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OFFICE OF THE STATE ENGINEER**



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Date: October 19, 2023

To: Sen. George K. Muñoz, Chair, Legislative Finance Committee
Rep. D. Wonda, Johnson, Chair, Interim Indian Affairs Committee
Sen. Shannon D. Pinto, Vice Chair, Interim Indian Affairs Committee
Sen. Elizabeth K. Stefanics, Chair, Interim Water and Natural Resources Committee
Rep. Matthew McQueen, Vice Chair, Interim Water and Natural Resources Committee

From: Mike A. Hamman, P.E., State Engineer 
Hannah Riseley-White, Director, Interstate Stream Commission 

Re: 2023 Indian Water Rights Settlement Fund Report

The 2005 Indian Water Rights Settlement Fund Act requires the State Engineer and the Interstate Stream Commission to report by November 15th every year to the Interim Indian Affairs Committee and to the Legislative Finance Committee on the following three subjects:

1. The status of proposed Indian water rights settlements requiring state financing;
2. The distribution of funds from the Indian water rights settlement fund to implement approved settlements; and
3. Recommendations on appropriations to the fund necessary to timely implement action of Indian water rights settlements.

NMSA 1978, § 72-1-11 (B). This memorandum presents the report of the State Engineer and the Interstate Stream Commission for 2023.

1. Status of Indian Water Rights Settlements – § 72-1-11 (B)(1)

New Mexico presently has three Indian water rights settlements in various stages of implementation: the Navajo Nation Water Rights settlement in the San Juan River adjudication; the settlement with the Pueblos of Nambé, Pojoaque, Tesuque, and San

Ildefonso in the *Aamodt* adjudication; and the Taos Pueblo Water Rights settlement in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication.

For each of these three settlements, a settlement agreement was executed in 2005 or 2006 by the tribe or Pueblos and the State of New Mexico. The *Aamodt* and Taos Pueblo settlement agreements also were executed by other water rights owning parties. Subsequent to the passage of federal legislation authorizing each of the settlements in 2009 and 2010, the Secretary of the U.S. Department of the Interior signed all three settlement agreements on behalf of the United States. Copies of the three fully-executed settlement agreements and related documents can be found at: www.ose.state.nm.us/Legal/settlements_IWR.php. Construction work and other activities are occurring for each of the settlements agreements as described below.

A. Navajo Nation Water Rights Settlement

On April 19, 2005, the Navajo Nation and the State of New Mexico executed a settlement agreement to resolve the claims of the Navajo Nation for use of waters in the San Juan River Basin in northwestern New Mexico. The Navajo settlement provides water development projects for the benefit of the Navajo Nation and non-Navajo communities in exchange for a release of the Navajo Nation's claims to water that potentially could displace existing non-Indian water uses in the basin. One of the primary elements of the settlement is the Northwestern New Mexico Rural Water Supply Project (more commonly known as the Navajo-Gallup Water Supply Project) that includes a pipeline currently under construction by the Bureau of Reclamation ("Reclamation") and pipeline and a water treatment plant currently in operation. This project will provide a long-term, sustainable water supply of 22,650 AFY of clean drinking water to 43 Navajo Chapters in northwestern New Mexico, the City of Gallup and the southwestern portion of the Jicarilla Apache Nation for municipal and domestic uses.

1) Key benchmarks for implementation of the Navajo Settlement include:

Federal Legislation. On March 30, 2009, President Obama signed federal legislation approving the settlement and authorizing the appropriation of federal funds to plan, design and construct the Project (*Northwestern New Mexico Rural Water Projects Act*, Public Law 111-11, Title X, Subtitle B) ("Navajo Settlement Act").

Conformed Settlement Agreement. The Navajo Settlement Act authorized the Secretary of Interior to execute, on behalf of the United States, a revised settlement agreement consistent with the Act ("conformed Settlement Agreement") with the State of New Mexico and the Navajo Nation. The conformed Settlement Agreement was executed on December 17, 2010.,

Environmental Impact Statement. On October 1, 2009, following a NEPA process and publication of a Final Environmental Impact Statement for the Navajo-Gallup

Water Supply Project, then Secretary of the Interior Ken Salazar signed the Record of Decision for the Project.

Court Approval. On November 1, 2013, the adjudication court entered two Partial Final Judgments and Decrees (“decrees”) adjudicating the water rights of the Navajo Nation. The decrees resolve the Navajo Nation’s water rights claims and adjudicate its rights to use the waters of the San Juan River stream system in New Mexico in accordance with the terms of the Settlement Agreement. Legal challenges to the decrees were filed in late 2013 and denied by the Court of Appeals in April 2018. That decision is now final.

2) Funding for Navajo-Gallup Water Supply Project

Settlement Project Costs. The federal legislation authorized the appropriation of \$870,000,000 to Reclamation to plan, design and construct the Navajo-Gallup Water Supply Project. The total estimated cost has now increased to approximately \$1.996 billion based on Reclamation’s April 2022 working cost estimate for the Project.

