

June 5, 2015 Draft

**JOINT POWERS AGREEMENT**  
**POJOAQUE BASIN REGIONAL WATER AUTHORITY**

This Agreement ~~creating the Authority~~ is entered into by, between, and among the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and Santa Fe County, ~~each acting pursuant to~~ under the New Mexico Joint Powers Agreements Act, ~~as. The effective date of this Agreement is~~ the date on which it is approved by the New Mexico Secretary of Finance and Administration.

**RECITALS**

**WHEREAS**, the Parties are signatories to the Settlement Agreement; and

**WHEREAS**, the Parties are signatories to the Cost-Sharing Agreement, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

**WHEREAS**, the Act approved the Settlement Agreement and the Cost-Sharing Agreement; and

**WHEREAS**, the Act authorizes the United States Secretary of the Interior to construct the Regional Water System; and

**WHEREAS**, the Act, the Cost-Sharing Agreement, and the Settlement Agreement call for formation by the Parties of the Authority to supply water for domestic, municipal, industrial, irrigation, commercial, and all other approved uses throughout the areas served by the Regional Water System and as otherwise authorized by the Act; and

**WHEREAS**, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Authority shall be exercised

consistent with the terms and conditions of the Act, Settlement Agreement, Cost Sharing Agreement and Operating Agreement; and

**WHEREAS**, the Parties desire that the Authority have the power to carry out the purposes and functions as authorized by the Act and as set forth herein in order to provide service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost- Sharing Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, as required by the Act and Settlement Agreement, and in consideration of the mutual covenants and obligations set forth here and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **ARTICLE 1 – DEFINITIONS**

As used herein, the following terms have the following meanings unless the context clearly indicates otherwise:

1. “Aamodt Case” means the federal litigation styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.).
2. “Act” means Title VI, Aamodt Litigation Settlement, of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.
3. “Agreement” means this Joint Powers Agreement unless context indicates otherwise.

4. “Authority” means the Pojoaque Basin Regional Water Authority created by this Agreement and defined in Section 1.13 of the Cost-Sharing Agreement.

5. “Board” means the Authority’s Board of Directors.

6. “Cost-Sharing Agreement” means that certain Cost-Sharing and System Integration Agreement, signed by the parties on March 14, 2013.

7. “County” means the County of Santa Fe, a political subdivision of the State of New Mexico.

8. “County Distribution System” has the same meaning as set forth in Section 1.5 of the Cost-Sharing Agreement.

9. “Director”, in the context of quorum and voting requirements and limitations, includes alternate directors attending meetings with voting rights.

10. “Operating Agreement” means that agreement required by Section 612 of the Act, the text of which is ~~appended~~attached hereto as Exhibit A.

11. “Parties” means all of the signatories to this Agreement – the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and County – collectively; “Party” means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, or County individually.

12. “Pueblo Water Facility” has the same meaning as set forth in Section 1.13 of the Cost-Sharing Agreement.

13. “Regional Water System” means the system defined in Section 602(18) of the Act.

14. “Settlement Agreement” means that certain Settlement Agreement dated April

19, 2012, and signed by the Parties on March 14, 2013, in the Aamodt Case.

**ARTICLE 2 – AUTHORIZATION: FORMATION**

Pursuant to the provisions of the Joint Powers Agreements Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties hereby create the Authority, a legal entity, separate and distinct from the Parties, organized and empowered as set forth herein.

**ARTICLE 3 - PURPOSES**

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply for domestic, municipal, industrial, irrigation, commercial and all other approved uses throughout the areas served by the Regional Water System, regardless of jurisdictional boundaries, and as otherwise authorized by the Act;

2. The construction, management, ownership, operation and maintenance of diversion, collection, treatment, storage, and transmission facilities as well as all related real and personal property, facilities and equipment as may be reasonably necessary to achieve the purposes of and discharge the powers of the Authority; and

3. Providing service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under, this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, and the Act.

**ARTICLE 4 – DURATION**

This Agreement shall continue in full force and effect unless terminated pursuant to Article 24.

### **ARTICLE 5 - POWERS**

To the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement, the Authority is empowered and authorized:

A. To own, construct, operate, manage, replace, repair, and maintain ~~the~~all facilities, equipment, and infrastructure of the ~~Authority~~;

~~B. To construct, operate, manage, and maintain the~~ Regional Water System;

~~C. To own, construct, operate, manage, and maintain, wherever located, including~~ any wastewater collection and treatment systems; provided, however, that the County Distribution System and Pueblo Water Facilities shall remain the separate property of the County and respective Pueblo;

~~D.~~ To own, acquire, and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;

~~E.~~ To bill and collect payments from ~~and on behalf~~all customers served by ~~of~~ the Regional Water System wherever located, or to bill and collect payments from the Parties, or both, as ~~required by~~may be provided in the Operating Agreement; provided, however, that any billing of and collection from a water customer served from the County Distribution System must conform to policies of the County and any billing of and collection from a water customer served from a Pueblo Water Facility must conform to policies of the applicable

Pueblo;

