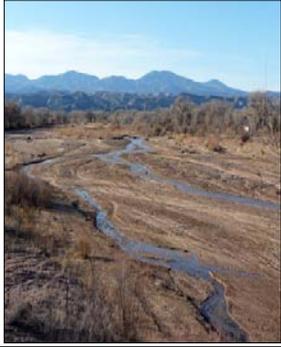


2014

Updated Feb. 21

AAMODT SETTLEMENT HANDOUTS

		
Rio Nambé	Rio Pojoaque	Rio Tesuque



Darcy S. Bushnell
Director, Stell Ombudsman Program
Utton Center, UNM - School of Law
MSC11 6070 1 University of New Mexico
Albuquerque, New Mexico 87131-0001
505-277-0551 Toll Free 1-877-775-8333
bushnell@law.unm.edu
<http://uttoncenter.unm.edu/ombudsman/npt.php>

AAMODT SETTLEMENT MEETINGS

Dates & Times

Community Meetings 6 pm to 8 pm

Tuesday 02/18 Pojoaque Middle School Auditorium
Thursday 02/20 Tesuque Elementary School

Workshops 6 pm to 8 pm

30 persons limit. Reservations: 505-277-0551 or bushnell@law.unm.edu

Tuesdays

02/25 Nambé Community Center
03/04 El Rancho Community Center
03/11 Nambé Community Center
03/18 El Rancho Community Center
03/25 Nambé Community Center
04/01 El Rancho Community Center

Thursdays

02/27 En Medio-Chupadero Community Center
03/06 Pojoaque Satellite Office
03/13 Tesuque Elementary School Library
03/20 Pojoaque Satellite Office
03/27 Tesuque Elementary School Library
04/03 Pojoaque Satellite Office

Office Hours Pojoaque Satellite Office

February 26 through April 5, 2014

Wednesdays 6 pm to 8 pm

Saturdays 10 am to 2 pm

Table of Contents

1. Aamodt Water Rights Adjudication Flowchart
2. Frequently Asked Questions
3. Choices To Be Made
4. Aamodt Settlement Considerations for Non-Pueblo Parties
5. Aamodt Case Timeline
6. Aamodt Settlement and the Pueblo Communities
7. Aamodt Settlement: Pueblos' Water Rights

For more information about the adjudications, the case & the Settlement Agreement:

OSE: Access to water right records

<http://nmwrrs.ose.state.nm.us/nmwrrs/disclaimer.html>

OSE: Adjudication information and court filings

http://www.ose.state.nm.us/legal_aamodt_adjudication.html

OSE: Settlement information & proposed Agreement

http://www.ose.state.nm.us/legal_ose_aamodt_info.html

Ombudsman: New Mexico Adjudication process

<http://uttoncenter.unm.edu/ombudsman/npt.php>

County of Santa Fe: Settlement and Outreach information

http://www.santafecountynm.gov/county_commissioners/daniel_mayfield/aamodt_outreach

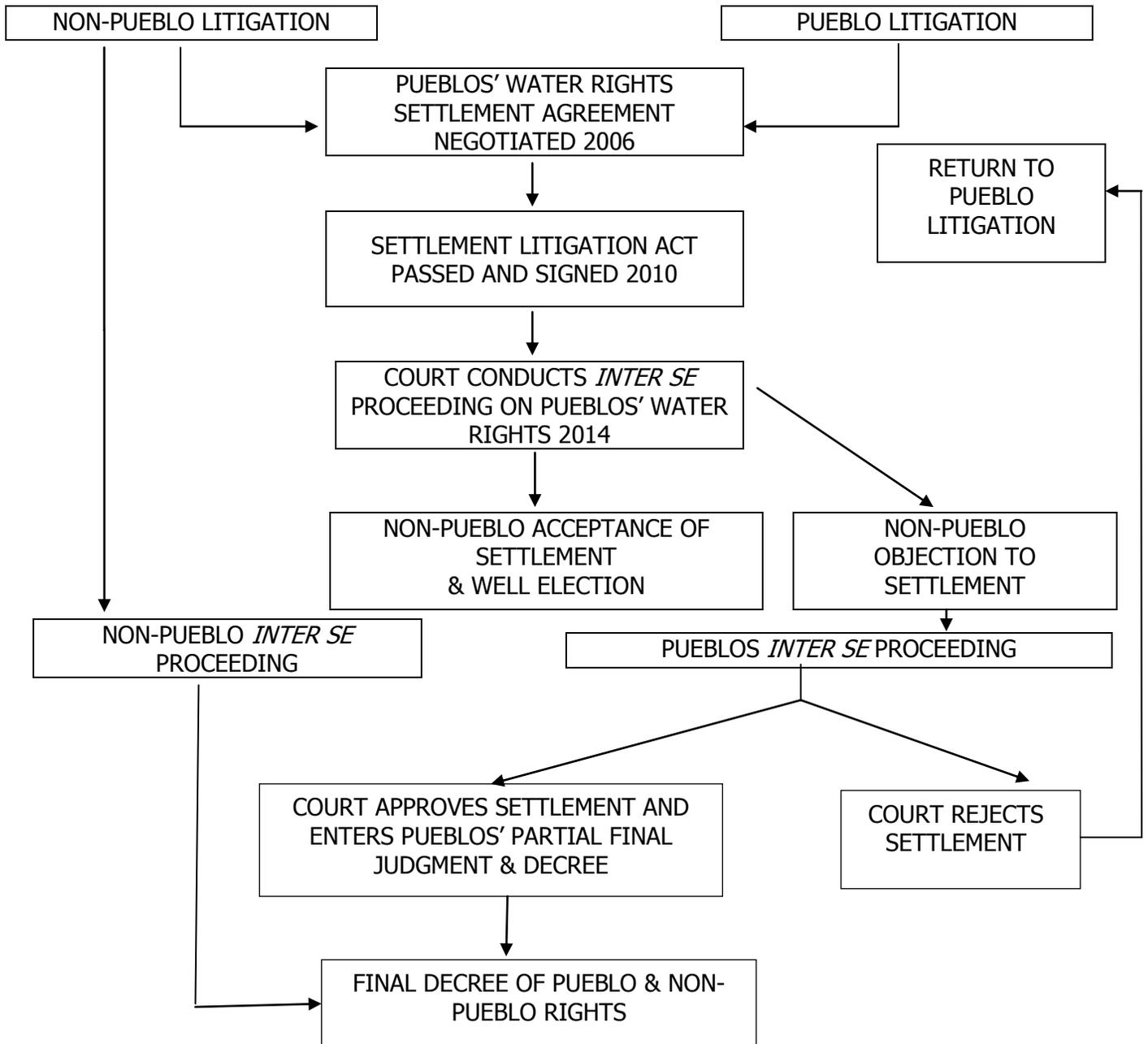
Aamodt Settlement by Paul White <https://www.facebook.com/aamodtsettlement>

Aamodt Water Rights Adjudication Flowchart

ADJUDICATION

Adjudication of most surface right elements done 1966-69

Adjudication of surface right priorities and wells continue.



