

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0107-24

**DATE:** May 10, 2024

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTON RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'IYATI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE RIO SAN JOSE STREAM SYSTEM WATER RIGHTS SETTLEMENT AGREEMENT; AND APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW CERTAIN ACTIONS TO BE BROUGHT IN STATE OF NEW MEXICO COURT

**PURPOSE:** The purpose of this legislation is to approve the Rio San Jose Stream System Water Rights Settlement Agreement and to approve a limited waiver of sovereign immunity.

**Final Authority:** Navajo Nation Council

**Vote Required:** 2/3 vote of the full membership of the Navajo Nation Council

**This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.**

5-DAY BILL HOLD PERIOD AlMikeLH  
Website Posting Time/Date 9:27 pm; 05/10/24  
Posting End Date: 05/15/24  
Eligible for Action: 05/16/24

Resources & Development Committee  
Thence  
Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

1 NAVAJO NATION COUNCIL RESOLUTION  
2 25<sup>th</sup> NAVAJO NATION COUNCIL – Second Year, 2024

3 INTRODUCED BY

4   
5 \_\_\_\_\_  
6 (Prime Sponsor)

7  
8 TRACKING NO. 0107-24

9  
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'  
12 COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE RIO  
13 SAN JOSÉ STREAM SYSTEM WATER RIGHTS SETTLEMENT AGREEMENT; AND  
14 APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW  
15 CERTAIN ACTIONS TO BE BROUGHT IN STATE OF NEW MEXICO COURT

16  
17 BE IT ENACTED:

18  
19 **SECTION ONE. AUTHORITY**

- 20 A. The Resources and Development Committee is a standing committee of the Navajo  
21 Nation Council empowered with oversight authority over the waters of the Navajo Nation  
22 and to protect this resource for the Navajo Nation and the Navajo People, now and for  
23 future generations. 2 N.N.C. §§ 500 (A) and 500 (C)(1).
- 24 B. The Naabik'iyáti' Committee is established as a standing committee of the Navajo Nation  
25 Council empowered to review proposed legislation which requires final action by the  
26 Navajo Nation Council. 2 N.N.C. §§ 164(A)(9), 700 (A), and 701 (A)(7).
- 27 C. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102  
28 (A).
- 29  
30

1 D. The Navajo Nation Council is authorized to approve a limited waiver of the Navajo  
2 Nation's sovereign immunity by a two-thirds (2/3) vote of the full membership of the  
3 Navajo Nation Council. 1 N.N.C § 554 and 2 N.N.C § 223(C).  
4

5 **SECTION TWO. NEW MEXICO WATER RIGHTS IN THE RIO SAN JOSÉ**  
6 **STREAM SYSTEM AND THE RIO PUERCO BASIN AND SETTLEMENT**  
7 **NEGOTIATIONS**

8 A. Since Navajo creation, water has served as a fundamental element to Navajo life. *Tó béei*  
9 *da' iiná*, (with water, there is life), and it is elemental to *Hózhóogo Oodáál* (the Navajo  
10 Way of Life). We pray and make offerings for rain to fill our rivers so our animals, crops,  
11 land, and people can grow and thrive. In the *Hózhóóji* (Blessingway Ceremony), we  
12 cleanse our bodies with water and wash our hair to restore harmony to our lives. Many  
13 Navajo People are connected to water through our clan names.

14 B. Water is a fundamental element to Navajo ceremonial life, provides nourishment and  
15 hygiene for the Navajo People, waters Navajo crops and livestock, and sustains Navajo  
16 wildlife and riparian vegetation.

17 C. In recognition of *Tó'éei'iná at'e* (water is life), the Navajo Nation Council has determined  
18 that water is essential "to provide for a permanent homeland for the Navajo People." 22  
19 N.N.C. § 1101.

20 D. *Tó Ba'áadii* (Female River – the Rio Grande), born from one of our sacred mountains, is  
21 one of the four sacred rivers that set the boundaries for *Dinétaah* (Navajoland) and is a  
22 protector for the Navajo People. It is part of a 335,500 square-mile watershed that extends  
23 across the Navajo Nation, the United States, and Mexico. The south is associated with  
24 femaleness, and the section of *Tó Ba'áadii* that is best known to the Navajo People flows  
25 almost directly south. The Rio Grande Basin intersects with Navajo Nation chapters  
26 across three subbasins: Rio San José, Rio Puerco, and Rio Salado. The settlement of the  
27 Navajo Nation's claims to waters in this watershed ensures that *Tó Ba'áadii* will continue  
28 to protect the Navajo Nation and the Navajo People and sustain life on our lands –  
29 forever.  
30

- 1 E. The Rio San José Basin, also known as the Rio San José Stream System, is primarily  
2 supplied by runoff from the Zuni Mountains. The Rio San José Stream System flows  
3 eastward through New Mexico, generally following the path of Interstate 40 before  
4 joining Rio Puerco.
- 5 F. The Rio Puerco's headwaters are in northwestern New Mexico. From there, the Rio  
6 Puerco flows south through the Arroyo San José and several other canyons before joining  
7 *Tó Ba'áadii* in Bernardo, New Mexico.
- 8 G. Navajo communities located in the Rio San José Stream System and the Rio Puerco Basin  
9 in northwestern New Mexico have severe water infrastructure deficiencies that  
10 negatively impact the health, economy, and welfare of the Navajo People and the Navajo  
11 Nation.
- 12 H. In 2020, during the Coronavirus ("COVID-19") pandemic, the lack of water  
13 infrastructure on the Navajo Nation exacerbated the spread of the virus, which infected  
14 more than 90,000 Navajo People, resulted in the death of more than 2,000 Navajo People,  
15 and placed the Navajo Nation in the global and national spotlight for its lack of access to  
16 clean water. Without access to potable water, Navajo communities remain  
17 disproportionately vulnerable to COVID-19 and other infectious diseases.
- 18 I. The lack of water infrastructure and access to potable water sources on the Navajo Nation  
19 is compounded by intensifying and rapid climate change and a megadrought impacting  
20 the American Southwest, including the Navajo Nation. Settlement of additional aspects  
21 of the Navajo Nation's water rights claims in New Mexico will protect the Navajo People  
22 from these impacts and sustain continued life on the Navajo Nation by ensuring that a  
23 meaningful water source will be available and accessible to the Navajo People in the near  
24 term and for generations to come.
- 25 J. Beginning in the 1980s, proceedings were initiated in the Rio San José Stream System in  
26 Cibola County, New Mexico. The Pueblos of Laguna and Acoma, the United States, and  
27 other defendants, both public and private, were brought into the ongoing adjudication.
- 28 K. In 1987, the Navajo Nation joined the proceedings and filed its original statement of  
29 claims with respect to the Rio San José Stream System.
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- 1 L. The Pueblo of Acoma, the Pueblo of Laguna, the State of New Mexico, the City of  
2 Grants, the Village of Milan, the Association of Community Ditches of the Rio San José,  
3 and nine individual Acequias and Community Ditches entered into the Rio San José  
4 Stream System Water Rights Local Settlement Agreement dated May 13, 2022 (the  
5 “Local Settlement Agreement”).
- 6 M. Prior to that, the Navajo Nation entered into negotiations that have led to a settlement  
7 that will resolve the Navajo Nation’s water rights claims within the Rio San José Stream  
8 System and the Rio Puerco Basin, benefiting fifteen chapter communities. The Rio San  
9 José Stream System Water Rights Settlement Agreement (the “Settlement Agreement”)  
10 is attached as **Exhibit A**.
- 11 N. The Rio San José Stream System Water Rights Settlement Agreement is the “Navajo  
12 Nation Addendum” referenced in Article 17 of the Local Settlement Agreement. By  
13 approving this “Navajo Nation Addendum”, the Navajo Nation is also agreeing to be a  
14 Signatory Party to the Local Settlement Agreement. The Local Settlement Agreement is  
15 attached as **Exhibit B**.
- 16 O. A map showing the area covered by the negotiations is included as **Exhibit C**.
- 17 P. The Rio San José Stream System Water Rights Settlement Agreement, **Exhibit A**, once  
18 approved and ratified by Congress, will recognize the water rights of the Navajo Nation  
19 in the Rio San José Stream System and the Rio Puerco Basin and provide funding for  
20 infrastructure development that will benefit members of the Navajo Nation. The  
21 Settlement Agreement is summarized here:
- 22 a. Article 17.1 – Definitions. This article defines key terms to avoid future controversy  
23 concerning the interpretation of the Settlement Agreement.
- 24 b. Article 17.2 – Navajo Nation Water Rights Based on Past and Present Uses in the Rio  
25 San José Stream System. This article describes and quantifies the Navajo Nation’s  
26 water rights based on past and present uses in the Rio San José Stream System,  
27 including:
- 28 i. 638 acre-feet per year (AFY) of groundwater with a priority date of 1849.  
29 ii. 35 AFY for the purpose of livestock and wildlife watering, 493 acre-feet  
30 quantified storage right for stock ponds, and 382 AFY consumptive use right

1 through evaporation for stock ponds, all with a priority date of 1849, provided  
2 that the priority date for stock ponds on Navajo fee lands is the construction  
3 date.

4 iii. Recognition of the existing state-law based water rights of the Navajo Nation  
5 and express recognition that the Navajo Nation may acquire additional state-  
6 law based rights consistent with Article 17.10.

7 iv. All of the quantities of water stated in Articles 17.2 and 17.4 shall be reviewed  
8 under a process for technical correction under Article 17.2.4, under which the  
9 Navajo Nation, the United States, and the State of New Mexico will prepare a  
10 joint report providing the basis for the quantifications based on past and present  
11 uses on Navajo Nation lands and the quantities will be corrected for inclusion  
12 in the Partial Final Judgement and Decree of the Navajo Nation's Water Rights  
13 in the Stream System.

14 c. Article 17.3 – Traditional Agricultural Water Use Practices. This article excludes the  
15 practices of seasonal works farming and soil conservation from priority  
16 administration, providing that no party to the adjudication may seek to enjoin or  
17 otherwise prohibit the Navajo Nation or its members from engaging in these  
18 practices.

19 d. Article 17.4 – Navajo Nation's Out of Basin Water Rights for Past and Present Uses.  
20 This article describes and quantifies the Navajo Nation's water rights based on past  
21 and present uses in the Rio Puerco Basin, including:

22 i. 363 AFY diversion within the Rio Puerco subbasin and 143 AFY diversion  
23 within the Arroyo Chico subbasin of groundwater with a priority date of 1849.

