamental flaw. The court will make its decision on the merits of the objections themselves and not merely on the sheer number of objections received. In other words, the court could receive 1000 objections that are not sound and thus discarded and just one that is sound and renders the Agreement invalid.

Once the court evaluates the objections, it will make its final determination on the Settlement Agreement. If it finds that the Settlement Agreement is valid, the Agreement will go into effect. At that point, the non-Pueblo residents will be asked to make their well election. It is unknown how long this process will take, but it is conservatively estimated that it will be at least a year before the well election must be made.

### **Regional Water System**

The pillar of the Settlement Agreement is the construction of a Regional Water System that will divert water from the Rio Grande, treat the water, and transmit the water throughout the Valley. Each Pueblo and the County will receive this treated water and then distribute it throughout their service areas. Non-Pueblo well owners will voluntarily choose to join this water system through their well election. The Regional Water System will be governed by a joint board (as described above).

### **Technical Implementation:**

According to the Settlement Act, the BOR is the lead agency for the technical implementation of the Regional Water System. This includes developing the EIS, designing the entire system, constructing the system, and operating any phases of the system that are completed early. The EIS is in process now, and the BOR has contractors in the field conducting surveys and geological and archeological analyses. The BOR is also evaluating the various alternatives for the diversion off the Rio Grande and the back-up storage. The design process has also started. The BOR has already completed an approximately 30% design of the transmission system.

The Settlement Act contains various deadlines that the BOR must meet. For instance, by September 15, 2017, the EIS must be complete and all permits from the State Engineer for creating a new point of diversion on the Rio Grande must be granted. On June 30, 2021, the BOR must report to the court on the state of completion of the Regional Water System, and the system must be substantially complete by June 30, 2024. As of the date of this memo, the BOR is on track to meet its deadlines.

### **ACTION REQUESTED:**

None; for information only

### **Attachments:**

1. Resolution 2005-78
2. Settlement Act
3. Settlement Agreement
4. Cost-Sharing and System Integration Agreement
5. Draft Cost-Share Plan
6. Draft Joint Powers Agreement



# **SANTA FE COUNTY**

## **Resolution No. 2005 - 78**

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### **A Resolution Supporting the Conceptual Proposal Regarding the Aamodt Water Settlement and Urging the Bureau of Reclamation and the State of New Mexico to Provide Apportionment of San Juan - Chama Water to the Aamodt Settlement**

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**WHEREAS,** Pueblo of Nambe, Pueblo of Tesuque, Pueblo of Pojoaque, and Pueblo of San Ildefonso, make up the Northern Pueblos Tributary Water Rights Association ("the four Association member Pueblos");

**WHEREAS,** the four Association member Pueblos are parties to the longstanding Aamodt adjudication;

**WHEREAS,** the four Association member Pueblos are seeking to secure a firm water supply for their future while attempting to work with all non-Pueblo parties to arrive at a regional water supply solution and to find practical, cost-effective solutions to the difficult water supply concerns that everyone faces;

**WHEREAS,** the four Association member Pueblos recognize and support Santa Fe County and the City of Santa Fe's need for a secure water supply and stand ready to work with them in the course of addressing the regional water supply concerns facing our respective entities;

**WHEREAS,** the four Association member Pueblos strongly believe there are viable approaches to enable Santa Fe County and City of Santa Fe to obtain the San Juan-Chama Project water while also allowing the Aamodt Pueblos and the Pueblo of Taos to utilize a portion of the uncontracted San Juan-Chama water supply together with other secure rights so that the long-term needs of the Pueblos, Santa Fe County, and the City of Santa Fe are met;

SEC. CLERK RECORDED 06/15/2005

**A Resolution Supporting the Conceptual Proposal of the Northern Pueblo Tributary Water Rights Association Regarding the Aamodt Water Settlement and Urging the Bureau of Reclamation and the State of New Mexico to Provide Apportionment of San Juan - Chama Water to the Aamodt Settlement**

**WHEREAS** there are practical and hydrological approaches that would benefit all parties that have not yet been fully explored;

**WHEREAS**, one issue that high level United States Department of Interior officials continue to raise with the Aamodt Pueblos is that the Department of Interior has set aside 2,990 acre-feet per year of San Juan-Chama Project water to assist in providing needed water supplies for Indian water rights settlements in New Mexico.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of County Commissioners of Santa Fe County:

1. Supports the conceptual proposal regarding the Aamodt Water Settlement, which includes a commitment by the parties, including the pueblos, to support Santa Fe County and City of Santa Fe Buckman Diversion Project, the Draft Environmental Impact Statement, and the renewal or conversion of Santa Fe County and the City of Santa Fe's San Juan-Chama water; and
2. Urges the United States Department of Interior's Bureau of Reclamation to address the regional water supply concerns facing our respective entities and look for alternative means to mitigate the concerns raised by the Pueblos with the Bureau of Reclamation regarding renewal or conversion of all of the existing San Juan-Chama water service contracts.

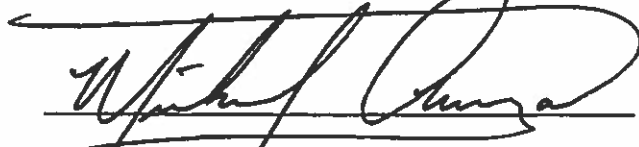
**AND FURTHER, BE IT RESOLVED**, that the Board of County Commissioners of Santa Fe County requests that the State of New Mexico work with the Pueblos, Santa Fe County, and the City of Santa Fe in ensuring that all governmental entities in the region have a secure water supply available to them.

STFC CLERK RECORDED 06/15/2005

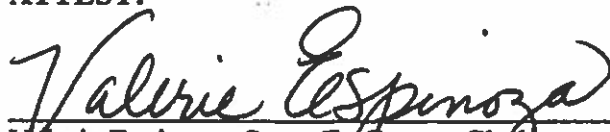
A Resolution Supporting the Conceptual Proposal of the Northern Pueblo Tributary Water Rights Association Regarding the Aamodt Water Settlement and Urging the Bureau of Reclamation and the State of New Mexico to Provide Apportionment of San Juan - Chama Water to the Aamodt Settlement

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of June, 2005.

BOARD OF COUNTY COMMISSIONERS

  
Michael D. Anaya, Chairman

ATTEST:

  
Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:

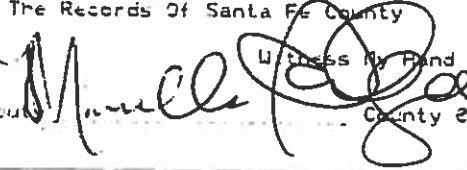
 6-8-05  
Stephen C. Ross, Santa Fe County Attorney



CLERK RECORDED 06/15/2005

COUNTY OF SANTA FE	)	BCC RESOLUTIONS
STATE OF NEW MEXICO	) ss	PAGES: 3

I hereby Certify That This Instrument Was Filed for Record On The 15TH Day Of June, A D , 2005 at 14:35 And Was Duly Recorded as Instrument # 1384536 Of The Records Of Santa Fe County

 Witness My Hand And Seal Of Office Valerie Espinoza  
Deputy County Clerk, Santa Fe NM



1. The first part of the paper is devoted to the study of the properties of the function  $f(x)$  defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt.$$

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including the jurisdiction of the court that enters the Partial Final Decree adjudicating the Pueblo's water rights.

(c) **REGULATORY AUTHORITY NOT AFFECTED.**—Nothing in this title shall be deemed to determine or limit any authority of the State or the Pueblo to regulate or administer waters or water rights now or in the future.

**SEC. 512. DISCLAIMER.**

Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of any other Indian tribe.

**SEC. 513. ANTIDEFICIENCY.**

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

## **TITLE VI—AAMODT LITIGATION SETTLEMENT**

**SEC. 601. SHORT TITLE.**

This title may be cited as the "Aamodt Litigation Settlement Act".

**SEC. 602. DEFINITIONS.**

In this title:

(1) **AAMODT CASE.**—The term "Aamodt Case" means the civil action entitled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.).

(2) **ACRE-FEET.**—The term "acre-feet" means acre-feet of water per year.

(3) **AUTHORITY.**—The term "Authority" means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.

(4) **CITY.**—The term "City" means the city of Santa Fe, New Mexico.

(5) **COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.**—The term "Cost-Sharing and System Integration Agreement" means the agreement, dated August 27, 2009, to be executed by the United States, the State, the Pueblos, the County, and the City that—

(A) describes the location, capacity, and management (including the distribution of water to customers) of the Regional Water System; and

(B) allocates the costs of the Regional Water System with respect to—

(i) the construction, operation, maintenance, and repair of the Regional Water System;

(ii) rights-of-way for the Regional Water System; and

(iii) the acquisition of water rights.

(6) COUNTY.—The term “County” means Santa Fe County, New Mexico.

(7) COUNTY DISTRIBUTION SYSTEM.—The term “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.

(8) COUNTY WATER UTILITY.—The term “County Water Utility” means the water utility organized by the County to—

(A) receive water distributed by the Authority; and

(B) provide the water received under subparagraph

(A) to customers on non-Pueblo land in the Pojoaque Basin.

(9) ENGINEERING REPORT.—The term “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” dated September 2008 and any amendments thereto, including any modifications which may be required by section 611(d)(2).

(10) FUND.—The term “Fund” means the Aamodt Settlement Pueblos’ Fund established by section 615(a).

(11) OPERATING AGREEMENT.—The term “Operating Agreement” means the agreement between the Pueblos and the County executed under section 612(a).

(12) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—The term “operations, maintenance, and replacement costs” means all costs for the operation of the Regional Water System that are necessary for the safe, efficient, and continued functioning of the Regional Water System to produce the benefits described in the Settlement Agreement.

(B) EXCLUSION.—The term “operations, maintenance, and replacement costs” does not include construction costs or costs related to construction design and planning.

(13) POJOAQUE BASIN.—

(A) 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—

(i) the Rio Pojoaque; or

(ii) the 2 unnamed arroyos immediately south; and

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

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

(14) PUEBLO.—The term "Pueblo" means each of the pueblos of Nambe, Pojoaque, San Ildefonso, or Tesuque.

(15) PUEBLOS.—The term "Pueblos" means collectively the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

(16) PUEBLO LAND.—The term "Pueblo land" means any real property that is—

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

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

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

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

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

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

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

(17) PUEBLO WATER FACILITY.—

(A) IN GENERAL.—The term "Pueblo Water Facility" means—

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

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

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

(II) described in the Operating Agreement.

(B) INCLUSIONS.—The term "Pueblo Water Facility" includes—

(i) the barrier dam and infiltration project on the Rio Pojoaque described in the Engineering Report; and

(ii) the Tesuque Pueblo infiltration pond described in the Engineering Report.

(18) REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The term "Regional Water System" means the Regional Water System described in section 611(a).

(B) EXCLUSIONS.—The term "Regional Water System" does not include the County or Pueblo water supply delivered through the Regional Water System.

(19) SAN JUAN-CHAMA PROJECT.—The term "San Juan-Chama Project" means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105).

(20) SAN JUAN-CHAMA PROJECT ACT.—The term "San Juan-Chama Project Act" means sections 8 through 18 of the Act of June 13, 1962 (76 Stat. 96, 97).

(21) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(22) SETTLEMENT AGREEMENT.—The term "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 9, 2006, as amended in conformity with this title.

(23) STATE.—The term "State" means the State of New Mexico.

### **Subtitle A—Pojoaque Basin Regional Water System**

#### **SEC. 611. AUTHORIZATION OF REGIONAL WATER SYSTEM.**

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct a regional water system in accordance with the Settlement Agreement, to be known as the "Regional Water System"—

(1) to divert and distribute water to the Pueblos and to the County Water Utility, in accordance with the Engineering Report; and

(2) that consists of—

(A) surface water diversion facilities at San Ildefonso Pueblo on the Rio Grande; and

(B) any treatment, transmission, storage and distribution facilities and wellfields for the County Distribution System and Pueblo Water Facilities that are necessary to supply 4,000 acre-feet of water within the Pojoaque Basin, unless modified in accordance with subsection (d)(2).

(b) FINAL PROJECT DESIGN.—The Secretary shall issue a final project design within 90 days of completion of the environmental compliance described in section 616 for the Regional Water System that—

(1) is consistent with the Engineering Report; and

(2) includes a description of any Pueblo Water Facilities.

(c) ACQUISITION OF LAND; WATER RIGHTS.—

(1) ACQUISITION OF LAND.—Upon request, and in exchange for the funding which shall be provided in section 617(c), the Pueblos shall consent to the grant of such easements and rights-of-way as may be necessary for the construction of the Regional Water System at no cost to the Secretary. To the extent that the State or County own easements or rights-of-way that may be used for construction of the Regional Water System, the State or County shall provide that land or interest in land as necessary for construction at no cost to the Secretary.



The Secretary shall acquire any other land or interest in land that is necessary for the construction of the Regional Water System.

(2) WATER RIGHTS.—The Secretary shall not condemn water rights for purposes of the Regional Water System.

(d) CONDITIONS FOR CONSTRUCTION.—

(1) IN GENERAL.—The Secretary shall not begin construction of the Regional Water System facilities until the date on which—

(A) the Secretary executes—

(i) the Settlement Agreement; and

(ii) the Cost-Sharing and System Integration Agreement; and

(B) the State and the County have entered into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction in accordance with the Cost-Sharing and System Integration Agreement.

(2) MODIFICATIONS TO REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The State and the County, in agreement with the Pueblos, the City, and other signatories to the Cost-Sharing and System Integration Agreement, may modify the extent, size, and capacity of the County Distribution System as set forth in the Cost-Sharing and System Integration Agreement.

(B) EFFECT.—A modification under subparagraph (A)—

(i) shall not affect implementation of the Settlement Agreement so long as the provisions in section 623 are satisfied; and

(ii) may result in an adjustment of the State and County cost-share allocation as set forth in the Cost-Sharing and System Integration Agreement.

(e) APPLICABLE LAW.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design and construction of the Regional Water System.

(f) CONSTRUCTION COSTS.—

(1) PUEBLO WATER FACILITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the expenditures of the Secretary to construct the Pueblo Water Facilities under this section shall not exceed \$106,400,000.

(B) EXCEPTION.—The amount described in subparagraph (A) shall be increased or decreased, as appropriate, based on ordinary fluctuations in construction costs since October 1, 2006, as determined using applicable engineering cost indices.

(2) COSTS TO PUEBLO.—The costs incurred by the Secretary in carrying out activities to construct the Pueblo Water Facilities under this section shall not be reimbursable to the United States.

(3) COUNTY DISTRIBUTION SYSTEM.—As a condition of the Secretary using the funds made available pursuant to section 617(a)(1), the costs of constructing the County Distribution System shall be a State and local expense pursuant to the Cost-Sharing and System Integration Agreement.

(g) INITIATION OF DISCUSSIONS.—

(1) IN GENERAL.—If the Secretary determines that the cost of constructing the Regional Water System exceed the amounts

described in the Cost-Sharing and System Integration Agreement for construction of the Regional Water System and would necessitate funds in excess of the amount made available pursuant to section 617(a)(1), the Secretary shall initiate negotiations with the parties to the Cost-Sharing and System Integration Agreement for an agreement regarding non-Federal contributions to ensure that the Regional Water System can be completed as required by section 623(e).

(2) JOINT RESPONSIBILITIES.—The United States shall not bear the entire amount of any cost overrun, nor shall the State be responsible to pay any amounts in addition to the amounts specified in the Cost-Sharing and System Integration Agreement.