Aamodt Settlement Frequently Asked Questions

The State of New Mexico, the United States, Santa Fe County, the City of Santa Fe and the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque have entered into a Settlement Agreement which determines the water rights of the four Pueblos in the Aamodt adjudication. The case has now entered the *inter se* phase of the Pueblos' water rights. The Court has ordered water rights owners in the Pojoaque Basin to accept or object to the Settlement Agreement and the proposed Partial Final Judgment and Decree for the Pueblos' water rights (proposed Pueblos' Partial Final Decree). The settling parties – the Pueblos, the United States, the State of New Mexico, Santa Fe County and the City of Santa Fe – have recommended the proposed Partial Final Decree to the Court. The proposed Pueblos' Partial Final Decree is based on the Settlement Agreement reached among the settling parties.

The Court's *Order to Show Cause and Notice* which was mailed in mid-January sets out the procedures for the next steps. The Court has set a deadline of April 7, 2014, for filing all Objections to the Aamodt Settlement Agreement and the proposed Pueblos' Partial Final Decree (Option 2 of the *Order to Show Cause and Notice*).

All owners of a water right in a domestic well may now file an Acceptance form and make a well election (Option 1 of the *Order to Show Cause and Notice*).

Owners do not need to have received the Order to Show Cause by mail to file an Objection or Acceptance.

The Court will set a final deadline at a later time for filing of an Acceptance form and for making a well election (Option 1 of the *Order to Show Cause and Notice*).

Owners do not need to have received the Order to Show Cause by mail to file an Objection or Acceptance.

The Aamodt Settlement Agreement is a complicated document. This handout answers some of the frequently asked questions regarding the Settlement Agreement, related documents, and the Court process. These are not legal interpretations of the Settlement Agreement and related documents. The responses to these questions are general and for exact answers please refer to the Aamodt Settlement Agreement, the Aamodt Litigation Settlement Act, the proposed Pueblos' Partial Final Judgment and Decree and the proposed Interim Administrative Order.

These documents are posted on the following websites:

- County of Santa Fe, Commissioner Danny Mayfield at http://www.santafecountynm.gov/county_commissioners/daniel_mayfield/aamodt_outreach
- Stoll Water Ombudsman at <http://uttoncenter.unm.edu/ombudsman/npt.php>
- Office of the State Engineer at www.ose.state.nm.us/legal_ose_aamodt_info.html

For those that did not receive a packet in the mail from the Court, the complete packets including the cover letter, the Order to Show Cause, the Acceptance form, and the Objection form are available at the Santa Fe County Pojoaque Satellite Office (505-455-2775) near the grocery at 17839 US 84/285, Santa Fe, NM 87506. The Satellite Office is open on Tuesdays, Wednesdays and Thursdays from 12-6 pm. The satellite office also has review-only copies of

other important settlement documents (the 2010 Congressional Act, the 2012 Settlement Agreement, Santa Fe County 2012-53 Resolution, the proposed Interim Administrative Order, the proposed Partial Final Decree), which are available to be read by the community. These documents may also be studied at the Office of the State Engineer, Water Rights Division, 407 Galisteo, Bataan Memorial Building, Rm. 101, in Santa Fe.

Additional information about the design and construction of the regional water system is available at the Bureau of Reclamation website: www.PojoaqueBasinEIS.com

In addition, information about how to file an Acceptance or Objection is available from the Stoll Water Ombudsman Program at the Utton Center of the UNM School of Law. You may call the toll-free Water Adjudication Helpline at 1-877-775-8333 or directly at (505) 277-0551. Leave your name, phone number, and question. The Ombudsman will try to call you back by the next business day.



SETTLEMENT

What are the goals of the Settlement Agreement?

Broadly, the goals of the Settlement Agreement are to resolve the Pueblos' water right claims while preserving existing non-Pueblo water uses. This goal is achieved by bringing more water into the Basin through the construction of a Regional water system for both Pueblos and non-Pueblo water users and protecting the surface waters and groundwater in the Basin. It also provides a timetable for an end to the Aamodt adjudication.

What is going on right now?

The Settlement Agreement was approved by Congress and signed by the President in 2010. It was signed by all the Settling Parties in 2012. The Court is conducting the *inter se* phase of the determination of the Pueblos' water rights in which the Court allows all other parties in the adjudication the opportunity to accept or object to the Pueblos' proposed water rights. After it hears the Objections, it will decide whether to enter the proposed Pueblos' Partial Final Decree based on the Settlement Agreement.

What concessions were made by different parties in negotiating the Settlement Agreement?

The Pueblos:

- Agree to not make a priority call for their Future Use Rights (which amounts to two thirds of their First Priority rights).

During shortages, surface water is distributed:

- First, to the Pueblos' first priority Existing Rights (1391 a/f/y);
 - Second, to all non-Pueblo water rights belonging to owners who join the Settlement;
 - Third, to the Pueblos' Future Uses; and
 - Fourth, those who do not join the Settlement.
- Agree to not make priority calls against owners of domestic rights from a well that are in compliance with the Settlement Agreement (that is, have made a well election and are not exceeding use limits).
 - Agree to ask the Court to dismiss their more than 500 *inter se* challenges to non-Pueblo

water rights. In addition, the Pueblos will not challenge any other water right of a non-Pueblo party who joins the Settlement during *inter se*.

- Agree that settling non-Pueblos who own water rights in post-moratorium wells can use water outside of their homes up to a certain annual amount.
- Agree to give up their right to appeal the case.
- Agree to have the State Engineer act as Water Master and administer their water rights within the Basin.
- Agree to have their wells metered and to report usage to the State Engineer.
- When water is available from the regional water system, Pojoaque Pueblo agrees to take its Supplemental Water from the water system instead of groundwater and the Pueblos of Nambe, San Ildefonso and Tesuque agree to take water from the regional water system before exercising their Future Basin Use rights.

Significant federal funding has been obtained and additional amounts will be obtained to fund the regional water system and other aspects of the Settlement.

Non-Pueblo well owners who accept the Settlement Agreement:

- Agree to either become part of the regional water system or limit their groundwater uses.
- Agree to discontinue domestic uses from their wells if they connect to the regional water system.
- All non-Pueblo water right owners agree to not further challenge the Pueblos' water rights.

