

New Mexico ex rel. State Engineer v. Aamodt,
No. 66cv06639 MV/LCS-ACE (D.N.M.)
SETTLEMENT DOCUMENTS

Version: 3/8/04 3:05 PM

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New Mexico ex rel. State Engineer v. Aamodt,
No. 66cv6639 (D.N.M.)

SETTLEMENT AGREEMENT

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1. Preamble

1.1 Purpose

- 1.1.1 The Settlement Parties, as defined herein, desire to resolve the issues and controversies involved in United States District Court for the District of New Mexico lawsuit New Mexico ex rel. State Engineer v. Aamodt, Civil Action No. 66-6639, in a just manner without needless expenditure of funds and other litigation resources.
- 1.1.2 The United States and the State of New Mexico (“State”), as a matter of policy, favor resolution of disputes concerning water rights through negotiation.
- 1.1.3 This Agreement is intended to be binding on the Settlement Parties and to establish a procedure for the resolution of any *inter se* objections. The Settlement Parties agree to jointly move the Court to enter an interim administrative order and a partial final decree conforming to the terms of this Agreement, and to move the Court at an appropriate time to establish an expedited *inter se* proceeding to resolve any objections to the proposed partial final decree which may be made by water right owners in the Pojoaque Basin who are not Settlement Parties.

1.2 Disclaimers

- 1.2.1 Other than with respect to the specific water rights affirmatively identified in this Agreement, this Agreement shall not be construed to establish precedent or to resolve any question of law or fact in any other judicial or administrative proceeding. In particular, because the descriptions of water rights in this Agreement are based upon a negotiated settlement by the Settlement Parties, the procedures and methods used to quantify and describe such rights herein shall not be binding under the law of the case doctrine upon any other water right claimant, the State, or the United States in the adjudication of water rights in other cases and may not be relied upon as precedent under the *stare decisis* doctrine in any other water adjudication suit. Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved water rights, aboriginal claims, or any other Indian claims to water in any other judicial or administrative proceeding.
- 1.2.2 **Evidentiary Effect of Negotiations.** This Agreement is the result of a process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all Settlement Parties agree that no conduct, statements, offers, or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal

proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement, *provided that* any evidence otherwise discoverable shall not be required to be excluded merely because it was presented in the course of compromise negotiations.

1.2.3 **Neutral Construction.** In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Settlement Party.

1.3 Definitions

1.3.1 “Aamodt case” means the civil action New Mexico ex rel. State Engineer v. Aamodt, No. 66cv6639 (D.N.M.).

1.3.2 “AFY” means acre-feet per year.

1.3.3 “Agricultural uses” means the use of surface or ground water for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agricultural uses shall not include domestic uses, community uses, commercial or industrial uses, or livestock uses.

1.3.4 “Commercial or industrial uses” means the diversion and consumption of water in connection with any activity which provides, or offers to provide, goods or services for consideration. Incidental commercial or industrial uses permitted pursuant to Section 72-12-1 will be considered domestic uses as defined in Section 1.3.8 of this Agreement, when such uses are discontinued at the permitted place of use.

1.3.5 “Community uses” means the diversion and consumption of water by a Pueblo on Pueblo land for indoor and outdoor public purposes, such as schools, community centers, governmental offices, healthcare facilities, and other public services provided by the Pueblo. Community uses shall not include the use of water for domestic, commercial, industrial, irrigated agriculture, or livestock watering purposes.

1.3.6 “CWU” means the County Water Utility described in Section 9.8.

1.3.7 “Decree Court” means the United States District Court for the District of New Mexico or for any federal judicial district subsequently created by Congress to include all or part of the Pojoaque Basin.

1.3.8 “Domestic uses” means the diversion and consumption of water for indoor and outdoor household purposes, including for drinking water, sanitation, and landscaping and gardening incidental to the maintenance of a household and such uses of water incidental to a commercial enterprise, *provided*, however, that domestic uses by any one household or commercial enterprise shall not exceed 3 AFY. Domestic uses shall not

otherwise include the use of water for commercial or industrial uses, community uses, agricultural uses, or livestock uses, as those terms are defined in this Agreement.

- 1.3.9 “Effective Date” means the date specified by Section 8 of this Agreement.
- 1.3.10 “Interfere” or “interference” means a material adverse effect on the quality, divertible quantity, or the cost of diversion of surface water historically used to satisfy surface water rights subject to this Agreement.
- 1.3.11 “Injuries to water rights” means the loss, interference with, impairment, deprivation, or diminution of water rights.
- 1.3.12 “Livestock uses” means the diversion and consumption of water for the care and feeding of domestic animals, such as cattle or horses, *provided*, however, that livestock uses shall not include the use of water in connection with the operation or maintenance of any feedlots and *provided further* that livestock uses shall not include agricultural uses of water.
- 1.3.13 “Local Parties” means all Settlement Parties except the United States and the Pueblos.
- 1.3.14 “Non-Pueblos” means those parties in the Aamodt case who claim water rights other than the Pueblos or the United States acting as trustee for the Pueblos. The United States acting in its proprietary capacity shall be included within the meaning of “Non-Pueblos” for purposes of this Agreement.
- 1.3.15 “Offset Water” means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.
- 1.3.16 “OSE” means the State of New Mexico Office of the State Engineer.
- 1.3.17 “Pojoaque Basin” means that geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff are collected into arroyos, drainages, and named Tributaries that eventually drain to the Rio Pojoaque, or to the two unnamed arroyos immediately south, and two arroyos, including the Arroyo Alamo, immediately north, of the confluence of the Rio Pojoaque with the Rio Grande, and shall also include, for purposes of this Agreement, all of the San Ildefonso Eastern Reservation recognized by the Act of September 14, 1961, 75 Stat. 505, Sec. 8.
- 1.3.18 “Potable Pipeline” means that part of the Regional Water System which shall carry potable water.

- 1.3.19 “Pueblos” means the Pueblos of Nambé, Pojoaque, Tesuque, and San Ildefonso.
- 1.3.20 “Pueblo land” means all real property within the Pojoaque Basin (1) held by the United States in trust for a Pueblo, or (2) owned by a Pueblo, *provided* that for property acquired by a Pueblo after the effective date the Decree Court approves this Agreement, the property is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858, 11 Stat. 374, as amended, or is within the exterior boundary of any territory set aside for the Pueblo pursuant to statute, executive order or court decree.
- 1.3.21 “PVID” means the Pojoaque Valley Irrigation District.
- 1.3.22 “Red Pipeline” means that part of the Regional Water System which shall carry untreated water.
- 1.3.23 “Regional Water Authority” or “RWA” means the nonprofit corporation created pursuant to Section 9.7 of this Agreement.
- 1.3.24 “Regional Water System” means the proposed Pojoaque-Santa Fe Regional Water System that will consist of surface water diversion facilities at the Pueblo of San Ildefonso, including completion of the barrier dam and infiltration project on the Rio Pojoaque, together with treatment, transmission, and distribution facilities necessary to supply a minimum of 4,000 AFY of water within the Pojoaque Basin and a maximum of 21,000 AFY of water to areas to be served by the Regional Water System, including the Pojoaque Basin and the Santa Fe River Basin. The Regional Water System shall include the Red Pipeline, the Potable Pipeline, and well fields, all of which shall be managed and operated consistent with this Agreement for the purpose of ensuring a reliable firm supply of water to all users of the Regional Water System.
- 1.3.25 “Section 4 protection” means the protection provided to Non-Pueblo water rights from priority enforcement or administration of the Pueblos’ First Priority Rights, as specified in Section 4 of this Agreement.
- 1.3.26 “Section 72-12-1” means NMSA 1978 § 72-12-1 (2001).
- 1.3.27 “Settlement Parties” means all persons or entities that sign this Agreement or authorize a representative to sign this Agreement.
- 1.3.28 “Transitional use” means a use that must cease under Section 3.1.8.
- 1.3.29 “Transition period” means that period of time until an owner of a well, whether a Section 72-12-1, pre-basin, or other permitted well, is required to connect to the CWU pursuant to Section 3.1.8.1. Because of the

different locations of wells, the transition period will vary from well to well, and in cases of wells of remote location may be indefinite.

1.3.30 “Tributaries” means the Rio Pojoaque, Rio Cuyamungue, Rio Tesuque, Rio Nambé, Rio Chupadero, and Rio en Medio.

1.3.31 “Water right” means any right to the use of water that is specifically described and authorized by a subfile order, this Agreement, the Interim Administrative Order, or the Final Decree in the Aamodt case, *provided that* the adjudication of such water rights in the Final Decree shall supercede in all respects any specification in a subfile order, this Agreement, or the Interim Administrative Order.

2. **Pueblo Water Rights**

2.1 **Pueblo First Priority Rights**

2.1.1 **Priority.** Subject to this Agreement, the water rights of each Pueblo quantified in Section 2.1.2 shall be entitled to first or time immemorial priority.

2.1.2 **Quantity.** The measure of each Pueblo’s First Priority Rights to consumptively use (deplete) the surface and ground water of the Pojoaque Basin shall be as follows:

Pueblo	First Priority Rights (AFY Consumptive Use)
Nambé	1,459
Pojoaque	236
San Ildefonso	1,246
Tesuque	719

2.1.3 The Pueblo First Priority Rights shall not be subject to forfeiture or abandonment.

2.1.4 Except as otherwise provided in this Agreement, no Pueblo shall have the right to divert, whether from surface water or ground water, any quantity of water in the Pojoaque Basin, the effect of which shall be to increase the Pueblo’s consumptive use to more than the AFY quantity set forth in Section 2.1.2 and Section 2.2.2.

2.1.5 Pursuant to a written agreement and subject to the terms of this Agreement, a Pueblo may lease, for any term up to 99 years, any portion of its First Priority Rights for use within the area served by the Regional Water System to (a) another Pueblo, which uses shall be in addition to the quantity specified for the lessee Pueblo in section 2.1.2 or (b) another

water user. No agreement for a period of seven years or more shall be valid unless approved by the Secretary of the Interior or her designee.

2.2 Supplemental Pueblo Rights.

2.2.1 **Priority.** The water rights of each Pueblo quantified in Section 2.2.2 shall not be subject to call for purposes of administration of priorities.

2.2.2 **Quantity.** The measure of each Pueblo’s Supplemental Pueblo Rights shall be as follows

Pueblo	Supplemental Pueblo Rights (AFY consumptive use)
Nambé	0
Pojoaque	475
San Ildefonso	0
Tesuque	0

2.2.3 Each Pueblo's Supplemental Pueblo Rights shall be used on that Pueblo's lands and shall not be subject to forfeiture or abandonment.

2.2.4 Alternative Water, Subordination of Supplemental Pueblo Rights

Four hundred seventy five (475) AFY of the Pueblo of Pojoaque’s Supplemental Pueblo Rights shall be subordinated to a right to receive an equivalent amount (475 AFY) of water delivered through Regional Water System (“Alternative Water”), as follows:

2.2.4.1 The United States shall secure the Pueblo of Pojoaque’s Alternative Water and make such water available to the Pueblo of Pojoaque without cost to the Pueblo of Pojoaque.

