



State of New Mexico Tribal Collaboration Act 2023 Annual Report



Rio Jemez from Pueblo of Santa Ana

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I. EXECUTIVE SUMMARY

New Mexico is currently experiencing the most intense period of drought since the early 2000s. The challenges of New Mexico's scarce water supplies are being exacerbated by changing climate. Climate change will impact New Mexico's water supplies through more frequent and longer droughts, altered patterns of precipitation and snowpack runoff, increased evaporation, and more frequent and more damaging wildfires. These impacts will threaten the communities, irrigators, and businesses that depend on New Mexico's water, and will increase stresses on the state's diverse ecosystems.

The OSE has created a new dedicated Bureau for Pueblos, Tribes, and Nations (Bureau) to focus full time on ongoing water right settlement negotiations and implementation to leverage federal funds for water supply projects and regional solutions. The newly formed Bureau negotiates with the 24 federally recognized tribal communities of New Mexico (including the Ute Mountain Tribe) to reach settlements, which not only quantify tribal water rights but also determine future administrative procedures and, in some cases, the construction, operation, and maintenance of water projects. The Bureau's work promotes water security for the Pueblos, Tribes, and Nations of New Mexico while also securing judicial decrees and legislative funding at both federal and state level.

Paramount to managing New Mexico's water is identifying and understanding the water rights and usage of the State's Pueblos, Tribes, and Nations. The Pueblos, Tribes, and Nations have a unique and independent status. Coordination, consultation and education among those sovereign governments, the state, federal entities, and the public is a key focus of the Office of the Office of the State Engineer (OSE) and the Interstate Stream Commission (ISC). The OSE is in the process of restructuring its staff resources to better communicate and coordinate issues that arise when a Pueblo, Tribe, or Nation has a stake in the outcome.

The Office of the State Engineer (OSE) is currently working with water managers and other stakeholders in key basins across the state to implement Active Water Resource Management to administer water rights to mitigate the effects of extreme drought and climate change. The OSE and ISC are also actively assisting water users to cope with emergency needs by helping secure access to additional water.

In Fiscal Year 2023 (FY 2023), the OSE processed approximately 99,944 water rights transactions. The majority of these included change of ownership forms, well plugging records, meter readings and over 2,386 domestic well applications. During FY 2023, 646 applications were filed for permits to change existing water rights. Approximately one-third of applications submitted to the Water Rights Division of the OSE each year are protested. These applications are then subject to the formal State Engineer administrative hearing process.

A key activity of the OSE is to obtain the judicial determination of existing water rights through water rights adjudication suits. This includes adjudication of the water rights of Pueblos, Tribes, and Nations and involves not only the State and other water rights claimants, but the federal government as the trustee for the Pueblos, Tribes, and Nations as well. The judicial adjudication process is required by state statute and guarantees due process for all affected water rights owners within a stream system. Typically, the first or technical phase of the adjudication process is the production of a hydrographic survey to determine the nature and extent of all water rights, including the location, quantity, and priority date within a stream system. The second, or

legal phase, starts with the filing of a lawsuit on behalf of the State of New Mexico that names as defendants all water right owners within the geographic scope of the suit (defined by boundaries of drainage and/or aquifer), and ends with a court judgement and decree that describes the element of each water right. Adjudication suits are filed on behalf of the State by attorneys within the OSE who are commissioned by the New Mexico Attorney General as Special Assistant Attorneys General. The adjudication process provides the water right owners with opportunities to challenge the determination of their own water right, and in the *inter se* stage, all other water rights in the adjudication. The State is currently conducting eleven open water rights adjudication suits throughout New Mexico.

Within the adjudication suits, the OSE participates in negotiations with the Pueblos, Tribes and Nations in lieu of litigation to resolve not only the water rights claims but associated issues that assist in administration of water for the future. Federal funding for the Pueblos, Tribes and Nations is often a key component that provides necessary infrastructure. In FY2023 the OSE successfully negotiated settlements on behalf of the State of New Mexico addressing the water rights claims of five Pueblos (Jemez, Zia, Laguna, Acoma, Zuni). Negotiations are nearly complete with Ohkay Owingeh and Navajo Nation's Rio San Jose claims, and the OSE is actively negotiating with the Pueblo of Santa Clara and the Ute Mountain Ute Tribe. The OSE is also preparing for an assessment of the water rights of the six Middle Rio Grande Pueblos (Cochiti, Kewa/Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta).

The OSE continues to leverage over \$2B in federal funding for regional rural water supply projects in the implementations of three federally authorized water rights settlements involving five Pueblos (Taos, Nambé, Pojoaque, Tesuque, San Ildefonso) and the Navajo Nation.

The ISC is a separate entity under state law, but organizationally is a program under the Office of the State Engineer. The State Engineer serves as the Secretary of the Interstate Stream Commission. The Legislature created the Interstate Stream Commission in 1935 and gave it broad powers to investigate, protect, conserve, and develop the State's water supplies. The ISC's duties include protecting New Mexico's right to water under eight interstate stream compacts and ensuring the State complies with each of those compacts, developing and promoting regional and statewide water planning, and implementing the Strategic Water Reserve.

Optimal management of New Mexico's water is dependent on good information and planning. Those needs have been highlighted both by the increasing demand placed on the limited resource by a growing population and by the added stress of a drought. OSE staff are developing more sophisticated tools for measuring and monitoring water resources. They have also been active in the development of regional water plans and in 2003 the ISC completed the first comprehensive statewide water plan. All 16 Regional Water Plans were updated in 2016 and 2017 and the State Water Plan was updated in December 2018. The determination and settlement of tribal water rights contributes to an even more comprehensive strategy to conserve water and creates opportunities to share water with the Pueblos, Tribes, and Nations in New Mexico. In 2023, the New Mexico legislature passed SB337, the Water Security Planning Act, which overhauled and updated the existing regional water planning statute in order to revitalize water planning in this era of tightening supplies. The ISC will be developing rules and guidelines to implement the statute. The statute provides for, among other things, the creation of an advisory council, established by ISC in consultation with IAD, to ensure that issues of tribal sovereignty, tribal water rights and the water needs of tribal communities are taken into account in the new water security planning program.

Under the direction of Governor Lujan Grisham, OSE and ISC have conducted significant planning efforts related to climate change impacts to water resources over the last two years. This effort involved extensive stakeholder activities and coordination with the Pueblos, Tribes, & Nations, including the formation of a Tribal Water Work Group, in coordination with IAD, to provide valuable input to the State's planning efforts. A driver for this effort was a "Leap Ahead" analysis commissioned by ISC and completed by a panel of New Mexico's leading climate and water resource scientists. This work, in combination with work provided by the U.S. Army Corps of Engineers (USACE) through a Planning Assistance to the States grant, evaluates what the anticipated changes to our climate will mean for the state's water resources, including a likely 25% decrease in surface water flows and aquifer recharge across the state. Given these anticipated changes, the plan evaluates the resiliency of different geographic areas and water use sectors across the state and provide recommendations to improve resilience.

A. Mission Statement

To actively protect and manage the water resources of New Mexico for beneficial uses by its people, in accordance with law.