(h) CONVEYANCE OF REGIONAL WATER SYSTEM FACILITIES.—

(1) IN GENERAL.—Subject to paragraph (2), on completion of the construction of the Regional Water System as defined in section 623(e), the Secretary, in accordance with the Operating Agreement, shall convey to—

(A) each Pueblo the portion of any Pueblo Water Facility that is located within the boundaries of the Pueblo, including any land or interest in land located within the boundaries of the Pueblo that is acquired by the United States for the construction of the Pueblo Water Facility;

(B) the County the County Distribution System, including any land or interest in land acquired by the United States for the construction of the County Distribution System; and

(C) the Authority any portions of the Regional Water System that remain after making the conveyances under subparagraphs (A) and (B), including any land or interest in land acquired by the United States for the construction of the portions of the Regional Water System.

(2) CONDITIONS FOR CONVEYANCE.—The Secretary shall not convey any portion of the Regional Water System facilities under paragraph (1) until the date on which—

(A) construction of the Regional Water System is substantially complete, as defined in section 623(e); and

(B) the Operating Agreement is executed in accordance with section 612.

(3) SUBSEQUENT CONVEYANCE.—On conveyance by the Secretary under paragraph (1), the Pueblos, the County, and the Authority shall not reconvey any portion of the Regional Water System conveyed to the Pueblos, the County, and the Authority, respectively, unless the reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

(4) INTEREST OF THE UNITED STATES.—On conveyance of a portion of the Regional Water System under paragraph (1), the United States shall have no further right, title, or interest in and to the portion of the Regional Water System conveyed.

(5) ADDITIONAL CONSTRUCTION.—On conveyance of a portion of the Regional Water System under paragraph (1), the Pueblos, County, or the Authority, as applicable, may, at the expense of the Pueblos, County, or the Authority, construct any additional infrastructure that is necessary to fully use the water delivered by the Regional Water System.

(6) TAXATION.—Conveyance of title to any portion of the Regional Water System, the Pueblo Water Facilities, or the

County Distribution System under paragraph (1) does not waive or alter any applicable Federal law prohibiting taxation of such facilities or the underlying land.

(7) LIABILITY.—

(A) IN GENERAL.—Effective on the date of conveyance of any land or facility under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land and facilities conveyed, other than damages caused by acts of negligence by the United States, or by employees or agents of the United States, prior to the date of conveyance.

(B) TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act").

(8) EFFECT.—Nothing in any transfer of ownership provided or any conveyance thereto as provided in this section shall extinguish the right of any Pueblo, the County, or the Regional Water Authority to the continuous use and benefit of each easement or 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 Cost-Sharing and System Integration Agreement.

SEC. 612. OPERATING AGREEMENT.

(a) IN GENERAL.—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) APPROVAL.—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) CONTENTS.—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

**SEC. 613. ACQUISITION OF PUEBLO WATER SUPPLY FOR REGIONAL WATER SYSTEM.**

(a) IN GENERAL.—For the purpose of providing a reliable firm supply of water from the Regional Water System for the Pueblos in accordance with the Settlement Agreement, the Secretary, on behalf of the Pueblos, shall—

(1) acquire water rights to—

(A) 302 acre-feet of Nambé reserved water described in section 2.6.2 of the Settlement Agreement; and

(B) 1141 acre-feet from water acquired by the County for water rights commonly referred to as "Top of the World" rights in the Aamodt Case;

(2) enter into a contract with the Pueblos for 1,079 acre-feet in accordance with section 11 of the San Juan-Chama Project Act; and

(3) by application to the State Engineer, seek approval to divert the water acquired and made available under paragraphs (1) and (2) at the points of diversion for the Regional Water System, consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement.

(b) FORFEITURE.—The nonuse of the water supply secured by the Secretary for the Pueblos under subsection (a) shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof.

(c) TRUST.—The Pueblo water rights secured under subsection (a) shall be held by the United States in trust for the Pueblos.

(d) APPLICABLE LAW.—The water supply made available pursuant to subsection (a)(2) shall be subject to the San Juan-Chama Project Act, and no preference shall be provided to the Pueblos as a result of subsection (c) with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.

(e) CONTRACT FOR SAN JUAN-CHAMA PROJECT WATER SUPPLY.—With respect to the contract for the water supply required by subsection (a)(2), such San Juan-Chama Project contract shall be pursuant to the following terms:

(1) WAIVERS.—Notwithstanding the provisions of the San Juan-Chama Project Act, or any other provision of law—

(A) the Secretary shall waive the entirety of the Pueblos' share of the construction costs for the San Juan-Chama Project, and pursuant to that waiver, the Pueblos' share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest, due from 1972 to the execution of the contract required by subsection (a)(2), shall be nonreimbursable;

(B) the Secretary's waiver of each Pueblo's share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior; and

(C) the construction costs associated with any water made available from the San Juan-Chama Project which were determined nonreimbursable and nonreturnable pursuant to Public Law No. 88-293, 78 Stat. 171 (March 28, 1964), shall remain nonreimbursable and nonreturnable.

(2) TERMINATION.—The contract shall provide that it shall terminate only on—

(A) failure of the United States District Court for the District of New Mexico to enter a final decree for the Aamodt Case by the expiration date described in section 623(b), or within the time period of any extension of that deadline granted by the court; or

(B) entry of an order by the United States District Court for the District of New Mexico voiding the final decree and Settlement Agreement for the Aamodt Case pursuant to section 10.3 of the Settlement Agreement.

(f) LIMITATION.—The Secretary shall use the water supply secured under subsection (a) only for the purposes described in the Settlement Agreement.

(g) FULFILLMENT OF WATER SUPPLY ACQUISITION OBLIGATIONS.—Compliance with subsections (a) through (f) shall satisfy any and all obligations of the Secretary to acquire or secure a water supply for the Pueblos pursuant to the Settlement Agreement.

(h) RIGHTS OF PUEBLOS IN SETTLEMENT AGREEMENT UNAFFECTED.—Notwithstanding the provisions of subsections (a) through (g), the Pueblos, the County or the Regional Water Authority may acquire any additional water rights to ensure all parties to the Settlement Agreement receive the full allocation of water provided by the Settlement Agreement and nothing in this title amends or modifies the quantities of water allocated to the Pueblos thereunder.

#### SEC. 614. DELIVERY AND ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY AND WATER.

(a) ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY.—

(1) IN GENERAL.—The Regional Water System shall have the capacity to divert from the Rio Grande a quantity of water sufficient to provide—

(A) up to 4,000 acre-feet of consumptive use of water;

and

(B) the requisite peaking capacity described in—

(i) the Engineering Report; and

(ii) the final project design.

(2) ALLOCATION TO THE PUEBLOS AND COUNTY WATER UTILITY.—Of the capacity described in paragraph (1)—

(A) there shall be allocated to the Pueblos—

(i) sufficient capacity for the conveyance of 2,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i); and

(B) there shall be allocated to the County Water Utility—

(i) sufficient capacity for the conveyance of up to 1,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i).

(3) APPLICABLE LAW.—Water shall be allocated to the Pueblos and the County Water Utility under this subsection in accordance with—

- (A) this subtitle;
- (B) the Settlement Agreement; and
- (C) the Operating Agreement.

(b) DELIVERY OF REGIONAL WATER SYSTEM WATER.—The Authority shall deliver water from the Regional Water System—

(1) to the Pueblos water in a quantity sufficient to allow full consumptive use of up to 2,500 acre-feet per year of water rights by the Pueblos in accordance with—

- (A) the Settlement Agreement;
- (B) the Operating Agreement; and
- (C) this subtitle; and

(2) to the County water in a quantity sufficient to allow full consumptive use of up to 1,500 acre-feet per year of water rights by the County Water Utility in accordance with—

- (A) the Settlement Agreement;
- (B) the Operating Agreement; and
- (C) this subtitle.

(c) ADDITIONAL USE OF ALLOCATION QUANTITY AND UNUSED CAPACITY.—The Regional Water System may be used to—

(1) provide for use of return flow credits to allow for full consumptive use of the water allocated in the Settlement Agreement to each of the Pueblos and to the County; and

(2) convey water allocated to one of the Pueblos or the County Water Utility for the benefit of another Pueblo or the County Water Utility or allow use of unused capacity by each other through the Regional Water System in accordance with an intergovernmental agreement between the Pueblos, or between a Pueblo and County Water Utility, as applicable, if—

(A) such intergovernmental agreements are consistent with the Operating Agreement, the Settlement Agreement, and this title;

(B) capacity is available without reducing water delivery to any Pueblo or the County Water Utility in accordance with the Settlement Agreement, unless the County Water Utility or Pueblo contracts for a reduction in water delivery or Regional Water System capacity;

(C) the Pueblo or County Water Utility contracting for use of the unused capacity or water has the right to use the water under applicable law; and

(D) any agreement for the use of unused capacity or water provides for payment of the operation, maintenance, and replacement costs associated with the use of capacity or water.

(d) INTERIM USE OF COUNTY CAPACITY.—In accordance with section 9.6.4 of the Settlement Agreement, the County may use unused capacity and water rights of the County Water Utility to supply water within the County outside of the Pojoaque Basin—

(1) on approval by the State and the Authority; and

(2) subject to the issuance of a permit by the New Mexico State Engineer.

SEC. 615. AAMODT SETTLEMENT PUEBLOS' FUND.

(a) **ESTABLISHMENT OF THE AAMODT SETTLEMENT PUEBLOS' FUND.**—There is established in the Treasury of the United States a fund, to be known as the "Aamodt Settlement Pueblos' Fund," consisting of—

(1) such amounts as are made available to the Fund under section 617(c) or other authorized sources; and

(2) any interest earned from investment of amounts in the Fund under subsection (b).

(b) **MANAGEMENT OF THE FUND.**—The Secretary shall manage the Fund, invest amounts in the Fund, and make amounts available from the Fund for distribution to the Pueblos in accordance with—

(1) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(2) this title.

(c) **INVESTMENT OF THE FUND.**—On the date on which the waivers become effective as set forth in section 623(d), the Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) **TRIBAL MANAGEMENT PLAN.**—

(1) **IN GENERAL.**—A Pueblo may withdraw all or part of the Pueblo's portion of the Fund on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) **REQUIREMENTS.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that a Pueblo spend any amounts withdrawn from the Fund in accordance with the purposes described in section 617(c).

(3) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Fund under an approved tribal management plan are used in accordance with this subtitle.

(4) **LIABILITY.**—If a Pueblo or the Pueblos exercise the right to withdraw amounts from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts withdrawn.

(5) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Pueblos shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Fund that the Pueblos do not withdraw under this subsection.

(B) **DESCRIPTION.**—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) **APPROVAL.**—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable



and consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(D) ANNUAL REPORT.—The Pueblos shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(6) NO PER CAPITA PAYMENTS.—No part of the principal of the Fund, or the interest or income accruing on the principal shall be distributed to any member of a Pueblo on a per capita basis.

(7) AVAILABILITY OF AMOUNTS FROM THE FUND.—

(A) APPROVAL OF SETTLEMENT AGREEMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), amounts made available under section 617(c)(1), or from other authorized sources, shall be available for expenditure or withdrawal only after the publication of the statement of findings required by section 623(a)(1).

(ii) EXCEPTION.—Notwithstanding clause (i), the amounts described in that clause may be expended before the date of publication of the statement of findings under section 623(a)(1) for any activity that is more cost-effective when implemented in conjunction with the construction of the Regional Water System, as determined by the Secretary.

(B) COMPLETION OF CERTAIN PORTIONS OF REGIONAL WATER SYSTEM.—Amounts made available under section 617(c)(1) or from other authorized sources shall be available for expenditure or withdrawal only after those portions of the Regional Water System described in section 1.5.24 of the Settlement Agreement have been declared substantially complete by the Secretary.

#### SEC. 616. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—In carrying out this subtitle, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) NATIONAL ENVIRONMENTAL POLICY ACT.—Nothing in this title affects the outcome of any analysis conducted by the Secretary or any other Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

#### SEC. 617. FUNDING.

(a) REGIONAL WATER SYSTEM.—

(1) FUNDING.—

(A) MANDATORY APPROPRIATION.—Subject to paragraph (5), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 616 an amount not to exceed \$56,400,000, as adjusted under paragraph (4), for the period of fiscal years 2011 through 2016, to remain available until expended.

(B) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to the amount made available under subparagraph (A), there is authorized to be appropriated to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 616 \$50,000,000, as adjusted under paragraph (4), for the period of fiscal years 2011 through 2024.

(2) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraph (1)(A), without further appropriation, to remain available until expended.

(3) **PRIORITY OF FUNDING.**—Of the amounts made available under paragraph (1), the Secretary shall give priority to funding—

(A) the construction of the San Ildefonso portion of the Regional Water System, consisting of—

(i) the surface water diversion, treatment, and transmission facilities at San Ildefonso Pueblo; and

(ii) the San Ildefonso Pueblo portion of the Pueblo Water Facilities; and

(B) that part of the Regional Water System providing 475 acre-feet to Pojoaque Pueblo pursuant to section 2.2 of the Settlement Agreement.

(4) **ADJUSTMENT.**—The amounts made available under paragraph (1) shall be adjusted annually to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices.

(5) **LIMITATIONS.**—

(A) **IN GENERAL.**—No amounts shall be made available under paragraph (1) for the construction of the Regional Water System until the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.

(B) **RECORD OF DECISION.**—No amounts made available under paragraph (1) shall be expended for construction unless the record of decision issued by the Secretary after completion of an environmental impact statement provides for a preferred alternative that is in substantial compliance with the proposed Regional Water System, as defined in the Engineering Report.

(b) **ACQUISITION OF WATER RIGHTS.**—

(1) **IN GENERAL.**—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for the acquisition of the water rights under section 613(a)(1)(B) \$5,400,000.

(2) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraph (1), without further appropriation, to remain available until expended.

(c) **AAMODT SETTLEMENT PUEBLOS' FUND.**—

(1) **FUNDING.**—

(A) **MANDATORY APPROPRIATIONS.**—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary the following amounts for the period of fiscal years 2011 through 2015:

(i) \$15,000,000, as adjusted according to the CPI Urban Index beginning on October 1, 2006, which shall be allocated to the Pueblos, in accordance with section 2.7.1 of the Settlement Agreement, for the rehabilitation, improvement, operation, maintenance, and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the applicable Pueblo.

(ii) \$5,000,000, as adjusted according to the CPI Urban Index beginning on January 1, 2011, and any interest on that amount, which shall be allocated to the Pueblo of Nambe only for the acquisition land, other real property interests, or economic development for the Nambe reserved water rights in accordance with section 613(a)(1)(A).

(B) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under clauses (i) and (ii) of subparagraph (A), respectively, there are authorized to be appropriated to the Secretary for the period of fiscal years 2011 through 2024, \$37,500,000 to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—Prior to conveyance of the Regional Water System pursuant to section 611, the Secretary is authorized to and shall pay any operation, maintenance, and replacement costs associated with the Pueblo Water Facilities or the Regional Water System, up to the amount made available under subparagraph (B).

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subparagraph (A) \$5,000,000.

(C) OBLIGATION OF FEDERAL GOVERNMENT AFTER COMPLETION.—After the date on which construction of the Regional Water System is completed and the amounts required to be deposited in the Aamodt Settlement Pueblos' Fund pursuant to paragraph (1) have been deposited by the Federal Government—

(i) the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs associated with the Pueblo Water Facilities or the Regional Water System; and

(ii) the authorization for the Secretary to expend funds for the operation, maintenance, and replacement costs of those systems under subparagraph (A) shall expire.

(3) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraphs (1)(A), without further appropriation, to remain available until expended or until the authorization for the Secretary to expend funds pursuant to paragraph (2) expires.

