Date: October 15, 2014

To: Board of County Commissioners

From: Penny Ellis-Green, Growth Management Director

Via: Katherine Miller, County Manager

Re: Growth Management Monthly Report –October 2014

This report is a summary of projects for Growth Management with statistics from October 2014. Growth Management consists of 3 divisions; Planning, GIS and Building and Development Services.

Planning Division

Affordable Housing

Home Sales

Two new affordable homes in Rancho Viejo. One buyer was a Tier 1 buyer, earning under 65% of Area Median Income; another buyer was a Tier 2 buyer, earning between 65% - 80% of Area Median Income. The combined total of the County affordability liens is $113,450. One affordable home resale in Turquoise Trail closed to a Tier 2 buyer who received $15,000 in down payment assistance. In addition, a Tier 3 buyer in Rancho Viejo was approved for and received $10,000 in down payment assistance.

Happy Roofs

The BCC approved an ordinance change in the Happy Roofs program which would increase the amount of assistance that can be given from $10,000 to $14,999, increase the length of the affordability period from 5 to 10 years, and limit recipients to low income households with incomes under 80% AMI. The ordinance will be effective 30 days from October 28, at which time work should be initiated on 4 reroofing jobs that had been awaiting this ordinance change.

Affordable Housing Plans and Agreements

Cielo Colorado subdivision affordable housing agreement was recommended for approval at the October CDRC meeting.

Frontier Community Initiative
Staff in collaboration with community members from Galisteo and Tesuque completed and submitted the NMEDD Frontier Community Initiative Application; Galisteo was awarded Tier I status and will beginning working with consultants in early November. Tesuque was awarded Tier II status and will begin working with consultants in January.

Chimayo Community Plan
Chimayó Youth Vision Workshop -Staff in collaboration with UNM's Community and Regional Planning Program Center for La Raza Planning facilitated the first of three youth vision workshops in Chimayó.

NCRTD Report
The NCRTD Board met on October 10, 2014, a summary of the agenda items discussed, the agenda and ridership information is attached.

Open Space
Planning, Economic Development and Open Space staff met with Horse Coalition of Santa Fe regarding equestrian trail maps and economic development opportunities.

Staff has identified projects to apply for Recreational Trails Program and Transportation Alternatives Program funds for FY 16 and FY17.

Economic Development
Staff facilitated filming for the production "Stanistan" at Public Works and Old Judicial Complex. The production hired 62 locals, spent $350k on equipment rental and almost $160k per day.

Staff coordinated joint County/City meeting on Economic Development. The primary outcome will be 2 reports on potential economic returns for Film/Digital Media and Outdoor Recreation target industries.

Staff facilitated sponsorship of the SF Independent Film Festival app

2014 Food Plan "Planning for Santa Fe's Food Future"
The 2014 iteration of Food Plan "Planning for Santa Fe's Food Future" was completed. The Food Plan was presented for adoption at the October 28th BCC meeting by staff, and members of the Santa Fe Food Policy Council; the Food Plan was adopted unanimously. Prior to the BCC meeting, informational meetings were held which included both City and County staff and officials. A Press conference was held on Food Day to release the Food Plan. There was media coverage, including radio interviews, articles, and news clips. These meetings summarized the scope and goals of the Food Plan, community priority areas, and recommended next steps in food policy for the Santa Fe region.

North Central NM Economic Development District (NCNMEDD)
The next NCNMEDD board meeting will be Nov. 21.

Building and Development Services Division

Permits and Development Review

The following statistics are provided for permits and approvals issued in October 2014:

	October 2014
New Residential Permits - Stick Built Homes	21
New Residential Permits - Manufactured Homes	7
Commercial Building Permits	1
Number of Lots Created – Subdivision	2 lots
Exemptions	8 Lots
Summary Review Subdivisions	8 lots
Subdivisions	0 lots
Commercial Business Licenses	2
Home Occupations Business licenses	1
Film Permits	1

Code Enforcement

The following statistics are provided for code enforcement actions in October 2014:

	October 2014
Number of Initial Notices of Violation Issued	19
Number of Final Notices of Violation Issued	2
Number of Notices of Violation resolved without court action	19

Attached is a report that covers 2013 and 2014 of projects that were given a timeframe for complying with a condition or approval.

GIS Division

GIS staff assisted the Bureau of Elections with Precinct Mapping for the November election, assisted Public Works / Roads with Traffic Count mapping for BCC presentation and assisted the Town of Edgewood's new town planner with mapping

GIS staff provided an analysis of demographics along NM Hwy 14 for a potential Senior Center.

Staff created a plan for an online Trails/OS map (see http://mapwv.gov/trails/ for one example of what can be done) with Planning and Economic Development.

Staff provided digital GIS data to the City of Santa Fe for their Acequia Trail project.

GIS staff created a Food System Map for the Food Policy Council brochure.

In October the E911 Addressing staff checked 26, and replaced 16 addresses.

Date: November 10, 2014

To Santa Fe Board of County Commissioners

From: Robert Griego, Planning Manager RG

via: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director PEG

Re: NCRTD Report

Summary

The North Central Regional Transit District Board Meeting was held on November 7th, 2014. In addition to the brief summary of the discussion and action items on the agenda is the Ridership Report from NCRTD through September 2014.

1. NCRTD received a Federal Transit Administration Award for Outstanding Public Service in Rural Public Transportation.
2. Board approved a Resolution adding the Town of Taos as a new member of NCRTD.
3. Board discussed the Intergovernmental Contract and the need for the contract to be approved by each of the members of NCRTD to reflect the new member and changes to the voting units based on population. The changes to the voting units include the Town f Taos and the City of Santa Fe who would gain one additional voting unit based on population increases due to annexation.
4. Brief discussion on Ski Santa Fe Service Update. NCRTD is continuing to discuss the Ski Santa Fe Santa Fe National Forest options for funding and is working to organize meetings with stakeholders including the City and County.
5. NCRTD held a presentation and discussion of a Long Range Transit Service Plan to include a workshop with the consultants regarding the Districts Vision, Mission, Goals and overall direction in creating a future service plan for the District.
6. Ridership Report through September 2014 is attached.

NORTH CENTRAL REGIONAL TRANSIT DISTRICT
BOARD MEETING AGENDA

November 7, 2014
9:00 AM - 1:00 PM
Jim West Regional Transit Center
Board Room

CALL TO ORDER:

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – September 5, 2014 and October 3, 2014
7. PUBLIC COMMENTS

PRESENTATION ITEMS:

A. **Presentation of Federal Transit Administration Award to the North Central Regional Transit District For Outstanding Public Service in Rural Public Transportation**
Sponsor: Anthony J. Mortillaro, Executive Director.

B. **Presentation and Discussion of Long Range Transit Service Plan**
Sponsor: Anthony J. Mortillaro, Executive Director.

ACTION ITEMS FOR APPROVAL/ DISCUSSION:

C. **Discussion and Consideration of Resolution 2014-18 Adding the Town of Taos as a New Member of the North Central Regional Transit District**
Sponsor: Anthony J. Mortillaro, Executive Director. *Attachment.*

D. **Discussion and Consideration of the Intergovernmental Contract Approving Modification of Voting Strengths Analysis for the City of Santa Fe Annexation**
Sponsor: Anthony J. Mortillaro, Executive Director. *Attachment.*

E. **Discussion and Consideration of Memorandum of Agreement between the Town of Taos and the North Central Regional Transit District Regarding Various Service Modifications and Exchanges**
Sponsor: Anthony J. Mortillaro, Executive. *Attachment.*

F. **Discussion and Consideration of Resolution 2014-19 Adopting Revised Paratransit and Demand Policies**
Sponsor: Anthony J. Mortillaro, Executive Director and Michael J. Kelly, Transit and Facilities Operations Director. *Attachment.*

G. **Continued Discussion and Possible Direction Regarding Jicarilla Apache Nation Service Request**
Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. *Attachment.*

H. **Discussion and Consideration of Resolution No. 2014-20 Authorizing the Submittal of an Application for Federal Section 5310 Funding in Federal Fiscal Year 2016**
Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist. *Attachment.*

DISCUSSION ITEMS:

I. **Discussion and Review of Ski Santa Fe Service Update**
Sponsor: Anthony J. Mortillaro, Executive Director and Stacey McGuire, Projects and Grants Specialist.

J. **Financial Report for October 2014:**
Sponsor: Anthony J. Mortillaro, Executive Director and Glenda Aragon, Finance Director. *Attachment.*

K. **Finance Subcommittee Report:**
Sponsor: Chair Tim Vigil and Anthony J. Mortillaro, Executive Director. *No Report.*

L. **Tribal Subcommittee Report:**
Sponsor: Chair Mary Lou Valerio and Anthony J. Mortillaro, Executive Director. *No Report.*

M. **Executive Report for October 2014 and Comments from the Executive Director:**
1) **Executive Report**
2) **Performance Measures for September 2014**
3) **Ridership Report for September 2014**

MATTERS FROM THE BOARD

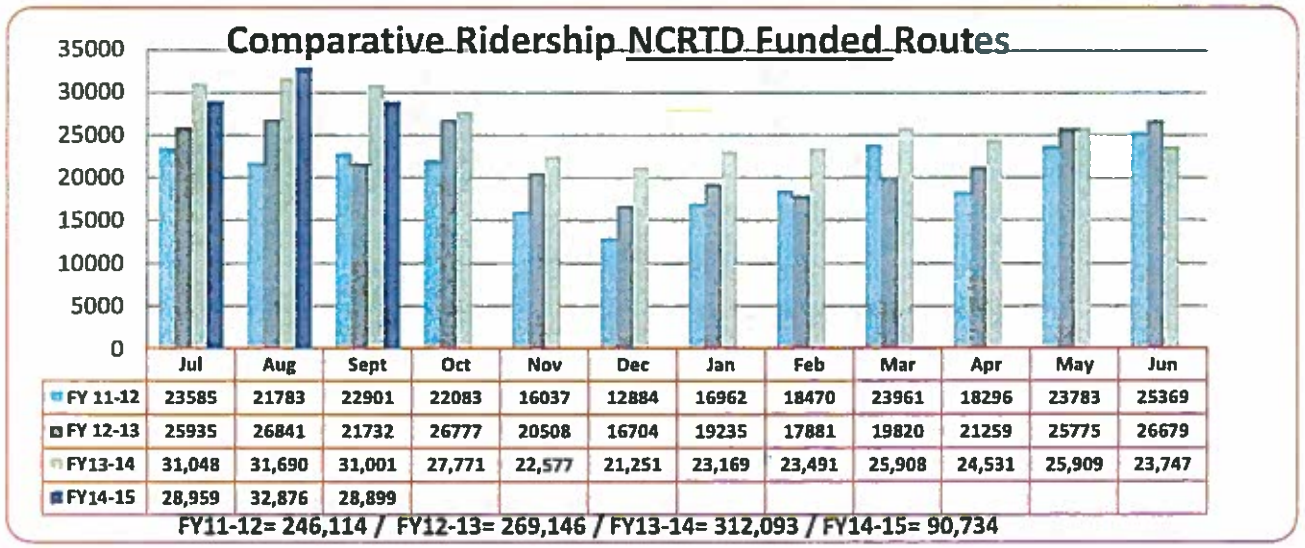
MISCELLANEOUS

ADJOURN

NEXT BOARD MEETING: December 5, 2014 at 9:00 a.m.

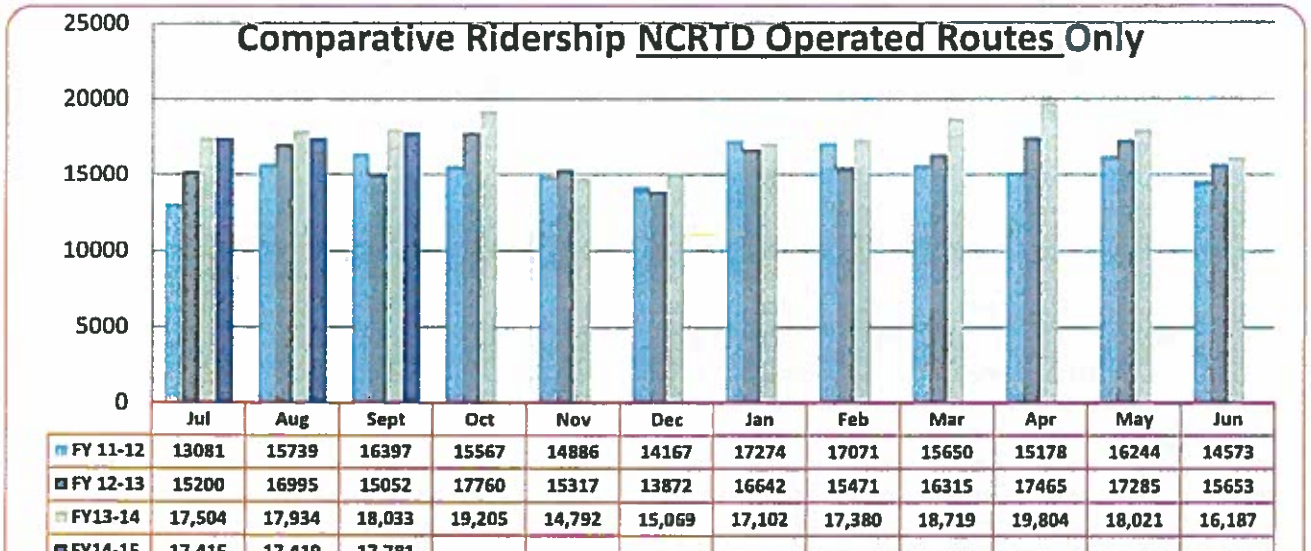
If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Sep-2014
Ridership Report



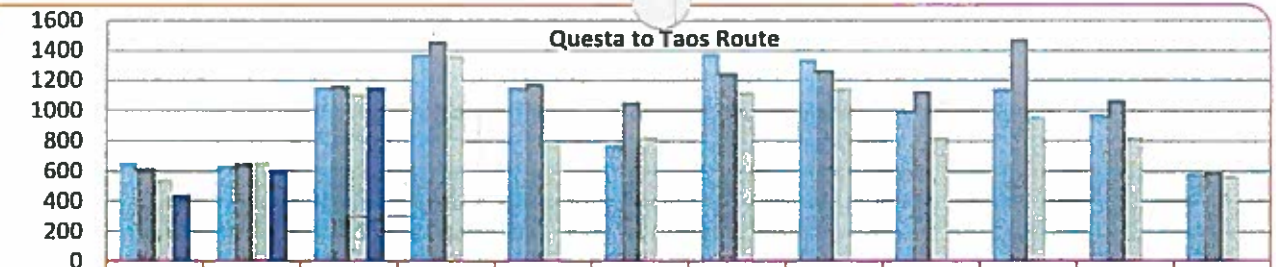
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY 11-12	23585	21783	22901	22083	16037	12884	16962	18470	23961	18296	23783	25369
FY 12-13	25935	26841	21732	26777	20508	16704	19235	17881	19820	21259	25775	26679
FY13-14	31,048	31,690	31,001	27,771	22,577	21,251	23,169	23,491	25,908	24,531	25,909	23,747
FY14-15	28,959	32,876	28,899									

FY11-12= 246,114 / FY12-13= 269,146 / FY13-14= 312,093 / FY14-15= 90,734



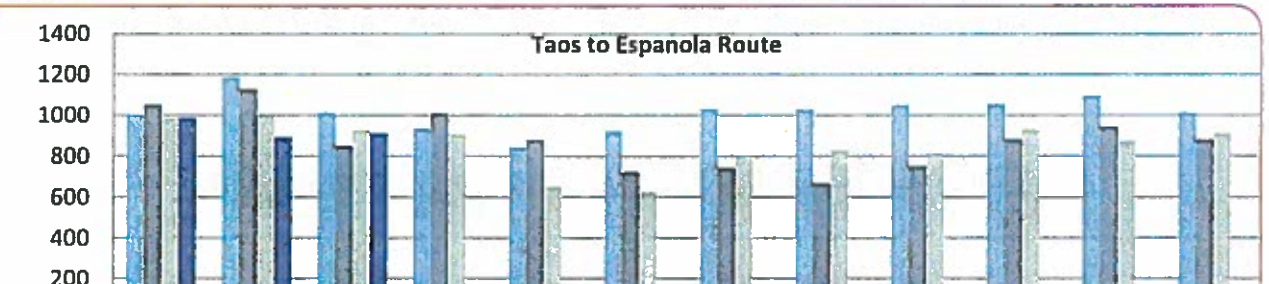
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY 11-12	13081	15739	16397	15567	14886	14167	17274	17071	15650	15178	16244	14573
FY 12-13	15200	16995	15052	17760	15317	13872	16642	15471	16315	17465	17285	15653
FY13-14	17,504	17,934	18,033	19,205	14,792	15,069	17,102	17,380	18,719	19,804	18,021	16,187
FY14-15	17,415	17,419	17,781									

FY11-12= 185,827 / FY12-13= 193,027 / FY13-14= 209,750 / FY14/15= 52,615



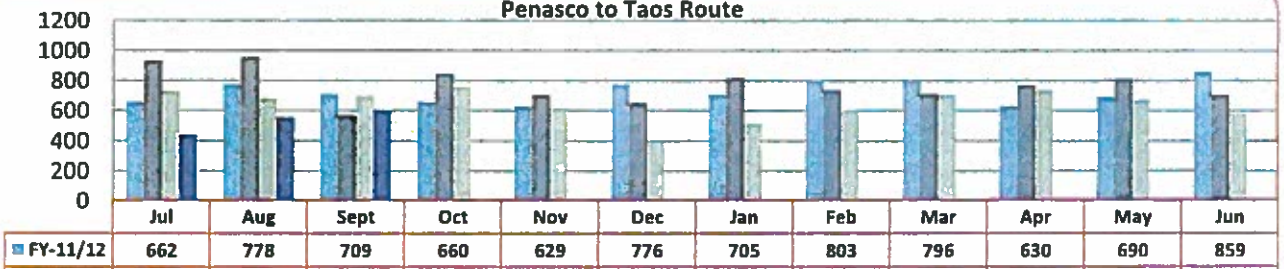
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY11/12	662	642	1158	1376	1157	775	1380	1342	1000	1147	975	587
FY12/13	616	654	1170	1459	1179	1056	1250	1267	1127	1474	1068	593
FY13/14	552	665	1116	1371	787	833	1125	1151	830	962	824	576
FY14/15	443	608	1158									

FY11-12= 12,201 / FY12-13= 12,913 / FY13-14= 10,792 / FY14/15= 2,209



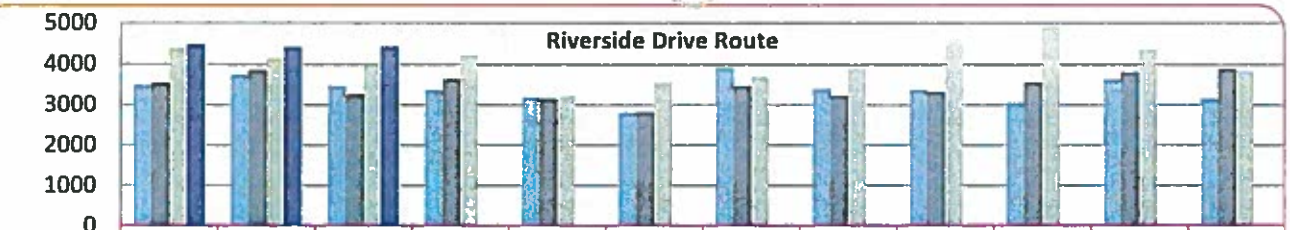
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY- 11/12	1002	1186	1012	935	841	922	1033	1028	1050	1055	1093	1012
FY-12/13	1051	1126	849	1009	879	722	742	668	750	883	942	879
FY-13/14	985	998	928	907	652	627	792	830	813	930	872	909
FY14-15	986	891	911									

FY11-12= 12,169 / FY12-13= 10,500 / FY13-14= 10,243 / FY14/15= 2,788



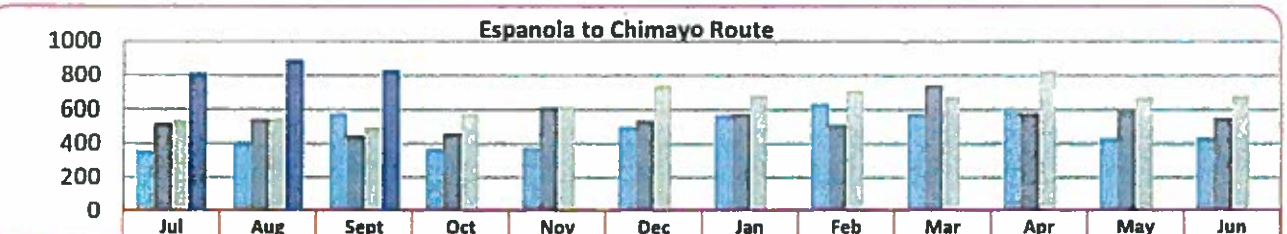
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	662	778	709	660	629	776	705	803	796	630	690	859
FY-12/13	930	953	565	847	700	648	818	735	708	769	812	704
FY-13/14	733	681	697	759	618	400	516	608	702	736	674	583
FY14-15	436	551	600									

FY11-12=8,697 / FY12-13= 9,189 / FY13-14= 7,707 / FY14/15= 1,587



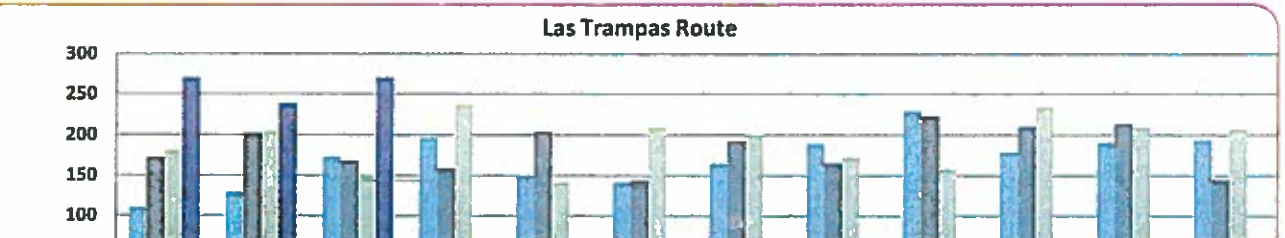
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	3474	3720	3447	3357	3185	2813	3921	3395	3356	3051	3630	3158
FY-12/13	3526	3848	3257	3631	3139	2820	3468	3224	3324	3550	3799	3884
FY-13/14	4382	4145	4001	4213	3220	3548	3687	3890	4716	4962	4354	3825
FY14-15	4479	4405	4422									

FY11-12= 40,507 / FY12-13= 41,470 / FY13-14= 48,943 / FY14/15= 13,306



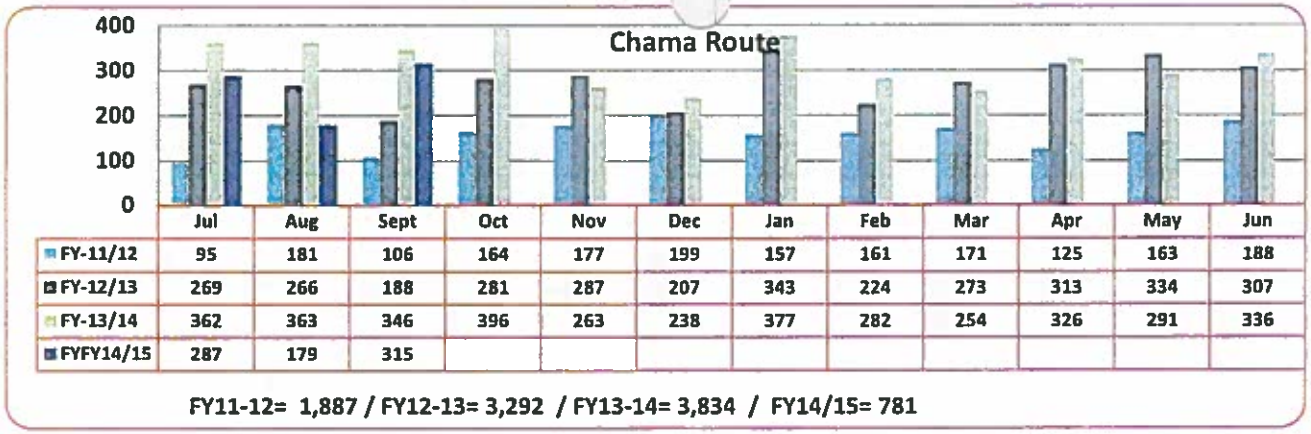
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	363	416	583	376	381	500	574	635	580	594	434	437
FY-12/13	517	543	445	455	609	534	576	510	743	576	589	548
FY-13/14	538	550	498	580	622	750	690	718	677	835	676	684
FY14-15	814	892	833									

FY11-12= 5,873 / FY12-13= 6,645 / FY13-14= 7,818 / FY14/15= 2,539



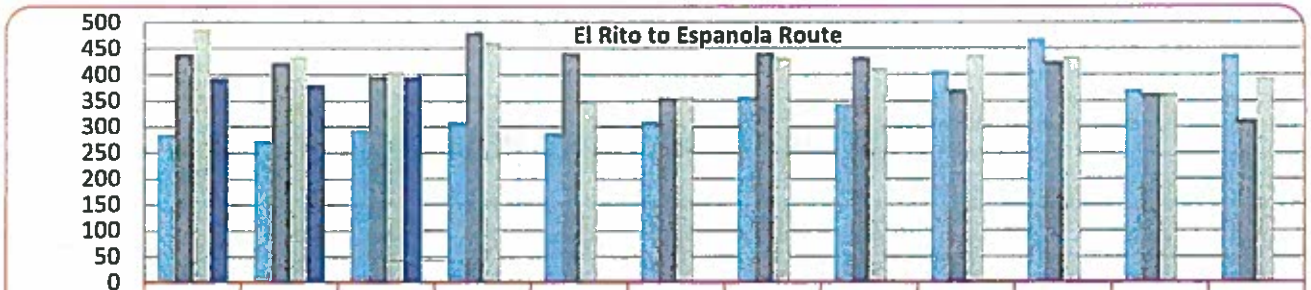
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	111	130	173	197	150	142	165	190	230	179	191	194
FY-12/13	172	202	168	158	204	143	192	165	223	210	214	145
FY-13/14	181	205	150	238	142	210	201	173	158	235	210	208
FY14-15	271	239	271									

FY11-12= 2,052 / FY12-13= 2,196 / FY13-14= 2,311 / FY14/15= 781



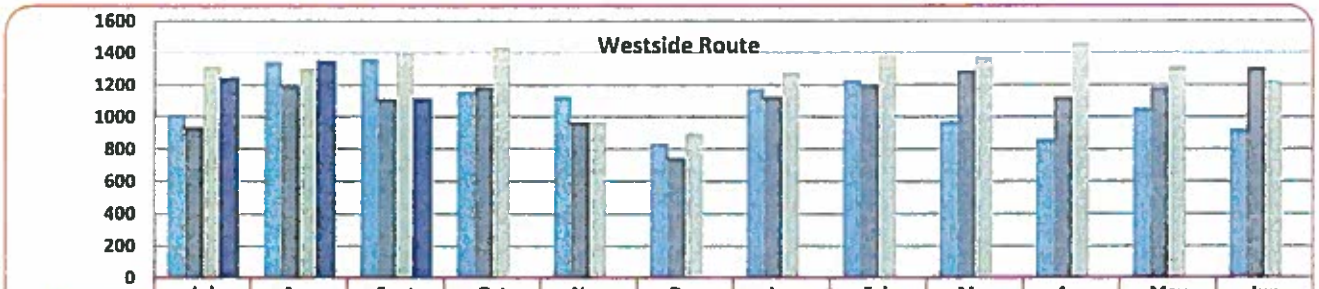
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	95	181	106	164	177	199	157	161	171	125	163	188
FY-12/13	269	266	188	281	287	207	343	224	273	313	334	307
FY-13/14	362	363	346	396	263	238	377	282	254	326	291	336
FYFY14/15	287	179	315									

FY11-12= 1,887 / FY12-13= 3,292 / FY13-14= 3,834 / FY14/15= 781



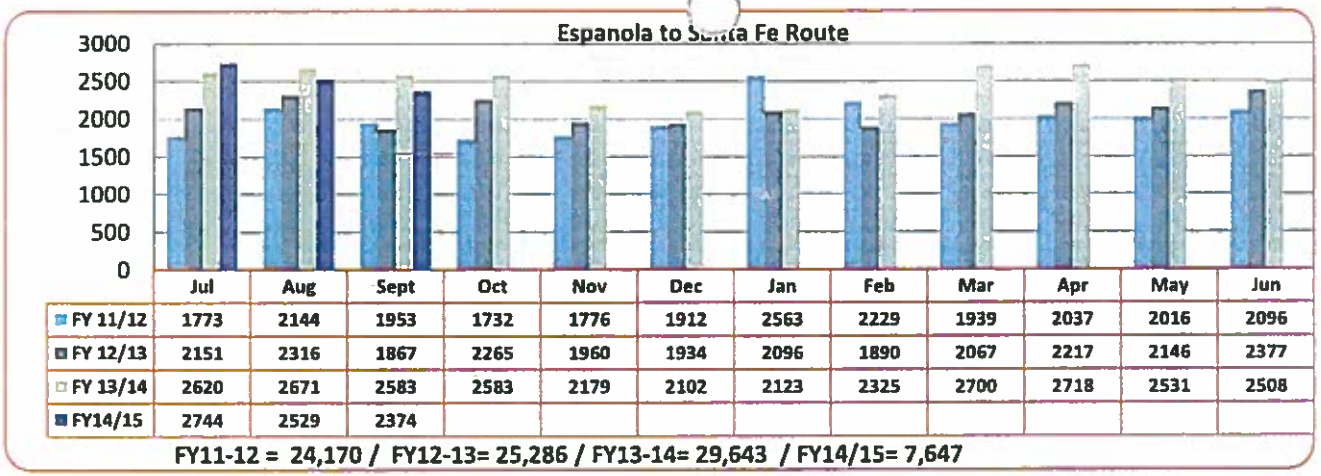
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	285	274	295	310	288	310	358	344	407	469	371	438
FY-12/13	438	422	396	480	441	355	441	433	371	424	363	312
FY-13/14	488	435	407	463	347	358	434	414	438	436	365	395
FY14/15	393	380	396									

FY11-12= 4,149 / FY12-13= 4,876 / FY13-14= 4,980 / FY14/15= 1,169



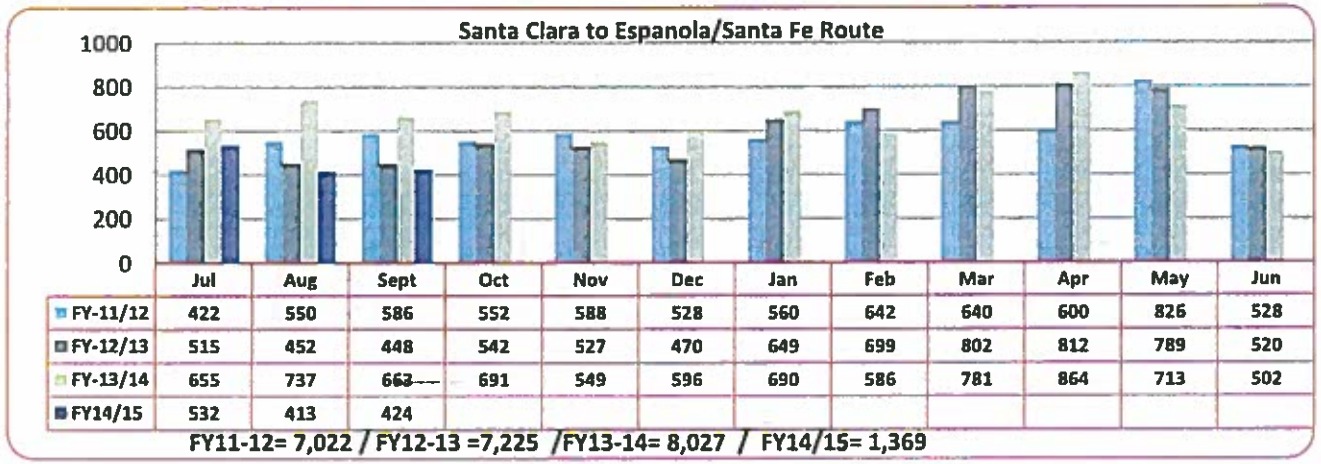
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	1013	1346	1363	1156	1128	837	1175	1230	975	859	1054	926
FY-12/13	936	1193	1113	1186	966	745	1125	1193	1288	1123	1184	1307
FY-13/14	1321	1305	1402	1437	972	902	1281	1388	1374	1467	1319	1225
FY14/15	1239	1345	1111									

FY11-12= 13,062 / FY12-13= 13,359 / FY13-14= 15,393 / FY14/15= 3,695



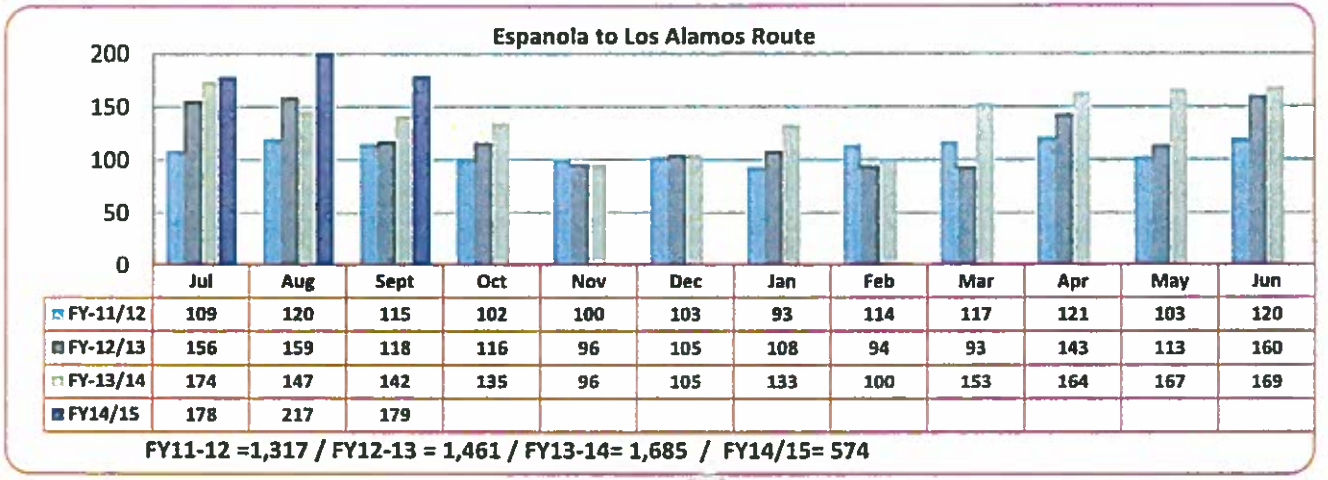
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY 11/12	1773	2144	1953	1732	1776	1912	2563	2229	1939	2037	2016	2096
FY 12/13	2151	2316	1867	2265	1960	1934	2096	1890	2067	2217	2146	2377
FY 13/14	2620	2671	2583	2583	2179	2102	2123	2325	2700	2718	2531	2508
FY14/15	2744	2529	2374									

FY11-12 = 24,170 / FY12-13= 25,286 / FY13-14= 29,643 / FY14/15= 7,647



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	422	550	586	552	588	528	560	642	640	600	826	528
FY-12/13	515	452	448	542	527	470	649	699	802	812	789	520
FY-13/14	655	737	663	691	549	596	690	586	781	864	713	502
FY14/15	532	413	424									

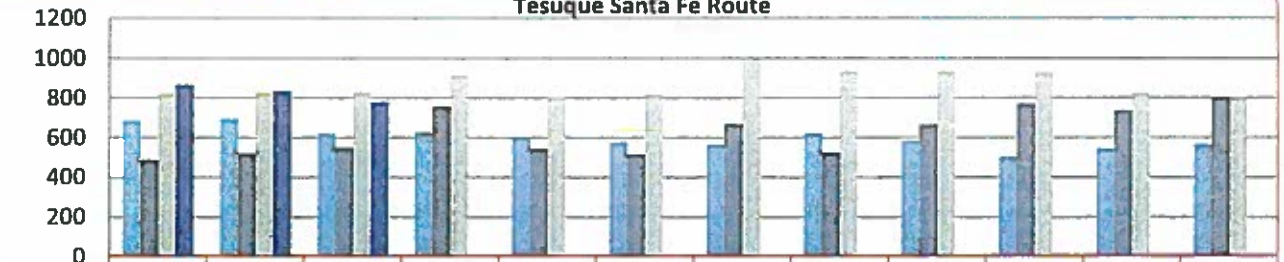
FY11-12= 7,022 / FY12-13 =7,225 /FY13-14= 8,027 / FY14/15= 1,369



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	109	120	115	102	100	103	93	114	117	121	103	120
FY-12/13	156	159	118	116	96	105	108	94	93	143	113	160
FY-13/14	174	147	142	135	96	105	133	100	153	164	167	169
FY14/15	178	217	179									

FY11-12 =1,317 / FY12-13 = 1,461 / FY13-14= 1,685 / FY14/15= 574

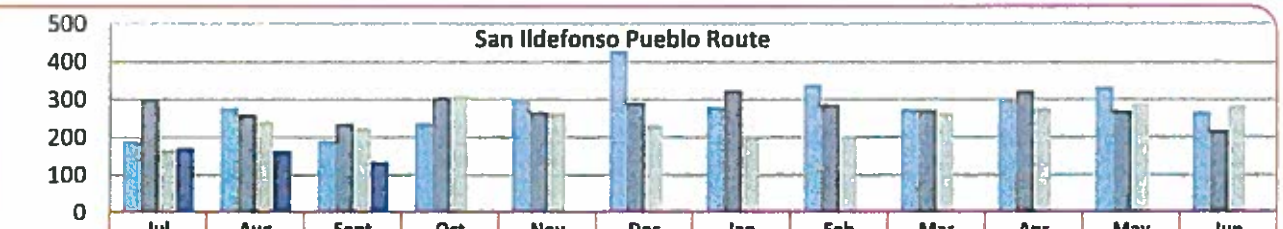
Tesuque Santa Fe Route



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	686	693	619	627	600	576	564	620	586	497	543	565
FY-12/13	485	519	548	756	541	513	669	522	666	771	734	800
FY-13/14	822	829	831	916	802	820	995	937	938	928	825	805
FY14/15	865	834	777									

FY11-12 = 7,176 / FY12-13 = 7,524 / FY13-14= 10,448 / FY14/15= 2,476

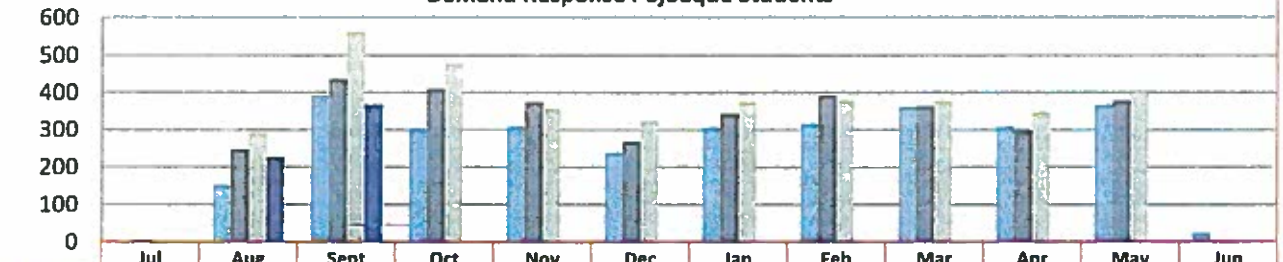
San Ildefonso Pueblo Route



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	189	277	190	237	297	426	279	338	272	296	332	266
FY-12/13	299	260	236	305	266	291	325	286	270	323	269	217
FY-13/14	167	241	223	308	264	233	202	201	263	276	289	284
FY14/15	171	163	133									

FY11-12= 3,399 / FY12-13= 3,347/ FY13-14= 2,951 / FY14/15= 467

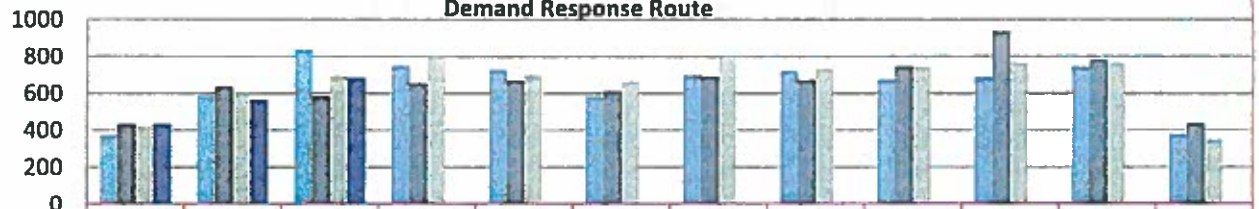
Demand Response Pojoaque Students



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	0	154	394	304	309	240	307	317	362	308	367	26
FY-12/13	6	247	437	410	375	268	343	392	363	295	379	0
FY-13/14	0	292	563	480	359	325	377	381	379	348	407	0
FY14/15	0	227	367									

FY11-12= 3,088 / FY12-13= 3,515 / FY13-14 = 3,911 / FY14/15= 594

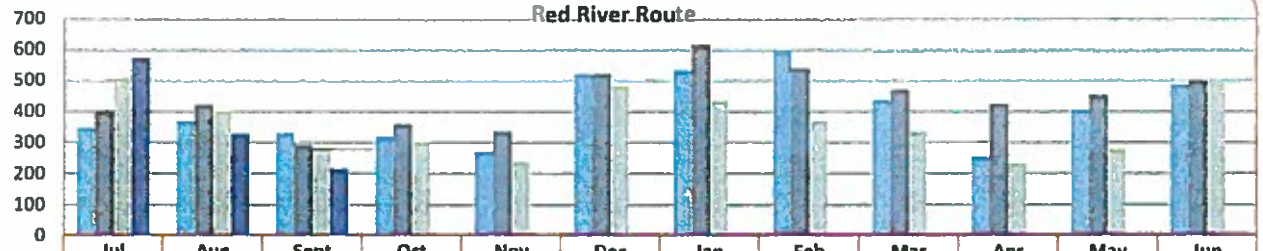
Demand Response Route



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	373	589	836	750	728	584	699	722	674	687	744	376
FY-12/13	432	636	586	656	670	613	695	671	747	937	782	434
FY-13/14	418	603	696	802	699	663	794	734	743	764	766	348
FY14/15	431	565	683									

FY 11-12= 7,762 / FY12-13= 7,849 / FY13-14= 8,030 / FY14/15= 1,679

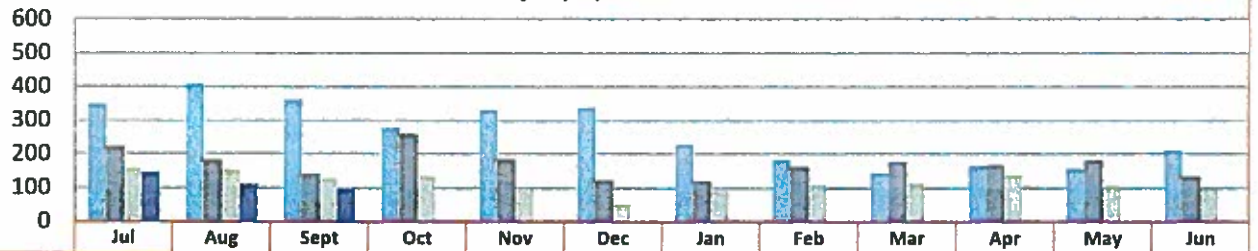
Red River Route



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	350	373	333	322	272	524	534	597	438	254	406	487
FY-12/13	403	421	291	358	336	521	614	538	467	423	452	495
FY-13/14	511	404	284	304	241	484	437	372	336	234	279	494
FY14/15	572	329	216									

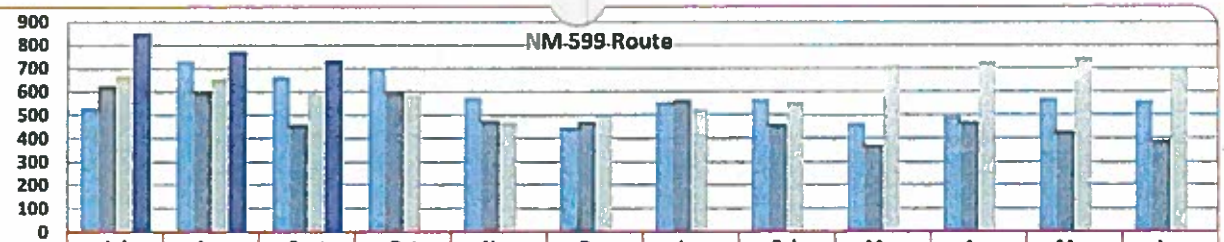
FY11-12= 4,890 / FY12-13= 5,319 / FY13-14= 4,380 / FY14/15= 1,117

Pojoaque/Nambe Route



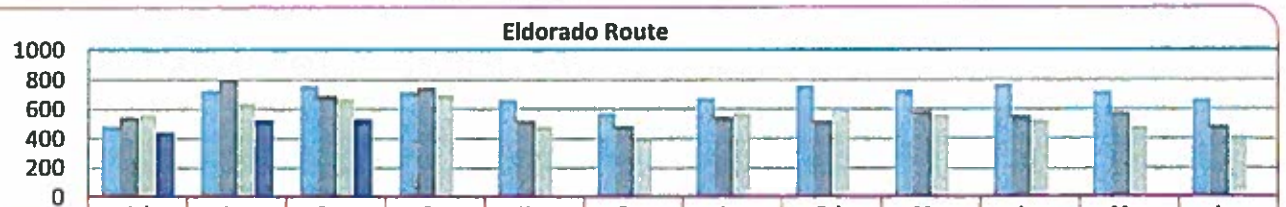
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	350	410	364	280	333	338	229	184	145	165	157	212
FY-12/13	221	181	140	259	182	121	119	160	176	166	179	131
FY-13/14	159	156	128	135	96	54	93	109	115	139	107	98
FY14/15	146	109	96									

FY11-12= 3,167 / FY12-13= 2,035 / FY13-14= 1,389 /FY 14/15= 351



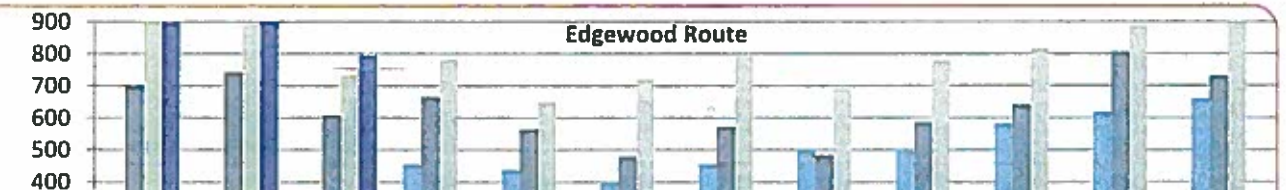
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	530	732	664	703	575	447	553	567	464	491	569	557
FY-12/13	623	598	458	596	475	470	563	458	371	469	429	389
FY-13/14	669	655	594	585	467	498	526	559	713	727	745	700
FY14/15	852	773	733									