- to investigate, measure and distribute water in the most efficient manner in accordance with state laws, court adjudications and State Engineer rules and regulations;
- to administer a water rights system that lawfully and effectively allocates and reallocates water through permits, licenses and the adjudications of the courts to meet the needs of New Mexico's growing population;
- to maximize use of New Mexico's renewable interstate stream apportionments to promote the sustainability of New Mexico's water supplies; and
- to plan for the future water needs of New Mexico's people and environment.



Santa Fe National Forrest

In carrying out the OSE/ISC mission, protection of waters and stream systems will take water quality issues into consideration.

Vision Statement – The Office of the State Engineer and the Interstate Stream Commission is the preeminent water management agency, which is trusted by the public to effectively and transparently manage, allocate and protect New Mexico's water resources.

Guiding Values – Accountability, Collaboration, Communication, Efficiency, Effectiveness, Fiscal Responsibility, Service and Quality.

B. Agency Overview

The State Engineer is statutorily charged with the general supervision of the state's waters and of the measurement, appropriation, and distribution thereof. The Office of the Territorial Irrigation Engineer was created in 1905, seven years before statehood, to assume responsibility over all surface water. In 1907, it was changed to the Office of the Territorial Engineer, and after statehood in 1912, it was renamed the Office of the State Engineer (OSE). The State Engineer is

appointed by the Governor and confirmed by the state Senate. The State Engineer's responsibilities were expanded in 1931 to include all groundwater within declared groundwater basins – which now comprise 100 percent of the state.

The State Engineer supervises the distribution of water in New Mexico. A permit issued by the State Engineer is required to make a new appropriation of water, or to change a point of diversion or place or purpose of use of an existing water right. The State Engineer evaluates applications for new appropriations to determine if there is unappropriated water available to satisfy the proposed appropriation. Applications for a change to an existing water right require the State Engineer to determine the nature and extent of the existing water right, and whether the granting of the application will cause detriment to an existing surface water right or impairment to existing groundwater rights, be contrary to the conservation of water within the state or be detrimental to the public welfare of the state. OSE staff measure and track water sources and resources, promote conservation of water, and perform the scientific, historical, and legal research needed to support the activities of the Office of the State Engineer. Additional agency duties include negotiating and implementing tribal water rights settlements, reviewing subdivision water supply plans submitted by counties, licensing water well drillers, and administering a statewide dam safety program. The State Engineer also produces hydrographic surveys to provide the data necessary for the determination of water rights in stream system adjudication suits conducted by OSE legal staff on behalf of the state.

Water management in New Mexico is guided by several prior appropriation principles codified in the New Mexico Constitution: (1) all un-appropriated water belongs to the public but is subject to appropriation for beneficial use by an individual or entity; (2) beneficial use is required to establish a water right and defines the nature and extent of the right with certain provisions, continuous beneficial use is required to maintain the right; and (3) in times of shortage, older water rights have priority over junior water rights. Stakeholders such as the Pueblos, Tribes, and Nations, typically have the most senior priority water rights.

Since 1907, a permit from the State Engineer has been required to appropriate surface water or make a change to a surface water right. State Engineer permits are also required to appropriate groundwater or make a change to groundwater rights throughout the state. Since September 2005, all underground water basins within the State of New Mexico have been declared by the State Engineer. How water rights are managed on the lands of the Pueblos, Tribes, and Nations vary and is a component of the settlement agreements entered into with the State during the adjudication process.

C. Office of the State Engineer Tribal Communication and Collaboration Policy (NMSA 1978, § 11-18-4.C (1))

Pursuant to Executive Order No. 2005-004, adopted by Governor Richardson on February 1, 2005, the Office of the State Engineer, and the Interstate Stream Commission adopted the OSE Tribal Communication and Collaboration Policy. In 2009, the Governor's Office established the "Protecting and Promoting New Mexico's Environment Group" composed of representatives from the New Mexico Energy, Minerals and Natural Resources Department, New Mexico Department of Game and Fish, New Mexico Office of State Engineer, New Mexico Environment Department, and New Mexico Department of Agriculture ("Agency" or "Agencies"). The Group was established to develop an overarching tribal communication and collaboration policy that:

- a. Promotes effective communication and collaboration between the state agency and New Mexico Indian nations, tribes and pueblos;

- b. Promotes positive Government-to-Government relations between the state and New Mexico Indian nations, tribes and pueblos;
- c. Promotes cultural competency in providing effective services to New Mexico Indian nations, tribes and pueblos; and
- d. Establishes a method for notifying state agency employees of the purpose and requirements of the tribal communication and collaboration policy.

The current policy builds upon the original policy adopted pursuant to the State Tribal Collaboration Act (STCA) on December 17, 2009.

II. GOALS ACHIEVED IN FY2023 AND PRIORITIES FOR FY 2024

The OSE established and met the following department-wide goals for interacting with Pueblos, Tribes, and Nations during Fiscal Year 2023:

- Continuing outreach to all 24 Tribes, Pueblos and Nations by the State Engineer, Tribal Liaison, and members of the agency through continued Government-to-Government communications.
- Continuing work on the adjudication of tribal water rights claims through a collaborative settlement process. Identifying and resolving the quantification of water rights of the Pueblos, Tribes and Nations is an ongoing work in progress and a priority for the agency. Specific milestones achieved included:
 - Completing negotiation of water rights settlement with Zuni Pueblo;
 - Advancing federal legislation through the Senate Indian Affairs Committee that would implement the settlements for Jemez and Zia and Laguna and Acoma Pueblos;
 - The appointment of federal assessment teams for the Six Middle Rio Grande Pueblos and the Ute Mountain Ute Tribe.
- Recruiting and retaining staff throughout the agency to assist in addressing Indian water rights and increase efforts to hire technical and administrative staff to work specifically on matters pertaining to Pueblos, Tribes, and Nations.
- Implementing settlement obligations including statutory amendments and seeking funding sources for non-tribal water users.

Significant State-Tribal Issues, Recommendations and Priorities for Fiscal Year 2024: For the upcoming fiscal year 2024, the OSE will continue its outreach identified above, as well as work to achieve the following:

- Update OSE Tribal Communication and Collaboration Policy.
- Create guiding policies for the Bureau for Pueblos, Tribes, and Nations consistent with the State Tribal Collaboration Act (STCA) and OSE Tribal Communications Policy.
- Finalize Ohkay Owingeh Rio Chama Settlement Agreements.

- Introduce federal legislation for Zuni and Ohkay Owingeh Water Rights Settlements.
- Complete negotiations with Navajo Nation for their water right claims in both the Rio San Jose Stream System and the Zuni River Stream System.
- Establish the Tribal Advisory Council with the Indian Affairs Department, as called for by 2023 Water Security Planning Act (SB337).
- Encourage collaboration across state agencies to utilize resources more efficiently.
- Develop budgetary framework to implement settlements and distribute state funding. Issues and concerns with water are always of paramount importance, as it pertains to Pueblos, Tribes, and Nations.