Non-Pueblo surface water owners either accept or object to the Settlement Agreement.

How will the Settlement affect the value of my property?

- The Settlement will remove legal cloud over non-Pueblo water rights.
- Settling non-Pueblo surface water rights will be protected from most Pueblo priority calls.
- Existing non-Pueblo households will have a choice of continuing to use their domestic wells or of connecting to the regional water system.

Post-moratorium domestic well owners, whose water rights are currently limited to indoor use only, will be able to use water outdoors up to specified annual limits.

What happens if the Settlement fails?

The Valley residents will return to litigation which may go on for a long time and which at this time has an uncertain outcome. The Pueblos will continue to exercise their rights within the Basin without the restrictions provided in the Settlement Agreement.

If priority administration is necessary, junior rights would be curtailed first.

No water system will be built for either the Pueblos or the non-Pueblo parties and no extra water will made be available to the Valley communities.

No one will be bound by the terms of the Settlement Agreement and the court will proceed to adjudicate the Pueblos' water rights.

What has to be done by September 15, 2017?

The Secretary of the Interior must certify that certain conditions have been met. Some of these have been completed already, most importantly, the Settlement Agreement and the Cost-Sharing and System Integration Agreement have been signed.

Remaining tasks include:

Funds must be appropriated by the federal, state and local governments.

The Court must enter a Final Judgment and Decree that determines all of the Pueblos' and non-Pueblo water rights.

Contracts for water and transfers of water rights must be completed.

An Environmental Impact Statement must be completed.

How will the Settlement affect my water rights?

The answer to this question depends on whether you have surface or groundwater water rights, or both. It also depends on whether you join the Settlement.



COURT PROCESS

What will happen next?

The Court's *Order to Show Cause and Notice* which was mailed in mid-January sets out the procedures for the next steps. You must decide whether you accept (Option 1) the Settlement Agreement and the proposed Pueblos' Partial Final Decree and proposed Interim Administrative Order; or object (Option 2) to them as a package.

Option 1:

If you accept, filing the Acceptance by April 7, 2014 is encouraged. A well election can be completed later. The Court will identify the final deadline for Acceptances and well elections after the settling parties submit a proposed case management order in May of 2014.

Option 2:

If you object, you must file the Objection form by April 7, 2014. This is your only chance to object.

If you choose Option 2, you will be allowed to withdraw your Objection later.

Some documents like the Joint Powers Agreement and the Water Master Rules & Regulations have not been completed. What if I want to see them before making a well election?

All owners of a water right in a domestic well may now file an Acceptance form and make a well election if they choose. If you are not ready to make a choice, you may wait to do so.

What happens if I do not file anything?

The Court requires that you either accept the Settlement Agreement or object to it.

Anyone who does not file an Objection by April 7, 2014 gives up the right to object to the Aamodt Settlement Agreement and proposed Pueblos' Partial Final Decree.

After the Acceptance and well election deadline (not yet set by the Court), the settling parties will ask the Court to issue another Order to Show Cause to those who did not file an Objection or an Acceptance.

The Order will require domestic well right owners who took no action to show why they should

not be required to connect to the regional water system when it is available.

If they fail to respond, the Court will require them to connect to the County Utility when service is available.

If someone owns more than one water right – say a domestic right and an irrigation right, do they file one document for each right?

Your Acceptance is for all your water rights, both surface and groundwater, but you must file separate well elections for each domestic groundwater right.

Can I get more time to respond?

The Court's current Order requires that Objections must be filed by April 7, 2014. The Court has not yet set a deadline for filing Acceptances and well elections.

If I object what must I show?

The Order to Show Cause says that you must state specific legal and factual reasons for your Objection in a way that the Court can rule on. You must explain how your individual water rights will be harmed by the Settlement Agreement, proposed Pueblos' Partial Final Decree and Interim Administrative Order.

Can I accept the Settlement Agreement for my surface rights and object to it for my well?

No.

What do I do if I did not get a packet?

Owners do not need to have received the packet by mail to file an Objection or Acceptance.

The documents that were included in the packet may be obtained online at these websites:

- County of Santa Fe, Commissioner Danny Mayfield at http://www.santafecountynm.gov/county_commissioners/daniel_mayfield/aamodt_outreach
- Stoll Water Ombudsman at <http://uttoncenter.unm.edu/ombudsman/npt.php>
- Office of the State Engineer at www.ose.state.nm.us/legal_ose_aamodt_info.html

For those that did not receive a packet in the mail from the Court, the complete packets including the cover letter, the Order to Show Cause, the Acceptance form, and the Objection form are available at the Santa Fe County Pojoaque Satellite Office (505-455-2775) near the grocery at 17839 US 84/285, Santa Fe, NM 87506. The Satellite Office is open on Tuesdays, Wednesdays and Thursdays from 12-6 pm. The satellite office also has review-only copies of other important settlement documents (the 2010 Congressional Act, the 2012 Settlement Agreement, Santa Fe County 2012-53 Resolution, the proposed Interim Administrative Order, the proposed Partial Final Decree), which are available to be read by the community. These documents may also be reviewed at the Office of the State Engineer, Water Rights Division, 407 Galisteo, Bataan Memorial Building, Rm. 101, in Santa Fe

Will the Court finish the adjudication of non-Pueblo water rights by September 15, 2017?

Yes.

What happens if a well – like a pre-Basin well – is missed either by the OSE or the Court?

It must be promptly brought to the attention of the Court and the Office of the State Engineer. Otherwise the adjudication will not recognize the water right in that well.

If in the future, the property owner wishes to connect to the regional water system, the water right will not be recognized, and the owner will have to pay a water acquisition fee.



DOMESTIC WELLS

Do existing domestic well users have to connect to the County Water Utility?

No. A domestic water right owner who accepts the Settlement Agreement (Option 1) must make one of the following three choices for their well election:

Election A: To connect to the County Water Utility when service is available.

Election B: To use the well without any requirement to connect and with a possible reduction in water usage.

Election C: To use the well with a lesser possible reduction in water use and to obligate whoever owns the property next to connect.

For more information see the Domestic Well Use table and the Settlement Agreement.

If the Court approves the Settlement, any domestic well owner who has not make an election, will deemed to have made Election A.

Each of the three elections is described in greater detail below.

Election A: You can connect to the water utility when the County Utility gives notice that service is available. You keep using the well with its full water usage until then.

The \$4 million Connection Fund will cover the full cost of connecting to the County Utility, unless an existing Santa Fe County land-development condition requires connection to the County Utility.