FD. To establish policies and enforcement mechanisms for delivery and use of water, provided that any suspension of service to a water customer served from the County Distribution System must conform to policies of the County and any suspension of service to a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

GE. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation;

HF. To make expenditures, incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements, and expansion of the facilities of the Authority and to otherwise carry out the purposes of the Authority;

IG. To provide services to and lease to others any of the Authority's assets;

JH. To open and maintain bank accounts, and to invest the Authority's funds, for its benefit, to the extent and in the manner that County funds may be invested under New Mexico law;

KI. To sell any of the Authority's assets deemed by the Board to be unnecessary, excess, obsolete, or scrap;

LJ. To employ and enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;

MK. To apply for and to receive grants, appropriations or other funds; and

N-L. To provide for retirement, insurance, and other benefits for its employees; and

M. To do any and all other lawful things consistent with its purposes and powers as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

## **ARTICLE 6 - BOARD OF DIRECTORS**

**A. Composition and Appointment.** The business and affairs of the Authority shall be controlled by the Board, which shall be composed of ~~five (5) directors. Each Party shall appoint one director. Each Party may establish its own qualifications for appointment of its respective director and an alternate director to serve in the director's absence~~ nine (9) directors. Each Pueblo except the Pueblo of San Ildefonso shall appoint one director. San Ildefonso shall appoint two directors, one of whom shall reside within the exterior boundaries of the Pueblo de San Ildefonso and shall either (i) be a water customer served by the County Distribution System or (ii) have elected to be served by the County Distribution System pursuant to Section 3.1.7.2.1 of the Settlement Agreement. The County shall appoint a total of four directors. Three of the County's directors shall be water customers served by the Regional Water System or persons who have elected to be served by the Regional Water System pursuant to Section 3.1.7.2.1 of the Settlement Agreement. The County's fourth director shall be the County Commissioner for District 1; provided, however, that a majority of the Board of County Commissioners of the County of Santa Fe may vote to appoint another County Commissioner to the fourth director position. Each Party shall establish its own qualifications for directors and alternate directors. No director shall attempt to control or influence the Authority except through the official actions of the Board.

**B. Terms of Directors.** The term of each director shall be indefinite or as otherwise determined by the Party appointing that director. A director shall continue to serve after expiration of the director's term until a successor has been appointed. Each director shall serve at the pleasure of the Party that appointed the director and may be replaced at any time by formal action of the appointing Party. A director shall be deemed to have resigned upon missing three consecutive duly called meetings of the Board. The ~~Board~~General Manager shall give written notice of such resignation to the Party that appointed such director and that Party's alternate director shall become ~~such its~~ director. The Party shall appoint a replacement director or alternate director within 30 days of such resignation notice.

**C. Officers.** Officers of the Board shall consist of a Chairperson and Vice-Chairperson. Except for the first Chairperson and Vice-Chairperson, the terms of the offices of Chairperson and Vice-Chairperson shall be for ~~two years~~one year, from February 1 until January 31 ~~two years later~~the following year unless otherwise determined by the Board. The terms of the first Chairperson and Vice-Chairperson shall end on January 31 of the year following the year in which their terms begin. The offices of Chairperson and Vice-Chairperson shall rotate every ~~two years~~year among the Parties.- At the first meeting of the Board, ~~directors~~one director from each Party shall draw from a hat numbers to determine the order in which the offices of Chairperson and Vice-Chairperson shall rotate among the Parties. The County and San Ildefonso shall determine who of their respective directors shall be Chairperson or Vice-Chairperson when those offices rotate to them. Should the Chairperson and Vice-Chairperson be absent from a meeting, the ~~remaining directors and any Party represented by alternative~~ directors (or their alternates) in attendance shall elect a



director to ~~perform the function of~~serve as Chairperson at the meeting. The officers shall perform the following respective functions:

1. **Chairperson.** The Chairperson shall preside at all meetings of the Board, shall execute documents and agreements on behalf of the Authority as authorized by the Board, and shall otherwise represent the Board, as authorized by the Board.

2. **Vice-Chairperson.** The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

**D. Alternate Directors.** Each Party ~~may, in addition to appointment of a regular director, except the County shall~~ appoint one alternate director. The County shall appoint another County Commissioner to serve as the alternate for the County Commissioner appointed as the County's fourth director and one additional person to the Board, who shall serve as the alternate for the other three County directors, which alternate must meet the same qualifications as the non-County Commissioner directors. Alternate directors shall serve and act in the absence or incapacity of the ~~director~~parties' primary directors and, when so acting, shall have all the powers, duties and responsibilities of the ~~director~~primary directors; provided, however, that an alternate director shall not assume the office of Chairperson or Vice-Chairperson ~~in the director's absence~~. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the ~~regular~~primary director.

**E. Compensation and Expenses.** The Authority shall not pay directors salaries or other compensation for their service as directors or expenses associated with such service, such as per diem or mileage. Each Party shall develop compensation and expense

reimbursement policies for its directors and shall be solely responsible for paying any compensation and reimbursing any expenses due under those policies for its director and alternate.