FY11-12= 6,852 / FY12-13= 5,899 / FY13-14= 7,438 / FY14/15= 2,358



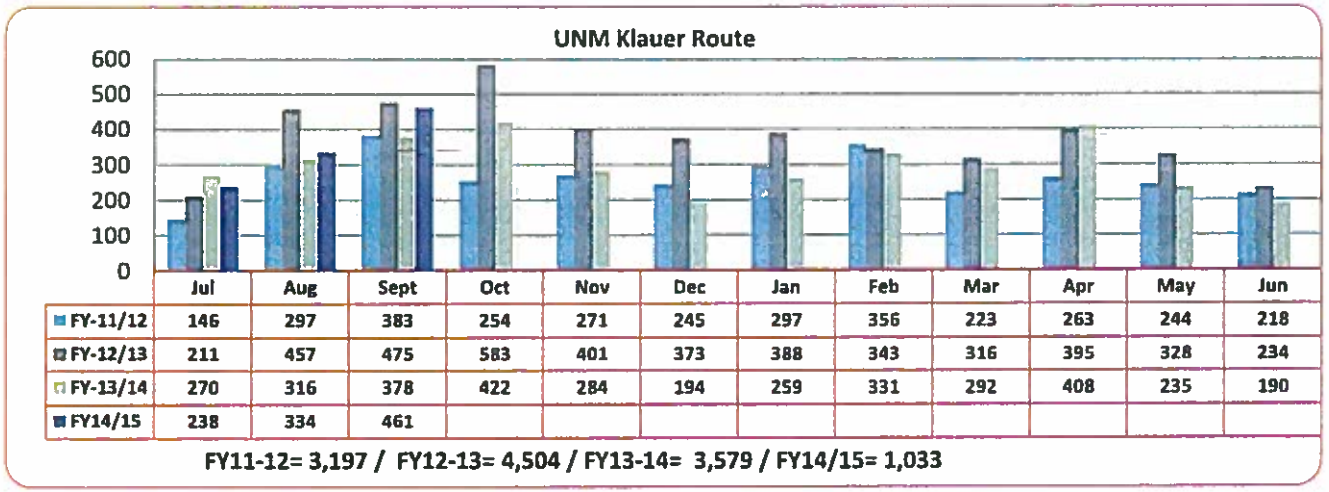
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	486	726	761	718	663	574	673	761	729	769	718	665
FY-12/13	544	799	689	745	521	484	546	518	584	552	576	487
FY-13/14	564	642	670	697	485	409	576	598	565	528	484	418
FY14/15	441	524	527									

FY11-12= 8,243 / FY12-13= 7,045 / FY13-14= 6,636 / FY14/15= 1,492



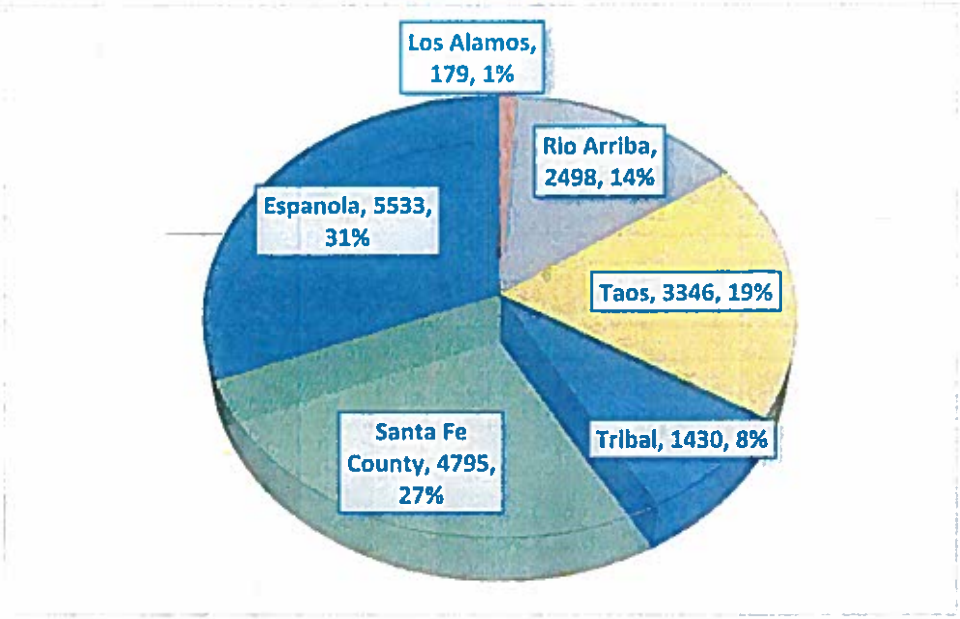
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12			353	455	438	396	455	496	496	581	618	658
FY-12/13	699	743	608	663	563	479	572	481	586	640	804	730
FY-13/14	933	894	733	783	648	720	794	693	779	817	888	930
FY14/15	897	912	794									

FY11-12= 4,946 / FY12-13= 7,568 / FY13-14= 9,612 / FY14/15= 2,603



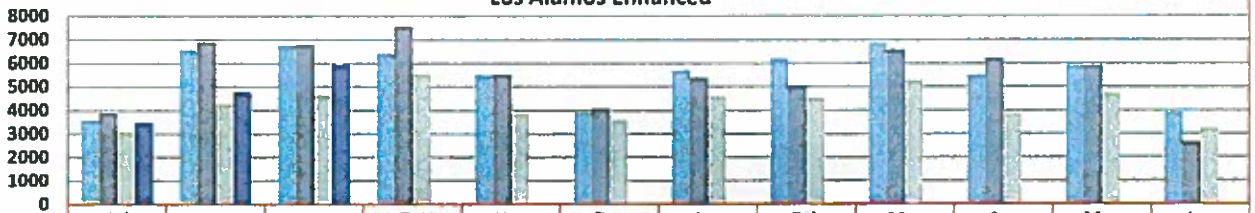
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	146	297	383	254	271	245	297	356	223	263	244	218
FY-12/13	211	457	475	583	401	373	388	343	316	395	328	234
FY-13/14	270	316	378	422	284	194	259	331	292	408	235	190
FY14/15	238	334	461									

FY11-12= 3,197 / FY12-13= 4,504 / FY13-14= 3,579 / FY14/15= 1,033



NCRTD Funded Routes - Member Operated

Los Alamos Enhanced

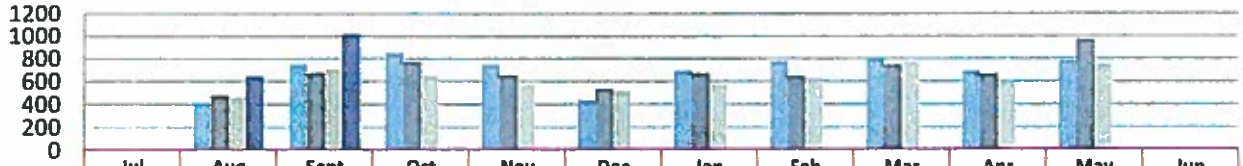


	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	3576	6579	6785	6403	5492	3899	5711	6178	6875	5487	5922	3913
FY-12/13	3920	6907	6809	7549	5529	4072	5381	5021	6572	6196	5908	2659
FY-13/14	3075	4278	4637	5556	3851	3588	4592	4508	5273	3869	4705	3216
FY14/15	3481	4772	5945									

FY11-12= 66,820 / FY12-13= 66,523 / FY13-14= 51,148 / FY14/15= 14,198

Los Alamos Route 11 formerly route 10

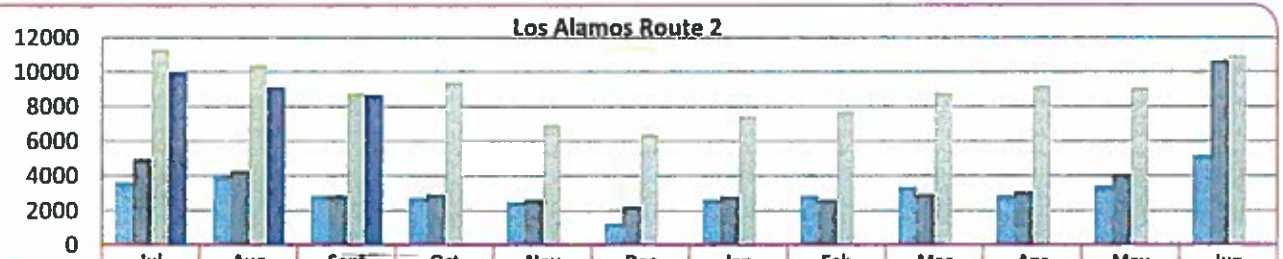
June-Route 10 didn't run due to fire



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	0	417	750	850	745	436	690	774	796	690	782	0
FY-12/13	0	477	672	771	655	536	669	642	742	662	966	0
FY-13/14	0	458	709	649	576	517	575	627	770	601	748	0
FY14/15	0	641	1019									

FY11-12= 6,930 / FY12-13= 6,792 / FY 13-14= 6,230 / FY14/15= 1,660

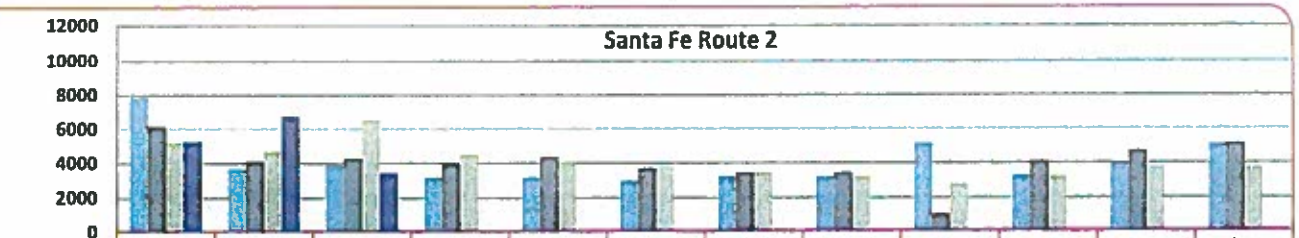
Los Alamos Route 2



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	3640	3946	2903	2755	2523	1264	2641	2856	3356	2884	3413	5171
FY-12/13	4936	4294	2859	2937	2628	2217	2808	2630	2924	3068	4068	10639
FY-13/14	11310	10405	8837	9433	6994	6408	7464	7736	8834	9206	9092	10952
FY14/15	9937	9092	8663									

FY11-12= 37,352 / FY12-13= 46,008 / FY13-14= 106,671 / FY14/15= 27,692

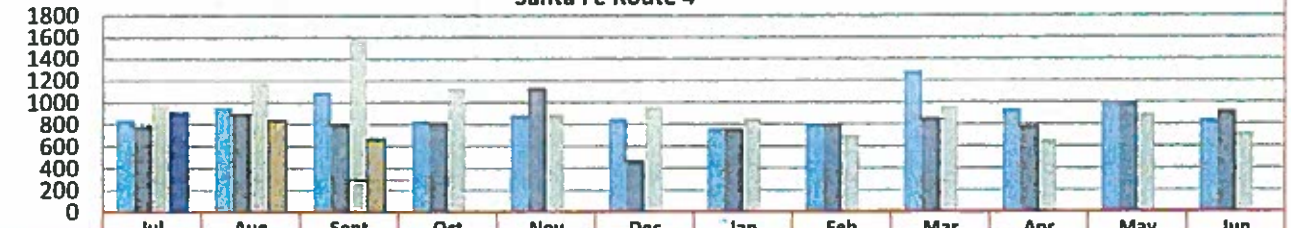
Santa Fe Route 2



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	7894	3691	3927	3188	3169	3016	3229	3200	5137	3309	3956	5057
FY-12/13	6160	4116	4276	3929	4348	3700	3457	3447	1016	4094	4700	5139
FY-13/14	5224	4716	6556	4539	4099	3934	3483	3229	2824	3224	3822	3743
FY14/15	5218	6743	3404									

FY11-12= 48,773 / FY12-13= 48,382 / FY13-14= 49,393 / FY14/15= 15,365

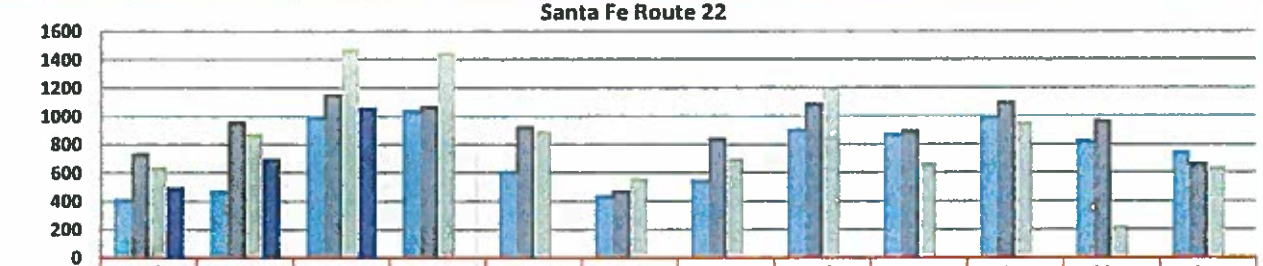
Santa Fe Route 4



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	851	964	1095	835	890	853	766	804	1288	940	988	842
FY-12/13	785	902	808	818	1128	475	757	801	854	782	985	920
FY-13/14	976	1183	1585	1135	894	963	855	707	967	659	899	720
FY14/15	913	835	667									

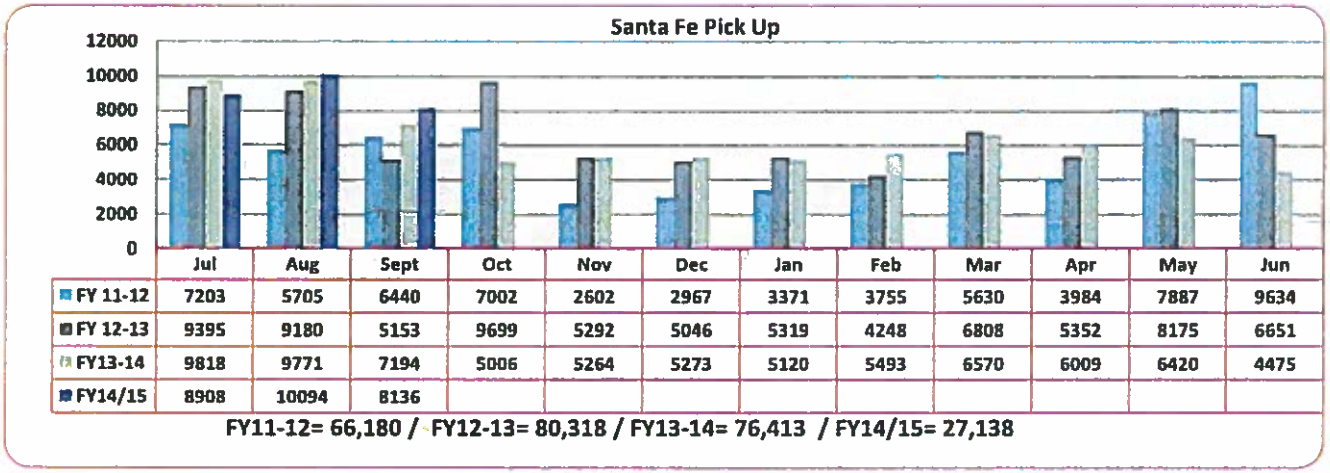
FY11-12= 11,116 / FY12-13= 10,015 / FY13-14= 11,543 / FY14/15= 2,415

Santa Fe Route 22



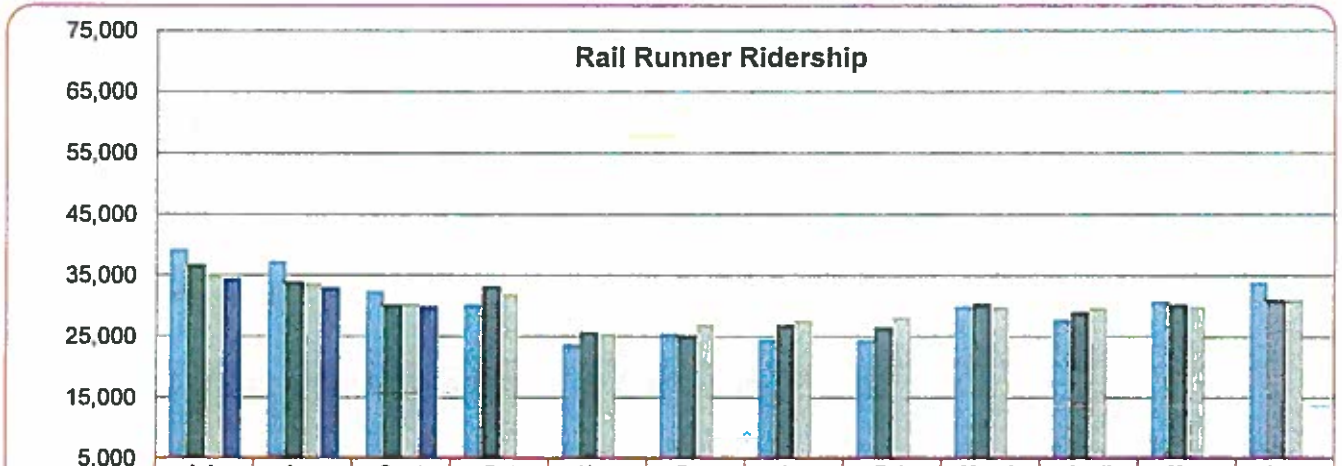
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY-11/12	421	481	1001	1050	616	446	554	913	879	1002	835	752
FY-12/13	739	965	1155	1074	928	475	844	1092	904	1105	973	671
FY-13/14	645	879	1483	1453	899	568	703	1191	670	963	223	641
FY14/15	502	699	1065									

FY11-12= 8,950 / FY12-13= 10,925 / FY13-14= 10,318 / FY14/15= 2,266



	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
FY 11-12	7203	5705	6440	7002	2602	2967	3371	3755	5630	3984	7887	9634
FY 12-13	9395	9180	5153	9699	5292	5046	5319	4248	6808	5352	8175	6651
FY13-14	9818	9771	7194	5006	5264	5273	5120	5493	6570	6009	6420	4475
FY14/15	8908	10094	8136									

FY11-12= 66,180 / FY12-13= 80,318 / FY13-14= 76,413 / FY14/15= 27,138



	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June
FY-11/12	39,322	37,307	32,420	30,251	23,730	25,517	24,593	24,466	29,909	27,813	30,816	33,932
FY-12/13	36,767	33,994	30,270	33,336	25,750	25,194	26,867	26,541	30,434	29,068	30,278	31,021
FY- 13/14	35,176	33,786	30,401	31,949	25,522	27,034	27,692	28,176	29,859	29,724	29,930	31,020
FY14/15	34,454	33,020	29,923									

FY11-12= 360,076 / FY12-13= 309,115 / FY13-14= 360,269 / FY14/15= 97,397

BCC Approved Cases with Time Sensitive Conditions

CASE #	Project Name	Final Order Recording Date	Condition and Time Frame	Comment
V 13-5340	Vincent Salazar Variance	5/29/2014	Must comply with all conditions within 90 days	Time has expired. Did not comply.
V 13-5190	Minnie Walsh Variance	11/13/2013	Must comply with all conditions within 90 days	Appealed to District Court. District Court remanded the case back to BCC. Will be reheard by BCC on December 9th.
V/Z/DP 13-5080	Windmill Water	10/29/2013	Submit Final Development in a timely manner	Has not sumitted Final Development Plan-Pending Annexation in Town of Edgewood. Staff will contact Applicant
Z 12-5060	Robert and Bernadette Anaya	6/13/2014	30 days to submit a Preliminary & Final Development Plan	Time has expired. Working with Legal to prepare letter to the Applicant
V 13- 5350	Joseph Lujan Variance	3/11/2014	Must Comply with all conditions within 90 days	Development Permit has been submitted. Property owner still working on cleaning up property

Pablo Sedillo, III
Public Safety Director

To: Santa Fe County Board of County Commissioners
From: Pablo Sedillo, III
Public Safety Department Director
Via: Katherine Miller
County Manager
Date: 11/10/14
Re: SFC Public Safety Department Monthly Report for October 2014

The purpose of this memo is to provide you information relative to the SFC Public Safety Department for the month of October 2014.

CORRECTIONS DEPARTMENT
Adult Detention Facility (ADF)

- Began 40 hour In-Service Training; held on Monday's and Friday's.
- OD Security Systems Founder and European CEO visited SFCADF for body scanner demonstration.
- Held Commissary Pre-Proposal Meeting.
- SFCADF Cadet Graduation Ceremony was held for 10 Cadets on October 3, 2014.
- Met with SFPD regarding billing of inmates brought direct from Magistrate Court.
- Meeting regarding Medical held in Director Sedillo's office.
- Tele-Conference with J-CORR/John Abbey was held to discuss upgrade and Inmate Look Up Project.
- Attended NMAC Detention Affiliate Conference in Ruidoso.
- Meeting regarding PREA held in Mr. Sedillo's office.
- Attended 3rd Annual US Marshal Warden's Training.
- Two Detention Officers and a Nurse Practitioner began employment with SFCADF.

Electronic Monitoring Program

- Providing services to 263 clients.
- There were 42 successful releases for October.
- Clients Financial Obligation – Paying - 33%, Waived - 0%, Unemployed - 64%, Out of County - 3%.
- Other Client Data – Arrests – 21, Absconded – 7, Intakes – 75, Releases – 42, Drug Tested – 504, Surety Bonds – 125, Cash Bonds – 61, Municipal Bonds – 25 and Municipal Fees - $250.00.

Youth Development Program (YDP)

Training

- A Volunteer Orientation was conducted on October 25, 2014, from 9:30 am to 12:30 pm by Renee Fernandez and Nicole Deaderick. A total of 13 volunteers attended this event. During this session volunteers reviewed expectations and requirements that are outlined in the Santa Fe County Youth Development Program Policy regarding volunteer services. We also included training on the Prison Rape Elimination Act (PREA).
- An additional Refresher Orientation was conducted on October 20, 2014, from 5:30 pm to 7:00 pm by Renee Fernandez and Nicole Deaderick. This Orientation was for volunteers currently participating in our volunteer programs. A total of 9 volunteers attended this training. Volunteers had an opportunity to voice concerns or provide feedback with services that they currently provide to the youth within our facility, this training also included the Prison Rape Elimination Act (PREA).
- IT collaborated with Sleuth Systems and conducted training for staff. It was held in our YDP conference room. The training consisted of an upgrade to the current Jail Management System (Sleuth V.10). A total of 16 staff from YDP attended this training. Training was held October 28, 2014 through October 30, 2014 from 9:00 am to 5:00 pm.

Special Activities

- On October 27, 2014, World Literature Today published an article in their November – December 2014 edition regarding Library and poetry workshops at the Santa Fe County Youth Development Program. This magazine is published through the University of Oklahoma. *www.**worldliteraturetoday**.org*
- On October 4, 2014, Mariachi Buenaventura came to the Santa Fe County Youth Development program and performed for the youth within our facility. They provided the performance free of charge and wanted to give something back to the community. Their hope is to inspire our youth to utilize positive aspects, such as music to influence their lives.

New Hires/Staffing

- Currently the Santa Fe County Youth Development Program has a total of 21 security staff. Total of four positions available for job openings, three positions for Life Skill Worker I and an Assistant Shift Supervisor.
- Life Skill Worker I position has been posted and closes on November 6, 2014.
- Assistant Shift Supervisor closed on October 31, 2014 and interviews are to be scheduled.
- The hiring of new staff and retention of staff at the Santa Fe County Youth Development program has helped with lowering the projected overtime budget. For the period between, August 2014 to October 2014 the projected overtime has been reduced by $37,737.26.

FIRE DEPARTMENT

Total Emergency Responses – 531
Other Emergency Responses - 166
EMS – 365

Operations and Administration

- Hose and ladder testing for all regions

- Hosted 5 sailors from the USS Santa Fe at Rancho Viejo station for five days
- Work on Ebola and other infectious disease response preparations
- Working with San Miguel Fire Chiefs Association to move San Miguel County fire departments to their own radio repeater
- Working on hiring 5 career firefighters and 10 wildland firefighters
- Design work complete on Hondo Station 1 apparatus bay addition and roof - ready to bid
- La Cienega Fire Station/Library construction certificate of occupancy received – awaiting installation of fire alarm system
- Pojoaque station remodel project design completed - ready for bid
- Glorieta La Joya Station design underway - CDRC in October
- Completed ARC station inspections
- Personal Protective Gear cleaning, repair, and inspection program 80% complete
- Prepping for ISO District inspections for Galisteo (11/12), La Cienega (12/3)
- Working on vehicle specifications for new apparatus in Stanley, Edgewood, Tesuque
- Hazardous Materials Awareness and Operations module for Volunteer Fire Academy successfully completed -16 passed practical test/15 of 16 written exam
- 4 EMS combo refresher classes completed for regional staff and volunteers
- Aerial Fire Truck refresher training
- PNM sponsored electrical safety training for career and volunteer crews
- 60 fleet repair orders processed and completed
- 6 annual pump tests
- Working to replace 2 fleet management vehicles
- Electrical generators serviced for winter preparations

Fire Prevention and Wildland

- Business registrations – 8
- Development Reviews – 36
- Lot line Adjustments/Land Division/Family Transfers – 5
- Burn Permits – 20
- Hydrants tested – 509
- New Hydrants accepted and testes - 14
- Movie permits processed – 1
- School and business inspections – 16
- Pre-school/School fire and injury prevention presentations - 31
- Wildland property assessments – 6
- Community Wildfire Protection Plan update completed

Volunteer Recruitment and Retention

- New member applications received and approved – 7 (YTD 83)
- East Mountain Interagency Fire Protection Association President work on-going
- Volunteer Fire Officer Training module completed for 7 district volunteers
- Attended Firefighter Cancer Support Network annual training and Board meeting

Emergency Management

- Conducted Active Shooter Multiple Casualty Incident Training to Combo-Refresher participants and regional crews
- Participated in NM Training Exercise Planning Workshop
- Conducted Community Emergency Preparedness Presentation for El Dorado Community
- Participated in NM Preventative Radiological Nuclear Detection Tabletop Exercise After Action Report
- Program tour for NM Hazardous Materials Safety Coordinator
- Worked on preparing for Ebola response; participated in White House Ebola conference call; provided Ebola briefing during KSFR Radio interview; prepared an EMS guide for staff; information and briefings delivered to staff on infectious disease response
- Work to maintain Emergency Management organizational readiness

RECC

Operations

- Total Telephone Calls Handled (incoming and outgoing)
  - October – 60,025
- Total calls Received via 911
  - October – 6,630
- County calls requiring response agency dispatch
  - October – 7,256
- City calls requiring response agency dispatch
  - October – 10,802
- Town of Edgewood calls requiring response agency dispatch
  - October - 604

Staffing

- 5 new hires will start on November 17th. 2 Call takers and 3 Dispatch Trainees
  - Vacancies
    - 2 Call Taker positions
    - 7 Trainee positions

If you have any questions, I can be contacted at 992-3092. Thank you.

MEMORANDUM

DATE: *November 12, 2014*

TO: *Board of County Commissioners*

VIA: *Katherine Miller, County Manager*

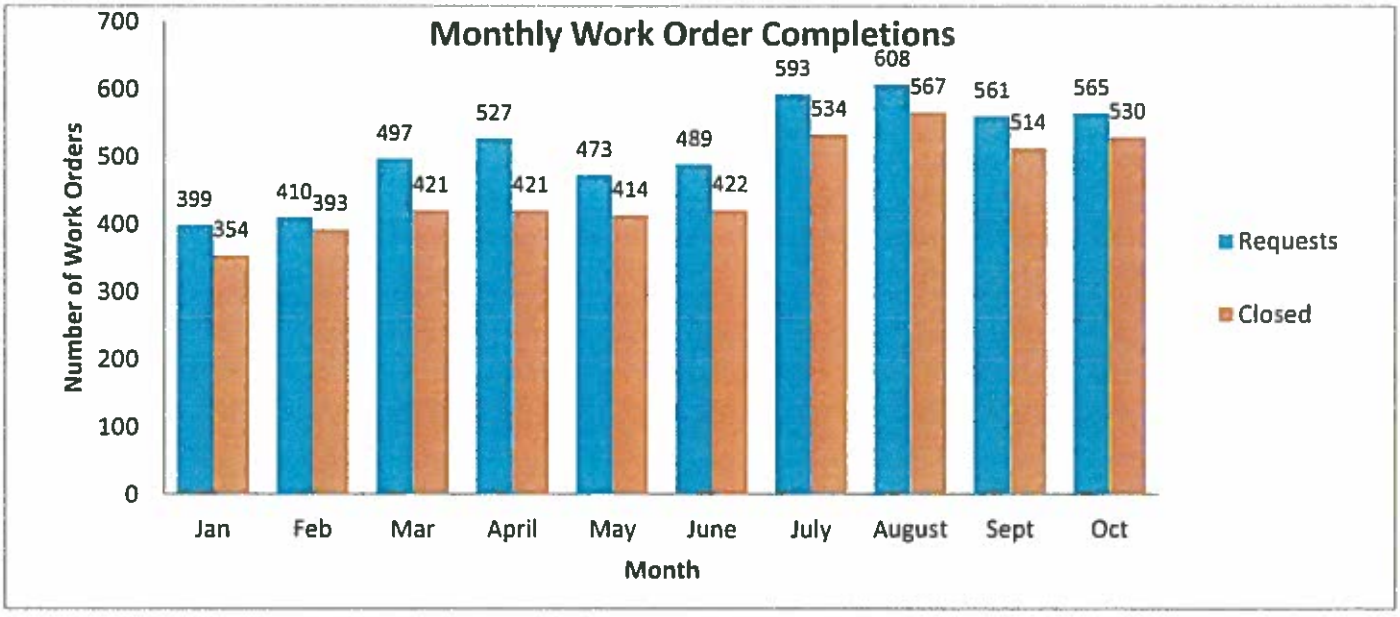
FROM: *Adam Leigland, Public Works Director*

ITEM AND ISSUE: *BCC Meeting November 25, 2014*
Public Works Monthly Report for November 2014

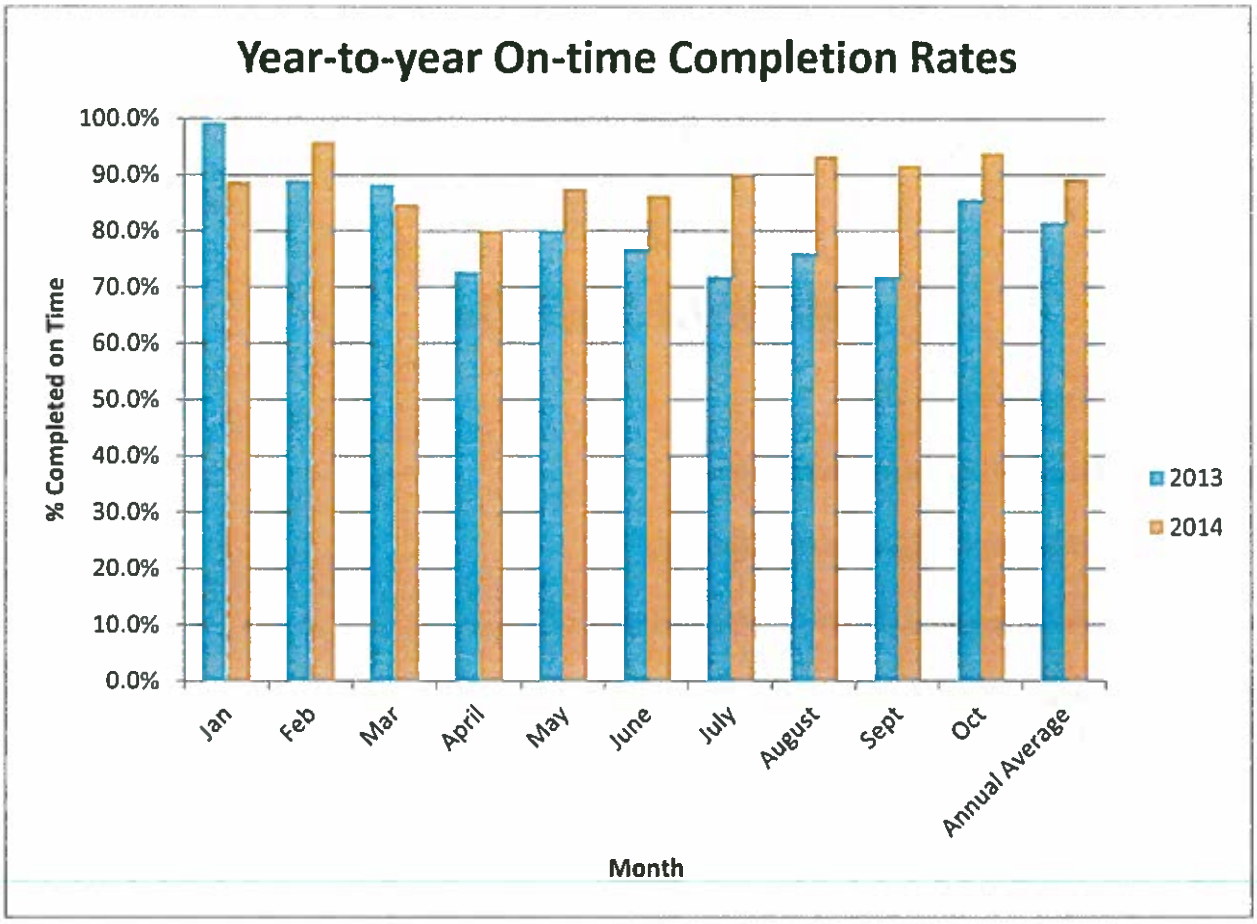
DISCUSSION

Operations and Maintenance

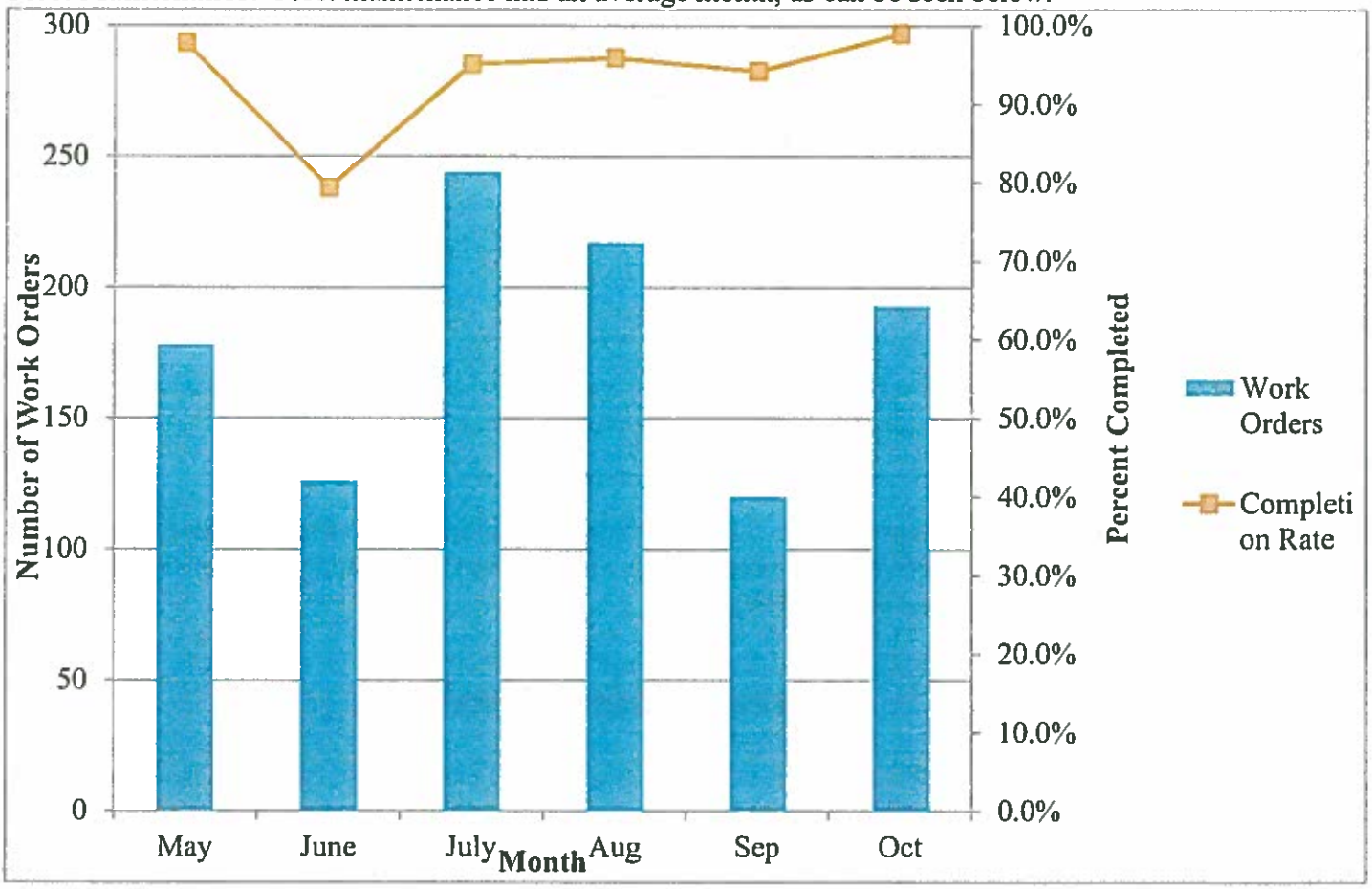
Work order completion rates by work area for the month of September are shown at Table 1 (attached). The October overall on-time completion rate continues to be high, at 90%. Month-to-month and year-to-year work order completion comparisons are shown in the two charts below. The year-to-date average completion rate is almost 90%, compared to 81% this time last year. Our goal is 75%.



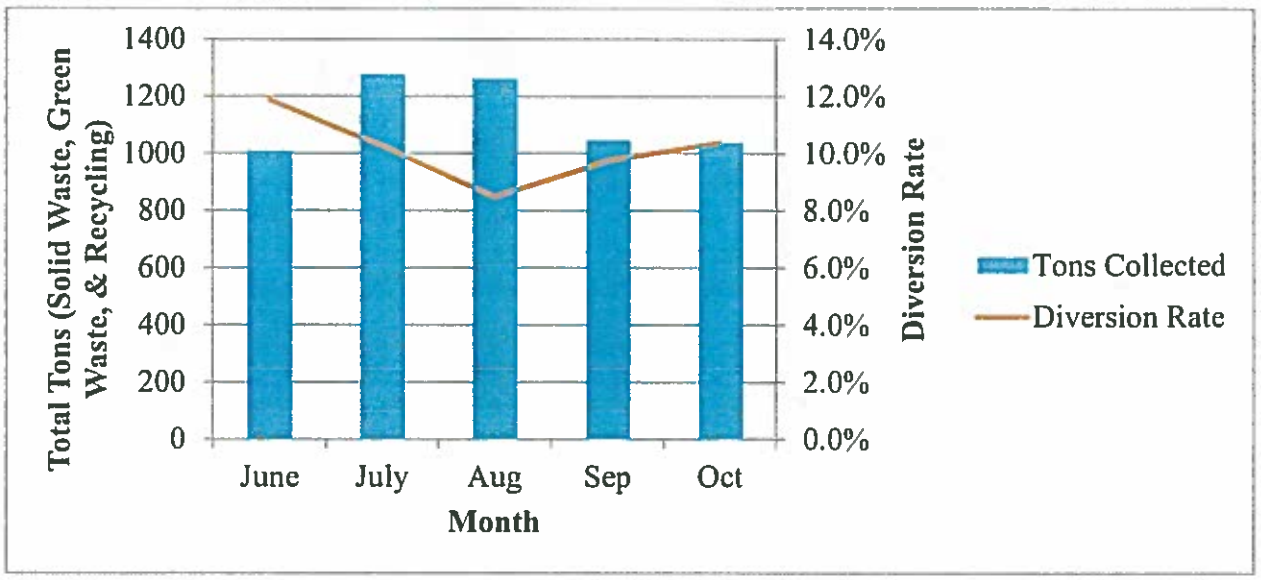
102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX: 505-995-2740 www.santafecountynm.gov


Year-to-year On-time Completion Rates
100.0%
90.0%
80.0%
70.0%
60.0%
50.0%
40.0%
30.0%
20.0%
10.0%
0.0%
% Completed on Time
Jan
Feb
Mar
April
May
June
July
August
Sept
Oct
Annual Average
Month
2013
2014

Fleet Maintenance: Fleet maintenance had an average month, as can be seen below.



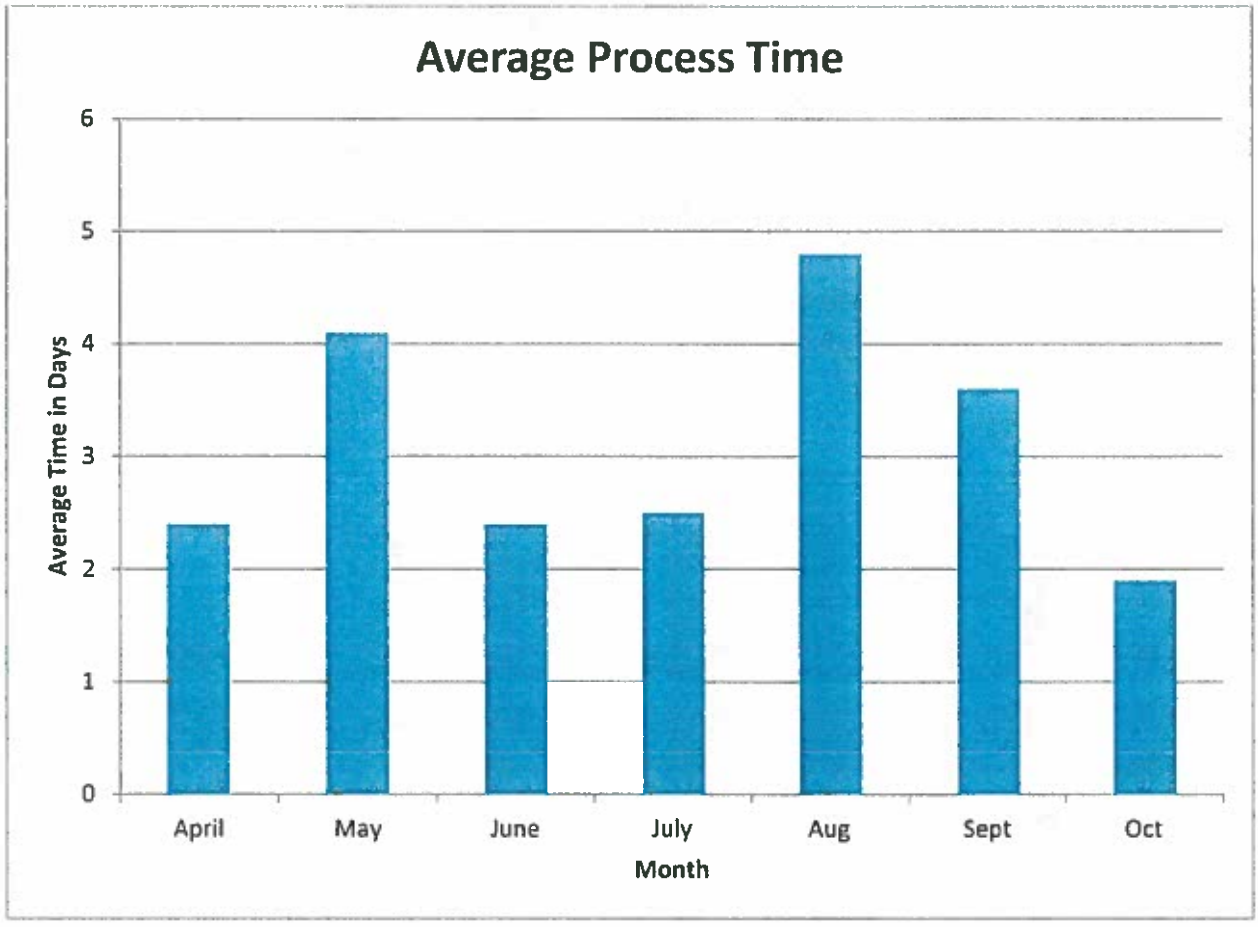
Solid Waste: The County's diversion rate (the amount of recycling compared to total material disposed, by weight) continues to hover around 11%.



Solid waste permits sales are shown below.

Permit Type	Number Sold in Time Period			
	FY14 Total	FY15 YTD	Oct-13	Oct-14
24-trip	3,718	1,058	221	174
Senior	1,539	510	71	86
Low Income	90	24	8	3
Bag tags	842	252	69	47
1-trip	987	240	106	52
Commercial	10	3	0	0

Administration Turn-around Time: The Public Works Administrative team processed 389 invoices in October, a lower-than-average number. The average turn-around time was 1.9 days. The internal goal is 5 days. See chart below.



Project Delivery

We are currently managing 84 procurements. Details on 49 of them follow below.

1. **Camino Torcido Loop**: 60% design in progress

2. **NE/SE Connector Alignments**: Steering committee met October 29th, 2014, to determine which alignments move on to Phase B. Three alternatives have been selected.

3. **Herrada Road Drainage and Road Improvements**: 99% complete. Project walk-thru was completed on October 30, 2014. Punch list items are minimal and should be completed by Nov 14, 2014.

4. **CR55A General Goodwin Drainage and Road Improvements**: 60% design in progress.

4. **Old Santa Fe Tail Multi-Modal Road Improvements/TL2N Water Line**: Project scheduled to let in late March 2015.

5. **Vista Redonda Drainage and Road Improvements**: Negotiating MOA with VRMDWCA on improvements to their water infrastructure necessitated by road work.

6. **CR50A San Jose Road Drainage and Road Improvements**: Consultant working on topographical survey.

7. **Pinon Hills Subdivision All-Weather Crossing:** Consultant submitted an alternate design proposal on October 31, 2014; in review.

8. **Richards Avenue Slip Lane Design**: Design is 60% complete. Meeting conducted with all utility companies to discuss possible relocation of utilities on the west side of Richards Avenue. Potholing held October 27, 2014. Design scheduled to be completed by December 30, 2014.

9. **County Road 89 and 89C Drainage and Road Improvements**: Segment 3 (CR 89-C) final design is on-going to get ready for construction bids. Waiting for decision from Pueblo regarding granting of additional road easement needed to finalize plans for Segments 1 & 2.

10. **CR84D Drainage Improvements and Paving Design:** Review of report with Louis Berger Group completed on November 6, 2014. The drainage report revealed that three retaining ponds on the southern segment of CR84D would alleviate the drainage problem is this area and resolve the drainage problems on the northern segment of CR84D. Decision is made to meet with property owners to see if it is acceptable to construction retaining ponds on their property prior to moving on to the next phase of the design.

11. **CR89D Construct Road Shoulders:** Completed project walk-thru on October 23, 2014

12. **CR109S Drainage Improvements and Paving Design**: Consultant has been given direction to provide 30% design drawings that address drainage issues, provide 20-foot-wide paved road and guard rail as required, and identify right-of-way required.

13. **Mutt Nelson Road**: Project start November 8, 2014. Anticipated completion date is November 22, 2014.

14. **Construct ADA Accessibility from Rodeo Road to Fair Grounds Building:** Procurement package submitted.

15. **Glorieta Waterline Project**: The waterline is complete/activated for community use. Staff is processing request for final close-out items, reviewing paperwork, and anticipates closing project by mid-November.