Once the Connection Fund is expended, domestic well owners who elect to sign up for the County Utility under Election A will not be required to connect at their own expense.

An existing domestic well owner who did not qualify for the Connection Fund may choose to connect to the County Utility and will likely be responsible for the County Utility connection fee.

Once connected to the County Utility, the property owner must transfer the full domestic well right to the Utility and stop using the well for domestic purposes. County Utility customers have no water usage limit; however, based on the current block water rate structure, the more water is used, the more it costs.

Election B: You may use the well indefinitely with a potential reduction in your water usage (see the Domestic Well Use table).

You may choose to connect to the County Utility later, but will have to pay all connection costs and transfer your domestic well water right to the Utility.

If your well fails, you may replace your well and pay a \$1,000 fee to the County Utility. The fee provides money for the Connection Fund.

Election C: You may use the well while you own the land with a potential smaller reduction in water usage (see the Domestic Well Use table) AND obligate the next owner (whether through inheritance or sale) to connect to the County Utility when it gives notice that service is available.

The new owner will pay all connection costs and transfer water rights to the Utility.

You may choose to connect to the County Utility later, but will have to pay all connection costs as well as transfer water rights to the Utility.

If your well fails, you may replace your well and pay a \$1,000 fee to the County Utility. The fee provides money for the Connection Fund.

If a domestic water right owner accepts the Settlement Agreement, can water be used outside?

Yes. Anyone who has a domestic well water right and accepts the Settlement Agreement may use water outside, regardless of the well election chosen. The amount depends on the election and category of well.

Will wells be metered?

Yes. All non-Pueblo and Pueblo wells will be metered and the readings will be reported to the State Engineer Water Master on a regular basis.

Are there specifications for the meter type?

This question will be answered in the Water Master Rules & Regulations.

How much do meters cost?

Prices of meters can be obtained from local outlets. Today they cost around \$250 and installation is about another \$300.

Who pays for the meter and its installation?

The well owner is responsible for the purchase and installation of the meter(s).

How often will meter reports have to be filed?

This question will be answered in the Water Master Rules and Regulations which are being drafted at this time. The OSE currently requires water use reports from shared domestic wells to be filed quarterly.

How will reporting be accomplished?

The State Engineer is considering a web-based reporting system. Reports may also be submitted through email or the mail.

Do well owners have to plug their wells when they become a County Utility customer?

The Settlement Agreement does not call for plugging wells. However, state agencies may have such a requirement to protect groundwater from pollution. Irrigation rights in a well may be used for irrigation.

Once the Court enters the proposed Pueblos' Partial Final Decree, can new wells be drilled in the Basin?

The Settlement Agreement provides that the waters of the Pojoaque Basin are fully appropriated and, if the Settlement is adopted, no new appropriations of water – including for domestic wells – will be allowed.

With appropriate OSE permits, new wells can be drilled in areas not served by the County Utility.

To use the new well, you will have to transfer an existing water right into the new well, and

connect to the County Utility at your expense, if service becomes available in your area.

What happens if an existing well fails?

Under the Settlement Agreement, the State Engineer can still issue domestic well replacement permits.

A well owner who has not elected to connect to the County Utility must pay a replacement well fee of \$1,000 to the County Utility for the Connection Fund.

How will new homes and businesses get water?

If the land is within the water service area and water service is available, a new home or business is required to connect to the County Utility.

If the home is built before water service is available, the owner may drill a well, acquire the necessary water right and transfer it into the well.

Once water service is available, the owner will be required to connect to the County Utility, either transfer water rights or pay a water right acquisition fee to the County Utility and pay for all necessary County Utility connection fees.



REGIONAL WATER SYSTEM

Why is a regional water system included in the Settlement?

The regional water system is included in the Settlement Agreement in exchange for the Pueblos agreeing to reduce their claims to water within the Basin and to limit their priority calls against existing non-Pueblo water rights.

By bringing up to 4,000 afy (Pueblos 2500 afy + County Water System 1500 afy) into the Basin, the regional water system has made Settlement possible by making the “water pie” bigger.

Without this additional water, dividing up the available local supplies would be very difficult and the Pueblos would not limit their in-Basin water rights claims.

What is the purpose of the regional water system?

The purpose of the regional water system is to provide a clean, reliable and affordable supply to all residents within the service area.

What is the difference between the regional water system and the County Water Utility?

The regional water system includes the surface water diversion facilities, the County Distribution System and the Pueblo Water Facilities, and the treatment, transmission, storage and distribution facilities and well fields.

The County Water Utility is the water utility organized by the County to provide water received from the Regional System to customers on non-Pueblo land in the Pojoaque Basin.

Why do some community members support the regional water system?

Members of the community may support the regional water system because:

- The regional water system will provide a safe and reliable water supply for Pueblos and non-Pueblo community members.

- Water imported into the Basin for the regional water system will increase the amount of water available for use in the Pojoaque Valley by all water users.
- The water system will eliminate the need for well maintenance or drilling of new wells.
- The water system will provide more water during times of shortage.
- The water system will provide water for fire suppression.

How much is it going to cost to build the regional water system?

The total cost to build the full 4,000 acre-foot system, including the cost of connecting all customers over the life of the project, is expected to be over \$177.3 million (in 2006 dollars).

Excluding connection costs, the cost to build out the system is expected to be over \$159 million (in 2006 dollars).

A summary and allocation of costs is provided in the table below.

Pojoaque Basin Regional Water System Costs (in 2006 Dollars)	U.S. Government	State of New Mexico	Santa Fe County/ Non-Pueblo Parties	Total
1. Construction of Water System	\$106.4 M	\$45.5 M	\$7.4 M	\$159.3 M
2. Connection Fund		\$4 M		\$4 M
3. Additional County Connections			\$14 M	\$14 M
Total Project Cost	\$106.4 M	\$49.5 M	\$21.4 M	\$177.3 M

Where will the money come from?

The Federal share will come from appropriations by Congress, within the U.S. Bureau of Reclamation’s budget. Also, if construction is delayed, beginning in 2020, the federal Reclamation Settlement Fund will make up to \$250 million available for the Aamodt and Taos Settlements.

The State’s share will come from State appropriations. The State has already established and appropriated funds for the Indian Water Rights Settlement Fund which are available for the Navajo, Aamodt and Taos Settlements.

Under the Settlement, the County has already received \$5.4 million from the United States in payment for water rights previously acquired by the County. The County’s remaining cost-share for construction for the system will come from County bonding capacity or gross receipts tax revenue. Customers not eligible for a free connection will pay for their own connection costs. For customers who are eligible, a connection fund of \$4 million will be available.