2.2.4.2 Acquisition of water rights to supply the Pueblo of Pojoaque’s Alternative Water and construction of the Red Pipeline shall be given priority in congressional authorizations and funding of the Settlement and in the implementation of the Settlement. Alternative Water shall be delivered to the Pueblo of Pojoaque from the Red Pipeline upon completion of construction of that portion of the Regional Water System and acquisition of an adequate water supply. Upon completion of construction of the Potable Pipeline, and thereafter, the Pueblo of Pojoaque may take delivery of Alternative Water from either the Red Pipeline or the Potable Pipeline, dependent on need as determined by the Pueblo.

2.2.4.3 The Pueblo of Pojoaque’s Supplemental Pueblo Rights shall be subordinated to the Pueblo’s right to receive Alternative Water, and may not be diverted from ground water within the Pojoaque Basin, whenever, and to the extent that, Alternative Water is available for delivery to the Pueblo of Pojoaque pursuant to Section 2.2.4.2. Until the Red Pipeline is constructed and Alternative Water is available for

delivery to the Pueblo, the Pueblo of Pojoaque shall have the right to divert the entirety of its Supplemental Pueblo Rights from ground water through wells located on Pueblo of Pojoaque lands, subject to an agreement between the Pueblos of Nambé and Pojoaque, or as provided by Section 2.2.4.4. After construction of the Red Pipeline, the Pueblo of Pojoaque shall cease diversion of its Supplemental Pueblo Rights to the extent Alternative Water is available to the Pueblo from the Regional Water System. In the event the Regional Water System is unable to deliver the full supply of Alternative Water to the Pueblo of Pojoaque, the Pueblo of Pojoaque may obtain the deficiency in delivery of Alternative Water from ground water through wells located on the lands of the Pueblo of Pojoaque; *provided* the total amount of Supplemental Pueblo Rights water exercised by the Pueblo of Pojoaque shall not exceed 475 A.F.Y.

- 2.2.4.4 Until the Red Pipeline is constructed and Alternative Water is available for delivery to the Pueblo of Pojoaque, that Pueblo may divert all or a part of its Supplemental Pueblo Rights from surface water allocated to the Pueblos and released from Nambé Reservoir, provided the Pueblos of Pojoaque, San Ildefonso, and Nambé, and the PVID agree after conferring with the United States Bureau of Reclamation.
- 2.2.4.5 The Pueblo of Pojoaque shall not make a priority call for the purpose of exercising its Supplemental Pueblo Rights. The Supplemental Pueblo Rights shall not be subject to call for purposes of priority administration as set forth in Section 2.2.1.
- 2.2.4.6 During any period when the Pueblo of Pojoaque exercises its Supplemental Pueblo Right from ground water, the owner of any Non-Pueblo ground water right which suffers impairment as a result of such use shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.
- 2.2.4.7 **Forbearance Agreement with the Pueblo of San Ildefonso.** Until Alternative Water is made available through the Regional Water System pursuant to Section 2.2.4.2, the Pueblo of Pojoaque shall maintain in effect a forbearance agreement with the Pueblo of San Ildefonso for the use of at least 475 AFY of the First Priority Rights recognized for the Pueblo of San Ildefonso in Section 2.1 of this Agreement. During the tenure of the forbearance agreement, the Pueblo of San Ildefonso shall forgo use of 475 AFY of its First Priority Rights.
- 2.2.4.8 Nothing in this section shall preclude the Pueblo of Pojoaque from acquiring and exercising additional rights to divert and consume water through lease, purchase, or other agreements consistent with the

terms of this Agreement, including transactions with other Pueblos subject to Sections 2.4.4.3 and 5.6.2.2.

2.3 Existing Basin Use Rights

2.3.1 For purposes of this Agreement, the Settlement Parties agree that the portions of each Pueblo’s First Priority Rights to be designated as Existing Basin Use Rights are as follows:¹

Pueblo	Existing Basin Use Rights (AFY consumptive use)
Nambé	522
Pojoaque	236
San Ildefonso	288
Tesuque	345

2.3.2 Each Pueblo shall be entitled to continue to use that quantity of water designated as its Existing Basin Use Rights. Any use in excess of Existing Basin use Rights shall be deemed a use pursuant to Section 2.2 or 2.4.

2.3.3 Each Pueblo may change the point of diversion, place of use, or purpose of use of that Pueblo’s Existing Basin Use Rights on that Pueblo’s land, *provided* that the owner of any Non-Pueblo ground water right which suffers impairment as a result of such change shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.3.4 Each Pueblo may change the point of diversion, place of use, or purpose of use, of that Pueblo’s Existing Basin Use Rights to a location off that Pueblo’s land, *provided that* such change shall not impair Pueblo or Non-Pueblo ground water rights. The Pueblo making such change shall offset any interference with Pueblo surface water rights and Non-Pueblo surface water rights entitled to Section 4 protection, including any resulting increased stream depletions caused by the change. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo’s First Priority Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection, or with Pueblo surface water rights, resulting from the Pueblo’s provision of Offset Water. A third party, pursuant to a written agreement

¹ These numbers were derived from estimates of the Pueblos’ respective agricultural, community and domestic, livestock, and commercial and industrial uses as of the year 2000. The figures that were developed for each Pueblo were: **Nambé**: 151 acres agricultural – 278 AFY; community and domestic – 193 AFY; livestock – 51 AFY; commercial or industrial – 0 AFY; **Pojoaque**: 9 acres agricultural – 17 AFY; community and domestic – 84 AFY; livestock – 48 AFY; commercial or industrial – 87 AFY; **San Ildefonso**: 70 acres agricultural – 129 AFY; community and domestic – 101 AFY; livestock – 58 AFY; commercial or industrial – 0 AFY; **Tesuque**: 70 acres agricultural – 129 AFY; community and domestic – 88 AFY; livestock – 48 AFY; commercial or industrial – 80 AFY.

that shall be filed with the Water Master, may assume the obligations under this Section of the Pueblo making the change.

2.4 Future Basin Use Rights:

2.4.1 For purposes of this Agreement, the Settlement Parties agree that the portions of each Pueblo’s First Priority Rights to be designated as Future Basin Use Rights are as specified in the following table:

Pueblo	Future Basin Use Rights (AFY consumptive use)
Nambé	937
Pojoaque	0
San Ildefonso	958
Tesuque	374

2.4.2 Each Pueblo with Future Basin Use Rights may use any portion of such rights for the purposes set forth in Sections 2.4.3 and 2.4.4, subject to the limitations described in those sections.

2.4.3 **Future Basin Domestic, Community, and Livestock Uses.** Each Pueblo shall be entitled to divert and consume on that Pueblo’s lands ground water for: (1) new community uses, (2) new domestic uses by Pueblo members or their households, and (3) new livestock uses. In the alternative, surface water may be used for such uses, subject to Section 4 protection. The owner of any Non-Pueblo ground water right which suffers impairment as a result of such new uses shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein. The place of use, purpose of use, and point of diversion for any new Pueblo use pursuant to this section shall not be changed, *provided* that in the event such use is discontinued, the Pueblo shall not be prohibited from otherwise using the Future Basin Use Rights applied to the discontinued use in accordance with the terms of this Agreement.

2.4.4 Future Basin Agricultural and Commercial or Industrial Uses of Pueblo First Priority Rights.

2.4.4.1 **New Agricultural Uses Upon Loss of Section 4 Protection for Non-Pueblo Rights.** Each Pueblo shall be entitled to divert and consume on that Pueblo’s lands water for new agricultural uses and to assert a priority call for such new agricultural uses to the extent that any Non-Pueblo water rights lose Section 4 protection. The Pueblos shall agree among themselves which Pueblo shall be entitled to irrigate additional lands under this subsection, *provided*, however, that any agricultural uses newly developed pursuant to this section shall utilize water from the same Tributary used to irrigate the Non-Pueblo water

rights acreage that lost Section 4 protection. After consultation with the four Pueblos, the Secretary of the Interior or her designee shall, in her sole discretion, resolve any dispute among the Pueblos over which Pueblo shall be able to irrigate additional lands under this section. Changes in the point of diversion, the place of use, or the purpose of use for such Pueblo uses shall be in accordance with Sections 2.3.3 and 2.3.4.

2.4.4.2 Other Future Basin Uses On Pueblo Land. Each Pueblo shall be entitled to divert and consume on that Pueblo's lands water for new agricultural uses and for new commercial or industrial uses, *provided:*

2.4.4.2.1 That such Pueblo shall not make a priority call for any such Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection;

2.4.4.2.2 The Pueblo initiating such Future Basin Use shall offset any resulting interference with Non-Pueblo surface water rights entitled to Section 4 protection, including any resulting increased stream depletions. Any Offset Water shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection resulting from the Pueblo's provision of Offset Water; and

2.4.4.2.3 The owner of any Non-Pueblo ground water right that suffers impairment caused by such Future Basin Use on the Pueblo's land, including impairment resulting from the provision of Offset Water, shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.4.4.3 Other Future Basin Uses Off Pueblo Land. A Pueblo may divert and consume water for new agricultural uses and new commercial or industrial uses off that Pueblo's lands, *provided:*

2.4.4.3.1 That such Pueblo shall not make a priority call for any such Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection;

2.4.4.3.2 The Pueblo initiating such Future Basin Use off that Pueblo's land shall offset any resulting interference with Non-Pueblo surface water rights entitled to Section 4 protection or Pueblo surface water rights, including any increased stream depletions resulting from the offset. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo's First Priority

Rights set forth in Section 2.1.2. The Pueblo shall also offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection, or with Pueblo surface water rights, resulting from the Pueblo's provision of Offset Water; and

2.4.4.3.3 Such Future Basin Use shall not impair Pueblo or non-Pueblo ground water rights.

2.4.4.4 Change in Point of Diversion, Place or Purpose of Use of New Uses Under Sections 2.4.4.2 and 2.4.4.3. A Pueblo may change the point of diversion, place or purpose of use of ("transfer") Future Basin Uses initiated pursuant to Sections 2.4.4.2 and 2.4.4.3, or transferred pursuant to this Section 2.4.4.4, *provided*:

2.4.4.4.1 Neither the transferee nor the transferring Pueblo shall make a priority call for any such transferred Future Basin Use against Non-Pueblo water rights entitled to Section 4 protection.

2.4.4.4.2 The Pueblo making such a transfer shall offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection or with Pueblo surface water rights, including any resulting increased stream depletions. Any Offset Water provided by the Pueblo shall not constitute use of the Pueblo's First Priority Rights set forth in Section 2.1.2. The Pueblo shall offset any interference with Non-Pueblo surface water rights entitled to Section 4 protection resulting from the Pueblo's diversion of Offset Water. If the transferred use is off the land of the Pueblo making the transfer, the Pueblo shall also offset any interference with Pueblo surface water rights resulting from the Pueblo's diversion of Offset Water.

2.4.4.4.3 A transfer to a use located off that Pueblo's land shall not impair any Pueblo or Non-Pueblo ground water right.

2.4.4.4.4 The owner of any Non-Pueblo ground water right that suffers impairment caused by such a transfer to a use located on the Pueblo's land, including impairment resulting from the diversion of Offset Water, shall be entitled to compensation from the fund established under Section 5.5 (Impairment Fund) as provided therein.

2.4.4.5 Non-Pueblo Rights Entitled to Section 4 protection Have Priority over New Pueblo Uses. Notwithstanding the Pueblos' first priority set forth in Section 2.1.1, new Pueblo uses of the Pueblos' Future Basin Rights initiated under Sections 2.4.4.2 and 2.4.4.3 or transferred pursuant to Section 2.4.4.4 shall be subordinated in priority administration to Non-Pueblo rights entitled to Section 4 protection.