**F. Board Meetings.** The Board shall meet monthly or as may be determined by the Board at publically accessible and convenient locations within the Pojoaque Basin, or at such other places within the county of Santa Fe, and at times as shall be determined by the Board. Special meetings of the Board may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors. Emergency meetings called to address emergency matters, as defined in the New Mexico Open Meetings Act, Chapter 10, Article 15, may be called upon not less than one day's notice; provided, however, that an emergency meeting may be called on less than one day's notice if ~~each Party's director or alternate~~ at least one director or alternate director appointed by each Pueblo, a County Commissioner director or alternate, and another director or alternate appointed by the County will be present at the emergency meeting. Directors may attend Board meetings by telephone or video conference, in accordance with policies to be established by the Board. Board meetings shall be in compliance with the New Mexico Open Meetings Act and in accordance with Robert's Rules of Order.

**G. Quorum; Special Majority Required.** A quorum for the conduct of business at any meeting of the Board shall be ~~four (4)~~ five (5) directors, present either in person or by telephone or video conference. except that at least one director must be present in person at a meeting place announced to the public. Each director shall have one vote. Voting by proxy is prohibited ~~except by;~~ provided, however, that an alternate director serving in place of an

absent director shall not constitute proxy voting. The action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board, except that affirmative votes by a director designated by the ~~directors appointed by~~ Pueblo de San Ildefonso as holding its supermajority vote and ~~the~~ County Commissioner shall be required for any of the following actions:

1. to approve the annual budget and any budget amendments of the Authority, ~~which shall be submitted to and shall not be effective until approved by a minimum of four directors of the Board~~; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Board;
2. to hire or terminate or enter into, modify, or terminate the contract for the ~~general manager~~General Manager of the Authority;
3. to approve delegation of any power of the Authority;
4. to borrow money in an amount in excess of \$125,000 or to convey, pledge or encumber any of the Authority's assets;
5. to enter into, terminate or modify the System Operator Agreement, the Fiscal Services Agreement, or any contract for an amount greater than \$125,000, exclusive of applicable gross receipts tax or governmental gross receipts tax, with an entity that is not a Party or entity controlled by a Party.

The Board may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority under ~~subparagraphs~~Subsections 4 and 5 above.

**H. Contract Party or Affiliated Entity.** Notwithstanding Section 5.G.5, any

action to enter into, terminate, assign, or modify any contract with a Party or an entity controlled by a Party shall require the affirmative vote of ~~the other four (4)~~ no less than five (5) directors: appointed by the other Parties. No ~~Party's~~ director may vote to enter into, modify, assign, or terminate a contract between the Authority and the Party ~~represented by that~~ appointed that director.

**I. Duties.** The Board shall: manage and oversee the Authority to assure that the Authority carries out its duties and exercises its powers in accordance with this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, the Act, and all other applicable laws and agreements; adopt, and from time to time amend, the Authority's policies, By-Laws, and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; approve or disapprove any and all acquisitions, dispositions, or the pledging of real property or interests therein by the Authority; approve or disapprove all Authority contracts, including contracts with consultants, engineers, legal counsel, and for other services but excluding employment contracts delegated to the ~~general manager~~ General Manager; and to exercise or delegate the powers of the Authority and duties of the Board in accordance with this Agreement~~-. .~~

**J. Committees.** The Board may establish such advisory committees of the Board as it deems appropriate. —Any action proposed by a committee shall be advisory only unless and until presented to and approved by the Board.

#### **ARTICLE 7 – GENERAL MANAGER AND OTHER AUTHORITY EMPLOYEES**

The Authority shall hire and set compensation for a ~~general manager~~ General Manager and ~~may authorize~~ such other ~~employment positions~~ employees as the Board deems necessary.—

~~Except as otherwise provided by the Board and subject to Article 10.F, the general manager that are within the Authority's approved budget. The General Manager shall report to the Board, be an at will employee who serves at the pleasure of the Board, and have the authority and duty to~~following duties: oversee and manage the Authority's day-to-day affairs; ~~to~~ hire, supervise, discipline, and fire employees of the Authority; consistent with the employment preferences benefiting members of the San Ildefonso Pueblo and other Party-Pueblos in accordance with Section 3.4 of the Cost-Sharing Agreement; ~~to~~ manage and assist in negotiating all Authority contracts (including the Fiscal Services Agreement and System Operator Agreement); ~~and to~~ perform such other duties and tasks as the Board may from time to time delegate to the ~~general manager. The general manager~~General Manager. All other employees of the Authority shall report to the General Manager and have such duties as may be an at will employee and serve at the pleasure of the assigned by the Board, or the General Manager.

#### **ARTICLE 8 – PROCUREMENT; EMPLOYMENT PREFERENCES; TAXES**

A. The Authority shall ~~procure goods~~ and services in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq. ~~The Authority may contract with the Fiscal Agent, pursuant to Article 9 of this Agreement, to provide necessary procurement and administrative services for the Authority.~~

B. Pursuant to Section 3.4 of the Cost-Sharing Agreement, to the extent authorized by law, the Authority shall provide an employment preference to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located

within San Ildefonso Pueblo.

C. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities undertaken by the Authority for delivery to the Parties, unless the tax, fee, or special assessment is specifically authorized in the Operating Agreement or required under federal or state law.

This section does not prohibit any taxes, fees, or special assessments imposed by a Party in connection with the sale of water by that Party to the Party's customers.

#### **ARTICLE 9 – FINANCIAL ACCOUNTABILITY**

A. As provided in NMSA 1978, Section 11-1-4 (as amended), the Authority shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete, and correct records and statements pertaining to receipts, disbursements, and all other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority's finances to be performed in accordance with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and implementing regulations; the audit shall be provided to each Party and shall be made available to the public.

C. Upon reasonable notice, the records and statements prepared by the Authority ~~pursuant to this paragraph~~ shall be open to inspection at any reasonable time by the Parties, their accountants, and agents.

D. The Authority shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the Parties, at

reasonable intervals, such reports and accounting as the Parties may from time to time request.

#### **ARTICLE 10 – FISCAL AGENT**

A. The Authority ~~may~~shall enter into a Fiscal Services Agreement with ~~at~~the County to serve as Fiscal Agent to provide human resources, procurement, payroll, financial and accounting, record keeping, and other fiscal and administrative services as determined by the Board and the County. After expiration or termination of the Fiscal Services Agreement with the County, the Authority may affirmatively resolve to be its own Fiscal Agent, in whole or in part, or may enter into a Fiscal Services Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

B. The ~~initial Fiscal Agent shall be the County. The~~ Fiscal Services Agreement with the County may be terminated pursuant to Section H of Article ~~6.H~~, or pursuant to the terms of the Fiscal Services Agreement; provided, however, that the Fiscal Services Agreement shall provide that the ~~–~~Agreement shall not terminate on less than one (1) year’s written notice, except for the material breach thereof; and provided further that, if the Authority terminates the Fiscal Services Agreement with the County for convenience and does not affirmatively resolve to be its own Fiscal Agent, the termination shall not go into effect until a new Fiscal Services Agreement is approved pursuant to Section G(5) of Article ~~6.G.5~~ and the successor Fiscal Agent is ready, willing, and able to perform its duties under the Agreement. Upon providing or receiving notice of the intent to terminate, the Board shall exercise diligence in identifying and contracting with a new Fiscal Agent. Except as provided above, in the event the Fiscal Services Agreement terminates before a new Agreement is in place, the Board shall act as Fiscal Agent in the interim.

C. The Fiscal Agent shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the Authority, at the direction of the Board. The Fiscal Agent and the Authority may contract for additional services ~~(including procurement services)~~. In performing any procurement services, the Fiscal Agent shall abide by Section 3.4 of the Cost- Sharing Agreement, which requires that, to the extent authorized by law, the Authority provide an employment preference to qualified members of the ~~San~~ Idefonso Pueblo, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Idefonso Pueblo.

D. The Fiscal Agent ~~may receive~~ shall be entitled to reasonable compensation for fulfilling the duties required herein, as ~~agreed to by the Parties to the Fiscal Services Agreement, as set out~~ provided in the Fiscal Services Agreement.

E. The funds of the Authority shall be held by the Fiscal Agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement or third parties. All contributions of and other payments by the Parties shall be initially deposited directly into a general fund created by the Fiscal Agent for the Authority.

~~F. The initial Fiscal Services Agreement with the County shall provide that, subject to this Agreement, employees of the Authority shall be employees of the County and entitled to the same benefits and privileges as customarily provided by the County, subject to the following:~~

~~1. The County shall hire the person selected by the Board for employment as the General Manager, who shall be an exempt employee of the County. The General~~



~~Manager shall report solely to the Board. The Board shall have supervisory authority over the General Manager and shall have the sole right to make any necessary personnel decisions concerning the General Manager to the County.~~

~~2. The General Manager shall have general supervisory authority over employees of the Authority.~~

~~3. The General Manager's recommendation to the County shall be followed by the County for the hiring, firing and disciplining of all employees of the Authority, consistent with the County's personnel rules.~~

#### **ARTICLE 11- ANNUAL BUDGET AND FINANCIAL PROVISIONS**

A. Each Party shall contribute its share of the amount necessary to meet the Authority's operating expenses ~~and reserve fund requirements~~. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and Section 612 of the Act, the basis for each Party's contribution shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority's operations and expenses shall be in compliance with an annual budget for each fiscal year beginning July 1 and ending June 30. The annual budget shall include all expenses necessary to operate, manage, and maintain the Regional Water System ~~and to maintain reserve funds at target levels~~.