For federal fiscal years 2010 to 2022, Congress has appropriated to and provided mandatory funding for the Navajo-Gallup Water Supply Project totaling \$1.195 billion. For federal fiscal year 2023, the President recommended appropriations to the Project totaling \$136.5 million.

State Contribution. The settlement legislation required a \$50 million (“cost share”) contribution by the State toward Project construction costs, less funds the State has already contributed that are determined to have reduced overall Project costs (“cost share credit”). Additionally, the State may, but is not obligated to provide \$10 million for non-Indian ditch rehabilitation.

Status of State Contribution. On June 27, 2011, the State and the federal government, through the Secretary of the Interior, executed a Cost Share Agreement for the State’s cost share obligation. On October 13, 2022, Reclamation approved the State’s final cost share credit request for Cutter Lateral phases 2 and 3 of the Project. With this approval, the State of New Mexico’s \$50 million cost share obligation towards the NGWSP has been fully met and fully formally recognized by the United States.

Implementation. Reclamation has the overall responsibility for the design and construction of the Project, which consists of two separate branches, the Cutter and San Juan Laterals. The Cutter Lateral is completed and is operational as summarized below; the San Juan Lateral is not. Infrastructure for the Project includes approximately 300 miles of pipeline; two water treatment plants; and several pumping plants and storage tanks. Work is also being done by the City and Navajo Nation funded through financial assistance agreements between the two entities and Reclamation.

The Cutter Lateral pipeline and treatment plant, which includes the southern portion of the Jicarilla Apache Nation, have been constructed and were commissioned in 2021. Operations and maintenance responsibility on the Reclamation-owned reaches of the Cutter Lateral was transferred to the Navajo Nation and the Navajo Tribal Utility Authority in June 2022.

Construction of the San Juan Lateral is about 50% complete with significant work. Final design work, design data collection, environmental and cultural resources permitting, and right-of-way acquisition continues on those reaches of the Project that are not yet under construction. However, there is a sizeable budget shortfall, in excess of \$600 million in 2022 dollars, and this budget shortfall will need to be overcome to ensure successful completion of the San Juan Lateral.

Following a Value Planning exercise in November 2020, Reclamation proposed using an existing river diversion at the San Juan Generating Station, and other existing infrastructure for connection to the San Juan Lateral, rather than a facility previously contemplated at the Hogback river diversion on the San Juan River. At its September 21, 2021, public meeting, the New Mexico Interstate Stream Commission (“ISC”) concurred with Reclamation’s recommendation to select the San Juan Generating Station Water Conveyance Facilities as the intake location of the San Juan Lateral. The Interstate Stream Commission directed its Director to coordinate with the Department of the Interior and the Navajo Nation regarding possible extension of the deadline for completion of the Project from 2024 to a later date. Any extension of the Project construction completion deadline pursuant to Section 10701(e)(1)(B) of the Settlement Act (P.L. 111-11) requires the approval of the Secretary of the Interior, the Navajo Nation, and the Commission.

On October 11, 2022, Senator Ben Ray Lujan (D-NM) introduced the NGWSP Amendments Act in Congress. If passed, this act would, among other things, provide millions of dollars of additional funding to Reclamation to cover the projected funding gap for the implementation of the San Juan lateral, the related water treatment plant, and other proposed infrastructure to help the Navajo Nation and the City of Gallup access residential water. The act would also extend the deadline for completion of the Project until 2029. The ISC has been a participant in the drafting of the NGWSP Amendments Act and supports completing this important Project as soon as possible.

In addition, the ISC has executed funding agreements with the City of Gallup to disburse to the City an \$8 million special appropriation approved in 2022 by the New Mexico Legislature to help fund construction of new water wells that will help the City with its water supply pending completion of the San Juan Lateral.

The ISC will continue to support all Project participants as needed until the Project is completed.

B. *Aamodt* Settlement with the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso

On May 3, 2006, the State of New Mexico, the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso, the County of Santa Fe and the City of Santa Fe executed a Settlement Agreement to resolve the claims of the four Pueblos to the use of waters in the Nambé-Pojoaque-Tesuque stream system (“NPT”), a tributary of the Rio Grande in north central New Mexico, in *State of New Mexico ex rel. State Engineer v. Aamodt, et al.*, U.S.D.C. No. 66cv06639 WJ/WPL. While most of the Pueblos’ water rights are adjudicated with senior priorities, the Settlement Agreement provides protections for non-Pueblo junior water rights in exchange for a regional water system to be constructed by the United States to serve the Pueblos and non-Pueblo residents of the NPT. The United States has acquired 2,381 acre-feet per year (AFY) of water to be delivered to the Pueblos, including 1,079 AFY of San Juan Chama Project water, reducing the effect of the Pueblos’ senior water rights on existing water supplies in the basin.