2.5 Acquired Water

2.5.1 In addition to each Pueblo's First Priority Rights, each Pueblo shall be entitled to 375 AFY consumptive use from the water supply made available for Pueblo use by purchase, lease, or otherwise pursuant to Section 9 of this Agreement. The Pueblo may use such water for any purpose, including uses off that Pueblo's lands.

2.5.2 Pursuant to a written agreement, a Pueblo may lease, for any term up to 99 years, any portion of the 375 AFY to another water user served by the Regional Water System. No such agreement for a period of seven years or more shall be valid unless approved by the Secretary of the Interior or her designee.

2.6 Reserved Water

2.6.1 The Settlement Parties agree that the Pueblo of San Ildefonso shall have a water right reserved under federal law for the San Ildefonso Eastern Reservation to deplete 4.82 AFY of water for grazing purposes with a 1939 priority date.

2.6.2 The Settlement Parties agree that the Pueblo of Nambé shall have a water right reserved under federal law for the Nambé Reservation to deplete 302 AFY with a 1902 priority date, which may be used only as follows:

2.6.2.1 The Pueblo of Nambé may lease such water right to the United States at a cost and for a term of years to be determined as part of the Cost Sharing and System Integration Agreement. That agreement may also provide for the terms by which the lease may be terminated consistent with Section 2.6.2.6.

2.6.2.2 The United States shall use such water right to assist in providing the water supply required by Sections 2.5 and 2.7.

2.6.2.3 The use of such water right shall not impair Pueblo or Non-Pueblo ground water rights.

2.6.2.4 The United States shall offset any interference with surface rights, including any increased stream depletions, caused by the use of the water right or by the provision of offset water.

2.6.2.5 Such use of water shall not be subject to, nor benefit from, priority administration.

2.6.2.6 If the water supply described in Sections 2.5 and 2.7 is not available to the Pueblo of Nambé after the entry of the Final Consent Decree and the satisfaction of the contingencies in Section 10, Nambé may use this water right for its own purposes, *provided* that (a) the use of this water right shall not impair Pueblo or Non-Pueblo ground water

rights, and (b) Nambé offsets any interference with Pueblo or Non-Pueblo surface rights, including any increased stream depletions, caused by the use of the water right or by the provisions of offset water. Priority administration shall apply to the use of such water right pursuant to this Section 2.6.2.6, *provided*, however, that Nambé shall not make a priority call against any surface water right for the benefit of this right.

2.7 Economic Development Water.

A firm supply of water, providing 525 AFY consumptive use, shall be secured by the United States for economic development uses by the four Pueblos or to offset interference or avoid impairment as required by this Agreement (“Economic Development Water”). Each Pueblo shall be allocated 131.25 AFY of Economic Development Water. The Pueblos of San Ildefonso and Nambé agree that in exchange for a pro rata distribution of the Pueblo of Pojoaque’s share of Pueblo Conservation Funds they shall release their allocation of Economic Development Water to the Pueblo of Pojoaque, and the Pueblo of Tesuque agrees that in exchange for a pro rata distribution of Pojoaque’s share of Pueblo Conservation Funds it shall release 7 AFY of its Economic Development Water to the Pueblo of Pojoaque, *provided* that the Pueblo Conservation Funds are, in total, no less than \$8 million, and that such exchange and release is consistent with an agreement between the Pueblos of Nambé and Pojoaque. The Pueblos and the United States shall execute the Pueblo Economic Development Water Agreement addressing the responsibility for the costs associated with the provision of Economic Development Water and the terms of allocation as set forth herein.

2.8 After-Acquired Pueblo lands.

Lands within the Pojoaque Basin acquired by the Pueblos, or by the United States in trust for the Pueblos, after the date when the Decree Court approves this Agreement shall have only those water rights decreed as appurtenant to those lands. The Pueblos, or the United States acting as trustee for the Pueblos, shall be entitled to exercise any state law water rights acquired with such lands, including any remedies or procedural rights provided by law to the owner of such state law water rights. Such state law water rights shall be subject to Section 2.9.2.

2.9 General Provisions

2.9.1 Consumptive use of the water supply provided to a Pueblo pursuant to Section 2.2 (Supplemental Pueblo Rights), Section 2.5 (Acquired Water), Section 2.6 (Reserved Water), and Section 2.7 (Economic Development Water) shall be in addition to consumptive use of the Pueblo First Priority Rights quantified in Section 2.1.

2.9.2 Nothing in this Agreement shall prohibit a Pueblo from acquiring additional water rights over and above the quantity set forth in this Agreement in accordance with, and subject to, New Mexico law and regulation. Such rights shall not be subject to forfeiture or abandonment

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so long as title to the water right remains in the Pueblo or in the United States acting as trustee for the Pueblo, but shall be subject to priority administration in accordance with the state law priority of such rights.

2.10 Summary

The stipulated quantities of the Pueblos' rights to consumptively use water are summarized as follows:

Summary of Pueblo Rights [†]				
	Nambé	Pojoaque	San Ildefonso	Tesuque
Existing Basin Use	522	236	288	345
Future Basin Use	937	0	958	374
Supplemental Pueblo	0	475	0	0
Acquired Water	375	375	375	375
Reserved Water	302	0	4.82	0
Economic Development Water ^{††}	131.25	131.25	131.25	131.25

[†]This table is provided for summary purposes only and does not supercede any provision of this Agreement. All quantities are AFY of consumptive use.

^{††}Subject to redistribution pursuant to Section 2.7 of this Agreement.

3. Non-Pueblo Water Rights

3.1 Ground Water Rights

3.1.1 Pre-Basin (pre-November 29, 1956) and Permitted Wells, Other Than Section 72-12-1 Wells

3.1.1.1 **Priority:** The priority for each pre-basin or permitted well shall be the priority adjudicated in the sub-file order for each such well.

3.1.1.2 **Quantity:** The quantity of the right for each pre-basin or permitted well shall be the quantity adjudicated in the sub-file order for each such well.

3.1.2 Section 72-12-1 Wells (Domestic and Commercial/Sanitary Wells Permitted Pursuant to Section 72-12-1, Including Post-Moratorium Wells)

3.1.2.1 **Priority:** The priority for each Section 72-12-1 well, including all wells subject to the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* adopted by the Decree Court on October 4, 1999 (“Post-1982 Well Agreement”) shall be the priority adjudicated in the sub-file order for each such well, or the date of filing of the application to drill such well if priority is not adjudicated in a sub-file order.

3.1.2.2 **Quantity:** The quantity of the right for each Section 72-12-1 well, including all wells subject to the Post-1982 Well Agreement, shall be limited to the historic beneficial use from such well, *provided*, however, that in no event shall the total diversion from any such well exceed 3 AFY.

3.1.3 Priority and quantification of Non-Pueblo wells shall not be subject to any *interse* challenges by the Pueblos or by the United States acting as trustee for the Pueblos, except as provided by Section 2.8.

3.1.4 Permits For New Ground Water Points of Diversion.

Subject to Section 5.8, with respect to Regional Water Authority ground water diversions, after the Effective Date of this Agreement, the State of New Mexico shall not issue any permit for a new ground water point of diversion in the Pojoaque Basin except on the condition that the diversion be metered and only as set forth below.

3.1.4.1 Change in Point of Diversion for Domestic and Commercial or Industrial Uses.

The State of New Mexico may issue permits for new ground water points of diversion for domestic and commercial uses, *provided*:

3.1.4.1.1 Water rights within the Pojoaque Basin are transferred to the new point of diversion;

3.1.4.1.2 The priority and quantity of any such new point of diversion shall be determined under state law and shall reflect reductions in quantity to account for the historic supply at the original surface point of diversion for the transferred or retired right; and

3.1.4.1.3 All such diversions permitted under this section 3.1.4.1 shall be subject to Sections 3.1.6, 3.1.8, 3.1.9, 3.3.2, and 4.

3.1.4.2 Change in Point of Diversion for Agricultural Uses.

The State of New Mexico may issue permits to change the point of diversion of an agricultural use to ground water *provided*:

3.1.4.2.1 Water rights within the Pojoaque Basin are transferred to the new point of diversion;

3.1.4.2.2 The priority and quantity of any such new point of diversion shall be determined under state law and shall reflect reductions in quantity to account for the historic supply at the original surface point of diversion for the transferred or retired right; and

3.1.4.2.3 The water right shall be administered in priority as though still diverted from that water right's original surface point of diversion, such that, in the event of a priority call or other administrative action that would require that right to cease diversions at its original surface point of diversion, the right at its newly permitted point of diversion shall also be required to cease diversions.

3.1.4.3 Supplemental Ground Water Points of Diversion.

The State of New Mexico may issue permits to supplement existing points of diversion for an agricultural use from ground water, *provided*:

3.1.4.3.1 The total diversion from surface and any ground water to supplement the surface supply is limited to the historic supply of the surface water diversion being supplemented.

3.1.4.3.2 If the surface water diversion is permitted to continue and is not metered, the combined acreage served by the supplemented and supplemental points of diversion must be reduced by the percentage of deficiency in the historic surface water supply.

3.1.4.3.3 If all diversions are metered, the combined total of the metered diversions may not exceed the historic surface water diversion.

3.1.4.3.4 In the case of a ground water point of diversion used to supplement another ground water point of diversion, all diversions must be metered and the total diversion under the permit must be limited to the decreed amount of the right.

3.1.5 Replacement Well Permits for Section 72-12-1 Wells

3.1.5.1 Notwithstanding the restriction in Section 3.1.4, the State of New Mexico may issue replacement well permits, or permits to deepen or repair a well, to existing 72-12-1 well owners during the transition period applicable to the given well, even if the transition period is indefinite.

3.1.5.2 After the transition period, the State may issue permits to deepen, repair, replace, or use an existing 72-12-1 well only (1) as

provided in Section 3.1.9.4, or (2) to the extent the well is not required to be capped pursuant to Section 3.1.8.1.

3.1.6 Pre-Basin Wells and Wells Permitted Pursuant to Authorities Other Than Section 72-12-1.

For wells with adjudicated or permitted domestic, livestock, commercial or industrial, or agricultural uses, the following applies:

3.1.6.1 **Domestic Use:** The provisions in Sections 3.1.5 and 3.1.8, with respect to Section 72-12-1 wells, shall also apply to domestic uses adjudicated or permitted in any pre-basin well or in wells permitted pursuant to authorities other than Section 72-12-1.

3.1.6.2 **Commercial or Industrial Use:** All wells with adjudicated or permitted commercial or industrial use rights shall be required to hook up to the CWU water system in accordance with Section 3.1.8 of this Agreement unless the owner of the well(s) with commercial or industrial use rights, including rights authorized under Section 72-12-1, and the Pueblos and the United States enter into a separate agreement which would exempt that use right and associated wells from the CWU hook up requirement in Section 3.1.8, and which would allow the owner of the commercial or industrial use right and wells to continue using that right based on the terms and conditions of the separate agreement. The form and general terms and conditions of the separate agreement shall be reviewed and approved by the Decree Court, and the separate agreement will be incorporated within this Agreement based on the Decree Court's approval. Commercial or industrial use rights that are required by this Agreement to hook up to the CWU water system shall be entitled to Section 4 protection and protection from impairment until the CWU water system is capable of providing water service in an amount that is sufficient to satisfy the owner's existing commercial or industrial use rights, including the owner's reasonably expected uses under existing permits or other authorities. Additionally, the State will be authorized to issue replacement well permits or permits to repair or deepen wells for commercial or industrial use rights that are required to hook up to the CWU water system until the time that CWU is capable of fully serving those use rights.