24 ii. Water rights for livestock water uses in the Rio Puerco Basin are to be  
25 quantified and described using the same methodology used for the Rio San José  
26 Stream System livestock rights recognized in Article 17.2.4.

27 iii. Recognition of the existing state-law based water rights of the Navajo Nation  
28 and express recognition that the Navajo Nation may acquire additional state-  
29 law based rights consistent with Article 17.10  
30

1           iv. For the Rio Puerco Basin, the Navajo Nation agrees not to claim additional  
2           water rights beyond those described in the Settlement Agreement, provided that  
3           in the event that any of the water rights described in this article and Article 17.5  
4           are not upheld in any administrative or judicial proceeding, the claims  
5           limitations provided in this article will no longer apply and the State and Navajo  
6           Nation will activate the process under Article 17.14.20.2 to modify the terms  
7           applying in the Rio Puerco Basin.

8           e. Article 17.5 – Additional Groundwater Rights. This article recognizes a right to an  
9           additional groundwater right of 1,300 AFY with a priority date of 1849. Diversion  
10          and use of this additional groundwater right is subject to the permit requirements  
11          established under the Navajo Nation Water Code and the Settlement Agreement.

12          f. Article 17.6 – Fulfillment of Need with Imported Water. This article recognizes the  
13          right of the Navajo Nation to divert and consume water imported to the Rio Puerco  
14          Basin and the Rio San José Stream System, and provides that the Navajo Nation will  
15          conjunctively manage its sources of supply to prioritize the importation of water  
16          supplies from sources outside either the Rio Puerco Basin or the Rio San José Stream  
17          System to the extent feasible in a manner that minimizes effects on groundwater and  
18          surface water supplies.

19          g. Article 17.7 – Cooperation with Settlement Parties. This article provides for  
20          settlement parties to provide points of contact and satisfy meet and confer processes,  
21          including any application to the State Engineer by the Navajo Nation or a Navajo  
22          Nation Water Use Permit application pending before the Navajo Nation during the  
23          public notice period.

24          h. Article 17.8 - Leasing of Navajo Nation’s Water Rights. This article allows the  
25          Navajo Nation to lease water rights under this settlement subject to the approval of  
26          the Secretary of the Interior.

27          i. Article 17.9 – Basin Administration. This article provides that the Navajo Nation will  
28          forbear making a priority call against any non-Tribal administrable water right  
29          existing prior to the Enforceability Date of the Settlement Agreement, provided that  
30          this does not affect the right of the Navajo Nation or the United States as a trustee to

1           assert and defend its senior right in response to any priority call made against Navajo  
2           Nation water rights. This article also provides that the Hydrology Bureau will  
3           develop a hydrologic model to simulate the effects on groundwater and surface water  
4           for use in water rights administration.

5           j. Article 17.10 – Navajo Water Rights Administration. This article provides details on  
6           how the Navajo Nation will administer water rights recognized under this Settlement  
7           Agreement. It provides for measurement of Navajo diversions and flow on Navajo  
8           lands, annual reports of diversions and depletions, detailed provisions regarding the  
9           process for public notice, hydrologic analysis, and review of Navajo Nation Water  
10          Use Permits. This article also allows a right of appeal of Navajo Nation Water Use  
11          Permit decisions to the State of New Mexico District Court for the 13th Judicial  
12          District.

13          k. Article 17.11 – Settlement Funding for Navajo Nation. This article provides that the  
14          funding from the United States under this settlement will be in the amount of  
15          \$243,271,000 provided in a federally funded trust fund plus an inflation adjustment.

16          l. Article 17.12 – Signatory Acequia Projects Fund. This article provides for state  
17          funding for a Signatory Acequias Projects Fund for the acequias to use for acquiring  
18          water rights or water supplies or for Signatory Acequia Offset Projects.

19          m. Article 17.13 – Relation to Allotments. This article provides that the Settlement  
20          Agreement does not quantify or affect any water right, or any claim or entitlement to  
21          water, of an Allottee in the Rio San José Stream System or the Rio Puerco Basin.  
22          Water rights for allotments will be separately adjudicated from the Navajo Nation  
23          water rights to be quantified under this Settlement Agreement, and the Settlement  
24          Agreement does not preclude allottees from making claims for water rights in the Rio  
25          San José Stream System or the Rio Puerco Basin. This article also describes  
26          conditions under which the Navajo Nation would forbear the use of its water rights if  
27          non-stock water use on allotments or adjudicated water rights for allotments exceed  
28          a specified amount.

29          n. Article 17.14 – General Provisions. This article provides for a number of general  
30          provisions, including a limited waiver of sovereign immunity by the Navajo Nation



1 to enforce the terms of the settlement and for review of a Navajo Water Use Permit  
2 Decision in state court. It also describes the procedure and contents of the Partial  
3 Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream  
4 System as related to the litigation. This article further provides a negotiation process  
5 to be triggered for modification of terms applying in the Rio Puerco Basin in the event  
6 that the water rights for the Rio Puerco Basin described in Articles 17.4 or 17.5 are  
7 not recognized or upheld in any administrative or judicial proceeding. In this event,  
8 the State of New Mexico, Navajo Nation, and the United States in its capacity as  
9 trustee for Navajo Nation will convene and negotiate mutually acceptable alternative  
10 solutions.

- 11 o. Article 17.15 – Waivers and Releases of Claims. This article provides for various  
12 waivers by the parties, including the release of certain water claims by the Navajo  
13 Nation in the Rio San José Stream System. Upon the Enforceability Date, the  
14 Settlement Agreement becomes a final, binding and permanent quantification of the  
15 water rights of the Navajo Nation in the Rio San José Stream System. The Navajo  
16 Nation retains the right to make claims in the Rio Puerco Basin only as provided in  
17 Article 17.4.5. The Navajo Nation cannot claim water rights in the Rio San José  
18 Stream System or the Rio Puerco Basin beyond those described in this Settlement  
19 Agreement; however, nothing in the Settlement Agreement prevents the Nation from  
20 acquiring additional water rights by purchase in the future.
- 21 p. Article 17.16 – Conditions Precedent. This article provides for the conditions that  
22 must be met before the Enforceability Date.
- 23 q. Article 17.17 – Effect; Enforceability Dates. This article describes the effect of the  
24 execution of the Settlement Agreement. The Navajo Nation's execution of this  
25 Settlement Agreement is deemed an execution of both this Settlement Agreement on  
26 the Navajo Nation's water rights and the Local Settlement Agreement dated May 13,  
27 2022, once the other parties execute this Settlement Agreement. This article also  
28 provides that the Local Settlement Agreement dated May 13, 2022, shall become  
29 final and enforceable when the conditions precedent in Article 16 have been met, and  
30 this Settlement Agreement shall become final and enforceable when the Secretary of

1 the Interior publishes a statement in the Federal Register finding that the conditions  
2 precedent in Article 17.16 have been met.

3 Q. The settlement requires that the Navajo Nation provide a limited waiver of sovereign  
4 immunity and consent to be added as a party and allow actions by any party concerning  
5 settlement interpretation or enforcement of the Settlement Agreement, or review of a  
6 Navajo Nation Water Use Permit Decision under the Settlement Agreement that is  
7 brought in State of New Mexico Court for the 13th Judicial District, and in the New  
8 Mexico Court of Appeals, and the New Mexico Supreme Court on appeal therefrom in  
9 the same manner as provided under New Mexico law.

10 R. The Navajo Nation Water Rights Commission, with legal and technical assistance from  
11 the Department of Justice Water Rights Unit and the Department of Water Resources,  
12 made presentations on the Settlement Agreement available to the fifteen chapter  
13 communities that will be impacted, to the Eastern Agency Council and to the Eastern  
14 Land Commission. Interactive forums were also held on radio and on social media  
15 livestreams.

16 S. On May 9, 2024, the Navajo Nation Water Rights Commission, through NNWRC-2024-  
17 013, attached as **Exhibit D**, passed a resolution endorsing and recommending approval  
18 by the Resources and Development Committee, the Naabik'iyáti' Committee, and the  
19 Navajo Nation Council of the Rio San José Stream System Water Rights Settlement  
20 Agreement.

21 T. Consistent with the concept of *Tó'éí'íiná At'e* (Water is Life), the Navajo Nation Council  
22 has determined that it is in the best interest of the members and chapters of the Navajo  
23 Nation residing within the Rio San José Stream System and Rio Puerco Basin and the  
24 Navajo Nation in general, to approve the Rio San José Stream System Water Rights  
25 Settlement Agreement.

26 U. It is in the best interest of the Navajo Nation, that a limited waiver of sovereign immunity  
27 be approved by the Navajo Nation Council and that the President of the Navajo Nation  
28 and the Attorney General of the Navajo Nation be authorized to sign the Settlement  
29 Agreement attached as **Exhibit A**, allowing actions related to interpretation or  
30 enforcement of the Settlement Agreement or federal implementing legislation, or review

1 of a Navajo Nation Water Use Permit Decision, to add the Navajo Nation as a party and  
2 to be brought in State of New Mexico Court for the 13th Judicial District, in the New  
3 Mexico Court of Appeals, and in the New Mexico Supreme Court on appeal therefrom  
4 in the same manner as provided under New Mexico law.

5  
6 **SECTION THREE. APPROVALS**

- 7 A. The Navajo Nation Council hereby approves the Rio San José Stream System Water  
8 Rights Settlement Agreement in the form of or substantially similar to the form of  
9 **Exhibit A** as attached.
- 10 B. Notwithstanding the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551-555, the  
11 Navajo Nation Council hereby approves a limited waiver of sovereign immunity to enter  
12 into the Settlement Agreement attached as **Exhibit A**, for the limited and sole purpose of  
13 interpretation or enforcement of the Settlement Agreement or federal implementing  
14 legislation or review of a Navajo Nation Water Use Permit Decision to be brought in the  
15 State of New Mexico District Court for the 13th Judicial District and in the New Mexico  
16 Court of Appeals and the New Mexico Supreme Court on appeal therefrom in the same  
17 manner as provided under New Mexico law.
- 18 C. The Navajo Nation Council hereby authorizes the President of the Navajo Nation and the  
19 Attorney General of the Navajo Nation to execute the Rio San José Stream System Water  
20 Rights Settlement Agreement in the form of or substantially similar to the form of  
21 **Exhibit A** as attached and any and all other documents necessary or appropriate to  
22 effectuate the intent and purpose of this resolution.