## Subtitle B—Pojoaque Basin Indian Water Rights Settlement

### SEC. 621. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL

(a) **APPROVAL.**—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments to the Settlement Agreement and the Cost-Sharing and System Integration Agreement that are executed to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title) are authorized, ratified, and confirmed.

(b) **EXECUTION.**—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Secretary shall execute the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments that are necessary to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title).

(c) **AUTHORITIES OF THE PUEBLOS.**—

(1) **IN GENERAL.**—Each of the Pueblos may enter into leases or contracts to exchange water rights or to forebear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Pojoaque Basin, in accordance with the other limitations of section 2.1.5 of the Settlement Agreement, provided that section 2.1.5 is amended accordingly.

(2) **APPROVAL BY SECRETARY.**—Consistent with the Settlement Agreement, the Secretary shall approve or disapprove a lease or contract entered into under paragraph (1).

(3) **PROHIBITION ON PERMANENT ALIENATION.**—No lease or contract under paragraph (1) shall be for a term exceeding 99 years, nor shall any such lease or contract provide for permanent alienation of any portion of the water rights made available to the Pueblos under the Settlement Agreement.

(4) **APPLICABLE LAW.**—Section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any lease or contract entered into under paragraph (1).

(5) **LEASING OR MARKETING OF WATER SUPPLY.**—The water supply provided on behalf of the Pueblos pursuant to section 613(a)(1) may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements described in section 614(c)(2).

(d) **AMENDMENTS TO CONTRACTS.**—The Secretary shall amend the contracts relating to the Nambe Falls Dam and Reservoir that are necessary to use water supplied from the Nambe Falls Dam and Reservoir in accordance with the Settlement Agreement.

### SEC. 622. ENVIRONMENTAL COMPLIANCE

(a) **EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.**—The execution of the Settlement Agreement under section 611(b) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) **COMPLIANCE WITH ENVIRONMENTAL LAWS.**—In carrying out this title, the Secretary shall comply with each law of the Federal

Government relating to the protection of the environment, including—

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**SEC. 623. CONDITIONS PRECEDENT AND ENFORCEMENT DATE.**

**(a) CONDITIONS PRECEDENT.—**

(1) **IN GENERAL.**—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register by September 15, 2017, a statement of findings that the conditions have been fulfilled.

(2) **REQUIREMENTS.**—The conditions precedent referred to in paragraph (1) are the conditions that—

(A) to the extent that the Settlement Agreement conflicts with this subtitle, the Settlement Agreement has been revised to conform with this subtitle;

(B) the Settlement Agreement, so revised, including waivers and releases pursuant to section 624, has been executed by the appropriate parties and the Secretary;

(C) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized by section 617, with the exception of subsection (a)(1) of that section;

(D) the Secretary has acquired and entered into appropriate contracts for the water rights described in section 613(a);

(E) for purposes of section 613(a), permits have been issued by the New Mexico State Engineer to the Regional Water Authority to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of at least 2,381 acre-feet by the Pueblos as part of the water supply for the Regional Water System, subject to the conditions that—

(i) the permits shall be free of any condition that materially adversely affects the ability of the Pueblos or the Regional Water Authority to divert or use the Pueblo water supply described in section 613(a), including water rights acquired in addition to those described in section 613(a), in accordance with section 613(g); and

(ii) the Settlement Agreement shall establish the means to address any permit conditions to ensure the ability of the Pueblos to fully divert and consume at least 2,381 acre-feet as part of the water supply for the Regional Water System, including defining the conditions that will not constitute a material adverse affect;

(F) the State has enacted any necessary legislation and provided any funding that may be required under the Settlement Agreement;

(G) a partial final decree that sets forth the water rights and other rights to water to which the Pueblos are entitled under the Settlement Agreement and this subtitle and that substantially conforms to the Settlement

Agreement has been approved by the United States District Court for the District of New Mexico;

(H) a final decree that sets forth the water rights for all parties to the Aamodt Case and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico; and

(I) the waivers and releases described in section 624 have been executed.

(b) EXPIRATION DATE.—If all the conditions precedent described in subsection (a)(2) have not been fulfilled by September 15, 2017—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases described in the Settlement Agreement and section 624 shall not be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(c) ENFORCEMENT DATE.—The Settlement Agreement shall become 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 (a)(2)(G) and an Interim Administrative Order consistent with the Settlement Agreement.

(d) EFFECTIVENESS OF WAIVERS.—The waivers and releases executed pursuant to section 624 shall become effective as of the date that the Secretary publishes the notice required by subsection (a)(1).

(e) REQUIREMENTS FOR DETERMINATION OF SUBSTANTIAL COMPLETION OF THE REGIONAL WATER SYSTEM.—

(1) CRITERIA FOR SUBSTANTIAL COMPLETION OF REGIONAL WATER SYSTEM.—Subject to the provisions in section 611(d) concerning the extent, size, and capacity of the County Distribution System, the Regional Water System shall be determined to be substantially completed if the infrastructure has been constructed capable of—

(A) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos; and

(B) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System.

(2) CONSULTATION.—On or after June 30, 2021, at the request of 1 or more of the Pueblos, the Secretary shall consult with the Pueblos and confer with the County and the State on whether the criteria in paragraph (1) for substantial completion of the Regional Water System have been met or will be met by June 30, 2024.

(3) WRITTEN DETERMINATION BY SECRETARY.—Not earlier than June 30, 2021, at the request of 1 or more of the Pueblos and after the consultation required by paragraph (2), the Secretary shall—

(A) determine whether the Regional Water System has been substantially completed based on the criteria described in paragraph (1); and

(B) submit a written notice of the determination under subparagraph (A) to—

- (i) the Pueblos;
- (ii) the County; and
- (iii) the State.

(4) RIGHT TO REVIEW.—

(A) IN GENERAL.—A determination by the Secretary under paragraph (3)(A) shall be considered to be a final agency action subject to judicial review by the Decree Court under sections 701 through 706 of title 5, United States Code.

(B) FAILURE TO MAKE TIMELY DETERMINATION.—

(i) IN GENERAL.—If a Pueblo requests a written determination under paragraph (3) and the Secretary fails to make such a written determination by the date described in clause (ii), there shall be a rebuttable presumption that the failure constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of title 5, United States Code.

(ii) DATE.—The date referred to in clause (i) is the date that is the later of—

(I) the date that is 180 days after the date of receipt by the Secretary of the request by the Pueblo; and

(II) June 30, 2023.

(C) EFFECT OF TITLE.—Nothing in this title gives any Pueblo or Settlement Party the right to judicial review of a determination of the Secretary regarding whether the Regional Water System has been substantially completed except under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(5) RIGHT TO VOID FINAL DECREE.—

(A) IN GENERAL.—Not later than June 30, 2024, on a determination by the Secretary, after consultation with the Pueblos, that the Regional Water System is not substantially complete, 1 or more of the Pueblos, or the United States acting on behalf of a Pueblo, shall have the right to notify the Decree Court of the determination.

(B) EFFECT.—The Final Decree shall have no force or effect on a finding by the Decree Court that a Pueblo, or the United States acting on behalf of a Pueblo, has submitted proper notification under subparagraph (A).

(f) VOIDING OF WAIVERS.—If the Final Decree is void under subsection (e)(5)—

(1) the Settlement Agreement shall no longer be effective;  
(2) the waivers and releases executed pursuant to section 624 shall no longer be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(g) EXTENSION.—The dates in subsections (a)(1) and (b) may be extended if the parties to the Cost-Sharing and System Integration Agreement agree that an extension is reasonably necessary.

**SEC. 624. WAIVERS AND RELEASES OF CLAIMS.**

(a) CLAIMS BY THE PUEBLOS AND THE UNITED STATES.—In return for recognition of the Pueblos' water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and this title, the Pueblos, on behalf of themselves and their members, and the United States acting in its capacity as trustee for the Pueblos are authorized to execute a waiver and release of—

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

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

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time



up to and including the waiver effectiveness date identified in section 623(d);

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

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

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

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

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

(b) CLAIMS BY THE PUEBLOS AGAINST THE UNITED STATES.—The Pueblos, on behalf of themselves and their members, are authorized to execute a waiver and release of—

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

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

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo

Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of Trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of this Act;

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

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

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Pueblos on behalf of themselves and their members and the United States acting in its capacity as trustee for the Pueblos retain.—

(1) all claims for enforcement of the Settlement Agreement, the Cost-Sharing and System Integration Agreement, the Final Decree, including the Partial Final Decree, the San Juan-Chama Project contract between the Pueblos and the United States or this title;

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all rights to use and protect water rights acquired pursuant to state law to the extent not inconsistent with the Partial Final Decree, Final Decree, and the Settlement Agreement;

(4) all claims against persons other than Parties to the Settlement Agreement for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water) within the Pojoaque Basin arising out of activities occurring outside the Pojoaque Basin;

(5) all claims relating to activities affecting the quality of water including any claims the Pueblos may have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations implementing those laws;

(6) all claims against the United States relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including hunting, fishing, gathering or cultural rights);

(7) all claims for water rights from water sources outside the Pojoaque Basin for land outside the Pojoaque Basin owned by a Pueblo or held by the United States for the benefit of any of the Pueblos; and

(8) all rights, remedies, privileges, immunities, powers and claims not specifically waived and released pursuant to this title or the Settlement Agreement.

(d) EFFECT.—Nothing in the Settlement Agreement or this title—

(1) affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing those laws;

(2) affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee; or

(3) confers jurisdiction on any State court to—

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

(B) conduct judicial review of Federal agency action;

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on June 30, 2021.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

**SEC. 625. EFFECT.**

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

**SEC. 626. ANTIDEFICIENCY.**

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

## **TITLE VII—RECLAMATION WATER SETTLEMENTS FUND**

**SEC. 701. MANDATORY APPROPRIATION.**

(a) IN GENERAL.—Notwithstanding any other provision of law, out of any funds in the Treasury not otherwise appropriated, for each of fiscal years 2012 through 2014, the Secretary of the Treasury shall transfer to the Secretary of the Interior \$60,000,000

for deposit in the Reclamation Water Settlements Fund established in section 10501 of Public Law 111-11.

(b) RECEIPT AND ACCEPTANCE.—Starting in fiscal year 2012, the Secretary of the Interior shall be entitled to receive, shall accept, and shall use to carry out subtitle B of title X of Public Law 111-11 the funds transferred under subsection (a), without further appropriation, to remain available until expended.

## TITLE VIII—GENERAL PROVISIONS

### Subtitle A—Unemployment Compensation Program Integrity

#### SEC. 801. COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE DEBTS.

(a) UNEMPLOYMENT COMPENSATION DEBTS.—Section 6402(f) of the Internal Revenue Code of 1986 is amended—

(1) in the heading, by striking “RESULTING FROM FRAUD”;

(2) by striking paragraphs (3) and (8) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;

(3) in paragraph (3), as so redesignated—

(A) in subparagraph (A), by striking “by certified mail with return receipt”;

(B) in subparagraph (B), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”;

(C) in subparagraph (C), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”; and

(4) in paragraph (4), as so redesignated—

(A) in subparagraph (A)—

(i) by inserting “or the person’s failure to report earnings” after “due to fraud”; and

(ii) by striking “for not more than 10 years”; and

(B) in subparagraph (B)—

(i) by striking “due to fraud”; and

(ii) by striking “for not more than 10 years”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of the enactment of this Act.

#### SEC. 802. REPORTING OF FIRST DAY OF EARNINGS TO DIRECTORY OF NEW HIRES.

(a) ADDITION OF REQUIREMENT.—Section 453A(b)(1)(A) of the Social Security Act (42 U.S.C. 653a(b)(1)(A)) is amended by inserting “the date services for remuneration were first performed by the employee,” after “of the employee.”

(b) CONFORMING AMENDMENT REGARDING REPORTING FORMAT AND METHOD.—Section 453A(c) of the Social Security Act (42 U.S.C. 653a(c)) is amended by inserting “, to the extent practicable,” after “Each report required by subsection (b) shall”.

(c) EFFECTIVE DATE.—

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

**SETTLEMENT AGREEMENT**

**Dated April 19, 2012**

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

**SETTLEMENT AGREEMENT**

**CONTENTS**

<b>1.</b>	<b>General Provisions.....</b>	<b>3</b>
1.1	PURPOSE.....	3
1.2	DISCLAIMERS.....	3
1.3	NEUTRAL CONSTRUCTION.....	4
1.4	PRIOR AGREEMENT.....	4
1.5	JURISDICTION.....	4
1.6	DEFINITIONS.....	4
<b>2.</b>	<b>Pueblo Water Rights.....</b>	<b>8</b>
2.1	PUEBLO FIRST PRIORITY RIGHTS.....	8
2.2	SUPPLEMENTAL PUEBLO RIGHTS.....	9
2.3	EXISTING BASIN USE RIGHTS.....	11
2.4	FUTURE BASIN USE RIGHTS.....	12
2.5	ACQUIRED WATER.....	15
2.6	RESERVED WATER.....	15
2.7	ECONOMIC DEVELOPMENT WATER.....	16
2.8	PUEBLO WATER SUPPLY FOR REGIONAL WATER SYSTEM.....	17
2.9	AFTER-ACQUIRED PUEBLO LANDS.....	19
2.10	GENERAL PROVISIONS.....	20
2.11	SUMMARY.....	20
<b>3.</b>	<b>Non-Pueblo Water Rights.....</b>	<b>21</b>
3.1	GROUND WATER RIGHTS.....	21
3.2	SURFACE RIGHTS.....	32
3.3	CHANGE IN POINT OF DIVERSION, PURPOSE OR PLACE OF USE – SECTION 4 PROTECTION UPON CHANGE.....	33
3.4	FEDERAL AGENCY RIGHTS.....	34
3.5	MUNICIPAL AND COUNTY OFFSET RIGHTS.....	34
<b>4.</b>	<b>Exceptions to Priority Enforcement for the Pueblos' First Priority Rights.....</b>	<b>34</b>
4.1	PUEBLO EXISTING BASIN USE RIGHTS ENTITLED TO PRIORITY ENFORCEMENT.....	34
4.2	EXISTING NON-PUEBLO RIGHTS ENTITLED TO PROTECTION FROM PRIORITY ENFORCEMENT OF THE PUEBLO FUTURE BASIN USE RIGHTS.....	35
4.3	LIMITATION ON PRIORITY CALL UPON LOSS OF PROTECTION AGAINST PRIORITY ENFORCEMENT.....	35
4.4	ADDITIONAL PROTECTION FOR NON-PUEBLO WELL USERS:.....	35