3.1.6.3 **Agricultural Use:** The owner of a pre-basin well or of a well permitted pursuant to authorities other than Section 72-12-1 with an agricultural right adjudicated or permitted prior to the Effective Date of this Agreement shall not be required to hook up to the CWU. The OSE shall not issue a permit to repair, deepen, or replace such a well unless the well is being metered and operated in compliance with any conditions of the applicable permit. The OSE shall report any failure

to meter or any non-compliance with permit conditions to the Water Master.

3.1.7 **Metering:** Within six months after Decree Court approval of this Agreement, each well owner shall install a meter of the type approved by the Water Master to measure the quantity of water diverted annually from such well.

3.1.8 **Hook-Up of Section 72-12-1 Wells and Other Uses to the County Water Utility**

3.1.8.1 Upon written notice from the CWU, an owner of a right of use for domestic purposes from a Section 72-12-1 well, or domestic purpose from a pre-basin or other permitted well, or any other right made subject to this Section 3.1.8 by this Agreement, shall connect to the CWU water system and thereafter shall cease use of the well or wells for domestic purposes. Such well may continue to be used for uses not required to connect to the CWU, subject to other provisions of this Agreement. Unless the owner of a commercial or industrial use right enters into a separate agreement with the Pueblos and the United States that exempts the owner's commercial or industrial use rights from the hook-up requirement of this Section, upon written notice from the CWU indicating that the CWU water system is capable of satisfying all existing commercial or industrial use rights, including reasonably expected uses under existing permits or other authorities, an owner of a right of use for commercial or industrial purposes from a well or wells shall connect to the CWU water system and thereafter cease use of the well(s). Any well referred to in this Section 3.1.8.1 shall be capped unless used to supply water for a use not required to connect to the CWU.

3.1.8.2 The State shall provide financial assistance toward the payment of any connection fees from the Pojoaque Valley Water Utility Connection Fund, described in Section 9.6.1.3. Not including the financial assistance provided by the State, no existing water user shall be required to pay connection costs in excess of \$5,000 per connection, adjusted annually after the year 2003 in an amount not to exceed the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the twelve month period preceding the end of the previous year's third quarter, as published by the United States Bureau of Labor Statistics. The CWU shall offer a connection cost payment schedule for those water users demonstrating financial need.

3.1.9 **Transfer Of Water Right And Point Of Diversion**

- 3.1.9.1 Upon connection to the CWU lines and the discontinuance of domestic use from a Section 72-12-1 well under the terms of this Section, the owner of the well (the “transferor”) shall convey title to and shall transfer that water right to the CWU for use in providing water to its customers within the Pojoaque Basin. The owner of a pre-basin or permitted right, other than one permitted under Section 72-12-1, may convey title to and transfer that water right to the CWU for use in providing water to its customers within the Pojoaque Basin. In exchange for a conveyance and transfer pursuant to this Section 3.1.9.1, the transferor, as well as any successors acquiring title to the property being served, shall not be billed by the CWU for the cost to the CWU of its acquisition of water for supply up to the quantity approved by the State Engineer for transfer to the CWU system, but such transferor or successor shall be billed for the cost of service.
- 3.1.9.2 Where a well owner connects to the CWU lines and conveys and transfers the water right to the CWU, such right shall not be subject to or benefit from priority administration within the Pojoaque Basin as long as the CWU offsets interference with any water rights subject to this Agreement, including any resulting increased tributary stream depletions caused by the CWU’s use of the conveyed and transferred right. The CWU also shall offset any interference with surface water rights resulting from the CWU’s provision of Offset Water and shall compensate the owner of any ground water right that suffers impairment caused by the CWU’s use of the right, including impairment resulting from the diversion of Offset Water. Compensation shall be determined by the Water Master in a manner consistent with the rules and regulations applicable to compensation from the fund established under Section 5.5 (Impairment Fund). Any Offset Water shall not constitute use of the CWU’s consumptive rights.
- 3.1.9.3 For purposes of transfer to the CWU, beneficial use for domestic purposes from Section 72-12-1 wells shall be deemed to be 0.7 AFY consumptive use per household unless a greater or lesser historic beneficial use is demonstrated. For uses for other purposes from pre-basin wells or permitted wells, beneficial use shall be the amount of historic use or the reasonably expected uses authorized under the applicable use right(s).
- 3.1.9.4 In the event that the CWU becomes unable to deliver water to a transferor through no fault of the transferor, the transferor may, at no cost, reacquire from the CWU title to the previously conveyed water right and commence diversion thereunder at the original ground water point of diversion. In such event the State of New Mexico shall, consistent with state law, issue such permit(s) as are necessary to enable such transferor or successors to drill a replacement well for the

purpose of diverting water to satisfy such water right in the amount approved for transfer and conveyance pursuant to Section 3.1.9.3. Any priority enforcement action against such a replacement well by the Pueblos, or the United States acting as Trustee for the Pueblos, shall only be for the amount of diversion in excess of 0.7 AFY per household for domestic use rights and the historic uses and those uses under development at the time of the proposed transfer for commercial or industrial use rights.

3.2 Surface Rights

3.2.1 Priority. The priority of all sub-file surface rights shall be the priority, other than time immemorial or “first priority,” agreed to between the State and the owner of the right. In the event the priority of the right cannot be agreed to between the State and the owner of the right, the priority shall be the priority adjudicated between the State and the owner of the right. Subsequent to the priority determination as between the State and the owners of all sub-file surface rights, the Decree Court shall conduct an *interse* phase for the filing and determination of *interse* challenges by other parties.

3.2.2 Quantity. The quantity of each surface right shall be the quantity adjudicated for that sub-file.

3.3 Change in Point of Diversion, Purpose or Place of Use - Section 4 Protection upon Change

3.3.1 Current Use: The “current use” of a water right is the calculated average yearly use of the right for the five-year period preceding a change in the point of diversion, purpose or place of use of that right.

3.3.2 Ground Water Rights

3.3.2.1 Pre-basin or Permitted, Other than under Section 72-12-1, Ground Water Rights. The point of diversion, purpose or place of use of a pre-basin or permitted right, other than one permitted under Section 72-12-1, may be changed in accordance with state law. Upon any such change, however, Section 4 protection shall no longer apply unless the point of diversion, purpose or place of use is changed to a transitional use. Replacing, repairing, or deepening of such a well shall not be considered a change in point of diversion, purpose or place of use.

3.3.2.2 Section 72-12-1 Rights. The point of diversion, purpose or place of use of Section 72-12-1 ground water rights may only be changed in accordance with Section 3.1.9, above.

3.3.3 Surface Water Rights

3.3.3.1 Change in Point of Diversion or Place of Use of Current Surface Rights. Section 4 protection, and the non-interference provisions described in Sections 2.4.4.2, 2.4.4.3, and 2.4.4.4, shall apply to a change in the point of diversion to another surface source within the same Tributary or change in the place of use of a surface right, so long as any return flows from the use remain within the same Tributary, but only to the extent of the current use of the right, not to exceed the quantity of the right permitted under state law. The priority of the transferred right shall be determined under state law.

3.3.3.2 Change in Point of Diversion, Purpose and Place of Use of Surface Rights for Transitional Use. Section 4 protection, and the impairment protections described in Sections 2.4.4.2, 2.4.4.3, and 2.4.4.4, shall apply during the transition period to a change in the point of diversion, purpose and place of use for a transitional use within the same tributary, but only to the extent of the quantity of the right permitted under state law. The priority of the transferred right shall be determined under state law and the transfer shall be allowed as a transitional use, subject to Section 3.1.8.

3.3.3.3 Other Changes in Point of Diversion, Purpose or Place of Use of Surface Rights. Any changes in the point of diversion, purpose or place of use of Non-Pueblo surface rights, other than those governed under the provisions set forth above, shall be governed under state law and shall not be entitled to Section 4 protection, and the non-interference provisions described in Sections 2.3.3, 2.4.4.2, 2.4.4.3, and 2.4.4.4. The priority of the transferred right shall be determined under state law.

3.3.3.4 Below is a table summarizing the guidelines on changes in the point of diversion, purpose and place of use of surface rights:

Changes in the Point of Diversion, Purpose or Place of Use of Non-Pueblo Surface Rights				
Type of Change	Section 4 Protection and Protection from Interference	Priority	Quantity	Duration of Use
Current surface to surface	Yes	Determined under state law	limited to current use and by state law	Permanent
Surface to transitional use	Yes, for transitional period	Determined under state law	limited by state law	Transitional

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Other change of current surface	No	Determined under state law	Determined under state law	Depends on purpose
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3.4 Federal Agency Rights:

The United States’ water rights on its own behalf were adjudicated in the Decree Court’s January 24, 1986 Memorandum Opinion and Order, which was certified as a final judgment on April 29, 1986, and through the July 11, 1991 Special Master’s Report and Recommended Order, adopted by the Decree Court on November 5, 2003. The United States may obtain additional water rights on its own behalf consistent with this Agreement and applicable law.

3.5 Municipal and County Offset Rights:

Subject to execution of the Cost-Sharing and System Integration Agreement as described in Section 9.2, no priority enforcement action may be taken against any well permitted to the County or City of Santa Fe, *provided*, however, that the permittee shall be in compliance with that well’s OSE permit offset conditions and the Cost Sharing and System Integration Agreement.

4. Exceptions to Priority Enforcement for the Pueblos’ First Priority Rights

Under the administration of the water rights subject to this Agreement, or in the event of a priority call, the first or time immemorial priority of the Pueblos’ First Priority Rights set forth in Section 2.1 shall be enforced against Non-Pueblo water rights in accordance with this Section.

4.1 Pueblo Existing Basin Use Rights Entitled to Priority Enforcement.

The first or time immemorial priority of the Pueblo Existing Basin Use Rights set forth in Section 2.3 shall be enforced against all Non-Pueblo water rights, except as set forth in Sections 4.4 and 7.2.

4.2 Existing Non-Pueblo Rights Entitled to Protection from Priority Enforcement of the Pueblo Future Basin Use Rights.

4.2.1 The first or time immemorial priority of the Pueblo Future Basin Use Rights set forth in Section 2.4 shall not be enforced against a Non-Pueblo water right subject to this Agreement except as provided in Section 4.2.2.

4.2.2 The protection provided by Section 4.2.1 shall not apply if a Non-Pueblo water right:

4.2.2.1 is not beneficially used for more than five consecutive years after the Effective Date of this Agreement, unless the owner of the water right demonstrates that (1) such non-use is due to circumstances

beyond the control of the water right owner and (2) that the water could not be placed to beneficial use by the owner's diligent efforts; or

4.2.2.2 is transferred to a new point of diversion or new place or purpose of use, except as provided in Sections 3.1.9.1, 3.1.9.2, 3.3.3.1 and 3.3.3.2.

4.2.3 Water rights retired or transferred to offset the effects on the Tributaries caused by ground water diversions shall be deemed to be beneficially used for purposes of this Section 4.2.