C. No later than five months prior to the beginning of the next fiscal year, the Board shall consider and approve the annual budget for the next fiscal year, which shall be sufficient to cover all annual expenses and required reserves of the Authority. At least one month prior to the Board's consideration, the General Manager shall prepare, submit to the Board, and provide a copy to each Party a detailed proposed budget for the Board's

consideration, including a calculation of each Party's proportionate contribution in accordance with the Operating Agreement. The General Manager shall prepare the proposed budget after consulting with the Parties. The Parties may provide written comments on the General Manager's proposed budget to the Board, copies of which shall be provided to the General Manager and the other Parties. The Board shall thereafter approve and adopt a budget after considering the written and oral comments of the General Manager and the Parties, making such changes to the General Manager's proposed budget as the Board deems appropriate. In the event that the annual budget is not approved prior to commencement of the fiscal year, the prior year's budget shall constitute the budget for the fiscal year without further action of the Board until such time as the Board adopts a budget for the fiscal year. By the beginning of each fiscal year, each party shall (i) appropriate adequate funds to meet its financial obligations to the Authority as reflected in the Authority's budget for the fiscal year or (ii) give notice to the Authority and other Parties that it has failed to do so.

D. Any amendments increasing the annual budget in total by more than five percent shall require approval of ~~the Board~~ all Parties.

E. The Authority may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds.

F. No Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.

G. The annual budget shall include ~~\_a provision for the Authority to maintain a Capital Replacement Fund, which shall be utilized to replace obsolete, worn out or unusable~~

~~equipment of the Authority, in accordance with the Operating Agreement.~~the following reserve funds:

~~H. The Authority shall~~ 1. a Capital Replacement Fund in an amount determined by the Board to be adequate, which shall be utilized to replace obsolete, worn out or unusable equipment of the Authority;

2. an Emergency Fund in an amount determined by the Board to provide immediate resources for unforeseen or catastrophic infrastructure failures that render facilities unable to deliver water at the needed capacity;

3. a Revenue Stability Fund, which shall no later than the twentieth anniversary of the first approved annual budget (and thereafter) have on deposit an amount no less than one-year's operating costs and, no later than the fortieth anniversary (and thereafter), an amount of no less than two-years' operating costs, to provide funds in the event of a revenue shortfall; provided, however, that the existence and use of the Revenue Stability Fund shall not relieve a Party of its obligations to provide funding to the Authority or preclude the Authority or other Parties from pursuing available remedies against a Party that breaches its obligation to provide funding; and

(4) such other reserve funds as may be required under the Operating Agreement to assure that dependable and reliable service is maintained throughout the areas served by the Regional Water System.

H. The Authority or its Fiscal Agent shall, in accordance with generally accepted accounting principles and all state laws applicable to public money and accounts, maintain adequate and correct accounts of its funds, properties and business transactions. Upon

reasonable notice and in accordance with applicable law, the accounts shall be open to inspection at any reasonable time by the Parties, their accountants or their agents.

#### **ARTICLE 12- REGIONAL WATER SYSTEM OPERATOR**

A. The Authority shall enter into a System Operator Agreement with the County to serve as System Operator and be responsible for the operation, maintenance, replacement, and repair of the Regional Water System. The County shall cooperate with the U.S. Bureau of Reclamation in training and certification of employees to achieve a smooth transition for operating the Regional Water System ~~and for the purpose of Article 7.B of this Agreement.~~ The County as System Operator shall be entitled to compensation from the Authority to cover the all of the County's direct and indirect costs of operating the Regional Water System, as provided in the System Operator Agreement and the Authority's approved budget.

B. The System Operator Agreement with the County (and any subsequent System Operator Agreement) shall provide that it cannot be terminated by either the Authority or the System Operator on less than two (2) years' notice except for the material breach thereof; and provided further that, if the Authority terminates the System Operator Agreement with the County for convenience and does not affirmatively resolve to be the System Operator, the termination shall not go into effect until a new System Operator Agreement is approved pursuant to Section G(5) of Article 6-G.5 and the successor System Operator is ready, willing, and able to perform its duties under the Agreement. In the event the Authority provides or receives notice of intent to terminate the System Operator Agreement, the Authority shall exercise diligence in identifying and contracting with a new

System Operator. Except as provided above, in the event the System Operator Agreement terminates before a new Agreement is in place, the Authority shall be responsible for operating the Regional Water System.

~~C. The County's policies regarding billing and collection and suspension of service for customers of the County Distribution System shall apply, as provided in Article 5.F~~  
~~E, regardless of whether the County is the System Operator.~~

DC. System Operator Agreements shall provide employment preferences in accordance with Section 3.4 of the Cost-Sharing and System Integration Agreement, which requires that, to the extent authorized by law, employment preferences be given to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo

~~E. If the D. After expiration or termination of the System Operator Agreement is terminated and with the County no longer serves as System Operator, the Authority may affirmatively resolve to be its own System Operator, in whole or in part, or may enter into an agreement with any one of the following to serve as a System Operator: (1) Agreement with one of the Pueblo Parties; (2) the Authority; or (3) or another entity, as determined by the Authority.~~

### **ARTICLE 13 – INSPECTION OF PUBLIC RECORDS**

All documents of the Authority within the definition of “public records” set out in NMSA 1978, Section 14-3-2(G), as such may be amended or recompiled from time to time, shall be retained as public records in accordance with state law and shall be subject to

inspection to the extent provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 1, as such may be amended or recompiled from time to time. The services provided by the Fiscal Agent under the Fiscal Services Agreement shall include compliance with the Inspection of Public Records Act, ~~NMSA 1978. § 14-2-1 et. seq.~~, on behalf of the Authority.