Construction of the system is on-going and is being funded by the United States, the State, Santa Fe County, and the Pueblos. The Pojoaque Basin Regional Water Authority will operate the system. The portion of the system that will serve non-Pueblo residents in the basin will be paid for by the State and the County and was originally projected to deliver up to about 1,500 AFY. In addition to increasing the amount of water available in the NPT, the settlement agreement limits the amount of the Pueblos’ water rights that can be exercised with a senior priority, thereby protecting existing junior water rights in the NPT from possible curtailment in times of shortage.

1) Key benchmarks for implementation of the *Aamodt* Settlement include:

Federal Legislation. Federal legislation approving the Settlement Agreement was enacted into law on December 8, 2010, when President Barack Obama signed the *Claims Resolution Act of 2010*, Title VI of which is the *Aamodt Litigation Settlement Act*. P.L. No. 111-291, § 601, et seq. (hereafter “*Aamodt* Settlement Act”).

Conformed Settlement Agreement. The conformed Settlement Agreement was executed by the parties in March 2013.

Conformed Cost Sharing and System Integration Agreement. The Cost Sharing and System Integration Agreement (“Cost Sharing Agreement”) was also executed by the settlement parties in March 2013. The Cost Sharing Agreement sets out the funding obligations of the governmental parties to the settlement and establishes the fundamental operational agreements among the parties that will be operating the regional water system.

Funding Agreement. On July 29, 2014, the State and Reclamation executed a funding agreement setting out the terms and conditions for the State’s payment of its share of costs for planning, design and construction of the regional water system. Both the Cost Sharing Agreement and the funding agreement were amended in 2020 to reflect

additional funding and other provisions contained in the 611(g) Agreement, executed in September 2019. *See Settlement Project Costs*, below.

San Juan Chama Project Water/State Engineer Permits. As mentioned above, the *Aamodt* Settlement Act authorizes the allocation of 1,079 (AFY) of water supply contracts from the San Juan Chama Project to fulfill water supply needs for the *Aamodt* settlement. The Pueblos and Reclamation have a contract for the San Juan Chama Project water and the State Engineer issued permits to the Regional Water Authority for the diversion and consumptive use of 2,381 AFY, including the San Juan Chama Project water.

Court Approval. The Court entered the Partial Final Judgment and Decree adjudicating the Pueblos' water rights on March 23, 2016, and the Final Judgment and Decree adjudicating all water rights (both Pueblo and Non-Indian) in the *Aamodt* adjudication on July 14, 2017, bringing 51 years of litigation to a final conclusion. Legal challenges to the decrees were filed in the fall of 2013 and denied by the Court in the fall of 2018.

State Engineer Administration. On September 12, 2017, the State Engineer promulgated administrative Rules for the Nambe-Pojoaque-Tesuque Water Master District: Active Water Resource Management, and on October 3, 2017 issued a Metering Order for metering of all wells in the NPT Water Master District. The deadline for installation was subsequently extended to October 3, 2019. During the 2021 and 2022 irrigation seasons, various water users have raised concerns regarding the allocation of surface flows of the Rio Nambe under the settlement. The OSE Water Master, the Pueblos, and the Pojoaque Valley Irrigation District have been working to reach a common understanding of rights and duties of all of the parties (including the duties under the settlement), to eliminate any improper diversions, and to achieve a common plan for managing surface flows. These discussions and activities are ongoing.

2) Funding for the Regional Water System

Settlement Project Costs. The *Aamodt* Settlement Act calls for the United States to build the regional water system, except for individual non-Pueblo service connection lines. The portion of the system that will serve the Pueblos will be paid for entirely by the United States and it will deliver about 2,500 AFY to them.

The total funding for the Settlement and the time frame for expending it has increased a number of times. The 2021 Annual Report provides background information on the cost share and construction timeline. The current costs and timeline are summarized herein. Under the most recent agreement, the 611(g) Agreement, the combined funding for the project is \$406.3 million and is to be provided as follows: \$276.8 million by the United States, \$104.5 million by the State, and \$38.4 million by Santa Fe County. The non-federal funding is to pay for the non-Pueblo portion of the proposed regional water system. The \$406.3 million construction cost number does not include the water rights

acquisition (County responsibility), service connections, or mitigation costs required by the settlement. Accordingly, the State's contribution in the 611(g) Agreement is an additional amount that, after indexing of the State's current obligation in a 2018 Cost-Sharing Agreement, provides the combined State total of \$104.5 million. The County is contributing an additional \$4 million in 2018 dollars and deferring \$24 million.