To achieve its outreach goals, the Office of the State Engineer has had meetings with many tribal stakeholders to discuss issues such as water transfer policy, administrative guidelines, Indian Water Rights Settlements, interactions with acequias and other non-tribal water uses, and other water and sovereignty concerns. Staff from various bureaus are engaged with proposing ideas and solutions to help the agency to navigate these sometimes-complicated issues. Collaboration within the agency includes the State Engineer directly, the Tribal Liaison, the General Counsel for OSE, OSE District Offices, the Interstate Stream Commission staff, the Hydrology Bureau staff, staff with the Administrative Litigation Unit, adjudication attorneys, and the newly formed Bureau for Pueblos, Tribes, and Nations staff.

The agency works hard to set the tone for cooperation and collaboration to preserve relations between the entities. The Office of the State Engineer staff is focusing on implementation of authorized settlements, continued negotiations with Pueblos, Tribes, and Nations that have yet to quantify their water rights reach settlement, water planning, and creating a foundation to ensure the success of the Bureau for Pueblos, Tribes, and Nations.

III. AGENCY EFFORTS TO IMPLEMENT POLICY (11-18-4.C (1)-(3))

Drawing upon the State Tribal Collaboration Act and OSE’s Tribal Communication and Collaboration Policy, OSE’s FY22 consultations and communications with the New Mexico Pueblos, Tribes, and Nations provided successful relationship building and extensive opportunity to collaborate with our tribal neighbors. Each of the 24 Pueblos, Tribes, and Nations have a unique relationship with the OSE and are in differing stages of settlement, resolution, administration, or implementation.

A. Status of Indian Water Rights Settlements

New Mexico has three Indian water rights settlements that have signed settlement agreements with federal approval and legislation, and are in different stages of implementation:

- the Navajo Nation settlement agreement in the San Juan Stream System adjudication in Northwest New Mexico;

- the settlement agreement with the four Pueblos of Nambé, Pojoaque, Tesuque, and San Ildefonso in the *Aamodt* adjudication; and
- the Taos Pueblo settlement agreement in the Rio Pueblo de Taos/Rio Hondo Abeyta Stream System adjudication (*Abeyta*).

Three Indian water rights settlement agreements have been signed at the local level and are pending Congressional approval and approval by the Secretary of the Interior:

- the Pueblos of Acoma and Laguna in the Rio San Jose Stream System adjudication (*Kerr-McGee* adjudication);
- the Pueblos of Jemez and Zia in the Rio Jemez Stream System adjudication (*Abousleman*); and
- the Zuni Tribe in the Zuni River Basin.
- Ohkay Owingeh has claims in the Rio Chama Stream System.

In addition, the State is in active negotiations with the following Pueblos, Tribes, and Nations to resolve their water rights claims:

- Navajo Nation has water rights claims being negotiated in both the Rio San Jose Stream System and the Zuni River Basin.
- For the upcoming fiscal year, the State plans to negotiate with Santa Clara Pueblo and Ohkay Owingeh regarding the Pueblos' respective water rights claims in the Santa Cruz/Truchas Stream Systems.

The following Pueblos and Tribe have been appointed a federal assessment team to determine the likelihood of the federal government appointing a negotiation team to proceed towards settlement of their water rights:

- The six Middle Rio Grande Pueblos – Pueblos of Sandia, Santa Ana, Isleta, Santo Domingo (Kewa), Cochiti, and San Felipe.
- Ute Mountain Ute Tribe in the San Juan River Steam System.



Ute Mountain Ute Reservation, New Mexico

1. FY2023 IMPLEMENTATION OF AUTHORIZED INDIAN WATER RIGHTS SETTLEMENTS

a. Implementation of the Navajo Nation Water Rights Settlement in the San Juan Stream System and the Status of the Navajo-Gallup Pipeline Project

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 Stream System 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 (also known as the Navajo-Gallup Water Supply Project, or “Project”) that includes a pipeline currently under construction by the Bureau of Reclamation (“Reclamation”). The project will provide a long-term, sustainable water supply of 22,650 acre-feet per year (“AFY”) to provide municipal and domestic water to 43 Navajo Chapters in northwestern New Mexico, the City of Gallup and the southwestern portion of the Jicarilla Apache Nation.

(1) Key Benchmarks for Implementation of the Navajo Settlement

Federal Legislation. On March 30, 2009, President Obama signed federal legislation that authorizes the settlement and authorizing the appropriation of federal funds to plan, design, and authorizes 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”). This Act also established the “Reclamation Water Settlements Fund,” to implement Indian water rights settlement agreements approved by Congress.

Court Approval. On November 1, 2013, the adjudication court entered a Partial Final Judgment and Decree and a second Supplemental Partial Final Judgment and Decree (“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. An appeal challenging the decrees was filed in December 2013 in the New Mexico Court of Appeals, which ultimately upheld the decrees.

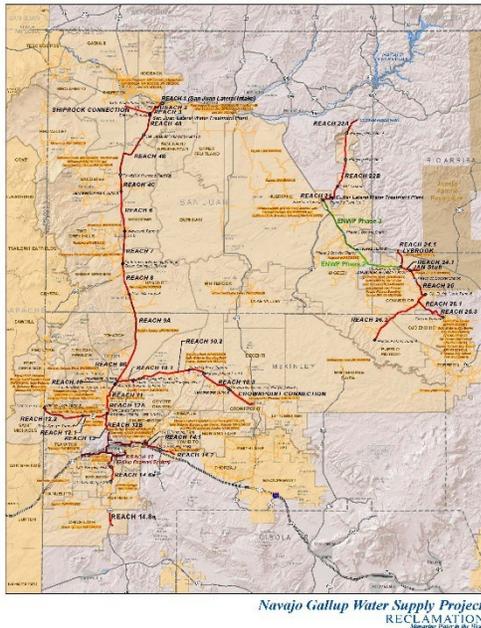
(2) Funding for Navajo-Gallup Water Supply Project

Settlement Project Costs. The federal legislation authorized the appropriation of \$870 million to Reclamation to plan, design and construct the Navajo-Gallup Water Supply Project. The total estimated cost for the Settlement has now increased to approximately \$1.363 billion based on Reclamation’s 2018 price levels for the Project.

For federal fiscal years 2010 to 2022, Congress appropriated 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 requires 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.



Based on New Mexico’s total cash contributions toward the Project and conservative estimates of anticipated cost share credit, the State has met its cost share obligation.

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.

(3) Implementation

The Bureau of 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; approximately 300 miles of pipeline; two water treatment plants; and several pumping plants and storage tanks. The work being completed by the City of Gallup and Navajo Nation is funded through financial assistance agreements between the two entities and Reclamation. 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.

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 June 8, 2023, Senator Ben Ray Lujan (D-NM) and Martin Heinrich (D-NM) introduced the Navajo-Gallup Water Supply Projects Amendments Act in the U.S. Senate. On June 9, 2023, Representatives Teresa Leger Fernandez (NM-03) and Melanie Stansbury (NM-01) introduced companion legislation in the U.S. House of Representatives. If passed, this Act would, among other things, provide millions of dollars of additional funding 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.

b. Aamodt Settlement of the Water Rights of Pueblos of Nambé, Pojoaque, Tesuque 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 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 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, although this capacity may be reduced if the County determines that non-Pueblo demand for water from the system will be less. 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. This project is under construction and is ongoing.