4.3 Limitation on Priority Call Upon Loss of Protection Against Priority Enforcement

To the extent a Non-Pueblo water right loses protection against priority enforcement pursuant to Section 4.2.2, the owner of that right may not assert a priority call for the portion of the right for which protection has been lost against another water right still entitled to protection under Section 4.2, including any such water rights which may be junior to the right that has lost protection.

4.4 Additional Protection for Non-Pueblo Wells During Transition Period

In addition to the protection from priority enforcement of the Pueblo Future Basin Use Rights provided non-Pueblo ground water rights under Section 4.2, the first or time immemorial priority of the Pueblos' First Priority Rights set forth in Section 2.1 shall not be enforced against:

4.4.1 Any non-agricultural well during the transition period applicable to that well, except that such priority may be enforced against any well whose transition period extends beyond June 30, 2021 to the extent that domestic uses exceed 0.7 AFY per household served or to the extent that other permitted uses exceed the authorized amount of use established on June 30, 2021. Nothing in this section shall be construed to waive any defenses to such priority enforcement.

4.4.2 An adjudicated or permitted agricultural use from a pre-basin well or from a well permitted pursuant to authorities other than Section 72-12-1 for which the point of diversion, purpose, or place of use is changed to a transitional use.

4.5 Priority Call Defense

In the event a Pueblo shall make a priority call to enforce its Existing Basin Use Rights, it shall be an affirmative defense, in whole or in part, to such priority call or related priority enforcement action, that the divertible supply of surface water, which would otherwise be available for diversion to the Pueblo, has been reduced as a result of the diversion of ground water on Pueblo of Pojoaque lands to satisfy Supplemental Pueblo Rights for the Pueblo of Pojoaque.

5. Administration

5.1 General Principles

- 5.1.1 The Pojoaque Basin is fully appropriated and there shall be no new appropriations in the basin after the Effective Date of this Agreement.
- 5.1.2 In accordance with the terms of this Agreement, water rights within the basin may be transferred for the purpose of providing the right to divert water from a new well. The OSE may issue permits for replacement wells in accordance with Sections 3.1.5 and 3.1.6.
- 5.1.3 For agricultural uses the diversion amount shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the surface source of water, 3.35 AFY per acre delivered at the farm headgate or well head, or a consumptive irrigation requirement of 1.84 AFY per acre, whichever is less.
- 5.1.4 For non-agricultural uses, consumptive use shall be deemed equal to the amount of diversion unless a return flow plan is approved consistent with this Agreement.

5.2 Rules

Before the Effective Date, the Settlement Parties shall submit to the Decree Court rules governing the Water Master's responsibilities under the Interim Administrative Order and this Agreement. The process for adoption of such rules by the Decree Court shall, at a minimum, include an opportunity for the parties to comment on such rules prior to adoption and whenever such rules may be modified in the future.

- 5.2.1 The Settlement Parties shall develop rules:
- 5.2.1.1 to identify and report irrigated acreage which may lose Section 4 protection;
 - 5.2.1.2 for the metering and monitoring of Pueblo and non-Pueblo wells and surface water uses, which rules shall include the provisions of Section 5 of the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* adopted in the Aamodt case by Order of the Court dated October 4, 1999 (Docket No. 5549);
 - 5.2.1.3 governing maintenance of a record of all administrative and judicial changes to decreed water rights;
 - 5.2.1.4 governing maintenance of an official list of owners of record for all Pojoaque Basin water rights;
 - 5.2.1.5 for the provision of notice under the Interim Administrative Order and this Section to the Water Master and other water users who may be affected by administrative or judicial actions related to water

rights, *provided that* to the extent practical, such rules shall be consistent with the notice provisions utilized by the OSE;

5.2.1.6 establishing procedures for implementing his responsibilities under this Agreement and the Interim Administrative Order to determine surface water offset requirements, impairment of ground water uses, and the impact on surface and ground water supplies of administrative actions;

5.2.1.7 establishing procedures in accordance with 3.1.4.1 to ensure that new supplemental wells do not result in an increase in the amount of water diverted from the source of supply that is to be supplemented; and

5.2.1.8 establishing procedures to administer existing supplemental wells consistent with their decreed rights.

5.2.2 The Settlement Parties may also develop other rules to implement his responsibilities under this Agreement and the Interim Administrative Order.

5.3 Water Master:

The Decree Court, upon motion by one or more Settlement Parties, shall appoint a Water Master. Nothing in this Agreement shall be construed to preclude the OSE from being appointed as the Water Master. The parties shall retain the right to advocate or challenge the appointment on any legal or factual basis.

5.3.1 General Provisions

5.3.1.1 The Water Master shall be responsible for ensuring the delivery of water and shall have the authority to shut off ditches and wells to ensure the delivery of water in accordance with this Agreement, the Interim Administrative Order, and the Final Decree.

5.3.1.2 The Water Master shall also carry out the duties assigned to him under this Agreement and in the *Post-1982 Domestic Wells Stipulation and Settlement Agreement*, adopted by Court Order on October 4, 1999 (Docket No. 5549).

5.4 Changes in the Point of Diversion or Purpose or Place of Use of State Law Rights:

The OSE shall administer all water rights established pursuant to state law that are governed by this Agreement, the Interim Administrative Order, or the Final Decree, including the transfer of such rights for use on Pueblo lands, *provided that* any subsequent transfer of such rights within that Pueblo's lands shall be subject to administration in accordance with Section 5.6 and such rights shall not be subject to abandonment or forfeiture for so long as title to the water rights remains in the Pueblo. All rights administered by the OSE pursuant to this Section 5.4 shall be administered in accordance with applicable state law and regulations, this Agreement, the Interim

Administrative Order, and the Final Decree. Prior to entry of the Interim Administrative Order, the Settlement Parties shall agree upon a procedure for appealing from the decisions of the OSE.

5.5 Impairment Fund:

The State shall create and administer in accordance with this Agreement a fund to be used to mitigate impairment to Non-Pueblo water rights. Administration of the fund shall be pursuant to rules duly promulgated by the State. Any entitlement to payment from the fund pursuant to this Agreement and such rules shall be subject to appropriations by the New Mexico State Legislature. The unavailability of funds under this Section shall not affect the right of the Pueblos to utilize their water rights as provided in this Agreement.

5.6 Administration of Pueblo Rights.

Each Pueblo shall administer that Pueblo's First Priority Rights and water rights created under state law but approved for use on that Pueblo's Lands in accordance with this Agreement, the Interim Administrative Order, the Final Decree, and the rules promulgated by the Water Master pursuant to this Agreement.

5.6.1 The Water Master's Duties under Pueblo Administration.

- 5.6.1.1 Pursuant to Sections 2.3.4, 2.4.4.2, 2.4.4.3.2, and 2.4.4.4.2, the Water Master shall determine whether a new or changed Pueblo use of its First Priority Rights will interfere with Non- Pueblo surface water rights entitled to Section 4 protection, and the amount of any offsets required.
- 5.6.1.2 Pursuant to Sections 2.3.4, 2.4.4.3.2, and 2.4.4.4.2, the Water Master shall determine if a new or changed Pueblo use of its First Priority Rights interferes with Pueblo surface water rights and the amount of any offsets required.
- 5.6.1.3 Nothing in Sections 5.6.1.1 or 5.6.1.2 shall affect the right of the Pueblo to make such new or changed use of its First Priority Rights in accordance with the Agreement, *provided* that any offsets required by the Agreement are made.
- 5.6.1.4 The Water Master shall determine the hydrological effect on Non- Pueblo and Pueblo ground water rights resulting from new or changed uses of Pueblo First Priority Rights pursuant to Sections 2.3.3, 2.3.4, 2.4.3, 2.4.4.2, 2.4.4.3.3, 2.4.4.4.3, and 2.4.4.4.4.
- 5.6.1.5 The Water Master shall carry out his obligations under this Section 5.6.1 in accordance with the rules promulgated pursuant to Section 5.2.
- 5.6.1.6 Only the Decree Court may review the Water Master's determinations under this Section 5.6.1.

5.6.1.7 The Water Master's duties with respect to transfer of Pueblo-owned state law water rights within the lands of a Pueblo shall include evaluation of any impairment or interference with water rights after consideration of the OSE's written evaluation and recommendation concerning such transfer. Any transfer of state law water rights within the lands of a Pueblo shall be conditioned so that no impairment of, or interference with, water rights shall occur.

5.6.1.8 Any determination of projected hydrologic effects of transfers of state law water rights within a Pueblo shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment.

5.6.2 The OSE's Duties Under Pueblo Administration

5.6.2.1 New or Changed Uses of a Pueblo's First Priority Rights on that Pueblo's Lands.

5.6.2.1.1 Nothing in this Section 5.6.2.1 shall affect the right of a Pueblo to make a new or changed use of its First Priority Rights on its lands in accordance with this Agreement.

5.6.2.1.2 The OSE shall determine whether a new or changed use of a Pueblo First Priority Right on its lands pursuant to Sections 2.3.3, 2.4.3, 2.4.4.2, or 2.4.4.4 causes impairment to a Non-Pueblo ground water right.

5.6.2.1.3 The OSE shall further determine the extent to which any Non-Pueblo ground water user whose right is impaired shall be entitled to compensation from the Impairment Fund established pursuant to Section 5.5.

5.6.2.1.4 Appeals from the decisions of the OSE shall be as provided by the procedure to be developed by the Settlement Parties pursuant to Section 5.4.

5.6.2.2 New or Changed Uses of Pueblo First Priority Rights Off that Pueblo's Lands.

A Pueblo that seeks to use its First Priority Rights, or to transfer a portion of such rights to a use, off of that Pueblo's lands pursuant to Sections 2.3.4, 2.4.4.3, or 2.4.4.4.3 shall proceed as follows:

5.6.2.2.1 If the new or changed use will be on the lands of another Pueblo, the Pueblo owning the right shall file an application with the Water Master, who, after consideration of the OSE's written evaluation and recommendation concerning the application, shall approve the application, conditioned by any offsets required by this

Agreement, unless the proposed use would impair Pueblo or Non-Pueblo ground water rights.

5.6.2.2.2 If the new or changed use will not be on Pueblo lands, the Pueblo owning the right shall file an application with the OSE, which, after consultation with the Water Master, shall approve the application, conditioned by any offsets required by this Agreement, unless the proposed use would impair Pueblo or Non-Pueblo ground water rights.

5.6.2.2.3 Any determination of impairment shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment.

5.6.2.2.4 Review of the determinations under this Section 5.6.2.2 shall be by the Decree Court.

5.7 Administration of Federal Reserved Rights

The Decree Court shall administer all federal reserved water rights.

5.8 Regional Water Authority Diversions

Any state law water rights, out of basin federal law rights, or contractual rights to the use of water transferred for diversion by the Regional Water Authority shall be transferred and administered at the point of diversion in accordance with state law and regulation. Such water may be diverted by the Regional Water Authority from the Rio Grande or from groundwater sources within the Pojoaque Basin only in compliance with state law and regulation. In operating and managing well fields within the Pojoaque Basin that are part of the Regional Water System the Regional Water Authority shall not impair Pueblo or non-Pueblo water rights and shall offset interference with water rights subject to this Settlement Agreement, including any resulting increased tributary stream depletions caused by pumping of Regional Water Authority wells and any interference resulting from the Regional Water Authority's provision of Offset Water. Any provision of Offset Water shall not constitute use of a consumptive right. Any determination of projected hydrologic effects of transfers of water rights for diversion by the Regional Water Authority shall include consideration of proposed remedies designed to reduce ground water effects below the threshold of impairment. In acting on any application to implement the provisions of this Section, the State Engineer shall consider that the purpose and intent of this Agreement, and of the Cost Sharing and System Integration Agreement, are to provide a firm supply of water for all uses served by the Regional Water Authority.