23  
24 **SECTION FOUR. PROCEDURES FOR APPROVING CHANGES IN THE**  
25 **SETTLEMENT AGREEMENT**

26 In the event changes are made to the Rio San José Stream System Water Rights  
27 Settlement Agreement during the congressional process such that the form of the  
28 Settlement Agreement is not substantially similar to **Exhibit A** as attached, the Navajo  
29 Nation Council delegates to the Navajo Nation Water Rights Commission the authority  
30 to make necessary technical and conforming changes to the Settlement Agreement, and

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authorizes the President of the Navajo Nation and the Attorney General of the Navajo Nation to execute the same.



Exhibit A

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13th Jud. Dist. Ct.)*

**NAVAJO NATION ADDENDUM**

**PURSUANT TO ARTICLES 1 AND 17 OF THE RIO SAN JOSÉ STREAM SYSTEM  
WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO  
NATION, THE STATE OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF  
MILAN, THE ASSOCIATION OF COMMUNITY DITCHES OF THE RIO SAN JOSÉ, AND  
NINE INDIVIDUAL ACEQUIAS AND COMMUNITY DITCHES**

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## 17.1. DEFINITIONS.

The definitions in Article 3 of the “Rio San José Stream System Water Rights Local Settlement Agreement among the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José and Nine Individual Acequias and Community Ditches” dated May 13, 2022 (“Settlement Agreement”) are incorporated herein and made applicable to Article 17, in addition to the following definitions:

**17.1.1. Addendum.** The term “Addendum” means this Article 17.

**17.1.2. Allotment.** The term “Allotment” means a parcel of land held in trust by the United States for the benefit of one or more individual Indians, or an Indian Tribe holding an undivided fractional beneficial interest.

**17.1.3. Allottee.** The term “Allottee” means an individual Indian holding a beneficial interest in an allotment, or an Indian Tribe holding an undivided fractional beneficial interest in an Allotment.

**17.1.4. Article 17 Allotment.** The term “Article 17 Allotment” means a parcel of land that is (A) located within (1) the Rio Puerco Basin or (2) the Rio San José Stream System; (B) held in trust by the United States for the benefit of one or more individual Indians, or an Indian Tribe holding an undivided fractional beneficial interest; and (C) not identified in Appendix A to this Addendum. Appendix A does not include allotments excluded from this definition within the Rio Puerco Basin. Appendix A to the conformed Settlement Agreement shall include allotments in the Rio Puerco Basin that are so excluded. The Navajo Nation, Pueblos, the State, and United States may, by agreement, amend Appendix A to accurately reflect the parcels intended to be excluded from this definition. However, if those parties cannot reach agreement, the United States will make the final decision on amending the appendix.

**17.1.5. Article 17 Allottee.** The term “Article 17 Allottee” means an individual Indian holding a beneficial interest in an Article 17 Allotment, or an Indian Tribe holding an undivided fractional beneficial interest in an Article 17 Allotment.

**17.1.6. Article 17 Enforceability Date.** The term “Article 17 Enforceability Date” means the date upon which the Secretary publishes the statement of findings that all Conditions Precedent set forth in 17.16 have been fulfilled.

**17.1.7. Navajo Nation Lands or Navajo Lands.** “Navajo Nation Lands” or “Navajo Lands” means any real property (A) in the Rio San José Stream System that is held by the United States in trust for the Navajo Nation, or owned by the Navajo Nation, as of the Article 17 Enforceability Date; or (B) in the Rio Puerco Basin that is held by the United States in trust for the Navajo Nation, or owned by the Navajo Nation, as of the Article 17 Enforceability Date. Land placed in trust with the United States subsequent to the Article 17 Enforceability Date for the Navajo Nation in the Rio San José Stream System and in the Rio Puerco Basin shall be considered Navajo Nation Lands. Navajo Nation Lands or Navajo Lands, as defined here, does not include Allotments.

**17.1.8. Navajo Nation Water Use Permit.** “Navajo Nation Water Use Permit” means a document specifying terms and conditions for diversion and use of water on Navajo Nation Lands issued by the Navajo Nation within the scope of its authority under the Navajo Nation Water Code and this Addendum.

**17.1.9. Navajo Nation Water Code.** “Navajo Nation Water Code” means the water code enacted in 1984 by the Navajo Nation Council through Resolution CAU-34-84. (22 N.N.C. §§ 1101 *et seq.*) The Navajo Nation Water Code asserts Navajo Nation authority over all actions taken within its territorial jurisdiction that affect the use of water within the Navajo Nation (<https://www.navajonationcouncil.org/code/>).

**17.1.10. Navajo Nation’s Water Rights.** “Navajo Nation’s Water Rights” means all the water rights set out in Articles 17.2, 17.4, and 17.5. This term does not include: (A) any interest that the Nation may have in an Article 17 Allotment that is determined by the Secretary to be held pursuant to Section 1 of the General Allotment Act, 24 Stat. 388, 25 U.S.C. sec. 331 *et seq.*; and (B) any undivided interest that the Nation may have in an Article 17 Allotment that is determined by the Secretary to be held pursuant to an authority other than Section 1 of the General Allotment Act.

**17.1.11. Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System.** “Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System” means the judgment and decree entered in the Adjudication for the resolution of the water rights claims of the Navajo Nation in the Rio San José Stream System. The Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System shall be substantially in the form agreed to by the Settlement Parties and attached to the conformed Settlement Agreement. Water rights of Article 17 Allotments will be adjudicated separately, as provided in Article 17.13.3.

## **17.2. NAVAJO NATION WATER RIGHTS BASED ON PAST AND PRESENT USES IN THE RIO SAN JOSÉ STREAM SYSTEM.**

**17.2.1. Domestic, Commercial, Municipal, and Industrial Uses.** Based on past and present uses, the Navajo Nation has a right to divert and consume water on Navajo Nation Lands for Domestic, Commercial, Municipal and Industrial uses as follows:

**17.2.1.1. Quantity:** 638 AFY

**17.2.1.2. Priority Date:** 1849

**17.2.1.3. Source of Supply:** Groundwater

**17.2.1.4. Points of Diversion:** The existing points of diversion will be included as an exhibit to the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System.

**17.2.1.5. Exception:** The provision in Article 17.2.1 requiring Navajo Nation water rights to be diverted and consumed on Navajo Lands does not apply to the 24 acre-feet per year currently diverted from the Haystack well operating on Allotment 16T-551.

**17.2.2. Livestock Uses.** Based on past and present uses, the Navajo Nation has a right to divert and consume water on Navajo Nation Lands for the purpose of livestock and wildlife watering as follows:

**17.2.2.1. Source of Water:** This right may be exercised from any lawful water source, including stock ponds subject to Article 17.2.2.3.D, wells, springs, or watercourses.

**17.2.2.2. Consumptive Use by Livestock:** The Navajo Nation is entitled to a water right to divert and consume water on Navajo Lands as of the date on which a motion for entry of

a Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System is filed, for the purpose of livestock and wildlife watering as follows: 35 AFY.

#### **17.2.2.3. Stock Ponds.**

- A. Stock Ponds Purpose of Use.** The primary purpose of use for stock ponds is livestock and wildlife watering, with incidental uses of flood control, erosion control, and sediment control.
- B. Stock Ponds Storage Right:** The Navajo Nation is entitled to store water in stock ponds on a continuous basis as water is available. The quantified storage right is expressed as a not-to-exceed aggregate of all stock ponds as follows: 493 AF.
- C. Stock Ponds Consumptive Use Right:** The Navajo Nation is entitled to a consumptive use right through evaporation from stock pond water surfaces as a not-to-exceed aggregate of evaporation of all stock ponds as follows: 382 AFY.
- D. Stock Ponds Limitations:** Stock pond water rights under this Article 17.2.2 are not transferable. Notwithstanding the foregoing, any stock pond may be reconstructed, rehabilitated, or replaced at its existing location or any other location on Navajo Lands, provided that:
  - 1. the aggregate stock pond depletion is not exceeded;
  - 2. the change does not result in exceedance of the aggregate stock pond storage capacity;
  - 3. the purpose of use for the stock pond is not changed;
  - 4. no water rights are Impaired by any relocation of stock pond storage rights;
  - 5. the new place of use is not on the mainstem Rio San José, including Bluewater Creek; and
  - 6. notice of changes of stock pond to locations within the Bluewater drainage basin shall be provided to the Bluewater Toltec Irrigation District no less than 30 days prior to the change, stating the size and location of the stock pond.

#### **17.2.2.4. Stock Wells.**

- A. Stock Wells Points of Diversion:** Existing stock wells serving the Navajo Nation's livestock water rights under this Article 17.2.2.4 will be identified in exhibits to the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System pursuant to Article 17.2.2.6.
- B. Stock Wells Limitations:** Any stock well may be reconstructed, rehabilitated, or replaced at its existing location or any other location on Navajo Nation Lands subject to Article 17.10.3, the Navajo Nation Water Code and this Addendum, provided that the purpose of use is not changed.

**17.2.2.5. Priority Date:** The priority date for the Navajo Nation's past and present livestock uses is 1849, provided that the priority date for stock ponds on Navajo fee lands is the construction date.

**17.2.2.6. Places of Use and Points of Diversion Exhibits for Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.** The Navajo Nation, State, and United States will jointly prepare exhibits identifying and mapping the places of use and points of diversion for inclusion in the Partial Final Judgment and

Decree of the Navajo Nation's Water Rights in the Stream System. Stock pond exhibit lists will include stock pond identifier, location coordinates, surface area, and capacity. Stock wells exhibit lists will include well identifier and location coordinates.