How will the regional water system be managed and by whom?

The regional water system will be operated and managed by the County and the four Pueblos pursuant to a Joint Powers Agreement and Operating Agreement. The proposed draft Joint

Powers Agreement anticipates a board consisting of representatives of the Pueblos and the County. The County Water Utility has been identified as the likely operator of the regional water system.

When will the regional water system be built?

The system must be substantially completed by 2024.

Who will build the regional water system?

The U.S. Bureau of Reclamation will contract for and oversee the construction of the regional water system.

Where will the regional water system be built?

This website has the latest Google Earth maps and phasing of the project.

<https://sites.google.com/site/pbwatereis/home>

Who will own the regional water system?

The proposed Regional Water Authority will own all of the common system, including easements and rights of way.

Each Pueblo will own that portion of the system located within that Pueblo's lands that serves only that Pueblo.

The County will own the portion of the system that serves water customers on non-Pueblo land.



COUNTY UTILITY OPERATIONS

Who will own the water rights from Top of the World and domestic water rights that are turned over to the County?

The County has sold 1142 a/f/y of the Top of the World water rights to the U.S. The County will own the water rights it acquires for the Settlement including its remaining Top of the World water rights and the domestic well rights from individual users connecting to the system.

What happens to the water rights when well owners connect to the County Water Utility?

Well owners choosing to connect to the County Utility are required to transfer their domestic water rights as a condition of service. Those water rights help the County Utility provide the customers a reliable water supply and will mostly be diverted from the Rio Grande via the regional water system. Future customers without a water right will be charged a water right acquisition fee.

How much is a water rights acquisition fee?

The water rights acquisition fee will be based on the Utility's actual water right purchase and transaction costs.

How much will it cost to connect?

If you are an existing owner of a domestic water right who elects to connect under Election A, are within the County service area, and are given notice of service by the County Water Utility, you will have no connection costs.

- These connection costs will be paid from the \$4 million fund provided by the State.
- If the \$4 million fund runs out of money before all those choosing Election A have been connected, the County will make additional funding available for connections that the

County Utility is willing to serve.

- If no additional funding is available, you will not have to connect.

People who select Election B or C will not have access to the Connection Fund. If these people decide to connect to the system later, they will have to pay the connection fee at that time.

How much per foot will it cost to run the line to the house?

If you do not select Election A, but decide to connect later, this cost will vary depending upon site-specific issues. Generally, the cost is expected to range from \$5,000 - \$10,000 per connection.

Will the water line be run to the house or to the property line?

The water line will be run to the house. The installation will include a water line to the house, meter box and a meter.

How can this be allowed under the anti-donation clause of the NM Constitution?

The Settlement Agreement does not violate the anti-donation clause of the New Mexico Constitution. Under the terms of the Aamodt Settlement Agreement, transferring domestic water rights to the County and becoming County Utility customers, means that those who connect do not have to pay for the connection cost. Because of the mutual consideration provided, there is no anti-donation clause issue.

How much will it cost per month for basic water service?

The monthly cost to the County Utility customer will be in line with the cost to all other County Water Utility customers. The current cost to a County Utility customer that uses 5,000 gallons per month is around \$45.00 plus tax.

If more rights-of-way are required for the system in the future, will the parties grant them at no cost?

No. The Pueblos have agreed to grant easements for the system being designed and built by the Bureau of Reclamation as required by the Settlement Agreement. If the County later decides to expand the County Water Utility, it may need to purchase additional easements.



WATER MANAGEMENT

Who will be the Water Master for diversion and use of water within the Basin?

The State Engineer will be the Water Master and will administer all water uses in the Pojoaque Basin.

Will there be assessments to pay for the Water Master?

By statute assessments can be made, but the source of funds for paying the Water Master has not yet been decided.

Will there be rules about how the Basin is administered?

Yes. The State Engineer and the Pueblos are drafting the Water Master Rules & Regulations. When the draft is completed, the public will have an opportunity to comment on the rules before they are finalized. It is anticipated that these rules will be ready for review in 2014.

How will the Settlement be enforced?

The Water Master will implement the Rules and Regulations and administer the non-Pueblo

water rights. The Water Master will also administer the Pueblos' water rights in accordance with the Settlement Agreement and the Rules and Regulations. Administrative disputes will be resolved through State Engineer processes. The federal District Court will retain jurisdiction to interpret and enforce the terms, provisions, and conditions of the Settlement Agreement and the Final Decree.

Where will the information about water use come from?

All groundwater uses, by both the Pueblos and non-Pueblo parties will be metered, reported and monitored.

Metering of any surface water use will be made at the point of diversion on the stream.

If a Pueblo over-diverts, who is responsible for managing & enforcing limits today?

Today, the Pueblos are responsible for managing and enforcing limits to their water use.

Who will be responsible for managing & enforcing limits if the Settlement Agreement is adopted?

If the Settlement Agreement is adopted and the Final Decree is entered, all water users including the Pueblos will be required to report their usage on a regular basis to the Water Master.

The State Engineer, as Water Master, will be responsible for administering any over-diversions by any water user, including the Pueblos. The Water Master Rules & Regulations will address the specifics of this administration.

What happens if a non-Pueblo party's groundwater rights are harmed by a Pueblo's use of its Future Use Right?

Under the Settlement Agreement, there is an "Impairment Fund" to assist non-Pueblo water right owners to obtain an alternative water supply if their groundwater rights are impaired by this use.

Each Pueblo will offset any interference to surface water users caused by the exercise of its Future Use rights.

Can a domestic water right be transferred to a commercial use?

No.

Currently, Nambé Dam waters are allocated proportionally to acreage under irrigation.

Does this formula remain under the Settlement?

Water stored in the Nambé Dam is currently allocated proportionally to acreage under a ditch (not acreage actually irrigated). The formula in the Settlement Agreement to allocate the uses acreage of adjudicated water rights based on surface water irrigation. Currently, the Pojoaque Valley Irrigation District (PVID) for non-Indian irrigators has 67% of the storage, and the Pueblos of Nambé, Pojoaque, and San Ildefonso together have 33%. Under the Settlement Agreement, the PVID share changes to 60% and the Pueblos share goes to 40%.

Under the Settlement, is irrigation water distributed by priority dates?

Yes. However, the Pueblos agree to not make a priority call in some instances. During shortages, surface water is distributed:

- First, to the Pueblos' First Priority Existing Rights (1391 a/f/y);
- Second, to all non-Pueblo surface water rights that have not lost Section 4 protection;
- Third, to the Pueblos' Future Uses (remaining of First Priority rights of 2269 a/f/y); and

- Fourth, to the non-Pueblos who do not have Section 4 Protection."