5.9 Development of Model and Historic Supply Study for Administration

5.9.1 The United States, the Pueblos, and the OSE shall cooperate on the development and utilization of administrative tools, including a model or models for determining the hydrological effects of administrative actions governed by this Agreement. As part of this task, these parties shall

develop a strategy for implementing a more comprehensive model to replace the interim models now in place.

5.9.2 Within eight months of the Effective Date of this Agreement, the OSE, in consultation with the United States, shall complete a new study of the historic supply of surface water for all of the tributaries within the Pojoaque Basin and shall formulate a process whereby this study will be jointly updated by these parties.

5.10 Modification of Administration Provisions

The Settlement Parties have negotiated the provisions of Section 5 in a good faith attempt to avoid future disputes about administration of water rights in the Pojoaque Basin, but recognize that experience gained through implementation, and presently unanticipated considerations of law, science, or sound judicial case management, may require those provisions to be amended. Accordingly, the Settlement Parties agree that the remaining provisions of this Agreement shall remain in full force and effect notwithstanding a declaration by any court that Section 5, or any provision thereof, is invalid or contrary to law. The Settlement Parties further agree to meet to negotiate recommendations to the Decree Court for modifications to Section 5 within 90 days of any such judicial declaration invalidating a provision of Section 5. The Settlement Parties further agree to meet to consider modifications to Section 5 at any time prior to the Certification of Satisfaction of Conditions pursuant to Section 9.10, and to recommend any such modifications to the Decree Court.

6. Waivers and Release of Claims

6.1 Dismissal of *Interse* Challenges

All signatories to this Agreement shall dismiss all pending *interse* challenges against other signatories to this Agreement with prejudice and shall be barred from asserting further *interse* challenges against such signatory parties.

6.2 Waiver and Release of Claims by the Local Parties.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Local Parties agree to waive and release:

6.2.1 all claims that they asserted, or could have asserted, in the Aamodt case;

6.2.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown.

6.2.3 the right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and

6.2.4 their defenses in the Aamodt case to the claims previously asserted therein by the Pueblos and the United States.

6.3 Waiver and Release of Claims by the Pueblos and the United States Acting in its Capacity as Trustee for the Pueblos

6.3.1 Waiver of Claims by the Pueblo of San Ildefonso, and the United States Acting in its Capacity as Trustee for the Pueblo of San Ildefonso.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of San Ildefonso on behalf of itself and its Members, and the United States acting in its capacity as trustee for the Pueblo of San Ildefonso, agree to waive and release:

6.3.1.1 all claims for water rights that they asserted, or could have asserted, in the Aamodt case;

6.3.1.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of San Ildefonso or its Members, or the United States acting in its capacity as Trustee for the Pueblo of San Ildefonso, may have against the parties to the Aamodt case;

6.3.1.3 the right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and

6.3.1.4 their defenses in the Aamodt case to the claims previously asserted therein by the Local Parties.

6.3.2 Waiver of Claims by the Pueblo of Pojoaque, and the United States Acting in its Capacity as Trustee for the Pueblo of Pojoaque.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Pojoaque on behalf of itself and its Members, and the United States acting in its capacity as trustee for the Pueblo of Pojoaque, agree to waive and release:

6.3.2.1 all claims for water rights that they asserted, or could have asserted, in the Aamodt case;

6.3.2.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the

Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Pojoaque or its Members, or the United States acting in its capacity as Trustee for the Pueblo of Pojoaque, may have against the parties to the Aamodt case;

6.3.2.3 the right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and

6.3.2.4 their defenses in the Aamodt case to the claims previously asserted therein by the Local Parties.

6.3.3 Waiver of Claims by the Pueblo of Tesuque, and the United States Acting in its Capacity as Trustee for the Pueblo of Tesuque.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Tesuque on behalf of itself and its Members, and the United States acting in its capacity as trustee for Pueblo of Tesuque, agree to waive and release:

6.3.3.1 all claims for water rights that they asserted, or could have asserted, in the Aamodt case;

6.3.3.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Tesuque or its Members, or the United States acting in its capacity as Trustee for the Pueblo of Tesuque, may have against the parties to the Aamodt case;

6.3.3.3 the right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and

6.3.3.4 their defenses in the Aamodt case to the claims previously asserted therein by the Local Parties.

6.3.4 Waiver of Claims by the Pueblo of Nambé, and the United States Acting in its Capacity as Trustee for the Pueblo of Nambé.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Nambé on behalf of itself and its Members, and the United States acting in its capacity as trustee for Pueblo of Nambé, agree to waive and release:

- 6.3.4.1 all claims for water rights that they asserted, or could have asserted, in the Aamodt case;
- 6.3.4.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Nambé or its Members, or the United States acting in its capacity as Trustee for the Pueblo of Nambé, may have against the parties to the Aamodt case;
- 6.3.4.3 the right to appeal from any decisions made by the Decree Court in the Aamodt case prior to execution of this Agreement; and
- 6.3.4.4 their defenses in the Aamodt case to the claims previously asserted therein by the Local Parties.

6.4 Waiver and Release of Claims by the Pueblos Against the United States

6.4.1 Waiver and Release of Claims by the Pueblo of San Ildefonso Against the United States.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of San Ildefonso on behalf of itself and its Members, agrees to waive and release:

- 6.4.1.1 all causes of action that the Pueblo of San Ildefonso or its Members may have against the United States, its agencies, or employees, arising out of claims for water rights that were asserted, or could have been asserted, by the United States in the Aamodt case;
- 6.4.1.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of San Ildefonso or its Members may have against the United States, its agencies, or employees; and
- 6.4.1.3 All claims arising out of or resulting from the negotiation or the adoption of this Agreement, exhibits to this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, or any specific terms and provisions thereof, that the Pueblo of San Ildefonso or its Members may have against the United States, its agencies, or employees.

6.4.2 Waiver and Release of Claims by the Pueblo of Pojoaque Against the United States.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Pojoaque on behalf of itself and its Members, agrees to waive and release:

- 6.4.2.1 all causes of action that the Pueblo of Pojoaque or its Members may have against the United States, its agencies, or employees, arising out of claims for water rights that were asserted, or could have been asserted, by the United States in the Aamodt case;
- 6.4.2.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Pojoaque or its Members may have against the United States, its agencies, or employees; and
- 6.4.2.3 All claims arising out of or resulting from the negotiation or the adoption of this Agreement, exhibits to this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, or any specific terms and provisions thereof, that the Pueblo of Pojoaque or its Members may have against the United States, its agencies, or employees.

6.4.3 Waiver and Release of Claims by the Pueblo of Tesuque Against the United States.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Tesuque on behalf of itself and its Members, agrees to waive and release:

- 6.4.3.1 all causes of action that the Pueblo of Tesuque or its Members may have against the United States, its agencies, or employees, arising out of claims for water rights that were asserted, or could have been asserted, by the United States in the Aamodt case;
- 6.4.3.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Tesuque or

its Members may have against the United States, its agencies, or employees; and

6.4.3.3 All claims arising out of or resulting from the negotiation or the adoption of this Agreement, exhibits to this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, or any specific terms and provisions thereof, that the Pueblo of Tesuque or its Members may have against the United States, its agencies, or employees.

6.4.4 Waiver and Release of Claims by the Pueblo of Nambé Against the United States.

Except as otherwise provided in this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, the Pueblo of Nambé on behalf of itself and its Members, agrees to waive and release:

6.4.4.1 all causes of action that the Pueblo of Nambé or its Members may have against the United States, its agencies, or employees, arising out of claims for water rights that were asserted, or could have been asserted, by the United States in the Aamodt case;

6.4.4.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the Effective Date, that may or may not be fully known and may or may not be more numerous or more serious than it is now understood or expected, even though the injuries, damages and losses may be now unanticipated, unexpected or unknown, that the Pueblo of Nambé or its Members may have against the United States, its agencies, or employees; and

6.4.4.3 All claims arising out of or resulting from the negotiation or the adoption of this Agreement, exhibits to this Agreement, the Final Consent Decree, or legislation enacted consistent with Section 9 of this Agreement, or any specific terms and provisions thereof, that the Pueblo of Nambé or its Members may have against the United States, its agencies, or employees.

6.5 Effectiveness of Waivers.

6.5.1 Nothing herein acknowledges the existence or validity of any claims that are being waived and released.

6.5.2 The waivers herein from all Settlement Parties will become effective upon entry of the Final Decree.

6.6 Reservation of Rights and Retention of Claims

6.6.1 Notwithstanding the waivers and releases described in Sections 6.2, 6.3, and 6.4, and except as otherwise provided in this Agreement, all Settlement Parties shall retain:

6.6.1.1 All claims for water rights or injuries to water rights arising out of activities occurring outside the Pojoaque Basin except insofar as such claims are specifically addressed in the Cost Sharing and System Integration Agreement executed pursuant to Section 9.2;

6.6.1.2 All claims for enforcement of this Agreement, the Final Consent Decree, or legislation enacted consistent with Sections 9.3.2 and 9.6 of this Agreement, through such legal and equitable remedies as may be available in any court of competent jurisdiction.

6.6.1.3 To the extent not inconsistent with the Final Consent Decree and this Agreement, all rights to use and protect water rights acquired pursuant to state law.

6.6.1.4 All claims relating to activities affecting the quality of water.

6.6.1.5 All rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement.

6.6.1.6 Priority administration initiated for the protection of water rights subject to this Agreement shall be governed by the Final Consent Decree and by the terms of this Agreement as between the water rights holders. Nothing in this Agreement shall be construed to limit the authority of the State Engineer to administer water rights by priority on the Rio Grande, or in the Pojoaque Basin, for the protection of senior water rights outside the Pojoaque Basin, or to ensure compliance with the Rio Grande Compact.

7. Miscellaneous

7.1 Nambé Falls Dam and Reservoir

7.1.1 The Pueblos may use their shares of water from Nambé Reservoir for the surface water offsets required under this Agreement or for any other purpose authorized by this Agreement.

7.1.2 Contingent upon the enactment of the federal legislation described in Section 9.5.1.11, the remaining construction costs assigned to the Pueblos and the PVID shall be waived and deemed non-reimbursable.

7.1.3 Pursuant to Section 3 of the contract dated November 2, 1972, among the PVID, the Pueblo of Nambé, the Pueblo of San Ildefonso and the Pueblo of Pojoaque, the annual allocation of water described in Section 1

of that contract shall be adjusted on the Effective Date of this Agreement, as follows: Nambé: 20%; San Ildefonso: 18%; Pojoaque: 2%; and PVID: 60%.

7.1.4 Concurrent with the adjustment of the annual allocation of water pursuant to Section 7.1.3, the care, operation and maintenance costs for the operation of the Nambé Falls Dam and Reservoir shall be allocated on the same percentage basis.