**ARTICLE 14 – FUTURE CONNECTIONS AND EXPANSIONS COOPERATION,  
ACCESS, EASEMENTS, COUNTY INTERIM USE**

~~The Parties agree to cooperate to facilitate customer connections to the Regional Water System.~~

~~A. The Parties agree to cooperate to assure consistent, reliable and continuous service and operation throughout the areas served by the Regional Water System. To assure such service and operation, the Parties hereby grant the Authority (including its employees, contractors, and agents) the right to enter upon the lands of the Parties, including lands held in trust by the United States, as may reasonably be necessary or appropriate to operate the Regional Water System, including for purposes of maintaining, repairing, or replacing infrastructure and equipment, operating heavy machinery and maintenance vehicles, reading meters, and commencing or terminating service.~~

~~B. The Parties agree to cooperate to encourage and facilitate customer connections to the Regional Water System. The Parties shall grant such rights-of-way and easements (collectively, “easements”) as may reasonably be necessary for customers to connect to the Regional Water System, both as constructed by the U.S. Bureau of Reclamation and as the System may be extended by the Authority in the future. In consideration of the Parties’ mutual~~

obligations under this Agreement, the Cost-Sharing Agreement, and the Operating Agreement, and the mutual benefits to be derived from expanding the Regional Water System to increase the customer base, the Parties shall grant such easements for so long as needed for the Regional Water System and at no cost, and the Pueblos each agree to consent to the grant of such easements by the Secretary of the Interior pursuant to the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. §§ 323-328) and 25 C.F.R. Part 169. Should the Secretary of the Interior determine that additional compensation is required for a Pueblo to grant such easements and should that determination not be overturned by a final, non-appealable decision of a court of competent jurisdiction, the following provisions shall apply. First, compensation for easements shall not exceed the appraised fair market value based on comparable sales of water utility easements on non-Pueblo fee lands. Second, fair market value shall be determined by an appraiser mutually agreed upon by the Pueblo granting the easement and the Authority or, in the event the Authority is not acquiring the easement, the Party acquiring the easement; provided, however, that if an appraiser cannot be agreed upon within 60 days of one being first proposed, each side shall appoint one appraiser and the two appointed appraisers shall select a third appraiser, and the appraised value as agreed upon by two or more of the appraisers shall be binding on the parties. The cost of the appraisers shall be shared equally by the parties.

C. The parties shall cooperate in facilitating interim uses by the Parties of any unused capacity in the Regional Water System. The Authority shall approve such interim uses by the Parties contingent solely on the requirement that such use shall be authorized and carried out in accordance with a permit issued by the New Mexico State Engineer. Pursuant to Sections 612(c)(2)(C) and (D) of the Act, the Parties agree that the Operating Agreement will

require such approval by the Authority.

D. To the extent that additional authorization is required to provide the right of entry to the Authority, grant the easements, or approve of interim uses required under Sections A, B and C of this Article, respectively, the Parties shall cooperate in obtaining such authorizations and shall execute such additional agreements or instruments as may reasonably be necessary or appropriate.

#### **ARTICLE 15 - LIMITED WAIVER OF SOVEREIGN IMMUNITY**

A. By entering into this Agreement, no Party waives, relinquishes or limits its sovereign immunity, except as expressly provided in Article 19 of this Agreement. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 19.

B. By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the Authority's or another Party's acts or omissions.

C. Any liability incurred by the Authority is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended.

D. This Agreement does not modify, in any way, the Parties' liabilities or sovereign immunity as to third parties, which is governed by federal and state law, including the New Mexico Tort Claims Act. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

E. The Operating Agreement required by Section 612 of the Act shall set forth



the financial obligations of each Party for the Regional Water System and shall provide for a limited waiver of sovereign immunity of each Party solely for the enforcement of such financial obligations.

**ARTICLE 16 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY**

A. The officers and directors of the Board shall be immune from any liability to third-parties for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal and state law, including the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as amended, recompiled, or ~~by any successor section replaced.~~

B. To the extent required by NMSA 1978, Section 41-4-4, the Authority shall provide a defense to its public employees, as defined in NMSA 1978, Section 41-4-3(F), and shall pay any award, settlement, or final judgment against its public employees.

C. With respect to claims and other matters for which a defense and payment of awards, settlements, and final judgments are not required by NMSA 1978, Section 41-4-4, the Authority may indemnify its officers and directors for personal liability and for reasonable expenses, costs and attorney’s fees incurred in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been a director or officer acting in good faith, to the fullest extent permitted by ~~federal law or by the New Mexico Tort Claims Act, as amended, or by any successor section.~~ state law.

ED. The indemnification provided for in Section C of this Article 16 is not self-executing and does not independently provide officers and directors with the right to

indemnification. Indemnification shall only be provided and be available pursuant to policies and procedures adopted by the Board, which shall include notice requirements as well as the right of the Authority (or its insurance carriers) to control the defense and resolution of claims brought against officers and directors.