	4.5	PRIORITY CALL DEFENSE.....	36
5.		<b>Administration .....</b>	<b>36</b>
	5.1	GENERAL PRINCIPLES. ....	36
	5.2	STATE ENGINEER. ....	36
	5.3	RULES. ....	37
	5.4	ADMINISTRATION OF STATE LAW WATER RIGHTS WITHIN PUEBLO LANDS. 38	
	5.5	IMPAIRMENT FUND. ....	38
	5.6	ADMINISTRATION OF PUEBLO RIGHTS. ....	39
	5.7	REGIONAL WATER AUTHORITY DIVERSIONS. ....	40
	5.8	DEVELOPMENT OF MODEL AND HISTORIC SUPPLY STUDY FOR ADMINISTRATION. ....	41
	5.9	MODIFICATION OF ADMINISTRATION PROVISIONS. ....	41
6.		<b>Waivers and Release of Claims.....</b>	<b>42</b>
	6.1	DISMISSAL OF <i>INTER SE</i> CHALLENGES. ....	42
	6.2	WAIVER AND RELEASE OF CLAIMS BY THE LOCAL PARTIES. ....	42
	6.3	WAIVER AND RELEASE OF CLAIMS BY THE PUEBLOS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE PUEBLOS. ....	42
	6.4	WAIVER AND RELEASE OF CLAIMS BY THE PUEBLOS AGAINST THE UNITED STATES. ....	42
	6.5	EFFECTIVENESS OF WAIVERS.....	42
	6.6	RESERVATION OF RIGHTS AND RETENTION OF CLAIMS. ....	43
7.		<b>Miscellaneous.....</b>	<b>44</b>
	7.1	NAMBÉ FALLS DAM AND RESERVOIR. ....	44
	7.2	PRIORITY ENFORCEMENT AND ACQUIRED AND ECONOMIC DEVELOPMENT WATER. ....	45
	7.3	EXPORT OF POJOAQUE BASIN WATER PROHIBITED. ....	45
8.		<b>Enforcement Date and Effectiveness of the Agreement .....</b>	<b>45</b>
	8.1	ENFORCEMENT DATE.....	45
	8.2	EFFECTIVENESS.....	45
9.		<b>Conditions.....</b>	<b>45</b>
	9.1	COST-SHARING AND SYSTEM INTEGRATION AGREEMENT. ....	45
	9.2	PUEBLO AGREEMENTS. ....	45
	9.3	FEDERAL APPROPRIATIONS.....	46
	9.4	STATE LEGISLATION AND FUNDING. ....	46
	9.5	FORMATION OF REGIONAL WATER AUTHORITY. ....	46
	9.6	WATER SUPPLY. ....	47
	9.7	PUEBLO WATER SUPPLY.....	47
	9.8	ADOPTION OF RULES.....	47
	9.9	CERTIFICATION OF SATISFACTION OF CONDITIONS. ....	47
10.		<b>Contingencies.....</b>	<b>48</b>
	10.1	ENTRY OF DECREE. ....	48
	10.2	VOIDING OF FINAL DECREE .....	48
	10.3	CONTINGENT ON APPROPRIATION OF FUNDS. ....	48
11.		<b>Amendment .....</b>	<b>48</b>
12.		<b>Signatures .....</b>	<b>49</b>

## **1. General Provisions**

### **1.1 Purpose.**

1.1.1 The Settlement Parties, as defined herein, desire to resolve the issues and controversies involved in United States District Court for the District of New Mexico lawsuit State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66cv6639 (D.N.M.), in a just manner without needless expenditure of funds and other litigation resources.

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

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

### **1.2 Disclaimers.**

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

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



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

### **1.3 Neutral Construction.**

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

### **1.4 Prior Agreement.**

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

### **1.5 Jurisdiction**

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

### **1.6 Definitions.**

1.6.1 “Aamodt case” means the civil action entitled State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66cv6639 (D.N.M.).

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

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

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

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

1.6.6 “City” means the City of Santa Fe, New Mexico.

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

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

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

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

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

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

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

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

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

- 1.6.15 “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” dated September 2008 and any amendments thereto, including any amendments necessary to conform to the Act.
- 1.6.16 “Final Decree” means the final judgment adjudicating all claims and rights in the Aamodt case consistent with this Agreement.
- 1.6.17 “Fund” means the Aamodt Settlement Pueblos’ Fund established by section 615(a) of the Act.
- 1.6.18 “Interfere” or “interference” means a material adverse effect on the quality, divertible quantity, or the cost of diversion of surface water historically used to satisfy surface water rights subject to this Agreement.
- 1.6.19 “Injuries to water rights” means the loss, interference with, impairment, deprivation, or diminution of water rights.
- 1.6.20 “Livestock uses” means the diversion and consumption of water for the care and feeding of domestic animals, such as cattle or horses, *provided*, however, that livestock uses shall not include the use of water in connection with the operation or maintenance of any feedlots and *provided further* that livestock uses shall not include agricultural uses of water.
- 1.6.21 “Local Parties” means all Settlement Parties except the United States and the Pueblos.
- 1.6.22 “Non-Pueblos” means those parties in the Aamodt case who claim water rights other than the Pueblos or the United States acting as trustee for the Pueblos. The United States acting in its proprietary capacity shall be included within the meaning of “Non-Pueblos” for purposes of this Agreement.
- 1.6.23 “Offset Water” means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.
- 1.6.24 IN GENERAL.—The term “Pojoaque Basin” means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—
- (A) the Rio Pojoaque; or
  - (B) the 2 unnamed arroyos immediately south; and
  - (C) 2 arroyos (including the Arroyo Alamo) that are immediately north of the confluence of the Rio Pojoaque and the Rio Grande.

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

**1.6.26 “Pueblo”** means each of the Pueblos of Nambé, Pojoaque, San Ildefonso, or Tesuque.

**1.6.27 “Pueblos”** means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque.

**1.6.28 “Pueblo land”** means any real property that is –

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

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

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

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

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

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

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

**1.6.29 “PVID”** means the Pojoaque Valley Irrigation District.

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

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

**1.6.32 “Secretary”** means the Secretary of the Interior.

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

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

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

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

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

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

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

## **2. Pueblo Water Rights**

### **2.1 Pueblo First Priority Rights.**

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

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

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

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

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

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

## **2.2 Supplemental Pueblo Rights.**

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

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

<b>Pueblo</b>	<b>Supplemental Pueblo Rights (AFY consumptive use)</b>
Nambé	0
Pojoaque	475
San Ildefonso	0
Tesuque	0

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

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

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

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

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

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

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

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

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

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

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

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

### 2.3 Existing Basin Use Rights.

2.3.1 The portions of each Pueblo's First Priority Rights to be designated as Existing Basin Use Rights are as follows:<sup>1</sup>

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

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

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

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

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



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

## **2.4 Future Basin Use Rights.**

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

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

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

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

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

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

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

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

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

**2.4.4.2.2** The Pueblo initiating such Future Basin Use shall offset any resulting interference with Non-Pueblo surface water rights entitled to Section 4 protection, including any resulting increased stream depletions. Any Offset Water shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection resulting from the Pueblo's provision of Offset Water; and

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2.5 Acquired Water.**

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

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

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

## **2.6 Reserved Water.**

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

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

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

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

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

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

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

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

## **2.7 Economic Development Water.**

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

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

## **2.8 Pueblo Water Supply for Regional Water System**

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

### **2.8.1 The Secretary shall:**

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

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

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

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

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

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

- 2.8.2.2.1 a requirement that the permit may not be exercised to the detriment of existing water rights;
- 2.8.2.2.2 a requirement that the permit may not be exercised in a manner contrary to conservation of water within the state;
- 2.8.2.2.3 a requirement that the permit may not be exercised in a manner detrimental to the public welfare of the state;
- 2.8.2.2.4 Requirements for measurement and reporting of diversions acceptable to the State Engineer;
- 2.8.2.2.5 a requirement that the permittee utilize the highest and best technology available to ensure conservation of water to the maximum extent practical;
- 2.8.2.2.6 restrictions on the time or rate of diversion of the permitted water supply, or requirements for delivery of offset water;
- 2.8.2.2.7 a requirement that the amount of water approved for transfer, diversion and consumptive use at the permitted point of diversion shall not exceed the consumptive use amount less conveyance losses between the move-from and move-to locations;
- 2.8.2.2.8 a requirement that irrigation water rights appurtenant to move-from lands are severed from those lands and that they shall not be irrigated with water from any source without a separate permit approved by the State Engineer;
- 2.8.2.2.9 a requirement that a survey of the move-from lands from which the irrigation water rights are severed shall be filed with the State Engineer prior to any diversion of water at the move-to location;
- 2.8.2.2.10 a requirement that a water conservation plan be filed with the State Engineer;
- 2.8.2.2.11 a requirement that Proof of Application to Beneficial Use be filed with the State Engineer and request that a license be issued;
- 2.8.2.2.12 a requirement that the diversion of water under the permit comply with any applicable federal or state law, including any Biological Opinion prepared and issued pursuant to the Endangered Species Act (16 U.S.C. §§ 1531-1544, December 28, 1973, as amended 1976-1982, 1984 and 1988); and
- 2.8.2.2.13 a requirement that the diversion of water under the permit

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

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

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

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

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

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

## **2.9 After-Acquired Pueblo lands.**

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



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

## **2.10 General Provisions.**

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

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

## **2.11 Summary.**

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

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

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

<sup>††</sup>Subject to redistribution pursuant to Section 2.7 of this Agreement.

### **3. Non-Pueblo Water Rights.**

#### **3.1 Ground Water Rights.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3.1.5 Replacement Well Permits for Section 72-12-1 Wells.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**3.1.7.4 Uses Allowed For Different Elections Under 3.1.7.2.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **3.1.8.4 Use of Original Domestic Well After Connection to the CWU**

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

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

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

#### **3.2 Surface Water Rights.**

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

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

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

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

**3.3.2 Ground Water Rights.**

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

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

**3.3.3 Surface Water Rights.**

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

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

### **3.4 Federal Agency Rights.**

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

### **3.5 Municipal and County Offset Rights.**

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

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

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

### **4.1 Pueblo Existing Basin Use Rights Entitled to Priority Enforcement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

#### **4.5 Priority Call Defense**

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

### **5. Administration**

#### **5.1 General Principles.**

- 5.1.1 The Pojoaque Basin is fully appropriated and there shall be no new appropriations in the basin after the Enforcement Date of this Agreement.
- 5.1.2 In accordance with the terms of this Agreement, water rights within the basin may be transferred for the purpose of providing the right to divert water from a new well in accordance with Section 3.1.4.1 and the other terms of this Agreement. The State Engineer may issue permits for replacement wells in accordance with Section 3.1.5.
- 5.1.3 For agricultural uses, the diversion amount shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the surface source of water, 3.35 AFY per acre delivered at the farm headgate or well head, or a consumptive irrigation requirement of 1.84 AFY per acre, whichever is less.
- 5.1.4 For non-agricultural uses, consumptive use shall be deemed equal to the amount of diversion unless a return flow plan is approved consistent with this Agreement.

#### **5.2 State Engineer.**

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

### **5.2.1 General Provisions.**

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

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

### **5.2.2 Annual Report**

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

### **5.3 Rules.**

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

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

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

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

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

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

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

- 5.3.1.6 Maintenance of records of the elections made by Settling Well Owners pursuant to Section 3.1.7 and subsequent compliance with such elections;
- 5.3.1.7 The provision of notice under the Interim Administrative Order and this Section to the Water Master and other water users who may be affected by administrative or judicial actions related to water rights, *provided* that to the extent practical, such rules shall be consistent with statutory provisions for providing notice of any change to a water right;
- 5.3.1.8 Establishment of procedures for implementing his responsibilities under this Agreement and the Interim Administrative Order to determine surface water offset requirements, impairment of ground water uses, and the impact on surface and ground water supplies of administrative actions;
- 5.3.1.9 Establishment of procedures in accordance with Section 3.1.4.3 to ensure that new supplemental wells do not result in an increase in the amount of water diverted from the source of supply that is to be supplemented; and
- 5.3.1.10 Establishment of procedures to administer existing supplemental wells consistent with their decreed rights;
- 5.3.1.11 Establishment of replacement well procedures in accordance with Section 3.1.5;
- 5.3.1.12 Establishment of penalties for violations of the rules;
- 5.3.1.13 Determination of Historical Beneficial Use for purposes of Section 3.1.7.4; and
- 5.3.1.14 Informal dispute resolution procedures, where appropriate.

#### **5.4 Administration of State Law Water Rights Within Pueblo Lands.**

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

#### **5.5 Impairment Fund.**

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

## **5.6 Administration of Pueblo Rights.**

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

### **5.6.1 The Water Master's Duties under Pueblo Administration.**

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

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

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

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

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

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

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

**5.6.2 The State Engineer's Duties Under Pueblo Administration.**

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

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

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

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

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

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

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

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

**5.7 Regional Water Authority Diversions.**

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

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

#### **5.8 Development of Model and Historic Supply Study for Administration.**

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

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

#### **5.9 Modification of Administration Provisions.**

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

## **6. Waivers and Release of Claims**

### **6.1 Dismissal of *Inter se* Challenges.**

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

### **6.2 Waiver and Release of Claims by the Local Parties.**

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

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

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

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

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

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

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

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

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

### **6.5 Effectiveness of Waivers.**

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

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

**6.6 Reservation of Rights and Retention of Claims.**

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

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

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

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

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

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

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

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

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

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

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



6.6.4.2 to conduct judicial review of Federal agency action.

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

## **7. Miscellaneous**

### **7.1 Nambé Falls Dam and Reservoir.**

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

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

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

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

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

## **7.2 Priority Enforcement and Acquired and Economic Development Water.**

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

## **7.3 Export of Pojoaque Basin Water Prohibited.**

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

# **8. Enforcement Date and Effectiveness of the Agreement**

## **8.1 Enforcement Date**

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

## **8.2 Effectiveness**

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

# **9. Conditions**

## **9.1 Cost-Sharing and System Integration Agreement.**

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

## **9.2 Pueblo Agreements.**

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

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

### **9.3 Federal Appropriations.**

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

### **9.4 State Legislation and Funding.**

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

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

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

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

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

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

### **9.4.2 State Appropriation.**

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

### **9.5 Formation of Regional Water Authority.**

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

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

#### **9.6 Water Supply.**

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

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

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

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

#### **9.7 Pueblo Water Supply.**

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

#### **9.8 Adoption of Rules**

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

#### **9.9 Certification of Satisfaction of Conditions.**

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

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

## **10. Contingencies**

### **10.1 Entry of Decree.**

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

### **10.2 Voiding of Final Decree**

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

### **10.3 Contingent on Appropriation of Funds.**

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

## **11. Amendment**

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

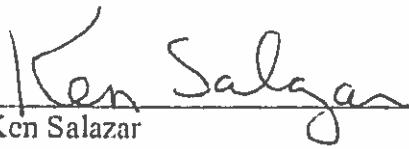
## **12. Signatures**

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

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
Settlement Agreement dated April 19, 2012

**FOR THE UNITED STATES OF AMERICA:**

UNITED STATES DEPARTMENT OF THE INTERIOR

  
\_\_\_\_\_  
Ken Salazar  
Secretary

Date: 3-14-13

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
*Settlement Agreement dated April 19, 2012*

FOR THE PUEBLO OF NAMBÉ:

  
\_\_\_\_\_  
Phillip A. Perez  
Governor

Date: 3/14/2013



New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
Settlement Agreement dated April 19, 2012

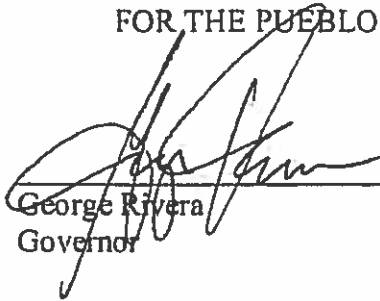
FOR THE PUEBLO OF TESUQUE:

Mark Mitchell  
Mark Mitchell  
Governor

Date: 03.14.13

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
*Settlement Agreement dated April 19, 2012*

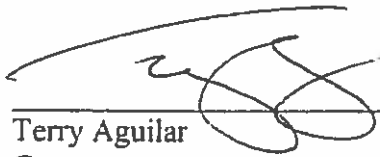
FOR THE PUEBLO OF POJOAQUE:

  
\_\_\_\_\_  
George Rivera  
Governor

Date: 3/14/13

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
*Settlement Agreement dated April 19, 2012*