16. **ECIA Trails**: Negotiating MOA with ECIA to allow the application of ECIA funds to the project.

17. **Jacona Transfer Station**: Staff has submitted SOW and request for master planning services for the project.

18. **State Health Building HVAC:** Staff is finalizing SOW for design services to upgrade HVAC systems at the State Health building on Letrado Avenue.

19. **Adult Detention Facility / Youth Development Program Projects**

    a. Server Rooms: Conron and Woods Architects will deliver final construction documents on 11/10/2014. IFB to be advertised on 11/23/2014.
    b. Repair/ Replace Front Retaining Wall: Cost estimate from Santa Fe Engineering to be delivered on 11/7/2014.
    c. Recreation Yard Concrete Floor and Door Replacement: Received construction drawings from Morris Survey Engineering on 11/5/2014 and have forwarded to purchasing. IFB date has not yet been determined.
    d. Installation of Isolation Valves: Testing of isolation valves was conducted on 11/6/2014, valves are good and will proceed with processing a new P. O. for Santa Fe Vacuum Excavation for additional work to complete this project.
    e. Upgrade Cooling System For Booking Server Room: Pre-Construction meeting is scheduled for 11/12/2014 with Comfort Systems USA.

20. **Replace Overhead Doors at Fleet**: Developing Scope of Work and have contacted the door manufacturer of the original doors (Shweiss Doors) to gather specifications of the existing doors for performance comparison to different door types.

21. **Ken and Patty Adam Senior Center/County Community Center:** Forming and concrete crews and are scheduled to begin on November 10. Purchase requisition for chairs and is waiting on one more quote for tables prior to submitting purchasing requisition.

22. **Glorieta Fire Station**: CDRC meeting is scheduled for November 20.

23. **La Cienega Fire Station #2 Remodel**: Punch list submitted. One more quote is required to submitting a purchase requisition for the fire alarm installation. C.O. is held by Fire Marshals until fire alarm devices are installed. County IT is assisting with the recommendation for wireless internet service.

24. **Pojoaque Fire Station – Volunteer side interior remodel**: Out for bid.

25. **Hondo Fire Station # 1 Remodel**: Out for bid.

26. **SF River Property Acquisition**: A Community Meeting has been scheduled for Thursday December 4, 2014, at 6:00pm at the Nancy Rodriguez Community Center to present the design and acquisition process. Team members from consultants will conduct the presentations.

27. **Santa Fe River – Frenchy's to Siler Permitting**: The final requirement by FEMA for the CLOMR is to post a Legal Notice in the paper. Posting will be done December 5, 2014.

28. **Santa Fe River – El Camino Real**: Staff met with consultant on October 29, 2014, to review the 90% design drawings for the River Restoration and Trail from Cottonwood Drive to 599. Redlines are due November 21, 2014.

29. **Romero Park**: Plan to advertise the IFB for the civil work and the IFB for the Landscaping on December 28, 2014, and award the contracts at the February 24, 2015, BCC meeting.

30. **Santa Fe River Greenway Wayside Exhibits**: Received the 90% designs on October 17, 2014. National Park Service provided review comments on November 3, 2014, which were forwarded to the consultant on November 6, 2014.

31. **Rio Quemado Watershed Restoration**: Purchasing is preparing the solicitation for construction. Plan to advertise in mid-December.

32. **Thornton Ranch Open Space**: Galisteo Archaeological Site Protection Act Working Group site tour and meeting held October 21. The Master Plan team will be conducting site visits until November. A site tour and meeting to develop a management plan for Petroglyph Hill is scheduled for Saturday December 6. Focus Group Meetings with key stakeholders to collect feedback on user-specific needs and desires are scheduled for December 11 and 12. The CR consultant will submit the Class I report mid-January 2015, complete the field surveys in October and November, and submit the Preliminary archaeological survey report, Preliminary historic built environment report, Ethnographic summary report, and Draft Petroglyph Hill Management Plan by the end of February 2015.

33. **Agua Fria Monument Sign**: Submitted the plans to CID on October 24, 2014.

34. **Santa Fe Rail Trail**: Substantial completion is scheduled for 5/28/14. The TAP funding has been reprogrammed to FY 15 for Segment 4. Submitted new Agreement Request Form on 9/18/14. The schedule for issuing the IFB is dependent on when funding is budgeted for construction.

35. **Quill Water Reclamation Plant – Treatment Improvements**:

    a. Electrical System Upgrades: Bixby Electric is on site and progressing with the Electrical Upgrades. Pole Transformers are not scheduled for delivery until December 15th. We now have a Revised Projected Completion date of December 19th.
    b. Design Upgrade Entrance Works Bar screen: We have received 100% Design Drawings and Specifications from HDR. We have submitted a BAR for the Construction for approval. Generating necessary documentation for Procurement support.
    c. Design Improvements to Effluent Irrigation System: We are expecting 60% design drawings by November 7, 2014.
    d. Design Improvements to Access Driveways: We have received 60% Design Drawings from HDR. We are obtaining quotes for additional security infrastructure required by the Department of Corrections. The design development for this project has been placed on hold pending conditional approval from Corrections.

36. **Design La Cienega Water Line Improvements:** The 60% Design Submittal is scheduled for November 6th. A Public Meeting to the La Cienega Community has been scheduled for November 10th at the La Cienega Community Center.

37. **Chupadero Water System Improvements**: Preliminary Survey information and Survey Drawings are expected by November 14th.

38. **UDV Temple Cost Estimate Verification**: All documentation regarding reimbursement requests have been submitted to Project Manager and a meeting with UDV Temple design and construction representatives was held on November 3, 2014.

39. **Madrid Fire Station** – Fire Protection System: Staff met with Chief Sperling on November 4th to discuss upgrades for the Madrid Fire Station.

40. **Eldorado Transfer Station Upgrades**: New compactors have been delivered. All work complete except for minor electrical work to hook-up new compactors.

Information on all active projects can be found in the attached Table 2: Capital Project Status Update.

Utilities:

Aamodt. Opening briefs in support of the settlement have been submitted to the federal court by the federal government and the Pueblos (jointly), the State, the City, and the County (jointly), and an association of acequias. These briefs are attached. The opposing parties must respond in 60 days, though they have asked for more time. Also attached is the latest regional water system EIS newsletter that the Bureau of Reclamation (BOR) releases periodically. In it, the BOR asks for help in getting access to private property for survey purposes.

Committee Meetings:

MPO Technical Coordinating Committee met October 27, 2014. MPO staff discussed upcoming Metropolitan Transportation Plan (2015-2040 plan due June 30) and other related planning documents in the works (Transit, Pedestrian) and they intend to involve SFC PW and GMD staff in a review meeting for relevant elements. Discussed call for DOT Transportation Alternative and Recreational Trail Program grants. SFC will submit some proposals.

ACTION REQUESTED:

None; for information only.

Table 1: Oc[illegible]er 2014 Work Order Report

Property Control

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	6	6	6	6
2	2	2	1	2
3	6	6	6	6
4	15	15	12	15
5	27	24	19	24
All	79	73	65	76
TOTAL	**135**	**126**	**109**	**129**
		93.33%	80.74%	96%

Building Services

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	7	7	3	5
2	2	2	2	2
3	4	4	3	4
4	3	3	3	3
5	7	7	4	7
All	72	72	68	72
TOTAL	**95**	**95**	**83**	**93**
		100.00%	87.37%	98%

Roads

COMM. DIST.	Overall WO's from public & staff	Overall WO Issued from public & staff	Overall WO Closed from public & staff	Request from public only	On-time request from public only
1	32	32	29	31	27
2	5	5	5	5	5
3	44	44	35	25	14
4	64	64	60	11	8
5	29	29	20	25	16
All	4	4	3	1	1
TOTAL	**178**	**178**	**152**	**98**	**71**
		100.00%	85.39%		72%

Open Space

COMM. DIST.	REQUESTS	ISSUED	WORK ORDER CLOSED	WORK ORDER ISSUE ASSESSED ON TIME
1	31	31	31	31
2	13	13	13	12
3	10	10	10	10
4	8	8	8	8
5	11	11	11	11
All	9	9	9	9
TOTAL	**82**	**82**	**82**	**81**
		100.00%	100.00%	99%

Traffic

COMM. DIST.	Overall WO's from public & staff	Overall WO Issued from public & staff	Overall WO Closed from public & staff	Request from public only	On-time request from public only
1	19	19	19	1	1
2	0	0	0	0	0
3	32	32	32	1	1
4	4	4	4	0	0
5	12	12	12	2	2
All	8	8	8	1	1
TOTAL	**75**	**75**	**75**	**5**	**5**
		100.00%	100.00%		100.00%

Fleet

	WORK ORDER REQUESTS	WORK ORDERS CLOSED	WORK ORDERS SENT OUT FOR REPAIRS	
Light Duty	168	168	18	
Heavy Equip.	25	23	7	
Autobody	16	14	0	
TOTAL	**209**	**205**	**25**	
		98.09%		

Table 2: SANTA FE COUNTY

Capital Project Status Update (As of 11/10/2014 1:06:24 PM)

	PW ProjectNbr	Project Name	Nature of Procurement	% Comp	District	Project Budget	Current Contract Amount	Estimated Start Date	Estimated Completion Date	Project Manager
1		Replace Existing Roof at Nambe Community Senior Center			1	$20,000.00				PJ Mantano
2		Upgrade Puye Road improvements			4	$140,000.00				
3	0132	Perform design an all weather crossing for Pinon Hills Subdivision in SFC	Design	0	2	$50,000.00		11/3/2014	4/17/2015	Chuck Vigil
4	0133	Madrid Fire Station Remediation & Upgrades		33	3	$15,000.00				David Madrid
5	0135	Richards Avenue Slip Lane	Design	60	5	$153,306.52	$43,667.22	8/21/2014	12/30/2014	Chuck Vigil
6	0135	Improvements of trails for the Eldorado Community Improvement Association		10	5	$90,000.00				Paul Olafson
7	0150	Public Safety Complex Upgrade Design	Plan	5	5	$200,000.00	$17,334.00	1/30/2014	3/6/2015	David Madrid
8	0182	Deisgn and Construction of all roads listed in Phase 2 of annexation		40		$950,000.00	$695,987.86	9/22/2014	11/28/2014	Chuck Vigil/
9	0702	Upgrade Eldorado Transfer Station Up Grades	Construction	20	5	$90,000.00	$128,402.18	7/21/2014	8/25/2014	Scott W. Rivers
10	0702	Replace Existing Roof at County Administration Building			1 2 3 4 5	$160,000.00				PJ Montano
11	0715	Evaluation of Heating & Cooling State Health Center,		5	1 2 3 4 5	$10,000.00				Paul Olafson
12	0718	Install Electrical Service to the Recycling Area of the Eldorado Transfer Station	Construction		5	$15,000.00				Scott W. Rivers
13	0718	Construct ADA Accessibility from Rodeo Road to Fair Grounds Building(s)	Design	15	1 2 3 4 5	$30,000.00		12/1/2014	12/19/2014	Joseph Martinez
14	0718	Install Cistern/connction for Youth Shelters	Other	0	3	$12,000.00			12/12/2014	Ron Sandoval
15	0718	Install Furniture at Ken and Patty Adams Senior Center the new addition	Other	10	5	$50,000.00		11/21/2014	4/30/2015	Ron Sandoval
16	0718	Replace Existing Garage Doors in Fleet Maintenance Building	Construction	5	2	$115,000.00				Joseph Martinez
17	0732	Romero Park	Design	95	2	$1,194,082.00	$163,351.00	5/17/2013	5/31/2015	Colleen Baker
18	0736	Pojoaque Sports Fields	Design	95	1	$1,785,000.00	$83,169.00	1/28/2014	5/31/2015	Colleen Baker
19	0737	Improve Edgewood Senior Center Parking Lot			3	$100,000.00				
20	0739	Vista Grande Library Addition / Construction	Construction	99	5	$1,050,000.00	$833,808.48	9/20/2013	6/30/2014	Ron Sandoval
21	0753	Construct Addition to Ken & Patty Adam Senior Center	Construction	5	5	$1,275,531.00	$1,363,302.84	8/18/2014	6/13/2015	Ron Sandoval
22	0798	Design Old Santa Fe Trail Multimodial	Design	98	4	$264,692.00	$252,011.10	3/5/2013	12/26/2014	Chuck Vigil
23	0834	Design Hondo Fire Station #1 Addition	Design	99	4	$325,348.00	$31,022.04	2/10/2014	8/5/2014	Ron Sandoval
24	1410	Improve Bulk Water Station	Construction	25	5	$20,000.00		11/3/2014	11/21/2014	David Madrid/Robert George

Table 2: SANTA FE COUNTY

Capital Project Status Update (As of 11/10/2014 1:06:24 PM)

25	1410	Install master meters for Utility Department	Design	5	2 5	$150,000.00			12/19/2014	David Madrid
26	1449	TL6S Water Transmission Line	Design	60	4 5	$333,080.30	$333,080.30	2/17/2012	12/5/2014	Scott W. Rivers
27	1457	Design La Cienega Water Line Improvements	Design	30	3	$300,000.00	$51,360.00	1/8/2014	12/12/2014	David Madrid
28	1465	Construct Glorieta MDWCA Water System Improvements	Construction	99	4	$424,759.00	$551,630.00	2/28/2014	7/7/2014	Paul Olafson
29	1472	Rio Quemado Watershed Restoration	Construction	57	1	$306,000.00	$96,681.75	5/8/2013	11/30/2014	Colleen Baker
30	1473	Purchase and Install Quill Plant Utilities Offfice	Other	95	1 2 3 4 5	$75,000.00	$51,969.60	3/31/2014	6/30/2014	Scott W. Rivers
31	1473	Quill Water Reclamation Plant – Treatment Improvements	Construction	10	5	$500,000.00	$85,000.00	1/1/2014	12/19/2014	David Madrid
32	1474	Design Lamy Junction Water Transmission Line	Design	60	4 5	$411,368.96	$411,368.96	5/4/2012	12/5/2014	Scott W. Rivers
33	1474	Old Santa Fe Trail Water Line	Design	80	4	$190,000.00	$167,154.00	2/15/2013	11/21/2014	Chuck Vigil
34	1477	Upgrade Chupadero Water System	Survey	50	1	$77,656.00			2/6/2015	David Madrid
35	1486	Design & Construction of Las Laqunitas Waste Water System	Other	75	3	$150,000.00	$98,965.00	2/19/2014	7/31/2014	David Madrid
36	1487	UDV Waterline Analysis	Other	5				1/5/2015		David Madrid
37	1860	Install Bar Screen and Modular Building at ADF	Plan	5	5	$200,000.00				David Madrid
38	1860	Replace HVAC Wall Mounted Unit In Booking Server Room (ADF-3)	Construction	15	5	$40,000.00	$5,924.79	10/13/2014	11/20/2015	Joseph Martinez
39	1860	Repair and replace recreation doors and cement on yard floors	Design	15	5	$60,000.00		11/24/2014	11/28/2014	Joseph Martinez
40	1860	Upgrade server rooms at Adult Detention Facility and Youth Development Program	Design	30	5	$363,000.00	$54,834.83	12/1/2014	3/31/2015	Joseph Martinez
41	1860	Replace and Repair Stormwater catchment structures at ADF	Construction	20	5	$30,000.00		5/7/2014	12/31/2014	Joseph Martinez
42	1860	Installation of Isolation Valves for Fire Suppression Lines (ADF-1)	Plan	20	5	$30,000.00	$4,275.00		12/31/2014	Joseph Martinez
43	2219	Renovate Old Judicial Courthouse Redevelopment	Design	0	1 2 3 4 5	$475,000.00		6/2/2014	2/27/2015	Paul Olafson
44	6159	Upgrade County Road 50A - Camino San Jose			3	$178,000.00	$87,220.76	10/10/2014	1/9/2015	Chuck Vigil/
45	6167	CR 54 Los Pinos Road All Weather Structure Design	Design	99	3	$95,000.00	$79,411.76	8/12/2013	12/26/2014	Chuck Vigil
46	6170	Install Fence County Road 98			1					
47	6181	NE-SE Connectors Location Study	Plan	75	5	$500,000.00	$454,133.49	2/4/2013	3/13/2015	Chuck Vigil
48	6182	CR 55A General Goodwin Rd Design Upgrade	Design	60	3	$100,000.00	$79,452.43	9/23/2013	12/26/2014	Chuck Vigil
49	6183	Torcido Loop - Design/Archaeological Survey	Design	30	3	$48,683.69	$48,683.69	7/18/2013	11/28/2014	Chuck Vigil
50	6184	Herrada Road Paving and Drainage Construction	Construction	95	5	$874,000.00	$1,288,374.13	7/14/2014	10/30/2014	Chuck Vigil
51	6197	Vista Rendonda Drainage and Road Paving Design	Design	70	1	$120,000.00	$90,590.78	12/16/2013	10/24/2014	Chuck Vigil
52	6198	Programming for Drainage and Roadway improvements on County Road 89.	Design	90	1	$55,000.00	$26,970.77	2/12/2014	7/30/2014	Scott W. Rivers

Table 2: SANTA FE COUNTY

Capital Project Status Update (As of 11/10/2014 1:06:24 PM)

53	6199	Programming for Drainage and Roadway Improvements on County Road 89 C	Design	90	1	$35,000.00	$17,980.52	3/28/2014	7/30/2014	Scott W. Rivers
54	6201	Jacona - Northern Santa Fe County Solid Waste Convenience Center	Design	0	1	$268,498.00		9/15/2014	12/26/2014	Scott Rivers
55	6202	Design drainage and roadway improvements on County Road 84 D	Design	30	1	$80,000.00	$39,526.54	5/21/2014	12/25/2014	Chuck Vigil
56	6204	Design and construct drainage and pavement improvements for County Road 109 S	Design	5	1	$260,000.00		10/20/2014	3/27/2015	Chuck Vigil
57	6205	Construct Pavement Improvements for 5 ft wide Road Shoulders on County Road 89 D	Construction	98	1	$170,000.00	$169,953.86	4/16/2014	8/1/2014	Chuck Vigil
58	6206	Upgrade Spruce Road Improvements			5	$156,000.00				Chuck Vigil/
59	6207	Upgrade Race Track Subdivision Chip Seal			3	$167,700.00				Chuck Vigil/
60	6209	Upgrade Rancho Alegre's Subdivision Road up			3	$264,335.00				Diego Gomez/Robert Martinez
61	6210	Calle Cantando - Cerros Subdivision			4	$118,500.00				
62	6211	Paseo Rincon - Cerros Subdivision				$59,500.00				
63	6212	Upgrade Camino Pacifico Road Improvements			4	$192,000.00				
64	7006	La Bajada Ranch Planning, Programming, & Design	Plan	10	3	$120,000.00		9/28/2012	3/29/2015	Mark Hogan
65	7118	Improve Rio En Medio Senior Center			1	$25,000.00				
66	7120	Santa Fe River Greenway: Wayside Exhibit Planning, Design, Fabrication	Other	90	2	$84,841.50	$76,398.38	7/1/2012	9/30/2015	Colleen Baker
67	7121	Design and Construct Stanley Community Wellness Center Phase 2	Design	10	3	$50,000.00	$59,503.13	9/2/2013	12/30/2014	David Padilla
68	7122	Highway 14 Senior/Community Center	Acquisition	10	3	$350,000.00		11/5/2012	5/1/2014	Agnes Leyba-Cruz
69	7123	District Attorney Complex Energy & Accessibility Upgrades	Design	70		$850,000.00			10/31/2014	Paul Olafson
70	7124	Admin Building Computer & Communications Room	Construction	99	1 2 3 4 5	$275,000.00	$52,285.73	3/31/2014	7/31/2014	Paul Olafson
71	7701	Arroyo Hondo Trail	Design	22	5	$470,572.00	$442,524.00	12/13/2012	6/30/2015	Colleen Baker
72	7706	Mt. Chalchihuitl	Acquisition	40	3	$988,499.00	$52,859.35	8/1/2012	12/31/2014	Colleen Baker
73	7707	Santa Fe Rail Trail	Construction	9	4, 5	$1,476,900.00	$1,148,870.77	9/15/2014	7/31/2015	Scott W. Rivers
74	7708	Santa Fe River Greenway Engineering Design Services	Design	88	2	$412,725.85	$340,633.57	10/3/2012	12/31/2014	Scott Kaseman
75	7708	Santa Fe River Greenway Acquisition	Acquisition	35	2	$1,814,850.60	$531,756.83	10/9/2012	9/30/2016	Scott Kaseman
76	7708	Santa Fe River Greenway: Frenchy's Field to Siler Rd.	Archaeology	100	2	$59,406.47	$59,406.47	3/1/2009	9/26/2014	Scott Kaseman
77	7711	Thornton Ranch Open Space	Plan	15	3	$200,000.00	$200,000.00	3/3/2014	7/30/2015	Colleen Baker
78	7723	Nambe Community Center, Park and Head Start Site Improvements	Construction	100	1	$354,065.00	$333,310.76	2/27/2014	7/15/2014	Scott W. Rivers
79	7732	Agua Fria Monument Signs	Construction	11	2	$83,846.00	$72,543.01	4/21/2014	9/30/2014	Colleen Baker
80	7733	Design and Construct El Camino Real Buckman Road Segment Retracement Trail	Other	2	2	$10,000.00	$10,000.00	1/1/2015	5/31/2017	Colleen Baker

Table 2: SANTA FE COUNTY

Capital Project Status Update (As of 11/10/2014 1:06:24 PM)

81	8008	La Cienega Fire Station No. 2 Apparatus bay expansion and Library remodel.	Construction	70	3	$494,091.00	$433,057.50	3/24/2014	9/30/2014	Ron Sandoval
82	8009	Glorieta Fire Station #2 - New Construction	Design	60	4	$50,000.00	$72,240.00	5/16/2014	9/30/2014	Ron Sandoval
83	8010	Pojoaque Fire Station - Interior Remodel Volunteer Side	Design	80	1	$181,470.00	$22,204.75	3/24/2014	8/8/2014	Ron Sandoval
84	9692	CR67F La Barbaria Drainage and Road Paving Design	Design	40	4	$100,000.00	$16,197.08	12/16/2013	1/30/2015	Chuck Vigil

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel. State Engineer,	)	
Plaintiff,	)	
v.	)	
R. LEE AAMODT, et al.,	)	
Defendants,	)	
and	)	
	)	**NO. 66cv6639 WJ/WPL**
UNITED STATES OF AMERICA, PUEBLO DE NAMBE, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, and PUEBLO DE TESUQUE,	)	
Plaintiffs-in-Intervention.	)	

STATE OF NEW MEXICO, SANTA FE COUNTY AND CITY OF SANTA FE'S JOINT MEMORANDUM IN SUPPORT OF SETTLEMENT

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I. Introduction

The State of New Mexico *ex rel.* State Engineer ("State"), Santa Fe County and City of Santa Fe hereby file their Memorandum in support of their position that the Court should approve the Settlement Agreement and enter the Partial Final Judgment and Decree, pursuant to the August 8, 2014 *Case Management Order* (No. 9506).

On December 6, 2013, the Court entered its *Order to Show Cause*, ordering that all persons claiming water rights in the Nambe-Pojoaque-Tesuque stream system show cause why the Court should not approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree adjudicating the Pueblos' water rights. *Order to Show Cause and Notice of Proceeding to Approve Settlement Agreement and Enter Proposed Partial Final Judgment and Decree on the Water Rights of the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso* ("*Order to Show Cause*")(No. 8035). The Objection form approved by the Court required parties filing objections to state the specific legal and factual basis for their objection, and how their water rights would be injured or harmed in a legally cognizable way by the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree and Interim Administrative Order. By the April 7, 2014 deadline, 650 persons had responded by filing with the Court 792 objections to the Settlement Agreement and the proposed Partial Final Judgment and Decree. On August 8, 2014 the Court entered its *Case Management Order*, setting forth a briefing schedule to address those objections:

> Within 90 days of entry of this Order, the Settlement Parties shall file memoranda in support of their position that the Court should approve the Settlement

[1] Magistrate Lynch (and now confirmed by Judge Johnson) has already ruled that issues relating to settlement implementation are irrelevant to consideration of the Settlement and entry of the Partial Final Decree.

> Agreement and enter the Partial Final Decree at this time. Any other parties that have responded to the Order to Show Cause and have filed the form titled "Acceptance of Settlement Agreement and Notice of Domestic Well Election" may also file memoranda in support within 90 days of entry of this Order.

Case Management Order at 6-7. The Court also required the memoranda to address each of the filed objections by category, and state why any such category should be overruled or dismissed at this time. As detailed below, none of the objectors has identified how they will be injured by the Settlement Agreement or the entry of the proposed Partial Final Judgment and Decree in a legally cognizable way. All objections should be dismissed or overruled.

Objectors may be affected, but they are not negatively affected. They will receive many of the benefits of the settlement.

II. Objections to the Settlement Agreement and Proposed Partial Final Judgment and Decree

By the deadline of April 7, 2014, 650 objectors had filed 792 objections with the Court. Most of those 792 objections were simply copies of, or edited portions of copies of five different form objections, each enumerating a number of specific objections. Those five principal form objections are attached hereto as Exhibits A, B, C, D and E.

In addition to the five form objections, there were a number of filings where objectors had written in their own individual objections. Taken together, the enumerated objections contained in the five form objections, along with the unique written in objections which some objectors filed, were largely repetitive and fell into twenty-six identified categories:

a. Taking / Injury to property value
b. Unequal representation on water board
c. Agreement incomplete / Details not available / Rules not drafted / Easements not obtained / EIS not complete
d. Property exempt from settlement
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y. Not enough time or information
z. Equal protection

Attached as Exhibit F is a matrix, cross-referencing each of the 792 objections with the issue categories listed above.

The twenty-six issues raised by the objections have been categorized into six general categories: A) Due Process / Notice / Equal Protection; B) Federal law / Indian water rights / Rights of Pueblos; C) The State had authority to enter into the Settlement Agreement, which is consistent with State law; D) Domestic wells; E) Treaty of Guadalupe Hidalgo and Acequia rights; and F) Settlement Implementation.

A. Due Process / Notice / Equal Protection

Objectors allege there was a lack of proper service of the Court's *Order to Show Cause*, and that as a result "there are many people currently deprived of due process and the opportunity

to protect their constitutional rights." However, Objectors fail to identify any water right claimant so deprived. Indeed, Objectors themselves obviously did receive notice given the fact that they are participating in this proceeding.

Moreover, Objectors fail to identify any failure by the State or the United States in complying with the Court's Orders regarding service, or any conflict with the Federal Rules of Civil Procedure. The procedures adopted by the Court for service of the *Order to Show Cause* were never objected to, the State and the United States followed the Court's directions to the letter, and the State made every reasonable effort to insure the mailing list was current and correct. In addition, the Court contemplated the likelihood that there would be unknown claimants and known claimants with unknown addresses, and for that reason also provided for publication and posting of the Order to Show Cause.

Further, extensive public outreach, including twenty public meetings, and a ten year history of community involvement in the *Aamodt* Settlement Agreement negotiations have contributed to an unprecedented level of public participation in this *Order to Show Cause* process. Over 1,000 responses to the Court's *Order to Show Cause*, acceptances and objection, have so far been filed.

1. Certified mail was not required to be used (Category g)

The Court has already examined the issue of "alleged lack of proper service," and found that its orders regarding service of the *Order to Show Cause* had been followed:

> The State filed an updated service list on December 2, 2013. The updated service list was prepared from the State's current adjudication records, the electronic public records of the office of the State Engineer, and the public records of irrigation districts, acequias and community ditches. In addition to mailing the Order to Show Cause to the persons on the updated service list, the State published the Order to Show Cause in English and Spanish in the Albuquerque

> Journal on January 3, 10, 17 and 24, 2014, posted the Order to Show Cause on the Office of the State Engineer's website, and posted the Order to Show Cause physically at the Office of the State Engineer, at the Santa Fe County Pojoaque Satellite Office and at the Utton Center in Albuquerque. Defendants make the conclusory allegation that service was not proper based on the fact that approximately 30 percent of the orders to show cause that were mailed to claimants were returned as undeliverable, but do not cite any authority demonstrating that service was legally insufficient.

Case Management and Service Order at 6 (citations omitted) (emphasis added) (No. 9506). Neither do any of the objectors "cite any authority demonstrating that service was legally insufficient."

Nonetheless, many form and individual objections complained that certified mail was not used to serve the *Order to Show Cause*. In Exhibit A:

> 2. The settlement agreement summary and order to show cause have been mailed by the state engineer to claimants of water rights by first class mail, rather than by certified mail, as the law requires. (Rule 4 FRCiv.P.).

and

> 3. . . . The state engineer's failure to use certified mail means that there is no easy way to know how many claimants are settlement parties that actually do not agree with the settlement agreement . . .

(emphasis added). Very similarly, Exhibit B states:

> 1. The Settlement Agreement summary and order to show cause have been mailed to claimants by the State Engineer, utilizing first class mail rather than certified mail. This is contrary to Rule 4 of the Federal Rules of Civil procedure. Thus, aside from the filing of these objections, the State Engineer has no proof that all claimant[s] received the copy of the Order to Show Cause
>
> . . .
>
> The failure to use certified mail means that it will be very difficult to ascertain the number of parties who actually agree with the Settlement and those who simply failed to receive the Order to Show Cause and thus did not respond.

(emphasis added).

As a practical matter, the objectors complaining about improper service have themselves been served. They clearly received the *Order to Show Cause*, as they have responded to it by filing objections. Moreover, none of the objectors complaining of improper service has been able to identify a single party who did not receive actual notice of the *Order to Show Cause*.

Rule 4 does not require that the Court's *Notice and Order to Show Cause* must be sent by certified mail. Fed.R.Civ.P. 4 speaks to summons and serving summons in order to join parties to a lawsuit, and is not applicable here. For serving and filing pleadings and other papers, such as the Court's *Order to Show Cause*, service is under Rule 5, which provides that:

> A paper is served under this rule by:
>
> . . .
>
> (C) mailing it to the persons last known address – in which event, service is complete upon mailing.

Fed.R.Civ.P. 5(b)(2). Further, if an action involves an unusually large number of defendants, Rule 5 further provides that the Court may on motion or on its own, order that other means of service apply. Indeed, in the instant matter, the Court specifically ordered service of the *Order to Show Cause* include publication and posting, in addition to service by regular first class mail. There is no requirement under the Federal Rules of Civil procedure, or this Court's own Orders, that service of the *Order to Show Cause* be by certified mail.

In sum, the procedures adopted by the Court for service to the *Order to Show Cause* were in accordance with law, exceeded requirements under the Federal Rules of Civil Procedure, the State and the United States followed the Court's directions to the letter, and the State made every reasonable effort to insure the Updated List was current and correct. The amount of returned mail was entirely consistent with the State's previous experience with such mailings, and for the

most part accounted for by the practical reality that water right claimants by and large do not substitute into this lawsuit or update their contact information with the State Engineer when ownership or addresses change. The Court contemplated the likelihood that there would be unknown claimants and known claimants with unknown addresses, and for that reason also provided for publication and posting of the Order to Show Cause. There was no deficiency in the mailed notice of the *Order to Show Cause*.

2. Notice not received (Category q)

Several objections complain of never having received notice of the *Order to Show Cause*. An *Objection* filed April 2, 2014 states: "I, John Valdez, along with my wife, Darlene T. Valdez, did not receive the letter and package from the State Engineer's office." (No. 8641). An April 4, 2014 *Objection* states: "Were never notified." (No. 8569). Yet, these objectors timely filed objections to the Settlement Agreement. That very fact demonstrates that they did have actual notice of the settlement approval process.

The *Amended Order* and the *Second Amended Order* anticipated that there could be a class of persons who might not receive mailed notice -- that notification was needed for those water right claimants who were not known, and known claimants whose addresses were not on the updated service list. As such, the Court provided that, in addition to direct mailing, notice of the Settlement Agreement and of the approval process should also be published and posted. More specifically, the two *Orders* required:

> 1) [P]ublish[ing of] the Order to Show Cause in English and Spanish, without exhibits, in at least one newspaper(s) of general circulation in the Pojoaque Basin and in the City and County of Santa Fe once a week for four weeks;
>
> 2) post[ing of] an electronic version of the Order to Show Cause in English and Spanish and all exhibits on the Court's and the Office of the State

Engineer's websites; and

3) post[ing of] the Order to Show Cause and all exhibits publicly at [a number of locations].

Amended Order at 2-3; *Second Amended Order* at 2. Pursuant to that direction, the State caused the *Order to Show Cause* to be published in both English and Spanish in the Albuquerque Journal on January 3, 10, 17 and 24 of 2014. The *Order to Show Cause* in both English and Spanish, along with all related exhibits was, and continues to be available on the OSE's website, and physically at the OSE offices, at the County of Santa Fe Pojoaque Satellite Office and the Joe M Stell Ombudsman Program at the Utton Center.

Indeed, the Court's Orders regarding service are entirely consistent with the Federal Rules of Civil Procedure. Rule 5 provides that once a person is made a party to a lawsuit, service of a document may be made by "mailing it to the person's last known address – in which event service is complete upon mailing." Fed.R.Civ.P. 5(b)(2)(C). Moreover, in *Mullane v. Central Hanover Bank and Trust Co, et al.*, the United States Supreme Court provides further guidance with regard to matters which involve an unusually large number of defendants. 70 S.Ct. 652 (1950). Specifically, in dealing with notice to large numbers of beneficiaries of a common trust fund, the Supreme Court stated that:

> We recognize the practical difficulties and costs that would be attendant on frequent investigations into the status of great number so beneficiaries, many of whose interest in the common fund are so remote as to be ephemeral, and we have no doubt that such impracticable and extended searches are not required in the name of due process. The expense of keeping informed from day to day of substitutions among even current income beneficiaries and presumptive remaindermen, to say nothing of the far greater number of contingent beneficiaries, would impose a severe burden on the plan, and would likely dissipate its advantages.

Id. at 317-318 (emphasis added). The Supreme Court consequently allowed published notice for

"beneficiaries whose interests or addresses are unknown to the trustee." *Id.* at 318.

Similarly, here, where keeping track of the day-to-day substitution of parties would impose a severe burden, the Court has provided that publication "shall serve as notification to those water right claimants who were not known with reasonable diligence to the Settling parties and claimants whose addresses are not on the updated service list . . ." *Amended Order* at 4. The service by mail and by publication made pursuant to the Court's Orders here is entirely sufficient.

3. Due Process / No opportunity to participate in negotiations and litigation (Categories p & x)

Objectors assert that the settlement violates due process because they have not had the opportunity to litigate the Pueblos' claims. For example, two of the form objections claim: "Defendant objects to entry of the partial final decree without providing an *inter se* proceeding involving the Pueblos as required by Due Process." Exhibit A, p 7 of 7, para. 23. And: "I object to the entry of a partial final decree which adjudicates Pueblo water rights, before the Pueblos have participated in an Inter se proceeding with all defendants, including myself." Exhibit C, p. 12 of 13.

The Court has given non-Pueblo parties the opportunity to participate in the adjudication of the Pueblos' water rights since 1983. Instead of following the typical two-step process of first completing the subfile phase (i.e., resolution just between the State and the claimant) before proceeding to the *inter se* phase where other parties have an opportunity to object, the Court collapsed the two phases into a unified proceeding and allowed potential objectors to participate beginning in 1983. The Court allowed "all parties" including non-Pueblo parties opposing Pueblo claims to submit objections to the Special Master's recommended findings on the

Pueblos' rights. *See Pretrial Order*, entered February 2, 1983, at 3. Upon inception of non-Pueblo defendants' participation the Court found:

> There is no question that the non-Indian defendants have had the benefit of each and every bit of evidence, authority and argument that has been presented with ample opportunity to review and with full access to the contentions of the other parties over a protracted period of time. Theirs is the favored position.

Order entered July 22, 1983 at 1-2. The non-Pueblo defendants then participated in ten days of trial in October 1983, leading to the Special Master issuing amended findings of fact and conclusions of law on the Pueblos' rights under Spanish and Mexican law, which were the subject of the *Aamodt II* decision.

From 1983 forward the non-Pueblo parties were active in all facets of the Pueblo proceedings and then participated in the settlement discussions beginning in 2000. The litigation proceedings were open to any claimant who wanted to participate, and any party to the case was allowed to attend and participate in the settlement discussions. By its *Order to Show Cause* entered last year, the Court has afforded non-Pueblo parties another opportunity to participate in the final adjudication of the Pueblos' water rights including the filing of objections to the proposed rights. The complaint that objectors have not been given adequate opportunity to participate has no basis in fact.

Several objectors also complained that they had no opportunity to participate in negotiations of the Settlement Agreement. Exhibit B states:

> 14. Defendant objects to the Settlement Agreement as proposed. Defendant would like to see a proposal which is fair and equitable including having even bodies of representation representing non-Indians. The agreement was negotiated under a confidentiality order.

(citations omitted) (emphasis added). The objectors add that "Defendant objects to the

deprivation of due process and a violation of the Equal protection Clause of the Constitution and the State Open meetings Act." Exhibit C states:

> The settlement agreement was drafted in secrecy and the participants are bound by confidentiality agreement, so information has not been forthcoming.

(emphasis added). Similarly, many non-form objections say the same thing. A March 31, 2014 *Objection* stated at page 3:

> As non-Pueblo water right holders, we have lacked the opportunity to participate in the essential integral parts of the proposed settlement agreement and insufficient opportunity to study the impacts and seek counsel. The settlement negotiations which began in 2010 excluded individual non-Pueblo water right holder parties from participation and settlement information was not provided to all parties.

(emphasis added) (No. 8349). That objection continues on to assert incorrectly that:

> . . . a gag order prevented all access to information by non-Pueblo water-right owner Parties. This exclusion unfairly prejudiced the non-Pueblo water-right owner Parties who, by the terms of the Order to Show Cause are now being required to understand all of the implications to their water rights and to make formal objections within a perilously short time frame or be deemed a Settlement Party and forfeit all or a portion of their lawful water rights.

Id.; and another filed March 3, 2014 states "[t]he settlement agreement has been negotiated and formulated without my input." *Objection* at 4 (No. 8158) (emphasis added). These objections are simply not factually correct. There have been ten years of public participation in the settlement process.

The foundations of this public participation date back at least to May 27, 2004, when the Court appointed representatives of non-Pueblo defendants who were opposed to the *Aamodt* Settlement at that time to participate in the ongoing mediated settlement negotiations. See May 27, 2004 *Clerk's Minutes* (No. 6094). Shortly thereafter, attorneys representing certain groups opposed to the proposed *Aamodt* Settlement began participating in those mediations as well. See

e.g. October 25, 2005 *Entry of Appearance* of attorney Fred Waltz (No. 6144).

By way of these negotiations, and with extensive community participation, the original *Aamodt* Settlement Agreement was revised to its present form, and approved by Congress in December 2010. Since that time all meetings regarding the *Aamodt* Settlement Agreement have been open to and attended by the public. See Sign in Sheets for *Aamodt* Implementation Meetings, attached hereto as Exhibit G. Objections asserting the contrary are not correct.

A number of objectors assert constitutional concerns related to their own water rights and to the adequacy of notice in this proceeding. In response to claims that the settlement has reduced domestic well rights or effected a taking without compensation, see discussion in section D(1). In response to claims that the settlement requires anyone involuntarily to transfer domestic rights to the County utility or to do so prior to connection to the water system, see discussion in section C(4). The settlement does not require parties electing to connect to the County utility to transfer rights before service is available. Finally, as to contentions that notice given in this proceeding violates due process, see section A of this brief.

4. The was sufficient time and information to make a decision about the *Aamodt* Settlement Agreement (Category y)

Many objections complained of not having enough time to make a decision about the *Aamodt* Settlement Agreement. For example: "I have not had sufficient time to review and get legal advice regarding the very complex 49 page, the partial final decree, the summary, the interim administrative order and the correspondence from the State Engineer." See attached Exhibit C (emphasis added); see also, e.g. March 25, 2014 *Objection* at p. 1 (No. 8291). Many of those objections also complained of lack of information: "The settlement agreement was drafted in secrecy and the participants are bound by a confidentiality agreement, so information has not

been forthcoming."(emphasis added) (Id.), a March 31, 2014 *Objection* states, "[t]he Settlement negotiations which began in 2010 excluded individual non-Pueblo water-right holder Parties from participation and even information" and:

> Further, a gag order prevented all –access [sic] to information by non-Pueblo water-right owner Parties.. [sic] This exclusion unfairly prejudiced the non-Pueblo water-right owner Parties who, by the terms of the Order to Show Cause are now being required to understand all of the implications to their water rights and to make formal objections within a perilously short time frame or be deemed a Settlement Party and forfeit all or [a] portion of their lawful water rights.

(emphasis added) (No. 8364). As already noted, various of the Settlement Parties have held over seventy (70) public meetings in the Pojoaque Valley regarding the *Aamodt* Settlement since 2004, and all *Aamodt* negotiations and implementation meetings have been open to the public since 2010. All relevant documents have been posted on-line at the websites of the Court of Santa Fe, Office of the State Engineer, and the Utton Center.

Moreover, the amount of public outreach associated with the Court's Order to Show Cause has been unprecedented. Since the Court issued the *Order to Show Cause*, Santa Fe County ("County") and the State, with assistance from the Pueblos, the United States and others who are interested in the settlement, have engaged in a substantial effort to provide information and explain the Settlement Agreement and Court process to interested individuals. To assist with this outreach, the County hired the Joe M Stell Water Ombudsman Program at the Utton Transboundary Resources Center of the University of New Mexico School of Law ("Ombudsman Program").

Fourteen (14) public meetings conducted by the Ombudsman Program, and attended by the County, the State, the United States, the Pueblos and others have been held in the Pojoaque Valley to make the *Order to Show Cause and Notice of Proceeding to Approve Settlement*

Agreement and associated materials available, and to provide information regarding them to claimants. Meetings took place on February 18, 20, 25 and 27; on March 4, 6, 11, 13, 18, 20, 25 and 27; and on April 1 and 3, 2014.

The Ombudsman Program also held office hours in the Pojoaque Valley every Wednesday and Saturday through the objections deadline of April 7 to explain the issues raised by the *Aamodt* Settlement Agreement and make documents and other materials regarding it available.

Approximately 2,200 individuals attended the fourteen (14) public meetings and twice a week office hours held by the Ombudsman Program.

The State and the County have also attended six more public meetings regarding the *Aamodt* Settlement Agreement held by State Representative Carl Trujillo on March 4, 5, 6, 26 and 27; and on April 3, 2014.[2] Hundreds more people attended these meetings, and were provided with information regarding the *Aamodt* Settlement Agreement.

In addition, over the last two months, the State, the County and the Ombudsman Program have received numerous calls and walk-ins on a daily basis from water right claimants in the Pojoaque Valley with questions and requests for materials, as well as requests to update their water right files with current ownership and address information. The Water Rights Division of the OSE alone had over a thousand walk-ins during that time period, with, as noted above, over

[2] In addition, the parties participating in the settlement discussions have held and attended more than fifty (50) other public meetings since 2004, when the original version of the *Aamodt* settlement Agreement was first published, in an effort to explain the proposed settlement and its terms. For example, in 2010, Santa Fe County conducted ten (10) public meetings in the Pojoaque Valley to inform water users and the general public regarding the settlement and the implementation process. Thirteen (13) meetings were held in 2004, after the Settlement Agreement was first released. Moreover, the County approved the final Settlement Agreement in a public process through the County Commission through the course of several public County Commission meetings. There were many more public meetings over the course of the last decade in addition to these.

400 changes of address and ownership filed.

Further, all relevant documents, as well as extensive information about the settlement and the Court process have been, and continue to be physically available at the Santa Fe Office of the State Engineer, the Santa Fe County Pojoaque Satellite Office, the United States District Court locations in both Albuquerque and Santa Fe and the Ombudsman Program. They have been, and continue to be also available on-line at the OSE website, the County website and the Ombudsman Program website.

5. Equal Protection (Category z)

Two of the form objections make constitutional challenges to the settlement claiming a violation of equal protection of the rights of non-Pueblo water right holders. Exhibit B states:

> Defendant objects to the Settlement Agreement as it violates the Equal Rights and Protection Clause of the Constitution. It allows one group of people rights and protection that are denied to another group of people.

See Exhibit B, p 6 of 13, para. 13. Similarly, Exhibit A states: "Defendant objects to the application of different water laws to the Pueblos and the non-Indians as a … denial of Equal Protection of the Law." *See* Exhibit A, p 6 of 7, para. 20. A number of individual objections also raise this issue. See *Objection* of Elmer and Mary Waite, filed March 27, 2014 (Dkt. No. 8317) (equal protection violated because non-Indians must limit use and Pueblos awarded future rights); *Objection* of Ronald Max Quintana, filed April 1, 2014 (Dkt. No. 8362) (unequal treatment because Pueblo water rights cannot be lost to forfeiture); *Objection* of Leroy and Josie Alderete, filed April 3, 2014 (Dkt. No. 8476) (Pueblos and the US enjoy sovereign immunity that is not waived in the settlement agreement - application of different water laws to the Pueblos and the non-Indians); *Objection* of Monica Trujillo, filed April 4, 2014 (Dkt. No. 8655) (settlement

agreement does not permit non-Pueblos to sell or lease water rights as permitted by NMSA 72-63-3; 14th Amendment equal protection and NM Const Art II, Sec 18 violated because Pueblos can lease and because no reciprocal right of enforcement).

As a starting point, it is important to recognize that the settlement is not the cause of any disparities in the application of law to the Pueblos vis-à-vis state-based water users. The settlement merely reflects existing circumstances in which federal law already applies to the Pueblos. To the extent some parties object that state and not federal law should apply, their objection is not to the settlement but to the laws that govern.

As discussed in section B(2)(Category i), Congress, in enacting Section 9 of the Pueblo Compensation Act of 1933, provided that the Pueblos' water rights "shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians." *See* § 9, Pub. L. No.73- 28, 48 Stat. 108,111. The Tenth Circuit in this case also has expressly held that the water rights of the Pueblos are not subject to state law forfeiture and abandonment. *See Aamodt I*, 537 F.2d at 1111-1112 (the United States has not relinquished jurisdiction and control over the Pueblos and has not placed their water rights under New Mexico law).

Likewise, federal Indian Tribes may claim reserved water rights on lands reserved for them by the federal government, under the Federal Reserved Rights or *Winters* Doctrine. *See Winters v. United States*, 207 U.S. 564 (1908). Although this doctrine does not apply to water on the Pueblos' Spanish or Mexican grant lands, it does apply to federal lands reserved for the Pueblos by the U.S. government, as this Court held:

> *Winters* rights exist on the Pueblo lands set aside by Executive Order for Nambe Pueblo on September 4, 1902 and any other Executive Order or Congressional reservations that may exist. Nambe and other Pueblos with Executive Order or Congressional reservations have priority to irrigate all of the

> irrigable acreage within the reservation subject to prior uses established before the date of the creation of the reservation.

Aamodt II, 618 F.Supp. at 1010. The Partial Final Judgment and Decree proposes to recognize 302 AFY of reserved rights to Nambe Pueblo, *see* § 3(A)(1)(b), but, as discussed in section B(1)(Category w) of this brief, under the settlement Nambe Pueblo agrees not to use its reserved rights and instead convey them to the United States for use from the Regional Water System. *See* Settlement Agreement at § 2.6.2.2 & -.3; Settlement Act §§ 613(a)(1)(A) & 617(c)(1)(A)(ii).