#### **ARTICLE 17 — INSURANCE**

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority ~~shall~~may purchase additional insurance for the directors and officers of the Board and the Authority against any suit which may be brought against them in connection with their duties under this Agreement.

C. The Authority shall carry and maintain fire and extended insurance coverage on all Authority buildings, structures and improvements, and on upon all of the contents and other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers' Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as

necessary or appropriate for the General Manager and any other employees ~~and staff, subject to Article 10(F) of this Agreement.~~ the Authority.

F. The expense of obtaining and maintaining the required insurance, along with the expense of all employee benefits, shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage required under this Article shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

#### **ARTICLE 18 – NO THIRD-PARTY BENEFICIARY**

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person or other entity, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

#### **ARTICLE 19 – ARBITRATION AND OTHER METHODS OF ALTERNATIVE DISPUTE RESOLUTION**

A. The Parties agree to submit any and all issues, disputes and controversies of every kind and nature between or among the Parties regarding this Agreement to binding arbitration by a panel of three arbitrators in accordance with the provisions below, including

but not limited to issues, disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement. The panel of arbitrators shall be comprised of licensed New Mexico attorneys with at least fifteen years of experience practicing in New Mexico. The attorneys shall have no past or current relationship to any Party or the Authority and shall not have represented any client against any Party or the Authority.

B. Any Party or combination of Parties may ~~demand~~commence arbitration by making a ~~demand in writing, which~~written demand and serving it on the other Parties by certified mail, return receipt requested. The demand shall summarize the matter in controversy and shall include the name of ~~that least one proposed neutral~~ arbitrator ~~proposed by the Party demanding.~~

C. Within 30 days after receiving a demand for arbitration, together the other Parties shall mail by certified mail, return receipt requested, a written answer to the demanding Party, either individually or jointly with a statement of other Parties, stating their position on the matter of ~~in~~ controversy.

C. ~~Within 20 days after such demand, any other Party shall name its and naming at least one neutral~~ arbitrator. If the Any Party that fails to provide a timely written answer shall have conclusively waived its right to participate in the arbitration but shall nevertheless be bound by the final decision of the arbitrators.

D. Within 45 days after the demand for arbitration, the Parties shall confer and attempt to agree on three neutral arbitrators; provided, however, that if the Parties agree only on two arbitrators ~~are selected, they, those two arbitrators~~ shall name ~~a~~ select the third arbitrator

in accordance with the requirements of Section A of this Article. If within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal 60 days after arbitration is demanded the Parties have not agreed on at least two neutral arbitrators, any Party may file an action in the United States District Court for the District of New Mexico, and request the Court to appoint a panel of three neutral arbitrators in accordance with NMSA 1978, Section 44-7A-12, 9 U.S.C. Section 5 and this Agreement.

D. The arbitration costs and expenses of each Party shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties.

E. The arbitration hearing shall be held at such time and place within the county of Santa Fe as designated by the arbitrators on at least 20 days' written notice to the Parties.

F. The award rendered by a majority of the arbitrators appointed pursuant to this Agreement, including an award that quantifies and requires a Party to pay its proportionate contribution under Article 11 of this Agreement pursuant to an approved budget of the Board and lawful appropriations made by the Party, shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award. The Parties shall comply with such award within thirty (30) days of the date thereof or such other time as the majority of arbitrators may specify.

G. The Parties waive their sovereign immunity only as to suits brought in the United States District Court for the District of New Mexico and only for the limited purposes of: (1) enforcing the requirement to arbitrate compelling arbitration pursuant to this Agreement, (2) having a panel of three neutral arbitrators appointed pursuant to Section D of this Article; and (2)-3) obtaining judicial declaratory and/or injunctive relief to enforce an

award of the arbitrators pursuant to this Agreement. Attached hereto as Exhibits B through F are Resolutions of the respective governing bodies of the Parties approving this Agreement, including the limited waiver of sovereign immunity provided herein.

H. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

I. Except as provided in ~~paragraph~~Section G of this Article, the Parties expressly waive their right to file suit in federal, state, and tribal court to resolve any issue, dispute or controversy that is subject to arbitration under this Agreement. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

J. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

K. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

L. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another the Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this

Agreement.

M. This Agreement shall be subject to the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Except to the extent of a conflict with this Agreement or the Federal Arbitration Act, the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7A-1 through 44-7A-22, shall also apply to the arbitration provisions of this Agreement; provided, however, that no Party waives its sovereign immunity from suit in state court except as provided in paragraph G of this Article.

N. Nothing in this Article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The Parties agree that prior to resorting to arbitration as set forth above they shall use their best efforts to resolve any dispute by such non-binding and informal means.

O. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in ~~paragraph~~Section G of this Article.

#### **ARTICLE 20 - AMENDMENTS**

This Agreement may only be amended by a mutual written agreement of all the Parties. No amendment shall be effective until approved by the New Mexico Secretary of Finance and Administration.