(1) Key Benchmarks for Implementation of the Aamodt Settlement

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").

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 conclusion. On September 7, 2017, a group of Defendants-Objectors filed a Notice of Appeal appealing the decrees and the decision approving the Settlement Agreement to the United States Court of Appeals for the Tenth Circuit. After hearing oral arguments in Denver in May 2018, the Tenth Circuit denied the appeal for lack of standing in November 2018.

San Juan-Chama Project Water. The Aamodt Settlement Act authorizes the allocation of 1,079 AFY of water supply contracts from the San Juan-Chama Project to fulfill settlement water supply needs for the Aamodt settlement. In January 2016, the Pueblos and Reclamation executed a contract for the full 1,079 AFY of San Juan-Chama Project water. In July and August 2017, the State Engineer issued permits to the Regional Water Authority for the diversion and consumptive use of 2,381 AFY, including the 1,079 AFY of San Juan-Chama Project water.

(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 the Pueblos.

Original Authorized Funding. With indexing to 2018 as provided for in the Cost Sharing Agreement, the total amount of federal funding currently authorized to construct the Project under the 2010 Aamodt Litigation Settlement Act is \$139.8 million, the State's allocation (exclusive of service connection costs) is \$62.8 million and the County's allocation (exclusive of service connection costs) is \$10.4 million, for a total of \$213 million.

Increased Costs and 611 (g) Agreement. In July 2018 the Secretary determined that the costs of the construction would exceed the authorized amounts, and initiated negotiations with the parties to the Cost Sharing Agreement under Section 611 (g) of the Settlement Act for an agreement to identify cost-saving measures to allow the Regional Water System to be completed. The resulting 611(g) Agreement, executed in September 2019, adopts a Consensus Design Concept for the Regional Water System that reduced the scope and size of the system and changed the definition of substantial completion; allocated the additional costs between the parties; and provides for the commencement of limited construction by January 2020.



Rio Pojoaque, Pojoaque Pueblo

Additional Contributions. In the 611(g) Agreement the United States agreed to contribute an additional \$137 million in 2018 dollars, contingent upon Congress amending the Settlement Act. On April 5, 2019, Governor Lujan Grisham signed legislation appropriating \$20 million to the Indian Water Rights Settlement Fund (\$2 million in addition to the \$18 million for the State's scheduled cost-share contribution) with the specific provision that this \$20 million appropriated in 2019 "constitutes approximately twenty percent of the state's contribution toward the Aamodt settlement to pay both the state's current cost-

share obligation and additional amounts necessary for the state's share of non-federal cost overruns". Accordingly, the State's contribution in the 611(g) Agreement is an additional amount that, after indexing of the State's current obligation in the Cost-Sharing Agreement, provides a combined total of \$104.5 million for the State's contribution. Santa Fe County is contributing an additional \$4 million in 2018 dollars and deferring \$24 million. Under the 611 (g) Agreement, funding for the project 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.

- Federal Contribution. 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.
- State Contribution. The Aamodt Settlement Act provides for a State contribution to the non-Pueblo portion of the settlement of \$50 million, plus increases based on Reclamation's construction cost index. Under the 611 (g) Agreement, the State agreed to provide up \$104.5 million both for the State's current cost-share obligation and additional amounts necessary for the State's share of non-federal cost overruns, but with no further indexing on the additional amounts.

Status of State Contribution. On September 26, 2014, the State made a contribution of \$15 million toward its share of costs for the regional water system under the Cost Sharing Agreement. The Legislature appropriated \$9 million to the Fund in 2018, \$20 million in 2019, \$9 million in 2020 and \$9 million again in 2021. 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.

Implementation. The Bureau of Reclamation is responsible for the construction of the regional water system. It began limited construction of Phase 1 in May 2020, and that phase has been completed. Reclamation is now moving forward with design of Phase 2, which is estimated to be completed in compliance with the extended substantial completion deadline of 2028. Phase 2 has been broken into three design stages (Stage 1 - Nambé, Stage 2 - South Pojoaque & Tesuque, Stage 3 - Bishop's Lodge). Construction is ongoing.

c. Taos Pueblo Water Rights Settlement

Negotiations for the settlement of Taos Pueblo's water rights to the use of waters in the Rio Pueblo de Taos and Rio Hondo stream systems, tributaries of the Rio Grande in north central New Mexico began in earnest in 1989. The parties involved were Taos Pueblo, State of New Mexico, Taos Valley Acequia Association (and its 55 member acequias), Town of Taos, El Prado Water and Sanitation District (EPWSD), and the twelve Taos area mutual domestic water consumer associations. On May 30, 2006, at a signing ceremony at Taos Pueblo, the Pueblo, the State of New Mexico, and several Taos-area water right owning parties executed a settlement agreement to resolve the claims of Taos Pueblo 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*.

The Settlement Agreement took effect on October 7, 2016. Taos Pueblo and the OSE are working on resolving implementation issues, such as coordination and Taos Pueblo forbearance for abandoned water rights. Meetings continue.

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.



Mitigation Well Mutual Benefit Project in Taos

(1) Key Benchmarks for Implementation of the Taos Pueblo Settlement

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").

Court Approval. The Taos Settlement Act set March 31, 2017, as the deadline for the court to enter the Partial Final Judgment and Decree. The Taos adjudication court conducted an expedited inter se proceeding to determine whether to approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree. 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.

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 settlement water supply needs for the settlement. In 2012, contracts were executed by Reclamation and various settlement parties for the full 2,621 AFY allocation.

(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 has appropriated and provided direct funding for the Taos Pueblo Settlement totaling approximately \$145.7 million.

State Contribution. The Taos Settlement Act requires 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 is not subject to indexing for inflation.

Status of State Contribution. On February 29, 2012, the Interstate Stream Commission, by resolution, allocated \$5 million dollars 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 \$5 million allocation was part of a larger, \$15 million appropriation made by the Legislature to the Fund during the 2011 special New Mexico Legislative Session. The State, through the Interstate Stream Commission, has 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 Interstate Stream Commission 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.

Ongoing Consultation. Parties to the Taos Pueblo Water Rights Settlement meet monthly to determine roles and obligations moving forward with the Mitigation Wells Mutual Benefit Project, and the Pueblo of Taos has completed the construction of a new Water Resources Building to facilitate the administration of the Pueblo's water rights.

2. SETTLEMENT AGREEMENTS PENDING CONGRESSIONAL APPROVAL

a. Pueblos of Acoma and Laguna Rio San Jose Water Rights Settlement Agreement

The Pueblo of Acoma, the Pueblo of Laguna, the State of New Mexico, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio San Jose and nine individual acequias and community ditches signed a settlement agreement in June 2022 resolving the water rights claims of the Pueblos of Acoma and Laguna in the pending Rio San Jose Stream System adjudication. *State of New Mexico ex rel. State Engineer v. Kerr-McGee, et al.*, Nos. D-1333-CV-1983-00190 and D-1333-CV-1983-002200 (consolidated).



Hearing for S.595 with Senator Ben Ray Lujan and OSE

Congress introduced legislation in both the House and the Senate (Rio San Jose and Rio Jemez Water Settlements Act of 2023, Senate Bill 595; House Bill 1304) on March 1, 2023, seeking approval and federal funding for the Pueblos.