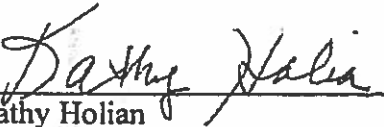
FOR THE PUEBLO OF SAN ILDEFONSO:

  
\_\_\_\_\_  
Terry Aguilar  
Governor

Date: 3/17/13


New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
Settlement Agreement dated April 19, 2012

FOR THE COUNTY OF SANTA FE:

  
\_\_\_\_\_  
Kathy Holian  
Chair, Board of County Commissioners


Date: 3-14-2013

Approved:

  
\_\_\_\_\_  
Stephen C. Ross  
County Attorney

Date: 3-14-2013

Attest:

  
\_\_\_\_\_  
Geraldine Salazar  
County Clerk

Date: 3/14/2013

New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.),  
Settlement Agreement dated April 19, 2012

FOR THE CITY OF SANTA FE:

David Coss  
David Coss  
Mayor

Date: 3-14-13

Approved as to form:

Geno Zamora  
Geno Zamora  
City Attorney

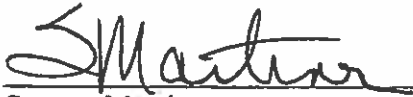
Date: 3/14/13

Attest:

Yolanda Y. Vigil  
Yolanda Y. Vigil  
Clerk

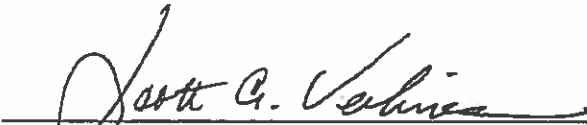
Date: 3-14-13

FOR THE STATE OF NEW MEXICO:



Susana Martinez  
Governor

Date: 3-27-13



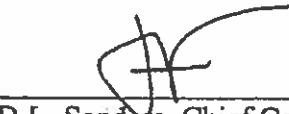
Scott A. Verhines, P.E.  
State Engineer

Date: 3-14-13



Gary K. King  
Attorney General

Date: 3/14/13



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

Date: 14 March 2013

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

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

- (1) all claims for water rights in the Pojoaque Basin that the Pueblo of Nambé, or the United States acting in its capacity as trustee for the Pueblo of Nambé, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Nambé, or the United States acting in its capacity as trustee for the Pueblo of Nambé, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;
- (5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;
- (6) all pending and future inter se challenges against other parties to the Settlement Agreement;
- (7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and
- (8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of

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

**UNITED STATES OF AMERICA**

By: Ken Salazar  
Ken Salazar  
Secretary  
U.S. Department of the Interior

Date: 3/14/13

**FOR THE PUEBLO OF NAMBÉ**

By: Phillip A. Perez  
Phillip A. Perez  
Governor  
Pueblo of Nambé

Date: 3/14/2013



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

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

- (1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;
- (2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;
- (4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and
- (5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO OF NAMBÉ

  
Phillip A. Perez

Governor  
Pueblo of Nambé

Date: 3/14/2012

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

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

- (1) all claims for water rights in the Pojoaque Basin that the Pueblo of Tesuque, or the United States acting in its capacity as trustee for the Pueblo of Tesuque, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Tesuque, or the United States acting in its capacity as trustee for the Pueblo of Tesuque, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;
- (5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;
- (6) all pending and future inter se challenges against other parties to the Settlement Agreement;
- (7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin, provided that this waiver shall not be effective by the Pueblo of Tesuque unless there is a water resources agreement executed between the Pueblo of Tesuque and the City of Santa Fe; and

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

**UNITED STATES OF AMERICA**

By: Ken Salazar  
Ken Salazar  
Secretary  
U.S. Department of the Interior

Date: 3/14/13

**FOR THE PUEBLO OF TESUQUE**

By: Mark Mitchell  
Mark Mitchell  
Governor  
Pueblo of Tesuque

Date: 03.14.13

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

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

- (1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;
- (2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;
- (4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and
- (5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

FOR THE PUEBLO OF TESUQUE



Mark Mitchell  
Governor  
Pueblo of Tesuque

Date: 05.14.13

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

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

- (1) all claims for water rights in the Pojoaque Basin that the Pueblo of Pojoaque, or the United States acting in its capacity as trustee for the Pueblo of Pojoaque, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo of Pojoaque, or the United States acting in its capacity as trustee for the Pueblo of Pojoaque, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;
- (5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;
- (6) all pending and future inter se challenges against other parties to the Settlement Agreement;
- (7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and
- (8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of

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

**UNITED STATES OF AMERICA**

By: Ken Salazar  
Ken Salazar  
Secretary  
U.S. Department of the Interior

Date: 3/14/13

**FOR THE PUEBLO OF POJOAQUE**

By: George Rivera  
George Rivera  
Governor  
Pueblo of Pojoaque

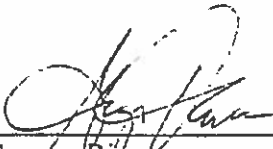
Date: 3/14/13

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

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

- (1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;
- (2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;
- (4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and
- (5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

**FOR THE PUEBLO OF POJOAQUE**

  
George Rivera

Governor  
Pueblo of Pojoaque

Date: 3/14/13

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

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

- (1) all claims for water rights in the Pojoaque Basin that the Pueblo de San Ildefonso, or the United States acting in its capacity as trustee for the Pueblo de San Ildefonso, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 623(d) of the Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblo de San Ildefonso, or the United States acting in its capacity as trustee for the Pueblo de San Ildefonso, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this Act, except to the extent that such rights are recognized in the Settlement Agreement or the Act;
- (3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (4) its defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;
- (5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;
- (6) all pending and future inter se challenges against other parties to the Settlement Agreement;
- (7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin; and
- (8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of



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

**UNITED STATES OF AMERICA**

By: Ken Salazar  
Ken Salazar  
Secretary  
U.S. Department of the Interior

Date: 3/14/13

**FOR THE PUEBLO DE SAN ILDEFONSO**

By: Terry Aguilar  
Terry Aguilar  
Governor  
Pueblo of San Ildefonso

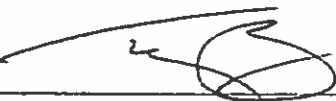
Date: 3/14/13

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

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

- (1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including the Aamodt Case;
- (2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 623(d) of the Act;
- (3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of the Aamodt Litigation Settlement Act;
- (4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and
- (5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or the Act.

**FOR THE PUEBLO DE SAN ILDEFONSO**



Terry Aguilar  
Governor  
Pueblo of San Ildefonso

Date: 3/14/15

## **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.

- 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

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.

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.

## 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 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 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.

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 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.

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.

- 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) 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 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.

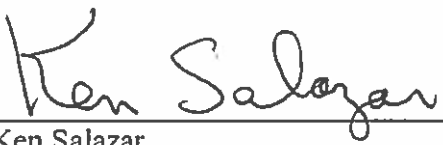
#### 4. GENERAL PROVISIONS

- 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.

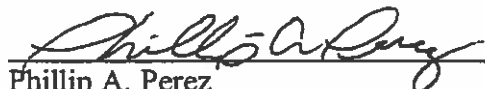
**FOR THE UNITED STATES OF AMERICA:**

UNITED STATES DEPARTMENT OF THE INTERIOR

  
\_\_\_\_\_  
Ken Salazar  
Secretary

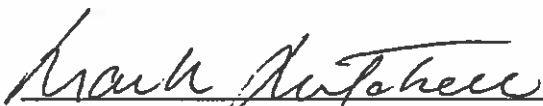
Date: 3-14-13

FOR THE PUEBLO OF NAMBÉ:

  
Phillip A. Perez  
Governor

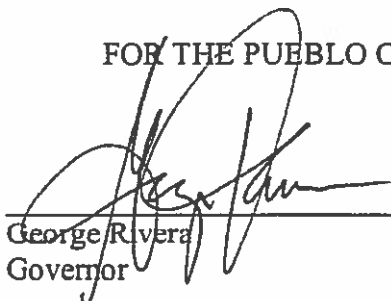
Date: 3/14/2013

FOR THE PUEBLO OF TESUQUE:

  
Mark Mitchell  
Governor

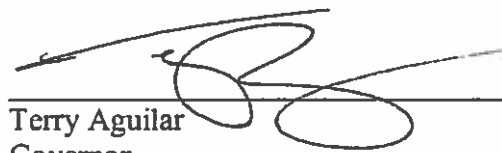
Date: 03.14.13

FOR THE PUEBLO OF POJOAQUE:

  
George Rivera  
Governor

Date: 3/14/13

FOR THE PUEBLO OF SAN ILDEFONSO:

  
Terry Aguilar  
Governor

Date: 3/14/13




FOR THE COUNTY OF SANTA FE:

  
\_\_\_\_\_  
Kathy Holian  
Chair, Board of County Commissioners


Date: 3-14-2013

Approved:

  
\_\_\_\_\_  
Stephen C. Ross  
County Attorney

Date: 3-14-2013

Attest:

  
\_\_\_\_\_  
Geraldine Salazar  
County Clerk

Date: 3/14/2013

FOR THE CITY OF SANTA FE:



David Coss  
Mayor

Date: 3-14-13

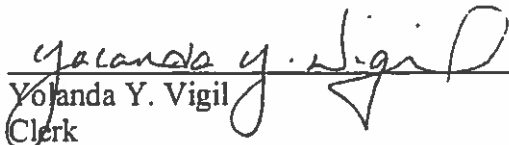
Approved as to form:



Geno Zamora  
City Attorney

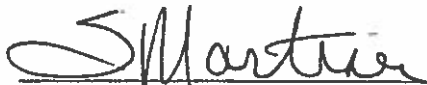
Date: 3/14/13

Attest:


  
Yolanda Y. Vigil  
Clerk

Date: 3-14-13


FOR THE STATE OF NEW MEXICO:

  
\_\_\_\_\_  
Susana Martínez  
Governor

Date: 3-27-13

  
\_\_\_\_\_  
Scott A. Verhines, P.E.  
State Engineer

Date: 3-14-13

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

Date: 14 March 2013



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## AAMODT LITIGATION SETTLEMENT IMPLEMENTATION

## Potential Funding Scenario #3

Based on Probable Budget Requests through FY 2016 and EARLY STATE Contribution and COUNTY contribution during construction  
Construction Completed by June 2024 without Reclamation Water Settlements Funding (RWSF)  
Assumes Mandatory Funds Can be Indexed Through FY 2024  
(Dollars in \$Millions)

Fiscal Year (FY)	Year	Inflation Factor <sup>1</sup>	Total Project Construct 2006 Funding Requirement	Total Project Construct FV Funding Requirement	Fed Funding Requirements 2006 Dollars	Fed Funding Requirements (Future Value) <sup>2</sup>	Fed Funding Needs (Future Value) <sup>2</sup>	State Funding Contrib 2006 Dollars	State Funding Contrib (Future Value) <sup>2</sup>	County Funding Contrib 2006 Dollars <sup>5</sup>	County Funding Contrib (Future Value) <sup>2</sup>	Estimated Non-Contract Costs Expended	Estimated Construction Costs Expended
2011	5		0	0.000	0.000	0.000	0.000	0	0	0	0		
2012	6	1.136	8,523	9,682	8,523	9,682	9,682	0	0	0	0	1,040	0.000
2013	7	1.191	7,127	8,488	7,127	8,488	8,488	0	0	0	0	7,000	0.000
2014	8	1.215	7,892	9,589	3,839	4,664	4,664	4,053	4,925	0	0	14,794	0.000
2015	9	1.239	4,797	5,944	2,421	3,000	3,000	2,376	2,944	0	0	5,944	0.000
2016	10	1.466	6,684	9,799	4,137	6,065	6,065	2,547	3,734	0	0.000	9,799	0.000
2017	11	1.523	5,650	8,606	2,368	3,606	3,606	3,282	5,000	0	0.000	8,606	0.000
2018	12	1.583	24,005	37,992	16,083	25,454	26,409	6,318	10,000	1,000	1,583	3,799	34,192
2019	13	1.644	22,586	37,140	15,133	24,884	23,851	6,081	10,000	2,000	3,289	3,714	33,426
2020	14	1.709	19,124	32,674	12,813	21,891	19,257	5,853	10,000	2,000	3,417	3,267	29,406
2021	15	1.775	15,446	27,419	10,349	18,371	13,869	5,633	10,000	2,000	3,550	2,742	24,677
2022	16	1.844	14,700	27,112	9,849	18,165	13,424	5,422	10,000	2,000	3,689	2,711	24,401
2023	17	1.916	16,399	31,425	10,987	21,055	20,056	3,933	7,537	2,000	3,833	3,143	28,283
2024	18	1.991	12,027	23,946	2,772	5,519	19,847	0	0	2,059	4,100	2,395	21,552
TOTAL			164,960	269,816	106,400	170,844	172,217	45,500	74,140	13,059	23,460	68,954	195,937

TOTAL PROJECT COST (not including post construction service connections) =

\$172,217

+

\$74,140

+

\$23,460

=

\$269,816

## NOTES:

1. Inflation rates for FY12 - FY15 are calculated using the appropriate Reclamation Engineering Indices for each PBRWS feature

After FY15 the inflation factor is calculated as  $(1 + i)^t$  where  $i$  is the inflation rate and  $t$  is the year.2. Future Value calculations based on the formula  $PV = FV / (1 + i)^t$  where  $i$  is the inflation rate and  $t$  is the year. $i$  = Inflation Rate 3.9% - Average Rate Based on BOR Cost Indices from 2000 to 2010

3. Federal Funding Needs is the funding that is needed to make up the difference between the Total Estimated Project Construction FV Requirement and the Non-Federal Contributions being provided that year.

4. The FY2014 Indian Water Rights Settlement (IWRS) Appropriation Request is based on the President's Request

Assumes all FY12 and FY13 appropriations are expended by the end of FY14 and all other appropriations are expended in year provided.

This simplifying assumption regarding expenditures is too optimistic.

5. The County contribution includes \$5,659 million of the County Service Connection Funds which were included in the HKM Engineering Report Construction Cost Estimates, table 5 and 5-9

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December 6, 2013 draft

**JOINT POWERS AGREEMENT**  
**POJOAQUE BASIN REGIONAL WATER AUTHORITY**

This Joint Powers Agreement (herein the "Agreement") creating the Pojoaque Basin Regional Water Authority is dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by, between and among the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque and Santa Fe County (herein referred to individually by name or collectively as the "Parties"), each acting as an eligible governmental entity under the New Mexico Joint Powers Agreement Act.

**RECITALS**

**WHEREAS**, the Parties are signatories to the Settlement Agreement (the "Settlement Agreement") dated April 19, 2012, and signed by the Parties on March 14, 2013, in the case of *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.) (the "Aamodt Case"); and

**WHEREAS**, the Parties are signatories to the Cost-Sharing and System Integration Agreement (the "Cost Share Agreement") signed March 14, 2013, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

**WHEREAS**, the Claims Resolution Act of 2010, approved the Settlement Agreement and the Cost-Sharing Agreement, Public Law 111-291, 124 Stat. 3064, 3134-3156, Title VI, the Aamodt Settlement Litigation Settlement Act (the "Act"); and

**WHEREAS**, the Act, the Cost-Sharing Agreement and the Act call for formation by the

Parties of the Pojoaque Basin Regional Water Authority to supply water to the Parties through a Regional Water System to be constructed by the United States Secretary of the Interior; and

**WHEREAS**, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Regional Water Authority shall be exercised consistent with the terms and conditions of the Operating Agreement (“Operating Agreement”) required by the Act in Section 612. A copy of that Section is set forth and appended hereto.

**WHEREAS**, the Parties desire that the Authority have the power to carry out the purposes and functions as authorized by the Act and as set forth herein.