### **17.2.3. State-law Based Water Rights.**

#### **17.2.3.1. Existing State-law Based Water Rights.**

- A. State-law based water rights are water rights acquired by prior owners under state law and subsequently acquired by the Navajo Nation.
- B. The priority date of a state-law based water right is the date the water right was first put to beneficial use; provided that stock ponds will have the priority date of 1849 if held in trust, or date of construction priority if held in fee, at the time of filing of Motion for Entry of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.
- C. All state-law based water rights acquired by the Navajo Nation shall retain their state law requirements and conditions; provided that, stock ponds on such acquired lands included in Navajo Nation's claims shall be quantified for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System using the same methodology used for Article 17.2.2 rights in Navajo Nation's claims and subject to the same limitations in Article 17.2.2.
- D. Upon acquisition by the Navajo Nation, a state-law based water right is not subject to forfeiture, abandonment, or permanent alienation.
- E. These rights will be identified and described in an exhibit to the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

#### **17.2.3.2. Additional State-Law Based Water Rights.**

- A. The Navajo Nation may acquire additional state-law based water rights, subject to the requirements of Article 17.10.
- B. Any such additional water rights acquired prior to the filing of a motion for the entry of a Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System will be quantified, and priority dates will be determined, based on state law of prior appropriation and beneficial use for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System; provided that, Navajo Nation stock ponds on such acquired lands shall be quantified for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System using the same methodology used for Article 17.2.2 rights and subject to the same limitations in Article 17.2.2, and Navajo Nation stock ponds will have a priority date of 1849 if held in trust or date of construction priority if held in fee at the time of filing of the Motion for Entry of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.
- C. The necessary information for inclusion of the state-law based water right must be provided to the State at least two months prior to the filing of the motion for entry of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

- D. All water rights acquired by the Navajo Nation after the deadline date set forth above for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System shall retain their state law requirements and conditions.
- E. State law-based water rights acquired by the Navajo Nation, or by the United States on behalf of the Navajo Nation, after the date for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System shall not be subject to forfeiture, abandonment, or permanent alienation from the time they are acquired.

**17.2.4. Technical Correction of Quantities.** Prior to the filing of the motion for entry of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System, the Navajo Nation, the United States and the State shall prepare a joint report providing the basis for the quantifications stated in Articles 17.2 and 17.4 based on past and present beneficial use on Navajo Nation Lands. The respective quantities for DCMI uses in Articles 17.2.1 and 17.4.2 will be based on the combined maximum amount in any single year pumped from wells for Domestic, Commercial, Municipal, and Industrial. Water Rights for past and present livestock uses will be quantified and described using the same methodology used for the Pueblos' Rio San José Stream System livestock rights recognized in Article 4.3. To the extent the joint report supports quantifications that diverge from those stated in Articles 17.2 and 17.4, the quantities shall be corrected and the corrected quantities shall be set forth in the proposed Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

### **17.3. TRADITIONAL AGRICULTURAL WATER USE PRACTICES.**

**17.3.1. Adoption of 2015 Stipulation Provisions.** The Navajo Nation and its members have the right on Navajo Nation Lands in the Rio San José Stream System to engage in the practices of Seasonal Works Farming and Soil Conservation as defined in and consistent with the Stipulation Concerning Certain Traditional Agricultural Water Use Practices of the Pueblos of Acoma and Laguna filed with the Court on May 12, 2015, and the Court Order Adopting Stipulation and Dismissing Certain Claims of the United States, the Pueblo of Acoma and the Pueblo of Laguna Regarding Certain Traditional Agricultural Water Use Practices filed with the Court on May 12, 2015.

**17.3.2. Practices Do Not Constitute a Water Right.** The practices of Seasonal Works Farming and Soil Conservation neither establish nor constitute a water right. The Navajo Nation, its members, and the United States shall not claim, assert, or be entitled to a quantifiable or transferable water right for Seasonal Works Farming and Soil Conservation, and such practices shall not be a basis for the United States, the Navajo Nation, or its members to assert any right to groundwater.

**17.3.3. Exclusion from Priority Administration.** The practices of Seasonal Works Farming and Soil Conservation shall not be subject to priority administration of water rights, and neither the Navajo Nation, nor its members, nor the United States may make a priority call to serve such practices. No other party to this adjudication may seek to enjoin or otherwise prohibit the Navajo Nation or its members from engaging in Seasonal Works Farming and Soil Conservation.

### **17.4. NAVAJO NATION'S OUT OF BASIN WATER RIGHTS FOR PAST AND PRESENT USES.**

**17.4.1. In General.** In addition to the water rights described in Article 17.2, the Navajo Nation has out of basin water rights for past and present uses located within the Rio Puerco Basin, as described in this Article 17.4.

**17.4.2. Out of Basin Domestic, Commercial, Municipal, and Industrial Water Uses.** The water rights for past and present Domestic, Commercial, Municipal, and Industrial water uses on Navajo Nation Lands in the Rio Puerco Basin will be quantified and described in the joint report described in Article 17.2.4 and included in an exhibit to the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.4.2.1. Quantity:** 363 AFY diversion within the Rio Puerco subbasin and 143 AFY diversion within the Arroyo Chico subbasin as defined in Article 3.18.

**17.4.2.2. Source of Supply:** Groundwater

**17.4.2.3. Purpose of Use:** Domestic, commercial, municipal and industrial.

**17.4.2.4. Points of Diversion:** Existing groundwater points of diversion will be included as an exhibit to the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.4.2.5. Priority Date:** 1849.

**17.4.2.6. Places of Use and Points of Diversion Exhibits for Partial Final Judgment and Decree.** The Nation, State, and United States will jointly prepare exhibits identifying and mapping the places of use and points of diversion for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.4.3. Out of Basin Livestock Water Uses.** The Navajo Nation's water rights for past and present livestock uses in the Rio Puerco Basin shall be subject to Articles 17.2.2.3.D and 17.10.3 and will be quantified and described, using the same methodology used for the Rio San José Stream System livestock rights recognized in Article 17.2.4 in an exhibit to the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System. The priority date for the Navajo Nation's past and present livestock uses is 1849, provided that the priority date for stock ponds on Navajo fee land is the date of construction.

**17.4.4. Out of Basin State-Law Based Water Rights.**

**17.4.4.1. Existing State-Law Based Water Rights.** The Navajo Nation's existing state-law based water rights in the Rio Puerco Basin shall be subject to and satisfy the requirements of Article 17.2.3 and will be identified and described, using the same methodology used for the Navajo Nation's existing state-law based water rights in the Rio San José Stream System, in exhibits jointly prepared by the Navajo Nation, the State and the United States for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.4.4.2. Additional State-Law Based Water Rights.** The Navajo Nation may acquire additional state-law based water rights outside the Rio San José Stream System. The Navajo Nation's additional state-law based water rights in the Rio Puerco Basin shall be subject to Article 17.2.3.2. Such rights acquired at least two months prior to the filing of the motion for entry of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System will be identified and described, using the methodology in Article 17.2.3.2 used for the Navajo Nation's additional state-law based water rights in the Rio San José Stream System, in exhibits jointly prepared by the

Navajo Nation, the State, and United States, for inclusion in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.4.5. Limitation of Claims.**

**17.4.5.1.** Subject to and in consideration of the rights described in Articles 17.4 and 17.5, the Navajo Nation will not claim any additional water rights, or divert water, appurtenant to Navajo Nation Lands in the Rio Puerco Basin in excess of or in addition to those water rights described in Articles 17.4 and 17.5.

**17.4.5.2.** Notwithstanding Article 17.4.5.1, the Navajo Nation may acquire and use additional water rights in the Rio Puerco Basin, including without limitation by appropriation of groundwater on Navajo Nation Lands subject to the requirements of Articles 17.10 and such rights will be quantified pursuant to Article 17.4.4.

**17.4.5.3.** In the event that any of the water rights described in Article 17.4 and 17.5, as corrected pursuant to Article 17.2.4, are not recognized or upheld in any administrative or judicial proceeding, the claims limitations in this Article 17.4.5 will no longer apply and the State and the Navajo Nation will activate the process under Article 17.14.20.2.

**17.5. ADDITIONAL GROUNDWATER RIGHTS.**

In addition to the water rights described in Articles 17.2 and 17.4, the Navajo Nation has an Additional Groundwater Right as described here in Article 17.5.

**17.5.1. Quantity:** Right to divert and consume 1,300 AFY.

**17.5.2. Purpose of Use:** Domestic, commercial, municipal and industrial.

**17.5.3. Place of Use:** Within Navajo Nation Lands, and on Article 17 Allotments in accordance with Article 17.13, in the Rio San José Stream System and the Rio Puerco Basin.

**17.5.4. Points of Diversion:** Any portion of the Additional Groundwater Right may be diverted from any new or existing well on Navajo Nation Lands in the Rio San José Stream System and the Rio Puerco Basin screened in any aquifer(s) below the alluvial aquifer.

**17.5.5. Priority Date:** 1849

**17.5.6. Transferability and Permits.**

**17.5.6.1. Navajo Nation Water Use Permits Required.** Diversion and use of the Additional Groundwater Right shall be subject to the permit requirements under the Navajo Nation Water Code and this Addendum.

**17.5.6.2. Transferability Limitations.** The Additional Groundwater Right shall not be transferable to:

- A. places of use off Navajo Lands or Article 17 Allotments;
- B. points of diversion off Navajo Nation Lands;
- C. any surface water point of diversion; or
- D. a well screened in the alluvial aquifer in the Rio San José Stream System.

**17.6. FULFILLMENT OF NEED WITH IMPORTED WATER.**

**17.6.1. In General.** The right to divert and consume water imported to the Rio Puerco Basin and the Rio San José Stream System shall be pursuant to this Article 17.6. Imported



water is in addition to Article 17.5 and is not included in the quantity limitation described in Article 17.5.1.

**17.6.2. Rio Puerco Basin.** In order to reduce and mitigate the effects of groundwater pumping by the Navajo Nation on the groundwater and surface water supplies of the Rio Puerco Basin, the Nation will conjunctively manage its sources of supply to:

**17.6.2.1.** prioritize the importation of water supplies from sources outside either the Rio Puerco Basin or the Rio San José Stream System to the extent feasible in a manner that minimizes effects on the groundwater and surface water supplies of the Rio Puerco Basin; and

**17.6.2.2.** otherwise utilizes both groundwater and surface water in a manner that minimizes effects on the groundwater and surface water supplies of the Rio Puerco Basin.

**17.6.3. Rio San José Stream System.** In order to reduce and mitigate the effects of groundwater pumping by the Navajo Nation on the groundwater and surface water supplies of the Rio San José Stream System, the Nation will conjunctively manage its sources of supply to:

**17.6.3.1.** prioritize the importation of water supplies from sources outside either the Rio Puerco Basin or the Rio San José Stream System to the extent feasible in a manner that minimizes effects on the groundwater and surface water supplies of the Rio San José Stream System; and

**17.6.3.2.** otherwise utilizes both groundwater and surface water in a manner that minimizes effects on the groundwater and surface water supplies of the Rio San José Stream System.

**17.6.4. Conjunctive Management of Supply to Allotments.** In the event the Navajo Nation provides service to Article 17 Allotments within the Rio Puerco Basin or the Rio San José Stream System of water from sources outside either basin or stream system, the Navajo Nation will make such service available in accordance with the conjunctive management principles described in Articles 17.6.2 and 17.6.3.