Federal Contribution. Between federal fiscal years 2012 and 2020, Congress has appropriated to and provided direct funding for the Aamodt Settlement totaling approximately \$135.5 million. Additionally, the 2022 President's budget recommendation for the Settlement is \$23.0 million. In June 2019, New Mexico Reps. Ben Ray Luján, Debra Haaland, and Xochitl Torres Small introduced legislation to provide the necessary additional federal funding and extend the timeline for construction of the regional water system. Final amendments were included in the FY 2021 Consolidated Appropriations Act, signed by the President in December 2020, increasing federal funding from \$106.4 million to \$243.4 million, approving the 611(g) Agreement, and extending the deadline for substantial completion of the system from 2024 to June 2028.

Status of State Contribution. As of September 30, 2022, the State has made a total contribution of \$58.7 million toward its share of costs for the regional water system under the Cost Sharing Agreement. The Legislature has appropriated all of the remaining funding needed to meet the State cost share. The remaining state obligation is \$0.00.

Implementation. On September 11, 2019, the Secretary issued the Record of Decision for the Final EIS for the Regional Water System. Reclamation began limited construction in May 2020 and has completed construction of that Phase. and Phase 2 is being constructed at this time. The Phase 1 and construction work consists of installing collector well systems near river and associated pipelines as well as site preparation for the water treatment plant. The work can be seen when driving from Pojoaque to Los Alamos at the turnoff for El Rancho and north of the river bridge over the Rio Grande. The water treatment plant for the project, which will be located near El Rancho, is anticipated to be completed near the end of 2025.

C. Taos Pueblo Settlement

On May 30, 2006, at a signing ceremony at Taos Pueblo, the Pueblo, the State of New Mexico, and Taos-area water right owning parties executed a settlement agreement to resolve the claims of Taos Pueblo to the use of waters in the Rio Pueblo de Taos and Rio Hondo stream systems, tributaries of the Rio Grande. The Taos Pueblo Water Rights Settlement Agreement was developed through multi-party negotiations initiated in 1989 between the Taos Pueblo, the State, the Taos Valley Acequia Association (and its 55 member acequias), the Town of Taos, El Prado Water and Sanitation District (EPWSD), and the 12 Taos area mutual domestic water consumer associations. The Taos Pueblo Settlement Agreement settles Taos Pueblo's water rights claims and expedites the final adjudication of non-Pueblo claims to water rights in the ongoing Taos area water rights adjudication suit, *State of New*

Mexico ex rel. State Engineer v. Abeyta, et al., U.S.D.C. No. 69cv07896 MV and 69cv7939 MV, Consolidated.

In exchange for adjudication of the Pueblo's water rights with senior priorities, the Settlement Agreement provides funding for new production wells and other water infrastructure improvements and mitigation mechanisms for offsetting surface water depletion effects of groundwater pumping ("Mutual Benefits Projects"); preserves existing acequia water uses and historic water sharing arrangements between the Pueblo and non-Pueblo acequias on the Rio Lucero and Rio Pueblo; and authorizes the United States to allocate 2,621 AFY of water supply contracts from the San Juan Chama Project to the Pueblo, the Town of Taos, and EPWSD.

1) Key benchmarks for implementation of the Taos Pueblo Settlement include:

Federal Legislation. Federal legislation approving the Settlement Agreement was enacted into law on December 8, 2010, when President Barack Obama signed the *Claims Resolution Act of 2010*, Title V of which is the *Taos Pueblo Indian Water Rights Settlement Act*. P.L. No. 111-291, § 501, et seq. (hereafter "Taos Settlement Act").

Conformed Settlement Agreement. The Taos Settlement Act authorized the Secretary of the Interior to execute, on behalf of the United States, a revised settlement agreement consistent with the Act ("conformed Settlement Agreement") which was executed by all the settlement parties in January 2013.

San Juan-Chama Project Water. The Taos Settlement Act authorizes the allocation of 2,621 AFY of water supply contracts from the San Juan Chama Project to fulfill water supply needs for the settlement. In 2012, contracts were executed by Reclamation and various settlement parties for the full 2,621 AFY allocation.

Court Approval. On February 11, 2016 the adjudication Court entered the Partial Final Judgment and Decree adjudicating the Pueblo's water rights in accordance with the conformed Settlement Agreement. No notice of appeal was filed.

On October 7, 2016, the Secretary of the Interior published Notice in the Federal Register that all the conditions precedent in the Taos Settlement Act had been met and that the Settlement Agreement was effective as of that date.

2) Funding for the Pueblo Water Development Fund and Mutual Benefit Projects

Settlement Project Costs. According to the terms of the Taos Settlement Act, the total cost of the Settlement is \$144 million. Of that amount, \$88 million of federal funds will be allocated to the Pueblo Water Development Fund, \$48 million (\$36 million federal, \$12 million State) will fund the Mutual Benefit Projects, \$1.15 million will be deposited by the State into a sinking fund for operations, maintenance and replacement for the Mutual Benefits Projects, and \$6.9 million will be contributed by the State to the non-Pueblo settlement parties for acquisition of water rights. Between federal

fiscal years 2012 and 2015, Congress appropriated to and provided direct funding for the Taos Settlement totaling approximately \$145.7 million.