Once legislation is passed, the parties will continue discussions to conform the Settlement Agreement to the federal legislation and will seek funding from the State legislature for water infrastructure related projects for the non-Pueblo parties.

Once the conformed Settlement Agreement is signed by the parties, including the United States, the State will move the Court for entry of a partial final judgment and decree adjudicating the Pueblos' water rights and to commence *inter se*. Timing for commencement of the *inter se* process is dependent upon actions by Congress.

b. Pueblos of Jemez and Zia Rio Jemez Water Rights Settlement Agreement

The Pueblo of Jemez, the Pueblo of Zia, the State of New Mexico, the Jemez River Basin Water Users Coalition, the San Ysidro Community Ditch Association, and the City of Rio Rancho parties signed a settlement agreement in June 2022, resolving the water rights claims of the Pueblos in the Rio Jemez Stream System adjudication. *United of America, on its own behalf, and on behalf of the Pueblos of Jemez, Santa Ana, and Zia; and State of New Mexico, ex rel. State Engineer, Plaintiffs; and Pueblos of Jemez, Santa Ana, and Zia, Plaintiffs-in Intervention v. Abousleman, et al, Defendants*, Civil No. 83-cv-01041.

Congress introduced legislation in both the House and the Senate (Rio San Jose and Rio Jemez Water Settlements Act of 2023, Senate Bill 595; House Bill 1304) on March 1, 2023, seeking approval and funding.

Once legislation is passed, the parties will continue discussions to conform the Settlement Agreement to the federal legislation and will seek funding from the State for the non-Pueblo component of a water infrastructure project. Once the conformed Settlement Agreement is signed by the parties, including the United States, the State will move the court for entry of a partial final judgment and decree adjudicating the Pueblos' water rights and to commence *inter se*. Timing for commencement of the *inter se* process is dependent upon actions by Congress.

c. Settlement Agreement to Quantify and Protect the Water Rights of the Zuni Indian Tribe in the Zuni River Basin in New Mexico and to Protect the Zuni Salt Lake (Pending Legislation)

Zuni Pueblo and the State signed a settlement agreement resolving the claims of the Zuni Pueblo 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 this year. Once legislation is passed, the parties will continue discussions to conform the Settlement Agreement to the federal legislation and seek State legislative approval. Once the conformed Settlement Agreement is signed by all parties, including the United States, the State will move the Court for entry of a partial final judgment and decree adjudicating Zuni Tribe's water rights and to commence *inter se*. Timing for commencement of the *inter se* process is dependent upon actions by Congress.



OSE learning about the geology of the Sacred Zuni Salt Lake

d. Ohkay Owingeh Rio Chama Water Rights Settlement (Aragon Adjudication)

Ohkay Owingeh's water rights claims on the Rio Chama began in 2013 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.). Mediators for the negotiations were hired to help facilitate the negotiations and a federal negotiation team was later appointed. Parties are meeting on a regular basis, and the negotiations are nearly complete. 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 the summer of 2023.

3. CURRENT NEGOTIATIONS WITH PUEBLOS, TRIBES, AND NATIONS

a. Pueblo of Santa Clara and Ohkay Owingeh Claims to the Santa Cruz/Truchas Stream System (*Abbott* Adjudication)

The Pueblo of Santa Clara has water rights claims within the Santa Cruz Stream System, and Ohkay Owingeh has claims to the Truchas Stream System, which are part of a pending adjudication. *New Mexico v. Abbott*, Case No. 68-7488 KWR/JHR (Santa Cruz) and Case No. 70-8650 KWR/JHR (Truchas) (U.S. D.Ct. N.M.). The Pueblo of Santa Clara's water rights on the Santa Cruz were added to discussions with Ohkay Owingeh in 2021. However, the parties agreed to resolve Ohkay Owingeh's claims in the Chama Stream System through the *Aragon* adjudication prior to commencing settlement negotiations in *Abbott*. OSE staff have collaborated with Santa Clara Pueblo in preparation for a resumption of discussions. In particular, attorneys and technical staff from BPTN and the OSE Hydrographic Survey Bureau have joined representatives of Santa Clara Pueblo on site visits for the purpose of examining possible locations of historic irrigation.

b. Navajo Nation

In addition to the settled claims of the Navajo Nation in the San Juan River Basin in northwestern New Mexico, the Navajo Nation also has water rights claims being negotiated in both the Rio San Jose Stream System and the Zuni River Basin. Negotiations between Navajo Nation, the federal government, the OSE, and acequia representatives are ongoing, and parties are meeting on a regular basis to move the process forward.

4. ASSESSMENT OF FUTURE OR PENDING TRIBAL WATER RIGHTS CLAIMS

a. Six Middle Rio Grande Pueblos

OSE staff are engaged in discussions with the Six Middle Rio Grande Pueblos (Pueblos of Cochiti, Sandia, Isleta, Kewa/Santo Domingo, San Felipe and Santa Ana) as well as representatives from various federal agencies, regarding the upcoming adjudication of the Pueblos' Middle Rio Grande water rights. A federal negotiation team has been appointed to assist in this process.

b. Ute Mountain Ute Tribe – San Juan River Basin

OSE staff are engaged in discussions with representatives from the Ute Mountain Ute Tribe. No mediator has been hired for these settlement discussions and a federal negotiation team has not been appointed. However, a federal assessment team has been appointed and may recommend the subsequent appointment of a federal negotiation team. Parties involved include Ute Mountain Ute Tribe, State of New Mexico, United States, State of Colorado, and Navajo Nation.

B. Office of the State Engineer/ Interstate Stream Commission Consultations

1. COMMUNICATIONS AND OUTREACH

Outreach continues to the Pueblos, Tribes, and Nations and to federal agencies, non-governmental organizations, and other state agencies where issues of water may have impacts to native communities and the Office of the State Engineer. The OSE Tribal Liaison will continue to assist in resolving issues related to water including conducting Government-to-Government consultation as requested by the Pueblos, Tribes, and Nations and the OSE. The OSE Tribal Liaison also continues to monitor the current drought conditions and its effects on Pueblos, Tribes and Nations, providing internal briefings to senior management in the agency.

Tribal Liaison Myron Armijo participated and coordinated in the following meetings and activities for the Office of State Engineer and Interstate Stream Commission:

Ohkay Owingeh. Negotiations on Chama River Stream System (*Aragon* Adjudication) and Santa Cruz/Truchas Stream Systems (*Abbott* Adjudication). Settlement negotiations have been completed for the *Aragon* Rio Chama claims and the settlement agreement is anticipated to receive final signatures for the local settlement by September 2023. Congressional legislation has been drafted and will hopefully be reviewed and introduced before the end of the 2024 fiscal year. Parties are meeting on a regular basis and some parties have signed the agreement.

Pueblo of Santa Clara. Negotiations on Santa Cruz/Truchas Stream Systems (*Abbott* Adjudication) continue but were slowed during Fiscal Year 2023 so the parties could focus on completing the Ohkay Owingeh Chama adjudication negotiations that involved many of the same participants. The OSE Hydro Survey Bureau is assisting the federal team in assessing land status and mapping related to the Pueblo's *Abbott* Adjudication claims.