**17.6.5. Satisfaction of Prior Agreement Provision.** The State agrees and acknowledges that the Navajo Nation's use of imported water as described in this Article 17.6 will satisfy the terms and conditions of Paragraph 9.11 of the *San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement* signed by the State of New Mexico, the Navajo Nation, and the Secretary of the Interior on December 17, 2010, with respect to the Navajo Nation's use of water diverted from the San Juan River Basin and delivered to supply Navajo Nation uses in the portions of the Rio Grande Basin consisting of the Rio San José Stream System or Rio Puerco Basin.

## **17.7. COOPERATION WITH SETTLEMENT PARTIES.**

**17.7.1. Navajo Nation, City of Grants, and Village of Milan Reciprocal Meet and Confer.** The Navajo Nation, City of Grants, and Village of Milan shall identify in writing their respective points of contact, including contact information, for meeting and conferring pursuant to this Article 17.7.1. The meet and confer requirements of Articles 7.6.2 and 7.6.4 shall apply respectively to the filing of applications by the municipalities and the Navajo Nation.

**17.7.2. Navajo Nation and Pueblos of Laguna and Acoma Meet and Confer.**

**17.7.2.1.** The Navajo Nation shall identify in writing to each Pueblo's Governor its designated point of contact, including contact information, for meeting and conferring pursuant to this Article 17.7.2.

**17.7.2.2.** If a Pueblo requests in writing to the Navajo Nation to meet and confer about an application to the State Engineer by the Navajo Nation or a Navajo Nation Water Use Permit application pending before the Navajo Nation during the public notice period, then the Pueblo and the Navajo Nation's point of contact will meet and confer in good faith during the public notice period on such application.

**17.7.2.3.** Each Pueblo shall identify in writing to the Navajo Nation its designated point of contact, including contact information, for meeting and conferring pursuant to this Article 17.7.2.

**17.7.2.4.** If the Navajo Nation requests in writing to a Pueblo to meet and confer about an application to the State Engineer by the Pueblo or a Pueblo Water Right Permit application pending before the respective Pueblo during the public notice period, then the Pueblo's and the Navajo Nation's representatives will meet and confer in good faith during the public notice period on such application.

**17.7.3. Navajo Nation and Signatory Acequias Reciprocal Meet and Confer.**

**17.7.3.1.** Each Signatory Acequia shall identify in writing to the Navajo Nation its designated Commissioner point of contact for meeting and conferring pursuant to Article 17.10.6.3.B and this Article 17.7.3. Such notification shall include the Commissioner's contact information.

**17.7.3.2.** If the Navajo Nation requests in writing to a Signatory Acequia to meet and confer about an application to the State Engineer by or on behalf of the Signatory Acequia, then the Navajo Nation and the Acequia Commission will meet and confer in good faith during the public notice period on such application.

**17.8. LEASING OF NAVAJO NATION'S WATER RIGHTS.**

**17.8.1. Secretarial Approval.** Subject to the approval of the Secretary, the Navajo Nation may lease water rights secured to it under this Article 17 and Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.8.2. No Preemption.** The approval authority of the Secretary under Article 17.8.1 shall not amend, construe, supersede, or preempt any State or Federal law, interstate compact, or international treaty that pertains to the Rio Grande, or any of its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quantity of those waters.

**17.8.3. Maximum Term.** The maximum term of any water use lease, including all renewals, shall not exceed 99 years in duration. The Navajo Nation shall not permanently alienate any rights it has under this Article 17 or the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.

**17.8.4. No Forfeiture or Abandonment.** The nonuse by a lessee of the Navajo Nation of any right to which the Navajo Nation is entitled under the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System shall in no event result in a forfeiture, abandonment, or other loss of all or any part of those rights.

**17.8.5. No Prejudice.** Nothing in this Article 17.8 shall be construed to establish, address, prejudice, or prevent any Settlement Party from litigating whether or to what extent any applicable State law, Federal law, or interstate compact does or does not permit, govern, or apply to the use of the Navajo Nation's water rights described in Articles 17.2, 17.4, and 17.5 outside of New Mexico.

## **17.9. BASIN ADMINISTRATION.**

**17.9.1. Forbearance from Priority Calls by Navajo Nation.** To avoid disruption to lawful existing non-Tribal water use, the Navajo Nation agrees to forbear making any priority call based on its senior rights against any non-Tribal administrable water right existing prior to the Article 17 Enforceability Date and determined pursuant to 19.25.13.27 NMAC. Notwithstanding the foregoing, nothing in this Article 17 affects the right of the Navajo Nation, or the United States in its trustee capacity on the Navajo Nation's behalf, to assert and defend its senior right in response to any priority call or priority administration made against Navajo Nation water rights.

**17.9.2. Priority Administration Among Junior Users.** In the event of priority administration among water rights users junior to Navajo Nation senior water rights, the Water Master shall administer priorities among the non-Navajo Nation water users. If a non-Navajo Nation water right owner requests a priority call, and if the Water Master grants such request, the Water Master will limit the scope of priority administration to users junior to the requesting owner in an amount necessary to satisfy the request.

**17.9.3. Hydrologic Model.** The Parties will cooperate in the development and agree to the use of a hydrologic model or models to be adopted and approved and used by the State Engineer for administration of the Rio San José Stream System and used by the Navajo Nation in the administration of water rights on Navajo Nation lands pursuant to 17.10 of this Addendum.

**17.9.3.1. Development of Settlement Model or Models.** Assuming the availability of adequate funding and staffing, the Hydrology Bureau, in consultation with the Parties choosing to be involved in the development process, shall develop a hydrologic model or models for use in the Rio San José Stream System after the Local Settlement Parties execute this Article 17, which will simulate the effects on groundwater and surface water from groundwater pumping and surface water diversions and be capable of quantifying effects on groundwater levels in wells. The hydrologic model or models shall be used in water rights management and administration, both for estimation of the incremental effects of a proposed change in water use and may be used for planning purposes. If a Settlement Party other than the Hydrology Bureau develops a model or models, the Hydrology Bureau shall still perform its remaining obligations under this Article 17.9.3.

**17.9.3.2. Approval Process for Development of Settlement Model.** When any model or models have been developed pursuant to Article 17.9.4, model files and documentation will be made available to the Settlement Parties by the Hydrology Bureau. The Hydrology Bureau will notify the Settlement Parties and request their approval or disapproval and comments. Parties will submit a notice of approval or disapproval with comments to the Hydrology Bureau within 90 days of receipt of the documents and files. A failure to respond within 90 days will be considered approval. If a notice of disapproval is timely submitted, the disapproving Settlement Party shall propose a change to the model that will satisfy their concerns to be considered by a Technical Committee convened by the Hydrology Bureau composed of one expert from each

Settlement Party that chooses to participate. A hydrologist from the United States and a hydrologist from the Hydrology Bureau shall serve as Co-Chairs of the Technical Committee. If the Technical Committee, including the Co-Chairs, unanimously approves the change to the model, the Settlement Party requesting the change shall implement the agreed upon change, unless the Hydrology Bureau agrees to do so. If there is not unanimous approval of a requested change to the model or models, the State Engineer shall make the decision as to the model or models to be adopted for the uses set forth in Article 17.9.3.3 The term Settlement Model will be used to describe the model or models developed and approved through the process set forth herein. If a model has not been approved or is being disputed by the Technical Committee, the Hydrology Bureau and the Navajo Nation have the authority to use whatever hydrologic tool or tools each deem appropriate on a case-by-case basis.

**17.9.3.3. Circumstances of Use.** A Settlement Model or Models shall be used for circumstances described in Article 17.9.3 and for assessment by the Office of the State Engineer and the Navajo Nation of water rights applications within the Rio San José Stream System and may be used for other administration, planning and management purposes by any other party or person. The requirement for use of a Settlement Model does not preclude use of additional hydrologic tools by the Hydrology Bureau and the Navajo Nation. Under limited circumstances, the use of a Settlement Model will not be required. The types of applications for which use of a Settlement Model may not be required include, but are not limited to:

- A. Applications involving the change in point of diversion for which the move-from and move-to locations are within the same model cell.
- B. Applications involving less than a certain volume of water per year. This amount will be determined by the Technical Committee following an evaluation of the completed Settlement Model.

**17.9.3.4. Revision of a Settlement Model.** Any Settlement Party may propose a revision to a Settlement Model by submitting to the Hydrology Bureau of the Office of the State Engineer (“Hydrology Bureau”) a written description of and justification for the proposed revision. If the Settlement Party has completed the proposed revisions and would like the proposed revised model to be considered, then the model files and revision documentation should also be submitted. A model revision is any revision which is not an extension of the historical period under Article 17.9.3.5.

- A. **Technical Committee Review.** Upon receipt of any such proposal, the Hydrology Bureau shall provide written notice to the Settlement Parties and convene a Technical Committee. The Technical Committee shall review the proposed revision and attempt to reach a consensus recommendation on whether to adopt the proposed revision to the Settlement Model.
- B. **Unanimous Consent.** If there is unanimous consent of the Technical Committee on a proposed revision to a Settlement Model, and the proposed model revisions have been completed, the proposed revised model shall be adopted. If the proposed model revisions have not been completed, the model shall be revised by the Party who proposed the revision in collaboration with the members of the Technical Committee, unless the Hydrology Bureau agrees to revise the model. The process for reviewing completed model revisions that follow a proposed revision is described in Article 17.9.3.4.D.

**C. Non-Unanimous Consent.** If there is not unanimous consent of the Technical Committee to a proposed revision to the Settlement Model, the Hydrology Bureau shall make the final determination on whether the proposal to revise the Settlement Model should be adopted. A decision to adopt a proposed revision shall be based on the determination by the Hydrology Bureau that the adoption of the proposed revision would significantly enhance the utility of the Settlement Model in the administration of water rights, including but not limited to the determination of Impairment to existing water rights and the determination of offsets or mitigation necessary to prevent Impairment. If the Hydrology Bureau approves the proposal to revise the Settlement Model, and the proposed model revisions have been completed, the proposed revised model shall be adopted. If the Hydrology Bureau approves the proposal to revise the model and proposed model revisions have not been completed, the model shall be revised by the Settlement Party who proposed the revision in collaboration with the members of the Technical Committee, unless the Hydrology Bureau agrees to revise the model. The process for completing model revisions is described in Article 17.9.3.4.D.