The application of federal laws to the Pueblos is not a violation of equal protection. Because Indian Tribes are governmental entities under the protection of the federal government, it is not a denial of equal protection to treat Indian Tribes and their members differently from other people when the distinctions are rationally related to Congress' trust responsibility toward the Indians. *See Morton v. Mancari*, 417 U.S.535, 554-555 (1974) (statutes providing special treatment for Indians will not be disturbed so long as such treatment can be tied rationally to the fulfillment of Congress' unique obligation towards Indians); *U.S. v. Hardman*, 297 F.3d 1116, 1128 (10th Cir. 2002) (laws that "might otherwise be constitutionally offensive" might be acceptable if they are enacted pursuant to the United States' trust relationship).

The objections do not demonstrate an equal protection violation. Arguments that Pueblo sovereign immunity violates equal protection are off base, especially in the context of the this case, where both the U.S. and Pueblos have waived sovereign immunity for the adjudication and administration of water rights, as discussed in section B(2)(Category i) and B(3)(Category k).

Finally, the complaint that the settlement does not provide for non-Pueblo leasing is also not a violation of equal protection. The settlement does not address leasing by non-Pueblo parties and doesn't affect it one way or the other. Non-Pueblo water right owners have the right

to lease their water provided to them under state law. *See* New Mexico Water-Use Leasing Act, §§ 72-61-1 to 72-6-7 N.M.S.A. 1978, amended (2014). Indeed, in contrast to federal restrictions on alienation of Pueblo trust assets, non-Pueblo water right owners have the ability to permanently sell their water rights and to lease them without many of the restrictions imposed on Pueblo leasing.

B. Federal Law / Indian water rights / Rights of Pueblos

A number of objections question the application of federal law in determining the Pueblo water rights proposed in the settlement. Some objections oppose the types of uses that are allowed, including for leasing and non-agricultural purposes. Other objections assume the Settlement Agreement and Partial Final Judgment and Decree will not be enforceable.

As discussed in this section, the settlement will be enforceable and will give substantial protections to non-Pueblo water users in the Pojoaque basin. The quantities of the Pueblo First Priority Rights are based upon this Court's findings of actual Pueblo historic irrigation and upon settlement of Pueblo replacement water rights claims and other historic beneficial uses based on the Court' opinions in this case. The senior or time immemorial priority date also is based upon rulings by this Court in this case. The proposed Pueblo water rights are based on applicable law, will be enforceable by this Court and will be administered by the State Engineer as Water Master.

Under the settlement, the Pueblos have agreed to limitations on their water rights in order to provide protections to other water rights. The Pueblos have made these concessions in exchange for construction by the federal government of the Regional Water System, which will deliver up to 2,500 AFY to the Pueblos and up to 1,500 AFY to Santa Fe County Water Utility

customers. This water will be imported into the Basin from a diversion on the Rio Grande and will greatly relieve the conflict over limited local water supplies. Without the settlement, the water system would not be built and the Pueblos would look to meet all of their claims from the water resources of the Basin; and the Pueblos would continue to claim an expanding federal water right. By contrast the settlement ends the litigation and gives all parties greater certainty and reliability in their water supply.

1. Pueblo uses of water under the Settlement. (Category w)

Although most objections seem to accept the quantities and senior priority dates of water rights proposed to be adjudicated to the Pueblos, some objections question the proposed quantities, the basis for their quantification or the Pueblos' senior priority date. For example: "The settlement agreement recognizes future water rights … for the Pueblos but not for the non-Indians." *See* Exhibit C, page 12 of 13. The same form objection further states:

> I object to the entry of a partial final decree which adjudicates Pueblo water rights, before the Pueblos have participated in an Inter se proceeding with all defendants, including myself. I have no information on how the amounts of Pueblo water rights were determined or how the priority dates were determined.

Id. Another objection asserts: "The Pueblo Parties have no requirement to demonstrate historic beneficial use. Those Parties are simply allocated a water right to support desired use, including … non-historic uses…." *See* Exhibit E, pp 10 & 11 of 12. Some objections specifically single out water proposed to be decreed to Pojoaque Pueblo:

> … the proposed Settlement Agreement grants to Pojoaque Pueblo over and above a primary allocation, an additional 475 afy (called a 'supplemental allocation') which will provide for its golf course. Not only is this supplemental allocation to Pojoaque Pueblo not related to beneficial historical use but funding the facility to provide it is given an early priority for funding.

See Exhibit E, p. 11 of 12.

The complaint that the Pueblos' water rights may not be based on state law is addressed under other sections of this brief. Section B(2) (Category i) and section B (3) (Category k)), below, discuss why the application of federal law, instead of state law, applies to certain categories of Pueblo water rights. Section A(5) (Category z) addresses how the application of federal law to the Pueblos is not a violation of equal protection for state-based water rights owners. Regarding the point that objectors have the right to participate in *inter se*, section A(3) (Category x) describes the due process this Court has afforded for participation by non-Pueblo parties culminating in the pending objection proceeding.

The quantities and time immemorial priority proposed by the settlement for the Pueblos' First Priority Rights are based upon the prior rulings of this Court. Under the Settlement Agreement and Partial Final Judgment and Decree, the Pueblos' total First Priority Rights are 3,660 acre-feet per year consumptive use (AFY). *See* Settlement Agreement § 2.1.2. This number is based on the Court's prior findings of the amount of the Pueblos' historically irrigated agriculture and on settlement of the Pueblos' claims for replacement water rights and other historic beneficial uses based on the opinions of the Court. *See The Rio de Tesuque Association, Inc's Memorandum in Support of the Settlement Agreement and Entry of a Partial Final Decree on the Pueblos' Rights*, filed November 6, 2014, at §§ B & C. The Partial Final Judgment and Decree and the Settlement Agreement separate the Pueblos' First Priority Rights into two categories: "Existing Basin Use Rights," which are that portion in use as of the year 2000, *see id.* at 2.3; and "Future Basin Use Rights" which are the remainder, *id.* at § 2.4. The following table breaks down these two categories of the Pueblos' First Priority Rights.

Pueblo First Priority Rights: Acre-Feet per Year Consumptive Use			
Pueblo	**Existing Basin Use Right**	**Future Basin Use Right**	**Total First Priority Right**
Nambe	522	937	1,459
Pojoaque	236	0	236
San Ildefonso	288	958	1,246
Tesuque	345	374	719
Totals	**1,391**	**2,269**	**3,660**

It is important to recognize that the Future Basin Use Rights are not Federal Reserved or *Winters* rights that have never been put to beneficial use. Instead, they are based on actual past uses of the Pueblos. Although they are currently unexercised, they are part of the Pueblos' historically used water rights that the Pueblos may use in the future, with restrictions as described below. Furthermore, this Court has determined the historic prior water rights of the Pueblos are entitled to a first or time immemorial priority. *See State of New Mexico v. Aamodt,* 618 F.Supp. 993, 1005-1010, (Dist. Ct. N.M. 1985) *(Aamodt II)*; Mem. Op & Order, May 1, 1987 at 3-5; Mem. Op & Order, Apr. 14, 2000 at 8-9 (Dkt. No. 5596).

The only Federal Reserved or *Winters* rights proposed by the settlement are 4.82 AFY for San Ildefonso with a 1939 priority for grazing purposes on the San Ildefonso Eastern Reservation, *see* Settlement Agreement § 2.6.1; and 302 AFY with a 1902 priority associated with reserved lands for Nambe Pueblo, *id.* at § 2.6.2. Again, settlement of these Federal

Reserved water right claims was based on prior rulings by the Court.[3] Under the settlement, however, Nambe Pueblo agrees not to use its 302 AFY of water rights and, instead, to convey these water rights to the United States for use from the Regional Water System. *See id.* at § 2.6.2.2 & -.3; Settlement Act §§ 613(a)(1)(A) & 617(c)(1)(A)(ii). In the absence of the settlement, the exercise of reserved water right in the Basin could affect other water users. But under the settlement, the Nambe reserved right will be diverted from the Regional Water System's point of diversion on the Rio Grande and is subject to the further restriction that its use "shall not impair Pueblo or Non-Pueblo ground water rights." *See* Settlement Agreement § 2.6.2.3; Partial Final Decree § 3(A)(1)(b).

In addition to limiting the Pueblos' First Priority Rights to quantities commensurate with their historic uses and replacement rights, the Settlement Agreement contains further concessions governing use of the Pueblos' water rights. The Pueblos have accepted three substantial limitations on the exercise of most or all of their First Priority Rights: (1) the Pueblos agree to relinquish their right to priority administration of any of their rights against junior groundwater users, including domestic well owners who join and comply with the terms of the settlement; (2) under Section 4 of the Settlement Agreement, the Pueblos will relinquish their right to priority administration of their first priority Future Basin Use Rights, which constitute almost two-thirds of the Pueblos' First Priority Rights, against protected non-Pueblo surface water right owners and other settling water right owners; and (3) under Section 2.5.3 of the Settlement Agreement the

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3 The Court's January 17, 1997 Memorandum Opinion and Order (Dkt. 5209) and April 30, 1998 Partial Judgment (Dkt.. 5390) recognized San Ildefonso Pueblo's reserved grazing rights. The Court's July 10, 2001 Memorandum Opinion and Order (Dkt. 5916) vacated the Special Master's December 8, 1999 Report (Dkt. 5560) on Nambe Pueblo's reserved rights and ordered the parties to request, if necessary, a status conference after settlement negotiations did not settle the claim.

Pueblos agree to supply any increasing demands for water in the future from the Regional Water System before exercising their Future Basin Use Rights. These three important concessions are discussed in more detail directly below.

First, as discussed in section D(1) (Category a), above, junior domestic well owners who make an election under Section 3.1.7.2 of the Settlement Agreement will be "protected from enforcement and administration of priorities within the Pojoaque Basin...." Without the settlement, domestic well owners, who have some of the most junior water rights in the Basin, risk curtailment in the event of water shortages.

Second, the Pueblos are agreeing that their Future Basin Use Rights, which are the largest category of their First Priority Rights, will not be enforced against non-Pueblo water rights that continue in beneficial use, including by acequias. *See* Settlement Agreement at § 4.2. Accordingly, of the Pueblos' total First Priority Rights of 3,660 AFY, only the "Existing Basin Use Rights" of 1,391 AFY will be exercised and administered with a first priority against protected non-Pueblo water right owners. As explained in more detail in section E(2) (Category n), this provision means that 62 percent of the Pueblos' First Priority rights, in the amount of 2,269 AFY, is effectively made a third priority.

Third, once the Regional Water System is constructed and capable of delivering water from the 2,500 AFY allocated to the Pueblos, each "Pueblo shall use that water supply to the maximum extent feasible prior to exercising its Future Basin Use Rights described in Section 2.4." Settlement Agreement § 2.5.3. By agreeing to defer and subordinate exercise of in-Basin water rights and to rely on new sources of supply, this provision will protect the local water resources of the Basin. This subordination also applies to all of Pojoaque Pueblo's 475 AFY of

Supplemental Pueblo Rights, which "shall be subordinated to a right to receive an equivalent amount (475 AFY) of water delivered through the Regional Water System...." *Id.* at § 2.2.4. The practical effect of this provision is that pumping of groundwater for the Pojoaque golf courses will be discontinued and replaced with imported water, along with increasing reuse of treated effluent for turf irrigation. The settlement seeks to expedite this conversion and subordination process by giving priority to implementation of this provision. *Id.* at § 2.2.4; Settlement Act § 617(a)(3)(B). Objections, such as that quoted at the beginning of this section, appear not to understand that priority in funding will address the conflict over the Pueblo's use of local groundwater for the golf courses, which would be resolved by this requirement.

In 2002 the State sought a preliminary injunction from this Court to stop Pojoaque Pueblo from using water for a second 18-hole golf course. Magistrate Judge Leslie Smith conducted an evidentiary hearing and then entered *Magistrate Judge's Proposed Findings and Recommended Disposition* on February 4, 2002 (Dkt. No. 6044), which were adopted by the Court by Order entered July 1, 2003 (Dkt. No. 6065) (*Findings and Disposition*). The *Findings and Disposition* recited that the Court had already recognized that the Pueblos can use both surface and inter-related groundwater to satisfy the amount of their first priority rights. *Findings and Disposition* at 15 (citing *Aamodt II*, 618 F.Supp. at 1010). Among its determinations, the *Findings and Disposition* found: (1) the Pueblos may be entitled to more water rights than the State has acknowledged; (2) No appeal has been made to the Tenth Circuit on the Pueblo's ultimate water rights; and (3) the Court has not entered a final order defining the Pueblo's ultimate water rights. *Id.* at 36. Based on the Magistrate's recommendation, the Court denied the petition for preliminary injunction. *See* Order at 27. The Settlement Agreement avoids an appeal and the

risk that the Pueblos could claim additional water rights. The Pueblos have given up claims to an expanding federal water right and instead have agreed to quantification of their rights based predominantly on historic uses.

Finally, in addition to objections about the amount and priority date of Pueblo rights, a number of objections express opposition to the type of water use made by the Pueblos. In particular these objections oppose use of water by the Pueblos for non-agricultural purposes, such as for casinos, the Pojoaque golf course and livestock. One repeated objection states: "Those Parties [the Pueblos] are simply allocated a water right to support desired use, including such non-historic uses as golf courses. *See* Exhibit E, pp. 10 & 11 of 12, para. 1. *See also Objection* of Jose P Archuleta, filed March 11, 2014 (Dkt. 8181) (valley would be harmed because Pueblos do not use water for agricultural purposes); *Objection* by Richard Rodriguez, filed March 11, 2014 (Dkt. 8192) (water comes from the land to share; water is life not for golf or casinos); *Objection* by Edward A. Romero, filed March 25, 2014 (Dkt. 8286) (excessive allocation to the Pueblos for livestock has potential detrimental effects of me not getting my allocation of surface water and thus affecting my water rights).

The settlement is structured to protect existing agriculture, by limiting Pueblo priority calls on existing surface water rights including calls on historic acequias. Without the settlement, the Pueblos would be entitled to priority administration in order to satisfy the full amount of their First Priority Rights. By contrast, with the settlement the Pueblos are agreeing to substantial limitations on priority calls and administration, as explained in more detail in section E(2) (Category n).

With respect to the view that Pueblo water should not be used for non-agricultural

purposes or other purposes that are not historic, such as golf course and casino uses, such uses are already being made by the Pueblos and are not a function of the settlement. Even without the settlement, this Court would certainly determine that the Pueblos, like other water right claimants, have the legal right to use their historic water rights for purposes other than agriculture. In the 2002 preliminary injunction proceedings, no party contended Pojoaque Pueblo's rights could not be used for recreational purposes such as commercial turf irrigation. The only issue was whether the Pueblo's expansion of groundwater pumping for the new golf course would exceed the Pueblo's water rights, an issued disposed of by the Settlement Agreement. Lastly, the total proposed first priority right of 3,660 AFY includes water for livestock. Consequently, any concern that a Pueblo is using excessive amounts of stock water is answered by the requirement that stock water must come from each Pueblo's total right and will reduce the amount available under that right for other purposes.

2. Non-Indian Has No Enforcement Rights / Forfeiture. (Category i).

Exhibit C, at p. 12 of 13 makes the following objection: "I object to the lack of right to enforce the settlement agreement by non-Indians." There is no explanation of the basis for this objection. To the extent this concern assumes the Court does not have jurisdiction over Pueblo water rights, the Pueblos have explicitly agreed in the Settlement Agreement that the State Engineer will have the authority to administer the Pueblos' water rights. *See* Settlement Agreement at p. 36, § 5.2. The Settlement Agreement also provides: "the Decree Court shall retain jurisdiction to interpret and enforce the terms, provisions and conditions of the Agreement, the Interim Administrative Order, and the Final Decree." *Id.* at 4, § 1.5.

The proposed Partial Final Judgment and Decree defines the water right amounts of the

Pueblos in terms that state over and over again that the rights are in "amounts not to exceed" and that uses and diversions "shall not exceed" the decreed amounts. *Id.* at 3-11. In addition, the end of the Partial Final Judgment and Decree contains a specific "Limitations" section that provides:

> E. Limitations
>
> 1. The Pueblos have no right to use the public waters of the Pojoaque Basin except as set forth in this Partial Final Judgment and Decree, the Settlement Agreement, and subfile orders entered by this Court in this action.
>
> 2. Each Pueblo, and its successors, representatives, lessees, and assigns, are permanently enjoined from any diversion, impoundment, or use of the public waters of the Pojoaque Basin except in strict accordance with this Partial Final Judgment and Decree, Settlement Agreement, and other orders entered by this Court in this action.

Id. at 11-12.

Finally, the Partial Final Judgment and Decree orders that the water rights of the Pueblos shall be administered in accordance with the Settlement Agreement:

> 5. ADMINISTRATION OF THE PUEBLOS' WATER RIGHTS.
>
> Administration of the Pueblos' water rights that are the subject of this Decree shall be in accordance with the Settlement Agreement.

Id. at 12. The Settlement Agreement, in turn, contains detailed provisions for the administration of the Pueblos' water rights. In addition to the State Engineer's statutory authorities and duties under state law, under Section 5.2 the State Engineer will perform the function of Water Master in administering Pueblo rights, as described in Sections 5.2 and 5.6. Section 5.2.1.2 gives the State Engineer authority in capacity as Water Master to enforce the limits on Pueblo uses: "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."

Another repeated objection is that "Pueblos' water rights are protected from forfeiture but not the non-Indians' rights." *See* Exhibit C at p. 12 of 13. Objectors appear to believe that the Settlement Agreement is the source of protection of the Pueblos' water rights from forfeiture and abandonment. *See* Exhibit E at p. 11 of 12, paras. 2&5. For example, one objection contends: "The proposed Settlement Agreement specifically exempts Pueblo Parties from such loss by non-use." *Id* at para. 2. The Settlement Agreement, however, does not and cannot change the law that already applies to non-use of water rights.

The Tenth Circuit in this case has explicitly held that the water rights of the Pueblos are not subject to state law forfeiture and abandonment. *See State of New Mexico v. Aamodt*, 537 F.2d 1102, 1111-1112 (10th Cir. 1976) ("*Aamodt I*") (the United States has not relinquished jurisdiction and control over the Pueblos and has not placed their water rights under New Mexico law). Section 9 of the Pueblo Compensation Act of 1933 provided that the Pueblos' water rights "shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians." *See* § 9, Pub. L. No.73- 28, 48 Stat. 108,111. So, although it is understandable that state-based water right holders may not like that a different law applies to the Pueblos, this difference is not created by the settlement. Provisions in the Settlement Agreement, Section 2.8, and the Settlement Act, Section 613(b), 42 U.S.C. § 1305, only reflect the already existing law.

3. McCarran Amendment violated / sovereign immunity not waived / US not bound as trustee. (Category k)

One form of objections raises the following concern: "The Pueblos and the USA enjoy sovereign immunity that is not expressly waived in the settlement agreement." *See* Exhibit A, p.

5 of 7 at para. 10. The same form further asserts: "The settlement agreement is not clear and unequivocal that that the USA as trustee for the Pueblos is bound by the agreement." *Id.*, p. 6 of 7 at para. 22. These assertions give no basis for concluding that sovereign immunity or any other legal impediment prevents enforcement of either the Partial Final Judgment and Decree or the Settlement Agreement.

This Court has had jurisdiction over the United States and Pueblos for decades, since the inception of this case. As discussed in section B(2) (Category i), by the terms of the Settlement Agreement and the Partial Final Judgment and Decree, the Court would retain jurisdiction to interpret and enforce the requirements and limitations ordered and decreed by the Court. And the State Engineer will have authority to administer water rights under his state statutory authority and under the authority as Water Master. Objectors cite no legal rationale or theory in support of their claim that the United States or the Pueblos will not be bound by the Settlement Agreement or the Partial Final Judgment and Decree. Congress through the Settlement Act expressly approved the Settlement Agreement and authorized the Secretary of the Interior to sign it. *See* § 621 (a) & (b) of Settlement Act. Secretary Ken Salazar signed the Settlement Agreement on March 14, 2013.

In addition, because Congress waived any claim of sovereign immunity for the U.S. and Pueblos in passage of the McCarran Amendment in 1953, there has never been a question of waiver of sovereign immunity in this case. That federal law established a statutory waiver: "(a) Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, . . . and the United States is a necessary party to such suit." 43 U.S.C. § 666. This waiver includes adjudication of

Indian water rights. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809-812 (1976); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983). The McCarran Amendment operates as a waiver of sovereign immunity in either state or federal court and it applies to Indian water rights, whether on reserved or fee simple lands. *See U.S. v. Bluewater-Toltec Irr. Dist.*, 580 F.Supp. 1434, 1437 & 1439 (Dist. N.M. 1984) *affirmed* 806 F.2d 986 (10th Cir.) (1986). *See also* Law of Water Rights and Resources (updated July 2014), A. Dan Tarlock, Chapter 7, Joinder of United States and Indian Tribes at § 7:3 (discussing McCarran Amendment waiver of the sovereign immunity of the United States and Indian Tribes in suits to adjudicate and administer the rights to a river system).

The last line of objections grouped under this section is founded on a misapprehension of the effect of the McCarran Amendment. The objections appear to assume that the McCarran Amendment not only waives sovereignty immunity but also restricts Pueblo claims to state-based water rights: "Defendant objects to the application of different water laws to the Pueblos and the non-Indians as a violation of the McCarran Amendment," *see* Exhibit A, p. 6 of 7 at para. 20; and "Defendant objects to the use of the federal reserve doctrine to determine the Pueblo's water rights as a violation of the McCarran Amendment," id. at p. 6 of 7 at para. 21.

Although federal law, such as Section 8 of the 1902 Reclamation Act, generally does limit federal water uses to appropriations under state law, the McCarran Amendment is a procedural law and does not prohibit claims under federal law on federal lands:

> Sovereign immunity is waived for both federal reserved rights claimed by federal land management agencies and ... for Indian reserved water rights. State courts may apply state procedures but must apply federal substantive law.

Law of Water Rights and Resources at § 7:3 (citing, among other authorities, *Colorado River*

Water Conservation Dist. v. United States, 424 U.S. 800, 812-13 (1976)); see also *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983). Prior holdings in the *Aamodt* case have already determined that the Pueblos' water rights on their grant lands are governed by federal law, *Aamodt I*, 537 F.2d at 1111-1112, and that a claim may be made for federal reserved water rights on federal lands reserved for a Pueblo, *Aamodt II*, 618 F.Supp. at 1010.

4. Pueblo water leasing ability (Category m)

Some objections also oppose provisions in the Settlement Agreement that allow the Pueblos to lease their water rights:

> With regard to long term leases enforced by the Pueblos, Defendant and Defendant's children and grandchildren become vulnerable to rate hikes by the Pueblos. A 99 year lease violates the 10-year limitation on leases of water rights and the very long term lease violates State Law against perpetuities.

See Exhibit B, p. 7 of 13, para. 15, pp. 9 & 10 of 13, para. 9. A similar objection states:

> The Pueblos can lease their water right to others for up to 99 years. Although the proposed Settlement Agreement states that the leased water must be used in the Basin, there is no protection against a sub-lessee removing the water from the Basin, thus the lease provision as written adds to the likelihood of a first priority call by the Pueblos if water is removed from the Basin.

See Exhibit E, p. 12 of 12, para. 7.

The objections are correct that the Settlement Act authorizes each Pueblo to lease its first priority rights by entering into "leases or contracts to exchange water rights or to forbear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Basin," *see* Settlement Act § 621(c)(1), and for a term not to exceed 99 years. *Id.* at § 621(c)(3). In its last session, the New Mexico Legislature amended the state leasing statute to conform to the Settlement Act and allow leases for up to 99 years:

> A water use due under an adjudicated water right secured to a pueblo pursuant to the settlement agreements approved in Title 5 [Taos Settlement] and Title 6 [Aamodt Settlement] of the federal Claims Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or in the partial final judgments and decrees entered pursuant to those settlement agreements, may be leased for a term, including all renewals, not to exceed the term specifically authorized in that act; provided that this subsection shall not apply to any water use due under any state-law based water rights acquired by a pueblo or by the United States on behalf of a pueblo.

See § 72-6-3(D) NMSA 1978 (2014). Consequently, a lease term of up to 99 years is expressly and specifically approved by both federal and state law.

The leasing provisions do not allow a Pueblo to exceed its total water right. If a Pueblo decides to lease a portion of its water right, then its own use will be limited to the amount of its remaining water right not leased. Furthermore, any lease for use of water on lands outside of the Pueblo will require approval by the State Engineer or by the State Engineer acting as Water Master, upon a showing that the change does not impair other groundwater uses, does not interfere with surface water uses and complies with other requirements set forth in the Settlement Agreement. *See* Settlement Agreement at § 5.6.3.

Without the settlement, the Pueblos could still seek federal approval to lease water rights and could conceivably enter into agreements to lease their first priority water outside of the basin. Under both the Settlement Agreement, § 2.1.5, and under the Settlement Act, § 621(c)(1), the Pueblos have agreed and are limited to leases of their first priority rights within the basin.

Furthermore, the Settlement Act even restricts Pueblo leasing of the imported water described in § 613(a)(1), which the federal government has acquired for the Regional Water System. If an individual Pueblo does not need all of its allocation from the Regional Water System the excess "may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements" among the Pueblos or with the County Water Utility as set out in

section 614(c)(2). *See* § 621(c)(5).

In response to the concern that the Pueblos' water rights could be used outside the Basin under a sublease, the restriction on the use of the water applies to the water, not the Pueblos. The water rights may only be used within the Basin, whether by a Pueblo, a lessee, or a sublessee. There is no right, by any user, to lease the water rights outside the Basin.

The final concern raised by these objections assumes that Pueblo leasing will make non-Pueblo parties vulnerable to rate hikes by the Pueblos. But the settlement neither imposes requirements nor creates conditions causing non-Pueblo parties to lease water from a Pueblo. To the contrary, as described in section B(1)(Category w) above, under the Settlement Agreement the Pueblos are limiting priority calls and use of their first priority rights and are usingthe imported supply to meet their needs. These limitations make junior non-Pueblo water right owners more secure in their own rights and less likely to need to acquire additional supplies.

With respect to rates of service from the County Water Utility, any Pueblo leasing will not affect the cost of service to County customers. Existing domestic well water right owners who elect to connect to the County Water Utility will not be charged the cost of acquisition of water rights and only for the cost of service, i.e., cost of diversion, treatment, transmission and distribution, including utility operations, maintenance, repair and upkeep of the system. *See* Settlement Agreement § 3.1.8.1. Because the connecting well owners will contribute the water rights to serve them, they are immune from water rights acquisition or leasing costs in the future. With respect to future customers who do not have domestic well water rights to contribute, the County has already acquired sufficient permanent water rights, *see* Settlement Agreement § 9.6.4, to meet increasing demand long into the future. While those future customers are not

exempt from a water right acquisition payment, the cost will be based on the permanent water rights already acquired by the County and will not be subject to fluctuating lease prices.

C. The State had authority to enter into the Settlement Agreement, which is consistent with State law

Several of the objections allege that the Settlement Agreement is somehow inconsistent with State law, and that it, exceeds the State's authority. More specifically, these objections allege that the Settlement Agreement violates the State Constitution, its Anti-Donation Clause and Equal Protection Clause; that it creates a conflict of interest for the State Engineer and directs the State Engineer to exceed his authority in a number of ways; that it does not provide enough protection for the objectors from Pueblo priority calls; and finally, that the Settlement Agreement "lacks consideration." For all the reasons identified below, none of these objections are well taken; all should be overruled.

1. OSE conflict of interest/authority to award future rights/declare basin closed (Category j)

Exhibit A, B and D all contain allegations that the state engineer has a potential conflict of interest because under the Settlement Agreement he has authority to curtail both Pueblo and non-Indian water rights.

> There appears to be a conflict of interest in the terms of the Settlement Agreement relating to the role of the New Mexico State Engineer. Section 5.2.1.1 of the Settlement Agreement provides the State Engineer with the right to restrict Pueblo water rights. Section 5.2.1.2 of the Settlement Agreement provides that a Water Master has the same authority over non-Indian water rights. However, the State Engineer is also designated as the Water Master in Section 5.2 of the Settlement Agreement.

Exhibit B, paragraph 10 (emphasis added). These objections do not explain how the State Engineer having authority over both Pueblo and non-Pueblo water rights is a conflict. In fact,

the State Engineer is charged by statute with the administration of all the waters of the state. "He has general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required." Section 72-2-1 NMSA, 1978. The State Engineer's ability to also administer the Pueblos' water rights under the Settlement Agreement only increases his ability to administer all the water right in the Basin consistently. The objectors do not provide any factual basis or legal authority to support their allegation that because the Settlement Agreement provides the State Engineer the authority to administer both Pueblo and non-Pueblo water rights, a conflict of interest exists.

Several objections also assert that the Settlement Agreement requires the State Engineer to "close the basin" to new domestic well permits, and that it is beyond the State Engineer's authority. More specifically,:

> The partial final decree declares the N-P-T basin fully appropriated and proposes to close to new wells. (Sec. 3.1.4). The State Engineer has stated that he does not have evidence of how much water is in the N-P-T aquifer. Any unappropriated groundwater is owned by the people of New Mexico. The state engineer is without jurisdiction to unilaterally and arbitrarily close the N-P-T aquifer to further development.

Exhibit A, paragraph 24 (emphasis added). See also: "The state engineer is also prevented from closing the Pojoaque aquifer by the Domestic Well Statute which imposes a non-discretionary duty on the state engineer to issue a permit to divert groundwater for domestic uses to any person who applies for one and complies with the state engineer rules. (Sec. 72-12-1.1)" *Id.*, Exhibit B paragraph 17; (Exhibit C, paragraph 6 and Exhibit D, paragraph 11. These assertions are contrary to State law. Under State regulations of domestic wells, 19.27.5 NMAC, the State Engineer has the authority to limit or curtail the issuing of domestic well permits under 72-12-1.1 N.M.S.A.. Under NMAC 19.27.5.14, the State Engineer may declare a Domestic Well

Management Area, limiting the issuance of permits for new appropriations of water. In addition, the State Engineer has the authority to issue orders closing basins from all new appropriations. NMSA Section 72-2-8. . Moreover, in the instant case, the Court has already made finding regarding the limited water supply in the Pojoaque Basin. See January 13, 1983 *Order* (No. 541). Objections that the State Engineer does not have the authority to close the Pojoaque Basin, or that there is no basis for doing so, are not well taken, and should be overruled.

2. Anti-donation clause/NM Constitution (Category u)

A number of objections complain that the Settlement Agreement is at odds with the State's Anti-Donation Clause and otherwise violates the Constitution of the State of New Mexico, and in particular, that the State does not have the authority to enter into the *Aamodt* Settlement without the approval of the State Legislature because the Settlement Agreement is in the nature of a "compact" under New Mexico law. None of these objections are well taken.

Specifically, one April 7, 2014 Objection argues that with the *Aamodt* Settlement Agreement, "a member of the executive (in this case New Mexico State Engineer instead of the Governor) has signed a tribal settlement or compact without statutory authorization of the New Mexico Legislature." No. 9011 at paragraph 5. That objection goes on to explain:

> The proposed settlement has not been submitted to the New Mexico Legislature for enactment or rejection or modification, as required in [*State ex rel. Guy Clark, George Buffet, and Max Coll v. Gary Johnson*, 1995-NMSC-048, 120 N.M. 562]. In an opinion by Justice Minzner, this Court held unanimously that a governor (in this case a member of the executive, the State Engineer) does not have the constitutional authority to bind the State of New Mexico to a compact with an Indian Tribe without a statute.

Id. This assertion is not correct. The operative signature on the *Aamodt* Settlement Agreement is not that of the Governor or the State Engineer, but of the Attorney General. The New Mexico

Legislature charged the Attorney General with the general duty to "prosecute and defend in any other court or tribunal [in addition to the New Mexico Supreme Court] all actions and proceedings, civil or criminal, in which the state may be a party," NMSA 1978, § 8-5-2(B) (1975), and has explicitly and unmistakably authorized the Attorney General to act on behalf of the State to adjudicate water rights and to enter into settlements of claims. By passage of the 1907 water code, the Territorial Legislature set forth the procedures and requirements for determination of rights to use waters within the State of New Mexico. *See* NMSA 1978, §§ 72-4-13 to -19 (1907). The adjudication statutes authorize and direct the State Engineer to conduct hydrographic survey work necessary for the determination of rights, *id.* at §§ 13-17, and direct the Attorney General to "enter suit on behalf of the state for the determination of all rights to the use of such water . . . . and diligently prosecute the same to a final adjudication ". *Id.* at §15. Additionally, the Legislature has also specifically charged the Attorney General with the power to compromise or settle any suit or proceedings in NMSA 1978, § 36-1-22 (1876).

The objection's reliance on *State ex rel. Clark v. Johnson* is unavailing. The New Mexico Supreme Court in *Johnson* considered whether by signing Indian gaming compacts the Governor had infringed on powers properly belonging to Legislature, in particular the Legislature's power to regulate gambling. The Court determined that a violation of separation of powers occurs when an action by one branch of government disrupts the proper balance with another branch, and thereby prevents the other branch from accomplishing its constitutionally assigned functions. 120 N.M. 562, 574, 904 P.2d 11, 23, 1995-NMSC-048 (1995). With respect to the effect of the executive branch action's on legislative functions the Court noted:

> One mark of undue disruption would be an attempt to foreclose legislative action in areas where legislative authority is undisputed. The Governor's present authority

> could not preclude future legislative action, and he could not execute an agreement that foreclosed inconsistent legislative action or precluded the application of such legislation to the agreement.

Id. Because the Governor had no express or implied authority to bind the State to terms of a gaming compact falling squarely within an area regulated by the Legislature and inconsistent with existing statutory law, the Governor's action violated constitutional separation of powers. *Id.* 120 N.M. at 574-76, 904 P.2d at 23-25.

In contrast to the facts and holding in *State ex rel. Clark v. Johnson*, no further legislative approval was needed in order for the Attorney General to execute the Settlement Agreement here. The executive action in *Johnson* infringed on an area directly regulated by the Legislature without either an express or implied legislative grant of authority to the executive. *Id.* By contrast, the authority of the Attorney General in litigating and settling Indian water rights adjudication claims derives from state law in existence for over a century. NMSA 1978, § 36-1-22 (1876); NMSA 1978, § 8-5-2(B) (1975); NMSA 1978, §§ 72-4-13 to -19 (1907).

Moreover, the New Mexico Legislature has been kept informed regarding the substance and status of the *Aamodt* Settlement for years. Lawmakers review Indian water rights settlements through an Indian Water Rights Settlement Report, which the State Engineer and the Interstate Stream Commission Director provide annually to lawmakers. The State Engineer and staff as well as the Interstate Stream Commission Director also have briefed members of the New Mexico Legislature extensively on the details of the *Aamodt* Settlement and the other Indian water rights settlements over the last several years. In response, the lawmakers have made multiple appropriations to the Indian Water Rights Settlement Fund to implement the Indian water rights settlements, including *Aamodt*.

That same April 7, 2014 Objection also complains that the Settlement Agreement somehow violates the Rio Grande Compact:

> The 2,500 acre-feet of imported water will come from the Rio Grande, therefore, can be potentially leased outside the basin. Thus, there is nothing requiring the Pueblos to keep the 2,500 acre-feet of wet water inside the basin. These waters are diverted just north of the Otowi gauge, possibly violating the Rio Grande Compact depending on where the water is leased.

No. 9011 at paragraph 4. This is false. The reality is that such water may not be leased outside the Pojoaque Basin. With regard to such Acquired Water, the Settlement Agreement expressly provides:

> 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.

Section 2.5.1 (emphasis added). The notion that Acquired Water might be leased outside the Pojoaque Basin is at odds with the express terms of the Settlement Agreement. As such, the Acquired Water will remain in the Pojoaque Basin, and north of the Otowi gauge. Moreover, any transfer of water for use as Acquired Water under the Settlement Agreement in the Pojoaque Basin will have to be permitted by the State Engineer. Such a permit would not be granted if it would violate the Rio Grande Compact.

The April 7, 2014 objection also complains that the Settlement Agreement somehow exempts the Regional Water Authority from certain State statutes:

> As a New Mexico Legislator and a taxpayer in Santa Fe County and State of New Mexico, I do **not** agree with Section 9.4.1.1 of the Settlement Agreement. In this Section, the Regional Water Authority (RWA) is not subject to the to the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, New Mexico Audit Act, Sections 12-6-1 through 12-6-14, NMSA 1978, or any successor to such law.

No. 9011 at paragraph 2 (emphasis in original) (emphasis added). Again, this is false. The Settlement Agreement does not provide for such an exemption. The Settlement Agreement actually

states that "[p]rior to the entry of the Final decree, the State must, by legislation, regulation or administrative order":

> 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;

Section 9.4.1.1. In other words, the Settlement Agreement requires that the State must pass legislation to allow those exemptions if those exemptions are necessary. It absolutely does not provide that the Regional Water Authority is not subject to those sections, nor could it.

> Finally, certain of the objections assert that the Settlement Agreement in some way violates the State's Anti-Donation Clause. A March 10, 2014 Objection states: "Hookups into my property are not paid for using the hookup funds because of the anti-donation clause." No. 8191 at 3. This objection does not state how the anti-donation clause is implicated. . Funds from the Water Connection Fund to be provided under the Settlement Agreement to cover the cost of connecting to the CWU are only available to settling parties that agree to transfer their water rights to the CWU. Further, the Settlement Agreement provides that the State Engineer shall promulgate rules respecting the administration of the Water Connection Fund.

Section 3.1.7.3. As such rules have not yet been developed, any allegations regarding violations of the anti-donation clause are purely speculative and impossible to assess. These objections should be dismissed.

3. The Settlement does not violate Equal Protection (Category z)

> Pre-Printed Attachment B states:
>
> 13. Defendant objects to the Settlement Agreement as it violates the Equal Rights and Protection Clause of the Constitution. It allows one group of people rights and protections that are denied to another group of people.

(emphasis added). Defendants do not state which group gets the rights and protections, which group is denied them, nor do they identify what rights and protections are involved. Exhibit B

paragraph 14 states "Defendant objects to the deprivation of due process and a violation of the Equal protection Clause of the Constitution and the State Open Meetings Act," and again in paragraph 16 that "Defendant objects to requirements of the Court which have deprived Defendant of fundamental fairness required by the 5th and 14th Amendments of our Constitution." Again Defendants fail to provide any particulars as to their equal protection claim, making an analysis of, and response to the objection impossible.

4. Lacks consideration; transfer of water rights before system complete; Pueblo protection from priority call not sufficient (Category I)

Several objections allege incorrectly that the Settlement Agreement requires the transfer of water rights before the Regional Water System is complete, and that there is a corresponding lack of consideration. Pre-Printed Attachment A states:

> 12. Defendant objects to the transfer of his domestic well water rights to the county water utility upon entry of the partial final decree (Sec. 8.1). Given the state of required agreements, rules, funding, and easement acquisition that have not been completed, Defendant would not be connected to the regional water system until the year 2024 (possibly) without just compensation. The settlement agreement is void for lack of consideration.

(emphasis added); similarly, Pre-Printed Attachments B states:

> 11. The Defendant objects to the transfer of the Defendant's domestic well rights to the County water utility upon entry of the Partial Final Decree. Due to the lack of certainty concerning rules, easements, required agreement and funding, the water system installation may be delayed for an indefinite period of time. There is no provision for compensation to the Defendant for transfer of water rights without certainty concerning the timeline and costs associated with the Defendant's ability to connection [sic] to said system.

(emphasis added).

These objections misstate the provisions of the Settlement Agreement. First, no party is required to transfer their domestic well water rights to the County Water Utility (CWU) unless

they elect to connect under the Settlement Agreement. Second, if they do elect to connect, no water rights are required to be transferred simply upon entry of the Partial Final Judgment and Decree. If a party does elect to connect to the County Water Utility, Section 3.1.7.2.1 of the Settlement Agreement provides that the owner will only discontinue the use of such well for domestic purposes "upon connection to the CWU." (emphasis added). There is no requirement anywhere in the Settlement Agreement that any party transfer a water right to the CWU "upon the entry of the partial final decree," as the objectors allege, or at any other time prior to receiving service from the utility. See Section 3.1.7.2.1 (They shall "upon written notice from the CWU, connect to the CWU for domestic water service as soon as such water 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.") In fact, the Settlement Agreement expressly provides that those making the election to connect to the CWU "shall be permitted to continue to use [their] well . . . until they are able to connect to the CWU and obtain service." 3.1.7.2.1.

And Settlement Parties are free to make an election not to connect to the CWU at all. Correspondingly, such a Settling Party would never be obligated to transfer their permit or domestic well water right to the CWU. Indeed, section 3.1.7.1 of the Settlement Agreement specifically provides that: "[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 that well." For these reasons, the objections based on the allegation that there is a lack of consideration or that they are required to transfer their domestic well water rights under the Settlement Agreement should be overruled.

D. Domestic Wells

There are a number of objections that are based on concerns about the treatment of domestic wells under the Settlement Agreement: that the Settlement Agreement provides for an unconstitutional "taking" of the objectors domestic well water rights, that it is at odds with the State's domestic well statute, that the indoor use restriction for wells permitted after 1983 arises unlawfully from the Settlement Agreement, and that shared wells are not spoken to by the Settlement Agreement in any way. None of these objections are factually or legally correct.

1. Taking/Injury to Property Value (Category a)

In a variety of ways, many objections complain that the Settlement Agreement causes an improper taking of domestic well water rights or otherwise reduces the value of the objectors' property as a result of transactions involving domestic well water rights. More specifically, these objections allege that the Settlement Agreement allows the County Water Utility to take the objectors' domestic well water rights without compensation, that it arbitrarily reduces the quantity of the objectors' domestic well water rights, and that it otherwise misquantifies the objectors' domestic well water rights. For instance, an objection in Exhibit A incorrectly asserts that the Settlement Agreement reduces domestic well water rights to 0.5 AFY:

> 1. By the terms of the settlement agreement (See Section 3), the beneficial use of 3.0 AFY of groundwater granted by permits issued after 1956 by the New Mexico State Engineer, are reduced to 0.5 AFY without just compensation, arbitrarily and in violation of the Domestic Well Statute (Sect. 72-12-1.1; NMAC 19.27.5.9).

(emphasis added); Similarly, an objection in Exhibit B complains that beneficial use is impossible to define:

> 4. Defendant objects to the method in which the OSE has come up with "Beneficial Use." Beneficial use has not been fully defined. There is no proof as to what Defendant's historical beneficial use is at this point. The State Engineer

> does not have the authority to determine Defendant's water rights.

(emphasis added); and in Exhibit C:

> 5. My rights to beneficial use of groundwater are reduced without consideration or just compensation.

(emphasis added).

These objections are factually and legally incorrect. There are no provisions in the Settlement Agreement that "reduce" a domestic well owner's "beneficial use."

The objections cited above seem to suggest an expectation on the part of the objectors that generally speaking a domestic well permit to appropriate up to three acre feet of water per year is equivalent to a water right. It unambiguously is not. This Court has already held many times that a permit is not a water right. More specifically, on September 20, 2012, this Court held:

> A permit is not a water right and Trujillo does not cite any authority, nor did the Court find any authority, for the proposition that a permit to appropriate water is a perfected property right. "A water permit is an inchoate right, and is the necessary first step in obtaining a water right. It is the authority to pursue a water right – a conditional but unfulfilled promise on the part of the state to allow the permittee to one day apply the state's water in a particular place and to a specific beneficial use under conditions where the rights of other appropriators will not be impaired." *Hanson v. Turney*, 136 N.M. 1, 3 (Ct. App. 2004) (Language in New Mexico water statutes "is compelling evidence that the legislature did not intend to allow permit holders who had not yet applied any water to beneficial use to be considered owners of a water right"); see also N.M. Stat. Ann. § 72-12-8 (distinguishing an "owner of a water right" from a "holder of a permit").

Memorandum Opinion and Order at 6 (No. 7757) (emphasis added). This Court then held that water rights for domestic wells in New Mexico are limited to the quantity of water beneficially used, and noted that in the Zuni River Basin Adjudication the Court stated:

> New Mexico law is clear on the subject. The constitutional provision and statutes . . . as well as abundant case law clearly state that beneficial use defines the extent

> of a water right. This fundamental principal is applicable to all appropriations of public waters. Only by applying water to beneficial use can an appropriator acquire a perfected right to that water.

Id. at 7 (citing *United States v. A & R Productions*, No. 01cv72, Doc. No. 733 at 4, filed June 15, 2006 (D.N.M.) (Black, J.) (citations and quotation marks omitted). That the objectors' water rights are defined by beneficial use arises from New Mexico water law, and applies to the objectors whether or not the Settlement Agreement is approved.

With regard to the notion that the objectors' water rights "are reduced to 0.5 AFY" by the Settlement Agreement, or that '[t]here is no proof as to what Defendant's historical beneficial use is at this point," this again is false. This Court has already found that the quantity of water beneficially used from a domestic well when water from that well can be used for both indoor and outdoor purposes in this Basin is an average of 0.3 acre-feet per year based upon evidence from meter readings of domestic wells in the Basin:

> The State pointed to the Water Master Report filed in this case which includes meter readings for over 300 post-1982 domestic wells. (See Doc. No. 6127, filed April 25, 2005. The owners of wells in the Water Master Report had entered into a settlement agreement which allowed them to divert 0.7 acre-feet per year for both indoor and outdoor use of water. The meter records for those wells showed an average use of 0.3 acre-feet per year. (See Doc. No. 6186 at 3). Because there were no objections to the State's motion and for good cause shown, the Court ordered claimants of unadjudicated water rights under post-1982 well permits to show cause why the water right quantity for post-1982 well permits should not be adjudicated as 0.5 acre-feet per year consistent with the terms of the domestic well permit. (See Doc. No. 6194, filed December 11, 2006).

Id. at 9-10. Indeed, several years' worth of annual water master reports filed with the Court consistently support the fact that beneficial use from domestic wells for both indoor and outdoor use varies little from the average of 0.3 acre-feet per year cited above, and is frequently even less than that. See e.g., *Notice of Filing 2010 Report of Post Moratorium Wells Water Master*,

Exhibit 1 at 2 ("Based on these readings the average use for each household decreased from the previous year to approximately 0.235 acre-feet per annum") (No. 7693-1); see also *Notice of Filing 2009 Report of Post Moratorium Wells Water Master*, Exhibit 1 at 2 ("Based on these readings the average use for each household is approximately 0.271 acre-feet per annum") (No. 7035-1); *Notice of Filing 2008 Report of Post Moratorium Wells Water Master*, Exhibit 3 Tabulation at 8 ("0.296 Average Use Per Meter") (No. 6740-3); see also *Notice of Filing 2007 Report of Post Moratorium Wells Water Master*, Exhibit 3 Tabulation at 8 ("0.296 Average Use Per Meter") (No. 6374-3).

Further, the State Engineer is not determining any party's water rights in this adjudication. The New Mexico Attorney General, not the State Engineer, is representing the State in adjudicating the water rights in this stream system pursuant to the statutory authority expressly granted in NMSA Section 72-4-15 (1907).

The only reduction of use required under the Settlement Agreement is voluntary -- a Settlement Party can voluntarily agree to reduce their use in return for receiving certain benefits of the Settlement Agreement. For example, Section 3.1.7.2 provides that "in order to be protected from 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" in some cases, to reduce their use. See e.g., Section 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"). However, these provisions are elective, and only apply where a party's beneficial use is actually above 0.5 AFY, which, as shown above, is much greater than the average beneficial use from domestic wells in the Basin. And, a settling

well owner can always choose to keep their well and not connect to the CWU or reduce their water usage pursuant to Section 3.1.7.1.