Serpent Lake & Black Mesa from Pueblo of Santa Clara

Pueblo of Picuris. The Office of the State Engineer has had frequent communications with Governor Quanchello and the parciantes in Mora to further the discussions on resolution for the Trans-Mountain diversion challenges. The Calf Canyon/Hermits peak fires, COVID, and flooding have impacted the availability of all parties to meet and assess the continued issues. A workshop is being planned and OSE Staff is working to research and looking at water data in the region. Representatives from the Office of the State Engineer have met with representatives of the Pueblo of Picuris, as well as representatives of acequias drawing surface water from the Trans-Mountain diversion.

The Northern Pueblos Tributary Water Users Association (Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso) (NPTWUA). OSE staff including the Tribal Liaison have begun to meet the Aamodt signatories regularly to continue work to resolve enforcement and implementation issues. Representative Andrea Romero held a town hall meeting on March 21, 2023, to update the non-Pueblo water users in the Pojoaque Valley. The meeting highlighted the need to include the Pueblos of Nambé and Pojoaque in future events. Representative Romero has since met with the NPTWUA and each party to the *Aamodt* Settlement have also been included in monthly updates to the association.

The NPTUA has requested the OSE to attend their monthly meeting regularly, and that has led to a better understanding of the needs of each entity. OSE has continued to consult with the NPTWUA to provide more detailed annual reports in order to create a practical rotation schedule and create more structure for non-Pueblo water users.

Pueblo of San Ildefonso. The Pueblo has been involved in the implementation meetings for the Pojoaque Valley Regional Water System. The Interstate Stream Commission continues to conduct its stream gage measurements on the Rio Grande at the Otowi gage, which is on the lands of the Pueblo of San Ildefonso. The State Engineer met with the Pueblo to address administration issues, along with the Water Master from District 6, Tribal Liaison Myron Armijo, and the attorneys from the Bureau for Pueblos, Tribes, and Nations.

Pueblo of Nambé. The Pueblo of Nambé has been involved in the implementation meetings for the Pojoaque Valley Regional Water System. OSE is working to resolve issues concerning the Pojoaque Valley Irrigation District and diversions on the Highline Ditch.

Pueblo of Pojoaque. The Pueblo of Pojoaque has been involved in the implementation meetings for the Pojoaque Valley Regional Water System and the 50-year Water Plan.

Pueblo of Tesuque. The Pueblo of Tesuque has been involved in the implementation meetings for the Pojoaque Valley Regional Water System. There has been a request to inform and educate the Town of Tesuque and others in the area to conserve the resource as much as possible. Governor Milton Herrera and staff met with OSE staff in May 2023.

Pueblo of Taos. The Settlement Parties attend a monthly implementation meeting, and the Pueblo and OSE have been meeting separately to work on outstanding obligations from the settlement agreement. There have been eleven (11) Government-to-Government meetings between the Pueblo and OSE on this subject.

Six Middle Rio Grande Pueblos. The Coalition of the Six Middle Rio Grande Pueblos (6 MRG Pueblos) requested the appointment of a federal assessment team to address potential water rights claims and resolution. This team is now in place and has begun looking at the water rights claims of the six Pueblos. Preliminary meetings are being held monthly with the State, the United States, and the Six Middle Rio Grande Pueblos. During FY2023, the Liaison and Bureau staff met with representatives from the Pueblo of Cochiti, the Pueblo of San Felipe, Kewa (Pueblo of Santo Domingo), and the Pueblo of Santa Ana. During these meetings the parties discussed specific concerns of the Pueblos regarding their water rights and the upcoming adjudication. The Liaison is also planning a meeting between Bureau staff and the Pueblo of Sandia, although that meeting has not yet occurred.

Pueblo of Cochiti. To address issues with use of water allocated from the Santa Fe River, OSE has consulted with the Pueblo numerous times and tours have been held by the Pueblo for the State Engineer. More recently the USACE was invited on a tour of the area. The Bureau for Pueblos, Tribes and Nations met with the Pueblos' Governor and staff regarding water diversions and future water rights negotiations with the Coalition of Six Middle Rio Grande Pueblos and the State.

Pueblo of San Felipe. The Bureau met with Governor and staff on May 16, 2023, to discuss future water settlement negotiations with the six Middle Rio Grande Pueblos. The Pueblo has also been involved in the 50-Year Water Plan.

Kewa (Pueblo of Santo Domingo). The Bureau met with the Pueblo on June 28, 2023, regarding the future water rights negotiations with the six Middle Rio Grande Pueblos.



Rio Jemez from Pueblo of Santa Ana

Pueblo of Santa Ana. The Bureau met with the Pueblo Governor and staff on February 13, 2023, regarding the future water rights negotiations with the six Middle Rio Grande Pueblos. Additionally, the OSE has been notified of concerns regarding water transfers, specifically water storage at El Vado and water transfer policy issues.

Pueblo of Isleta. The Bureau met with the Governor Max Zuni and 1st Lt. Governor Juan Ray Abeita and staff on February 1, 2023, regarding the future water rights negotiations with the six Middle Rio Grande Pueblos. Additionally, the Pueblo has expressed concerns regarding water transfers, as well as water pumping in Belen and other surrounding entities.

Pueblo of Sandia. The Pueblo has concerns regarding water transfers and storage of water at El Vado. The Bureau has not yet met separately with the Pueblo to discuss the six Middle Rio Grande Pueblo water rights claims assessment. Tribal Liaison Myron Armijo is working to schedule a meeting with Sandia leadership to discuss the assessment of water rights claims in the Middle Rio Grande.

Pueblos of Jemez and Zia. Local parties signed a settlement agreement of the claims of the Pueblos in the pending Jemez River Stream System adjudication. Federal legislation was introduced in both the House and Senate and is now pending Congressional approval. Once the legislation passes, a federal implementation team will be appointed, and New Mexico will begin to fulfill its obligations to the agreement. Settlement parties meet weekly to discuss legislative updates and review monthly status reports filed with the Court.

The Pueblos continue to participate in the 1996 Shortage Sharing Agreement and seasonal meetings are held to ensure issues or concerns are addressed at the appropriate time. The early spring runoff impacted the diversion because debris and sediment plug the turnouts to the Pueblo's irrigation system.

Pueblos of Acoma and Laguna. Local parties signed a settlement agreement of the claims of the Pueblos in the Rio San Jose Stream System. Federal legislation was introduced in both the House and the Senate and is now pending Congressional approval. A technical committee is also working on modeling and researching for potential projects. The parties have been meeting regularly and a goal is to assist Navajo Nation to reach a settlement agreement of its water rights claims in the Rio San Jose Stream System sometime in the coming year.

Pueblo of Zuni. The local parties have reached a settlement and federal legislation is being drafted and reviewed before introduction to Congress for approval. The State of New Mexico, United States, Zuni Pueblo and a Technical committee has been meeting regularly to implement

parts of the settlement agreement on the local level. The State Engineer has entered Closure Orders for the Zuni River Basin and the Zuni Salt Lake per the terms of the Settlement Agreement. Settlement parties are now working on a model which will be used to administer water rights consistent with the Settlement Agreement.

