

# **RIO POJOAQUE ACEQUIA AND WATER WELL ASSOCIATION**

## **NEWSLETTER REGARDING THE PROPOSED AAMODT SETTLEMENT**

The proposed settlement agreement and a summary are available on line at [www.westernwaterlaw.com](http://www.westernwaterlaw.com). Or call Holland & Hart, LLP at 988-4421 or Pasty Sandoval at 455-2693 to request a copy by mail.

### **FOR MORE INFORMATION PLEASE ATTEND A PUBLIC MEETING**

<b>Tuesday, March 9</b>	<b>Pojoaque School District Administration Building</b>	<b>6:30 pm</b>
<b>Tuesday, March 16</b>	<b>Sacred Heart Church - Nambe</b>	<b>6:30 pm</b>
<b>Tuesday, March 23</b>	<b>Pojoaque Middle School Gym</b>	<b>6:30 pm</b>
<b>Thursday, April 1</b>	<b>Pojoaque Middle School Gym</b>	<b>6:30 pm</b>
<b>Wednesday, April 7</b>	<b>Pablo Roybal Elementary/ Multi-purpose Room – Jacona</b>	<b>6:30 pm</b>
<b>Sunday, April 18</b>	<b>Pablo Roybal Elementary/ Multi-purpose Room – Jacona</b>	<b>1:00 pm</b>

On behalf of the Rio Pojoaque Acequia and Water Well Association, this Newsletter provides background information regarding the proposed settlement agreement in the *Aamodt* case. Although negotiations continue on some important issues, the negotiating parties have agreed to begin public discussion of the proposed settlement. The proposed settlement agreement is a global settlement of all Pueblo and non-Pueblo water rights issues in the Rio Pojoaque Basin, and represents a compromise of the positions taken in the litigation.

Because there were still many issues yet to be decided by the Court, in 2000, the Court ordered the active participants to discuss settlement options, and the Court appointed a judge to act as a mediator to facilitate confidential negotiations. The proposed settlement agreement is the result of more than three years of negotiations. After public discussions, the settlement agreement will be presented to the Court for review. In addition, the settlement agreement must be approved by the federal and state legislatures. The United States Senate Committee on Energy and Natural Resources may consider the settlement during a committee meeting within the next few months. If the settlement is approved, it will take several years for all of the settlement provisions to be fully implemented.

The foundation of the proposed settlement is the development of a regional water system that will serve the Pojoaque Basin. The regional water system will divert water from the Rio Grande, and treat and transport a safe, reliable supply of water to the Pueblo and non-Pueblo residents in the Pojoaque Basin. The regional system will be governed by a board of directors of local non-Pueblo and Pueblo representatives. The Pueblos will grant permanent rights-of-way to the regional water system for the pipelines and structures that will be necessary for the system. We have requested the ability to use those permanent rights-of-way for any waste water treatment system that eventually may be developed in the region.

Construction of the regional water system should be completed by 2016, at which time non-Pueblo domestic ground water well owners will become customers of the County Water Utility and will cease using wells to supply water for domestic purposes. Non-Pueblo commercial well users also will disconnect their wells, unless agreement is reached with affected Pueblos authorizing continued use.

### **What the Settlement Means for Your Water Rights**

Water rights in the Pojoaque Basin are either ground water rights or surface water rights as explained below:

**Surface Water Rights**

Surface rights are administered through the acequia system. If you own surface water rights, you are a member or parciante of one or more of the acequias in the area. The proposed settlement will recognize the priority and quantity of all non-Pueblo surface rights in the Pojoaque Basin. The Pueblos will be able to make a priority call for an amount of water that approximates their current uses of water, which is lower than the amounts currently awarded under the Court’s prior rulings in this case.

<b><u>Surface Water Rights With Settlement</u></b>	<b><u>Surface Water Rights Without Settlement</u></b>
Subject to priority administration for Pueblos’ existing uses	Subject to priority administration for entire amount of Pueblo rights
Subject to additional priority calls if not used for more than 5 years	Subject to abandonment and forfeiture under state law

**Ground Water Rights**

Wells can be divided into different categories: domestic, commercial, and agricultural. In addition, wells are treated differently in the Pojoaque Basin depending on when the well was drilled. Wells that pre-date 1956 are known as pre-basin wells. Domestic wells drilled after 1956 have been drilled pursuant to a permit from the State Engineer’s Office under state statute §72-12-1. Domestic wells drilled after January 1983, are subject to a court order that restricts water use to indoor uses only, unless the well owner has entered into an earlier settlement agreement that limited the total quantity of water use from a well.

<b><u>Type of Well</u></b>	<b><u>Ground Water Rights With Settlement</u></b>	<b><u>Ground Water Rights W/O Settlement</u></b>
Pre-Basin well	Free from priority administration; domestic use connects to the County Water Utility when service is available; preserves other uses	Subject to priority administration for entire amount of Pueblo rights
Domestic well drilled between 1956 – 1983	Quantity limited to historical beneficial use not to exceed 3 acre feet; use is free from priority administration; connect to the County Water Utility when service is available	Subject to priority administration for entire amount of Pueblo rights; quantity limited by permit to historical beneficial use not to exceed 3 acre feet
Domestic well drilled after 1983	Quantity limited to historical beneficial use not to exceed 3 acre feet; use is free from priority administration; connect to the County Water Utility when service is available	Subject to existing injunction; no outdoor use unless you agreed to the 1999 settlement, then restriction to .7 acre feet; subject to priority administration for entire amount of Pueblo rights
Irrigation well	Subject to priority administration for Pueblos’ existing uses	Subject to priority administration for entire amount of Pueblo rights
Commercial well	Free from priority administration; connect to the County Water Utility when service is available unless a special agreement has been reached with the Pueblos	Subject to priority administration for entire amount of Pueblo rights

The Court has asked the State Engineer to update the water rights ownership records in the Pojoaque Basin. In the near future, you may receive a letter from the State Engineer Office asking you to confirm

certain information, such as your address and whether you have transferred any water rights. Returning the information to the State Engineer is not an indication of whether you support or oppose the proposed settlement.