How will the Settlement affect my water rights if I put them in a water bank?

Water banking is not covered by the Settlement Agreement. Non-Pueblo parties may still decide to put their water rights in a water bank as allowed under state law. Under state law, the rights are protected from forfeiture for non-use if the water is used by the bank.

However, under the Settlement Agreement, if the rights in the water bank remain unused for five years, they will lose priority protection from the Pueblos' Future Use rights. The Water Master will keep track on an annual basis of which fields are irrigated by non-Pueblo parties and in his annual report indicate which irrigation water rights are at risk of losing protection from a priority call.

How will the Settlement affect the forfeiture or abandonment of non-Pueblo water rights?

The Pueblos have agreed to not claim forfeiture or abandonment of non-Pueblo water rights based on past non-use.

The Settlement will have no effect on future non-use. All non-Pueblo water rights are subject to a challenge from anyone in the Valley under state law if they are not used for an extended period.

Aamodt Settlement Choices to be Made

PUEBLOS' WATER RIGHTS INTER SE PROCEEDING Documents

- Court's Order to Show Cause
- Acceptance of Settlement
- Objection to Settlement
- Settlement Agreement
- Proposed Pueblos' Partial Final Judgment and Decree

1. Review each of the documents listed above.
2. Decide:

<p>To Accept the Settlement</p> <p>a. File Acceptance and/or well election with the court now.</p> <p>b. Wait to file until Court sets deadline for Acceptances, then file well election</p> <p>c. If own only surface rights, file Acceptance with no well election.</p>	OR	<p>To Object to Settlement</p> <p>a. File Objection by April 7, 2014</p> <p>b. Receive further instructions from the court.</p> <p>c. Prepare to defend Objection in court.</p>
--	----	--

Well Elections select one of the following		
<p>1</p> <p>Connect to County Water System When Service is available</p>	<p>2</p> <p>Keep well Indefinitely</p>	<p>3</p> <p>Keep well until property sold or inherited. Next owner must connect</p>

* a/f/y = quantity of water measured by amount of water needed to cover:

1 acre (a) 1 foot deep (f) each in 1 year (y).

3.0 acre ft = 977,553 gallons

1.0 acre ft = 325,851 gallons

0.7 acre ft = 228,895.7 gallons

0.5 acre foot = 162,925.5 gallons

Summary of Aamodt Settlement Re: Domestic Wells - Section 3.1.7

Prepared by Larry White, Esq.

- I. Wells - 4 basic categories of wells for domestic uses
 - A. Pre-basin Wells (prior to November 29, 1956; may have more than domestic uses)
 - B. 72-12-1 Wells - permitted prior to “moratorium” on January 13, 1983
 - C. Post Moratorium Wells - Signed Post 1982 Well Agreement (approved Oct. 4, 1999)
 - D. Post Moratorium Wells - Not a party to the Post 1982 Well Agreement - limited to “in-house” use only

- II. Settlement does not require you to connect to CWU, but to be protected from priority calls or priority administration, you must elect one of the following Choices:
 - A. Connect to the County Water Utility when available
 - B. Keep well in perpetuity and reduce use
 - C. Reduce use and agree that upon transfer, successor will connect

- III. Uses allowed for 4 categories under the 3 Choices
 - A. Agree to connect when available - FOR all categories – but not less than .5afy
 - 1. Pre-Basin Wells - Historic HBU
 - 2. 72-12-1 Wells - Lesser of HBU or 3afy
 - 3. Either Post Moratorium Well category - Lesser of .7 or HBU; Indoor/outdoor
 - B. Keep well in perpetuity
 - 1. Pre-basin and 72-12-1 Wells – HBU with 15% reduction, but not less than .5afy
 - 2. Post Moratorium Wells - signed Post 1982 Well Agreement - Lesser of .7afy or HBU; use over .5 afy subject to priority call
 - 3. Post Moratorium Wells – Unrestricted indoor use only OR up to .3afy indoor/outdoor
 - C. Agree that upon transfer, successor will connect
 - 1. Pre-basin and 72-12-1 Wells – HBU with 10% reduction, but not less than .5afy
 - 2. Either post moratorium, same as III (B) (2 & 3) above

- IV. Table Summary (HBU = Historic Beneficial Use; afy = acre feet/year)

Category of Well	Agree to Connect	Keep well indefinitely	Connection upon transfer
Pre-basin well (limited by adjudicated amount)	HBU, but not less than .5afy	HBU minus 15%, but not less than .5afy	HBU minus 10%, but not less than .5afy
72-12-1 Well	Lesser of HBU or 3afy, but not less than .5afy	Lesser of HBU or 3afy, minus 15%, but not less than .5afy	Lesser of HBU or 3afy, Minus 10%, But not less than .5afy
Post Moratorium well, Signed Post 1982 Well Agreement	Lesser of .7afy or HBU, not less than .5; indoor/outdoor	Lesser of .7afy or HBU; Use over .5afy subject to priority call; in/out	Lesser of .7afy or HBU; Use over .5afy subject to priority call; in/out
Post Moratorium well, did not sign Post 1982 Well Agreement	Lesser of .7afy or HBU, but not less than .5; indoor/outdoor	Unrestricted indoor only or up to .3afy; indoor/outdoor	Unrestricted indoor or up to .3afy indoor/outdoor

Aamodt Settlement Considerations for Non-Pueblo Parties

Benefits to the Pojoaque Basin

- The Settlement will end the litigation of the Pueblos' water rights and the Pueblos will not seek an appeal.
- The uncertainty about Pueblo water rights will end.
- The Pueblo water uses will be metered and reported.
- Expanded water supply through imported water.