Ute Mountain Ute Tribe. The Tribe has water rights claims in the pending adjudication of the San Juan River Stream System. A federal assessment team has been appointed and may recommend the subsequent appointment of a federal negotiation team. Parties involved are Ute Mountain Ute Tribe, State of New Mexico, United States, State of Colorado, and Navajo Nation. Settlement discussions began in 2015, regular meetings began in 2020, and the parties have visited the Ute Mountain Ute Tribal Lands in New Mexico twice. Discussions are continuing.

Navajo Nation. The Nation has one settlement agreement in the implementation phase (San Juan River Stream System) and claims under negotiation in the Rio San Jose Stream System adjudication and in the Zuni River Stream System adjudication.

Navajo Nation has also been working closely with the ISC in drafting a legislative amendment to the Navajo-Gallup pipeline bill. ISC has weekly meetings with BOR on construction of the San Juan lateral. Legislation amending the original settlement act was introduced in Congress by Senator Ben Ray Lujan as S. 1898. It allows for an extension of time for completion of the project until December 31, 2029. Its language has been endorsed by all project participants and beneficiaries and has been accepted by the Department of the Interior. There was a hearing for the bill and testimony was presented before the Senate Indian Affairs Committee. Approval of the senate bill is anticipated after the legislation has gone through the mark-up process.

Ft. Sill Apache Tribe. The Office of the State Engineer District 3 office in Deming requested the Tribal Liaison to look into an issue on the Tribe's Akela Flats property east of Deming regarding a groundwater well. The Tribal Liaison consulted with OSE District 3 office regarding land ownership status and proposed use of the well.



Mescalero Apache hosted the 2023 State-Tribal Summit

Mescalero Apache Nation. Mescalero has been involved in the 50-Year Water Plan. Although Mescalero has litigated the majority of their claims in the Pecos *Lewis* Adjudication, the Tribe reached out during the 2023 legislative session regarding possible meetings to discuss current water rights issues. The Tribe will contact the agency when information has been assessed by the new tribal water counsel.

Jicarilla Apache Nation. Jicarilla has entered into a lease of the Nations San Juan-Chama Water in collaboration with the Interstate Stream Commission. There was a signing ceremony in Farmington on June 29, 2023, to commemorate the extensive work and collaboration between the parties involved.

Interim Indian Affairs Committee Hearing. The State Engineer reported to the Interim Indian Affairs Committee (“IIAC”) on the status of Indian Water Rights Settlements negotiations. Many legislators voiced concern over the costs of the settlements from the State’s cost share standpoint. The legislators did acknowledge that the settlements that the OSE staff is negotiating are necessary in order to bring certainty to administration of the water rights within the stream systems.

Tribal Water Working Group. The Working Group met on May 10, 2023, to discuss SB 337 and establishment of a Tribal Water Advisory Council. The discussion centered around ensuring tribal input and collaboration with the Regional Water Planning process. The Tribal Liaison and attorneys from the Bureau attended with the director of ISC, the State Engineer, and the ISC water planning staff. Follow up meetings to continue the work towards establishing the Tribal Water Advisory Council should occur in FY2024.

2. CONTINUING CHALLENGES REGARDING OUTREACH AND COORDINATION WITH PUEBLOS, TRIBES, AND NATIONS

The creation of the Bureau for Pueblos, Tribes, and Nations has expedited the response time to issues reported through the Tribal Liaison. The Bureau was created to handle the negotiations of water rights settlements and intends to hire more staff in order to address issues regarding implementation and administration among non-tribal water users.

Enforcement and jurisdictional complications have been an issue with almost all the Pueblos, Tribes, and Nations that OSE communicates with regularly. OSE staff have been increasing the amount of time spent coordinating with tribal communities to learn about the issues in order to come up with more creative solutions. OSE staff have been meeting more frequently with tribal governments to work together to come up with solutions to conflicts regarding diversions of the water short stream systems, such as rotations and shortage sharing schedules. Outreach to non-tribal entities that are neighbors to Pueblos, Tribes, and Nations has helped to facilitate better relationships and more successful administration of water rights.

C. Resources & Services

1. NATIVE AMERICAN PROGRAMS AND SERVICES

The Native American Water Resources Program, created by the Governor in 1995, aims to promote a spirit of coordination, communication, and good relations between tribal and state governments as separate sovereigns. During Governor Bill Richardson’s administration, a statement of policy and process was signed with Governors of the 19 New Mexico Pueblos to work in good faith to amicably and fairly resolve issues and differences in a Government-to-Government relationship. This policy and process also extends to other tribes and nations within New Mexico. The policy was signed in 2003; even today the document has language that still resonates in the 2009 State-Tribal Collaboration Act, with respect to Government-to-Government consultation and taking reasonable steps in working with the Pueblos, Tribes, and Nations.

Rights to water on Indian grant lands and reservations in New Mexico fall within one or a combination of three different doctrines: Pueblo historic use water rights, federal reserved water

rights, or water rights established under the laws of the state of New Mexico. Water rights administration, litigation and negotiation leading to a settlement of rights to water are exceedingly complex when Native American water rights are involved.

The Tribal Liaison deals with matters related to adjudication of tribal and Pueblo water rights, negotiations regarding these rights, and assistance to the individual Pueblos, Tribes, and Nations. The Tribal Liaison's role is to advocate for equal protection of all water users, emphasizing conservation and the development of feasible alternative water supplies. An important goal is to resolve disputes between the state of New Mexico and Pueblos, Tribes, and Nations, without costly litigation. While the State Engineer began adjudicating water rights on tributaries to the state's major rivers more than 30 years ago, the water rights for most of the state's 24 Pueblos, Tribes, and Nations have not been quantified.

Current and Planned Programs and Services for American Indians. The Office of the State Engineer has provided suggestions and recommendations to the Pueblos, Tribes, and Nations on an as requested basis on the resources which are provided by several funding agencies, such as Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA), USACE and the Water Trust Board, including the Tribal Infrastructure Fund. The Tribal Liaison will continue efforts to look for other resources as part of the outreach process to help the Tribes, Pueblos, and Nations with their water projects where it will be feasible. Funds could be available through the ARPA process for infrastructure and other needs.

2. APPROPRIATIONS AND DISTRIBUTION OF FUNDS FROM THE INDIAN WATER RIGHTS SETTLEMENT FUND & RECOMMENDATIONS (NMSA 1978 § 72-1-11)

The Legislature has provided all the funding needed for the currently authorized state cost share for the three approved settlement agreements. Because this obligation had been met, the Office of the State Engineer and Interstate Stream Commission did not request funding in the FY24 Infrastructure Capital Improvement Plan (ICIP). The Agency has historically requested \$9 million annually and anticipates making future requests for state cost share funding through ICIP as the proposed new settlements outlined in discussed above are approved.

As the newly signed settlement agreements go through the federal approval process, the OSE and ISC will request additional funding from the state legislature as set forth in the various settlement agreements.