State Contribution. The Taos Settlement Act required the State to contribute the following: \$12 million of the non-Pueblo portion of planning, design and construction of the Mutual Benefits Projects; \$6.9 million for the acquisition of water rights by the non-Pueblo parties; and, \$1.15 million for the operation, maintenance and replacement for the Mutual Benefits Projects. The State's total required contribution of \$20.05 million was not subject to indexing for inflation.

Funding Agreement. On January 28, 2016 the State, through the New Mexico Interstate Stream Commission and the Department of Finance and Administration, executed a Contributed Funds Agreement with Reclamation to provide the State's share of funding for the Mutual Benefits Projects.

Status of State Contribution. The State funding obligation under the Taos Settlement have been met. The following provides a summary of state actions to meet the obligation. On February 29, 2012, the ISC, for the State, allocated \$5 million to the Taos Pueblo Settlement from the Indian Water Rights Settlement Fund. This was in addition to the Commission's allocation in 2011 of \$1.4 million for the Taos Pueblo Settlement (see below) and \$915,000 in earlier direct appropriations to some of the Settlement parties. The ISC has also been making funds available to the non-Pueblo settlement parties from the Indian Water Rights Settlement Fund for water rights acquisition (up to \$6.9 million per the terms of the Settlement). In its 2015 special session, the New Mexico Legislature appropriated \$12.7 million to the Fund, which the ISC allocated in July 2015 to the Taos Settlement. This appropriation, combined with \$35,000 allocated to the Settlement from the Commission's operating budget, completed the State's funding obligations under the Taos Settlement.

Some of the settlement parties to the Taos Settlement have indicated that the amounts appropriated by the State and Federal Governments to complete Mutual Benefits Projects are given cost increases. The settlement parties have presented revised cost estimates that are currently being reviewed by the State and Federal teams. This will likely result in an additional federal bill being introduced to authorize additional federal funding, as well as a request for additional state funding.

D. New Proposed Indian Water Rights Settlements – Acoma and Laguna Pueblos/Rio San Jose, Jemez and Zia Pueblos/Rio Jemez, Ohkay Owingeh/Rio Chama, and Zuni Tribe /Zuni River Basin

1) Rio Jemez Water Rights Settlement

On June 7, 2022, the State signed a water rights settlement that would settle the claims of Jemez and Zia Pueblos on the Rio Jemez stream system.

The parties to the Rio Jemez settlement are: Jemez Pueblo, Zia Pueblo, the State, the Jemez River Basin Water Users Coalition, and the City of Rio Rancho.

The Rio Jemez Settlement contemplates federal funding of \$290 million to Jemez Pueblo and \$200 million to Zia Pueblo, to be placed in settlement funds for each Pueblo, for planning, permitting, designing, engineering, constructing, and operating etc., a water supply augmentation project, as well as other water infrastructure and watershed protection costs. These amounts are indexed for inflation and are not subject to a State cost share. This settlement is a fund-based, and not a project-based settlement, so the projects will not necessarily be constructed by the federal government.

In the Rio Jemez settlement, the State cost share of the funding would be as follows (all amounts indexed for inflation):

- \$ 3.4 million for capital and operating expenses for the San Ysidro Community Ditch Association, indexed for inflation from July 1, 2023. This funding would be paid as a lump sum to the Association.
- \$16.159 million for acequia ditch improvements within the member acequias of the Jemez River Basin Water Users Coalition, indexed for inflation from July 1, 2023. This funding would be administered by the NMISC through the Indian Water Right Settlement Funds.
- \$500,000 for a Mitigation Fund for non-Pueblo users whose rights are found to be impaired by Pueblo water uses.
- Sufficient funding for two new full-time employees of the Office of the State Engineer to perform Water Master duties and administrative duties that are required under the settlement.

2) Rio San Jose Settlement

On June 7, 2022, the State signed a settlement agreement that would settle the water rights claims of Acoma Pueblo and Laguna Pueblo within the Rio San Jose stream system. The parties to the Rio San Jose settlement are Acoma Pueblo, Laguna Pueblo, the State, the City of Grants, the Village of Milan, nine individual acequias and community ditches, and the Association of Community Ditches of the Rio San Jose. The parties are currently working with the Navajo Nation to resolve Navajo claims within the Rio San Jose stream system as well, and if that negotiation is successful, the Navajo claims will be brought within this settlement as well.

The Rio San Jose settlement contemplates federal funding of \$850 million, indexed for inflation, into various federally administered funds, as follows:

- \$760 million into the Pueblos' Water Rights Settlement Trust Funds, for planning, permitting, designing, engineering, constructing, etc., alternative water supply infrastructure (\$296 million for Pueblo of Acoma; \$464 million for Pueblo of Laguna).
- \$40 million into the Pueblos' Infrastructure Operations and Maintenance Funds, for the operation and maintenance of the alternative water supply project (\$14 million for Pueblo of Acoma; \$26 million for Pueblo of Laguna).