Benefits to non-Pueblo parties who join the Settlement

- Court will dismiss 535 existing *inter se* challenges to non-Pueblo rights by the Pueblos.
- The Pueblos' rights given first priority status are reduced from 3435.68 a/f/y to 1391 a/f/y, which is the quantity of their Existing Uses.
- The Pueblos do not give up the first priority status to the remaining 2269 a/f/y for their Future Uses, but agree not to make (forbear) priority calls for that amount against non-Pueblo rights entitled to Section 4 Protection.
- State Engineer will be the Water Master on Non-Pueblo lands and will administer Pueblo water rights in accordance with the Settlement Agreement. The Pueblos will administer their rights on Pueblo lands.
- Non-Pueblo Settling Parties can participate in the making of the Water Master Rules.
- Pueblos will get 2500 a/f/y from outside of the Basin for economic development, acquired water and the supplemental water for Pojoaque once the regional water system is available. One purpose of the Settlement is to protect existing Basin water rights, bring more water to the Basin in the form of recharge and allow the Pueblos to provide for their economic futures.
- Domestic and commercial rights of non-Pueblo Settling Parties are protected from Pueblo priority calls.
- Pueblos will give Future Use priority call protection to surface water uses of non-Pueblo Settling Parties. However, this protection is lost after 5 consecutive years of non-use after the Court adopts the Settlement Agreement. After 5 years of non-use, priority call protection ends. Non-Pueblo settling parties may continue to use their domestic wells unless they connect to the water system.
- Non-Pueblo parties can move surface rights into the wells. These rights will carry the same priority that they had as surface water rights but will not be entitled to the same priority protection as surface irrigation rights.
- Non-Pueblo settling well users who agree to hook up as soon as the system is available have access to the Water Utility Connection Fund.
- Non-Pueblo Settling Parties whose water rights are impaired by Pueblo activities will have access to alternative water supply through the Impairment Fund.

The Settlement Agreement is intended to reduce risk for everyone; however, there are certain challenges and concerns which remain.

- Some risks that existed before the Settlement Agreement remain.
 - Non-Pueblo water right owners can still make a priority call on any other non-Pueblo water right.
 - Anyone can make abandonment or forfeiture challenges to non-Pueblo water rights.

- Some considerations associated with the Settlement Agreement:
 - Tying into the system results in a monthly fee from the Regional Water Utility.
 - County’s cost share will come from local funds such as those derived from property and gross receipt taxes.
 - Like the water of many other public water systems, regional water system water may have chemical, pharmaceutical and naturally occurring contaminants within allowable state and federal limits.
 - Groundwater in domestic wells may have naturally occurring animal and human waste contaminants.
 - Non-Pueblo parties who do not elect to tie into the County Water Utility when it is available will not have access to the Water Utility Connection Fund.
 - Non-Pueblo parties who do not join the Settlement:
 - have no access to the Impairment Fund, and,
 - may have groundwater rights subject to the Pueblos First Priority 3660 a/f/y right in a priority call.
 - Priority Calls
 - Pueblos can make a priority call against all surface water users to the degree that the Pueblos’ 1391 a/f/y first priority rights are not met. Settling domestic well owners who stay within their specified limits are exempt from ANY Pueblo priority call.
 - Non-Pueblo surface water users who join the Settlement get priority protection from Pueblo Future Use priority calls. However, that protection will be lost after 5 consecutive years of non-use.
 - No more new water rights, but old uses can be transferred around the Basin.
 - Some people believe and have competing information that:
 - The water system is not feasible, will cost too much, and will not accomplish the goals of the Settlement.
 - The United States will not be able to find out-of-basin water rights for the Water System.

RISKS TO NON-PUEBLO PARTIES IF NO SETTLEMENT

- Unknown how long the litigation will last, the cost and what the Pueblos will get in the end.
- Unknown how Pueblo Future Use claims will be resolved though the Appellate Courts.
- No limit to Pueblos’ right to call priorities or pursue *inter se* claims.
- Unknown what 10th Circuit Court of Appeals & US Supreme Court will do.
- No public notice as to how much water the Pueblos are using.
- No imported water supply for Pueblos or non-Pueblo parties.
- No regional water system.

Aamodt Case Timeline

Date	Description										
1966	State's Hydrographic Survey of non-Indian claims filed. 04-20: Complaint filed and case opened.										
1967	The United States joins the case.										
1967-69	Most surface water rights of non-Pueblos are adjudicated except for the element of priority.										
1971	Court does not let Pueblos of Santo Domingo and San Felipe join the case.										
1974 -78	Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque join the case.										
1976	Appeals Court ruling that Pueblo water rights are not governed by state law and that Pueblos may have their own lawyers.										
1976-83	Parties work on claim for Winters water rights measured by PIA on Pueblo grant lands. Court rejects this claim.										
1982-84	Court adds all water users and community ditch associations to the case.										
1983	US/Pueblos file 535 <i>inter se</i> challenges and seek to have all non-Pueblo post-1924 wells declared invalid. Court delays Pueblo challenges until non-Pueblo subfiles are done. 01-13: All future domestic wells are limited to indoor use only.										
1985	09-18: Court rules on Spanish & Mexican Law and adopts HIA instead of the Winters federally reserved rights practicably irrigable acreage (PIA) as the measure on Pueblos' grant lands.										
1986	01-24: US Forest Service water rights except for firefighting and road building decided. Other federal agencies recognized as not having water rights in the NPT system.										
1987	02-26: Court orders non-Pueblo priorities to be determined on a tract-by-tract basis and that non-Pueblos are not entitled to first priority. 04-24 & 09-09: Court quantifies Pueblos' Historically irrigated acres (HIA) on grant lands.										
	<table> <tr> <td>Tesuque</td> <td>241.500 ac</td> </tr> <tr> <td>Nambe</td> <td>427.261 ac</td> </tr> <tr> <td>Pojoaque</td> <td>59.794 ac</td> </tr> <tr> <td><u>San Ildefonso</u></td> <td><u>364.472 ac</u></td> </tr> <tr> <td>Total:</td> <td>1,094.027 ac</td> </tr> </table>	Tesuque	241.500 ac	Nambe	427.261 ac	Pojoaque	59.794 ac	<u>San Ildefonso</u>	<u>364.472 ac</u>	Total:	1,094.027 ac
Tesuque	241.500 ac										
Nambe	427.261 ac										
Pojoaque	59.794 ac										
<u>San Ildefonso</u>	<u>364.472 ac</u>										
Total:	1,094.027 ac										
1987-2000	Parties work on Pueblos' water rights under the Pueblos Lands Act of 1924 a/k/a Pueblos' replacement water rights.										