7.1.5 If in any water year, the United States does not use the full amount of the San Juan - Chama Project annual water supply allocated to Nambé Falls Dam and Reservoir for the replacement of the depletion of flows on the Rio Grande caused by the storage and use of water from Nambé Falls Dam and Reservoir, the unused allocation of the San Juan - Chama annual water supply shall be assigned to the PVID and the United States. The United States shall be entitled to 50% of any such water supply to provide a portion of the water supply described in Sections 2.5 and 2.7. PVID shall be entitled to subcontract 50% of any such water supply to (1) the CWU to meet water demands within the Pojoaque valley, or (2) to the United States for use in providing a portion of the water supply described in Sections 2.5 and 2.7.

7.1.6 This Agreement does not affect any other provisions of the agreements among the United States, PVID, and the Pueblos.

7.2 Priority Enforcement and Acquired and Economic Development Water

The Pueblos of Nambé, Pojoaque and San Ildefonso shall not use Acquired Water, provided for by Section 2.5, or Economic Development Water, provided for by Section 2.7, in a manner so as to increase Pueblo surface water diversions for which a Pueblo may make a priority call against non-Pueblo water users entitled to Section 4 protection.

8. Effective Date

This Agreement is effective when the Court approves it and enters an Interim Administrative Order substantially similar to Exhibit 2 to this Agreement.

9. Conditions Subsequent

The following are conditions subsequent to this Agreement that must be satisfied prior to entry of the Final Consent Decree. Satisfaction of these conditions shall be demonstrated by certification to the Decree Court as described in Section 9.10.

9.1 Settlement Study

- 9.1.1 The settlement study for the Regional Water System shall be completed pursuant to Public Law No. 107-66.
- 9.1.2 In conjunction with the settlement study, the pilot project evaluating the viability of a horizontal collector system on the Rio Grande at the Pueblo of San Ildefonso shall be completed.

9.2 Cost-Sharing and System Integration Agreement

- 9.2.1 By June 30, 2004, in consultation with the United States, the State acting through the OSE, each of the Pueblos, the County of Santa Fe, the City of Santa Fe, and active counsel for the Non-Pueblo parties shall execute a Cost-Sharing and System Integration Agreement, specifying the location, capacity, and management, including distribution of water to customers, and allocating the costs, of the Regional Water System for system construction, operation, maintenance, and repair, and land, rights-of-way and water rights acquisition, and other related and necessary undertakings agreed to by the parties named in this Section. The agreement shall provide for the Regional Water System, utilizing the system's well field in conjunction with the system's surface water supply, to deliver a reliable, firm supply of water in the amounts provided for in this Agreement, recognizing that it is the intent of this Agreement to utilize surface supplies to the maximum extent possible. The agreement shall also address mitigation of impacts of Buckman and other Santa Fe well field pumping on Pueblo First Priority Rights. The Decree Court, upon showing of good cause, may extend the 180-day period.
- 9.2.2 The Cost-Sharing and System Integration Agreement shall specify the amount required to fund the Pueblo Conservation Funds and Pueblo Water Acquisition Fund described in Section 9.5.1, the Pojoaque Valley Water Acquisition Fund described in Section 9.8, and the Pojoaque Valley Water Utility Connection Fund and the Non-Interference Fund described in Section 9.6.1, and shall contain an escrow agreement governing the deposit and disbursement of funds thereunder.
- 9.2.3 The Cost-Sharing and System Integration Agreement shall include an agreement for acquisition of land and permanent rights-of way for the Regional Water System including the County Water Utility and the Pueblo distribution systems. Agreements with the Pueblos will be required for the rights-of-way for the diversion facilities and other components of the Regional Water System and the County Water Utility to be located on lands of the Pueblos.

9.3 Pueblo Agreements

9.3.1 By June 30, 2004, the United States and the Pueblo of Nambé shall develop a proposed agreement as to cost, term of years, and termination of the lease of the Pueblo of Nambé's water right described in Section 2.6.2.

9.3.2 By June 30, 2004, the Pueblo Economic Development Water Agreement shall be developed, consistent with Section 2.7.

9.4 Rio Tesuque Implementation Agreement

By June 30, 2004, the authorized representatives of the Rio de Tesuque Association, Inc. and the Pueblo of Tesuque shall enter into a Rio Tesuque Implementation Agreement concerning the diversion and delivery of surface water to the Pueblo of Tesuque and the Rio de Tesuque acequias.

9.5 Federal Legislation

9.5.1 Authorizations

Prior to the entry of the Final Consent Decree, federal legislation must be enacted that:

9.5.1.1 Authorizes and directs the Secretary of the Interior to construct the Regional Water System, and to acquire the easements necessary for such system, consistent with the Cost-Sharing and System Integration Agreement described in Section 9.2 ("the Project"). The authorization shall include authority for the appropriations of funds required to meet the federal share of Project costs;

9.5.1.2 Authorizes the Pueblos to settle their claims in this litigation on the terms contained in this Agreement;

9.5.1.3 Authorizes the United States, on behalf of the Pueblos, to settle the Pueblos' claims to water rights in this litigation on the terms contained in this Agreement;

9.5.1.4 Approves the Agreement and authorizes the United States to act in accordance with its terms;

9.5.1.5 Authorizes the United States to pay the operation, maintenance, and replacement costs allocated to the Pueblos' participation in the Regional Water System;

9.5.1.6 Provides that the construction costs allocable to the Pueblos' portion of the Regional Water System shall not be reimbursable to the United States;

9.5.1.7 Authorizes the establishment of a Conservation Fund in the United States Treasury for each of the Pueblos in the amount specified in the Cost-Sharing and System Integration Agreement, which funds shall not be reimbursable, for the rehabilitation, improvement,

operation, maintenance, and replacement of Pueblo agricultural delivery facilities, waste water systems, and other water-related infrastructure.

- 9.5.1.8 Authorizes the appropriation of funds in the amount specified in the Cost-Sharing and System Integration Agreement, which funds shall not be reimbursable, for the acquisition of an annual water supply of at least 2,500 AFY consumptive use for the Pueblos pursuant to Sections 2.2.4.1, 2.5, and 2.7 of this Agreement, and further authorizes actual acquisition of such water supply; and
- 9.5.1.9 Authorizes appropriation of any other funds consistent with the Cost-Sharing and System Integration Agreement;
- 9.5.1.10 Authorizes the use of water supplied from Nambé Falls Dam and Reservoir in accordance with this Agreement and provides authority for the United States to execute a service contract without limitations as to term with the Pueblos and PVID;
- 9.5.1.11 Provides that the remainder of the construction costs for Nambé Falls Dam and Reservoir allocated to the Pueblos and the PVID shall be deemed non-reimbursable; and
- 9.5.1.12 Exempts the Regional Water Authority from federal corporate income tax, and exempts interest payments on bonds issued by the Regional Water Authority from federal income tax.

9.5.2 Appropriations

Prior to entry of the Final Consent Decree, federal legislation must be enacted that:

- 9.5.2.1 Appropriates funding for the Pueblo Conservation Funds authorized by the federal legislation described in Section 9.5.1.7;
- 9.5.2.2 Appropriates funding for any other purpose for which the Cost-Sharing and System Integration Agreement requires federal funding, except for the portion of such funding required under Sections 10.3 and 10.4; and
- 9.5.2.3 Provides that the Pueblo of San Ildefonso portion of the Project and settlement funds is fully funded before the rest of the project proceeds. This funding for San Ildefonso is to include (a) funding for the final design and construction of a community water and wastewater system, together with completion of the surface water structure across the Pojoaque River; and (b) funds authorized pursuant to Sections 9.5.1.5, 9.5.1.7, and 9.5.1.9 of this Agreement.

- 9.5.3 The Settlement Parties contemplate that other provisions not enumerated herein may be proposed to Congress.

9.6 State Legislation

9.6.1 Prior to the entry of the Final Consent Decree, state legislation must be enacted that:

9.6.1.1 With respect to the Regional Water Authority:

9.6.1.1.1 Exempts the RWA from the operation of the New Mexico Public Utility Act, Chapter 62, Articles 1 to 6 and 8 to 13, NMSA 1978, or any successor law, and the jurisdiction of the New Mexico Public Regulation Commission, or any successor entity;

9.6.1.1.2 Confirms that the RWA shall have the power of eminent domain for the acquisition of easements and other interests in and over privately owned land reasonably necessary for the construction, operation and maintenance of its portion of the Regional Water System, pursuant to §§ 42-2-1 through 42-2.24 and §§ 42A-1-1 through 42A-1-34, NMSA 1978, or any successor law;

9.6.1.1.3 Exempts the RWA from the New Mexico corporate franchise tax, exempts RWA income from the New Mexico corporate income tax, exempts RWA property from any New Mexico property tax, and exempts interest paid on RWA bonds from New Mexico personal income tax;

9.6.1.1.4 Confirms that the RWA is not subject to the New Mexico Procurement Code, §§ 13-1-28 through 13-1-199, NMSA 1978, the 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 employee;

9.6.1.1.5 Establishes that RWA records are considered public records subject to the New Mexico Inspection of Public Records Act, §§ 14-2-1 through 14-2-12, NMSA 1978, or any successor law;

9.6.1.1.6 Establishes that meetings of RWA members and of the RWA Board of Directors are subject to the New Mexico Open Meetings Act, §§ 10-15-1 through 10-15-4, NMSA 1978, or any successor law;

9.6.1.1.7 Establishes that the RWA is subject to suit on contracts and for the collection of debts only to the extent a governmental entity would be subject to such suit, pursuant to §§ 37-1-23 and 37-1-24, NMSA 1978, or any successor to either such law, and that the RWA is subject to suit arising from torts committed by the RWA

or by its officers, agents and employees only to the extent a governmental entity would be subject to such suit under the New Mexico Tort Claims Act, §§ 41-4-1 through 41-4-29, NMSA 1978, or any successor law, provided that the RWA complies with the insurance requirements of such law; and

9.6.1.1.8 Exempts the RWA from the provisions of the New Mexico Nonprofit Corporation Act relating to dissolution of nonprofit corporations, including §§ 53-8-47 through 53-8-63, NMSA 1978, or any successor sections, and establishes that in the event of dissolution of the RWA, the RWA's affairs will be dealt with by the United States District Court for the District of New Mexico, as set forth in the Articles of Incorporation;

9.6.1.2 Authorizes the retirement and transfer of existing, and limitation on further, Non-Pueblo wells within the Pojoaque Basin as required by Section 3, in conjunction with the organization and operation of the CWU described in Section 9.8;

9.6.1.3 Authorizes the establishment of a Pojoaque Valley Water Utility Connection Fund in the amount specified in the Cost-Sharing and System Integration Agreement, which fund shall provide financial grants and loans to assist Non-Pueblo well users to connect to the CWU described in Section 9.8;

9.6.1.4 Authorizes and directs the OSE to act in accordance with the terms of this Agreement, the Interim Administrative Order, and the Final Consent Decree;

9.6.1.5 Authorizes the establishment of an Impairment Fund described in Section 5.5 in the amount specified in the Cost-Sharing and System Integration Agreement; and

9.6.1.6 Authorizes appropriation of any other funds consistent with the Cost-Sharing and System Integration Agreement.

9.6.2 The Settlement Parties contemplate that other provisions not enumerated herein may be proposed to the state legislature.

