

SANTA FE COUNTY

Resolution No. 2012 - 53

A Resolution Authorizing Amendments to the Aamodt Settlement Agreement, Authoring Execution of a Cost Sharing Agreement and a Cooperative Agreement, and Directing County Staff to Prepare Plans and Analysis of the Design of the County Water System that will Serve the Pojoaque Basin and in order to Inform County Residents of the Availability and Cost of Water Utility Service to be Provided as part of the Water Rights Settlement of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque in the Case of New Mexico ex rel. State Engineer v. Aamodt

WHEREAS, on April 25, 2006 the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County") approved the Settlement Agreement in the case of New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS-ACE (D.N.M.) (hereinafter referred to as "the Settlement Agreement"); and

WHEREAS, the County, the State of New Mexico, the City of Santa Fe, the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque and a number of private parties signed the Settlement Agreement on May 3, 2006; and

WHEREAS, the Aamodt settlement will resolve the water rights claims of the four Pueblos and will provide financial resources for water infrastructure benefiting the Pojoaque Basin, both for Pueblo and other County residents; and

WHEREAS, Congress approved the Settlement Agreement by enactment of the Aamodt Litigation Settlement Act, as part of the Claims Resolution Act of 2010, Pub. L. No. 11-291, tit. VI, §§ 601- 626, 124 Stat. 3064, 3134-56 (2010), which was signed into law by the President on December 8, 2010 (hereinafter referred to as the "Act"); and

WHEREAS, the Act authorized the Secretary of the Interior to execute the Settlement Agreement as revised to conform to the Act and further authorized the Secretary to execute the Cost-Sharing and System Integration Agreement (hereinafter referred to as "Cost-Sharing Agreement") and to acquire a portion of the County's Top of the World water rights in the amount of 1,141 acre-feet, for a purchase price of \$5,400,000.00 (hereinafter referred to as "Pueblo Top of the World Rights") under the terms of the proposed Cooperative Agreement between the County and the United States Bureau of Indian Affairs; and

WHEREAS, Section 3.1.7.2 of the Settlement Agreement provides each non-Pueblo domestic well owner a choice with respect to the future use of the well: (i) to connect to the County water utility after service becomes available and thereafter take domestic service from the County rather than the well; (ii) to continue using the well in perpetuity but at a reduced or limited amount with no obligation to connect to the County water utility; or (iii) or agree to connect to the County Water Utility upon transfer of property and discontinue use of the well at that point; and

WHEREAS, as provided in the Act and the Settlement Agreement, the cornerstone of the settlement is the construction by the United States Bureau of Reclamation of a regional water system that will provide service to the four pueblos in the amount of 2,500 acre-feet and to other County residents who elect to connect to the County Water Utility in the amount of up to 1,500 acre-feet; and

WHEREAS, the Act authorizes up to 1,500 acre-feet of capacity for use by the County, and both the Act and the Cost-Sharing Agreement give the County the right to make its own determination whether a smaller capacity or modified alignment is more suitable for County uses and whether the current plans and designs of the water system should be modified to better serve potential County customers; and

WHEREAS, under the terms of the Cost-Sharing Agreement, the United States Bureau of Reclamation will prepare engineering designs and cost estimates before the County must make its final capacity and alignment determination; and

WHEREAS, the Settlement Agreement calls upon non-Pueblo well owners to make an election either to continue receiving supply from their wells or to connect to the regional water system;

WHEREAS, although execution of the amendments to the Settlement Agreement and execution of the Cost-Sharing Agreement and the Cooperative Agreement are necessary to continue implementation of the Aamodt settlement, the County recognizes that additional significant steps will be required to fully and fairly consummate the settlement; and

WHEREAS, an essential step to implement the settlement is the creation of a joint utility or regional water authority by the County and the Pueblos to govern and operate the regional water system; and

WHEREAS, in particular, as the settlement moves forward significant additional information, analysis and planning will be needed (1) for the County to reach a final determination on the sizing and alignment of County water utility (2) for potential County customers to be informed of the availability and cost of service when making their connection elections (3) for creation of a regional water authority comprised of the

County and the four Pueblo governments and (4) to assure adequate water rights for use by the County water utility;

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

Approves the Amendments to the Settlement Agreement and approves the Cost-Sharing Agreement and Cooperative Agreement and hereby authorizes the Board Chair to sign the amended Settlement Agreement, the Cost-Sharing Agreement and the Cooperative Agreement.