#### **ARTICLE 21 - SEVERABILITY**

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable or otherwise unenforceable by a Court of competent jurisdiction, then the remainder

of this Agreement shall continue in full force and effect and this Agreement shall thereafter be construed as if such unlawful, voided or unenforceable provision(s) had never been a part hereof; provided, however, that this Agreement shall terminate if the Agreement, as severed, would violate the requirements of the Act, the Settlement Agreement, or the Cost-Sharing Agreement.

**ARTICLE 22 – EFFECTIVE DATE; EFFECT OF AGREEMENT**

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the New Mexico Secretary of Finance and Administration. This Agreement may be executed in counterparts, which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Party or Parties.

**ARTICLE 23 – NOTICES**

Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

<b>To The County:</b>	Santa Fe County Utilities Director Santa Fe County PO Box 276 Santa Fe, New Mexico 87504 Phone: 505.992-9870 Fax: 505.992.3028
<b>With A Copy To:</b>	County Manager Santa Fe County



P.O. Box 276  
Santa Fe, New Mexico 87504  
Phone: 505.986.6200  
Fax: 505.986.6362  
County Attorney  
Santa Fe County  
P.O. Box 276  
Santa Fe, New Mexico 87504  
Phone: 505.986.6279  
Fax: 505.986.6362

**To Pueblo of Nambe :** Pueblo Governor  
15A NP 102 West  
Santa Fe, New Mexico 87506  
Phone: 505.455.2036  
Fax: 505.455.2038

**With A Copy To:** McElroy, Meyer, Walker & Condon, P.C.  
1007 Pearl Street, Suite 220  
Boulder, Colorado 80302  
Phone: 303.442.2021  
Fax: 303.444.3490

**To Pueblo of Pojoaque:** Pueblo Governor  
78 Cities of Gold Road  
Santa Fe, New Mexico 87506  
Phone: 505.819.2276  
Fax: 505.819.2299

**With A Copy To:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone:  
Fax:

**To Pueblo de San Idefonso:** Office of Governor  
02 Tunyo Po  
Santa Fe, New Mexico 87506  
Phone: (505) 455-2273  
Fax: (505) 455-7351

**With A Copy To:** Realty Department  
02 Tunyo Po

Santa Fe, New Mexico 87506  
Phone: 505.455.4138  
Fax: 505.455.4163

Chestnut Law Offices, P.A.  
121 Tijeras Ave. NE, Suite 2001  
Albuquerque, New Mexico 87102  
Phone: 505.842.5864  
Fax: 505.843.9249

**To Pueblo of Tesuque**

Pueblo Governor  
Route 42, Box 360T  
Santa Fe, New Mexico 87506  
Phone: 505.955.7732  
Fax: 505.955.2331

**With A Copy To:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone:  
Fax:

**ARTICLE 24 - TERMINATION**

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party; and
2. approval by an Act of Congress or if one or more of the conditions

precedent set forth in Section 623 of the Act have not been fulfilled by the applicable deadline set forth therein.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the

extent necessary to wind down the affairs of the Authority, make an effective disposition of property, provide a full accounting, and distribute surplus funds in proportion to the contributions made.

C. Upon termination of this Agreement pursuant to an Act of Congress, the property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

#### **ARTICLE 25 – ASSIGNMENT PROHIBITED**

No Party shall assign this Agreement.

#### **ARTICLE 26 – NON-APPROPRIATION CLAUSE**

A. So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's obligations in future fiscal years are contingent upon sufficient appropriations and authorizations being made by the Board of County Commissioners of the County. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. The County's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties.

B. Each Pueblo's obligations in future fiscal years are contingent upon sufficient appropriations and authorizations being made by its Tribal Council. Each Pueblo is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. Each Pueblo's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties.

**ARTICLE 27 – COMPLIANCE WITH APPLICABLE LAWS**

The Authority shall exercise its powers and conduct its operations in accordance with all laws applicable to the Authority, the Fiscal Agent, and the System Operator.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

**PUEBLO OF POJOAQUE**

**PUEBLO DE SAN ILDEFONSO**

\_\_\_\_\_  
Joseph Talachy, Governor

\_\_\_\_\_  
James Mountain, Governor

**PUEBLO OF NAMBE**

**PUEBLO OF TESUQUE**

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

\_\_\_\_\_  
Milton Herrera, Governor

**SANTA FE COUNTY**

(name) \_\_\_\_\_  
(title) \_\_\_\_\_, \_\_\_\_\_

## Appendix

### An Act

This Act may be cited as “The Claims Resettlement Act of 2010.”.

#### TITLE VI—AAMODT LITIGATION SETTLEMENT

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

###### SEC. 612. OPERATING AGREEMENT.

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

- (1) the date of completion of environmental compliance and permitting; or
- (2) the date of issuance of a final project design for the Regional Water System under section 611(b).

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

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

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

(2) provisions for—

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

- (i) distribution lines for the County Distribution System;
- (ii) distribution lines for the Pueblo Water Facilities; and
- (iii) distribution lines that serve both—
  - (I) the County Distribution System; and
  - (II) the Pueblo Water Facilities;

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

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

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

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

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

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

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

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

(J) dispute resolution; and

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

(A) ensure that—

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

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

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

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

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

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