**D. Process for Reviewing Completed Model Revisions that Follow a Proposed Revision.** If the proposed model revisions have been approved but not yet completed, upon completion of the revised Settlement Model pursuant to Articles 17.9.3.4.B. and 17.9.3.4.C., the final revised model documentation and model files shall be submitted to the Technical Committee for review. If the Technical Committee reaches unanimous consensus to approve the final revised model, it shall be approved. If unanimous consent among the Technical Committee members regarding the final revised model is not reached, the Hydrology Bureau shall make the final decision on whether to approve the final revised model if it determines that its adoption would significantly enhance the utility of the Settlement Model in the administration of water rights, including but not limited to the determination of Impairment to existing water rights and the determination of offsets or mitigation necessary to prevent Impairment.

**17.9.3.5. Extension of the Historical Period.** An extension of the historical period will not be considered a model revision unless it is part of a model validation process, model recalibration, and/or a Settlement Party's proposed changes to it as described in Article 17.9.3.4. and adopted pursuant to Article 17.9.3.4.D.

**17.9.3.6. Sharing of Files for the Settlement Model or Models.** Every five years, the Hydrology Bureau will provide the Parties with the most recent files for the Settlement Model or Models for hydrologic evaluation of water rights applications in the Rio San José Stream System, at which time a Settlement Party may propose a revision of the extension of the historical period to the model files that were provided pursuant to Articles 17.9.3.2 and 17.9.3.4. If model files are requested by a Settlement Party in a period less than five years, comments on an extension of the historical period for a model or models may be submitted to the Hydrology Bureau for consideration. If a Settlement Party wants to review or run the Settlement Model or Models, the Party should request the latest version of the model files from the Hydrology Bureau.

**17.9.4. Irrigation Water Requirements.** Prior to the entry of a Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System, the Parties shall jointly move the Court to adopt the following values to apply to Navajo Nation water rights and certain non-Tribal water rights in the Rio San José Stream System, including

non-Tribal irrigation rights for which declarations have been filed by water right claimants with different irrigation values:

**17.9.4.1. Consumptive Irrigation Requirement (“CIR”):** 2.1 AFY per acre;

**17.9.4.2. Farm Delivery Requirement (“FDR”):** 3.0 AFY per acre; and

**17.9.4.3. Project Diversion Requirement (“PDR”):** 4.3 AFY per acre, assuming 70% ditch efficiency, unless a different efficiency can be shown for a specific ditch on a case-by-case basis.

**17.9.5. Non-Agricultural Uses.** For non-agricultural uses on both Navajo Nation and non-Tribal lands, the diversion amount shall be limited to the consumptive use amount unless a return flow plan is approved through the relevant permitting process consistent with Office of the State Engineer practice.

**17.9.6. District Specific Management.** An important purpose of District Specific Management is to monitor, support and protect stream flows, both on and off Navajo Nation lands. The State Engineer, in consultation with the Navajo Nation and the other Parties, shall promulgate district specific management tools by order, district specific rules for the Rio San José Stream System, other lawful means under the State Engineer’s active water resource management authority, or other legal authority prior to entry of the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System. Such management tools shall incorporate and implement the administrative provisions of this Addendum. In addition, the management tools may include other provisions for the administration of rights in the Rio San José Stream System in order to provide for administration pending adjudication of such rights. The management tools adopted by the State Engineer shall at a minimum require the following:

**17.9.6.1. Water Right Validity.** Establish procedures to determine whether, and to what extent, a water right or claim to water right in the Bluewater Underground Water Basin is valid.

**17.9.6.2. Drawdowns.** Establish procedures to determine whether excessive drawdowns are predicted to occur in any area or areas within the Bluewater Underground Water Basin, due to the full exercise of existing water rights for which points and amounts of diversion have been identified, as determined in Articles 17.9.3.2 and 17.9.3.4 to delineate such area(s).

**17.9.6.3. Changes in Place of Use, Purpose of Use, or Point of Diversion.** Establish procedures to ensure that changes in place of use, purpose of use or point of diversion of existing water rights do not lead to excessive incremental drawdown effects in existing wells within areas where excessive drawdowns are predicted, due to full exercise of existing rights for which points and amounts of diversion have been identified, as determined in Articles 17.9.6.1 and 17.9.8.

**17.9.6.4. Wells.** Specify requirements for the metering, monitoring, and reporting of Navajo Nation and non-Navajo wells, including scheduling of meter installation, calibration, and operation. This Article 17.9.6.4 does not apply to pre-basin domestic and livestock wells or domestic and livestock wells permitted by the State pursuant to NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-12-1.2 and equivalent uses on Navajo Nation lands. Requirements for Navajo Nation wells shall be consistent with Article 17.9.10 of this Addendum.



- 17.9.6.5. Groundwater Level Measurements.** Specify requirements for periodic groundwater level measurement for Navajo Nation and non-Navajo wells and well fields diverting ten (10) AFY or more.
- 17.9.6.6. Ditches.** Specify requirements for the measurement of diversions into Navajo Nation and non-Navajo ditches and data sharing. Requirements for Navajo Nation ditches shall be consistent with Article 17.10.1 of this Addendum.
- 17.9.6.7. Record.** Establish procedures for maintenance of a record of all metering, monitoring, and reporting data, including any administrative and judicial changes to decreed water rights or permitted water uses, and including procedures for making Office of the State Engineer records and data readily available to the public on the Office of the State Engineer's website.
- 17.9.6.8. Record of Owners.** Maintain a record of owners for all water rights and permittees.
- 17.9.6.9. Water Master Responsibilities.** Establish duties and responsibilities of a Water Master or Water Masters including provision of an annual Water Master Report.
- 17.9.7. Office of the State Engineer Consideration of Navajo Nation Water Rights.** The Office of the State Engineer shall take into account the water rights of the Navajo Nation recognized in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System, for which points and amounts of diversion have been identified in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System or subsequently by Navajo Nation, including without limitation the rights recognized in Articles 17.4 and 17.5, in all (1) Office of the State Engineer water rights permitting decisions, (2) other Office of the State Engineer water rights administration actions; and (3) Office of the State Engineer assessment of effects of water use by others in any proceeding, including without limitation a court proceeding under NMSA 1978, § 72-12-28. To the extent that such decision, action or assessment includes analysis of full exercise quantities of existing rights, the Office of the State Engineer shall include the full exercise quantities of such Navajo Nation rights at such identified points and amounts of diversion.
- 17.9.8. Hydrographic Survey.** In completing the hydrographic survey under Article 10.8, the State will consult with the Navajo Nation as well as the Pueblos and other Settlement Parties.
- 17.9.9. Exclusion of Certain Permitted Domestic and Livestock Rights.** If the State determines that adjudication of all or a portion of State Engineer permitted rights under NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-12-1.2 is not necessary for administration of the Rio San José Stream System, the Parties agree not to oppose exclusion of those rights from the Adjudication; provided the State Engineer, in consultation with the Settlement Parties, first provides for administration of such excluded rights.
- 17.9.10. Forbearance from Priority Call by Pueblos and Navajo Nation.** The Pueblos agree to forbear making any priority call based on their senior rights against any Navajo Nation water rights existing prior to the Article 17 Enforceability Date that are recognized in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System. In addition, in recognition of the fact that some Pueblo water rights have date-of-construction or state-law priority dates, the Navajo Nation agrees to forbear making any priority call against any of the Pueblos' water rights

existing prior to the Article 17 Enforceability Date that are recognized in the Partial Final Judgment and Decree of the Pueblos' water rights.

## **17.10. NAVAJO WATER RIGHTS ADMINISTRATION.**

### **17.10.1. Measurement of Navajo Diversions and Flow on Navajo Lands.**

**17.10.1.1. Diversion Measurement In General.** The Navajo Nation shall install and maintain flow-measuring devices or gaging stations of appropriate design and using appropriate technology on any surface-water diversions and all groundwater diversions within the Rio San José Stream System on Navajo Nation Lands unless exempted by Article 17.10.1.4.

**17.10.1.2. Diversion Measurement Design, Technology, and Equipment.** The design and technology for each device or station required by Article 17.10.1 shall be subject to approval by the Navajo Nation Department of Water Resources and Water Master. If the Navajo Nation has surface water diversions, surface-water flow-measuring devices and gaging stations required by Article 17.10.1 shall be equipped with telemetry and data storage capability.

**17.10.1.3. Diversion Data Reading, Transmittal, and Posting.** The flow-measuring device at each groundwater diversion shall be read by the Navajo Nation at monthly intervals, or more frequently as may be required by the Navajo Nation Department of Water Resources or Water Master, and the Navajo Nation shall submit the data to the Navajo Nation Department of Water Resources and Water Master. The State shall post the data on the Office of the State Engineer's website monthly. The Navajo Nation Department of Water Resources and Water Master shall maintain a permanent record of the surface-water and groundwater diversion data received pursuant to this Article 17.10.1.3.

**17.10.1.4. Exempt Diversions.** Diversions for the following purposes of use are exempt from this Article 17.10.1:

- A. Individual household wells for domestic and livestock use diverting 3.00 AFY or less, and
- B. Livestock wells diverting 3.00 AFY or less.

### **17.10.1.5. Surface Water Flow Measurement.**

**A. Surface Water Flow Measurement In General.** If the Navajo Nation diverts surface water, flow-measuring devices or gaging stations of appropriate design and equipped with telemetry and data storage capability shall be installed and maintained by the Navajo Nation on the Rio San José and any tributary on which the diversion takes place. These gages shall be installed on each such tributary at the otherwise-suitable location closest to the confluence with the Rio San José or another tributary of the Rio San José. These gages shall also be installed where the tributary exits Navajo Nation lands.

**B. Data Reading, Transmittal and Posting.** If the Navajo Nation diverts surface water in the future, the Navajo Nation shall allow for the surface water telemetry data to be transmitted to the Water Master. The Navajo Nation Department of Water Resources and the Water Master shall post the data on their respective websites and the State shall post the data on the Office of the State Engineer's website.

## **17.10.2. Annual Reports Of Navajo Nation Diversions And Depletions.**



The Navajo Nation shall compile and submit an Annual Report of its diversions and depletions in the Rio San José Stream System pursuant to this Article 17.10.2.