In sum, beneficial use is the basis, the measure, and the limit of a water right, including domestic well water rights, and domestic wells on average use far less than the 0.5 AFY protected by the Settlement Agreement. The Settlement Agreement does not result in a taking of property, the objectors have failed to show it would injure property values, and the objections should be dismissed.

2. Violates Domestic Well Statute (Category f)

Several objections argue that the Settlement Agreement is contrary to New Mexico's domestic well statute. In particular, two of the form objections assert that the Settlement Agreement "declares a minimum amount of water for household uses that is immune from priority call" in violation of New Mexico law. In exhibit A, an objection states:

> 17. The Settlement Agreement denies the protection afforded by the New Mexico Legislature to domestic well owners by declaring a minimum amount of water used for household uses that is immune from priority call. (Sect. 72-12-1.1; NMAC 19.27.5.9). Defendant objects to the denial of protection afforded by the state water code and related rules and regulations. (NMAC 19.27.5)

(emphasis added); and in almost identical fashion, in Exhibit B:

> 12. The Defendant contends that the Settlement Agreement denies the Defendant the protections afforded domestic well owners under New Mexico law. Section 72-12-1.1 of the NMAC protects the owners of domestic wells by declaring that a minimum amount of water used for household purposes should be immune from a priority call. Defendant therefore objects and states that Defendant is being denied the protections embodied in the State [W]ater Code.

(emphasis added).

These objections misstate the law. There is no protection from priority call provided for by New Mexico's domestic well statute. Neither Section 72-12-1.1 NMSA 1978 nor its

predecessor statutes have ever given protection from priority call for any uses of water. Neither does NMAC 19.27.5.9 provide for any protection from priority call. This is exactly what the New Mexico Supreme Court held in *Bounds v. State ex rel. D'Antonio*: "Nothing in the language of the [Domestic Wells Statute] prevents domestic well permits from being administered in the same way as all other water rights, including priority administration—exactly what Article XVI, Section 2 of the New Mexico Constitution requires." 2013-NMSC-037, 306 P.3d 457, 465 (2013). The Supreme Court added:

> Significantly, according to the very permits that authorize them, domestic wells are "subject to curtailment by priority administration as implemented by the state engineer or a court." 19.27.5.13(B)(11) NMAC. Curtailment by priority administration authorizes the State Engineer to limit water use administratively in times of water shortage to protect senior water rights. *See* NMSA 1978, § 72–2–9 (1907) (giving the State Engineer authority to supervise the apportionment of water in New Mexico).

Id. at 466-467.

On the other hand, although New Mexico's domestic wells statute does not provide any protection from priority calls, the Settlement Agreement actually does. Section 4 of the Settlement Agreement provides that Settlement Parties that have made an election for their well under Section 3.1.7.2, shall be protected from priority enforcement of the Pueblos' water rights. This is a protection that is not provided under state law, but only by voluntary agreement of the Pueblos in the Settlement Agreement. *Aamodt* Settlement Agreement at 35.

This category of objections should be overruled.

3. Water Quantity Insufficient to Meet Needs (Category o)

A number of objections to the Settlement Agreement in fact appear to be objections to the Court's January 13, 1983 *Order* (No. 753) which granted a motion for a preliminary injunction,

and required the State Engineer to limit all future domestic well permits to indoor use only.

More specifically, in Exhibit A:

> 26. Defendant objects to the arbitrary restriction against outdoor use of a domestic well for irrigation of non-commercial trees, gardens or lawns as a deprivation of procedural and substantive Due Process of Law.

(emphasis added)and in Exhibit C:

> 2. The restriction against outdoor use of a domestic well for irrigation of non-commercial trees, gardens or laws [sic] is arbitrary.

and

> 4. The settlement agreement is coercive by granting domestic well owners who agree to the settlement agreement 0.5 AFY while well owners who desire to keep their wells and not connect to the regional water system are only granted 0.3 AFY. A claimant who agrees with the settlement agreement may use 0.5 AFY for indoor and outdoor domestic uses, but a well owner who does not agree with the settlement agreement is subject to the preliminary injunction.

(emphasis added). These objections are unfounded. The restriction against outdoor use arises from the Court's January 13, 1983 *Order*, and is not a creation of the Settlement Agreement.

On February 26, 1982, the U.S. and the four Pueblos filed a *Motion* (No. 576) seeking an injunction barring the State from issuing any well permits under Section 72-12-1 NMSA 1978. Following oral argument, on January 13, 1983 the Court ordered that:

> No permits to appropriate underground waters shall be issued within the Rio Pojoaque stream system under Section 72-12-1, N.M.S.A. 1978. Permits may issue limited to the use of water for household, drinking and sanitary purposes within a closed water system that returns effluent below the surface of the ground minimizing and [sic] consumptive use of water. All subject to further orders of the court.

No. 641. All domestic well permits issued by the State Engineer since that time have included the indoor use restriction.

In the years since, the Court has spoken many times to the validity of the January 13,

1983 preliminary injunction. See e.g. March 30, 2012 *Memorandum Opinion and Order* (denying motion to quash January 13, 1983 preliminary injunction) (No. 7579); see also June 2, 2011 *Memorandum Opinion and Order* (denying motion for relief from January 13, 1983 *Order*) (No. 7398); see also September 20, 2012 *Memorandum Opinion and Order* (denying defendant's objection to Special Master's *Order* granting summary judgment in part on the basis of the validity of the 1983 preliminary injunction) (No. 7757). To the extent the objectors' domestic well water rights are limited to indoor use, it is due to conditions in their permits imposed pursuant to the Court's 1983 *Order*, and definitely not due to the Settlement Agreement.

Moreover, the Settlement Agreement, far from limiting the Settlement Parties to indoor use, actually does the opposite. In most cases, for domestic well water right owners under permits issued after January 13, 1983, the State has agreed in the Settlement Agreement to lift the permit limitation to indoor use. For instance, under Section 3.1.7.4.1.4, wells subject to permit restrictions imposed under the Court's January 13, 1983 Order will have uses up to 0.7 AFY or historic beneficial use, whichever is less, protected from enforcement of priorities, for "indoor and outdoor use combined." (emphasis added)). Objections that the Settlement Agreement does the opposite are factually incorrect, and should be overruled.

Another group of form objections complain that the Settlement Agreement somehow limits or quantifies water rights at a level which is insufficient to meet the objectors' needs. One *Objection* (No. 8308) states "[l]imitation on my current water usage will deprive my future family development." Another *Objection* (No. 8400) states "[l]ivestock, alfalfa, orchards will be affected" and another (No. 8418) states the Settlement Agreement "jeopardizes future and historical generation use" and "free access to fire department, our community." *Objection* ("I

want to be able to water livestock, alfalfa fields, garden vegetables, garden flowers, trees, landscape, small orchard, some of which I sell.") (No. 8438); Objection ("We want our 3 acre feet of water.") (No. 8546); see also Objection ("need water for garden and trees and household use . . . retired need to work on garden and yard to stay busy.") (No. 8601). These objections misunderstand the basis for the determination of their water rights. As noted above, water rights are quantified based on actual, historical, beneficial use. Water rights are not quantified based on future need, or the 3.0 acre-feet permit limit, or the terms of the Settlement Agreement. To the extent a party has beneficially used water under an adjudicated water right or permit from the State Engineer, they will be able to continue doing so if the Settlement Agreement is approved. The Settlement Agreement does not adjudicate or determine their water right, but it does provide protections for water right owners that agree to accept its determination of the Pueblos' water rights. These objections have no basis in fact or law and should be overruled.

4. Shared Wells Not Addressed (Category v)

A number of non-form objections complain that the Settlement Agreement is vague or detrimental or discriminatory toward shared domestic wells. A March 26, 2014 *Objection* states simply:

> Shared well – less water rights than with individual wells. No possibility of hookup to planned water system. No city hookup possible.

No. 8312 at p. 2. Another March 26, 2014 *Objection* recites that the objector is possessed of a shared well, and then states:

> Only two properties have full time residents (each with only two persons) and the third (with only one full time resident) No. 14 Tano Point Lane is for sale. Because of Aamodt we will/may be significantly limited in our water usage thus deterring any possible future sales and more immediately, creating severe inconvenience to our already conservative water usage.

No. 8313 at 3. See also March 26, 2014 *Objection* at 3 (No. 8321); March 26, 2014 Objection at 3 ("By detrimentally relying on well use and rights not being diminished by Aamodt, the three parties to the shared well use agreement have been physically and financially harmed) (No. 8320) (emphasis added); March 10, 2014 *Objection* at 3 ("The rules for shared wells are not to be found in the settlement documents.") (No. 8191). Similarly, an April 1, 2014 *Objection* at p. 5 states:

> 5).—No where [sic] in the settlement agreement is there any provision in writing providing specifically what my rights, protections, or enforcement of non-compliance are because I have a **shared well**. No provision exist [sic] in the Interim Administrative Order and Settlement Agreement that addresses this situation of a **shared well.**

No. 8384.

These objections misunderstand the Settlement Agreement's treatment of shared wells. Section 3.1.2.2 describes an evidentiary presumption with regard to quantity that "historic beneficial use from a well is presumed to be .5 AFY per household." Section 3.1.2.2 (emphasis added). This is not a quantity per well, but rather a quantity *per household*, and as such, while there is no express provision regarding shared wells, under Section 3.1.2.2, their rights are not "reduced."

Beyond that important recognition that shared wells are quantified based on the number of households served by the well, and not limited to a quantity per well, the Settlement Agreement otherwise makes no distinction between single user wells and "shared" or "multiple-household" wells. Rather, it speaks to domestic wells generally, and within the category of domestic wells, both single household and multiple household wells are included. The provisions of the Settlement Agreement apply to both.

For example, Section 3.1.7.4.3.1 speaks to "Pre-Basin Wells" only. It makes no

distinction between Pre-Basin single household domestic wells and Pre-Basin shared or multiple-household domestic wells. Similarly throughout the rest of the Settlement Agreement both single household and multiple-user wells are included under the general headings of domestic wells. No carve-out or distinction regarding "multiple-household" or "shared wells" exists under the Settlement Agreement.

5. Property exempt from Settlement (Category d)

One objector claims that his property is exempt from the Pueblos' claims: "Property deed signed by Herbert Hoover ... specifically segregates this well property from all future Indian pueblo claims or federal claims." *Objection* of Richard C. Bibb, filed March 4, 2014 (Dkt. No. 8096). The objection does not explain how a land deed exempts the owner from the adjudication and administration of water rights Assuming the objector is referring to a deed recognizing a Private Claim under the 1924 and 1933 Pueblos Lands Acts, the Tenth Circuit in *Aamodt I*, found: "The water rights of the Pueblos are prior to all non-Indians whose land ownership was recognized pursuant to the 1924 and 1933 Acts." 537 F.2d at 1113.

E. Treaty of Guadalupe Hidalgo and Acequia Rights

This section responds to concerns that the settlement violates non-Pueblo rights under the Treaty of Guadalupe Hidalgo, including detrimental effects to historic acequias. In negotiating the Settlement Agreement, a key objective of the State and non-Pueblo parties was to protect existing irrigation by acequias and other non-Pueblo surface water rights holders.

1. Treaty of Guadalupe Hidalgo (Category s)

A handful of individual objectors oppose the settlement as contrary to the Treaty of Guadalupe Hidalgo: "The settlement forgoes the Treaty of Guadalupe Hidalgo Rights and

doesn't consider the protections of those rights." *Objection* of Paul White, filed March 10, 2014 (Dkt. No. 8191) at p. 3 of 6. See *Objection* of Eric Valdez, filed April 1, 2014 (Dkt. No. 8379) (settlement challenges the Treaty of Guadalupe Hidalgo 1848, stating no 'superior access' water rights by anyone, tribe, other entities before 1848); *Objection* of Stephanie Kelly, filed April 7, 2014 (Dkt. No. 8899) (Treaty of Guadalupe Hidalgo requires Pueblo post-1846 rights to be treated the same as all others); *Objection* of Lucy Cornwell, filed April 7, 2014 (Dkt. 9124) (Treaty of Guadalupe Hidalgo, Constitution violated by changing priority dates).

"In the Treaty of Guadalupe Hidalgo, the United States agreed to protect rights recognized by prior sovereigns." *Aamodt I*, 537 F.2d at 1108-1109. In *Aamodt II*, the Court held:

> Acreage under irrigation in 1846 was protected by federal law including the Treaty of Guadalupe Hidalgo, *supra*, and the 1851 Trade and Intercourse Act, *supra*. The Pueblo aboriginal water right, as modified by Spanish and Mexican law, included the right to irrigate new land in response to need. Acreage brought under irrigation between 1846 and 1924 was thus also protected by federal law.

618 F.Supp at 1010. As described in section B(1)(Category w) of this brief, the quantities and priority dates of the Pueblos' proposed water rights are based on the rulings of this Court. In holding that aboriginal title gave the Pueblos first priority, the Court rejected the arguments of the non-Pueblo ditches and acequias, most of which were established under Spanish and Mexican sovereignty, that water should be allocated under a "repartimiento" or equitable sharing system. *Compare Aamodt II* at 997-999 & 1005-1010 to *Certain Defendants' Requested Findings of Fact and Conclusions of Law*, filed Jan. 17, 2004, beginning at p. 11. *See* Mark F. Sheridan, *Pueblo Indian Water Rights, the Federal Law Sources, A Non-Pueblo Position* (Jan. 2002) (CLE International, Law of the Rio Grande conference). As discussed below in section E(2)(Category

n), the Settlement Agreement contains protections for water rights on acequias that will insulate them from strict priority administration that would otherwise apply under the Court's prior rulings.

2. Threatens Acequia System Culture (Category n)

Some objections assert the Settlement Agreement will harm traditional acequia uses:

> The settlement agreement protects the Pueblos' surface water rights from forfeiture but does not protect non-Indians from forfeiture (Sec. 2.10.2). Forfeiture eliminates a member of the acequia and threatens the survival of the acequia system.

Exhibit A, pp. 7 of 7, para. 25. As covered in section B(2)(Category i) and section A(5)(Category z), the settlement does not affect or modify the existing laws governing forfeiture of water rights.

Under the settlement, existing non-Pueblo water rights receive a number of protections they would not otherwise, as set out in detail in section B(1)(Category w). Without settlement, the Pueblos would be entitled to priority administration in order to satisfy the full amount of their first priority rights. By contrast, with the settlement the Pueblos are agreeing to substantial limitations on priority calls and administration.

The settlement provisions are specifically designed to protect the historic and continuing diversions of surface water rights from acequias. The Settlement Agreement limits a first priority call to the Pueblos' current uses, which are about a third of their total historic first priority rights. Section 4.2 of the Settlement Agreement provides that currently unexercised historic first priority rights of the Pueblos ("Future Basin Use Rights") will not be enforced against non-Pueblo water rights that continue in beneficial use, including diversions from acequias. This means that of the Pueblos' total first priority rights of 3,660 AFY, only the "Existing Basin Use Rights" of 1,391

AFY may be exercised and administered with a first priority against protected non-Pueblo surface water rights. As a result, almost two-thirds of the Pueblos' first priority rights, in the amount of 2,269 AFY, are effectively made a third priority.

Surface water administration under Settlement: non-Pueblo rights with Section 4 Protection		
First Priority	Pueblo Existing Basin Rights	1391 AFY
Second Priority	Non-Pueblos' Existing Uses with Section 4 Protection	continuing beneficial use as allowed by water rights
Third Priority	Pueblo Future Basin Rights	2269 AFY

This Section 4 protection's reversing of priorities would not occur without the settlement.

Section 4 protection, however, may be lost if the non-Pueblo water right is not beneficially used for more than five consecutive years in the future without justification or is transferred to a new point of diversion or purpose or place of use, with certain exceptions. *See* Settlement Agreement §§ 4.2.2 & 4.2.3. Some objectors have complained that loss of this protection amounts to forfeiture of the non-Pueblo rights. See *Objection* of Edward Romero, filed March 25, 2014 (Dkt. No. 8286) (I object that if some water rights are not beneficially used for more than five consecutive years forfeiture could occur which would eliminate that member of the Acequia). This objection confuses forfeiture of water rights under state law with the additional protection afforded by the settlement. Under the state forfeiture statutes, NMSA 72-5-28 (1957) and 72-12-8 (1957), if a party fails to beneficially use water for a period of four years before the State Engineer issues a notice and declaration of non-use, and an additional year after

the notice, the water shall revert to the public. Under the Settlement Agreement, if a non-Pueblo surface water right owner fails to irrigate for five years even though there is adequate supply, the water right is not forfeited, but rather may lose the priority protection agreed to by the Pueblos under Section 4. The potential loss of Section 4 protection is not the loss of an existing water right, as under state forfeiture, but rather the possible loss of a benefit that would not exist except under the Settlement. There is no potential for forfeiture of water rights under the Settlement Agreement.

Finally, it is noteworthy that both of the Basin's two large acequia associations support the Settlement Agreement and are filing briefs asking the Court to approve it and enter the Partial Final Decree. *See The Rio de Tesuque Association, Inc's Memorandum in Support of the Settlement Agreement and Entry of a Partial Final Decree on the Pueblos' Rights*, filed Nov. 6, 2014; and *Certain Non-Pueblo Defendants' Memorandum in Support of Entry of Partial Final Judgment and Decree,* Rio Pojoaque Acequia & Water Well Association, filed Nov. 6, 2014.

F. Settlement Implementation

Several objections relate to the implementation of the Settlement Agreement, including complaints that there is unequal representation on the board of the Regional Water Authority, the Settlement Agreement is not complete, certain documents have not yet been developed, and water quality, funding and the Settlement Agreements perceived costs to non-Settlement Parties have not been addressed. These objections should be dismissed because, as discussed below, the Court has already held that these issues related to implementation of the Settlement Agreement are irrelevant to the Court's consideration of the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree.

1. Unequal representation on board, the agreement is incomplete, details are not available, the rules have not been drafted, easements are not obtained, the EIS not complete (Category b and c)

Numerous objections oppose the Settlement Agreement because of a perceived unequal representation on the board of the Regional Water System or that the Settlement Agreement is not complete because the Joint Powers Agreement, the Operating Agreement, the Pojoaque Basin Rules and Regulations, and the Environmental Impact Statement, and the easements for the Regional Water System have not yet been provided or obtained. A February 4, 2014 Objection complains that "water board is 4 out of 5 sovereign nation which we are not a citizen of. So no representation. Takes 3 out of 5 to vote in changes." (No. 8094). Another, dated February 4, 2014, states: "Water board ruled by savereign [sic] nation; no representation for US citizen." (No. 8095); and one Objection dated March 12, 2014 states:

> I object to the JPA (joint powers agreement) or Water Authority Board proposed 4 tribal reps 1 county. Board should reflect interest of parties involved approx. 6000 non-tribal and 1000 tribal individuals.

(No. 8227); another from March 25, 2014 states "I object to the uneven representation on the Water Authority Board. This is unacceptable. There needs to be more non-pueblo representation." (No. 8288).

Exhibit A states:

> 13. The Joint Powers Agreement and the Water Master Rules for the District WaterMaster and the WaterMaster Rules for the N-P-T WaterMaster, including but not limited to the rules required by Section 5 of the settlement agreement, have not been presented or approved;
>
> And
>
> 10 . . . the rules governing the Water Master and the State Engineer in the context of the Settlement Agreement have not yet been adopted. Furthermore, the Joint Powers Agreement, Water Rules for the District Water Master and Water Master

> Rules for the NPT Water Master have not been presented or approved as required by Settlement Agreement.

(emphasis added). Similarly, Exhibit C states: "I object to the entry of the partial final decree before all funding, agreement, rules, reports, and technical information have been provided and approved"; Exhibits D and E, as well as many individual objections which raise basically the same concern.

The Court has already ruled that these objections are not relevant to the Court's approval of the Settlement Agreement or entry of the Partial Final Judgment and Decree. In its September 12, 2014 *Memorandum Opinion and Order Overruling Objection to Magistrate Judge's Order Denying Motion for Partial Stay* the Court rejected exactly the same assertion these objections raise, namely that these subsidiary documents must be completed before the Settlement Agreement can be approved, stating that:

> Defendants have not shown that the requested documents are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law.

No. 9674 at 3. The Court was affirming the Magistrate Judge's *Order*, which examined the same issue, and stated:

> Defendants argue that without these documents, they are unable to determine the feasibility of the Regional Water System. Defendants' argument is not persuasive because the feasibility of the Regional Water System is not one of the criteria relevant to the approval of the Settlement Agreement. Furthermore, the Settlement Act provides for the right to void the final decree if the Regional Water System is not substantially complete by June 30, 2024. If the final decree is void because the Regional Water System is not substantially complete by June 30, 2024, the Settlement Agreement will no longer be effective.

July 7, 2014 *Order* at 3 (citations omitted) (No. 9473). The Magistrate Judge went on to find that the Defendants' other arguments regarding the unavailable documents was equally unpersuasive:

> Defendants also argue that because the requested documents are not available, there is a risk of "erroneous deprivation of water rights," and make the conclusory allegation that approval of the Settlement Agreement could "potentially result in the loss of water rights and the loss of rights and immunities guaranteed by state law, depending on how the relevant agreements, rules, and reports are drafted and how the system is designed." Section 3 of the Settlement Agreement sets forth the non-Pueblo water rights. Defendants do not identify any provisions in the Settlement Agreement or the Settlement Act which would provide for deprivation of the water rights set forth in the Settlement Agreement based on provisions in the requested documents.

Id. at 3-4. The Magistrate Judge therefore concluded, as did the Court, that "Defendants have not shown that the requested documents are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law." *Id.* at 4.

Further, the Court held that the argument that the requested documents are not consistent with the applicable law is meritless on its face because the requested documents do not yet exist. No. 9674 at 5. The same applies now to the instant objections. The objectors have failed to show that the requested documents concerning the implementation of the Settlement Agreement are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law. The objections should be overruled.

2. The Settlement Agreement will not adversely affect water quality (Category e)

Several individual objections raise issues of water quality concerns. One February 4, 2014 Objection complains that "well water – purity needed for elderly resident (age 75)" (No.

8096); another filed March 5, 2014 states "no good to give treated water to livestock will open other doors for further problems" (No. 8157); another from March 10, 2014 states: "we have good drinking water. Water from the Rio Grande would be a health issue." (No. 8187). These objectors fail to state how the Settlement Agreement would affect the quality of their well water, nor could they, as nothing in the Settlement Agreement would do that.

First, if their concern is that the Settlement Agreement requires them to take water from the County Water Utility ("CWU"), and they fear the quality of that water might be an issue, their concerns are misplaced. Nothing in the Settlement Agreement forces any person to connect to the CWU. Connecting to the CWU is completely voluntary. As expressly stated in Section 3.1.7.1 of the Settlement Agreement :

> [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 that well.

In fact, unlike water supplied under individual domestic wells, the water supplied by the CWU must meet federal and state regulatory standards for drinking water quality. Therefore, the only effect that the Settlement Agreement may have upon the quality of their water is the opportunity to improve it by connecting to the CWU, an opportunity that does not currently exist without the Settlement. The objections as to water quality should be overruled.

3. Funding concerns: connection fund/impairment fund (Category h)

Several objections complain about a perceived uncertainty as to funding for various aspects of the Settlement Agreement. "The funds needed to connect to the system have not been fully explained and allocated." Exhibit B at paragraph 6. "Additionally, since the design is not fully completed and firm costs established, there is potential that the construction costs for the

system may exceed the early estimates. If this is the case, then the excess costs may be covered through an increase in taxes that will affect the Defendant negatively." Exhibit D (emphasis added). Certain other individual objections complain specifically with regard to uncertainty regarding funding of the impairment fund:

> If the Pueblos impair or damage my water rights, the non-Indian has no enforcement rights. If the impairment fund has no money in it non-Indian has no remedy for impairment[.]

(emphasis added) (No. 8406). Others are concerned about uncertainty regarding funding of the connection fund. None of these objections identify how these funding concerns are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law.

4. Personal financial situation/cost (Category r)

Another group of objections express similar concerns that the Settlement Agreement will impose costs on them which they will be unable to support. "The funds needed to connect to the system have not been fully explained and allocated. Therefore, the Defendant is unable to determine what the costs of connection will be and whether Defendant is financially able to afford such connection." Exhibit B, paragraph 6. (emphasis added). Additionally, certain individual objections express concerns that the Settlement Agreement will impose costs on them which they will be unable to support. One, filed March 5, 2014, states "I don't want another bill to pay every month" (No. 8157); another filed March 31, 2014 states; "we cannot afford to pay"; and yet another filed April 2, 2014 states: "We paid good money for the well. Is somebody going to reimburse us? Money is limited." (No. 8439).

These objections misunderstand the provisions of the Settlement Agreement. The

Settlement Agreement does not require any person to cease using their well or to connect to the CWU, or to be subject to future costs associated with such a connection. In fact, for those parties who elect to connect to the CWU when it is available under section 3.1.7.2.1, their connection costs will be paid out of the Connection Fund. Indeed, under the Settlement Agreement, no person making an election to connect to the CWU under Section 3.1.7.2.1 shall be required to connect to the CWU "unless all connection expenses are paid by the Pojoaque Valley Water Utility Connection Fund or other third party." Section 3.1.7.3. As such, these objections should be dismissed.

III. Conclusion

The Objection form approved by the Court required parties filing objections to state the specific legal and factual basis for their objection, and how their water rights would be injured or harmed in a legally cognizable way by the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree and Interim Administrative Order. None of the objectors has identified how they will be injured by the Settlement Agreement or the entry of the proposed Partial Final Judgment and Decree in a legally cognizable way. All objections should be dismissed or overruled.

WHEREFORE The State of New Mexico *ex rel.* State Engineer, Santa Fe County and the City of Santa Fe request that the Court overrule the objections, approve the Settlement Agreement and enter the proposed Partial Final Decree.

Respectfully submitted this 6th day of November, 2014.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 6, 2014 I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel. State Engineer,	)	
Plaintiff,	)	
v.	)	
R. LEE AAMODT, et al.,	)	
Defendants,	)	
and	)	
	)	**NO. 66cv6639 WJ/WPL**
UNITED STATES OF AMERICA, PUEBLO DE NAMBE, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, and PUEBLO DE TESUQUE,	)	
Plaintiffs-in-Intervention.	)	

STATE OF NEW MEXICO, SANTA FE COUNTY AND CITY OF SANTA FE'S JOINT MEMORANDUM IN SUPPORT OF SETTLEMENT

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I. Introduction

The State of New Mexico *ex rel.* State Engineer ("State"), Santa Fe County and City of Santa Fe hereby file their Memorandum in support of their position that the Court should approve the Settlement Agreement and enter the Partial Final Judgment and Decree, pursuant to the August 8, 2014 *Case Management Order* (No. 9506).

On December 6, 2013, the Court entered its *Order to Show Cause*, ordering that all persons claiming water rights in the Nambe-Pojoaque-Tesuque stream system show cause why the Court should not approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree adjudicating the Pueblos' water rights. *Order to Show Cause and Notice of Proceeding to Approve Settlement Agreement and Enter Proposed Partial Final Judgment and Decree on the Water Rights of the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso* ("*Order to Show Cause*")(No. 8035). The Objection form approved by the Court required parties filing objections to state the specific legal and factual basis for their objection, and how their water rights would be injured or harmed in a legally cognizable way by the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree and Interim Administrative Order. By the April 7, 2014 deadline, 650 persons had responded by filing with the Court 792 objections to the Settlement Agreement and the proposed Partial Final Judgment and Decree. On August 8, 2014 the Court entered its *Case Management Order*, setting forth a briefing schedule to address those objections:

> Within 90 days of entry of this Order, the Settlement Parties shall file memoranda in support of their position that the Court should approve the Settlement

[1] Magistrate Lynch (and now confirmed by Judge Johnson) has already ruled that issues relating to settlement implementation are irrelevant to consideration of the Settlement and entry of the Partial Final Decree.

> Agreement and enter the Partial Final Decree at this time. Any other parties that have responded to the Order to Show Cause and have filed the form titled "Acceptance of Settlement Agreement and Notice of Domestic Well Election" may also file memoranda in support within 90 days of entry of this Order.

Case Management Order at 6-7. The Court also required the memoranda to address each of the filed objections by category, and state why any such category should be overruled or dismissed at this time. As detailed below, none of the objectors has identified how they will be injured by the Settlement Agreement or the entry of the proposed Partial Final Judgment and Decree in a legally cognizable way. All objections should be dismissed or overruled.

Objectors may be affected, but they are not negatively affected. They will receive many of the benefits of the settlement.

II. Objections to the Settlement Agreement and Proposed Partial Final Judgment and Decree

By the deadline of April 7, 2014, 650 objectors had filed 792 objections with the Court. Most of those 792 objections were simply copies of, or edited portions of copies of five different form objections, each enumerating a number of specific objections. Those five principal form objections are attached hereto as Exhibits A, B, C, D and E.

In addition to the five form objections, there were a number of filings where objectors had written in their own individual objections. Taken together, the enumerated objections contained in the five form objections, along with the unique written in objections which some objectors filed, were largely repetitive and fell into twenty-six identified categories:

a. Taking / Injury to property value
b. Unequal representation on water board
c. Agreement incomplete / Details not available / Rules not drafted / Easements not obtained / EIS not complete
d. Property exempt from settlement
e. Water quality concerns

f. Violates domestic well statute
g. Certified mail not used
h. Funding concerns: connection fund, impairment fund
i. Non-Indian has no enforceable rights / forfeiture
j. OSE conflict of interest / authority to award future water rights / declare basin closed
k. McCarran amendment violated / sovereign immunity not waived / US not bound as trustee
l. Lacks consideration: transfer water rights before RWS complete, Pueblo protection from priority call not sufficient
m. Pueblo water leasing ability
n. Threatens acequia system/culture
o. Water quantity insufficient for needs
p. Due process / no opportunity to participate in negotiations
q. Notice not received
r. Personal financial situation / cost
s. Treaty of Guadalupe Hidalgo
t. water delivery system will not extend to property
u. NM anti-donation clause / NM constitution
v. Shared wells not addressed
w. Pueblo uses of water
x. General dislike / Bill of Rights
y. Not enough time or information
z. Equal protection

Attached as Exhibit F is a matrix, cross-referencing each of the 792 objections with the issue categories listed above.

The twenty-six issues raised by the objections have been categorized into six general categories: A) Due Process / Notice / Equal Protection; B) Federal law / Indian water rights / Rights of Pueblos; C) The State had authority to enter into the Settlement Agreement, which is consistent with State law; D) Domestic wells; E) Treaty of Guadalupe Hidalgo and Acequia rights; and F) Settlement Implementation.

A. Due Process / Notice / Equal Protection

Objectors allege there was a lack of proper service of the Court's *Order to Show Cause*, and that as a result "there are many people currently deprived of due process and the opportunity

to protect their constitutional rights." However, Objectors fail to identify any water right claimant so deprived. Indeed, Objectors themselves obviously did receive notice given the fact that they are participating in this proceeding.

Moreover, Objectors fail to identify any failure by the State or the United States in complying with the Court's Orders regarding service, or any conflict with the Federal Rules of Civil Procedure. The procedures adopted by the Court for service of the *Order to Show Cause* were never objected to, the State and the United States followed the Court's directions to the letter, and the State made every reasonable effort to insure the mailing list was current and correct. In addition, the Court contemplated the likelihood that there would be unknown claimants and known claimants with unknown addresses, and for that reason also provided for publication and posting of the Order to Show Cause.

Further, extensive public outreach, including twenty public meetings, and a ten year history of community involvement in the *Aamodt* Settlement Agreement negotiations have contributed to an unprecedented level of public participation in this *Order to Show Cause* process. Over 1,000 responses to the Court's *Order to Show Cause*, acceptances and objection, have so far been filed.

1. Certified mail was not required to be used (Category g)

The Court has already examined the issue of "alleged lack of proper service," and found that its orders regarding service of the *Order to Show Cause* had been followed:

> The State filed an updated service list on December 2, 2013. The updated service list was prepared from the State's current adjudication records, the electronic public records of the office of the State Engineer, and the public records of irrigation districts, acequias and community ditches. In addition to mailing the Order to Show Cause to the persons on the updated service list, the State published the Order to Show Cause in English and Spanish in the Albuquerque

> Journal on January 3, 10, 17 and 24, 2014, posted the Order to Show Cause on the Office of the State Engineer's website, and posted the Order to Show Cause physically at the Office of the State Engineer, at the Santa Fe County Pojoaque Satellite Office and at the Utton Center in Albuquerque. Defendants make the conclusory allegation that service was not proper based on the fact that approximately 30 percent of the orders to show cause that were mailed to claimants were returned as undeliverable, but do not cite any authority demonstrating that service was legally insufficient.

Case Management and Service Order at 6 (citations omitted) (emphasis added) (No. 9506). Neither do any of the objectors "cite any authority demonstrating that service was legally insufficient."

Nonetheless, many form and individual objections complained that certified mail was not used to serve the *Order to Show Cause*. In Exhibit A:

> 2. The settlement agreement summary and order to show cause have been mailed by the state engineer to claimants of water rights by first class mail, rather than by certified mail, as the law requires. (Rule 4 FRCiv.P.).

and

> 3. . . . The state engineer's failure to use certified mail means that there is no easy way to know how many claimants are settlement parties that actually do not agree with the settlement agreement . . .

(emphasis added). Very similarly, Exhibit B states:

> 1. The Settlement Agreement summary and order to show cause have been mailed to claimants by the State Engineer, utilizing first class mail rather than certified mail. This is contrary to Rule 4 of the Federal Rules of Civil procedure. Thus, aside from the filing of these objections, the State Engineer has no proof that all claimant[s] received the copy of the Order to Show Cause
>
> . . .
>
> The failure to use certified mail means that it will be very difficult to ascertain the number of parties who actually agree with the Settlement and those who simply failed to receive the Order to Show Cause and thus did not respond.

(emphasis added).

As a practical matter, the objectors complaining about improper service have themselves been served. They clearly received the *Order to Show Cause*, as they have responded to it by filing objections. Moreover, none of the objectors complaining of improper service has been able to identify a single party who did not receive actual notice of the *Order to Show Cause*.

Rule 4 does not require that the Court's *Notice and Order to Show Cause* must be sent by certified mail. Fed.R.Civ.P. 4 speaks to summons and serving summons in order to join parties to a lawsuit, and is not applicable here. For serving and filing pleadings and other papers, such as the Court's *Order to Show Cause*, service is under Rule 5, which provides that:

> A paper is served under this rule by:
>
> . . .
>
> (C) mailing it to the persons last known address – in which event, service is complete upon mailing.

Fed.R.Civ.P. 5(b)(2). Further, if an action involves an unusually large number of defendants, Rule 5 further provides that the Court may on motion or on its own, order that other means of service apply. Indeed, in the instant matter, the Court specifically ordered service of the *Order to Show Cause* include publication and posting, in addition to service by regular first class mail. There is no requirement under the Federal Rules of Civil procedure, or this Court's own Orders, that service of the *Order to Show Cause* be by certified mail.

In sum, the procedures adopted by the Court for service to the *Order to Show Cause* were in accordance with law, exceeded requirements under the Federal Rules of Civil Procedure, the State and the United States followed the Court's directions to the letter, and the State made every reasonable effort to insure the Updated List was current and correct. The amount of returned mail was entirely consistent with the State's previous experience with such mailings, and for the

most part accounted for by the practical reality that water right claimants by and large do not substitute into this lawsuit or update their contact information with the State Engineer when ownership or addresses change. The Court contemplated the likelihood that there would be unknown claimants and known claimants with unknown addresses, and for that reason also provided for publication and posting of the Order to Show Cause. There was no deficiency in the mailed notice of the *Order to Show Cause*.

2. Notice not received (Category q)

Several objections complain of never having received notice of the *Order to Show Cause*. An *Objection* filed April 2, 2014 states: "I, John Valdez, along with my wife, Darlene T. Valdez, did not receive the letter and package from the State Engineer's office." (No. 8641). An April 4, 2014 *Objection* states: "Were never notified." (No. 8569). Yet, these objectors timely filed objections to the Settlement Agreement. That very fact demonstrates that they did have actual notice of the settlement approval process.

The *Amended Order* and the *Second Amended Order* anticipated that there could be a class of persons who might not receive mailed notice -- that notification was needed for those water right claimants who were not known, and known claimants whose addresses were not on the updated service list. As such, the Court provided that, in addition to direct mailing, notice of the Settlement Agreement and of the approval process should also be published and posted. More specifically, the two *Orders* required:

> 1) [P]ublish[ing of] the Order to Show Cause in English and Spanish, without exhibits, in at least one newspaper(s) of general circulation in the Pojoaque Basin and in the City and County of Santa Fe once a week for four weeks;
>
> 2) post[ing of] an electronic version of the Order to Show Cause in English and Spanish and all exhibits on the Court's and the Office of the State

Engineer's websites; and

3) post[ing of] the Order to Show Cause and all exhibits publicly at [a number of locations].

Amended Order at 2-3; *Second Amended Order* at 2. Pursuant to that direction, the State caused the *Order to Show Cause* to be published in both English and Spanish in the Albuquerque Journal on January 3, 10, 17 and 24 of 2014. The *Order to Show Cause* in both English and Spanish, along with all related exhibits was, and continues to be available on the OSE's website, and physically at the OSE offices, at the County of Santa Fe Pojoaque Satellite Office and the Joe M Stell Ombudsman Program at the Utton Center.

Indeed, the Court's Orders regarding service are entirely consistent with the Federal Rules of Civil Procedure. Rule 5 provides that once a person is made a party to a lawsuit, service of a document may be made by "mailing it to the person's last known address – in which event service is complete upon mailing." Fed.R.Civ.P. 5(b)(2)(C). Moreover, in *Mullane v. Central Hanover Bank and Trust Co, et al.*, the United States Supreme Court provides further guidance with regard to matters which involve an unusually large number of defendants. 70 S.Ct. 652 (1950). Specifically, in dealing with notice to large numbers of beneficiaries of a common trust fund, the Supreme Court stated that:

> We recognize the practical difficulties and costs that would be attendant on frequent investigations into the status of great number so beneficiaries, many of whose interest in the common fund are so remote as to be ephemeral, and we have no doubt that such impracticable and extended searches are not required in the name of due process. The expense of keeping informed from day to day of substitutions among even current income beneficiaries and presumptive remaindermen, to say nothing of the far greater number of contingent beneficiaries, would impose a severe burden on the plan, and would likely dissipate its advantages.

Id. at 317-318 (emphasis added). The Supreme Court consequently allowed published notice for

"beneficiaries whose interests or addresses are unknown to the trustee." *Id.* at 318.

Similarly, here, where keeping track of the day-to-day substitution of parties would impose a severe burden, the Court has provided that publication "shall serve as notification to those water right claimants who were not known with reasonable diligence to the Settling parties and claimants whose addresses are not on the updated service list . . ." *Amended Order* at 4. The service by mail and by publication made pursuant to the Court's Orders here is entirely sufficient.

3. Due Process / No opportunity to participate in negotiations and litigation (Categories p & x)

Objectors assert that the settlement violates due process because they have not had the opportunity to litigate the Pueblos' claims. For example, two of the form objections claim: "Defendant objects to entry of the partial final decree without providing an *inter se* proceeding involving the Pueblos as required by Due Process." Exhibit A, p 7 of 7, para. 23. And: "I object to the entry of a partial final decree which adjudicates Pueblo water rights, before the Pueblos have participated in an Inter se proceeding with all defendants, including myself." Exhibit C, p. 12 of 13.

The Court has given non-Pueblo parties the opportunity to participate in the adjudication of the Pueblos' water rights since 1983. Instead of following the typical two-step process of first completing the subfile phase (i.e., resolution just between the State and the claimant) before proceeding to the *inter se* phase where other parties have an opportunity to object, the Court collapsed the two phases into a unified proceeding and allowed potential objectors to participate beginning in 1983. The Court allowed "all parties" including non-Pueblo parties opposing Pueblo claims to submit objections to the Special Master's recommended findings on the

Pueblos' rights. *See Pretrial Order*, entered February 2, 1983, at 3. Upon inception of non-Pueblo defendants' participation the Court found:

> There is no question that the non-Indian defendants have had the benefit of each and every bit of evidence, authority and argument that has been presented with ample opportunity to review and with full access to the contentions of the other parties over a protracted period of time. Theirs is the favored position.

Order entered July 22, 1983 at 1-2. The non-Pueblo defendants then participated in ten days of trial in October 1983, leading to the Special Master issuing amended findings of fact and conclusions of law on the Pueblos' rights under Spanish and Mexican law, which were the subject of the *Aamodt II* decision.

From 1983 forward the non-Pueblo parties were active in all facets of the Pueblo proceedings and then participated in the settlement discussions beginning in 2000. The litigation proceedings were open to any claimant who wanted to participate, and any party to the case was allowed to attend and participate in the settlement discussions. By its *Order to Show Cause* entered last year, the Court has afforded non-Pueblo parties another opportunity to participate in the final adjudication of the Pueblos' water rights including the filing of objections to the proposed rights. The complaint that objectors have not been given adequate opportunity to participate has no basis in fact.

Several objectors also complained that they had no opportunity to participate in negotiations of the Settlement Agreement. Exhibit B states:

> 14. Defendant objects to the Settlement Agreement as proposed. Defendant would like to see a proposal which is fair and equitable including having even bodies of representation representing non-Indians. The agreement was negotiated under a confidentiality order.

(citations omitted) (emphasis added). The objectors add that "Defendant objects to the

deprivation of due process and a violation of the Equal protection Clause of the Constitution and the State Open meetings Act." Exhibit C states:

> The settlement agreement was drafted in secrecy and the participants are bound by confidentiality agreement, so information has not been forthcoming.

(emphasis added). Similarly, many non-form objections say the same thing. A March 31, 2014 *Objection* stated at page 3:

> As non-Pueblo water right holders, we have lacked the opportunity to participate in the essential integral parts of the proposed settlement agreement and insufficient opportunity to study the impacts and seek counsel. The settlement negotiations which began in 2010 excluded individual non-Pueblo water right holder parties from participation and settlement information was not provided to all parties.

(emphasis added) (No. 8349). That objection continues on to assert incorrectly that:

> . . . a gag order prevented all access to information by non-Pueblo water-right owner Parties. This exclusion unfairly prejudiced the non-Pueblo water-right owner Parties who, by the terms of the Order to Show Cause are now being required to understand all of the implications to their water rights and to make formal objections within a perilously short time frame or be deemed a Settlement Party and forfeit all or a portion of their lawful water rights.

Id.; and another filed March 3, 2014 states "[t]he settlement agreement has been negotiated and formulated without my input." *Objection* at 4 (No. 8158) (emphasis added). These objections are simply not factually correct. There have been ten years of public participation in the settlement process.

The foundations of this public participation date back at least to May 27, 2004, when the Court appointed representatives of non-Pueblo defendants who were opposed to the *Aamodt* Settlement at that time to participate in the ongoing mediated settlement negotiations. See May 27, 2004 *Clerk's Minutes* (No. 6094). Shortly thereafter, attorneys representing certain groups opposed to the proposed *Aamodt* Settlement began participating in those mediations as well. See

e.g. October 25, 2005 *Entry of Appearance* of attorney Fred Waltz (No. 6144).

By way of these negotiations, and with extensive community participation, the original *Aamodt* Settlement Agreement was revised to its present form, and approved by Congress in December 2010. Since that time all meetings regarding the *Aamodt* Settlement Agreement have been open to and attended by the public. See Sign in Sheets for *Aamodt* Implementation Meetings, attached hereto as Exhibit G. Objections asserting the contrary are not correct.

A number of objectors assert constitutional concerns related to their own water rights and to the adequacy of notice in this proceeding. In response to claims that the settlement has reduced domestic well rights or effected a taking without compensation, see discussion in section D(1). In response to claims that the settlement requires anyone involuntarily to transfer domestic rights to the County utility or to do so prior to connection to the water system, see discussion in section C(4). The settlement does not require parties electing to connect to the County utility to transfer rights before service is available. Finally, as to contentions that notice given in this proceeding violates due process, see section A of this brief.

4. The was sufficient time and information to make a decision about the *Aamodt* Settlement Agreement (Category y)

Many objections complained of not having enough time to make a decision about the *Aamodt* Settlement Agreement. For example: "I have not had sufficient time to review and get legal advice regarding the very complex 49 page, the partial final decree, the summary, the interim administrative order and the correspondence from the State Engineer." See attached Exhibit C (emphasis added); see also, e.g. March 25, 2014 *Objection* at p. 1 (No. 8291). Many of those objections also complained of lack of information: "The settlement agreement was drafted in secrecy and the participants are bound by a confidentiality agreement, so information has not

been forthcoming."(emphasis added) (Id.), a March 31, 2014 *Objection* states, "[t]he Settlement negotiations which began in 2010 excluded individual non-Pueblo water-right holder Parties from participation and even information" and:

> Further, a gag order prevented all –access [sic] to information by non-Pueblo water-right owner Parties.. [sic] This exclusion unfairly prejudiced the non-Pueblo water-right owner Parties who, by the terms of the Order to Show Cause are now being required to understand all of the implications to their water rights and to make formal objections within a perilously short time frame or be deemed a Settlement Party and forfeit all or [a] portion of their lawful water rights.

(emphasis added) (No. 8364). As already noted, various of the Settlement Parties have held over seventy (70) public meetings in the Pojoaque Valley regarding the *Aamodt* Settlement since 2004, and all *Aamodt* negotiations and implementation meetings have been open to the public since 2010. All relevant documents have been posted on-line at the websites of the Court of Santa Fe, Office of the State Engineer, and the Utton Center.

Moreover, the amount of public outreach associated with the Court's Order to Show Cause has been unprecedented. Since the Court issued the *Order to Show Cause*, Santa Fe County ("County") and the State, with assistance from the Pueblos, the United States and others who are interested in the settlement, have engaged in a substantial effort to provide information and explain the Settlement Agreement and Court process to interested individuals. To assist with this outreach, the County hired the Joe M Stell Water Ombudsman Program at the Utton Transboundary Resources Center of the University of New Mexico School of Law ("Ombudsman Program").

Fourteen (14) public meetings conducted by the Ombudsman Program, and attended by the County, the State, the United States, the Pueblos and others have been held in the Pojoaque Valley to make the *Order to Show Cause and Notice of Proceeding to Approve Settlement*

Agreement and associated materials available, and to provide information regarding them to claimants. Meetings took place on February 18, 20, 25 and 27; on March 4, 6, 11, 13, 18, 20, 25 and 27; and on April 1 and 3, 2014.

The Ombudsman Program also held office hours in the Pojoaque Valley every Wednesday and Saturday through the objections deadline of April 7 to explain the issues raised by the *Aamodt* Settlement Agreement and make documents and other materials regarding it available.

Approximately 2,200 individuals attended the fourteen (14) public meetings and twice a week office hours held by the Ombudsman Program.

The State and the County have also attended six more public meetings regarding the *Aamodt* Settlement Agreement held by State Representative Carl Trujillo on March 4, 5, 6, 26 and 27; and on April 3, 2014.[2] Hundreds more people attended these meetings, and were provided with information regarding the *Aamodt* Settlement Agreement.