AND FURTHER, BE IT RESOLVED, that County staff is directed to gather information and engage in further planning and analysis in support of implementation of the Aamodt settlement, and in particular shall focus on the following tasks:

1. Design and Alignment of County System. The County shall work with the U.S. Bureau of Reclamation to design the County utility portion of the regional water system. The design should be optimized to provide cost-effective service to areas that currently have or are projected to have sufficient demand to justify extension of service. To this end, within the next twelve months the County shall perform the following tasks:
 - a. Existing Demand Estimate. The County Utilities Division shall be responsible for defining the demand area by area so that corresponding water service infrastructure will be properly designed for size and alignment. If staff deems it necessary, residents and other water users within particular areas proposed for service may be canvassed to more accurately determine demand levels.
 - b. Future Demand - Land Use Analysis and Demographic Projections. The County Planning Division shall prepare an assessment of undeveloped non-Pueblo lands located within potential service areas and shall use the most current demographic information and projections to estimate future County customers. The analysis shall take into account existing County development plans that are conditionally approved upon requirement of connection to available County water utility service.
 - c. Water Quality Considerations. In preparing the above analyses, the County Utilities and Planning Divisions should seek to determine those areas most susceptible to groundwater quality degradation and therefore that are more likely to need County utility service in the future.
 - d. Fire Protection Considerations. The Utilities Division shall consult with the County Fire Department to consider what areas would benefit most

from improved access to reliable fire fighting water flows such as those provided by a public water system. This information should be considered in determining system capacity and alignment.

- e. Rural Character and Density Considerations. Estimates of future demand shall incorporate the County's policies for preservation and protection of traditional agriculture.
 - f. Integration with existing County Utility. The Utilities Division shall determine whether benefits will derive from integrating the proposed infrastructure and operations with those of existing or other proposed County utilities, such as improved efficiencies, cost effectiveness or improved reliability of supply.
 - g. Financial and Capacity Analysis and Recommendations. Taking into account all of the information and analysis described above, along with other relevant data, the Public Works Department shall prepare a cost-benefit and capacity analysis of the County's portion of the system and shall recommend to the Board of County Commissioners the preferred design for such portion. The preferred design shall be based upon a capacity and alignment that will make the system economically viable. The cost-benefit analysis shall include an estimate of the capital costs the County will be required to pay and an estimate of costs for operations, maintenance and replacement of the system.
2. Customer Information. In conjunction with the analysis described above, the Utilities Division shall prepare the following:
- a. Service Map and Timeline. The Division shall prepare a preliminary service area map delineating the likely alignment of distribution lines and the projected timeline for service availability, area by area.
 - b. Customer Costs. The Division shall prepare estimates of service rates, based on water used, as well as fees for connection to the system for potential customers who elect not to connect, or are not eligible for free connection as provided by the settlement.
3. Governance of Regional Water Authority. The County Attorney is directed to work with the Pueblos to prepare a proposed Joint Powers Agreement (hereinafter referred to as "JPA") pursuant to New Mexico state law that will create a joint board and will establish governance of the regional water authority. The JPA shall assure the following:

- a. Protection against withdrawal. The JPA shall contain strict provisions to deter withdrawal of any of the five members from participation in the authority.
- b. Reliability of Service. The JPA shall contain provisions to protect the County's participation in the governance of the authority and to assure that service to County customers is reliable. The JPA shall contain voting rights protections and dispute resolution mechanisms to assure no disruption in service to customers.
- c. Assurance of financial integrity. The JPA shall require its member entities to be responsible for their respective financial obligations to operate and maintain the system. The authority shall at all times have in place appropriate and sufficient insurance to cover its operations. Any liability incurred in connection with operations of the authority shall be subject to the immunities and limitations of the New Mexico Tort Claims Act.

In addition, the JPA shall contain such other provisions as the County Attorney recommends are necessary to carry out the purpose of the regional water authority and to protect the interests of the County and of its utility customers. Once the County Attorney and Pueblo representatives have negotiated a draft of the JPA, the County shall consult with representatives of potential customers to receive comments regarding any additional provisions that may be needed. Once a final proposed JPA is prepared, it shall be placed on a meeting agenda of the Board of County Commissioners for consideration and action.

4. Water Rights Assessment. In addition, the Utilities Division and the County Attorney are directed to prepare an assessment of adequacy of the water rights, including the Top of the World right, that have been identified to provide the basis for supply to the County system. In the event the identified water rights are inadequate or deficient in any manner, the assessment shall contain a contingency plan to assure that adequate water rights are in place in order to provide the service intended.

PASSED, APPROVED and ADOPTED this 10 DAY OF April, 2012.

BOARD OF COUNTY COMMISSIONERS



Liz Stefaniacs, Chair

ATTEST: *Valerie Espinoza* *CC*

Valerie Espinoza, Santa Fe County Clerk



APPROVED AS TO FORM:

[Signature]
Stephen C. Ross, Santa Fe County Attorney

SFC CLERK RECORDED 04/18/2012

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
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I Hereby Certify That This Instrument Was Filed for
Record On The 18TH Day Of April, 2012 at 10:16:52 AM
And Was Duly Recorded as Instrument # 1666578
Of The Records Of Santa Fe County



Deputy *Marcella [Signature]* *Valerie Espinoza*
County Clerk, Santa Fe, NM