**17.10.2.1. Content.** Each Annual Report shall contain the following information.

- A. Irrigated Acreage.** In the event the Navajo Nation has irrigated acreage, a summary by ditch of the acreage, including lands held by the United States in trust for the Navajo Nation and lands owned by the Navajo Nation in fee, irrigated in the previous calendar year from the Rio San José, its tributaries or underground water sources. The Water Master and Navajo Nation Department of Water Resources shall be granted access to diversion data and irrigated acreage data, and shall be allowed to inspect flow and storage measurement facilities and gages upon request to the Navajo Nation, as may be necessary for the Water Master and Navajo Nation Department of Water Resources to perform their duties under this Addendum.
- B. Diversions.** A tabulation of diversions of water by point of diversion and purpose and place of use. Reported diversions required to be measured by this Addendum or a permit shall reflect actual measured diversions. Diversions not required to be measured by this Addendum or a permit shall be calculated by a methodology acceptable to the Navajo Nation Department of Water Resources.
- C. Depletions.** A tabulation of depletions for all consumptive uses of water by point of diversion and purpose and place of use, calculated with a methodology acceptable to the Water Master in consultation with the Navajo Nation Department of Water Resources.
- D. Adjustments for Data Quality.** Data may be adjusted for data quality in the preparation of annual reports. Such adjustments shall use a methodology acceptable to the Navajo Nation Department of Water Resources in consultation with the Water Master.
- E. Stock Ponds.** A list of the stock ponds that have changed surface area or capacity or have been relocated or replaced. The list will include new location coordinates, surface area and capacity, supporting data including maximum pond depth, and channel/slope or dug out pond designation with the appropriate reservoir shape factor.

**17.10.2.2. Submittal.** The Navajo Nation shall submit its annual report for the previous calendar year to the Water Master on or before March 31st of each year.

**17.10.2.3. Posting.** The Navajo Nation Department of Water Resources and Water Master shall post each Navajo Nation's annual report for the previous calendar year on the Navajo Nation Department of Water Resources and Office of the State Engineer websites, respectively, on or before April 15th of each year.

### **17.10.3. Navajo Nation's Water Use Permits.**

**17.10.3.1. In General.** The Navajo Nation shall have authority to change the purpose and place of use and point of diversion of a Navajo Nation water right to and from locations on Navajo Nation Lands, including but not limited to changes from surface water to groundwater points of diversion, and to make new appropriations of groundwater from points of diversion on Navajo Nation Lands for uses on Navajo Nation Lands, under a Navajo Nation Water Use Permit issued pursuant to the Navajo Nation Water Code and

this Article 17.10.3. Diversions limited to drilling and testing wells are not subject to the requirements of this Article 17.10.3.

- 17.10.3.2. Permit Applications, Permit Decisions, Protests and Appeals.** Permit applications, permit decisions, protests and appeals shall be governed by the Navajo Nation Water Code, this Addendum, and the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System. The Navajo Nation Permitting process shall require at a minimum the following provisions:
- A. Availability of Navajo Nation Water Code and Addendum Requirements.** The Navajo Nation shall make a copy of the Navajo Nation's Water Code and requirements established through this Addendum publicly available on the Navajo Nation's website or by a link thereon no later than the Article 17 Enforceability Date.
  - B. Application Content.** An application for a Navajo Nation Water Use Permit must contain information comparable to that required in an application under state law.
  - C. Timing of Application.** Prior to commencing a diversion requiring a Navajo Nation Water Use Permit, an applicant shall submit an application in accordance with the Navajo Nation Water Code and this Article 17.10.3.
  - D. Initiation of Hydrologic Analysis.** Upon receipt of an application, the Navajo Nation will perform a hydrologic analysis with opportunity for input from the Bureau of Indian Affairs to assess groundwater drawdown and surface water depletion effects of the proposed Navajo Nation Water Use Permit. At the written request of the Navajo Nation, the Office of the State Engineer will confer with the Navajo Nation regarding the application.
  - E. Requirements of Hydrologic Analysis; Report.** The Navajo Nation shall prepare a Hydrologic Analysis Report that includes the findings of the Navajo Nation regarding the groundwater drawdown and surface water depletion effects that the proposed Navajo Nation Water Use Permit might have, and whether and how the drawdown and depletion effects can be avoided or mitigated. For Navajo Nation Water Use Permits requiring public notice under the Navajo Nation Water Code or Article 17.10.3.3, the Hydrologic Analysis Report shall be completed by the date the public notice is posted under Article 17.10.3.3.
  - F. Use of Settlement Model(s).** In evaluating a Navajo Nation Water Use Permit application under this Article 17.10.3, the Navajo Nation shall use the Settlement Model(s) approved and adopted by the State Engineer pursuant to Article 17.9.3. In applying the Settlement Model(s) to Navajo Nation Water Use Permit applications, the Navajo Nation shall use the Office of the State Engineer specific guidelines related to the calculation and assessment of hydrologic impacts as identified in Office of the State Engineer regulations and/or guidelines applicable statewide or to the specific basin.
  - G. Model Files Availability.** The Navajo Nation shall preserve their hydrologic model input and output files and make copies of those model files available promptly upon written request by a Settlement Party. The Navajo Nation shall make hydrologic model input and output files available for review promptly upon written request by a protestant with standing who timely filed a protest.
  - H. Public Notice.** The Navajo Nation shall require notice provisions consistent with Article 17.10.3.3.

- I. Protests and Hearings.** The Navajo Nation shall require provisions for protesting the issuance of a Navajo Nation Water Use Permit application and provide for an administrative hearing of the protest consistent with Article 17.10.4.
- J. Appeal of Navajo Nation Administrative Decision.** The Navajo Nation shall require that the time for appeal shall not be less than thirty days after receipt by a party to the administrative hearing of the written decision by certified mail and shall provide provisions for the manner in which the appeal shall be taken, consistent with Article 17.10.5. and the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.
- K. Applicable Standards.** The Navajo Nation shall require the applicable standards for review of Navajo Nation Water Use Permit applications consistent with Article 17.10.6.
- L. Retention of Records of Permits.** The Navajo Nation shall retain records of all Navajo Nation Water Use Permits issued under this Article 17.10.3 and related hydrologic analyses.

#### **17.10.3.3. Public Notice.**

- A. Limited Exemption.** The Navajo Nation is not required to provide public notice of an application for a Navajo Nation Water Use Permit where the diversion amount is equal to or less than 3 AFY for domestic or stock watering purposes. The Navajo Nation may proceed with issuing such a Permit without notice, subject to Article 17.10.3.3.E.
- B. In General.** Subject to the limited exemption from notice requirements in Article 17.10.3.3.A, the Navajo Nation is required to provide prior public notice pursuant to this Article 17.10.3.3.B of an application for a Navajo Nation Water Use Permit for (1) a diversion amount of greater than 3 AFY for domestic or stock watering purposes, or (2) any diversion for purposes other than domestic and stock watering purposes.
- C. Electronic Posting.** When prior public notice is required, no later than 70 days prior to the deadline for filing protests in Article 17.10.4.4, the Navajo Nation shall post electronically on the Navajo Nation's public website at a webpage viewable through the Office of the State Engineer website link under Article 17.10.3.3.F a notice that contains the essential facts of the application, the Hydrologic Analysis Report, the contact information of the Navajo Nation where the application and supporting documentation are located, and the date and manner by which protests may be filed.
- D. Newspaper Publication.** In addition to electronic posting, the Navajo Nation shall publish the notice in the Navajo Times once a week for at least three consecutive weeks with the last date of publication at least 10 days prior to the deadline for protests of the application. If state law changes to eliminate a requirement for publication in a newspaper or to require a different method for providing public notice, the Navajo Nation will not be required by this Article 17 to publish in a newspaper any notice that is published on the Navajo Nation's public website and shall utilize a notice method comparable to the method or methods required by state law.
- E. Records of Non-Public Notice Actions.** Non-public notice Navajo Nation Water Use Permits shall be listed and described in the annual report provided to the Water

Master pursuant to Article 17.10.2. A copy of each non-public notice Navajo Nation Water Use Permit shall be provided to the Water Master along with the annual report.

**F. Office of the State Engineer Link to Navajo Nation Notices.** The Navajo Nation shall provide written notice to the District Manager of the Office of the State Engineer District 1 Office in Albuquerque at the same time that the Navajo Nation provides public notice pursuant to this Article 17.10.3.3. The State Engineer shall maintain a link on its legal notice webpage to the Navajo Nation's legal notice webpage to enable viewing of Navajo Nation legal notices through the Office of the State Engineer webpage.

#### **17.10.4. Protests Of and Hearings On Navajo Nation Water Use Permits.**

**17.10.4.1.** Any person with standing under Article 17.10.4.3 may submit to the Navajo Nation a written protest of a Navajo Nation Water Use Permit, provided that the protest contains the protestant's water right point of diversion, purpose and place of use and the number of the subfile, permit, license, or declaration, if any.

**17.10.4.2.** At its discretion, the Office of State Engineer may appear as a party or a witness in the administrative proceeding. Upon a reasonable written request to the State Engineer by a Settlement Party, the State Engineer will consider whether to designate a representative to appear and testify as a witness at the Navajo Nation administrative hearing.

**17.10.4.3. Standing.** The Navajo Nation shall recognize the standing of (A) any owner of water rights who objects that the Navajo Nation Water Use Permit would Impair his or her surface water or groundwater right and (B) any Acequia or community ditch which objects that the Navajo Nation Water Use Permit would Impair water rights of the Acequia's or community ditch's parciantes or members.

**17.10.4.4. Deadline.** Protests shall be submitted by the date set forth in the public notice given pursuant to Article 17.10.3.3, which date shall be 70 days after posting on the Navajo Nation website pursuant to Article 17.10.3.3.C.

**17.10.4.5. Hearings.** The Navajo Nation shall provide administrative hearings for protested applications and applications which are denied, including without limitation provisions for written notice of hearing, opportunity for discovery, opportunity for presentation of evidence and cross-examination of witnesses, and a full record of the hearing. Protestants shall be entitled to be represented by legal counsel, at their own expense, in compliance with Navajo Nation requirements for attorney admission. The Navajo Nation shall provide that members of the New Mexico State Bar in good standing may appear in the Navajo Nation administrative proceeding under this Article 17.10.4 upon the completion of forms and documentation and payment of fees required by the Navajo Nation.

**17.10.4.6. Record of Proceedings.** The record of proceedings shall include, at a minimum, the Hydrologic Analysis Report prepared in accordance with Article 17.10.3.2.E; all pleadings, motions, and intermediate rulings; evidence admitted at hearing; matters or items administratively noticed; questions and offers of proof, and objections and rulings thereon; any proposed findings submitted; the transcript or recordings of the administrative hearing; and any decision, opinion, or report by the Navajo Nation decision-maker or hearing examiner who conducted the hearing.