In addition, over the last two months, the State, the County and the Ombudsman Program have received numerous calls and walk-ins on a daily basis from water right claimants in the Pojoaque Valley with questions and requests for materials, as well as requests to update their water right files with current ownership and address information. The Water Rights Division of the OSE alone had over a thousand walk-ins during that time period, with, as noted above, over

[2] In addition, the parties participating in the settlement discussions have held and attended more than fifty (50) other public meetings since 2004, when the original version of the *Aamodt* settlement Agreement was first published, in an effort to explain the proposed settlement and its terms. For example, in 2010, Santa Fe County conducted ten (10) public meetings in the Pojoaque Valley to inform water users and the general public regarding the settlement and the implementation process. Thirteen (13) meetings were held in 2004, after the Settlement Agreement was first released. Moreover, the County approved the final Settlement Agreement in a public process through the County Commission through the course of several public County Commission meetings. There were many more public meetings over the course of the last decade in addition to these.

400 changes of address and ownership filed.

Further, all relevant documents, as well as extensive information about the settlement and the Court process have been, and continue to be physically available at the Santa Fe Office of the State Engineer, the Santa Fe County Pojoaque Satellite Office, the United States District Court locations in both Albuquerque and Santa Fe and the Ombudsman Program. They have been, and continue to be also available on-line at the OSE website, the County website and the Ombudsman Program website.

5. Equal Protection (Category z)

Two of the form objections make constitutional challenges to the settlement claiming a violation of equal protection of the rights of non-Pueblo water right holders. Exhibit B states:

> Defendant objects to the Settlement Agreement as it violates the Equal Rights and Protection Clause of the Constitution. It allows one group of people rights and protection that are denied to another group of people.

See Exhibit B, p 6 of 13, para. 13. Similarly, Exhibit A states: "Defendant objects to the application of different water laws to the Pueblos and the non-Indians as a … denial of Equal Protection of the Law." *See* Exhibit A, p 6 of 7, para. 20. A number of individual objections also raise this issue. See *Objection* of Elmer and Mary Waite, filed March 27, 2014 (Dkt. No. 8317) (equal protection violated because non-Indians must limit use and Pueblos awarded future rights); *Objection* of Ronald Max Quintana, filed April 1, 2014 (Dkt. No. 8362) (unequal treatment because Pueblo water rights cannot be lost to forfeiture); *Objection* of Leroy and Josie Alderete, filed April 3, 2014 (Dkt. No. 8476) (Pueblos and the US enjoy sovereign immunity that is not waived in the settlement agreement - application of different water laws to the Pueblos and the non-Indians); *Objection* of Monica Trujillo, filed April 4, 2014 (Dkt. No. 8655) (settlement

agreement does not permit non-Pueblos to sell or lease water rights as permitted by NMSA 72-63-3; 14th Amendment equal protection and NM Const Art II, Sec 18 violated because Pueblos can lease and because no reciprocal right of enforcement).

As a starting point, it is important to recognize that the settlement is not the cause of any disparities in the application of law to the Pueblos vis-à-vis state-based water users. The settlement merely reflects existing circumstances in which federal law already applies to the Pueblos. To the extent some parties object that state and not federal law should apply, their objection is not to the settlement but to the laws that govern.

As discussed in section B(2)(Category i), Congress, in enacting Section 9 of the Pueblo Compensation Act of 1933, provided that the Pueblos' water rights "shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians." *See* § 9, Pub. L. No.73- 28, 48 Stat. 108,111. The Tenth Circuit in this case also has expressly held that the water rights of the Pueblos are not subject to state law forfeiture and abandonment. *See Aamodt I*, 537 F.2d at 1111-1112 (the United States has not relinquished jurisdiction and control over the Pueblos and has not placed their water rights under New Mexico law).

Likewise, federal Indian Tribes may claim reserved water rights on lands reserved for them by the federal government, under the Federal Reserved Rights or *Winters* Doctrine. *See Winters v. United States*, 207 U.S. 564 (1908). Although this doctrine does not apply to water on the Pueblos' Spanish or Mexican grant lands, it does apply to federal lands reserved for the Pueblos by the U.S. government, as this Court held:

> *Winters* rights exist on the Pueblo lands set aside by Executive Order for Nambe Pueblo on September 4, 1902 and any other Executive Order or Congressional reservations that may exist. Nambe and other Pueblos with Executive Order or Congressional reservations have priority to irrigate all of the

> irrigable acreage within the reservation subject to prior uses established before the date of the creation of the reservation.

Aamodt II, 618 F.Supp. at 1010. The Partial Final Judgment and Decree proposes to recognize 302 AFY of reserved rights to Nambe Pueblo, *see* § 3(A)(1)(b), but, as discussed in section B(1)(Category w) of this brief, under the settlement Nambe Pueblo agrees not to use its reserved rights and instead convey them to the United States for use from the Regional Water System. *See* Settlement Agreement at § 2.6.2.2 & -.3; Settlement Act §§ 613(a)(1)(A) & 617(c)(1)(A)(ii).

The application of federal laws to the Pueblos is not a violation of equal protection. Because Indian Tribes are governmental entities under the protection of the federal government, it is not a denial of equal protection to treat Indian Tribes and their members differently from other people when the distinctions are rationally related to Congress' trust responsibility toward the Indians. *See Morton v. Mancari*, 417 U.S.535, 554-555 (1974) (statutes providing special treatment for Indians will not be disturbed so long as such treatment can be tied rationally to the fulfillment of Congress' unique obligation towards Indians); *U.S. v. Hardman*, 297 F.3d 1116, 1128 (10th Cir. 2002) (laws that "might otherwise be constitutionally offensive" might be acceptable if they are enacted pursuant to the United States' trust relationship).

The objections do not demonstrate an equal protection violation. Arguments that Pueblo sovereign immunity violates equal protection are off base, especially in the context of the this case, where both the U.S. and Pueblos have waived sovereign immunity for the adjudication and administration of water rights, as discussed in section B(2)(Category i) and B(3)(Category k).

Finally, the complaint that the settlement does not provide for non-Pueblo leasing is also not a violation of equal protection. The settlement does not address leasing by non-Pueblo parties and doesn't affect it one way or the other. Non-Pueblo water right owners have the right

to lease their water provided to them under state law. *See* New Mexico Water-Use Leasing Act, §§ 72-61-1 to 72-6-7 N.M.S.A. 1978, amended (2014). Indeed, in contrast to federal restrictions on alienation of Pueblo trust assets, non-Pueblo water right owners have the ability to permanently sell their water rights and to lease them without many of the restrictions imposed on Pueblo leasing.

B. Federal Law / Indian water rights / Rights of Pueblos

A number of objections question the application of federal law in determining the Pueblo water rights proposed in the settlement. Some objections oppose the types of uses that are allowed, including for leasing and non-agricultural purposes. Other objections assume the Settlement Agreement and Partial Final Judgment and Decree will not be enforceable.

As discussed in this section, the settlement will be enforceable and will give substantial protections to non-Pueblo water users in the Pojoaque basin. The quantities of the Pueblo First Priority Rights are based upon this Court's findings of actual Pueblo historic irrigation and upon settlement of Pueblo replacement water rights claims and other historic beneficial uses based on the Court' opinions in this case. The senior or time immemorial priority date also is based upon rulings by this Court in this case. The proposed Pueblo water rights are based on applicable law, will be enforceable by this Court and will be administered by the State Engineer as Water Master.

Under the settlement, the Pueblos have agreed to limitations on their water rights in order to provide protections to other water rights. The Pueblos have made these concessions in exchange for construction by the federal government of the Regional Water System, which will deliver up to 2,500 AFY to the Pueblos and up to 1,500 AFY to Santa Fe County Water Utility

customers. This water will be imported into the Basin from a diversion on the Rio Grande and will greatly relieve the conflict over limited local water supplies. Without the settlement, the water system would not be built and the Pueblos would look to meet all of their claims from the water resources of the Basin; and the Pueblos would continue to claim an expanding federal water right. By contrast the settlement ends the litigation and gives all parties greater certainty and reliability in their water supply.

1. Pueblo uses of water under the Settlement. (Category w)

Although most objections seem to accept the quantities and senior priority dates of water rights proposed to be adjudicated to the Pueblos, some objections question the proposed quantities, the basis for their quantification or the Pueblos' senior priority date. For example: "The settlement agreement recognizes future water rights … for the Pueblos but not for the non-Indians." *See* Exhibit C, page 12 of 13. The same form objection further states:

> I object to the entry of a partial final decree which adjudicates Pueblo water rights, before the Pueblos have participated in an Inter se proceeding with all defendants, including myself. I have no information on how the amounts of Pueblo water rights were determined or how the priority dates were determined.

Id. Another objection asserts: "The Pueblo Parties have no requirement to demonstrate historic beneficial use. Those Parties are simply allocated a water right to support desired use, including … non-historic uses…." *See* Exhibit E, pp 10 & 11 of 12. Some objections specifically single out water proposed to be decreed to Pojoaque Pueblo:

> … the proposed Settlement Agreement grants to Pojoaque Pueblo over and above a primary allocation, an additional 475 afy (called a 'supplemental allocation') which will provide for its golf course. Not only is this supplemental allocation to Pojoaque Pueblo not related to beneficial historical use but funding the facility to provide it is given an early priority for funding.

See Exhibit E, p. 11 of 12.

The complaint that the Pueblos' water rights may not be based on state law is addressed under other sections of this brief. Section B(2) (Category i) and section B (3) (Category k)), below, discuss why the application of federal law, instead of state law, applies to certain categories of Pueblo water rights. Section A(5) (Category z) addresses how the application of federal law to the Pueblos is not a violation of equal protection for state-based water rights owners. Regarding the point that objectors have the right to participate in *inter se*, section A(3) (Category x) describes the due process this Court has afforded for participation by non-Pueblo parties culminating in the pending objection proceeding.

The quantities and time immemorial priority proposed by the settlement for the Pueblos' First Priority Rights are based upon the prior rulings of this Court. Under the Settlement Agreement and Partial Final Judgment and Decree, the Pueblos' total First Priority Rights are 3,660 acre-feet per year consumptive use (AFY). *See* Settlement Agreement § 2.1.2. This number is based on the Court's prior findings of the amount of the Pueblos' historically irrigated agriculture and on settlement of the Pueblos' claims for replacement water rights and other historic beneficial uses based on the opinions of the Court. *See The Rio de Tesuque Association, Inc's Memorandum in Support of the Settlement Agreement and Entry of a Partial Final Decree on the Pueblos' Rights*, filed November 6, 2014, at §§ B & C. The Partial Final Judgment and Decree and the Settlement Agreement separate the Pueblos' First Priority Rights into two categories: "Existing Basin Use Rights," which are that portion in use as of the year 2000, s*ee id.* at 2.3; and "Future Basin Use Rights" which are the remainder, *id.* at § 2.4. The following table breaks down these two categories of the Pueblos' First Priority Rights.

Pueblo First Priority Rights: Acre-Feet per Year Consumptive Use			
Pueblo	**Existing Basin Use Right**	**Future Basin Use Right**	**Total First Priority Right**
Nambe	522	937	1,459
Pojoaque	236	0	236
San Ildefonso	288	958	1,246
Tesuque	345	374	719
Totals	**1,391**	**2,269**	**3,660**

It is important to recognize that the Future Basin Use Rights are not Federal Reserved or *Winters* rights that have never been put to beneficial use. Instead, they are based on actual past uses of the Pueblos. Although they are currently unexercised, they are part of the Pueblos' historically used water rights that the Pueblos may use in the future, with restrictions as described below. Furthermore, this Court has determined the historic prior water rights of the Pueblos are entitled to a first or time immemorial priority. *See State of New Mexico v. Aamodt,* 618 F.Supp. 993, 1005-1010, (Dist. Ct. N.M. 1985) *(Aamodt II)*; Mem. Op & Order, May 1, 1987 at 3-5; Mem. Op & Order, Apr. 14, 2000 at 8-9 (Dkt. No. 5596).

The only Federal Reserved or *Winters* rights proposed by the settlement are 4.82 AFY for San Ildefonso with a 1939 priority for grazing purposes on the San Ildefonso Eastern Reservation, *see* Settlement Agreement § 2.6.1; and 302 AFY with a 1902 priority associated with reserved lands for Nambe Pueblo, *id.* at § 2.6.2. Again, settlement of these Federal

Reserved water right claims was based on prior rulings by the Court.[3] Under the settlement, however, Nambe Pueblo agrees not to use its 302 AFY of water rights and, instead, to convey these water rights to the United States for use from the Regional Water System. *See id.* at § 2.6.2.2 & -.3; Settlement Act §§ 613(a)(1)(A) & 617(c)(1)(A)(ii). In the absence of the settlement, the exercise of reserved water right in the Basin could affect other water users. But under the settlement, the Nambe reserved right will be diverted from the Regional Water System's point of diversion on the Rio Grande and is subject to the further restriction that its use "shall not impair Pueblo or Non-Pueblo ground water rights." *See* Settlement Agreement § 2.6.2.3; Partial Final Decree § 3(A)(1)(b).

In addition to limiting the Pueblos' First Priority Rights to quantities commensurate with their historic uses and replacement rights, the Settlement Agreement contains further concessions governing use of the Pueblos' water rights. The Pueblos have accepted three substantial limitations on the exercise of most or all of their First Priority Rights: (1) the Pueblos agree to relinquish their right to priority administration of any of their rights against junior groundwater users, including domestic well owners who join and comply with the terms of the settlement; (2) under Section 4 of the Settlement Agreement, the Pueblos will relinquish their right to priority administration of their first priority Future Basin Use Rights, which constitute almost two-thirds of the Pueblos' First Priority Rights, against protected non-Pueblo surface water right owners and other settling water right owners; and (3) under Section 2.5.3 of the Settlement Agreement the

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3 The Court's January 17, 1997 Memorandum Opinion and Order (Dkt. 5209) and April 30, 1998 Partial Judgment (Dkt.. 5390) recognized San Ildefonso Pueblo's reserved grazing rights. The Court's July 10, 2001 Memorandum Opinion and Order (Dkt. 5916) vacated the Special Master's December 8, 1999 Report (Dkt. 5560) on Nambe Pueblo's reserved rights and ordered the parties to request, if necessary, a status conference after settlement negotiations did not settle the claim.

Pueblos agree to supply any increasing demands for water in the future from the Regional Water System before exercising their Future Basin Use Rights. These three important concessions are discussed in more detail directly below.

First, as discussed in section D(1) (Category a), above, junior domestic well owners who make an election under Section 3.1.7.2 of the Settlement Agreement will be "protected from enforcement and administration of priorities within the Pojoaque Basin...." Without the settlement, domestic well owners, who have some of the most junior water rights in the Basin, risk curtailment in the event of water shortages.

Second, the Pueblos are agreeing that their Future Basin Use Rights, which are the largest category of their First Priority Rights, will not be enforced against non-Pueblo water rights that continue in beneficial use, including by acequias. *See* Settlement Agreement at § 4.2. Accordingly, of the Pueblos' total First Priority Rights of 3,660 AFY, only the "Existing Basin Use Rights" of 1,391 AFY will be exercised and administered with a first priority against protected non-Pueblo water right owners. As explained in more detail in section E(2) (Category n), this provision means that 62 percent of the Pueblos' First Priority rights, in the amount of 2,269 AFY, is effectively made a third priority.

Third, once the Regional Water System is constructed and capable of delivering water from the 2,500 AFY allocated to the Pueblos, each "Pueblo shall use that water supply to the maximum extent feasible prior to exercising its Future Basin Use Rights described in Section 2.4." Settlement Agreement § 2.5.3. By agreeing to defer and subordinate exercise of in-Basin water rights and to rely on new sources of supply, this provision will protect the local water resources of the Basin. This subordination also applies to all of Pojoaque Pueblo's 475 AFY of

Supplemental Pueblo Rights, which "shall be subordinated to a right to receive an equivalent amount (475 AFY) of water delivered through the Regional Water System...." *Id.* at § 2.2.4. The practical effect of this provision is that pumping of groundwater for the Pojoaque golf courses will be discontinued and replaced with imported water, along with increasing reuse of treated effluent for turf irrigation. The settlement seeks to expedite this conversion and subordination process by giving priority to implementation of this provision. *Id.* at § 2.2.4; Settlement Act § 617(a)(3)(B). Objections, such as that quoted at the beginning of this section, appear not to understand that priority in funding will address the conflict over the Pueblo's use of local groundwater for the golf courses, which would be resolved by this requirement.

In 2002 the State sought a preliminary injunction from this Court to stop Pojoaque Pueblo from using water for a second 18-hole golf course. Magistrate Judge Leslie Smith conducted an evidentiary hearing and then entered *Magistrate Judge's Proposed Findings and Recommended Disposition* on February 4, 2002 (Dkt. No. 6044), which were adopted by the Court by Order entered July 1, 2003 (Dkt. No. 6065) (*Findings and Disposition*). The *Findings and Disposition* recited that the Court had already recognized that the Pueblos can use both surface and inter-related groundwater to satisfy the amount of their first priority rights. *Findings and Disposition* at 15 (citing *Aamodt II*, 618 F.Supp. at 1010). Among its determinations, the *Findings and Disposition* found: (1) the Pueblos may be entitled to more water rights than the State has acknowledged; (2) No appeal has been made to the Tenth Circuit on the Pueblo's ultimate water rights; and (3) the Court has not entered a final order defining the Pueblo's ultimate water rights. *Id.* at 36. Based on the Magistrate's recommendation, the Court denied the petition for preliminary injunction. *See* Order at 27. The Settlement Agreement avoids an appeal and the

risk that the Pueblos could claim additional water rights. The Pueblos have given up claims to an expanding federal water right and instead have agreed to quantification of their rights based predominantly on historic uses.

Finally, in addition to objections about the amount and priority date of Pueblo rights, a number of objections express opposition to the type of water use made by the Pueblos. In particular these objections oppose use of water by the Pueblos for non-agricultural purposes, such as for casinos, the Pojoaque golf course and livestock. One repeated objection states: "Those Parties [the Pueblos] are simply allocated a water right to support desired use, including such non-historic uses as golf courses. *See* Exhibit E, pp. 10 & 11 of 12, para. 1. *See also Objection* of Jose P Archuleta, filed March 11, 2014 (Dkt. 8181) (valley would be harmed because Pueblos do not use water for agricultural purposes); *Objection* by Richard Rodriguez, filed March 11, 2014 (Dkt. 8192) (water comes from the land to share; water is life not for golf or casinos); *Objection* by Edward A. Romero, filed March 25, 2014 (Dkt. 8286) (excessive allocation to the Pueblos for livestock has potential detrimental effects of me not getting my allocation of surface water and thus affecting my water rights).

The settlement is structured to protect existing agriculture, by limiting Pueblo priority calls on existing surface water rights including calls on historic acequias. Without the settlement, the Pueblos would be entitled to priority administration in order to satisfy the full amount of their First Priority Rights. By contrast, with the settlement the Pueblos are agreeing to substantial limitations on priority calls and administration, as explained in more detail in section E(2) (Category n).

With respect to the view that Pueblo water should not be used for non-agricultural

purposes or other purposes that are not historic, such as golf course and casino uses, such uses are already being made by the Pueblos and are not a function of the settlement. Even without the settlement, this Court would certainly determine that the Pueblos, like other water right claimants, have the legal right to use their historic water rights for purposes other than agriculture. In the 2002 preliminary injunction proceedings, no party contended Pojoaque Pueblo's rights could not be used for recreational purposes such as commercial turf irrigation. The only issue was whether the Pueblo's expansion of groundwater pumping for the new golf course would exceed the Pueblo's water rights, an issued disposed of by the Settlement Agreement. Lastly, the total proposed first priority right of 3,660 AFY includes water for livestock. Consequently, any concern that a Pueblo is using excessive amounts of stock water is answered by the requirement that stock water must come from each Pueblo's total right and will reduce the amount available under that right for other purposes.

2. Non-Indian Has No Enforcement Rights / Forfeiture. (Category i).

Exhibit C, at p. 12 of 13 makes the following objection: "I object to the lack of right to enforce the settlement agreement by non-Indians." There is no explanation of the basis for this objection. To the extent this concern assumes the Court does not have jurisdiction over Pueblo water rights, the Pueblos have explicitly agreed in the Settlement Agreement that the State Engineer will have the authority to administer the Pueblos' water rights. *See* Settlement Agreement at p. 36, § 5.2. The Settlement Agreement also provides: "the Decree Court shall retain jurisdiction to interpret and enforce the terms, provisions and conditions of the Agreement, the Interim Administrative Order, and the Final Decree." *Id.* at 4, § 1.5.

The proposed Partial Final Judgment and Decree defines the water right amounts of the

Pueblos in terms that state over and over again that the rights are in "amounts not to exceed" and that uses and diversions "shall not exceed" the decreed amounts. *Id.* at 3-11. In addition, the end of the Partial Final Judgment and Decree contains a specific "Limitations" section that provides:

> E. Limitations
>
> 1. The Pueblos have no right to use the public waters of the Pojoaque Basin except as set forth in this Partial Final Judgment and Decree, the Settlement Agreement, and subfile orders entered by this Court in this action.
>
> 2. Each Pueblo, and its successors, representatives, lessees, and assigns, are permanently enjoined from any diversion, impoundment, or use of the public waters of the Pojoaque Basin except in strict accordance with this Partial Final Judgment and Decree, Settlement Agreement, and other orders entered by this Court in this action.

Id. at 11-12.

Finally, the Partial Final Judgment and Decree orders that the water rights of the Pueblos shall be administered in accordance with the Settlement Agreement:

> 5. ADMINISTRATION OF THE PUEBLOS' WATER RIGHTS.
>
> Administration of the Pueblos' water rights that are the subject of this Decree shall be in accordance with the Settlement Agreement.

Id. at 12. The Settlement Agreement, in turn, contains detailed provisions for the administration of the Pueblos' water rights. In addition to the State Engineer's statutory authorities and duties under state law, under Section 5.2 the State Engineer will perform the function of Water Master in administering Pueblo rights, as described in Sections 5.2 and 5.6. Section 5.2.1.2 gives the State Engineer authority in capacity as Water Master to enforce the limits on Pueblo uses: "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."

Another repeated objection is that "Pueblos' water rights are protected from forfeiture but not the non-Indians' rights." *See* Exhibit C at p. 12 of 13. Objectors appear to believe that the Settlement Agreement is the source of protection of the Pueblos' water rights from forfeiture and abandonment. *See* Exhibit E at p. 11 of 12, paras. 2&5. For example, one objection contends: "The proposed Settlement Agreement specifically exempts Pueblo Parties from such loss by non-use." *Id* at para. 2. The Settlement Agreement, however, does not and cannot change the law that already applies to non-use of water rights.

The Tenth Circuit in this case has explicitly held that the water rights of the Pueblos are not subject to state law forfeiture and abandonment. *See State of New Mexico v. Aamodt*, 537 F.2d 1102, 1111-1112 (10th Cir. 1976) ("*Aamodt I*") (the United States has not relinquished jurisdiction and control over the Pueblos and has not placed their water rights under New Mexico law). Section 9 of the Pueblo Compensation Act of 1933 provided that the Pueblos' water rights "shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians." *See* § 9, Pub. L. No.73- 28, 48 Stat. 108,111. So, although it is understandable that state-based water right holders may not like that a different law applies to the Pueblos, this difference is not created by the settlement. Provisions in the Settlement Agreement, Section 2.8, and the Settlement Act, Section 613(b), 42 U.S.C. § 1305, only reflect the already existing law.

3. McCarran Amendment violated / sovereign immunity not waived / US not bound as trustee. (Category k)

One form of objections raises the following concern: "The Pueblos and the USA enjoy sovereign immunity that is not expressly waived in the settlement agreement." *See* Exhibit A, p.

5 of 7 at para. 10. The same form further asserts: "The settlement agreement is not clear and unequivocal that that the USA as trustee for the Pueblos is bound by the agreement." *Id.*, p. 6 of 7 at para. 22. These assertions give no basis for concluding that sovereign immunity or any other legal impediment prevents enforcement of either the Partial Final Judgment and Decree or the Settlement Agreement.

This Court has had jurisdiction over the United States and Pueblos for decades, since the inception of this case. As discussed in section B(2) (Category i), by the terms of the Settlement Agreement and the Partial Final Judgment and Decree, the Court would retain jurisdiction to interpret and enforce the requirements and limitations ordered and decreed by the Court. And the State Engineer will have authority to administer water rights under his state statutory authority and under the authority as Water Master. Objectors cite no legal rationale or theory in support of their claim that the United States or the Pueblos will not be bound by the Settlement Agreement or the Partial Final Judgment and Decree. Congress through the Settlement Act expressly approved the Settlement Agreement and authorized the Secretary of the Interior to sign it. *See* § 621 (a) & (b) of Settlement Act. Secretary Ken Salazar signed the Settlement Agreement on March 14, 2013.

In addition, because Congress waived any claim of sovereign immunity for the U.S. and Pueblos in passage of the McCarran Amendment in 1953, there has never been a question of waiver of sovereign immunity in this case. That federal law established a statutory waiver: "(a) Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, . . . and the United States is a necessary party to such suit." 43 U.S.C. § 666. This waiver includes adjudication of

Indian water rights. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809-812 (1976); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983). The McCarran Amendment operates as a waiver of sovereign immunity in either state or federal court and it applies to Indian water rights, whether on reserved or fee simple lands. *See U.S. v. Bluewater-Toltec Irr. Dist.*, 580 F.Supp. 1434, 1437 & 1439 (Dist. N.M. 1984) *affirmed* 806 F.2d 986 (10th Cir.) (1986). *See also* Law of Water Rights and Resources (updated July 2014), A. Dan Tarlock, Chapter 7, Joinder of United States and Indian Tribes at § 7:3 (discussing McCarran Amendment waiver of the sovereign immunity of the United States and Indian Tribes in suits to adjudicate and administer the rights to a river system).

The last line of objections grouped under this section is founded on a misapprehension of the effect of the McCarran Amendment. The objections appear to assume that the McCarran Amendment not only waives sovereignty immunity but also restricts Pueblo claims to state-based water rights: "Defendant objects to the application of different water laws to the Pueblos and the non-Indians as a violation of the McCarran Amendment," *see* Exhibit A, p. 6 of 7 at para. 20; and "Defendant objects to the use of the federal reserve doctrine to determine the Pueblo's water rights as a violation of the McCarran Amendment," id. at p. 6 of 7 at para. 21.

Although federal law, such as Section 8 of the 1902 Reclamation Act, generally does limit federal water uses to appropriations under state law, the McCarran Amendment is a procedural law and does not prohibit claims under federal law on federal lands:

> Sovereign immunity is waived for both federal reserved rights claimed by federal land management agencies and … for Indian reserved water rights. State courts may apply state procedures but must apply federal substantive law.

Law of Water Rights and Resources at § 7:3 (citing, among other authorities, *Colorado River*

Water Conservation Dist. v. United States, 424 U.S. 800, 812-13 (1976)); see also *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983). Prior holdings in the *Aamodt* case have already determined that the Pueblos' water rights on their grant lands are governed by federal law, *Aamodt I*, 537 F.2d at 1111-1112, and that a claim may be made for federal reserved water rights on federal lands reserved for a Pueblo, *Aamodt II*, 618 F.Supp. at 1010.

4. Pueblo water leasing ability (Category m)

Some objections also oppose provisions in the Settlement Agreement that allow the Pueblos to lease their water rights:

> With regard to long term leases enforced by the Pueblos, Defendant and Defendant's children and grandchildren become vulnerable to rate hikes by the Pueblos. A 99 year lease violates the 10-year limitation on leases of water rights and the very long term lease violates State Law against perpetuities.

See Exhibit B, p. 7 of 13, para. 15, pp. 9 & 10 of 13, para. 9. A similar objection states:

> The Pueblos can lease their water right to others for up to 99 years. Although the proposed Settlement Agreement states that the leased water must be used in the Basin, there is no protection against a sub-lessee removing the water from the Basin, thus the lease provision as written adds to the likelihood of a first priority call by the Pueblos if water is removed from the Basin.

See Exhibit E, p. 12 of 12, para. 7.

The objections are correct that the Settlement Act authorizes each Pueblo to lease its first priority rights by entering into "leases or contracts to exchange water rights or to forbear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Basin," *see* Settlement Act § 621(c)(1), and for a term not to exceed 99 years. *Id.* at § 621(c)(3). In its last session, the New Mexico Legislature amended the state leasing statute to conform to the Settlement Act and allow leases for up to 99 years:

> A water use due under an adjudicated water right secured to a pueblo pursuant to the settlement agreements approved in Title 5 [Taos Settlement] and Title 6 [Aamodt Settlement] of the federal Claims Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or in the partial final judgments and decrees entered pursuant to those settlement agreements, may be leased for a term, including all renewals, not to exceed the term specifically authorized in that act; provided that this subsection shall not apply to any water use due under any state-law based water rights acquired by a pueblo or by the United States on behalf of a pueblo.

See § 72-6-3(D) NMSA 1978 (2014). Consequently, a lease term of up to 99 years is expressly and specifically approved by both federal and state law.

The leasing provisions do not allow a Pueblo to exceed its total water right. If a Pueblo decides to lease a portion of its water right, then its own use will be limited to the amount of its remaining water right not leased. Furthermore, any lease for use of water on lands outside of the Pueblo will require approval by the State Engineer or by the State Engineer acting as Water Master, upon a showing that the change does not impair other groundwater uses, does not interfere with surface water uses and complies with other requirements set forth in the Settlement Agreement. *See* Settlement Agreement at § 5.6.3.

Without the settlement, the Pueblos could still seek federal approval to lease water rights and could conceivably enter into agreements to lease their first priority water outside of the basin. Under both the Settlement Agreement, § 2.1.5, and under the Settlement Act, § 621(c)(1), the Pueblos have agreed and are limited to leases of their first priority rights within the basin.

Furthermore, the Settlement Act even restricts Pueblo leasing of the imported water described in § 613(a)(1), which the federal government has acquired for the Regional Water System. If an individual Pueblo does not need all of its allocation from the Regional Water System the excess "may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements" among the Pueblos or with the County Water Utility as set out in

section 614(c)(2). *See* § 621(c)(5).

In response to the concern that the Pueblos' water rights could be used outside the Basin under a sublease, the restriction on the use of the water applies to the water, not the Pueblos. The water rights may only be used within the Basin, whether by a Pueblo, a lessee, or a sublessee. There is no right, by any user, to lease the water rights outside the Basin.

The final concern raised by these objections assumes that Pueblo leasing will make non-Pueblo parties vulnerable to rate hikes by the Pueblos. But the settlement neither imposes requirements nor creates conditions causing non-Pueblo parties to lease water from a Pueblo. To the contrary, as described in section B(1)(Category w) above, under the Settlement Agreement the Pueblos are limiting priority calls and use of their first priority rights and are usingthe imported supply to meet their needs. These limitations make junior non-Pueblo water right owners more secure in their own rights and less likely to need to acquire additional supplies.

With respect to rates of service from the County Water Utility, any Pueblo leasing will not affect the cost of service to County customers. Existing domestic well water right owners who elect to connect to the County Water Utility will not be charged the cost of acquisition of water rights and only for the cost of service, i.e., cost of diversion, treatment, transmission and distribution, including utility operations, maintenance, repair and upkeep of the system. *See* Settlement Agreement § 3.1.8.1. Because the connecting well owners will contribute the water rights to serve them, they are immune from water rights acquisition or leasing costs in the future. With respect to future customers who do not have domestic well water rights to contribute, the County has already acquired sufficient permanent water rights, *see* Settlement Agreement § 9.6.4, to meet increasing demand long into the future. While those future customers are not

exempt from a water right acquisition payment, the cost will be based on the permanent water rights already acquired by the County and will not be subject to fluctuating lease prices.

C. The State had authority to enter into the Settlement Agreement, which is consistent with State law

Several of the objections allege that the Settlement Agreement is somehow inconsistent with State law, and that it, exceeds the State's authority. More specifically, these objections allege that the Settlement Agreement violates the State Constitution, its Anti-Donation Clause and Equal Protection Clause; that it creates a conflict of interest for the State Engineer and directs the State Engineer to exceed his authority in a number of ways; that it does not provide enough protection for the objectors from Pueblo priority calls; and finally, that the Settlement Agreement "lacks consideration." For all the reasons identified below, none of these objections are well taken; all should be overruled.

1. OSE conflict of interest/authority to award future rights/declare basin closed (Category j)

Exhibit A, B and D all contain allegations that the state engineer has a potential conflict of interest because under the Settlement Agreement he has authority to curtail both Pueblo and non-Indian water rights.

> There appears to be a conflict of interest in the terms of the Settlement Agreement relating to the role of the New Mexico State Engineer. Section 5.2.1.1 of the Settlement Agreement provides the State Engineer with the right to restrict Pueblo water rights. Section 5.2.1.2 of the Settlement Agreement provides that a Water Master has the same authority over non-Indian water rights. However, the State Engineer is also designated as the Water Master in Section 5.2 of the Settlement Agreement.

Exhibit B, paragraph 10 (emphasis added). These objections do not explain how the State Engineer having authority over both Pueblo and non-Pueblo water rights is a conflict. In fact,

the State Engineer is charged by statute with the administration of all the waters of the state. "He has general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required." Section 72-2-1 NMSA, 1978. The State Engineer's ability to also administer the Pueblos' water rights under the Settlement Agreement only increases his ability to administer all the water right in the Basin consistently. The objectors do not provide any factual basis or legal authority to support their allegation that because the Settlement Agreement provides the State Engineer the authority to administer both Pueblo and non-Pueblo water rights, a conflict of interest exists.

Several objections also assert that the Settlement Agreement requires the State Engineer to "close the basin" to new domestic well permits, and that it is beyond the State Engineer's authority. More specifically,:

> The partial final decree declares the N-P-T basin fully appropriated and proposes to close to new wells. (Sec. 3.1.4). The State Engineer has stated that he does not have evidence of how much water is in the N-P-T aquifer. Any unappropriated groundwater is owned by the people of New Mexico. The state engineer is without jurisdiction to unilaterally and arbitrarily close the N-P-T aquifer to further development.

Exhibit A, paragraph 24 (emphasis added). See also: "The state engineer is also prevented from closing the Pojoaque aquifer by the Domestic Well Statute which imposes a non-discretionary duty on the state engineer to issue a permit to divert groundwater for domestic uses to any person who applies for one and complies with the state engineer rules. (Sec. 72-12-1.1)" *Id.*, Exhibit B paragraph 17; (Exhibit C, paragraph 6 and Exhibit D, paragraph 11. These assertions are contrary to State law. Under State regulations of domestic wells, 19.27.5 NMAC, the State Engineer has the authority to limit or curtail the issuing of domestic well permits under 72-12-1.1 N.M.S.A.. Under NMAC 19.27.5.14, the State Engineer may declare a Domestic Well

Management Area, limiting the issuance of permits for new appropriations of water. In addition, the State Engineer has the authority to issue orders closing basins from all new appropriations. NMSA Section 72-2-8. . Moreover, in the instant case, the Court has already made finding regarding the limited water supply in the Pojoaque Basin. See January 13, 1983 *Order* (No. 541). Objections that the State Engineer does not have the authority to close the Pojoaque Basin, or that there is no basis for doing so, are not well taken, and should be overruled.

2. Anti-donation clause/NM Constitution (Category u)

A number of objections complain that the Settlement Agreement is at odds with the State's Anti-Donation Clause and otherwise violates the Constitution of the State of New Mexico, and in particular, that the State does not have the authority to enter into the *Aamodt* Settlement without the approval of the State Legislature because the Settlement Agreement is in the nature of a "compact" under New Mexico law. None of these objections are well taken.

Specifically, one April 7, 2014 Objection argues that with the *Aamodt* Settlement Agreement, "a member of the executive (in this case New Mexico State Engineer instead of the Governor) has signed a tribal settlement or compact without statutory authorization of the New Mexico Legislature." No. 9011 at paragraph 5. That objection goes on to explain:

> The proposed settlement has not been submitted to the New Mexico Legislature for enactment or rejection or modification, as required in [*State ex rel. Guy Clark, George Buffet, and Max Coll v. Gary Johnson*, 1995-NMSC-048, 120 N.M. 562]. In an opinion by Justice Minzner, this Court held unanimously that a governor (in this case a member of the executive, the State Engineer) does not have the constitutional authority to bind the State of New Mexico to a compact with an Indian Tribe without a statute.

Id. This assertion is not correct. The operative signature on the *Aamodt* Settlement Agreement is not that of the Governor or the State Engineer, but of the Attorney General. The New Mexico

Legislature charged the Attorney General with the general duty to "prosecute and defend in any other court or tribunal [in addition to the New Mexico Supreme Court] all actions and proceedings, civil or criminal, in which the state may be a party," NMSA 1978, § 8-5-2(B) (1975), and has explicitly and unmistakably authorized the Attorney General to act on behalf of the State to adjudicate water rights and to enter into settlements of claims. By passage of the 1907 water code, the Territorial Legislature set forth the procedures and requirements for determination of rights to use waters within the State of New Mexico. *See* NMSA 1978, §§ 72-4-13 to -19 (1907). The adjudication statutes authorize and direct the State Engineer to conduct hydrographic survey work necessary for the determination of rights, *id.* at §§ 13-17, and direct the Attorney General to "enter suit on behalf of the state for the determination of all rights to the use of such water . . . . and diligently prosecute the same to a final adjudication ". *Id.* at §15. Additionally, the Legislature has also specifically charged the Attorney General with the power to compromise or settle any suit or proceedings in NMSA 1978, § 36-1-22 (1876).

The objection's reliance on *State ex rel. Clark v. Johnson* is unavailing. The New Mexico Supreme Court in *Johnson* considered whether by signing Indian gaming compacts the Governor had infringed on powers properly belonging to Legislature, in particular the Legislature's power to regulate gambling. The Court determined that a violation of separation of powers occurs when an action by one branch of government disrupts the proper balance with another branch, and thereby prevents the other branch from accomplishing its constitutionally assigned functions. 120 N.M. 562, 574, 904 P.2d 11, 23, 1995-NMSC-048 (1995). With respect to the effect of the executive branch action's on legislative functions the Court noted:

> One mark of undue disruption would be an attempt to foreclose legislative action in areas where legislative authority is undisputed. The Governor's present authority

> could not preclude future legislative action, and he could not execute an agreement that foreclosed inconsistent legislative action or precluded the application of such legislation to the agreement.

Id. Because the Governor had no express or implied authority to bind the State to terms of a gaming compact falling squarely within an area regulated by the Legislature and inconsistent with existing statutory law, the Governor's action violated constitutional separation of powers. *Id.* 120 N.M. at 574-76, 904 P.2d at 23-25.

In contrast to the facts and holding in *State ex rel. Clark v. Johnson*, no further legislative approval was needed in order for the Attorney General to execute the Settlement Agreement here. The executive action in *Johnson* infringed on an area directly regulated by the Legislature without either an express or implied legislative grant of authority to the executive. *Id.* By contrast, the authority of the Attorney General in litigating and settling Indian water rights adjudication claims derives from state law in existence for over a century. NMSA 1978, § 36-1-22 (1876); NMSA 1978, § 8-5-2(B) (1975); NMSA 1978, §§ 72-4-13 to -19 (1907).

Moreover, the New Mexico Legislature has been kept informed regarding the substance and status of the *Aamodt* Settlement for years. Lawmakers review Indian water rights settlements through an Indian Water Rights Settlement Report, which the State Engineer and the Interstate Stream Commission Director provide annually to lawmakers. The State Engineer and staff as well as the Interstate Stream Commission Director also have briefed members of the New Mexico Legislature extensively on the details of the *Aamodt* Settlement and the other Indian water rights settlements over the last several years. In response, the lawmakers have made multiple appropriations to the Indian Water Rights Settlement Fund to implement the Indian water rights settlements, including *Aamodt*.

That same April 7, 2014 Objection also complains that the Settlement Agreement somehow violates the Rio Grande Compact:

> The 2,500 acre-feet of imported water will come from the Rio Grande, therefore, can be potentially leased outside the basin. Thus, there is nothing requiring the Pueblos to keep the 2,500 acre-feet of wet water inside the basin. These waters are diverted just north of the Otowi gauge, possibly violating the Rio Grande Compact depending on where the water is leased.

No. 9011 at paragraph 4. This is false. The reality is that such water may not be leased outside the Pojoaque Basin. With regard to such Acquired Water, the Settlement Agreement expressly provides:

> 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.

Section 2.5.1 (emphasis added). The notion that Acquired Water might be leased outside the Pojoaque Basin is at odds with the express terms of the Settlement Agreement. As such, the Acquired Water will remain in the Pojoaque Basin, and north of the Otowi gauge. Moreover, any transfer of water for use as Acquired Water under the Settlement Agreement in the Pojoaque Basin will have to be permitted by the State Engineer. Such a permit would not be granted if it would violate the Rio Grande Compact.

The April 7, 2014 objection also complains that the Settlement Agreement somehow exempts the Regional Water Authority from certain State statutes:

> As a New Mexico Legislator and a taxpayer in Santa Fe County and State of New Mexico, I do **not** agree with Section 9.4.1.1 of the Settlement Agreement. In this Section, the Regional Water Authority (RWA) is not subject to the to the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, New Mexico Audit Act, Sections 12-6-1 through 12-6-14, NMSA 1978, or any successor to such law.

No. 9011 at paragraph 2 (emphasis in original) (emphasis added). Again, this is false. The Settlement Agreement does not provide for such an exemption. The Settlement Agreement actually

states that "[p]rior to the entry of the Final decree, the State must, by legislation, regulation or administrative order":

> 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;

Section 9.4.1.1. In other words, the Settlement Agreement requires that the State must pass legislation to allow those exemptions if those exemptions are necessary. It absolutely does not provide that the Regional Water Authority is not subject to those sections, nor could it.

> Finally, certain of the objections assert that the Settlement Agreement in some way violates the State's Anti-Donation Clause. A March 10, 2014 Objection states: "Hookups into my property are not paid for using the hookup funds because of the anti-donation clause." No. 8191 at 3. This objection does not state how the anti-donation clause is implicated. . Funds from the Water Connection Fund to be provided under the Settlement Agreement to cover the cost of connecting to the CWU are only available to settling parties that agree to transfer their water rights to the CWU. Further, the Settlement Agreement provides that the State Engineer shall promulgate rules respecting the administration of the Water Connection Fund.

Section 3.1.7.3. As such rules have not yet been developed, any allegations regarding violations of the anti-donation clause are purely speculative and impossible to assess. These objections should be dismissed.

3. The Settlement does not violate Equal Protection (Category z)

> Pre-Printed Attachment B states:
>
> 13. Defendant objects to the Settlement Agreement as it violates the Equal Rights and Protection Clause of the Constitution. It allows one group of people rights and protections that are denied to another group of people.

(emphasis added). Defendants do not state which group gets the rights and protections, which group is denied them, nor do they identify what rights and protections are involved. Exhibit B

paragraph 14 states "Defendant objects to the deprivation of due process and a violation of the Equal protection Clause of the Constitution and the State Open Meetings Act," and again in paragraph 16 that "Defendant objects to requirements of the Court which have deprived Defendant of fundamental fairness required by the 5th and 14th Amendments of our Constitution." Again Defendants fail to provide any particulars as to their equal protection claim, making an analysis of, and response to the objection impossible.

4. Lacks consideration; transfer of water rights before system complete; Pueblo protection from priority call not sufficient (Category I)

Several objections allege incorrectly that the Settlement Agreement requires the transfer of water rights before the Regional Water System is complete, and that there is a corresponding lack of consideration. Pre-Printed Attachment A states:

> 12. Defendant objects to the transfer of his domestic well water rights to the county water utility upon entry of the partial final decree (Sec. 8.1). Given the state of required agreements, rules, funding, and easement acquisition that have not been completed, Defendant would not be connected to the regional water system until the year 2024 (possibly) without just compensation. The settlement agreement is void for lack of consideration.

(emphasis added); similarly, Pre-Printed Attachments B states:

> 11. The Defendant objects to the transfer of the Defendant's domestic well rights to the County water utility upon entry of the Partial Final Decree. Due to the lack of certainty concerning rules, easements, required agreement and funding, the water system installation may be delayed for an indefinite period of time. There is no provision for compensation to the Defendant for transfer of water rights without certainty concerning the timeline and costs associated with the Defendant's ability to connection [sic] to said system.

(emphasis added).

These objections misstate the provisions of the Settlement Agreement. First, no party is required to transfer their domestic well water rights to the County Water Utility (CWU) unless

they elect to connect under the Settlement Agreement. Second, if they do elect to connect, no water rights are required to be transferred simply upon entry of the Partial Final Judgment and Decree. If a party does elect to connect to the County Water Utility, Section 3.1.7.2.1 of the Settlement Agreement provides that the owner will only discontinue the use of such well for domestic purposes "upon connection to the CWU." (emphasis added). There is no requirement anywhere in the Settlement Agreement that any party transfer a water right to the CWU "upon the entry of the partial final decree," as the objectors allege, or at any other time prior to receiving service from the utility. See Section 3.1.7.2.1 (They shall "upon written notice from the CWU, connect to the CWU for domestic water service as soon as such water 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.") In fact, the Settlement Agreement expressly provides that those making the election to connect to the CWU "shall be permitted to continue to use [their] well . . . until they are able to connect to the CWU and obtain service." 3.1.7.2.1.

And Settlement Parties are free to make an election not to connect to the CWU at all. Correspondingly, such a Settling Party would never be obligated to transfer their permit or domestic well water right to the CWU. Indeed, section 3.1.7.1 of the Settlement Agreement specifically provides that: "[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 that well." For these reasons, the objections based on the allegation that there is a lack of consideration or that they are required to transfer their domestic well water rights under the Settlement Agreement should be overruled.

D. Domestic Wells

There are a number of objections that are based on concerns about the treatment of domestic wells under the Settlement Agreement: that the Settlement Agreement provides for an unconstitutional "taking" of the objectors domestic well water rights, that it is at odds with the State's domestic well statute, that the indoor use restriction for wells permitted after 1983 arises unlawfully from the Settlement Agreement, and that shared wells are not spoken to by the Settlement Agreement in any way. None of these objections are factually or legally correct.

1. Taking/Injury to Property Value (Category a)

In a variety of ways, many objections complain that the Settlement Agreement causes an improper taking of domestic well water rights or otherwise reduces the value of the objectors' property as a result of transactions involving domestic well water rights. More specifically, these objections allege that the Settlement Agreement allows the County Water Utility to take the objectors' domestic well water rights without compensation, that it arbitrarily reduces the quantity of the objectors' domestic well water rights, and that it otherwise misquantifies the objectors' domestic well water rights. For instance, an objection in Exhibit A incorrectly asserts that the Settlement Agreement reduces domestic well water rights to 0.5 AFY:

> 1. By the terms of the settlement agreement (See Section 3), the beneficial use of 3.0 AFY of groundwater granted by permits issued after 1956 by the New Mexico State Engineer, are reduced to 0.5 AFY without just compensation, arbitrarily and in violation of the Domestic Well Statute (Sect. 72-12-1.1; NMAC 19.27.5.9).

(emphasis added); Similarly, an objection in Exhibit B complains that beneficial use is impossible to define:

> 4. Defendant objects to the method in which the OSE has come up with "Beneficial Use." Beneficial use has not been fully defined. There is no proof as to what Defendant's historical beneficial use is at this point. The State Engineer

> does not have the authority to determine Defendant's water rights.

(emphasis added); and in Exhibit C:

> 5. My rights to beneficial use of groundwater are reduced without consideration or just compensation.

(emphasis added).

These objections are factually and legally incorrect. There are no provisions in the Settlement Agreement that "reduce" a domestic well owner's "beneficial use."