3. TRAINING AND EMPLOYEE NOTIFICATION (NMSA 1978, § 11-18-4.C (3))

The Office of the State Engineer encourages all employee to take the State Tribal Collaboration Act mandated training administered by the State Personnel Office and developed by IAD, titled "Building Cultural Equity with Native Nations" (formerly called "Cultural Competency"). The OSE and Bureau for Pueblos, Tribes, and Nations recognizes the importance of consulting with native communities throughout the State and will avail itself of the Cultural Competency training as it becomes available.

As a former Governor of the Pueblo of Santa Ana, the Liaison recognizes how unique each community is and has learned the protocols of each individual Pueblo, Tribe and Nation.

The Pueblos, Tribes, and Nations are deeply connected to their water resources through their customs and traditions that have been passed down through the generations and place a deep respect on the resource. Senate Bill 196, the State-Tribal Collaboration Act, established a process to ensure the employees of each state agency are properly trained to collaborate with tribal communities and the OSE/ISC will continue its practice for informing and consulting in good faith on a Government-to-Government basis.

IV. GOVERNING STATUTES AND RULES

- NMSA 1978, § 72-2-9 Supervising Apportionment of Waters
- NMSA 1978, § 72-3-2 Water Masters; Appointment, Removal, Duties
- NMSA 1978, § 72-4A-4 Water Trust Board Created
- NMSA 1978, § 72-4A-5.1 Implementation of the State Water Plan
- NMSA 1978, § 72-5-22 Transfer of Water Rights
- NMSA 1978, § 72-5-24 Change of purpose; Change of Point of Diversion
- NMSA 1978, § 75-5A-14 Obligations to Indian Nations, Tribes or Pueblos
- NMSA 1978, § 72-14-3.1 State Water Plan
- NMSA 1978, § 72-12A-1 Mine De-Watering Act
- NMSA 1978, § 72-12-1 Underground Waters Declared to be Public
- NMSA 72-6-1 Water Use Leasing
- NMSA 72-4B-2 Water Data Act
- NMSA 1978, § 11-18 State Tribal Collaboration Act
- 19.25.13 NMRA Active Water Resource Management

V. KEY NAMES AND CONTACT INFORMATION

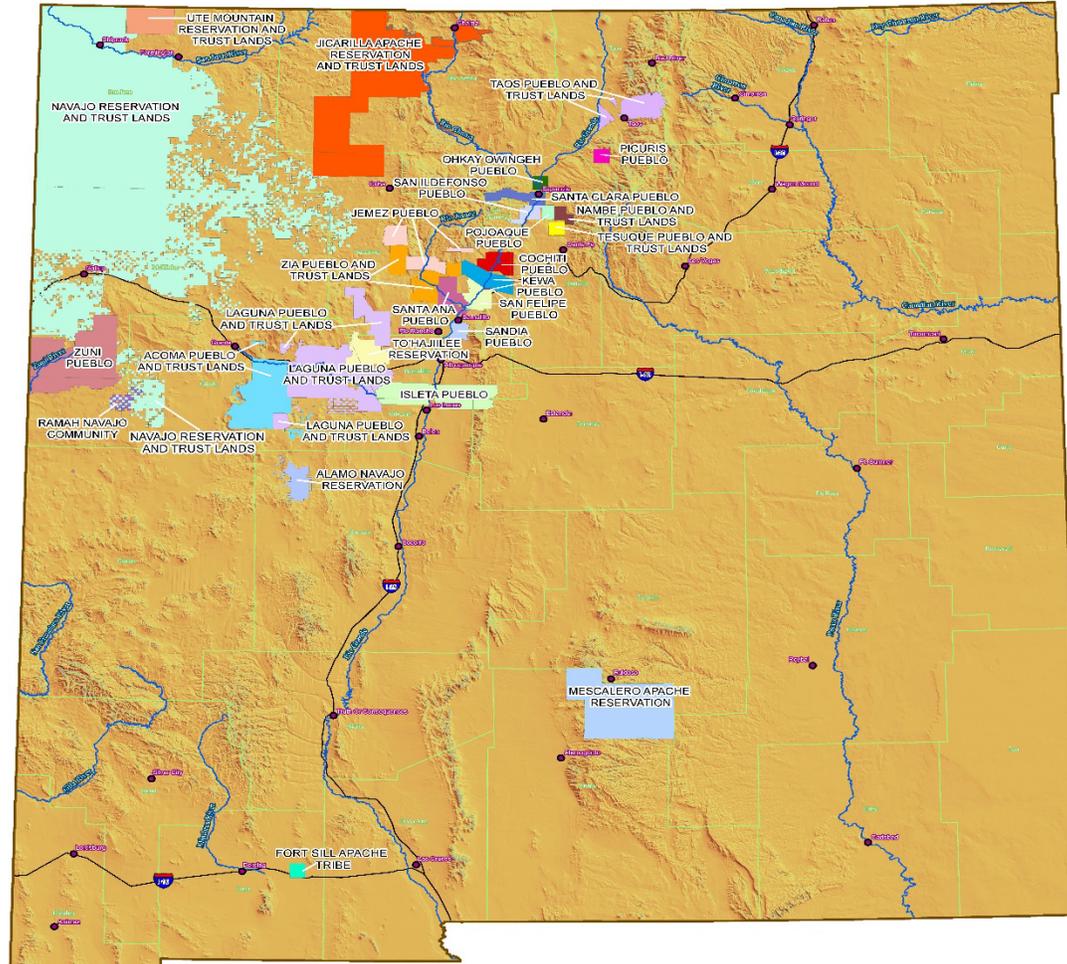
OSE/ISC Personnel having periodic communications with Tribes, Pueblos and Nations.

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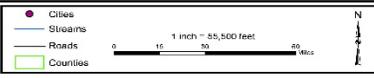
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VI. APPENDICES

Map of Tribes, Pueblos and Nations Trust Lands in New Mexico



NAME	
ACOMA PUEBLO AND TRUST LANDS	MESCALERO APACHE RESERVATION
ALAMO NAVAJO RESERVATION	NAMBE PUEBLO AND TRUST LANDS
COCHITI PUEBLO	NAVAJO RESERVATION AND TRUST LANDS
FORT SILL APACHE TRIBE	OHKAY OWINGEH PUEBLO
ISLETA PUEBLO	PICURIS PUEBLO
JEMEZ PUEBLO	POJOAQUE PUEBLO
JICARILLA APACHE RESERVATION AND TRUST LANDS	RAMAH NAVAJO COMMUNITY
KEWA PUEBLO	SAN FELIPE PUEBLO
LAGUNA PUEBLO AND TRUST LANDS	SAN FELIPE/SANTA ANA JOINT AREA
	SAN ILDEFONSO PUEBLO
	SANTA ANA PUEBLO
	SANTA CLARA PUEBLO
	TAOS PUEBLO AND TRUST LANDS
	TESUQUE PUEBLO AND TRUST LANDS
	TO'HAIJILEE RESERVATION
	ZIA PUEBLO AND TRUST LANDS
	ZUNI PUEBLO



STATE OF NEW MEXICO
 Office of the State Engineer
 John R. D'Antonio Jr., P.E.,
 State Engineer

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OFFICE OF THE STATE ENGINEER / INTERSTATE STREAM COMMISSION ORGANIZATIONAL CHART