- \$45 million for an Acomita Reservoir Dam Safety, Inlet and Outlet Works Settlement Fund.
- \$5 million for the Pueblos' Feasibility Studies Settlement Fund (\$1.75 million for Pueblo of Acoma; \$3.25 million for Pueblo of Laguna).

In the Rio San Jose settlement, the State cost share of the funding would be as follows (all amounts indexed for inflation until disbursed):

- \$12 million for a Projects Fund for the signatory Acequias, for the purpose of providing non-federal matching/cost share funding to the signatory Acequias for acquiring water rights, infrastructure projects, and costs associated with protecting acequia water sources and water rights. The NMISC has approved funding for \$250,000 for the signatory Acequias to conduct a hydrologic needs assessment to determine the most appropriate projects to implement, as set forth in the Local Settlement Agreement.
- \$500,000 for a Mitigation Fund for non-Pueblo users whose rights are found to be impaired by Pueblo water uses.
- \$16 million for Grants and Milan for the non-federal cost share for a joint project for water re-use, conservation, and augmentation of the Rio San Jose (allocated as \$8.5 million to Grants and \$7.5 million to Milan).
- \$3.5 million as a lump sum payment to the Village of Milan for the non-federal cost share for water supply and infrastructure improvements and water conservation projects, including drinking water system projects.
- \$4 million as a lump sum payment to the City of Grants for the non-federal cost share for water supply and infrastructure improvements and water conservation projects, including drinking water system projects.
- Sufficient funding for two new full-time employees of the Office of the State Engineer to perform Water Master duties and administrative duties that are required under the settlement.

3) Ohkay Owingeh/*Aragon* Settlement

Ohkay Owingeh's water rights claims on the Rio Chama within the Rio Chama Stream System adjudication have been settled and are awaiting final signatures. *New Mexico v. Aragon*, Case No. 69-cv-07941-KWR/KK (U.S. D. Ct. N.M.). The proposed federal legislation will soon be sent to the DOI for review. A number of parties have signed the final Settlement Agreement, and OSE has received assurances that the remaining parties will likely sign in short order. It is the goal of Ohkay Owingeh to have the settlement fully signed in 2023 and begin the federal legislation process for introducing a bill.

The Ohkay Owingeh settlement calls for the Pueblo to receive federal funding in the amount of \$818,350,000, indexed for inflation from date of execution of the settlement agreement through date of deposit into a Water Rights Settlement Trust Fund.

The State cost share of the funding totals \$130,500,000 and shall be distributed as follows:

- \$11,500,000 paid to the Rio Chama Acéquia Association for acquisition of storage space in existing reservoirs and for acquisition of water or water rights for impoundment in storage in existing reservoirs for use in increasing supply during shortage sharing pursuant to an acquisition plan approved by the Rio Chama Acéquia Association.
- \$17,500,000 for the State's share of, and improvements to, the two diversion structures serving the Acéquia de Chamita, Acéquia de los Salazares, and Acéquia de Hernandez, and for ditch improvements to those three acéquias, pursuant to an allocation plan approved by the three acéquias.
- \$25,875,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the Acéquias Norteñas, pursuant to an allocation plan approved by the Acéquias Norteñas. \$3,881,250 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$15,250,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of El Rito Ditch Association, pursuant to an allocation plan approved by El Rito Ditch Association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$15,250,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of La Asociación de las Acéquias del Rio Vallecitos, Tusas, y Ojo Caliente, pursuant to an allocation plan approved by the association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$13,125,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the RCAA not receiving funding under Article 12.1.1.2, pursuant to an allocation plan approved by the RCAA. \$1,968,750 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$32,000,000 to the City of Espanola for the development of production wells and related infrastructure costs to provide additional sources of safe drinking water.

4) Zuni Indian Tribe Settlement

The Zuni Indian Tribe and the State signed a settlement agreement resolving the claims of the Zuni Indian Tribe in the Zuni River Stream System adjudication in FY 2023. *U.S. v. A&R Production, et al.*, Case No. 6:01-00072-DHYU-JHR (D.N.M.). The parties are working on federal legislation to propose to the Department of the Interior for introduction to Congress in 2023.

The settlement calls for the Tribe to receive federal funding in the amount of \$719,500,000, which shall be deposited in a Water Rights Settlement Fund and indexed for inflation from date to be agreed upon between the Tribe and the United States. The settlement calls for the establishment of an additional federally funded Water Infrastructure Operations and

Maintenance Trust Fund in the amount of \$29,600,000, calculated as estimated operations and maintenance expense for a period of 10 years, to be used to pay or reimburse costs for operation and maintenance of water infrastructure to serve Zuni Tribe irrigation, livestock, domestic, commercial, municipal, and industrial water uses from any water source.