The objections cited above seem to suggest an expectation on the part of the objectors that generally speaking a domestic well permit to appropriate up to three acre feet of water per year is equivalent to a water right. It unambiguously is not. This Court has already held many times that a permit is not a water right. More specifically, on September 20, 2012, this Court held:

> A permit is not a water right and Trujillo does not cite any authority, nor did the Court find any authority, for the proposition that a permit to appropriate water is a perfected property right. "A water permit is an inchoate right, and is the necessary first step in obtaining a water right. It is the authority to pursue a water right – a conditional but unfulfilled promise on the part of the state to allow the permittee to one day apply the state's water in a particular place and to a specific beneficial use under conditions where the rights of other appropriators will not be impaired." *Hanson v. Turney*, 136 N.M. 1, 3 (Ct. App. 2004) (Language in New Mexico water statutes "is compelling evidence that the legislature did not intend to allow permit holders who had not yet applied any water to beneficial use to be considered owners of a water right"); see also N.M. Stat. Ann. § 72-12-8 (distinguishing an "owner of a water right" from a "holder of a permit").

Memorandum Opinion and Order at 6 (No. 7757) (emphasis added). This Court then held that water rights for domestic wells in New Mexico are limited to the quantity of water beneficially used, and noted that in the Zuni River Basin Adjudication the Court stated:

> New Mexico law is clear on the subject. The constitutional provision and statutes . . . as well as abundant case law clearly state that beneficial use defines the extent

> of a water right. This fundamental principal is applicable to all appropriations of public waters. Only by applying water to beneficial use can an appropriator acquire a perfected right to that water.

Id. at 7 (citing *United States v. A & R Productions*, No. 01cv72, Doc. No. 733 at 4, filed June 15, 2006 (D.N.M.) (Black, J.) (citations and quotation marks omitted). That the objectors' water rights are defined by beneficial use arises from New Mexico water law, and applies to the objectors whether or not the Settlement Agreement is approved.

With regard to the notion that the objectors' water rights "are reduced to 0.5 AFY" by the Settlement Agreement, or that '[t]here is no proof as to what Defendant's historical beneficial use is at this point," this again is false. This Court has already found that the quantity of water beneficially used from a domestic well when water from that well can be used for both indoor and outdoor purposes in this Basin is an average of 0.3 acre-feet per year based upon evidence from meter readings of domestic wells in the Basin:

> The State pointed to the Water Master Report filed in this case which includes meter readings for over 300 post-1982 domestic wells. (See Doc. No. 6127, filed April 25, 2005. The owners of wells in the Water Master Report had entered into a settlement agreement which allowed them to divert 0.7 acre-feet per year for both indoor and outdoor use of water. The meter records for those wells showed an average use of 0.3 acre-feet per year. (See Doc. No. 6186 at 3). Because there were no objections to the State's motion and for good cause shown, the Court ordered claimants of unadjudicated water rights under post-1982 well permits to show cause why the water right quantity for post-1982 well permits should not be adjudicated as 0.5 acre-feet per year consistent with the terms of the domestic well permit. (See Doc. No. 6194, filed December 11, 2006).

Id. at 9-10. Indeed, several years' worth of annual water master reports filed with the Court consistently support the fact that beneficial use from domestic wells for both indoor and outdoor use varies little from the average of 0.3 acre-feet per year cited above, and is frequently even less than that. See e.g., *Notice of Filing 2010 Report of Post Moratorium Wells Water Master*,

Exhibit 1 at 2 ("Based on these readings the average use for each household decreased from the previous year to approximately 0.235 acre-feet per annum") (No. 7693-1); see also *Notice of Filing 2009 Report of Post Moratorium Wells Water Master*, Exhibit 1 at 2 ("Based on these readings the average use for each household is approximately 0.271 acre-feet per annum") (No. 7035-1); *Notice of Filing 2008 Report of Post Moratorium Wells Water Master*, Exhibit 3 Tabulation at 8 ("0.296 Average Use Per Meter") (No. 6740-3); see also *Notice of Filing 2007 Report of Post Moratorium Wells Water Master*, Exhibit 3 Tabulation at 8 ("0.296 Average Use Per Meter") (No. 6374-3).

Further, the State Engineer is not determining any party's water rights in this adjudication. The New Mexico Attorney General, not the State Engineer, is representing the State in adjudicating the water rights in this stream system pursuant to the statutory authority expressly granted in NMSA Section 72-4-15 (1907).

The only reduction of use required under the Settlement Agreement is voluntary -- a Settlement Party can voluntarily agree to reduce their use in return for receiving certain benefits of the Settlement Agreement. For example, Section 3.1.7.2 provides that "in order to be protected from 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" in some cases, to reduce their use. See e.g., Section 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"). However, these provisions are elective, and only apply where a party's beneficial use is actually above 0.5 AFY, which, as shown above, is much greater than the average beneficial use from domestic wells in the Basin. And, a settling

well owner can always choose to keep their well and not connect to the CWU or reduce their water usage pursuant to Section 3.1.7.1.

In sum, beneficial use is the basis, the measure, and the limit of a water right, including domestic well water rights, and domestic wells on average use far less than the 0.5 AFY protected by the Settlement Agreement. The Settlement Agreement does not result in a taking of property, the objectors have failed to show it would injure property values, and the objections should be dismissed.

2. Violates Domestic Well Statute (Category f)

Several objections argue that the Settlement Agreement is contrary to New Mexico's domestic well statute. In particular, two of the form objections assert that the Settlement Agreement "declares a minimum amount of water for household uses that is immune from priority call" in violation of New Mexico law. In exhibit A, an objection states:

> 17. The Settlement Agreement denies the protection afforded by the New Mexico Legislature to domestic well owners by declaring a minimum amount of water used for household uses that is immune from priority call. (Sect. 72-12-1.1; NMAC 19.27.5.9). Defendant objects to the denial of protection afforded by the state water code and related rules and regulations. (NMAC 19.27.5)

(emphasis added); and in almost identical fashion, in Exhibit B:

> 12. The Defendant contends that the Settlement Agreement denies the Defendant the protections afforded domestic well owners under New Mexico law. Section 72-12-1.1 of the NMAC protects the owners of domestic wells by declaring that a minimum amount of water used for household purposes should be immune from a priority call. Defendant therefore objects and states that Defendant is being denied the protections embodied in the State [W]ater Code.

(emphasis added).

These objections misstate the law. There is no protection from priority call provided for by New Mexico's domestic well statute. Neither Section 72-12-1.1 NMSA 1978 nor its

predecessor statutes have ever given protection from priority call for any uses of water. Neither does NMAC 19.27.5.9 provide for any protection from priority call. This is exactly what the New Mexico Supreme Court held in *Bounds v. State ex rel. D'Antonio*: "Nothing in the language of the [Domestic Wells Statute] prevents domestic well permits from being administered in the same way as all other water rights, including priority administration—exactly what Article XVI, Section 2 of the New Mexico Constitution requires." 2013-NMSC-037, 306 P.3d 457, 465 (2013). The Supreme Court added:

> Significantly, according to the very permits that authorize them, domestic wells are "subject to curtailment by priority administration as implemented by the state engineer or a court." 19.27.5.13(B)(11) NMAC. Curtailment by priority administration authorizes the State Engineer to limit water use administratively in times of water shortage to protect senior water rights. *See* NMSA 1978, § 72–2–9 (1907) (giving the State Engineer authority to supervise the apportionment of water in New Mexico).

Id. at 466-467.

On the other hand, although New Mexico's domestic wells statute does not provide any protection from priority calls, the Settlement Agreement actually does. Section 4 of the Settlement Agreement provides that Settlement Parties that have made an election for their well under Section 3.1.7.2, shall be protected from priority enforcement of the Pueblos' water rights. This is a protection that is not provided under state law, but only by voluntary agreement of the Pueblos in the Settlement Agreement. *Aamodt* Settlement Agreement at 35.

This category of objections should be overruled.

3. Water Quantity Insufficient to Meet Needs (Category o)

A number of objections to the Settlement Agreement in fact appear to be objections to the Court's January 13, 1983 *Order* (No. 753) which granted a motion for a preliminary injunction,

and required the State Engineer to limit all future domestic well permits to indoor use only. More specifically, in Exhibit A:

> 26. Defendant objects to the arbitrary restriction against outdoor use of a domestic well for irrigation of non-commercial trees, gardens or lawns as a deprivation of procedural and substantive Due Process of Law.

(emphasis added)and in Exhibit C:

> 2. The restriction against outdoor use of a domestic well for irrigation of non-commercial trees, gardens or laws [sic] is arbitrary.

and

> 4. The settlement agreement is coercive by granting domestic well owners who agree to the settlement agreement 0.5 AFY while well owners who desire to keep their wells and not connect to the regional water system are only granted 0.3 AFY. A claimant who agrees with the settlement agreement may use 0.5 AFY for indoor and outdoor domestic uses, but a well owner who does not agree with the settlement agreement is subject to the preliminary injunction.

(emphasis added). These objections are unfounded. The restriction against outdoor use arises from the Court's January 13, 1983 *Order*, and is not a creation of the Settlement Agreement.

On February 26, 1982, the U.S. and the four Pueblos filed a *Motion* (No. 576) seeking an injunction barring the State from issuing any well permits under Section 72-12-1 NMSA 1978. Following oral argument, on January 13, 1983 the Court ordered that:

> No permits to appropriate underground waters shall be issued within the Rio Pojoaque stream system under Section 72-12-1, N.M.S.A. 1978. Permits may issue limited to the use of water for household, drinking and sanitary purposes within a closed water system that returns effluent below the surface of the ground minimizing and [sic] consumptive use of water. All subject to further orders of the court.

No. 641. All domestic well permits issued by the State Engineer since that time have included the indoor use restriction.

In the years since, the Court has spoken many times to the validity of the January 13,

1983 preliminary injunction. See e.g. March 30, 2012 *Memorandum Opinion and Order* (denying motion to quash January 13, 1983 preliminary injunction) (No. 7579); see also June 2, 2011 *Memorandum Opinion and Order* (denying motion for relief from January 13, 1983 *Order*) (No. 7398); see also September 20, 2012 *Memorandum Opinion and Order* (denying defendant's objection to Special Master's *Order* granting summary judgment in part on the basis of the validity of the 1983 preliminary injunction) (No. 7757). To the extent the objectors' domestic well water rights are limited to indoor use, it is due to conditions in their permits imposed pursuant to the Court's 1983 *Order*, and definitely not due to the Settlement Agreement.

Moreover, the Settlement Agreement, far from limiting the Settlement Parties to indoor use, actually does the opposite. In most cases, for domestic well water right owners under permits issued after January 13, 1983, the State has agreed in the Settlement Agreement to lift the permit limitation to indoor use. For instance, under Section 3.1.7.4.1.4, wells subject to permit restrictions imposed under the Court's January 13, 1983 Order will have uses up to 0.7 AFY or historic beneficial use, whichever is less, protected from enforcement of priorities, for "indoor and outdoor use combined." (emphasis added)). Objections that the Settlement Agreement does the opposite are factually incorrect, and should be overruled.

Another group of form objections complain that the Settlement Agreement somehow limits or quantifies water rights at a level which is insufficient to meet the objectors' needs. One *Objection* (No. 8308) states "[l]imitation on my current water usage will deprive my future family development." Another *Objection* (No. 8400) states "[l]ivestock, alfalfa, orchards will be affected" and another (No. 8418) states the Settlement Agreement "jeopardizes future and historical generation use" and "free access to fire department, our community." *Objection* ("I

want to be able to water livestock, alfalfa fields, garden vegetables, garden flowers, trees, landscape, small orchard, some of which I sell.") (No. 8438); Objection ("We want our 3 acre feet of water.") (No. 8546); see also Objection ("need water for garden and trees and household use . . . retired need to work on garden and yard to stay busy.") (No. 8601). These objections misunderstand the basis for the determination of their water rights. As noted above, water rights are quantified based on actual, historical, beneficial use. Water rights are not quantified based on future need, or the 3.0 acre-feet permit limit, or the terms of the Settlement Agreement. To the extent a party has beneficially used water under an adjudicated water right or permit from the State Engineer, they will be able to continue doing so if the Settlement Agreement is approved. The Settlement Agreement does not adjudicate or determine their water right, but it does provide protections for water right owners that agree to accept its determination of the Pueblos' water rights. These objections have no basis in fact or law and should be overruled.

4. Shared Wells Not Addressed (Category v)

A number of non-form objections complain that the Settlement Agreement is vague or detrimental or discriminatory toward shared domestic wells. A March 26, 2014 *Objection* states simply:

> Shared well – less water rights than with individual wells. No possibility of hookup to planned water system. No city hookup possible.

No. 8312 at p. 2. Another March 26, 2014 *Objection* recites that the objector is possessed of a shared well, and then states:

> Only two properties have full time residents (each with only two persons) and the third (with only one full time resident) No. 14 Tano Point Lane is for sale. Because of Aamodt we will/may be significantly limited in our water usage thus deterring any possible future sales and more immediately, creating severe inconvenience to our already conservative water usage.

No. 8313 at 3. See also March 26, 2014 *Objection* at 3 (No. 8321); March 26, 2014 Objection at 3 ("By detrimentally relying on well use and rights not being diminished by Aamodt, the three parties to the shared well use agreement have been physically and financially harmed) (No. 8320) (emphasis added); March 10, 2014 *Objection* at 3 ("The rules for shared wells are not to be found in the settlement documents.") (No. 8191). Similarly, an April 1, 2014 *Objection* at p. 5 states:

> 5).—No where [sic] in the settlement agreement is there any provision in writing providing specifically what my rights, protections, or enforcement of non-compliance are because I have a **shared well**. No provision exist [sic] in the Interim Administrative Order and Settlement Agreement that addresses this situation of a **shared well.**

No. 8384.

These objections misunderstand the Settlement Agreement's treatment of shared wells. Section 3.1.2.2 describes an evidentiary presumption with regard to quantity that "historic beneficial use from a well is presumed to be .5 AFY per household." Section 3.1.2.2 (emphasis added). This is not a quantity per well, but rather a quantity *per household*, and as such, while there is no express provision regarding shared wells, under Section 3.1.2.2, their rights are not "reduced."

Beyond that important recognition that shared wells are quantified based on the number of households served by the well, and not limited to a quantity per well, the Settlement Agreement otherwise makes no distinction between single user wells and "shared" or "multiple-household" wells. Rather, it speaks to domestic wells generally, and within the category of domestic wells, both single household and multiple household wells are included. The provisions of the Settlement Agreement apply to both.

For example, Section 3.1.7.4.3.1 speaks to "Pre-Basin Wells" only. It makes no

distinction between Pre-Basin single household domestic wells and Pre-Basin shared or multiple-household domestic wells. Similarly throughout the rest of the Settlement Agreement both single household and multiple-user wells are included under the general headings of domestic wells. No carve-out or distinction regarding "multiple-household" or "shared wells" exists under the Settlement Agreement.

5. Property exempt from Settlement (Category d)

One objector claims that his property is exempt from the Pueblos' claims: "Property deed signed by Herbert Hoover ... specifically segregates this well property from all future Indian pueblo claims or federal claims." *Objection* of Richard C. Bibb, filed March 4, 2014 (Dkt. No. 8096). The objection does not explain how a land deed exempts the owner from the adjudication and administration of water rights Assuming the objector is referring to a deed recognizing a Private Claim under the 1924 and 1933 Pueblos Lands Acts, the Tenth Circuit in *Aamodt I*, found: "The water rights of the Pueblos are prior to all non-Indians whose land ownership was recognized pursuant to the 1924 and 1933 Acts." 537 F.2d at 1113.

E. Treaty of Guadalupe Hidalgo and Acequia Rights

This section responds to concerns that the settlement violates non-Pueblo rights under the Treaty of Guadalupe Hidalgo, including detrimental effects to historic acequias. In negotiating the Settlement Agreement, a key objective of the State and non-Pueblo parties was to protect existing irrigation by acequias and other non-Pueblo surface water rights holders.

1. Treaty of Guadalupe Hidalgo (Category s)

A handful of individual objectors oppose the settlement as contrary to the Treaty of Guadalupe Hidalgo: "The settlement forgoes the Treaty of Guadalupe Hidalgo Rights and

doesn't consider the protections of those rights." *Objection* of Paul White, filed March 10, 2014 (Dkt. No. 8191) at p. 3 of 6. See *Objection* of Eric Valdez, filed April 1, 2014 (Dkt. No. 8379) (settlement challenges the Treaty of Guadalupe Hidalgo 1848, stating no 'superior access' water rights by anyone, tribe, other entities before 1848); *Objection* of Stephanie Kelly, filed April 7, 2014 (Dkt. No. 8899) (Treaty of Guadalupe Hidalgo requires Pueblo post-1846 rights to be treated the same as all others); *Objection* of Lucy Cornwell, filed April 7, 2014 (Dkt. 9124) (Treaty of Guadalupe Hidalgo, Constitution violated by changing priority dates).

"In the Treaty of Guadalupe Hidalgo, the United States agreed to protect rights recognized by prior sovereigns." *Aamodt I*, 537 F.2d at 1108-1109. In *Aamodt II*, the Court held:

> Acreage under irrigation in 1846 was protected by federal law including the Treaty of Guadalupe Hidalgo, *supra*, and the 1851 Trade and Intercourse Act, *supra*. The Pueblo aboriginal water right, as modified by Spanish and Mexican law, included the right to irrigate new land in response to need. Acreage brought under irrigation between 1846 and 1924 was thus also protected by federal law.

618 F.Supp at 1010. As described in section B(1)(Category w) of this brief, the quantities and priority dates of the Pueblos' proposed water rights are based on the rulings of this Court. In holding that aboriginal title gave the Pueblos first priority, the Court rejected the arguments of the non-Pueblo ditches and acequias, most of which were established under Spanish and Mexican sovereignty, that water should be allocated under a "repartimiento" or equitable sharing system. *Compare Aamodt II* at 997-999 & 1005-1010 to *Certain Defendants' Requested Findings of Fact and Conclusions of Law*, filed Jan. 17, 2004, beginning at p. 11. *See* Mark F. Sheridan, *Pueblo Indian Water Rights, the Federal Law Sources, A Non-Pueblo Position* (Jan. 2002) (CLE International, Law of the Rio Grande conference). As discussed below in section E(2)(Category

n), the Settlement Agreement contains protections for water rights on acequias that will insulate them from strict priority administration that would otherwise apply under the Court's prior rulings.

2. Threatens Acequia System Culture (Category n)

Some objections assert the Settlement Agreement will harm traditional acequia uses:

> The settlement agreement protects the Pueblos' surface water rights from forfeiture but does not protect non-Indians from forfeiture (Sec. 2.10.2). Forfeiture eliminates a member of the acequia and threatens the survival of the acequia system.

Exhibit A, pp. 7 of 7, para. 25. As covered in section B(2)(Category i) and section A(5)(Category z), the settlement does not affect or modify the existing laws governing forfeiture of water rights.

Under the settlement, existing non-Pueblo water rights receive a number of protections they would not otherwise, as set out in detail in section B(1)(Category w). Without settlement, the Pueblos would be entitled to priority administration in order to satisfy the full amount of their first priority rights. By contrast, with the settlement the Pueblos are agreeing to substantial limitations on priority calls and administration.

The settlement provisions are specifically designed to protect the historic and continuing diversions of surface water rights from acequias. The Settlement Agreement limits a first priority call to the Pueblos' current uses, which are about a third of their total historic first priority rights. Section 4.2 of the Settlement Agreement provides that currently unexercised historic first priority rights of the Pueblos ("Future Basin Use Rights") will not be enforced against non-Pueblo water rights that continue in beneficial use, including diversions from acequias. This means that of the Pueblos' total first priority rights of 3,660 AFY, only the "Existing Basin Use Rights" of 1,391

AFY may be exercised and administered with a first priority against protected non-Pueblo surface water rights. As a result, almost two-thirds of the Pueblos' first priority rights, in the amount of 2,269 AFY, are effectively made a third priority.

Surface water administration under Settlement: non-Pueblo rights with Section 4 Protection		
First Priority	Pueblo Existing Basin Rights	1391 AFY
Second Priority	Non-Pueblos' Existing Uses with Section 4 Protection	continuing beneficial use as allowed by water rights
Third Priority	Pueblo Future Basin Rights	2269 AFY

This Section 4 protection's reversing of priorities would not occur without the settlement.

Section 4 protection, however, may be lost if the non-Pueblo water right is not beneficially used for more than five consecutive years in the future without justification or is transferred to a new point of diversion or purpose or place of use, with certain exceptions. *See* Settlement Agreement §§ 4.2.2 & 4.2.3. Some objectors have complained that loss of this protection amounts to forfeiture of the non-Pueblo rights. See *Objection* of Edward Romero, filed March 25, 2014 (Dkt. No. 8286) (I object that if some water rights are not beneficially used for more than five consecutive years forfeiture could occur which would eliminate that member of the Acequia). This objection confuses forfeiture of water rights under state law with the additional protection afforded by the settlement. Under the state forfeiture statutes, NMSA 72-5-28 (1957) and 72-12-8 (1957), if a party fails to beneficially use water for a period of four years before the State Engineer issues a notice and declaration of non-use, and an additional year after

the notice, the water shall revert to the public. Under the Settlement Agreement, if a non-Pueblo surface water right owner fails to irrigate for five years even though there is adequate supply, the water right is not forfeited, but rather may lose the priority protection agreed to by the Pueblos under Section 4. The potential loss of Section 4 protection is not the loss of an existing water right, as under state forfeiture, but rather the possible loss of a benefit that would not exist except under the Settlement. There is no potential for forfeiture of water rights under the Settlement Agreement.

Finally, it is noteworthy that both of the Basin's two large acequia associations support the Settlement Agreement and are filing briefs asking the Court to approve it and enter the Partial Final Decree. *See The Rio de Tesuque Association, Inc's Memorandum in Support of the Settlement Agreement and Entry of a Partial Final Decree on the Pueblos' Rights*, filed Nov. 6, 2014; and *Certain Non-Pueblo Defendants' Memorandum in Support of Entry of Partial Final Judgment and Decree,* Rio Pojoaque Acequia & Water Well Association, filed Nov. 6, 2014.

F. Settlement Implementation

Several objections relate to the implementation of the Settlement Agreement, including complaints that there is unequal representation on the board of the Regional Water Authority, the Settlement Agreement is not complete, certain documents have not yet been developed, and water quality, funding and the Settlement Agreements perceived costs to non-Settlement Parties have not been addressed. These objections should be dismissed because, as discussed below, the Court has already held that these issues related to implementation of the Settlement Agreement are irrelevant to the Court's consideration of the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree.

1. Unequal representation on board, the agreement is incomplete, details are not available, the rules have not been drafted, easements are not obtained, the EIS not complete (Category b and c)

Numerous objections oppose the Settlement Agreement because of a perceived unequal representation on the board of the Regional Water System or that the Settlement Agreement is not complete because the Joint Powers Agreement, the Operating Agreement, the Pojoaque Basin Rules and Regulations, and the Environmental Impact Statement, and the easements for the Regional Water System have not yet been provided or obtained. A February 4, 2014 Objection complains that "water board is 4 out of 5 sovereign nation which we are not a citizen of. So no representation. Takes 3 out of 5 to vote in changes." (No. 8094). Another, dated February 4, 2014, states: "Water board ruled by savereign [sic] nation; no representation for US citizen." (No. 8095); and one Objection dated March 12, 2014 states:

> I object to the JPA (joint powers agreement) or Water Authority Board proposed 4 tribal reps 1 county. Board should reflect interest of parties involved approx. 6000 non-tribal and 1000 tribal individuals.

(No. 8227); another from March 25, 2014 states "I object to the uneven representation on the Water Authority Board. This is unacceptable. There needs to be more non-pueblo representation." (No. 8288).

Exhibit A states:

> 13. The Joint Powers Agreement and the Water Master Rules for the District WaterMaster and the WaterMaster Rules for the N-P-T WaterMaster, including but not limited to the rules required by Section 5 of the settlement agreement, have not been presented or approved;
>
> And
>
> 10 . . . the rules governing the Water Master and the State Engineer in the context of the Settlement Agreement have not yet been adopted. Furthermore, the Joint Powers Agreement, Water Rules for the District Water Master and Water Master

> Rules for the NPT Water Master have not been presented or approved as required by Settlement Agreement.

(emphasis added). Similarly, Exhibit C states: "I object to the entry of the partial final decree before all funding, agreement, rules, reports, and technical information have been provided and approved"; Exhibits D and E, as well as many individual objections which raise basically the same concern.

The Court has already ruled that these objections are not relevant to the Court's approval of the Settlement Agreement or entry of the Partial Final Judgment and Decree. In its September 12, 2014 *Memorandum Opinion and Order Overruling Objection to Magistrate Judge's Order Denying Motion for Partial Stay* the Court rejected exactly the same assertion these objections raise, namely that these subsidiary documents must be completed before the Settlement Agreement can be approved, stating that:

> Defendants have not shown that the requested documents are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law.

No. 9674 at 3. The Court was affirming the Magistrate Judge's *Order*, which examined the same issue, and stated:

> Defendants argue that without these documents, they are unable to determine the feasibility of the Regional Water System. Defendants' argument is not persuasive because the feasibility of the Regional Water System is not one of the criteria relevant to the approval of the Settlement Agreement. Furthermore, the Settlement Act provides for the right to void the final decree if the Regional Water System is not substantially complete by June 30, 2024. If the final decree is void because the Regional Water System is not substantially complete by June 30, 2024, the Settlement Agreement will no longer be effective.

July 7, 2014 *Order* at 3 (citations omitted) (No. 9473). The Magistrate Judge went on to find that the Defendants' other arguments regarding the unavailable documents was equally unpersuasive:

> Defendants also argue that because the requested documents are not available, there is a risk of "erroneous deprivation of water rights," and make the conclusory allegation that approval of the Settlement Agreement could "potentially result in the loss of water rights and the loss of rights and immunities guaranteed by state law, depending on how the relevant agreements, rules, and reports are drafted and how the system is designed." Section 3 of the Settlement Agreement sets forth the non-Pueblo water rights. Defendants do not identify any provisions in the Settlement Agreement or the Settlement Act which would provide for deprivation of the water rights set forth in the Settlement Agreement based on provisions in the requested documents.

Id. at 3-4. The Magistrate Judge therefore concluded, as did the Court, that "Defendants have not shown that the requested documents are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law." *Id.* at 4.

Further, the Court held that the argument that the requested documents are not consistent with the applicable law is meritless on its face because the requested documents do not yet exist. No. 9674 at 5. The same applies now to the instant objections. The objectors have failed to show that the requested documents concerning the implementation of the Settlement Agreement are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law. The objections should be overruled.

2. The Settlement Agreement will not adversely affect water quality (Category e)

Several individual objections raise issues of water quality concerns. One February 4, 2014 Objection complains that "well water – purity needed for elderly resident (age 75)" (No.

8096); another filed March 5, 2014 states "no good to give treated water to livestock will open other doors for further problems" (No. 8157); another from March 10, 2014 states: "we have good drinking water. Water from the Rio Grande would be a health issue." (No. 8187). These objectors fail to state how the Settlement Agreement would affect the quality of their well water, nor could they, as nothing in the Settlement Agreement would do that.

First, if their concern is that the Settlement Agreement requires them to take water from the County Water Utility ("CWU"), and they fear the quality of that water might be an issue, their concerns are misplaced. Nothing in the Settlement Agreement forces any person to connect to the CWU. Connecting to the CWU is completely voluntary. As expressly stated in Section 3.1.7.1 of the Settlement Agreement :

> [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 that well.

In fact, unlike water supplied under individual domestic wells, the water supplied by the CWU must meet federal and state regulatory standards for drinking water quality. Therefore, the only effect that the Settlement Agreement may have upon the quality of their water is the opportunity to improve it by connecting to the CWU, an opportunity that does not currently exist without the Settlement. The objections as to water quality should be overruled.

3. Funding concerns: connection fund/impairment fund (Category h)

Several objections complain about a perceived uncertainty as to funding for various aspects of the Settlement Agreement. "The funds needed to connect to the system have not been fully explained and allocated." Exhibit B at paragraph 6. "Additionally, since the design is not fully completed and firm costs established, there is potential that the construction costs for the

system may exceed the early estimates. If this is the case, then the excess costs may be covered through an increase in taxes that will affect the Defendant negatively." Exhibit D (emphasis added). Certain other individual objections complain specifically with regard to uncertainty regarding funding of the impairment fund:

> If the Pueblos impair or damage my water rights, the non-Indian has no enforcement rights. If the impairment fund has no money in it non-Indian has no remedy for impairment[.]

(emphasis added) (No. 8406). Others are concerned about uncertainty regarding funding of the connection fund. None of these objections identify how these funding concerns are relevant to the determination of whether the Settlement Agreement is fair, adequate, reasonable, in the public interest, or consistent with applicable law.

4. Personal financial situation/cost (Category r)

Another group of objections express similar concerns that the Settlement Agreement will impose costs on them which they will be unable to support. "The funds needed to connect to the system have not been fully explained and allocated. Therefore, the Defendant is unable to determine what the costs of connection will be and whether Defendant is financially able to afford such connection." Exhibit B, paragraph 6. (emphasis added). Additionally, certain individual objections express concerns that the Settlement Agreement will impose costs on them which they will be unable to support. One, filed March 5, 2014, states "I don't want another bill to pay every month" (No. 8157); another filed March 31, 2014 states; "we cannot afford to pay"; and yet another filed April 2, 2014 states: "We paid good money for the well. Is somebody going to reimburse us? Money is limited." (No. 8439).

These objections misunderstand the provisions of the Settlement Agreement. The

Settlement Agreement does not require any person to cease using their well or to connect to the CWU, or to be subject to future costs associated with such a connection. In fact, for those parties who elect to connect to the CWU when it is available under section 3.1.7.2.1, their connection costs will be paid out of the Connection Fund. Indeed, under the Settlement Agreement, no person making an election to connect to the CWU under Section 3.1.7.2.1 shall be required to connect to the CWU "unless all connection expenses are paid by the Pojoaque Valley Water Utility Connection Fund or other third party." Section 3.1.7.3. As such, these objections should be dismissed.

III. Conclusion

The Objection form approved by the Court required parties filing objections to state the specific legal and factual basis for their objection, and how their water rights would be injured or harmed in a legally cognizable way by the Settlement Agreement and entry of the proposed Partial Final Judgment and Decree and Interim Administrative Order. None of the objectors has identified how they will be injured by the Settlement Agreement or the entry of the proposed Partial Final Judgment and Decree in a legally cognizable way. All objections should be dismissed or overruled.

WHEREFORE The State of New Mexico *ex rel.* State Engineer, Santa Fe County and the City of Santa Fe request that the Court overrule the objections, approve the Settlement Agreement and enter the proposed Partial Final Decree.

Respectfully submitted this 6th day of November, 2014.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 6, 2014 I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER, Plaintiff, v. R. LEE AAMODT, et al., Defendants, and UNITED STATES OF AMERICA, PUEBLO DE NAMBÉ, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, and PUEBLO DE TESUQUE, Plaintiffs-in-Intervention.	)	No. 66cv6639 WJ/WPL

THE RIO de TESUQUE ASSOCIATION, INC.'S MEMORANDUM IN SUPPORT OF SETTLEMENT AGREEMENT AND ENTRY OF A PARTIAL FINAL DECREE ON THE PUEBLOS' RIGHTS

The Rio de Tesuque Association, Inc. (hereafter "the Association") is an association of the Acequia Madre, Acequia Chiquita, Acequia del Rio Tesuque, Acequia del Medio, Acequia del Cajon Grande, Mitchell and Cy More Ditches. Each of the association ditches are political subdivisions of the State of New Mexico and constitute the majority of the community ditches diverting water from the Rio Tesuque. At its annual meeting held October 14, 2014, the Association's board of directors instructed the undersigned to file this memorandum in support of the Settlement Agreement dated April 19, 2012 (hereafter "Settlement") and in support of the entry of the proposed Partial Final Judgment and Decree on the Water Rights of the Pueblos of

Tesuque, Pojoaque, Nambe and San Ildefonso (hereafter "Partial Final Decree"). Because of the economic constraints of the Association, this memorandum will not address each of the numerous objections filed by the numerous parties, but rather will demonstrate that the Settlement and entry of the Partial Final Decree are in the best interests of its member community ditches and, in turn, each of those community ditch's members. Rather than injuring adjudicated individual surface rights on the Association's member ditches in a "legally cognizable way," only under the Settlement are those rights and current uses protected. As such both the Settlement and the Partial Final Decree, contrary to the objections of many of the objectors, are fair, adequate, reasonable, in the public interest and consistent with the applicable law.

As the starting point of analysis, the Association will set forth a brief history of this adjudication and the claims asserted by the US/Pueblos. Although the US/Pueblos' initial claims that the Pueblos had "prior and paramount" water rights has been rejected by this Court, in the absence of settlement, the US/Pueblos will undoubtedly appeal such rejection to the Tenth Circuit and regardless of how the Tenth Circuit rules, the aggrieved parties will seek certiorari to the Supreme Court. Obviously, absent settlement, this adjudication may go on indefinitely.

How both the non-Pueblo acequia rights and the Pueblos' rights extrapolated from this Court's prior rulings would be administered are compared below to the administration of those rights under the Settlement and Partial Final Decree. The focus of this memorandum is on the administration of rights on the Rio Tesuque which is a separately administrable stream system within the Pojoaque Basin which flows from south to north and is chronically water short.

A. Brief History of the Aamodt Litigation and Claims Asserted by the US/Pueblos Therein

Aamodt was filed by the State of New Mexico in 1966 in order to adjudicate water rights in the Rio Tesuque-Nambe-Pojoaque stream systems. The United States intervened as a Plaintiff and asserted claims of prior and paramount water rights on behalf of the Pueblos of Tesuque, Nambe, Pojoaque and San Ildefonso. In 1974, pursuant to motions for partial summary judgment directed toward the claims of prior and paramount water rights asserted on behalf of the Pueblos, this Court ruled that the Pueblos' rights were governed by New Mexico state law. The US/Pueblos appealed that ruling to the Tenth Circuit Court of Appeals. In 1976 the Tenth Circuit held that the Pueblos' rights were not governed by New Mexico state law and remanded the case to for a determination of what law did govern Pueblo water rights and a determination of the Pueblos' water rights thereunder[1].

After remand from the Tenth Circuit, proceedings ensued primarily between the State and the US/Pueblos before Special Master Ed Yudin. Defendants were temporarily excused from participating in those proceedings without prejudice to their rights to challenge any adverse determinations at a later date. The US/Pueblos claimed they were entitled to first priority to the amount of water necessary to irrigate their "practically irrigable acreage" (PIA) under the Winters doctrine, which they claimed amounted to over 12,000 acres (3,702 acres for Tesuque Pueblo). In his November 23, 1982 Recommended Findings, Special Master Yudin found and concluded that the four Pueblos had first priority to irrigate all of their PIA, which he found to be 10,045 acres (2,750 acres for Tesuque Pueblo), minus 10% for roads, etcetera. This amounted to approximately 10 times what other evidence showed the Pueblos had historically used and far exceeded the average stream flows in the respective drainages.

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[1]*State v. Aamodt*, 537 F.2d 1102 (10th Cir 1976)

There were three significant developments in 1983. First certain defendants challenged the US/Pueblos claims that the Pueblos had Winters rights quantified by PIA with first priority. On June 10, 1983 the court entered a Memorandum Opinion and Order expressing the opinion that the Pueblos did not have "Winters" rights. Second, the US/Pueblos filed *interse* challenges to the quantity adjudicated to defendants in 535 sub-files, which challenges were stayed pending a determination of the Pueblos' rights. Third, in support of their objections to Special Master Yudin's findings, defendants did extensive briefing on the legal issues and had almost 3 additional weeks of trial on Spanish and Mexican Law in October 1983.

In 1985 this Court rejected Special Master Yudin's findings and conclusions and indicated that the Pueblos' had first or "aboriginal" priority to irrigate only those lands which had been irrigated by them between 1846 and 1924.[2] This Court quantified those rights in 1987 at 1094 acres (241.5 acres for Tesuque Pueblo) based on all acreage irrigated by the Pueblos between 1846 and 1924[3]. This quantification was referred to thereafter as the Pueblos "Historically Irrigated Acreage" (HIA). On February 26, 1987 this Court ruled that defendants would have to prove their priorities on a "tract by tract" basis and were not entitled to "ditch wide" priorities previously offered by the State. In another opinion entered on February 26, 1987, this Court ruled that in addition to their HIA, the Pueblos had "replacement" rights acquired with "compensation" funds pursuant to the 1924 Pueblo Lands Act; "reserved" rights on their "reservation" lands; rights otherwise "acquired" under state law but which did not have first

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[2]*State v. Aamodt*, 618 F. Supp 993 (D.C.N.M. 1985).

[3]Amended Findings of Fact and Conclusions of Law, filed September 9, 1987

priority; and domestic and livestock rights[4]. Between 1987 and 2000 extensive briefing and hearings occurred both before the Special Master and the Court pertaining to the Pueblos' rights in those various categories. To date, the only actual "quantification" of the Pueblos' rights found by the Court is for their HIA.

Extrapolating from this Court's April 14, 2000 Opinion with respect to the Pueblos "replacement rights" which also have a "first" priority, the Pueblos claim entitlement to an additional 700 - 750 acres (108.73 acres for Tesuque Pueblo) which would be a likely result under the Court's April 14, 2000 Opinion. The January 21, 2001 Opinion held that for domestic and livestock rights, the Pueblos had first priority for their historical use between 1848 and 1924. Estimates of such use, set forth below, were based upon population figures for the Pueblos and a per capita per day use.

B. Administration Based Upon Current Court Rulings

In order to compare results of administration of Pueblo versus non-Pueblo rights under the current Court rulings with administration under the Settlement, it is necessary to convert the acreage of the Pueblos' first priority rights to consumptive use amounts.[5] Consumptive use (CU) equals the number of acres multiplied by the consumptive irrigation requirement (CIR) of 1.84 acre feet per acre per year (CU = acres X 1.84). The following table sets out the projection of the Pueblos' first priority rights based upon current Court rulings. Not included are amounts for the Pueblos' livestock uses, other "acquired" rights, and possible "reserved rights" on the Nambe reservation.

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[4]February 26, 1987 Memorandum Opinion and Order

[5]For "irrigation water requirements," see footnote 6 below.

Projected Pueblo First Priority Right Based upon Current Court Rulings				
	Historically Irrigated Acreage (CU)	Replacement Rights Acreage (CU)	Domestic (no livestock component) (CU)	Total Consumptive Use (CU)
All 4 Pueblos	2011.2 AFY CU (1094 acres)	1346.2 AFY CU (@732 acres)	72.9 AFY CU	3430.3 AFY CU (no livestock)
Tesuque Pueblo	444.4 AFY CU (241.5 acres)	200 AFY CU (108.7 acres)	20.8 AFY CU	665.2 AFY CU (no livestock)

Hence if a partial final decree on the Pueblos' rights were entered based on the current Court rulings and affirmed on appeal, Tesuque Pueblo could call priority against the upstream non-Pueblo defendants with adjudicated rights for water sufficient to irrigate a total of 350.2 acres (241.5 acres of HIA + 108.7acres of "replacement rights"). The diversion amount from the Rio Tesuque necessary to irrigate 350.2 acres is 1628.43 AFY (350.2 acres X 4.65).[6] Attached hereto as Exhibit A is a document prepared by the Office of the State Engineer showing the Pueblo and non-pueblo irrigation water rights in the Pojoaque Basin, based upon the Pueblos' HIA and the Special Master's report on the Pueblos' "replacement rights" prior to the Court's April 14, 2000 Opinion. Under the reasoning of the 2000 Opinion, the Pueblos "replacement rights" significantly increased (for Tesuque Pueblo that increase was from 15.91 acres under the Special Maser's report to 108.73 acres). As shown on page 2 of Exhibit A, even using the

[6]See, Order entered August 18, 1994 adjudicating water requirements for non-Pueblo sub-files. A prior order held the Pueblo and non-Pueblo irrigation requirements were the same. Section 5.1.3 of the Settlement Agreement adopts those water requirements for all parties as follows: "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."

smaller figure of 257.41 acres with a total diversion requirement of 1,196.96 AFY from the Rio Tesuque, such is greater than the average annual supply on the Rio Tesuque. Consequently, without the Settlement, there would be no water in the Rio Tesuque available to the upstream non-Pueblos members of the Association's community ditches. In addition, without the Settlement, each ditch member of the Association's ditches may have to prove the priority for his/her tract if challenged by the Pueblos. Furthermore the owners of the sub-files who were challenged in 1983 by the US/Pueblos' *interse* challenges, may likely have to litigate those challenges and some of their current adjudicated acreage may be lost.

C. Administration under the Settlement and Partial Final Decree

Under the Settlement, the Pueblos' total first priority right is 3660 AFY CU with Tesuque Pueblo having a total first priority right of 719 AFY CU.[7] Under the Settlement the Pueblos' can only make a priority call against defendants' adjudicated rights entitled to Section 4 Protection to the extent of Pueblos' "Existing basin use rights." The total "existing basin use rights" for the 4 Pueblos is 1391 AFY CU and for Tesuque is 345 AFY CU, or between one-third to one-half of the Pueblos' total first priority right. Under the Settlement Tesuque Pueblo can only make a priority call against adjudicated non-Pueblo rights on the Rio Tesuque for the irrigation of 71 acres[8], rather than for 350.2 acres Tesuque Pueblo would be entitled to under the current Court rulings. All of the non-pueblo surface right owners with adjudicated rights have initial "Section 4 Protection" under the Settlement. That protection may be lost if the non-Pueblo water right is

[7]These amounts represent the Pueblos' HIA as found by the Court and compromised amounts for the Pueblos' "replacement rights," other "acquired rights," and livestock rights.

[8]Settlement Agreement, Section 4.1.2

not beneficially used for more than five consecutive years after the enforcement date of the Settlement without justification or is transferred to a new point of diversion or purpose or place of use, with certain exceptions. Although certain objectors have objected to the Settlement on the basis that one may lose Section 4 Protection absent "notice" of non-use as required under New Mexico's forfeiture statute, under the Settlement the water right is not "forfeited," it only loses priority protection which protection it would not even have without the Settlement. Without the Settlement all non-Pueblos surface rights would be subject to the entire Pueblo first priority right. The chart below summarizes priority administration under the Settlement.

Priority administration under Settlement against non-Pueblo rights with "Section 4 Protection"				
	Pueblo Existing Basin Uses(CU)	Future Basin First Priority Right (CU)	Total Compromised First Priority Right(CU)	Non-Pueblos' Existing Uses with Section 4 Protection
All 4 Pueblos	1391 AFY	2269 AFY	3660 AFY	
Tesuque Pueblo	345 AFY	374 AFY	719 AFY	
Priority Administration under Settlement	First Priority	Third Priority	All 4 Pueblos 1391 AFY - 1st 2269 AFY - 3rd Tesuque Pueblo 345 AFY - 1st 374 AFY - 3rd	Second Priority for Existing Surface Uses with Section 4 protection

Therefore, without the Settlement, the Pueblos could call first priority against non-Pueblo adjudicated surface rights for 3430 AFY; with the Settlement the amount is limited to 1391 AFY. On the Rio Tesuque, without the Settlement Tesuque Pueblo could call priority against adjudicated non-Pueblo surface rights for the water necessary to irrigate 350.2 acres; with the

Settlement Tesuque Pueblo can only call priority against adjudicated non-Pueblo surface rights entitled to Section 4 Protection for the water necessary to irrigate 71 acres.

In addition to being in the best interests of the Association's member ditches and each of those individual ditch's members and resolving the conflict over the use of water existing in the Pojoaque Basin for centuries with finality and certainty, additional benefits under the Settlement include the dismissal, with prejudice, of the US/Pueblos' 1983 *interse* challenges; the preclusion of the filing of additional interse challenges by the Pueblos; the importation of approximately 4000 AFY of water into the Pojoaque Basin, with approximately 2500 AFY for the use and benefit of the Pueblos. The water imported into the Pojoaque Basin will also, over time, increase the supply within the basin and lessen impacts of the current rate of withdrawal of groundwater on the aquifer.

For the reasons set forth above, the Association supports the Settlement, submits that the Settlement is in the best interests of its member community ditches and their members, and that the Settlement is fair, adequate, reasonable, in the public interest, consistent with applicable law, and it should be adopted.

Respectfully submitted this 6th day of November, 2014.

Electronically Filed

/s/Larry C. White
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2014, I filed the foregoing electronically through the CM/ECF system, which caused to be served all those signed up on the CM/ECF system in this cause to be served by electronic means.

AND I FURTHER CERTIFY that on the 6th day of November, 2014, I served the foregoing on the non-CM/ECF participants listed in the *Notification of Filing List of Parties That Have Filed a Notice of Hardship* filed by Plaintiff State of New Mexico on November 5, 2014 (Dkt. 9907)by first class mail, postage prepaid.

/s/Larry C. White
Post Office Box 2248
Santa Fe, NM 87504-2248
(505) 982-2863

RECLAMATION
Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation
Albuquerque Area Office

Pojoaque Basin Regional Water System

Issue No. 3, November 2014

Alternative Development Underway for the Pojoaque Basin Regional Water System Environmental Impact Statement

The United States (US) Bureau of Reclamation, Albuquerque Area Office (Reclamation), is in the process of developing alternatives for the Pojoaque Basin Regional Water System (RWS) Environmental Impact Statement (EIS). Below is an explanation of the ongoing alternative development process, a discussion of key resource studies, and identification of next steps in the project. Additional information is available on the project website at www.PojoaqueBasinEIS.com.

Guiding Principles for Alternative Development

Alternative development is the heart of the EIS process. National Environmental Policy Act of 1969 (NEPA) regulations require agencies to rigorously explore all reasonable alternatives that meet the purpose of and need for the proposed action. For alternatives eliminated from detailed study, the EIS must document the reasons for elimination. Agencies must also include a "No Action" alternative and identify the agency's preferred alternative or alternatives, if one or more exists, in the draft and final EISs (40 Code of Federal Regulations [CFR] 1502.14; 43 CFR 46.415[b]).

Projects that require an individual permit by the US Army Corps of Engineers under the Clean Water Act must comply with the Section 404(b)(1) guidelines for discharge of dredge and fill material into waters of the US (40 CFR Part 230). The Section 404(b)(1) guidelines require that the US Army Corps of Engineers permits the least environmentally damaging practicable alternative. Section 404(b)(1) criteria were incorporated into the alternative development process.

Reclamation is also bound by the Principles and Requirements for Federal Investments in Water Resources (Council on Environmental Quality 2013), which lay out broad principles to guide water investments. The principles are based on the federal objective as set forth in the Water Resources Development Act of 2007. The objective specifies that federal water resources investments shall reflect national priorities, encourage economic development, and protect the environment. The objective and guiding principles were incorporated into the alternative development process.

"Components" and "Elements" of a Water System

In general, a water system consists of six components:

Water collection

Treatment

Short-term storage

Long-term storage (or supplemental supply)

Transmission and distribution

Power source

There are different ways these components can be implemented; these are referred to as project elements. For example, water collection could be from diversion of surface flows or capture of subsurface water using wells or other methods. Part of alternative development identifies the different project elements available for each component.

Summary of the On-going Collaborative Alternative Development Process

The Pojoaque Basin RWS alternative development process to date has involved intensive collaboration with interested stakeholders as well as internal engineering and feasibility analysis. Reclamation used public scoping to help identify issues and concerns; comments identified in the August 2013 scoping report related to alternatives were carried forward into alternative development. Additionally, Reclamation is coordinating with 11 cooperating agencies in developing alternatives. Reclamation has held three alternative development workshops with the cooperating agencies to date, plus an additional meeting with the US Fish and Wildlife Service and US Army Corps of Engineers.