**NOW, THEREFORE**, the Parties agree as follows:

#### **ARTICLE 1 – AUTHORIZATION; FORMATION**

Pursuant to the provisions of the Joint Powers Agreement Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties agree that a legal entity to be known as the Pojoaque Basin Regional Water Authority (the “Authority”) shall be created, organized and empowered as set forth herein. The Authority shall provide a firm and reliable water supply to each of the Parties so that they can supply their individual customers.

#### **ARTICLE 2 - PURPOSES**

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply to each of the Parties, for distribution by each Party to individual Pueblo members by each Pueblo and to County residents by the County, through the diversion, collection, treatment, storage and transmission of water, in accordance with the Operating Agreement.



2. The construction, management, ownership, operation and maintenance of diversion, collection, treatment, storage, and transmission works and facilities and all related real and personal property, facilities and equipment as may be reasonably necessary to perform the purposes of the Authority.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under, this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement and the Settlement Act.

### **ARTICLE 3 – DURATION**

This Agreement shall continue in full force and effect unless terminated pursuant to Article 22.

### **ARTICLE 4 - POWERS**

The Authority shall be empowered and authorized:

- A. To own, construct, operate, manage, and maintain the facilities of the Authority;
- B. To construct, operate, manage, and maintain the Regional Water System;
- C. To own, construct, operate, manage, and maintain wastewater collection and treatment systems;
- D. To acquire and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;
- E. To establish a system of reasonable fees and charges for its services;
- F. To establish policies for allocation of water in accordance with the Operating Agreement;

G. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation and nonpayment of amounts owed by Parties;

H. To incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements and expansion of the facilities of the Authority;

I. To provide services to and lease to others any of the Authority's assets;

J. To open and maintain bank accounts, and to invest the Authority's funds, for its benefit, in short and long-term investments, stocks, bonds, real property, common investment accounts and other regulated investment vehicles;

K. To sell any of the Authority's assets deemed by the Board of Directors to be unnecessary, excess, obsolete or scrap;

L. To enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;

M. To apply for and to receive grants, appropriations or other funds; and

N. To do any and all other lawful things consistent with its purposes and powers as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

O. All powers and authority described herein shall be consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Settlement Act and the Operating Agreement.

## **ARTICLE 5 - BOARD OF DIRECTORS**

**A. Composition and Appointment.** The business and affairs of the Authority shall be controlled by the Board of Directors, which shall be composed of five (5) directors. Each Party shall appoint one director. Each Party may establish its own qualifications for appointment of its respective director and alternate director.

**B. Terms of Directors.** The term of each director shall be indefinite or as otherwise determined by the Party appointing that director. Directors may succeed themselves without limitation. Each director of the Board of Directors shall serve at the pleasure of the Party that appointed the director and may be replaced at any time by formal action of the appointing Party. Each director may serve until a successor has been appointed. Upon the death or resignation of any director, or upon removal of any director by the appointing Party, or in the event of three consecutive absences from duly called meetings of the Board of Directors, the Board of Directors shall give written notice thereof to the Party that appointed such director, and that Party shall appoint a replacement director. Should no replacement be named within sixty (60) days of such notice and no alternative director representing said Party is available, the number of directors constituting a quorum and whose votes are required for those actions set for in paragraph (G) of this Article, shall be reduced by one until such replacement is named.

**C. Officers.** The Board of Directors shall elect one member as Chairperson, one member as Vice-Chairperson and one member as Secretary of the Board. Officers shall be elected every two years. Officers shall serve until their successors have been duly qualified and elected. The Board of Directors shall appoint a replacement if a vacancy occurs in the Chair, Vice-Chair or Secretary prior to the expiration of the two year appointment. An officer may be removed from his or her position at any time, with or without cause upon affirmative vote of not

less than three (3) directors. The officers shall perform the following respective functions:

**1. Chairperson.** The Chairperson shall preside at all meetings of the Board of Directors, shall execute documents and agreements on behalf of the Authority as authorized by the Board of Directors, and shall otherwise represent the Board of Directors.

**2. Vice-Chairperson.** The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

**3. Secretary.** The Secretary shall oversee maintenance of the records of the Board of Directors, giving official notice of meetings of the Board of Directors, taking and preparing minutes of each meeting, keeping official records of the identity of the director and alternate director representing each Party, preparing and receiving correspondence for and on behalf of the Board of Directors, preparing and filing reports as may be required by law and not otherwise delegated, and otherwise performing such usual and customary duties of that position as may be assigned by the Board of Directors.

**D. Alternate Directors.** Each Party may, in addition to appointment of a regular director, appoint one alternate member to the Board, who shall act in the absence or incapacity of the regular director and when so acting shall have all the powers, duties and responsibilities of the regular director. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the regular member.

**E. Per Diem.** Directors shall not be paid salaries or other compensation for their services as directors, but may be paid a reasonable per diem and mileage for their attendance at Authority functions, in amounts to be determined in accordance with the New Mexico Mileage and Per Diem Act and approved by the Board of Directors, and shall be reimbursed for any

expenses incurred by them in connection with the business of the Authority, in accordance with policies to be established by the Board of Directors.

**F. Board Meetings.** The Board of Directors shall meet monthly or as may be determined by the Board of Directors at convenient locations within the Pojoaque Basin, or at such other places within the state of New Mexico and times as shall be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors, except that in the event of an emergency that may affect the ability of the Authority to provide service, a special meeting may be called upon not less than one day's notice. Directors may attend regular and special meetings by telephone or video conference, in accordance with policies to be established by the Board of Directors. Board meetings shall be in compliance with the Open Meetings Act of the State of New Mexico and in accordance with Robert's Rules of Order.

**G. Quorum; Special Majority Required.** A quorum for the conduct of business at any meeting of the Board of Directors shall be four (4) directors, present either in person or by telephone or video conference. Each director shall have one vote. Voting by proxy is prohibited except by an alternate director serving in place of an absent director. The action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board of Directors, except that affirmative votes by the Directors appointed by Pueblo de San Ildefonso and Santa Fe County shall be required for any of the following actions:

1. to approve the annual budget of the Authority which shall be submitted to and shall not be effective until approved by a minimum of four members of the Board; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Directors.

2. to hire or terminate or modify the contract for the general manager of the Authority;

3. to borrow money or to convey, pledge or encumber the Authority's assets in an amount in excess of \$125,000.

4. to enter into, terminate or modify any contract for an amount greater than \$125,000 with a party that is not a member or entity controlled by a member.

**H. Contract with Member Entity.** Notwithstanding Section 5.G.4, any action to enter into, terminate or modify any contract with a member or an entity controlled by a member shall require the affirmative vote of a minimum of any four (4) directors.

The Board of Directors may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority as set forth herein.

No member entity can vote to modify or terminate a contract that it holds with the Authority, or vote on a proposal for it to enter into a contract with the Authority.

**I. Duties.** The Board of Directors shall oversee the affairs of the Authority; adopt and from time to time amend the Authority policies; adopt By-Laws and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; hire or remove the officers of the Board; approve or disapprove any and all acquisitions or dispositions of real property or interests therein by the Authority; approve or disapprove contracts, including but not limited to contracts for water delivery to the Parties; pledge assets and collateral; set water base charge and service fee rates; incur debt; engage engineers, consultants, auditors and outside accountants; retain counsel for the Authority; provided that the Chairperson shall have the authority to retain counsel, if the Authority has no counsel, when necessary to protect the Authority's legal rights,

subject to ratification by the Board of Directors at its next meeting, all in its discretion and in accordance with the powers of the Authority.

J. **Committees.** The Board of Directors may establish such committees of the Board of Directors as it deems appropriate to the furtherance of the Authority's affairs, and subject to ratification by the Board of Directors at its next meeting, may delegate to any such committee any power reserved to the Board of Directors by this Agreement, except for the powers requiring a Special Majority.

#### **ARTICLE 6 – GENERAL MANAGER**

The Authority shall hire and set compensation for a general manager and may authorize such other employees as the general manager recommends or the Board of Directors deems necessary. The general manager shall have authority to hire, supervise, discipline and fire employees of the Authority, consistent with employment preferences required by the Cost-Sharing and System Integration Agreement. If the Authority enters into a System Operator Agreement pursuant to Article 11, the general manager shall be responsible for managing that agreement. The general manager shall serve at the pleasure of the Board of Directors. The general manager of the Authority shall be an *ex officio* non-voting member of the Board of Directors, shall be chief executive officer of the Authority and shall have full authority over the Authority's day-to-day affairs. The general manager shall have such other powers and duties as are set forth in policies set by the Board.

#### **ARTICLE 7 – PROCUREMENT; ADMINISTRATIVE SERVICES; PREFERENCES**

A. The Authority shall adopt an appropriate process for procurement of goods and services in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq.

B. The Authority's Fiscal Agent, appointed pursuant to Article 9, shall provide all necessary procurement and administrative services related to the foregoing.

C. Employment preference 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 allowed by the Cost Sharing and System Integration Agreement signed by the Members has been approved by the Act, and shall be followed by the Authority and System Operator, as defined in Article 11.

D. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities under taken by the Regional Water Authority for delivery to the member government parties, unless a fee or special assessment is specifically authorized in the Operating Agreement.

This section does not prohibit any taxes, fees, or special assessments imposed by the member government parties in connection with the sale of water to retail customers.

#### **ARTICLE 8 – FINANCIAL ACCOUNTABILITY**

A. As provided in NMSA 1978 Section 11-1-4 (as amended), the Authority shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority finances to be performed by an independent certified public accountant; the audit shall be provided to each Party and shall be made available to the public.

C. The records and statements prepared by the Authority pursuant to this paragraph shall be open to inspection at any reasonable time by the Parties, their accountants and agents.

D. The Authority shall prepare and present such reports as may be required by law,



regulation or contract to any governmental agency, and shall also render to the Parties, at reasonable intervals, such reports and accounting as the Parties may from time to time request.

#### **ARTICLE 9 – FISCAL AGENT**

The Authority shall enter into an agreement with the County to serve as the fiscal agent for the Authority to act on behalf of the Parties (the “Fiscal Services Agreement”). The Fiscal Services Agreement shall provide employment preferences, as required by the Cost-Sharing and System Integration Agreement. Unless terminated by a vote of any four (4) directors pursuant to Article 5.H., the Fiscal Services Agreement shall continue in full force and effect. The Fiscal Services Agreement, and such subsequent agreement, shall continue in effect until a new fiscal services agreement is in place. The fiscal agent shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the Authority and at the direction of the Board. The fiscal agent may receive reasonable compensation for its time and expense in fulfilling the duties required herein. Such compensation shall be approved by the Authority and shall not exceed five percent (5%) of the Authority’s operating budget. The funds of the Authority shall be held by the fiscal agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement. All contributions of and other payments by the Parties shall be deposited directly into the Authority’s general fund.

#### **ARTICLE 10- ANNUAL BUDGET AND FINANCIAL PROVISIONS**

A. The Parties shall jointly contribute the amount necessary to meet the Authority’s operating budget. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and section 612 of the Act, the basis for each Party’s contribution shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority may invest its funds only in accordance with any applicable laws

of the State of New Mexico governing the investment of public funds.

C. Other than the payment obligations described herein, no Party shall have any liability to pay for any debt or other obligation incurred by the Authority unless there is a specific undertaking to do so accompanied by an appropriation approved with the requisite formalities and written waiver of sovereign immunity.

D. The Authority shall maintain a Capital Replacement Fund which shall be utilized to replace obsolete, worn out or unusable equipment of the Authority, in accordance with the Operating Agreement.

E. The Authority shall maintain adequate and correct accounts of its funds, properties and business transactions. The accounts shall be open to inspection at any reasonable time by the Parties , their accountants or their agents.

F. Within ninety days after the end of each fiscal year, the Authority shall prepare and present to the Parties a comprehensive annual report of the Authority's activities and finances during the preceding year.

#### **ARTICLE 11- REGIONAL WATER SYSTEM OPERATOR**

Subject to the direction of the Authority Board and General Manager, and the terms of this Agreement, the Authority shall enter in an agreement with the County directing the County Water Utility to serve as System Operator ("System Operator") and be responsible for the operation, maintenance and repair of the Regional Water System (the "System Operator Agreement"). The System Operator Agreement shall provide that the general manager shall have authority to supervise and recommending authority for hiring, firing and disciplining employees provided to the Authority by the System Operator. The System Operator Agreement, and any such subsequent agreement, shall provide employment preferences, as required by the

Cost-Sharing and System Integration Agreement. Unless terminated by a vote of any four (4) directors pursuant to Article 5.H, the System Operator Agreement continue in full force and effect. The System Operator Agreement, and any such subsequent agreement, shall continue in effect until a new system operator agreement is in place. The fee for the services of the System Operator payable by the Authority to the County Water Utility shall be reasonable, consistent with industry standards, and specified in the System Operator Agreement. The County shall cooperate with the U.S. Bureau of Reclamation in training and certification of employees to achieve a smooth transition for operating the Regional Water System, and the purpose of Article 7.C. of this Agreement. The System Operator Agreement with the County shall provide that, subject to this Agreement, employees of the Authority shall be employees of the County and entitled to the same benefits and privileges as customarily provided by the County. If the System Operator Agreement is terminated and the County no longer serves as System Operator the Authority may enter into an agreement with any one of the following to serve as System Operator: (1) one of the member Pueblos; (2) the Authority; or (3) another entity, as determined by the Authority.

#### **ARTICLE 12 – INSPECTION OF PUBLIC RECORDS**

The services provided by the County under the Fiscal Services Agreement shall include compliance with the Inspection of Public Records Act, § 14-2-1 et. Seq. NMSA, on behalf of the Authority.

#### **ARTICLE 13 - NO WAIVER OF SOVEREIGN IMMUNITY**

A. By entering into this Agreement, no Party waives, relinquishes or limits its individual sovereign immunity, except as expressly provided in Article 17. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the

Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 17.

B. To the extent any Party has or claims sovereign immunity which has not been waived, each member shall be responsible to provide to the Authority funds for the purchase of liability insurance insuring the Authority in amounts which are equal to the waivers set forth by the New Mexico Tort Claims Act, or such greater amounts as the Board of Directors shall determine.

C. By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement.

D. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the Parties and is not intended to modify, in any way, the Parties' liabilities as governed by federal, state, local, or common law and the New Mexico Tort Claims Act. The Parties and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act as applicable to the County of Santa Fe.

E. The Operating Agreement required by Section 612 of the Settlement Act shall set forth the financial obligations of each Party for the Regional Water System and shall provide for a limited waiver of sovereign immunity of each Party solely for the enforcement of such financial obligations.

#### **ARTICLE 14 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY**

A. The members and officers of the Board of Directors shall be immune from any liability for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal law or by the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq*, as amended, or by any successor section.

B. The officers and directors of the Authority shall be entitled to indemnification by the Authority for personal liability and for reasonable expenses, costs and attorney's fees incurred by them or any of them in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been a director or officer acting in good faith, to the fullest extent permitted by federal law or by the New Mexico Tort Claims Act, as amended, or by any successor section. Subject to the obligation of such officer or director to reimburse the Authority in the event that it shall later be established that indemnification was inappropriate or unlawful, an officer or director shall have the right to be reimbursed for his or her costs of defense as same are incurred.

#### **ARTICLE 15 – INSURANCE**

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq*. Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority shall purchase insurance for the directors and officers of the Board

of Directors and the Authority against any suit which may be brought against them.

C. The Authority shall carry and maintain fire and extended insurance coverage on all Authority buildings, structures and improvements, and on upon all of the contents and other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers' Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et seq., if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as necessary or appropriate for employees and staff.