The State shall provide \$750,000 to develop monitoring programs to further assess impacts on spring and stream flows from groundwater development within the Critical Protection Area and to assess impacts to Zuni Salt Lake, as well as a fund in the amount of \$500,000 to mitigate impairment to non-tribal groundwater rights for domestic and livestock use as a result of new Zuni water use. In addition, the State shall contribute funding for up to two full time employee positions in the Office of the State Engineer to perform water master and administrative duties in accordance with the settlement agreement.

5) Ongoing/Upcoming Settlement Negotiations

While the *Aragon* Settlement resolves the claims of Ohkay Owingeh on the Rio Chama, Ohkay Owingeh and Santa Clara Pueblos have outstanding water rights claims on the Santa Cruz/Truchas stream system. The State, the Pueblos, and other interested parties are currently engaged in negotiations regarding those water rights.

The OSE and ISC are also involved in conversations with the Ute Mountain Ute Tribe regarding settlement of their water right claims in New Mexico, which were not addressed during the settlement of the Utes' claims in the Colorado Ute Settlement Act Amendments of 2000. The Tribe has requested the appointment of a Federal negotiating team, a request that is supported by both the States of Colorado and New Mexico.

The OSE and ISC are involved in negotiations with the Navajo Nation to be included in the Settlement Agreement for the Rio San Jose Adjudication for the relevant Navajo communities. The amount of federal or state money requested is under negotiations. In addition, the Navajo Nation will begin discussions regarding settlement of the Ramah Navajo claims in the Zuni River Stream System.

Finally, the Six Middle Rio Grande Pueblos are in the process, with the Federal Government, of setting up a Federal Assessment Team to prepare water rights claims that will form the basis for the negotiation of their water rights.

6) Next Steps

All of the recently completed settlements (Rio Jemez, Rio San Jose, Ohkay Owingeh/*Aragon*, and Zuni) must still be approved by Congress. Once that occurs, the United States will be a party to the settlements as well. Federal legislation authorizing the Rio Jemez and the Rio San Jose settlements has been introduced in Congress (S.B. 595/ H.B. 1304). Legislation authorizing the other settlements is currently being finalized and should be introduced in Congress in late 2023 or early 2024.

In addition, the settlements are contingent upon the appropriation of the necessary funds by Congress and the New Mexico Legislature. While none of these settlements includes immediate outstanding financial obligations from the State of New Mexico, the current budget surplus (and the possibility that multiple settlements could be approved simultaneously) means that this year presents a good opportunity to make a sizeable contribution to the Indian Water Rights Settlement Fund. The OSE and ISC's funding recommendation is set forth below.

2. Appropriations and distribution of monies from the Indian Water Rights Settlement Fund – § 72-1-11 (B)(2)

In 2009, the Board of Finance issued severance tax bonds (STB) in the amount of \$10 million for deposit in the Indian Water Rights Settlement Fund. The Interstate Stream Commission allocated \$1.4 million of this total to the Taos non-Pueblo parties for water rights acquisition, and allocated the remaining \$8.6 million for implementation of the Navajo Settlement.

At the special session in 2011, the Legislature appropriated an additional \$15 million in STB authorization to the Fund. On December 1, 2011, the ISC certified to the Board of Finance the sale of the entire \$15 million bond authorization for the December 2011 sale. The Interstate Stream Commission subsequently allocated the \$15 million appropriation in three equal amounts of \$5 million each to the Navajo, *Aamodt* and Taos Pueblo Settlements.

During its 2013 regular session, the Legislature appropriated an additional \$10 million in STB authorization to the Fund. In April 2014, the Interstate Stream Commission certified to the Board of Finance the sale of the entire \$10 million bond authorization. The Commission subsequently allocated the \$10 million to satisfy the state's obligation under the *Aamodt* Settlement.

During its 2015 special session, the Legislature appropriated \$12.7 million to the Fund from several sources, including STBs, General Fund, the Tribal Infrastructure Project Fund and the Water Project Fund. On July 22, 2015, the Interstate Stream Commission allocated the entire \$12.7 million to the Taos Settlement to complete the State's cost share obligation under the Settlement.

During the 2018 regular session, the Legislature appropriated \$6.175 million in STBs and \$2.825 million from the Water Projects Fund to the Fund for a total of \$9 million. In April 2018, the Interstate Stream Commission certified to the Board of Finance the sale of the entire \$6.175 million bond authorization. These funds are being allocated to the State's cost share under the *Aamodt* Settlement.

During the 2019 regular session, the Legislature appropriated \$17.0 million from the General Fund and \$3.0 million from the Water Projects Fund to the Indian Water Rights Settlement Fund for a total of \$20 million. During the 2020 regular session, the Legislature appropriated \$9.0 million in STB's to the Indian Water Rights Settlement Fund, and another \$9.0 million in the 2021 regular session.