Through these workshops, Reclamation developed preliminary alternative project elements and screening criteria to determine which elements will be carried forward for detailed analysis.

Key Outputs of Alternative Development

1. Refinement of Purpose and Need Statement

The Purpose and Need Statement has been reviewed by cooperating agencies at multiple alternative development workshops in addition to undergoing internal review with Reclamation. The statement included below is not expected to change significantly during the remainder of the alternative development process because it serves as a benchmark against which alternatives are evaluated.

Reclamation's proposed action, as authorized by Section 611 (a) of the Claims Resolution Act of 2010, Public Law 111–291, 124 Stat. 3065 (Settlement Act), is to plan, design, and construct a RWS consisting of surface water diversion facilities at Pueblo de San Ildefonso on the Rio Grande and any treatment, transmission, storage, and distribution facilities and wellfields for the County distribution system and Pueblo water facilities that are necessary to distribute up to 4,000 acre-feet per year (afy) of water within the Pojoaque Basin (Settlement Act § 611(a)(2)(B)). Reclamation's proposed action includes: (1) substantially completing construction of the RWS by June 30, 2024 (Settlement Act § 623(e)); (2) bringing portions of the RWS into operation as they are constructed; (3) performing operations, maintenance and replacement for the RWS until construction is substantially completed; (4) contracting with the Pueblo de San Ildefonso, Pueblo of Nambé, Pueblo of Pojoaque, and Pueblo of Tesuque (Settlement Pueblos) for 1,079 afy of San Juan-Chama Project water (Settlement Act § 613(a)(2)); (5) completing the Pojoaque River Barrier Dam modification project; and (6) completing the Rio Tesuque channel modifications project.

The purpose of Reclamation's proposed action is to reliably provide a firm, safe supply of treated drinking water for distribution in the Pojoaque Basin in compliance with the Settlement Act.

The need is to reduce reliance on groundwater in the Pojoaque Basin and to allow the Settlement Pueblos to receive a portion of the water provided under the Settlement Act.

Reclamation's proposed action would also facilitate and enable the Settlement Pueblos to utilize funding made available in the Settlement Act for certain water-related infrastructure improvements if requested. This funding can be used for any water-related improvements that are more cost effective when implemented in conjunction with the construction of the RWS (Settlement Act § 615(d)(7)(A)(ii)).

The Settlement Pueblos' and Santa Fe County's specific objectives for Reclamation's proposed action are to:

- Use water secured under the Settlement Act to meet current and anticipated future demand within the Basin.
- Provide adequate water volume and pressure for fire suppression.
- Reduce the effects from groundwater pumping.

2. Development of Screening Criteria

Screening criteria are organized into three categories: (1) purpose and need, (2) technological and economic feasibility and practicability, and (3) Clean Water Act Section 404(b)(1)/ Endangered Species Act compliance. Any alternative that did not satisfy one of these criteria was eliminated from further consideration.

3. Preliminary Identification of Elements to Carry Forward

Reclamation is currently carrying forward 20 project elements that may be combined into alternatives and analyzed in detail. Elements may be adjusted or eliminated before alternatives are finalized for impact analysis based on the results of additional engineering and feasibility studies or additional information from project stakeholders.

4. Preliminary Alternative Concepts

Reclamation is developing alternative concepts that combine the various elements into an implementable RWS. As the elements are refined through ongoing feasibility studies, these concepts will evolve into standalone alternatives.

5. Development of Working Draft No Action Alternative

Under the No Action Alternative, the RWS would not be constructed and the Settlement Agreement could be nullified. Uncertainty would continue to surround the water rights in the Pojoaque Basin. Groundwater would continue to be the primary source of drinking water.

Discussion topics from each meeting to date are summarized below.

Alternative Development Workshop 1

- Refined the preliminary draft Purpose and Need Statement for the RWS.
- Brainstormed alternative elements as options for implementing six RWS components. Each component has various alternative elements (e.g., side-channel diversion vs. horizontal radial collector well for primary collection). Scoping comments suggesting RWS elements were also considered.
- Discussed alternative RWS service areas.
- Brainstormed screening criteria to evaluate alternative elements based on their ability to satisfy the purpose of and need for the RWS, their technological and economic practicability and feasibility, and their environmental impacts.

Alternative Development Workshop 2

- Reviewed the refined draft Purpose and Need Statement.
- Revised screening criteria.
- Applied the screening criteria by assigning a score between 0 and 5 to each element for each criterion, where 5 = element fully satisfied criteria and 0 = did not satisfy criteria.

Ongoing Data Collection Activities

Reclamation and its contractors are continuing to collect engineering and resource data within the RWS study area to determine the feasibility of alternative project elements and to identify potential pipeline and facility constraints. The studies described below are ...ing or planned for the next six months. Feasibility studies for particular RWS elements are only to determine preliminary ...bility of that element and do not mean that the element will be part of the preferred alternative for the RWS.

- Visual resource and noise surveys—surveys to photograph existing views from key observation points (e.g., residences and scenic viewpoints) that may be impacted by proposed RWS facilities and to measure existing noise levels near proposed RWS facilities (Fall 2014)
- Asset inventory—surveys to document existing utility infrastructure in the RWS area (Fall 2014 through Fall 2015)
- Water treatment plant pilot study—engineering study to determine the optimal design for the water treatment plant (Fall 2014 through Fall 2015)
- Horizontal radial collector well study—engineering study to determine the feasibility of using a horizontal radial collector well as the primary water collection process for the RWS (Fall 2014 through Winter 2015)
- Geotechnical investigation study for parallel interceptor drain and infiltration galleries—engineering study to determine the feasibility of using a parallel interceptor drain or infiltration galleries as the primary water collection process for the RWS (Fall 2014 through Winter 2015)
- Shallow aquifer storage and recovery well study—engineering study to determine the feasibility of using shallow aquifer storage and recovery wells as a long-term storage/ secondary supply component of the RWS (Fall 2014 through Fall 2016)

Surveyors will be easily recognizable by their brightly colored field vests and may be using the following equipment: waders or boots, shovels, sediment-collection sacks, digital cameras, binoculars, measuring tapes, backpacks, handheld GPS units, clipboards, and field notebooks. No surveys will be conducted on private lands without prior permission from ...nd owner. Visit the project website at https://sites.google.com/site/pbwatereis/how-to-get-involved/information-for-landowners for the current survey schedule and more information about these activities.

Meeting with US Fish and Wildlife Service and US Army Corps of Engineers

Reclamation met with the US Fish and Wildlife Service and US Army Corps of Engineers to assign screening scores to elements for the Clean Water Act Section 404(b)(1)/ Endangered Species Act compliance criteria. All elements satisfied these criteria to some extent; therefore, no element was eliminated from screening on the basis of these criteria.

Alternative Development Workshop 3

- Reviewed the results of element screening from Workshop 2 to ensure agreement among Reclamation and cooperating agencies.
- Began combining elements currently being carried forward into preliminary alternatives.
- Reviewed and revised the preliminary draft No Action Alternative.

Survey Rights-of-Entry We Need Your Help!

Your permission is critical to the success of the Pojoaque Basin RWS project. Reclamation and its contractors will not access your property to perform data collection and surveys without your express permission (e.g., a signed right-of-entry form). All property owners within 300 feet of the proposed pipeline alignment have been sent two right-of-entry requests. Many letters were returned because of incorrect addresses. If you live close to the proposed alignment and have not received a right-of -entry request or your address has changed, we respectfully request that you please visit www.PojoaqueBasinEIS.com and fill out the right-of-entry form. Both positive and negative responses are appreciated. If you have any questions or would like to have a right-of-entry form mailed to you, please contact Diana Clifton at dclifton@usbr.gov or (505) 462-3591.

...ce of Intent ...blished in the Federal Register	Public and Pueblo Scoping Period	Alternative Development and Special Studies	Draft EIS and Public Comment Period	Final EIS and Issuing of Record of Decision
Feb 2012	March - May 2013	Fall 2013 - Fall 2015	Spring 2016	Spring 2017

This is the third in a series of newsletters from the Bureau of Reclamation regarding the proposed design and construction of the Pojoaque Basin Regional Water System to serve the Pueblo de San Ildefonso, Pueblo of Nambé, Pueblo of Pojoaque, Pueblo of Tesuque, and other customers in Santa Fe County, New Mexico. This edition of the newsletter provides an overview of the alternative development process to date, progress of supporting studies, right-of-entry information, and information on how to stay informed. Contact us at PojoaqueBasinEIS@usbr.gov if you would like to be removed from the mailing list or receive future mailings via email.

Want More Information?

Get on the mailing list: Send a request to PojoaqueBasinEIS@usbr.gov

Visit the project website: www.PojoaqueBasinEIS.com

E-mail: PojoaqueBasinEIS@usbr.gov

Fax: 505-462-3797

Postal Mail: Kathy Dickinson
Bureau of Reclamation
Albuquerque Area Office, ALB-800
555 Broadway NE, Suite 100
Albuquerque, NM 87102

Photo credits: Bureau of Reclamation; EMPSi

Future Steps

1. Collect information on remaining data gaps to determine the feasibility of alternative elements.
2. Combine elements being carried forward into standalone alternatives.
3. Perform impact analysis on alternatives.
4. Release a draft EIS for public comment.
5. Revise the draft EIS based on comment and release final EIS and Record of Decision.

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Penalty for Private Use, $300

US Department of the Interior
Bureau of Reclamation
c/o EMPSi *
54 ½ Lincoln St., Suite 201
Santa Fe, NM 87501

*Acting as contracted agent for the Bureau of Reclamation

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MEMORANDUM

To: Board of County Commissioners

Via: Katherine Miller, County Manager
Andria Duran, Interim Human Resources Director

Date: November 12, 2014

Re: HR Monthly Report October 2014

Issue:

The HR Division provides the Santa Fe County Board of County Commission with a monthly report regarding highlighted HR information and events.

Background:

The purpose of this memo is to provide you with information relative to various HR functions and statistics for the month of October 2014. Throughout the month of October, HR coordinated/ conducted eighteen training sessions. Two hundred sixty two employees attended these training sessions. During the month of October, HR received one application for tuition assistance and it was approved for a total of $2,500.00.

In October, we negotiated two first time contracts for two bargaining units within the Adult Detention Facility. The AFSCME Corrections and AFSCME Medical bargaining units will receive their salary increases effective November 1, 2014. These increases will affect one hundred twenty two current employees and will help in the recruitment and retention of new employees.

Attached are the HR Statistics Report, the New Hire Report and the Labor Statistics Report for October 2014 and the list of Years of Service for Santa Fe County Employees for November 2014. If you have any questions, I can be contacted at 992-1635. Thank you.

MEMORANDUM

To: Board of County Commissioners

Via: Katherine Miller, County Manager
Andria Duran, Interim Human Resource Director
Sonya Quintana, Human Resource Analyst

Date: November 25, 2014

Re: Recognition of Years of Service for Santa Fe County Employees

Santa Fe County initiated a years of service recognition program in July. This program recognizes employees on a monthly basis who have completed years of service in five year increments. Employees receive a service pen with the years of service listed.

Santa Fe County recognizes the value of employee retention. It is important that we express our appreciation to those employees who contribute to the County and choose to make their career with us.

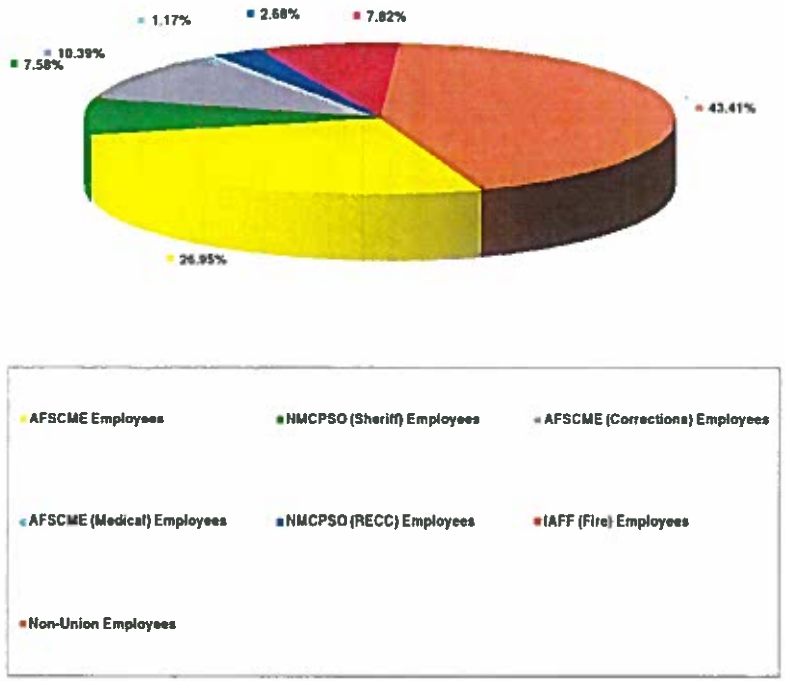
For the month of November, the following employees will be recognized:

Employee Name	Department	Title	Years of Service	Hire Date
Brian Brandle II	Sheriff	Sheriff Deputy II	5	11/30/2009
Ronaldo Ulibarri	Sheriff	Sheriff Deputy II	5	11/30/2009
Tina Salazar	County Mangers.	Constituent Services Liaison	5	11/15/2009

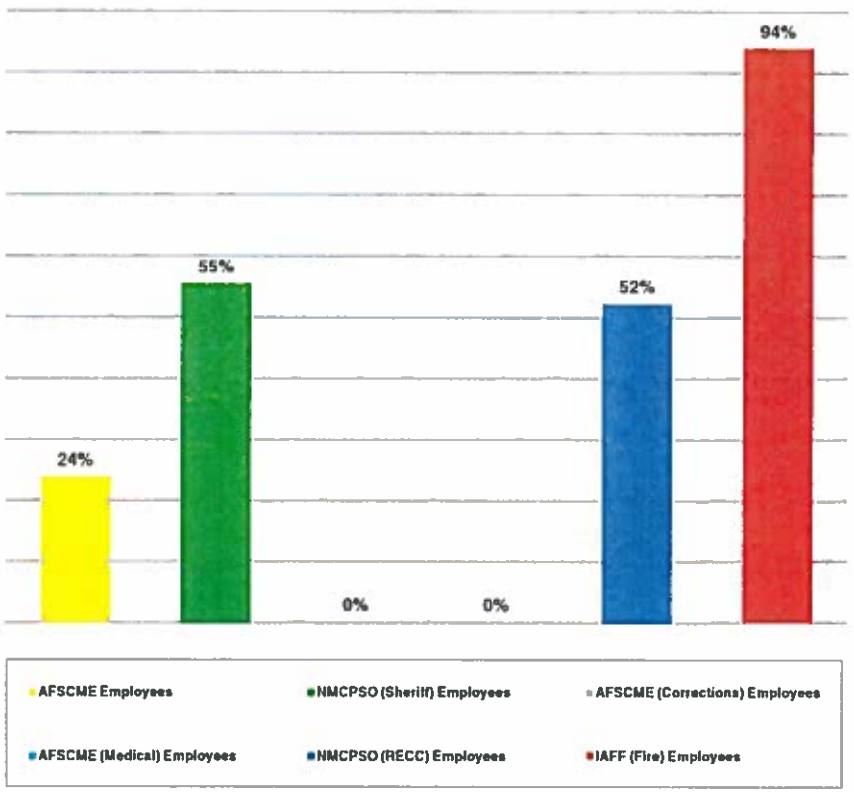
LABOR STATISTICS FOR OCTOBER 2014

Union Status		Percentage of Union Status		Percentage Of Employees Paying Union Dues			
AFSCME Employees	231	AFSCME Employees	26.95%	AFSCME Employees	55	AFSCME Employees	24%
NMCPSO (Sheriff) Employees	65	NMCPSO (Sheriff) Employees	7.58%	NMCPSO (Sheriff) Employees	35	NMCPSO (Sheriff) Employees	55%
AFSCME (Corrections) Employees	89	AFSCME (Corrections) Employees	10.39%	AFSCME (Corrections) Employees	0	AFSCME (Corrections) Employees	0%
AFSCME (Medical) Employees	10	AFSCME (Medical) Employees	1.17%	AFSCME (Medical) Employees	0	AFSCME (Medical) Employees	0%
NMCPSO (RECC) Employees	23	NMCPSO (RECC) Employees	2.68%	NMCPSO (RECC) Employees	12	NMCPSO (RECC) Employees	52%
IAFF (Fire) Employees	67	IAFF (Fire) Employees	7.82%	IAFF (Fire) Employees	63	IAFF (Fire) Employees	94%
Total Number of Union Employees	485	Total Percentage of Union Employees	56.59%	Total Number of Employees Paying Dues	166		
Non-Union Employees	372	Non-Union Employees	43.41%				
Total Number of Employees	857		100%				

Union Status



Paying Members



SANTA FE COUNTY NEW HIRES FOR OCTOBER 4, - OCTOBER 31, 2014

LAST NAME	FIRST NAME		DEPARTMENT	POSITION	EMP STATUS	HIRE D
ROMERO	LOUIE	J	PUBLIC WORKS DEPARTMENT	ADOPT-A-ROAD COORDINATOR	PB	10/6/2
SALAZAR	ANDREA		LEGAL OFFICE	ASSISTANT COUNTY ATTORNEY	E	10/14/2014
BLEA	JAVIER	L	PUBLIC SAFETY DEPARTMENT	DETENTION OFFICER	PB	10/6/2014
VARELA	JERSEN	M	PUBLIC SAFETY DEPARTMENT	DETENTION OFFICER	PB	10/14/2014
LEE	KAREN	L	PUBLIC SAFETY DEPARTMENT	NURSE PRACTITIONER	PB	10/29/2014
BRANSFORD	ANNA	L	COMMUNITY SERVICES DEPARTMENT	PROGRAM MANAGER	PB	10/20/2014
RYAN	KYRA	T	COMMUNITY SERVICES DEPARTMENT	PROGRAM MANAGER	PB	10/20/2014
RIBONI-MEJIA	JUAN	P	PUBLIC WORKS DEPARTMENT	UTILITIES MAINTENANCE WORKER	PB	10/27/2014
MASCARENAS	REJEANA	B	COUNTY CLERK'S OFFICE	VOTER INFORMATION SPECIALIST	PB	10/8/2014

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF OCTOBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
MANAGER'S OFFICE	01-COUNTY MANAGER ADMINIS.	8		8			1	9
	02-COMMISSION	4		4	5		1	5
	15-HUMAN RESOURCES	11		11				11
	21-FINANCE	22		22			2	24
CMO TOTAL		45		45	5		4	49
	01-LEGAL ADMINISTRATION	8		8			1	9
LEGAL TOTAL		8		8			1	9
SERVICES DEPARTMENT	00-ADMINISTRATION	3		3				3
	02-INFORMATION TECHNOLOGY	13		13			4	17
	12-PURCHASING	7		7				7
	16-MAIL ROOM	1		1				1
	17-RISK MANAGEMENT	3		3				3
ASD TOTAL		27		27			4	31
COMMUNITY SERVICES DEPARTMENT	01-ADMINISTRATION	3		3				3
	20-INDIGENT HOSPITAL FUND	3		2				3
	21-EMS-HEALTH CARE	3		3				3
	74-MOBILE HEALTH FAIR VAN	4	2	2			1	5
TOTAL		13	2	10	0	0	1	14
	04-DWI LOCAL	8		8			1	9
TOTAL		8	0	8	0	0	1	9
	09-DWI TEEN COURT	2		2				2
TOTAL		2	0	2	0	0	0	2
	89-SENIOR PROGRAMS - ADMIN.	12		12			1	13
	90-SR SVCS-CONGREGATE MEALS	7	2	5				7
	92-SR SVCS - HOME DELIVERED	7		7		2		7

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF OCTOBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	93-SR SVCS - TRANSPORTATION	1		1			1	2
TOTAL		27	2	25	0	2	2	29
	01-POJOAQUE SATELLITE OFFICE					1		
	02-EDGEWOOD SATELLITE OFFICE					1		
TOTAL						2		
CSD TOTAL		50	4	45	0	4	4	54
HOUSING TOTAL		13		13			2	15
MANAGEMENT DEPARTMENT	01-LAND USE ADMINISTRATION	4		4				4
	02-PLANNING	7		7			1	8
	14-GIS	9		9				9
	15-AFFORDABLE HOUSING-COUNTY	2		2				2
	16-BUILDING & DEVELOPMENT	15		15				15
GMD		37		37			1	38
PUBLIC WORKS DEPARTMENT	01-PUBLIC WORKS ADMIN.	13	1	12			1	14
	02-FLEET SERVICE	8		8		1	1	9
	03-TRAFFIC ENGINEERING	6		6			1	7
	05-SOLID WASTE	20		20		1	1	21
	11-ROAD MAINTENANCE	39		39			3	42
	02-PROPERTY CONTROL	11		11			4	15
	03-BUILDING SERVICES	16	1	15			2	18
TOTAL		113	2	111	0	2	13	126
	18-PROJECT DEVELOPMENT DIV	9		9			1	10
	26-OPEN SPACE	5		5				5
	08-SANTA FE RIVER GREENWAY	1		1				1
TOTAL		15	0	15	0	0	1	16

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF OCTOBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
	10-WATER	15		15		1	4	19
	15-AAMODT						1	1
	20-WASTEWATER	1		1				1
TOTAL		16		16		1	5	21
PWD TOTAL		144	2	142	0	3	19	163
PUBLIC SAFETY DEPARTMENT	01-FIRE ADMINISTRATION	27		27			3	30
	09-FOREST RESTORATION	3	1	2				3
	11-FIRE REGIONS	69		69			5	74
	14-FEMA GRANT	1		1				1
	78-2014 YCC GRANT					2		
TOTAL		100	1	99		2	8	108
	01-ADMINISTRATION	6		6			2	8
	60-ADULT FACILITY	128		128			28	156
	62-MAINTENANCE DIVISION	6		6			1	7
	63-MEDICAL SERVICES	23		23		1	6	29
	65-ELECTRONIC MONITORING	9		9				9
	70-YOUTH DEVELOPMENT FAC.	25		25			4	29
TOTAL		197		197		1	41	238
	RECC-ADMINISTRATION	36		36			12	48
TOTAL		36		36			12	48
PSD TOTAL		333	1	332	0	3	61	394
COUNTY CLERK'S OFFICE	01-REPORTING & RECORDING	17	1	16	1		4	21
	02-BUREAU OF ELECTIONS	12	1	11		52	1	13
CLERK'S OFFICE		29	2	27	1	52	5	34
COUNTY TREASURER OFFICE		13		13	1			13

SANTA FE COUNTY HR STATISTICS FOR THE MONTH OF OCTOBER 2014

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Vacancies	Total Positions
COUNTY ASSESSOR OFFICE	01-COUNTY ASSESSOR ADMIN.	27		27	1		2	29
	11-PROPERTY VALUATION	14		14				14
ASSESSOR'S OFFICE		41		41	1		2	43
SHERIFF'S OFFICE		117		117	1		6	123
COUNTY PROBATE DEPARTMENT	01-COUNTY PROBATE JUDGE				1			
COUNTY WIDE TOTAL		857	9	847	10	62	109	966

MEMORANDUM

Date: November 12, 2014

To: Board of County Commissioners

From: Jeffery Trujillo, ASD Director

Via: Katherine Miller, County Manager

Subject: Administrative Services Monthly Report – October 2014

Below is an informational report in regards to the Administrative Services Department for the month of October 2014.

Information Technology

Work Orders/Technical Support All IT requests are captured using a work order tracking system located on SharePoint.	255 work orders were completed/resolved in October 2014.
Systems and Network Uptime for October 2014.	Q1 2015 Actual: 100% FY 2015 YTD: 100%

October Unscheduled Downtime		
Date	Description	Hours
		0.0
	Total	0.0

Legal

Legal has processed 160 contracts, 44 resolutions, and reviewed or drafted (or participated in drafting) 2 ordinances this fiscal year.

Legal is also representing Santa Fe County in several pending lawsuits and working with outside counsel in the representation of several others.

Mailroom

The Mailroom processed the following in the month of October

Name	Items
Co. Manager (Commissioners)	112
DWI	47
MCH	0
PFMD	0
Clerks	285
Elections	10582
Assessors	110
Treasurers	546
Probate Judge	0
Attorney or Legal	28
Sheriff	194
Human Resources	57
Corrections Admin	3
Home for Good Program	0
Purchasing	7
PW-Solid Waste	0
Care Connection	0
HHS Admin	12
Sobering Center	0
Adult Jail	0
Teen Court	74
ASD	1
Fire Department	687
E-911	2
RECC	7
Senior Services	0
YDF	1
Natural Resources	0
Affordable Housing	3
Section 8	68
Finance/Payroll	1029

Utilities (Water Resources)	313
Public Works	158
Land Use	2361
Housing	25
Indigent/HAP	26

Purchasing

602 Purchase Orders were processed in October: **$ 2,661,103.22 Encumbered**
$ 308,530.34 Expended

The following procurement activities were performed by 3 Procurement Specialists, Senior in October:

IFBs	5
RFPs	7
LOI	3
On-call	15
Price Agreements	4
Contract Amendments	7
Lease or Agreements	1
MOU/MOA	5
Grant Apps	4
Sole Source	1
DOE	0
3 Quotes	5

Current Solicitations:

IFB's	6
RFP's	7

Risk Management

Number of Fire Safety Inspections	52
Number of Facility Inspections	17
Number of Road Inspections	13
Number of Worker's Compensation Processed	6
Number of Employees out on Worker's Comp	2
Number of RAP Lessons	6
Number of County Involved Auto Accidents	3
Number of Century Link Cut Cables	3
Number of Safety Trainings	9
Number of Evacuation Drills	2
Number of New Employee Orientations	2

Memorandum

To: **Santa Fe County Board of County Commissioners**

From: **Katherine Miller, County Manager, SFC**
Rachel O'Connor, Director, Community Services Department, SFC

Date: **November 10, 2014**

Subject: **Community Services Monthly Report**

Health Services

Our radios PSAs in Spanish for NMHIX open enrollment period are rolling out now, for the period beginning November 15. We are coordinating with our partners on materials and getting the word out in other ways for this next stage of NMHIX enrollment. For Centennial Care enrollment, we are working on a plan to help enroll uninsured clients from DWI and Teen Court. Santa Fe County is doing way better than most counties in getting people enrolled in Medicaid; and is doing best in the state getting people enrolled through the exchange.

We have administered 343 flu shots so far (67 at Solana Center on Thursday), with more scheduled clinics scheduled up North and at Corrections over the next two weeks.

We are continuing to work with Rachel Brown and the legal team to finalize procedures for the Health Care Assistance Program.

Community Safety

Teen Court will be coordinating with the Santa Fe County's Health Services Department to enroll eligible Teen Court youth and parents in Centennial Care Medicaid Plan.

Teen Court recently met with the Magistrate Court Judges and staff to update them on what our program has to offer for their young offenders. Magistrate Court has seldom referred to our program in the past due to various reasons. I believe the meeting clarified many of the questions for the judges and they have agreed to refer more of their cases. We now have a plan to pick up referrals on a weekly basis and have been given a key to access the mailbox at the courthouse to retrieve our referrals.

The DWI program will be meeting with the Office of the District Attorney to discuss how we can better prosecute cases regarding driving on a revoked license in Santa Fe County.

The DWI program attended the Immigration Committee meeting hosted by the City of Santa Fe. The DWI program was seeking direction from the Committee on how to reach out to the Spanish speaking community. The Committee provided numerous suggestions and volunteered to help organize a focus group to identify effective messaging for this population.

The DWI program is looking at data to determine the number of DWI offenders participating in the compliance program that do not have health insurance and that will qualify for Centennial Care. Early analysis of the data shows that 30% of offenders referred to the program do not have health insurance. The DWI program now needs to determine which of the 30% will qualify for Centennial Care.

The next DWI campaign will kick off this month. The theme of the campaign is "Two Too Many" and will focus on vehicle forfeiture.

Community Operations

The Imagination Library contract is now signed and we will be working with United Way to roll out this program in Santa Fe County. Other funders, likely the Brindle Foundation, will be supplementing this program by providing funding for Spanish language books.

The following Open Spaces have been adopted: Arroyo Hondo, Spur Trail, Rail Trail, Little Tesuque and La Piedra.

Three new junction signs have been purchased and will be installed on the Talaya Trail to let hikers know which way to proceed.

Senior Services

The Thanksgiving lunch will be served on Thursday the 20th. I am anticipating that all kitchens will need additional staff assistance. Senior admin staff will be part of that assistance.

Greg has scheduled a mandatory training to have all Senior staff trained on CPR. The training will be held on November 15, 2014. Cooks, drivers and coordinators will all attend.

Nutrition training was conducted for Rufina, El Rancho, Santa Cruz, Chimayo, Eldorado, and Edgewood.

The transition of an additional driver in Edgewood seems to be going very well. Our numbers have more than doubled in transportation and home delivered continues to receive new requests every week.

Memorandum

: Santa Fe Board of County Commissioners

From: Teresa C. Martinez, Finance Director

Via: Katherine Miller, County Manager

Date: November 11, 2014

Re: ***Financial report for the month ending 10/31/2014***

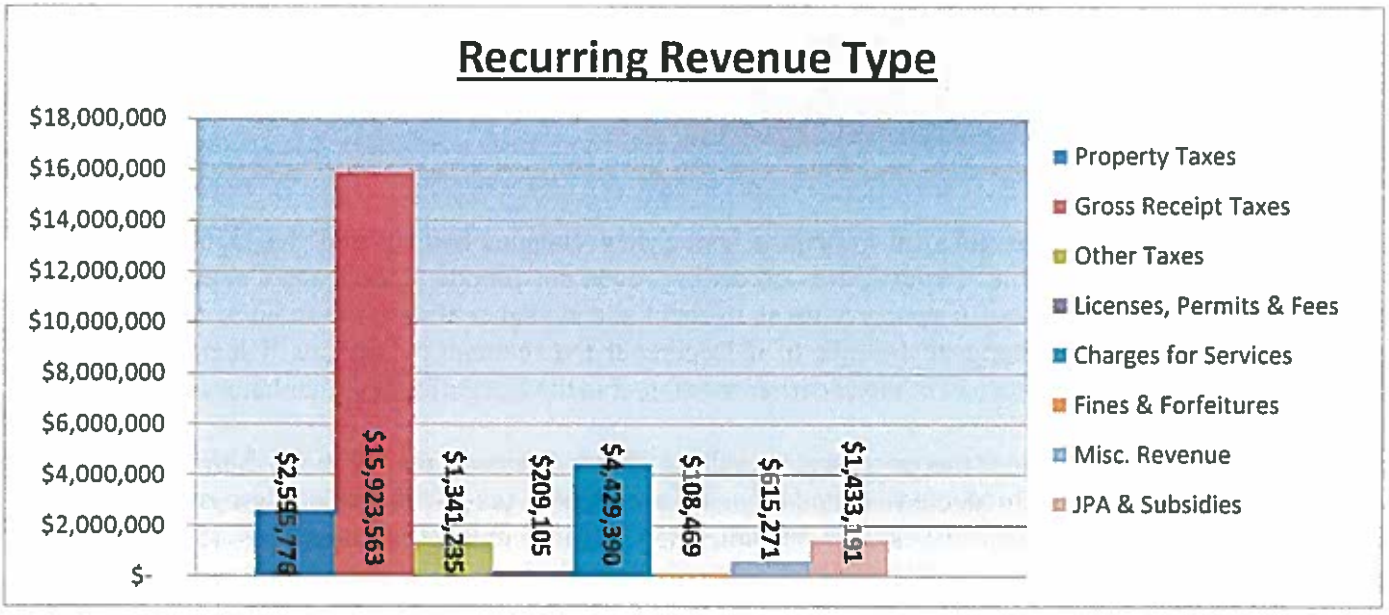
ISSUE:

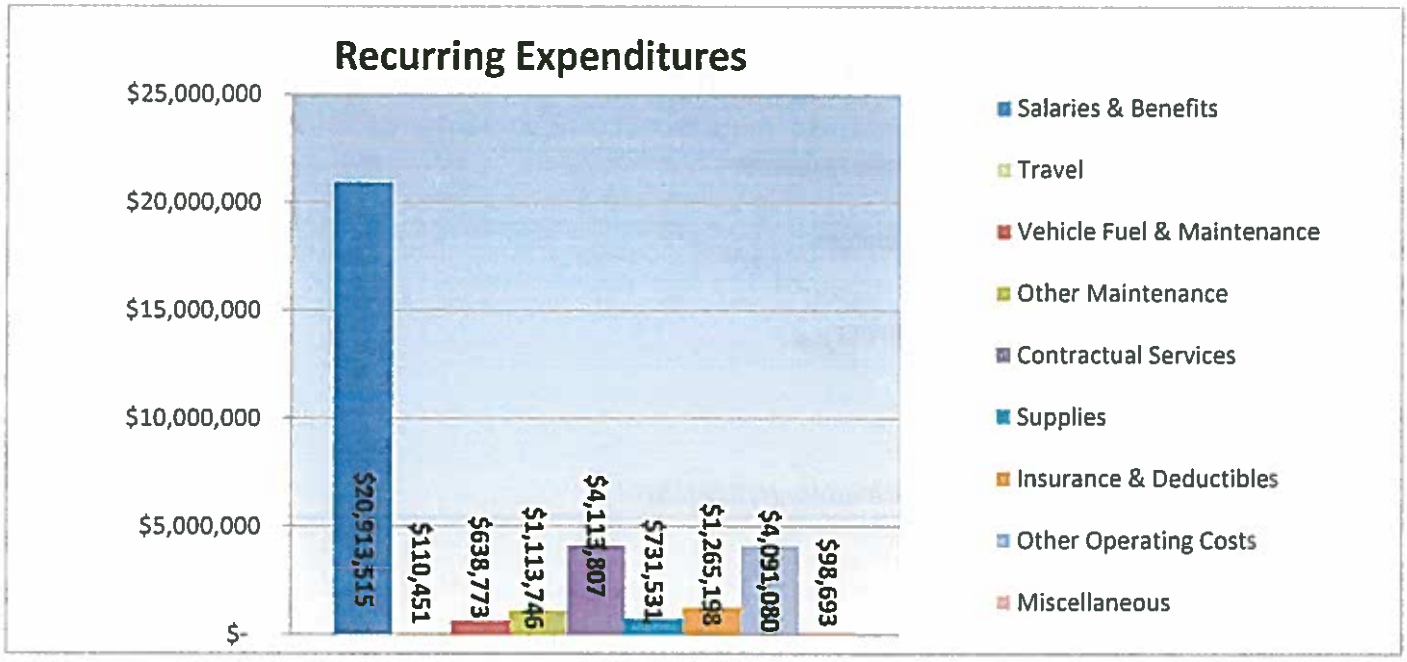
Enclosed is a report summarizing the financial activities of the County through the month ending October 31, 2014.

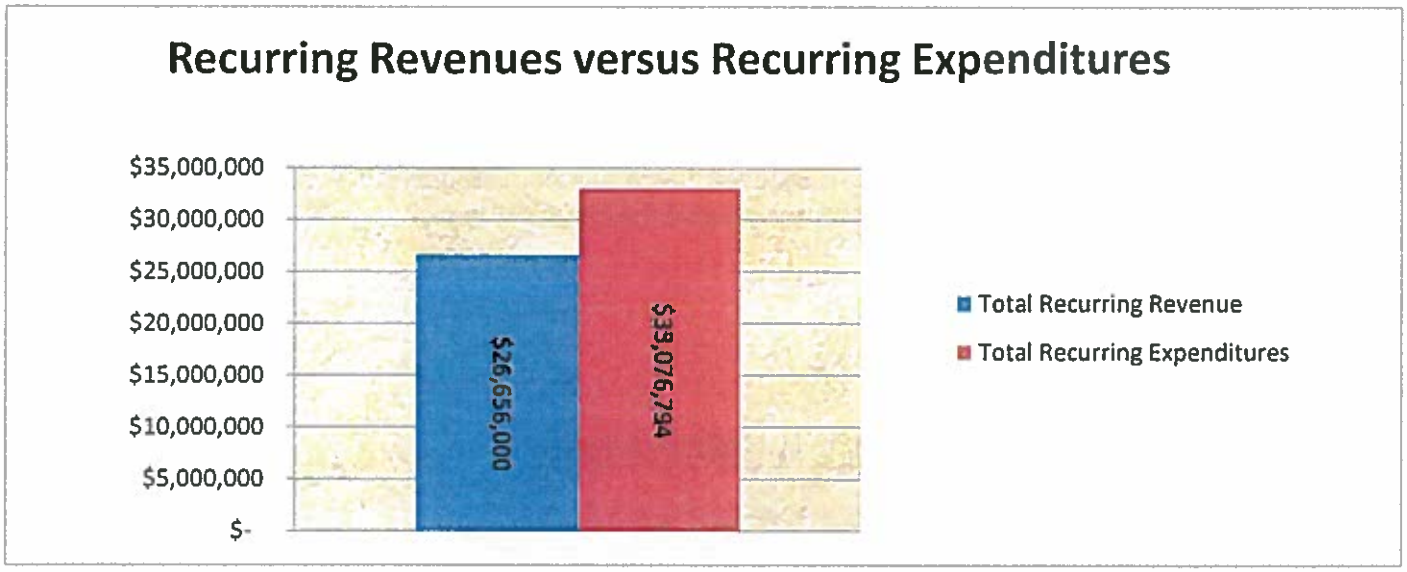
BACKGROUND:

This is a comparison of revenues and expenditures on a recurring versus non-recurring basis. The monthly report will still highlight major revenue sources. Below are several charts that identify 1) the recurring revenue sources, 2) the recurring expenditures and 3) a comparison of the two side by side.

CURRING VERSUS NON-RECURRING







Through the month of October, as noted in the charts above, the revenues collected totaled $26.7 million and the expenditures total $33.1 million. Expenditures exceeding revenue collections at the start of each fiscal year is normal. Typically, the collection of property taxes is cyclical and higher within the months of December – January and May – June. Beginning in the month of December the revenue collections will materialize at a level sufficient to sustain expenditures. In those earlier months, it is the budgeted cash that balances the budget.

The revenue collections were below the prior year's collections for the same period by $8.5 million or 3.2%. The decrease can be attributed to decreased collections for property taxes ($602,006), gross receipt taxes ($150,210), other taxes ($204,308), JPAs and subsidies ($796,146), charges for services ($826,776) and miscellaneous revenue ($6.5 million). The biggest portion of the difference is related to the receipt of $5.4

million related to the Aamodt Settlement during FY 2014. This is a one-time receipt of funds, which is skewing the comparison from year to year. The other factor contributing to the decreased revenues is the changes made to the expiration date of transfer station permits. The permit sales are down $175,621 from the prior year.

ON-RECURRING EXPENDITURES

Capital expenditures are non-recurring expenditures funded by non-recurring sources. Such sources include bond proceeds, special appropriations, grants and cash balances from excess revenues of prior years.

The following is a listing of some of the major capital expenditures incurred thru the month of October:

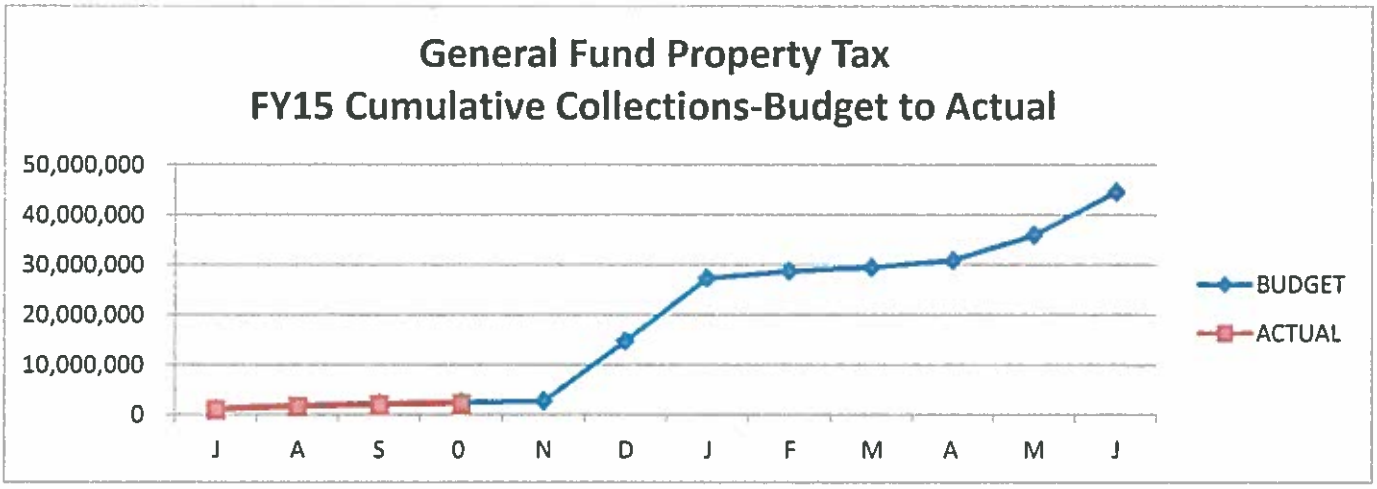
La Cienega Fire #2/CC/Library	$300,083	Glorieta Estate MDWA	$121,834
Adm Building Upgrades	$ 55,025	TCSP Road Grants	$211,035
Sheriff Vehicle Purchases	$ 35,845	Torcido Loop	$ 34,282
Eldorado/Canoncito/SE Sector	$114,382	Caja Del Oro	$ 19,399
Herrada Road	$347,193	Phase 2A Road Annexation	$189,612

Also included for your information are the charts reflecting major revenue sources and collections through October.

REVENUE:

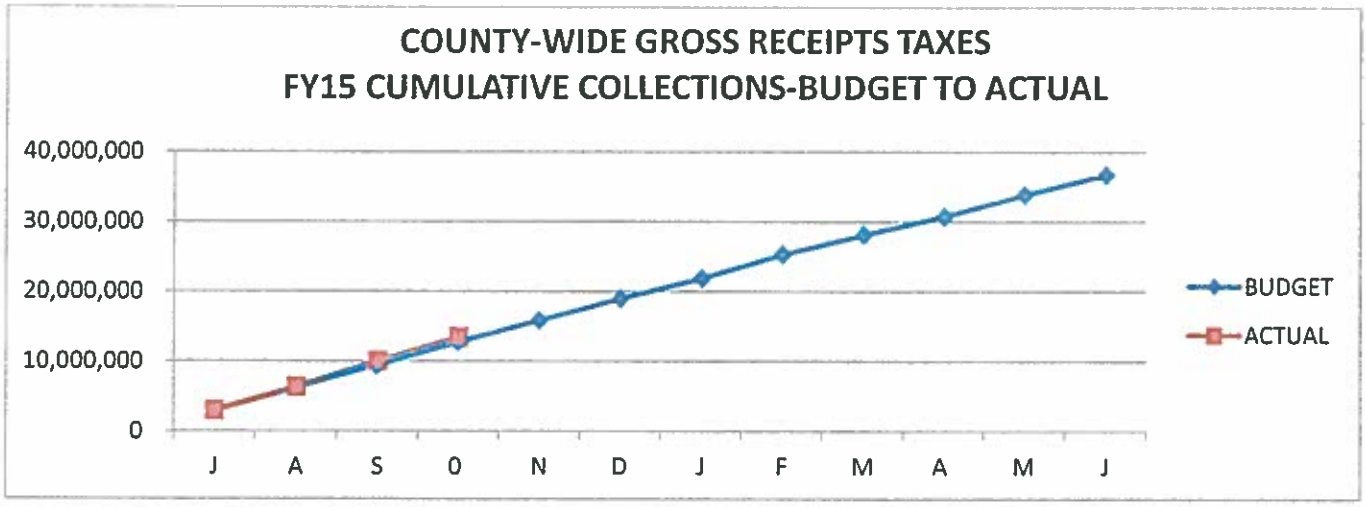
Property tax is recorded monthly and compared to the actual monthly budget forecasts. Property tax revenue budget estimates are conservative, as a budget shortfall in tax receipts would have a serious impact on various County operations.

Actual property tax collections of $2.2 million through the end of October fell below the budget of $2.5 million by $290,456. The collections are $534,712 below the prior year's collections for the same time period.

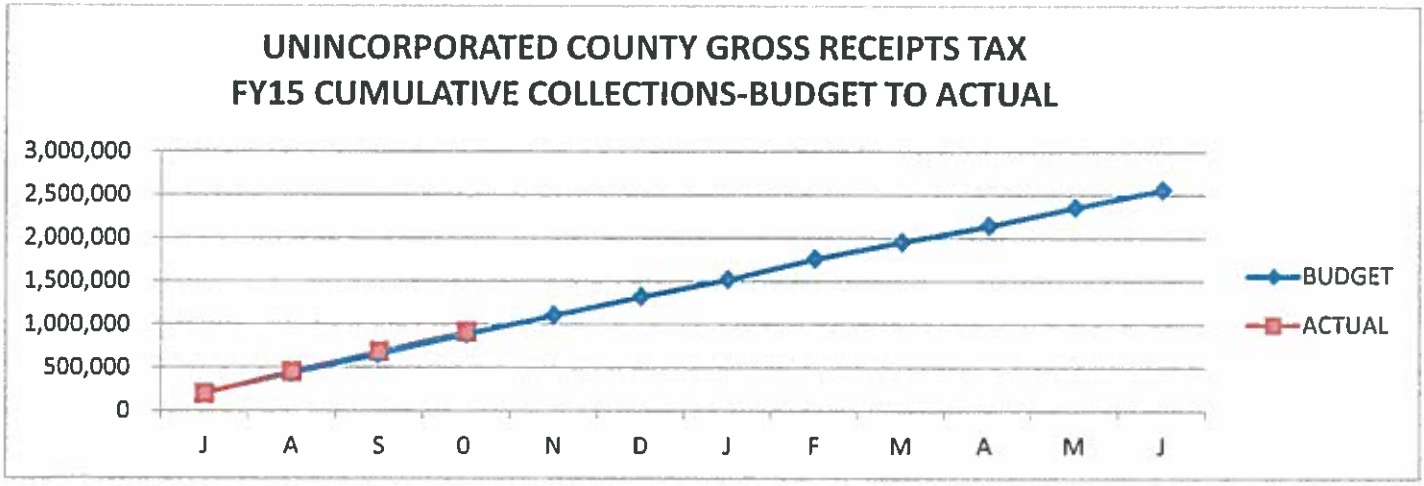


The gross receipts taxes are estimated from trend data and from economic analysis of the business activities in the areas of construction, wholesale, retail and service sectors. Combined, both the county-wide and the unincorporated gross receipt taxes collected through October total $3.7 million and are $112,085 above the

budgeted amount of $3.56 million. Total year-to-date collections were below the collections of the prior year by $332,747 for the same time period.



The unincorporated GRT collections total $912,117 for the month of October and are $25,340 above the budgeted amount of $231,894. The collections are $207,512 above the prior year collections. The increase is mainly attributable to the enacted Fire Excise Tax which began receiving monthly collections in September of FY 2014 resulting in an average monthly amount of $100,000 to $115,000. Through October, the Fire Excise GRT collections total $452,936.



SUMMARY:

In summary, the property tax collections fell just below budget for the month of October. The GRT collections exceeded the monthly budget and fell slightly below the prior year's collections for October. Finance continues to work with independent audit staff to complete the audit of FY 2014 and finalize the FY 2014 annual financial report.