- 1990s** Parties work on Pueblo domestic and livestock quantification.
- 1990** Court defines quantification methods and measures and decides that they are the same for Pueblos and non-Pueblos. Non-Pueblo issues are addressed.
- 1990-93** Parties work on Pueblos' reserved or Winters' water rights.
12/29/93: Court rejects claims for Winters rights with first priority on Pueblo grant lands.
- 1991** **07/11:** Special Master reports on Forest Service water rights for fire fighting and road construction.
- 1993-99** Court delays work on non-Pueblo water rights.
- 1994** **07/22:** Court limits 72-12-1 wells to historic beneficial use or 3 afy, whichever is less.
- 1999** **10/ 04:** Domestic well agreement for post-1982 well quantity limit of .7 afa, outside watering, metering and appointment of water master to manage wells. 1999 agreement resolves non-Pueblo challenges to Court's 1983 Order limiting water use to indoors. About 1/3 of post-1982 well owners sign on. Adjudication of settling claimants' wells begins.
- 2000** Court orders administration of domestic wells which signed onto the 1999 agreement.
- 2000-6** Settlement talks conducted.
- 2007** **12/18:** Court approves procedures for consideration of Settlement Agreement (if Congress approves) and entry of Final Decree.
06/14: Court orders adjudication of remaining wells.
- 2007-present** Parties work on adjudication of remaining wells.
- 2006** Settlement Agreement sent to Congress.
- 2010** The Claims Settlement Act of 2010 containing Title VI - Aamodt Litigation Act passed and signed into law.
- 2010-present** Parties continue work on adjudicating surface right priorities for non-Pueblo ditches and domestic water rights.
- 2013** Court enters Order to Show Cause.
- 2014** Order to Show Cause packet mailed to non-Pueblo parties.
02/18 – 04-05 Public meetings and office hours held.
04/07 Filing deadline for Objections to Settlement Agreement and proposed Pueblos' Partial Final Judgment and Decree.

Aamodt Settlement And The Pueblo Communities

What are the Pueblos giving up?

1. Pueblo claims to Practicably Irrigable Acreage (PIA) 12,083 acres , which was reduced in a 1982 Special Master Report to 9,000 acres with First Priority. The Court rejected the idea of PIA for Pueblos. All rulings relating to these determinations could be appealed.
2. The right to appeal the District Court's decisions to the 10th Circuit and ultimately to the United States Supreme Court.
3. The right to pursue the 535 *inter se* challenges to non-Pueblo water rights first filed in 1982.
4. The right to make a First Priority call for about two thirds of their water rights entitled to first priority. The terms used to describe this are "priority protection." Except for Existing Uses of 1391a/f/y, they will not make a priority call against a non-Pueblo's surface water rights, IF that non-Pueblo continues to exercise the water right. This is called "Section 4 Protection" under the Settlement Agreement.

Non-Pueblo "Section 4 Protection" against priority enforcement of the Pueblos' 2269 a/f/y first priority Future Use Rights effectively gives all the acequias Second Priority status in times of shortage.

If a surface water right is not exercised for a period of five consecutive years, it loses priority protection and the Pueblos can make priority call against the water. The State Engineer Water Master will keep track of non-Pueblo water use and non-use.

5. The Pueblos gave up their original position of having all domestic wells on the regional water system. Now domestic wells can enjoy protection from a priority call if they agree to certain use limits and they can choose to not hook up to the system. See Ombudsman Handout.

What are the Pueblos gaining?

1. Surface Water
 - a. More stable access to surface water for irrigation and cultural purposes.
 - b. 2500 a/f/y imported water.
2. Protection of Basin Water Resources
 - a. Controlled depletions to the water table from domestic wells.
 - b. Strengthen stream flows and riparian habitat.
3. End to litigation of Pueblos' water rights claims.

Aamodt Settlement: Pueblos' Water Rights

The Pueblos were the first people to arrive in the Nambe - Pojoaque - Tesuque area. The Spanish and other non-Indian peoples began arriving in the 1500s. Throughout the West, water right priority is based upon when people put water to beneficial use.

Pueblos' water rights are determined using federal law. Non-Indian water rights are determined under New Mexico state law. These two legal systems have some similar rules and some very different rules.

Everyone's water rights are measured in acre-feet per year. Consumptive use (CU) is the amount of water removed from the system by human, plant, or animal consumption.

The Aamodt litigation has been ongoing for 48 years.

1. Under the Settlement Agreement

Rights to Natural Flows	Rights to Imported Water
Existing Uses 1391 a/f/y CU First Priority	Acquired Water 1500 a/f/y CU No Priority
Future Uses 2269 a/f/y CU First Priority deferred to third place Thus Pueblos share shortages with Non-Pueblos None for Pojoaque	Supplemental Water 475 a/f/y CU No Priority For Pojoaque only From well until hookup available
	Economic Development Water 525 a/f/y CU No Priority
Total in basin water right 3660 a/f/y CU	Total imported (out of basin) water right 2500 a/f/y CU
Water rights acquired through state law These are not subject to forfeiture or abandonment for non-use, but are subject to priority administration with state law priority.	

(Over)

2. **Without the Settlement Agreement and based on non-final court rulings, the Pueblos' water rights would be at least the following: (Pueblo claims and U.S. claims on behalf of the Pueblos are much larger and litigation of all claims was not concluded in the District Court nor had the basis for these rights been appealed at the time of settlement talks.)**

<p>a. Historically Irrigated Acres Consumptive Use (CU) 1094.0 acres (x 1.84 a/f/a/y) 2012.96 a/f/y First Priority</p> <p>Federal Court ruling</p>	<p>b. Reserved or Winters Acres San Ildefonso 1939 Priority 4.82 a/f/y Federal Court Adopted Agreement Nambe 1902 priority Federal Court Ruling Quantity?</p>
<p>c. Replacement Acres (CU) (based on 1924 Pueblo Lands Act) 731.0 acres B(x 1.84 a/f/a/y) 1345.0 a/f/y</p> <p>First Priority Special Master Report</p>	<p>d. Domestic Uses (CU) 72.9 a/f/y First Priority Highest pop 1846 – 1924 (x .7 a/f/y)</p> <p>Federal Court ruling on formula + best estimates by parties 1-31-2001</p>
<p>e. Livestock Uses quantity a/f/y</p>	<p>Total 3435.68 a/f/a/y + livestock</p>
<p>f. Future Use Claims?</p>	

PRESENT CHARACTERISTICS OF THE PUEBLO WATER RIGHTS

- First Priority for categories a, c, d (all non-Pueblo rights come after Pueblo rights in priority).
- They can seek a priority call against everyone else, including domestic well owners, if their first priority water rights are not met.
- Surface and groundwater are interrelated and Pueblo water rights can be satisfied by either.
- No metering or reporting requirements.
- No limits by how or whether Pueblo water rights were used in the past.
- Pueblo rights are not subject to abandonment or forfeiture.
- Pueblos can make *inter se* claims against non-Pueblos, including domestic wells.
- Pueblos have quantified first priority rights to 2012.96 a/f/y, an approximate 1422.72 a/f/y under Replacement rights (c), and Domestic Uses (d) under court rulings and an unknown amount for Livestock Uses (e).
- Pueblos can appeal to the 10th Circuit Court of Appeals and the United States Supreme Court.