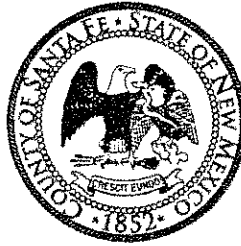


**Henry P. Roybal**  
*Commissioner, District 1*

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

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



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

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

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *July 5, 2017*

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

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

**FROM:** *Sandra Ely, Aamodt Project Manager*

**ITEM AND ISSUE:** *BCC Meeting July 11, 2017*

*State of New Mexico, ex rel. State Engineer v. R. Lee Aamodt et al., U.S. District Court, District of New Mexico, No. Civ. 66-06639 WJ/WPL: Update. (Public Works Department/Sandra Ely)*

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### **BACKGROUND AND SUMMARY:**

On March 14, 2013, the Board of County Commissioners (BCC) approved and signed the revised Aamodt Settlement Agreement (Settlement) and the Cost-Sharing and System Integration Agreement (Cost-Sharing Agreement). These approvals launched efforts by the County, the State, the United States, and the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque (the Parties) to implement the Settlement Agreement.

### **GENERAL UPDATES**

**Water Master Rules.** The Settlement Agreement requires domestic well owners who elect to connect to the County Water Utility (CWU) to transfer their water rights to the County when service becomes available.<sup>1</sup> In most instances, the transfer from the customer to the County will be 0.5 acre-feet per year (afy). After transferring all of their water rights to the County, the Settlement calls for the customer to discontinue using their well so long as they are receiving water service from the CWU. Well owners electing to connect to the CWU as soon as service is available, will have access the Connection Fund to cover the cost of connecting to the CWU. The transfer of water rights to the CWU and the Connection Fund will both be part of the Water Master Rules (Rules) which will be promulgated by the Office of the State Engineer (OSE) and will govern the administration of Pueblo and non-Pueblo water rights in the Pojoaque Basin in accordance with the Settlement.

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<sup>1</sup> This is an exception to OSE's general position that statutory domestic water rights are not transferrable to other lands or uses.

At the February 28, 2017, Board of County Commissioners (Board) meeting, the Board directed staff on two matters related to the Rules:

- one, to allow for the partial transfer of water rights to the CWU and for the remainder to be used outdoors; and
- two, to not support the use of the Connection Fund to cover the cost of certain meters for well owners utilizing the partial water rights transfer.

Following these two directives, County staff worked with the Parties to draft the proposed Rules. On June 21, 2017, the Office of the State Engineer (OSE) published the rules and set a hearing date of August 16, 2017 for public testimony.

The proposed rules implement the policy direction previously given by the Board. Specifically, as published, the proposed rules **do** allow a household that elects to connect to the CWU for indoor uses to convey 0.3 afy to the CWU and continue to use the remaining right in the well for outdoor use. In addition, the proposed rules **do not** contain language regarding use of the Connection Fund for meters, as described above.

The County's Sustainable Land Development Code does not allow County residents to use their well for domestic purposes on property supplied by the County water utility (7.13.3.7). If the Rules as promulgated by the OSE allow a well owner to connect to the CWU and use their well for outdoor purposes, staff will propose amending the SLDC to be consistent with the Rules.

**Pojoaque Basin Water Fair.** County Utilities coordinated with the New Mexico Departments of Environment and Health to host a water fair for residents of the Pojoaque Basin with private wells serving homes not connected to a public water utility. The event is scheduled to be held at Pojoaque High School on Friday, July 7 and Saturday, July 8.

There are projected to be two types of tests at the water fair. A lab test for well water samples from within the Pojoaque Basin and included analysis for iron, nitrate, arsenic, manganese, fluoride, uranium, electrical conductivity and pH. And an in-field test done onsite at the gymnasium for well water samples not within the Pojoaque Basin and included field analysis for sulfate, nitrate, arsenic, fluoride, iron, electrical conductivity, and pH. Participants in the water fair will have test results mailed to them in about four weeks.

In addition to support from New Mexico Departments of Environment and Health, assistance was provided by the City of Santa Fe, Los Alamos National Laboratory, Los Alamos National Security LLC, CDM Smith, the Climate Change Leadership Institute, Pojoaque Pueblo and Northern New Mexicans Protecting Land, Water, and Rights.

The water fair presents an opportunity for Pojoaque Basin well owners to better understand the quality of their well water prior to making a well election to connect to the County Water Utility or continue using their well water. We anticipate that the Federal Court will set a well election date for some time prior to the end of the year.

**The Pojoaque Basin Regional Water Authority Joint Powers Agreement.** At the December 13, 2016, Board meeting, the Board adopted Resolution 2016-146 approving the Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA). The JPA would create the Authority that would own the common infrastructure of the RWS, operate the entire system, and collect operating

and capital expenses from the Pueblos and the County and, depending upon the policies of the parties, their customers. The creation of the Authority is a requirement of the Aamodt Settlement Agreement.

Since December, the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque have approved and signed the JPA. The Department of the Interior is expected to sign the JPA shortly, after which Santa Fe County will be expected to sign it. After all signatures have been obtained, the JPA must be approved by the New Mexico Secretary of Finance and Administration to become effective.

**Entry of the Final Decree.** In 1966 the Aamodt case was filed in the United States District Court for the District of New Mexico (Court) to adjudicate Pueblo and non-Pueblo water rights in the Pojoaque River water shed. Nearly fifty years later, on March 21, 2016, the Court entered the Partial Final Judgement and Decree which quantifies the water rights of the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso.

On July 14, 2017, the Court intends to sign and enter the Final Judgement and Decree at the Federal Courthouse in Santa Fe. The Final Decree will set forth the water rights for all parties in the Aamodt case consistent with the Settlement Agreement and is an important milestone in the Aamodt Settlement. Approval and entry of the Final Decree by the Court is one of the conditions precedent in the Aamodt Litigation Settlement Act that must be met and published in the Federal Register by September 15, 2017.

#### **CERTIFICATION OF SATISFACTION OF CONDITIONS WITH THE DECREE COURT**

Section 9.9 of the Settlement Agreement provides:

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

Sections 9.1 through 9.5 of the Settlement Agreement are described below:

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

Section 9.1 of the Settlement Agreement provides:

The United States, the State acting through the State Engineer, each of the Pueblos, the County of Santa Fe, and the City of Santa Fe shall execute the Cost-Sharing and System Integration Agreement.

#### **2. Pueblo Agreements**

Section 9.2 of the Settlement Agreement provides:

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

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

### **3. Federal Appropriations**

Section 9.3 of the Settlement Agreement provides:

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

### **4. State Legislation and Funding**

Section 9.4 of the Settlement Agreement provides:

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

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

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

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

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

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

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

## **5. Formation of the Regional Water Authority**

Section 9.5 of the Settlement Agreement provides:

The Regional Water Authority to be known as the Pojoaque Basin Regional Water Authority shall have been established by the County and the Pueblos in accordance with the provisions of this Agreement and the Cost-Sharing and System Integration Agreement, with authorization to commence operations.

The County Attorney will be seeking direction from the Board relative to the certification under a separate agenda item.