F. The expense of obtaining and maintaining the required insurance shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

#### **ARTICLE 16 – NO THIRD-PARTY BENEFICIARY**

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**ARTICLE 17 – ARBITRATION AND OTHER METHODS OF  
ALTERNATIVE DISPUTE RESOLUTION**

A. All disputes and controversies of every kind and nature between or among the Parties, including but not limited to disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, shall be submitted to arbitration, and shall be conducted according to the procedures set forth below.

B. Any Party may demand arbitration by making a demand in writing, which demand shall include the name of the arbitrator proposed by the Party demanding arbitration, together with a statement of the matter of controversy.

C. Within 20 days after such demand, any other Party may name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint an arbitrator within 30 days of the request therefore, the appointment shall be made by the American Arbitration Association.

D. The arbitration costs and expenses of each Party shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties.

E. The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least 20 days' written notice to the Parties.

F. An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award.

G. The Parties waive their immunity to suit only for the limited purpose of judicial declaratory and/or injunctive relief to enforce an award or decision of the arbitrators in the United States District Court for the District of New Mexico. This limited waiver of immunity is expressly and solely for nonmonetary relief sought by one of the Parties in the enforcement of an award or decision of the arbitrators pursuant to this Article.

H. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

I. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

J. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

K. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

L. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another the Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this Agreement and shall entitle the Party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that Party.



M. This Agreement is not subject to enforcement under New Mexico's Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7-1 through 44-7-22.

N. Nothing in Section this article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The Parties agree that prior to resorting to arbitration as set forth above they shall use their best efforts to resolve any dispute by such non-binding and informal means.

O. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in paragraph G of this Article.

#### **ARTICLE 18 - AMENDMENTS**

This Agreement may only be amended by a mutual written agreement of all the Parties. No amendment shall be effective until approved by the New Mexico Department of Finance and Administration.

#### **ARTICLE 19 - SEVERABILITY**

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable or otherwise unenforceable, the remainder of this Agreement shall continue in full force and effect and only so much of this Agreement as is necessary shall be separated herefrom and made unenforceable, and this Agreement shall be construed as if such unlawful, voided or unenforceable provision had never been a part hereof.

#### **ARTICLE 20 – EFFECTIVE DATE; EFFECT OF AGREEMENT**

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the Department of Finance and Administration of the State of New

Mexico. This Agreement may be executed in counterparts which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Party or Parties.

#### **ARTICLE 21 – NOTICES**

Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

**To The County:**

Santa Fe County Utilities Director  
Santa Fe County  
PO Box 276  
Santa Fe, New Mexico 87504  
Phone: 505.992-9870  
Fax: 505.992.3028

**With A Copy To:**

County Manager  
Santa Fe County  
P.O. Box 276  
Santa Fe, New Mexico 87504  
Phone: 505.986.6200  
Fax: 505.986.6362

County Attorney  
Santa Fe County  
P.O. Box 276  
Santa Fe, New Mexico 87504  
Phone: 505.986.6279  
Fax: 505.986.6362

**To Pueblo of Nambe :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone:

**Fax:**

**With A Copy To:**

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**Phone:**

**Fax:**

**To Pueblo of Pojoaque:**

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**Phone:**

**Fax:**

**With A Copy To:**

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**Phone:**

**Fax:**

**To Pueblo de San  
Ildefonso:**

Office of Governor  
02 Tunyo Po  
Santa Fe, New Mexico 87506  
Phone: (505) 455-2273  
Fax: (505) 455-7351

**With A Copy To:**

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**Phone:**

**Fax:**

**To Pueblo of Tesuque**

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**Phone:**

**Fax:**

**With A Copy To:**

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\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Fax:

## **ARTICLE 22 - TERMINATION**

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party;
2. approval by an Act of Congress or other applicable provisions of the Act;

and

3. approval of the New Mexico Department of Finance Administration.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

C. Upon termination of this Agreement, the property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

**PUEBLO OF POJOAQUE**

**PUEBLO DE SAN ILDEFONSO**

\_\_\_\_\_  
George Rivera, Governor

\_\_\_\_\_  
Terry Aguilar, Governor

**PUEBLO OF NAMBE**

**PUEBLO OF TESUQUE**

\_\_\_\_\_  
Phillip A. Perez, Governor

\_\_\_\_\_  
Mark Mitchell, Governor

**SANTA FE COUNTY**

(name) \_\_\_\_\_  
(title) \_\_\_\_\_, \_\_\_\_\_

## Appendix

### An Act

This Act may be cited as "The Claims Resettlement Act of 2010."

#### TITLE VI—AAMODT LITIGATION SETTLEMENT

##### Subtitle A—Pojoaque Basin Regional Water System

###### SEC. 612. OPERATING AGREEMENT.

(a) IN GENERAL.—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) APPROVAL.—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) CONTENTS.—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

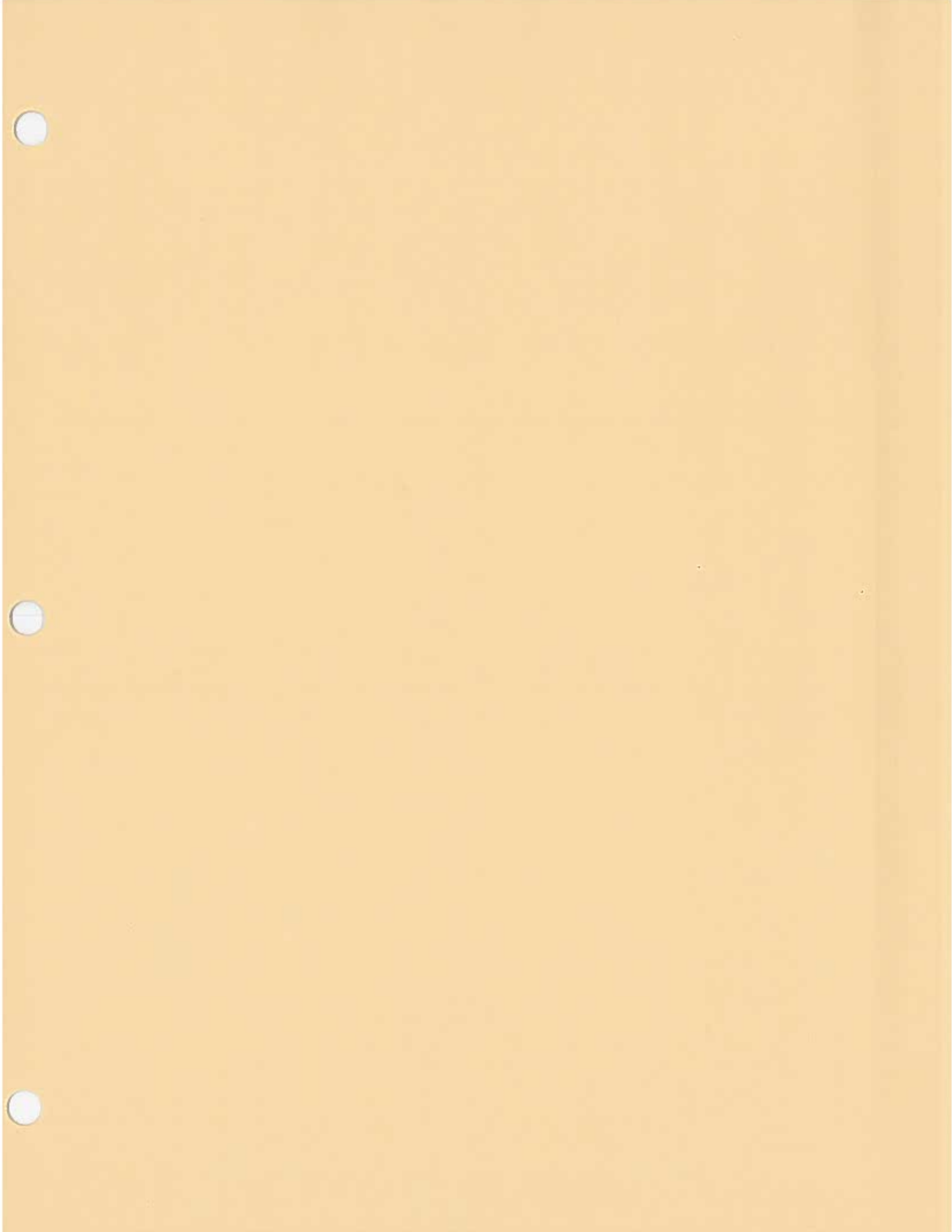
(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.







**NO PACKET MATERIAL FOR THIS ITEM**







**NO PACKET MATERIAL FOR THIS ITEM**









**NO PACKET MATERIAL FOR THIS ITEM**

**EXECUTIVE SESSION**



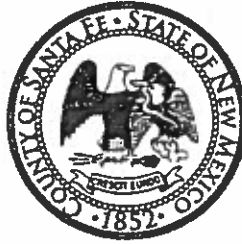




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel Chavez**  
*Commissioner, District 2*

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



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

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

**Katherine Miller**  
*County Manager*

## ***MEMORANDUM***

**DATE:** *March 25, 2014*

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

**FROM:** *Rachel O'Connor, Community Services Department Director*

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

**ITEM AND ISSUE:** *BCC Meeting May 13, 2014*

**REQUEST APPROVAL OF ORDINANCE 2014-\_\_\_\_, AN ORDINANCE DEDICATING, IN QUARTERLY INSTALLMENTS, AN AMOUNT EQUAL TO A GROSS RECEIPTS TAX OF ONE-TWELFTH (1/12) PERCENT APPLIED TO THE TAXABLE GROSS RECEIPTS REPORTED DURING THE PRIOR FISCAL YEAR BY PERSONS ENGAGED IN BUSINESS IN THE COUNTY TO THE NEWLY CREATED SAFETY NET CARE POOL FUND; AND PROVIDING AN EFFECTIVE DATE OF TRANSFERRING FUNDS**

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### **BACKGROUND AND SUMMARY:**

This Ordinance is required pursuant to Section 16 of State Legislation signed by the Governor on March 12, 2014 (SB 268), regarding the replacement of the Sole Community Provider program and requiring that counties dedicate the equivalent of one-twelfth gross receipts tax increment to a newly created state Safety Net Care Pool Fund. This fund will help fund hospitals across the state, including allowing for higher reimbursement to hospitals for Medicaid.

Request to publish title and general summary was approved at the BCC meeting on April 8, and title and general summary were published in the legal section of the Journal on April 29, 2014.

### **ACTION REQUESTED:**

Approval of the Ordinance described above.

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

**ORDINANCE NO. 2014-\_\_**

**AN ORDINANCE DEDICATING, IN QUARTERLY INSTALLMENTS, AN AMOUNT  
EQUAL TO A GROSS RECEIPTS TAX OF ONE-TWELFTH (1/12) PERCENT  
APPLIED TO THE TAXABLE GROSS RECEIPTS REPORTED DURING THE PRIOR  
FISCAL YEAR BY PERSONS ENGAGED IN BUSINESS IN THE COUNTY TO THE  
NEWLY CREATED SAFETY NET CARE POOL FUND; AND PROVIDING AN  
EFFECTIVE DATE OF TRANSFERRING FUNDS**

WHEREAS, on February 19, 2014, the New Mexico Legislature passed Senate Public Affairs Committee Substitute for Senate Bills 268 and 314 together with Senate Finance Committee Substitute for Senate Bill 368;

WHEREAS, the short title for this bill is "Sole Community Provider Federal Compliance";

WHEREAS, the bill became law upon signing by the Governor on March 12, 2014;

WHEREAS, the bill contained an emergency clause, making the law effective on March 12, 2014;

WHEREAS, the bill has been codified into law as the Laws of 2014, Chapter 79, Section 1;

WHEREAS, pursuant to her authority under Article IV, Section 22 of the New Mexico Constitution and as fully explained in Senate Executive Message No. 116 dated March 12, 2014, the Governor exercised her line-item veto 15 times prior to signing the referenced bill into law on March 12, 2014;

WHEREAS, Section 8 of the bill amended the Indigent Hospital and County Health Care Act by creating the Safety Net Care Pool Fund to be administered by the Human Services Department ("HSD");

WHEREAS, the Safety Net Care Pool Fund is a non-reverting fund, which according to the bill, will consist of public funds transferred from counties for use by the HSD to make payments to qualifying hospitals under an agreement with the federal Centers for Medicare and Medicaid Services;

WHEREAS, Section 16 of the bill contained a provision that required a county to adopt an ordinance to be effective July 1, 2014 that dedicated to the Safety Net Care Pool Fund an amount equal to a gross receipts tax of one-twelfth (1/12) percent applied to the taxable gross receipts reported during the prior fiscal year by persons engaging in business in a county;



WHEREAS, Section 16 of the bill required further that any ordinance adopted by a county in compliance with the bill must transfer to the Safety Net Care Pool Fund by the last day of March, June, September and December of each year, an amount equal to one-fourth (1/4) of the county's payment to the Safety Net Care Pool Fund.

**NOW THEREFORE, BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY AS FOLLOWS:**

1. Annually, the County shall transfer to the Safety Net Care Pool Fund, described in Laws 2014, Ch. 79, Section 1, an amount that is equal to the gross receipts tax revenues generated by a gross receipts tax rate of one-twelfth (1/12) percent of the taxable gross receipts reported during the prior fiscal year by persons engaging in business in Santa Fe County.
2. The annual payment of the County shall be made in quarterly payments no later than the last day of March, June, September and December, with the first payment being made by the last day of September 2014.

**THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Daniel W. Mayfield, Chair

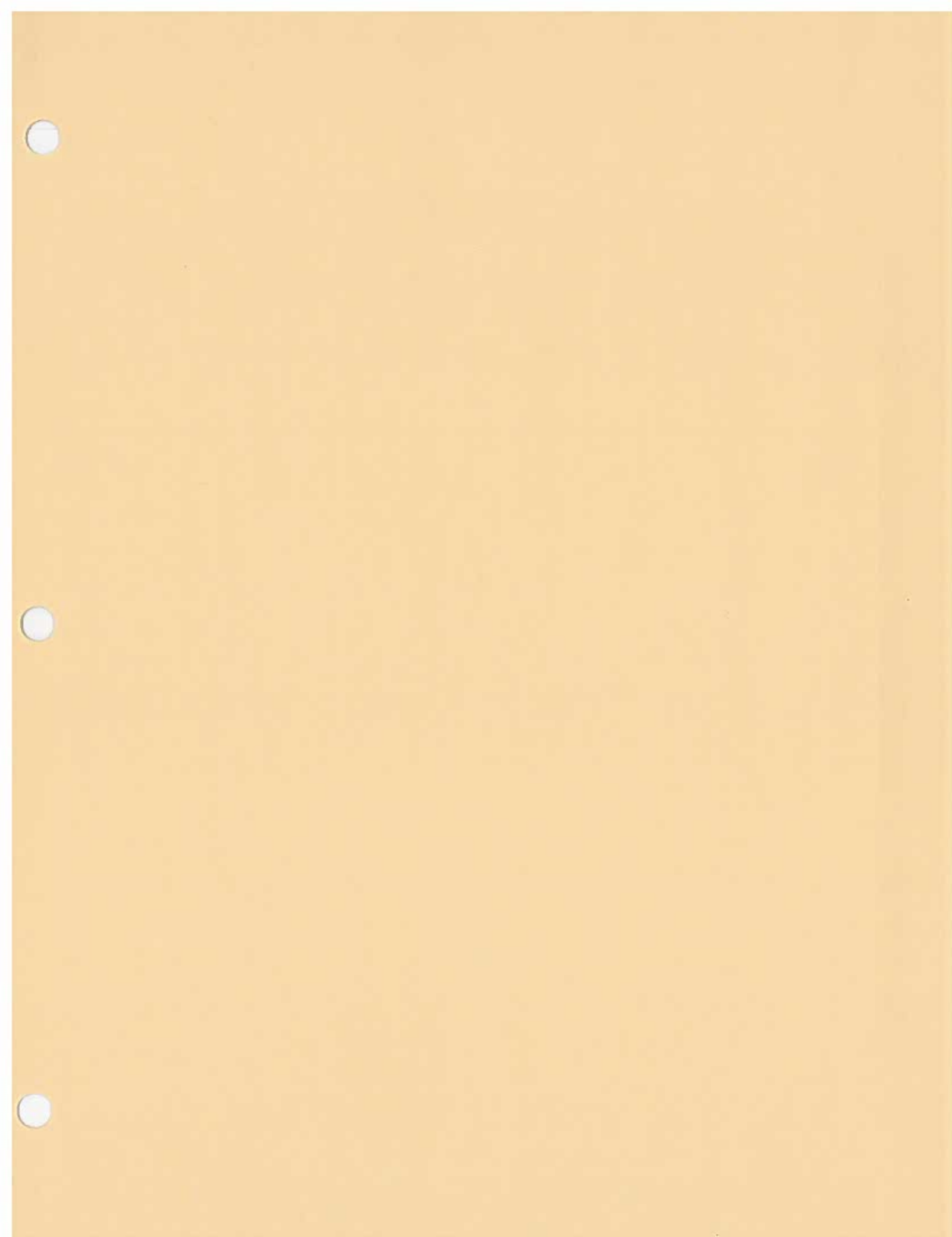
**ATTESTED:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Rachel Brown, Acting County Attorney







**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014 – \_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 2014-1 (AN ORDINANCE ESTABLISHING A LIVING WAGE WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE; ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION; ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE), TO MODIFY THE BASE WAGE FOR TIPPED EMPLOYEES**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 2014-1, IS AMENDED AS FOLLOWS:**

1. Section Five (Minimum Wage Payment Requirements), subsection B is amended to read as follows:

B. An employer shall pay an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions:

(i) the base wage; and

(ii) an amount determined by subtracting from the living wage both the base wage and the tips and commissions actually received by an employee; provided that, if the result of this calculation is less than zero, no additional wages are due under this subparagraph (ii).

The base wage is the minimum cash wage that must be paid to tipped employees under the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8. Tips received by an employee shall be determined in accordance with the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8, and implementing regulations.

2. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.

3. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9(1975).

PASSED, ENACTED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

\_\_\_\_\_  
Daniel W. Mayfield, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stephen C. Ross, County Attorney

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014 – \_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 2014-1 (AN ORDINANCE ESTABLISHING A LIVING WAGE WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE; ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION; ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE), TO MODIFY THE BASE WAGE FOR TIPPED EMPLOYEES**

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B. An employer shall pay an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions:

(i) the base wage; and

(ii) an amount determined by subtracting from the living wage both the base wage and the tips and commissions actually received by an employee; provided that, if the result of this calculation is less than zero, no additional wages are due under this subparagraph (ii).

Until January 1, 2015, the base wage is the minimum cash wage that must be paid to tipped employees under the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8. Commencing on January 1, 2015, the base wage shall be thirty percent of the living wage established by this Ordinance. On January 1, 2015 the base wage rate shall be three dollars and twenty cents (\$3.20) per hour. Thereafter, the base wage shall increase simultaneous with each living wage increase. Tips received by an employee shall be determined in accordance with the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8, and implementing regulations.

2. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.

3. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9(1975).

**PASSED, ENACTED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

\_\_\_\_\_  
Daniel W. Mayfield, Chair

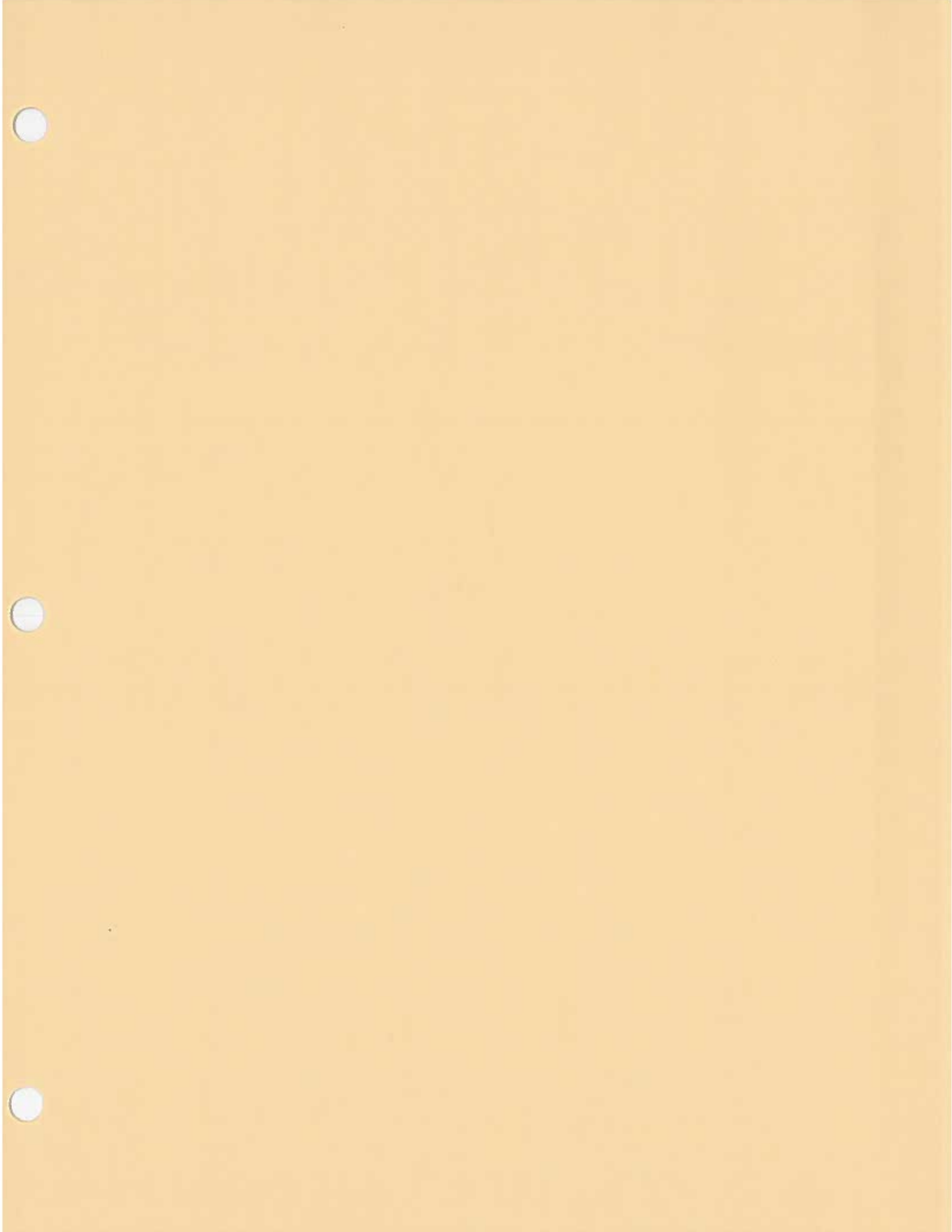
**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stephen C. Ross, County Attorney







**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014 – \_\_\_\_**

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**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 2014-1 IS AMENDED AS FOLLOWS:**

1. Section Three (Applicability), subsections F(7) through (8) are amended to read as follows and the following new subsection F(9) is enacted:
  - (7) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university;
  - (8) Persons working for a business in connection with a court-ordered community service program; and
  - (9) Minors enrolled in a public or private school in compliance with the Compulsory School Attendance Law, NMSA 1978, Chapter 22, Article 12, or who are otherwise in compliance with that law.
2. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.
3. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9 (1975).

**PASSED, ENACTED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

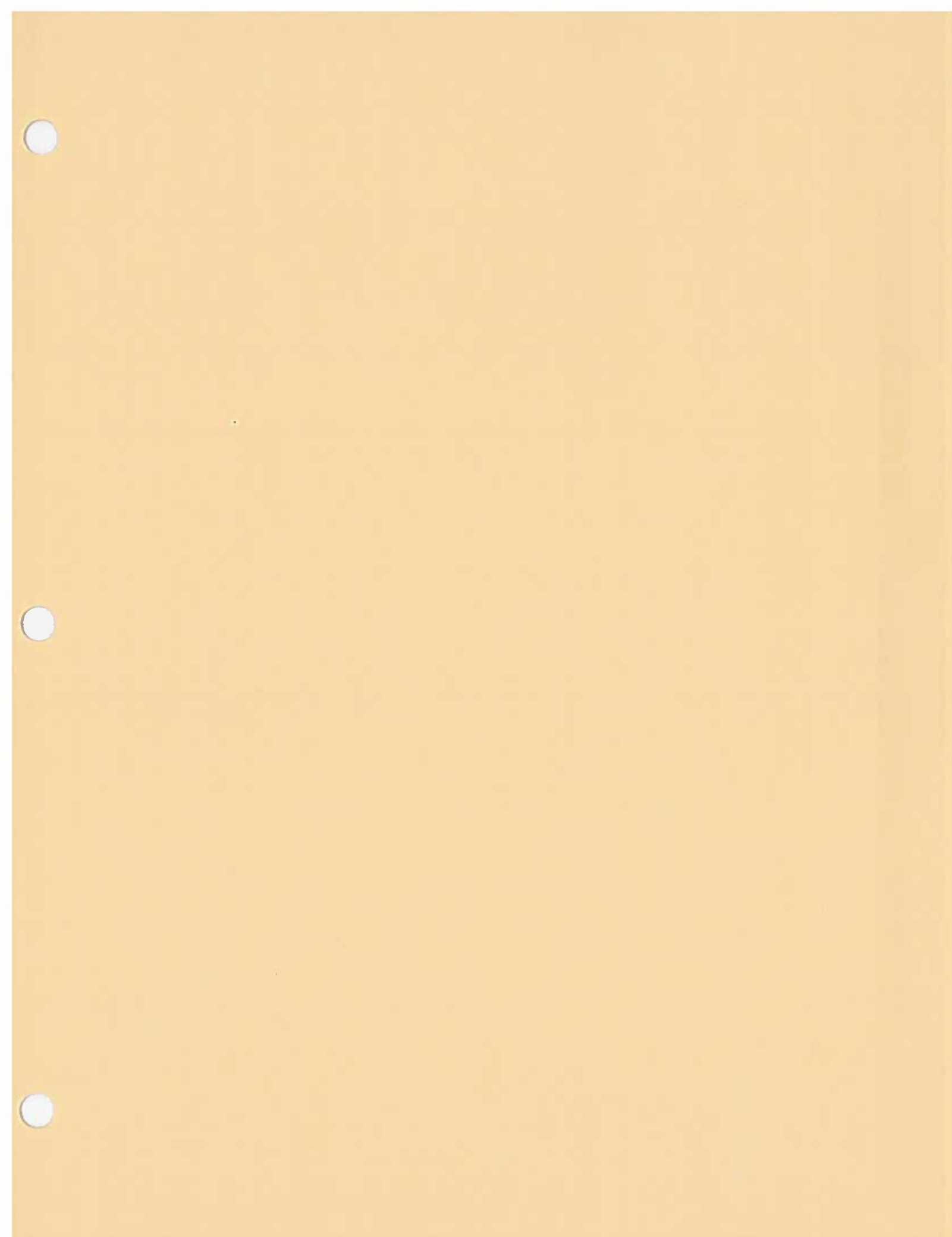
\_\_\_\_\_  
Daniel W. Mayfield, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney





Commission Anaya Proposals  
Concerning Base Wage for Tipped Employees and Minors Exception

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014 – \_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 2014-1 (AN ORDINANCE ESTABLISHING A LIVING WAGE WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE; ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION; ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE), TO MODIFY THE BASE WAGE FOR TIPPED EMPLOYEES AND TO ENACT ONE OR MORE ADDITIONAL EXCEPTIONS TO THE APPLICABILITY OF THE ORDINANCE**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 2014-1 IS AMENDED AS FOLLOWS:**

1. Section Three (Applicability), subsections F(7) through (8) are amended to read as follows and the following new subsection F(9) is enacted:

(7) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university;

(8) Persons working for a business in connection with a court-ordered community service program; and

(9) Minors enrolled in a public or private school in compliance with the Compulsory School Attendance Law, NMSA 1978, Chapter 22, Article 12, or who are otherwise in compliance with that law.

2. Section Five (Minimum Wage Payment Requirements), subsection B is amended to read as follows:

B. An employer shall pay an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions:

(i) the base wage; and

(ii) an amount determined by subtracting from the living wage both the base wage and the tips and commissions actually received by an

employee; provided that, if the result of this calculation is less than zero, no additional wages are due under this subparagraph (ii).

The base wage is the minimum cash wage that must be paid to tipped employees under the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8. Tips received by an employee shall be determined in accordance with the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8, and implementing regulations.

3. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.

4. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9 (1975).

**PASSED, ENACTED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

\_\_\_\_\_  
Daniel W. Mayfield, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney



**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014 – \_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 2014-1 (AN ORDINANCE  
ESTABLISHING A LIVING WAGE WITHIN SANTA FE COUNTY;  
SPECIFYING EMPLOYERS SUBJECT TO THE LIVING WAGE; MAKING  
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PROHIBITION ON RETALIATION FOR REPORTING VIOLATIONS OF THE  
LIVING WAGE; PROVIDING FOR REMEDIES AND PENALTIES;  
SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE PROCESS TO  
BE EMPLOYED UPON COMPLAINTS OF VIOLATION; ESTABLISHING  
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE), TO MODIFY  
THE BASE WAGE FOR TIPPED EMPLOYEES AND TO ENACT ONE OR  
MORE ADDITIONAL EXCEPTIONS TO THE APPLICABILITY OF THE  
ORDINANCE**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY THAT ORDINANCE NO. 2014-1 IS AMENDED AS  
FOLLOWS:**

1. Section Three (Applicability), subsections F(7) through (8) are repealed and replaced with the following and the following new subsection F(9) is enacted:

(7) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university;

(8) Persons working for a business in connection with a court-ordered community service program; and

(9) Minors enrolled in a public or private school in compliance with the Compulsory School Attendance Law, NMSA 1978, Chapter 22, Article 12, or who are otherwise in compliance with that law.

2. Section Five (Minimum Wage Payment Requirements), subsection B is repealed and replaced with the following:

B. An employer shall pay an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions:

(i) the base wage; and

(ii) an amount determined by subtracting from the living wage both the base wage and the tips and commissions actually received by an

employee; provided that, if the result of this calculation is less than zero, no additional wages are due under this subparagraph (ii).

Until January 1, 2015, the base wage is the minimum cash wage that must be paid to tipped employees under the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8. Commencing on January 1, 2015, the base wage shall be thirty percent of the living wage established by this Ordinance. On January 1, 2015 the base wage rate shall be three dollars and twenty cents (\$3.20) per hour. Thereafter, the base wage shall increase simultaneous with each living wage increase. Tips received by an employee shall be determined in accordance with the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8, and implementing regulations.

3. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.

4. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9 (1975).

**PASSED, ENACTED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

\_\_\_\_\_  
Daniel W. Mayfield, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

**APPROVED AS TO FORM:**

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Gregory S. Shaffer, County Attorney