9.7 Formation of Regional Water Authority

9.7.1 By June 30, 2004, in consultation with the United States, the State acting through the OSE, each of the Pueblos, the County of Santa Fe, the City of Santa Fe, and active counsel for the Non-Pueblo parties shall agree on articles of incorporation for the Regional Water Authority.

9.7.2 Santa Fe County, the City of Santa Fe and the Pueblos shall, by no later than 60 days following the enactment of the federal legislation described in Section 9.5 and the state legislation described in Section 9.6,

form a New Mexico Nonprofit Corporation to be known as Pojoaque-Santa Fe Basin Water Authority, by filing with the New Mexico Public Regulatory Commission articles of incorporation, together with such other documents as may be necessary for the formation of such corporation under New Mexico law, and shall thereafter do all things necessary and appropriate, consistent with the provisions of the articles of incorporation, this Agreement and the Cost-Sharing and System Integration Agreement, to cause such corporation to come into existence and commence operations.

9.7.3 Funding for and operations of the Regional Water Authority shall be consistent with the Cost-Sharing and System Integration Agreement described in Section 9.2.

9.8 County Water Utility

9.8.1 Pursuant to the Cost-Sharing and System Integration Agreement, the Board of Commissioners of Santa Fe County shall authorize the CWU to receive water from the Pojoaque-Santa Fe Basin Water Authority. In order to carry out the retirement of Non-Pueblo domestic wells within the Pojoaque Basin as required by Section 3, the CWU shall offer service to all Non-Pueblo domestic users within the Pojoaque Basin to whom it is feasible to provide service.

9.8.2 Funding for and operations of the CWU shall be consistent with the Cost-Sharing and System Integration Agreement described in Section 9.2, and shall include establishment of a Pojoaque Valley Water Acquisition Fund for the acquisition of a water supply of at least 750 AFY consumptive use for the CWU in addition to water supplied by water rights transferred pursuant to Section 3.1.9 of this Agreement.

9.9 Construction of Red Pipeline and Acquisition of Supply for Pueblo of Pojoaque Alternative Water

Prior to entry of the Final Consent Decree, and no later than June 30, 2010, construction of the Red Pipeline must be substantially completed and the United States must have secured 475 AFY of water to supply the Pueblo of Pojoaque's Alternative Water pursuant to Section 2.2.4.1.

9.10 Certification of Satisfaction of Conditions

9.10.1 Prior to entry of the Final Consent 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 parties shall file a Certification of Satisfaction of Conditions with the Decree Court, stating that the conditions subsequent described in Section **Error! Reference source not found.** through 9.8 have been met in a manner acceptable to each of the certifying parties.

9.10.2 In conjunction with such certification, the same Settlement Parties shall jointly move the Decree Court to enter a Final Consent Decree that shall be consistent with this Agreement and the Certification of Satisfaction of Conditions. Finally, the Settlement Parties shall request the Decree Court to give appropriate notice and hold the necessary hearings to consider and rule on any objections to the proposed Final Consent Decree.

10. Contingencies

10.1 Entry of Decree

If the Final Consent Decree has not been entered by December 15, 2012, the Settlement Parties shall not be bound by this Agreement, including any waiver and release of claims provided pursuant to Section 6 of this Agreement.

10.2 Contingent on Appropriation of Funds

This Settlement Agreement shall not be construed to require the United States to make an expenditure or advance of any money or to perform any obligation for which an Act of Congress has not duly appropriated funds. The United States shall accrue no liability as a result of any failure to make such appropriations.

10.3 Construction of Regional Water System

If the Regional Water System described in Section 1.3.24 has not been substantially completed by June 30, 2016, then upon notification to the Decree Court and the parties by the Pueblos, the United States acting on their behalf, the State of New Mexico, or the County or City of Santa Fe, the parties shall not be bound by the Final Consent Decree or this Agreement, including any waiver and release of claims provided pursuant to Section 6 of this Agreement, and the Decree Court shall proceed with the determination of the parties' rights. The right to void the Final Consent Decree, and this Agreement, and have the Decree Court determine the rights of the parties as provided in this Section shall expire at midnight on June 30, 2021, or upon satisfaction of this contingency, whichever first occurs.

10.4 Pueblo Water Supply

If the Pueblo water supply described in Sections 2.5 and 2.7 has not been acquired for the benefit of the Pueblos as described in this Agreement by June 30, 2016, then upon notification to the Decree Court and the parties by any of the Pueblos or the United States acting on the behalf of a Pueblo, the parties shall not be bound by the Final Consent Decree or this Agreement, including any waiver and release of claims provided pursuant to Section 6 of this Agreement, and the Decree Court shall proceed with the determination of the parties' rights. The right to void the Final Consent Decree, and this Agreement, and have the Decree Court determine the rights of the parties, shall expire at midnight on June 30, 2021, or upon satisfaction of this contingency, whichever first occurs.

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

11. Amendment

No addition to or waiver or modification of any provision of this Agreement shall be binding unless in a writing specifically referencing this Agreement and signed by a duly authorized representative of each Settlement Party. Whenever this Agreement provides for the agreement of one or more Settlement Parties, any such agreement shall be in writing, specifically refer to this Agreement, and be signed by duly authorized representatives of each agreeing Settlement Party.

12. Signatures

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE UNITED STATES OF AMERICA²:

UNITED STATES DEPARTMENT OF THE INTERIOR

SECRETARY OF THE INTERIOR

DATE: _____

UNITED STATES DEPARTMENT OF JUSTICE

?

DATE: _____

² [BSB: Whether, when and how this document may be executed on behalf of the United States may not be clear until after it has been submitted for formal review within the Departments of Interior and Justice.]

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE PUEBLO OF NAMBÉ:

GOVERNOR OF THE PUEBLO OF NAMBÉ

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE COUNTY OF SANTA FE:

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

DATE: _____

Approved:

SANTA FE COUNTY ATTORNEY

DATE: _____

ATTEST:

SANTA FE COUNTY CLERK

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR LEND LEASE VALUE ENHANCEMENT FUND II ("THE BISHOP'S LODGE"):

B. STANTON BREON

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR RANCHO DEL MONTE LLC ("RANCHO ENCANTADO"):

DANIEL N. EPSTEIN

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE SANTA FE OPERA, A NEW MEXICO NON-PROFIT CORPORATION:

DR. PAUL R. HOFFMAN

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE STATE OF NEW MEXICO:

JOHN D'ANTONIO, STATE ENGINEER

DATE: _____

PATRICIA MADRID, ATTORNEY GENERAL

DATE: _____

DL SANDERS, CHIEF COUNSEL
JOHN STROUD
EDWARD C. BAGLEY
OFFICE OF THE STATE ENGINEER

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE PUEBLO OF TESUQUE:

GOVERNOR OF THE PUEBLO OF TESUQUE

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE PUEBLO OF POJOAQUE, a federally recognized Indian Tribe

JACOB VIARRIAL, GOVERNOR

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE PUEBLO OF SAN ILDEFONSO

GOVERNOR OF THE PUEBLO OF SAN ILDEFONSO

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

FOR THE CITY OF SANTA FE

CITY OF SANTA FE, MAYOR

DATE: _____

Approved as to form:

CITY OF SANTA FE, CITY ATTORNEY

DATE: _____

Attest:

CITY OF SANTA FE, CLERK

DATE: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

SIGNATURE PAGE FOR INDIVIDUAL DEFENDANT

SIGNATURE OF DEFENDANT:

_____ DATE: _____

PRINTED, OR TYPED, NAME: _____

ADDRESS: _____

SUBFILE NUMBER: _____

RG NUMBER: _____

COUNSEL OF RECORD (IF ANY):

SIGNATURE: _____ DATE: _____

PRINTED OR TYPED NAME: _____

FIRM NAME (IF ANY): _____

ADDRESS: _____

TELEPHONE NUMBER: _____

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

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SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

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

STATE OF NEW MEXICO ex rel. State)
Engineer,)
)
Plaintiff,)
)
v.)
)
R. LEE AAMODT, et al.,)
)
Defendant,)
and)
)
UNITED STATES OF AMERICA, PUEBLO)
DE NAMBÉ, PUEBLO DE POJOAQUE,)
PUEBLO DE SAN ILDEFONSO, and)
PUEBLO DE TESUQUE,)
)
Plaintiffs in Intervention.)
)
)

No. 66cv6639 MV/LCS-ACE

INTERIM ADMINISTRATIVE ORDER

THIS CASE is a general adjudication of the surface and underground water rights within the Pojoaque Basin authorized by N.M. Stat. Ann. §§ 72-4-13 through –19 (1985 Repl. Pamp.). This Order is to govern the administration of all such water rights pending entry of a Final Consent Decree herein consistent with the Settlement Agreement approved by the Court this day.

This matter comes before the Court pursuant to the _____, 200_, Joint Motion for Approval of Settlement Agreement and Entry of Interim Administrative Order (Docket # ____), filed by the United States, the State of New Mexico, _____ [& etc.]. The Court finds that the proposed Interim Administrative Order is the product of a negotiated settlement by the aforesaid parties.

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

Notice of the deadline for filing and serving objections to the water rights described in this Order was served on the parties to this case. The Court has considered the joint motion and the objections thereto, and the evidence of record. For good cause shown, the Court finds that the motion should be granted.

Accordingly, **IT IS HEREBY ORDERED** that the Settlement Agreement is APPROVED and that the following provisions shall govern the administration of water rights within the Pojoaque Basin, pending the entry of a Final Consent Decree (“the Interim Period”):

Defined Terms

Except as expressly defined herein, the terms used in this Order shall be defined as stated in the Settlement Agreement.

Pueblo Water Rights

During the Interim Period, the Pueblos shall have rights to use water as specified in Sections 2 and 7 of the Settlement Agreement, subject to all terms and conditions stated in that agreement.

Non-Pueblo Water Rights

During the Interim Period, the Non-Pueblos shall have rights to use water as provided by the subfile orders entered in this case and pursuant to all terms and conditions stated in Sections 3 and 7 of the Settlement Agreement.

Priority Enforcement for Pueblo First Priority Rights

Section 4 of the Settlement Agreement is hereby adopted and incorporated as an effective provision of this Order during the Interim Period.

Administration

Section 5 of the Settlement Agreement is hereby adopted and incorporated as an effective provision of this Order during the Interim Period.

IT IS FURTHER ORDERED that, within 30 days of the date of this Order, counsel shall meet with the Magistrate Judge to finalize an agreement and plan to (1) identify and appoint a Water Master to fulfill the duties specified in Section 5 of the Settlement Agreement, (2) provide for the compensation of the Water Master and for other costs of administering the Settlement Agreement, and (3) provide for the imposition and collection of civil penalties for violations of this Order and the provisions of the Settlement Agreement adopted herein. In the event the parties cannot reach such agreement, the Court, upon the recommendation of the Magistrate Judge, shall appoint a temporary Water Master to serve until further order of the Court.

IT IS FURTHER ORDERED that this Order shall expire and be of no further effect upon entry of a Final Consent Decree, but no later than December 15, 2012.

Dated this _____ day of _____, 20__.

UNITED STATES DISTRICT JUDGE

SETTLEMENT DOCUMENT: This document is provided during and for compromise negotiations and, pursuant to Fed.R.Evid. 408, and court order, is not admissible evidence concerning the claims or defenses of any party.

Recommended for Entry:

UNITED STATES MAGISTRATE JUDGE