### **The Pueblos' Water Rights Under the Settlement**

The proposed settlement will adjudicate all Pueblo water rights in the Pojoaque Basin, protect all existing Pueblo water uses and provide for future development of Pueblo water use as follows:

A. Each Pueblo will be entitled to assert its first priority to water use as follows: Nambe Pueblo, 522 AFY; Pueblo of Pojoaque, 236 AFY; San Ildefonso Pueblo, 288 AFY; and Tesuque Pueblo, 345 AFY; total existing use water rights, 1391 AFY. These numbers are lower than the numbers currently awarded under the Court's prior rulings in this case.

B. Each Pueblo possessing currently unexercised first priority rights will be entitled to develop new water uses up to the limit of those rights. Such future basin use first priority rights have been quantified as follows: Nambe Pueblo, 937 AFY; San Ildefonso Pueblo, 958 AFY; and Tesuque Pueblo, 374 AFY; total future basin use water rights, 2269 AFY. The Pueblos will be required (a) to offset increased depletions in the surface flows of the Pojoaque Basin stream system, and (b) to avoid impairment of existing ground water diversions in the Pojoaque Basin. Such obligations are intended to protect existing Pueblo and non-Pueblo surface and ground water uses.

C. To settle all remaining Pueblo water rights claims, an additional 2500 AFY of water will be acquired. This water will be delivered to the Pueblos through the regional water system. Of that quantity, 475 AFY will be allocated to the Pueblo of Pojoaque to supply a Supplemental Pueblo Water Right, 525 AFY will be allocated to the Pueblos for agreed economic development purposes, and 1500 AFY will be allocated in equal shares of 375 AFY to each Pueblo for unrestricted use within the Regional Water System.

### **Answers to Frequently Asked Questions:**

Q: Why have the settlement negotiations been confidential?

A: The United States is a party in the Aamodt suit. The United States Department of Justice has a policy that it will not participate in settlement negotiations unless the negotiations are confidential. Therefore, in 2000, when the Court ordered the parties to mediation, the Court also entered an order requiring the settlement negotiations be kept confidential. Parties were allowed to attend the negotiations if they agreed to be bound by the confidentiality order. At times, over the years, representatives of the Association attended some of the meetings.

Q: Who will pay for the regional water system?

A: The parties are in the process of negotiating a Cost Sharing and System Integration Agreement that will determine how the costs of the system will be allocated between the federal government, the state, the county and the city. That agreement has not been completed, but after it is, it will be available to the public.

Q: How much can non-Pueblo customers expect to pay for receiving water from the County Water Utility System?

A: Budget estimates are that the average rate for service will be approximately \$70/month for 10,000 gallons of water. This compares to an average cost of approximately \$113/month for maintaining and operating a well (factoring in costs of ultimately having to replace a well). Customers will not be charged an

additional amount for water if the customer has transferred a water right to the County Water Utility in accordance with the settlement agreement. The State will establish a fund to provide financial assistance toward the payment of any connection charges. No costs will be incurred until the regional water system is completed, which is expected to be in 2016.

Q: Will wells be metered until water from the County Water Utility is available?

A: Yes. All wells within the basin will be required to be metered. Currently, any well drilled after January 1983 is required to be metered. Well owners can expect increased enforcement proceedings even if the settlement is not approved.

Q: Will any new wells be allowed in the Pojoaque Basin after the settlement agreement?

A: No. The settlement agreement prohibits permits for new appropriations in the Pojoaque Basin. Water rights may be transferred for the purpose of drilling new wells. Similar restrictions may be imposed by the Legislature even if the settlement is not approved.

Q: Will the Pueblos provide rights of way for the Regional Water System and the County Water Utility?

A: Yes. As a condition of the settlement agreement, the Pueblos must grant permanent rights of way for the project.

Q: Will the system include a waste water system?

A: The Aamodt Settlement provides for a water supply system. Potential waste water systems are being studied through the regional planning process.

Q: Where will the imported water come from that is going to be diverted by the Regional Water System?

A: The Settlement Agreement requires the United States to fund the purchase of 2500 acre feet of water rights for the Pueblos in order to resolve their claims for additional water rights through the litigation process. The additional water may be purchased from any willing sellers in the water rights market.

Q: How will the settlement agreement be enforced and are the Pueblos bound by the settlement agreement?

A: The Court will appoint a water master to administer the settlement agreement and to oversee all water rights issues in the Pojoaque Basin. The Federal Court will retain continuing jurisdiction over the parties to enforce the settlement agreement.

Q: How are Pojoaque's golf courses affected by the settlement agreement?

A: Pursuant to the settlement agreement, the Pueblo of Pojoaque is required to take water from a portion of the regional water system for golf course watering as soon as it is available, which may be as soon as 2010. During the interim period, Pojoaque will enter into an agreement with San Ildefonso Pueblo, and San Ildefonso will agree not to use 475 acre feet of water that it is not using today, but that it would have the right to use without the agreement with Pojoaque.

If you have additional questions, please attend one of the public meetings or contact Holland & Hart at 988-4421 or the Association office at 455-2693.