During the 2022 regular session, the Legislature appropriated \$10.6 million in STB's , and another \$32.0 million in the 2022 regular session to the Indian Water Rights Settlement Fund. Consequently, the full \$104.5 million of state cost share has been provided or made available for use. The Commission is in the process of allocating the funding to Reclamation for construction of the regional water system under the *Aamodt* Settlement.

3. Funding Recommendation – § 72-1-11 (B)(3)

Last year, for the first time in a number of years, the OSE did not request funding for Indian Water Rights Settlements. Previously, the OSE had historically requested funding annually through its Infrastructure Capital Improvement Plan (ICIP) requests. This year, the OSE has submitted a request to the Executive for a special appropriation of \$30 million into the Indian Water Rights Settlement Fund. This will serve three purposes: First, it will help ensure that Congress knows the State's level of commitment as they consider authorizing new settlements and can begin meeting its funding obligations. Second, a significant appropriation this year will send a strong signal to the settlement parties that the State is serious about implementing the new settlements, which will also allow them to advocate effectively in Congress to spur necessary federal authorization. And third, it will help ensure that New Mexico can fund its obligations on the timetables set forth in the settlements.

10/16/2023

IWRS Federal, State and Local Funds

Funding in thousands

| | Total Settlement Costs | | | Settlement Totals | Federal Approps | | Initial Total State Required Contribution - Non-Pueblo | | | State Totals (not indexed) | Current Estimated Outstanding State Obligation | Current Estimated Outstanding Local Obligation |
|---------------|-----------------------------|--------------------------|---------------------------|-------------------|--|---------------------------------|--|--------------------------|--------------------------|-------------------------------|--|--|
| | Project Construct | Water Rights Acquisition | Other Settlement Costs | | Appropriated & Mandatory Funding to date | President's FY2023 Budget Rec. | Project Construct | Water Rights Acquisition | Other Settlement Costs | | | |
| Aamodt | \$ 406,300.0 ¹ | \$ 5,400.0 | \$ 18,000.0 ² | \$ 429,703.0 | \$ 139,559.0 32% | \$ 23,000.0 38% ⁴ | \$ 100,000.0 | | \$ 4,500.0 | \$ 104,500.0 ³ | \$ - | \$ 38,400.0 ¹ |
| Taos | \$ 48,000.0 | \$ 20,000.0 | \$ 76,000.0 | \$ 144,000.0 | \$ 145,741.0 101% | \$ - 101% | \$ 12,000.0 | \$ 6,900.0 | \$ 1,150.0 | \$ 20,050.0 ⁵ | \$ - | |
| Navajo | \$ 1,897,917.3 ⁶ | | \$ 103,000.0 ⁷ | \$ 2,000,917.3 | \$ 1,194,675.6 60% | \$ 136,583.0 67% | \$ 50,000.0 ⁸ | | \$ 10,000.0 ⁹ | \$ 60,000.0 ¹⁰ | \$ - ⁸ | \$ 54,321.0 |
| Total | \$ 2,352,217.3 | \$ 25,400.0 | \$ 197,000.0 | \$ 2,574,620.3 | \$ 1,479,975.6 | \$ 159,583.0 | \$ 162,000.0 | \$ 6,900.0 | \$ 15,650.0 | \$ 184,550.0 ¹⁰ | \$ - ^{10,11} | \$ 92,721.0 |

Notes:

- 1 Reclamations engineering indices are as of October 2018 price levels
- 2 Other settlement costs include service connections and mitigation costs
- 3 The NM Legislature has authorized up to \$104.5M. The 611G agreement was approved on 9/17/2019, the revised cost-sharing & system integration agreement was approved on 8/26/2020 and the revised funding agreement with BOR was approved on 10/2/2020.
- 4 The percentage represents the Federal amount appropriated & the President's current budget recommendation of the total respective Settlement costs
- 5 Total state contribution requirement was met in the 2015 legislation to include assuming credit for past appropriations in the amount of \$915k
- 6 Reclamation's engineering indices are as of April 26, 2022 Working Cost Estimate at the October 2021 price level, of the project configuration at that time.
- 7 Other settlement costs includes \$30M for Conjunctive Use Wells + \$23M for SJ River Irrigation Project Improvements & \$50M for the Trust Fund
- 8 To date, approximately \$52M has been appropriated through WTB grants and capital outlay appropriations for the Settlement projects, but will not be approved by the Bureau until the appropriations are fully expended towards the Settlement projects and officially requested to be approved. It is anticipated that the State will receive approximately 75% credit of the future expenditures that have not received final approval or have been preliminary approved
- 9 Non-mandatory cost for Non-Indian ditch rehabilitation. The state provided capital outlay appropriations to various ditches in the area in 2019 and 2020.
- 10 Appropriations to date to the IWR Fund is \$146.3 M (\$10M (2009)+\$15M (2011) + \$10M (2013) + \$12.7M (2015)+ \$9M (2018)+\$20M (2019)+\$9M (2020)+\$9M (2021)+\$42.6M (2022)