#### **17.10.5. Appeal Of Navajo Nation Water Use Permit Decisions.**

- 17.10.5.1.** Upon issuance of a decision on the application for Navajo Nation Water Use Permit in the Navajo Nation administrative process under Article 17.10.3, any party to the administrative process under Article Art 17.10.4 may pursue judicial review of the Navajo Nation Water Use Permit decision in the State of New Mexico District Court for the 13<sup>th</sup> Judicial District pursuant to the Court's jurisdiction pursuant to Article 17.14.7.2.C and as provided in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System and the limited waiver of sovereign immunity in Article 17.14.4 . Concurrently with seeking legislation that amends NMSA 1978, § 72-6-3 under Article 17.16.5, the Parties will seek legislation adopting a specific provision in Chapter 72 of the New Mexico Statutes setting forth a process for appeals from a Navajo Nation Water Use Permit decision, consistent with this Addendum, under existing State Court jurisdiction.
- 17.10.5.2.** Appeal of a decision of the District Court to the New Mexico Court of Appeals and Supreme Court may be taken in the same manner as provided under New Mexico law. The Parties will not object to a motion filed by the State Engineer to appear as *amicus curiae* in the State appellate process.
- 17.10.5.3.** Judicial review shall be based on the record developed through the Navajo Nation's administrative process.
- 17.10.5.4.** The standard of judicial review shall be limited to determining whether the Navajo Nation decision on the application for Navajo Nation Water Use Permit is supported by substantial evidence, is not arbitrary, capricious, or contrary to law, is not in accordance with this Addendum or the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System, or shows that the Navajo Nation acted fraudulently or outside the scope of its authority.

#### **17.10.6. Substantive Standards Applicable To Navajo Nation Water Use Permit Decisions.**

- 17.10.6.1. No Impairment.** A Navajo Nation Water Use Permit shall not Impair existing, as of the date of permit issuance, surface water or groundwater rights and shall so state as a condition of any permits for diversion or use of water in the Rio San José Stream System or the Rio Puerco Basin. Impairment will be determined based on state law standards.
- 17.10.6.2. Offsets of Surface Water Depletion Effects from Groundwater Pumping.** The Navajo Nation shall offset the following surface water depletion effects from groundwater pumping under a Navajo Nation Water Use Permit:
- A. surface water depletion effects greater than the effects at the move-from place of use or point of diversion, and
  - B. surface water depletion effects from new appropriations. The portion of the water rights used for offsets shall not be available for any other use.
- 17.10.6.3. Avoiding or Mitigating Impairment of Acequia Member and Parciante Water Rights and Offsetting Surface Water Depletion Effects to Acequia Sources.**
- A. If the Hydrologic Analysis Report prepared pursuant to Article 17.10.3.2.E indicates that the proposed Navajo Nation change in a water right or new appropriation may cause surface water depletion effects to the source of supply of an Acequia, the Navajo Nation will provide a copy of the Hydrologic Analysis Report to the affected

Acequia prior to or at the time of the publication of the public notice under Article 17.10.3.3.

- B.** If the Commission of an affected Signatory Acequia requests in writing to the Navajo Nation at the address provided in the public notice under Article 17.10.3.3 to meet and confer with the Navajo Nation, the Navajo Nation and the Acequia Commission will meet and confer in good faith during the public notice period under Article 17.10.3.3.C regarding the application, the Hydrologic Analysis Report, the effects on the Acequia water supply calculated by the Model and the Navajo Nation's proposed mechanisms for offsets. In the event the Navajo Nation and affected Acequia cannot agree on the mechanisms for offsets, the affected Acequia may protest the application.
- C.** The Navajo Water Use Permit shall identify the offset mechanism(s) determined in the Navajo Water Use Permit decision.
- D.** The Parties agree that the mechanism(s) the Navajo Nation may employ to avoid or mitigate the Impairment to water rights of members or parciantes of an Acequia and to offset the surface water depletion effects to the source of supply of an Acequia, subject to appeal pursuant to Article 17.10.5 of the Navajo Water Use Permit decision by the affected Acequia, are:
  - 1. replacement of water; or
  - 2. improvements to the Acequia's infrastructure to increase efficiencies sufficient to offset the surface water depletion effects or Impairment; or
  - 3. procurement of documentation establishing:
    - (a) a waiver of protest to the Application by the Commission of the affected Acequia;
    - (b) agreement with the Navajo Nation's proposed mitigation measure by the Commission of the affected Acequia; or
    - (c) approval by the Commission of an Acequia on the affected tributary for transfer of a surface water irrigation right from that Acequia to offset the surface water depletion effects; or
  - 4. substantial evidence in the Navajo Nation administrative record supporting a finding or findings of fact pursuant to Article 17.10.6.4 in the Navajo Water Use Permit decision that the Hydrologic Benefit to the Signatory Acequia, or its members or parciantes, from a Signatory Acequia Project offsets or avoids the calculated surface water depletion or mitigates the groundwater drawdown effects of the proposed Navajo Water Use Permit so that Impairment is avoided; or
  - 5. with respect to Acequias supplied by springs on the slopes of Mount Taylor (Moquino Water Users Association II, San Mateo Irrigation Association, Seboyeta Community Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, and Community Ditch of San José de la Cienega), offsets for surface water depletion effects on tributary sources of supply to an Acequia shall not be required for Navajo diversions from the Dakota, Morrison and/or San Andres-Glorieta aquifers; or



6. a combination of any of the above mechanisms.

**17.10.6.4. Findings of Fact Regarding Hydrologic Benefit.** The Navajo Nation may use, at its discretion and without limitation, an Acequia's application for funding under Article 12.2 and Article 17.12, a certification upon construction under Article 17.12, an estimate of the Hydrologic Benefits under Article 17.12, or other documents related to a Signatory Acequia Project of an affected Acequia as evidence to support a finding of fact under Article 17.10.6.3.D(4). The mechanism under Article 17.10.6.3.D(4) shall be available to the Navajo Nation regardless of whether the Acequia has applied for funding under Article 12. No findings by the Navajo Nation with regard to feasibility, funding status, completion status, operational status or longevity of a Signatory Acequia Project shall be required. Notwithstanding the foregoing, the affected Acequia may submit evidence regarding feasibility, funding status, Hydrologic Benefit, completion status, operational status or longevity of a Signatory Acequia Project to show the actual Hydrologic Benefit provided to the Signatory Acequia by a Signatory Acequia Project.

**17.10.6.5. Fund for Avoiding Domestic Well and Livestock Well Impairment.** The State shall create and administer in accordance with this Addendum a fund to be used to mitigate Impairment to Non-Navajo groundwater rights as a result of new Navajo Nation water use, as described in Article 12.4.

**17.10.6.6. Mitigation of Non-Navajo Domestic Well and Livestock Well Impairment.** The State's agreement to create and administer a fund, pursuant to Article 12.4, to be used to mitigate Impairment to non-Navajo domestic well and livestock well water rights as a result of new Navajo Nation water use shall be deemed sufficient mitigation for Impairment to non-Navajo domestic well and livestock well water rights.

**17.10.6.7. Mitigation of Impairment of Grants and Milan Water Rights.** The Navajo Nation may use, at its discretion and without limitation, documents related to a Project for the respective municipality under Article 12 as evidence to support a finding of fact in the Navajo Water Use Permit decision that the Hydrologic Benefit of an Article 12 project avoids Impairment of Grants' and Milan's water rights that would otherwise result from the Navajo Water Use Permit. The finding of fact must be supported by substantial evidence and is subject to appeal pursuant to Article 17.10.5.

**17.10.7. Rules Governing Appropriation Of Groundwater.** In the event that the State Engineer enters an order closing or restricting the Rio San José Stream System or the Rio Puerco Basin to new appropriations of groundwater or promulgates District Specific Rules adopting provisions governing the appropriation of groundwater in any of those basins, notice shall be provided by the State Engineer to the Navajo Nation. The Navajo Nation agrees to adopt such closure or restrictions within 120 days of receipt of such notice. Navajo Nation Water Use Permits issued and applications for Navajo Nation Water Use Permits filed prior to the Navajo Nation adopting such closures or restrictions shall not be subject to such closures or restrictions.

**17.10.8. Consistency With This Settlement Agreement.** No Navajo Nation Water Use Permit for diversion or use in the Rio San José Stream System and Rio Puerco Basin may be inconsistent with this Addendum.

**17.10.9. Transfer To Or From Non-Navajo Nation Lands.**

**17.10.9.1.** A change in point of diversion or place or purpose of use of Navajo Nation water rights adjudicated under this Addendum to a location off the respective Navajo Nation

Lands shall be made pursuant to an application to the New Mexico Office of the State Engineer in accordance with state law provided that any increase in depletions of the Rio Grande shall be offset in accordance with state law.

**17.10.9.2.** A change in point of diversion or place or purpose of use of water rights from a location off Navajo Nation Lands to a location on Navajo Nation's Lands shall be made pursuant to an application to the New Mexico Office of the State Engineer in accordance with state law.

#### **17.11. SETTLEMENT FUNDING FOR NAVAJO NATION.**

**17.11.1. In General.** Settlement funding for the Navajo Nation shall consist of the trust funds described in this Article 17.11. These trust funds shall be 100% federally funded. Trust fund amounts are subject to negotiation with the United States in the federal process for authorization and approval of the legislation enacted by Congress approving this addendum. Authorized funding shall include an inflation adjustment from the date of estimate to the date that this Addendum becomes final and enforceable. Inflation adjustments shall be based on the Bureau of Reclamation Composite Construction Cost Index and shall apply to the entirety of each trust fund. Management, investment, expenditure, and withdrawal of funds shall be subject to the American Indian Trust Fund Reform Act and other applicable federal law. Investment of each fund shall commence upon the deposit of each appropriation into the respective account in the United States Treasury.

**17.11.2. Water Rights Settlement Trust Fund.** The Navajo Nation shall receive a Water Rights Settlement Trust Fund in the amount of \$243,271,000, plus the inflation adjustment pursuant to Article 17.11.1.

**17.11.3. Authorized Purposes of Use.** The Navajo Nation may use its Water Rights Settlement Trust Fund to pay or reimburse costs incurred by it for planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure of the water infrastructure described in Appendix B to this Addendum.

#### **17.12. SIGNATORY ACEQUIA PROJECTS FUND.**

**17.12.1. Amount.** The State shall make available, pursuant to a funding or allocation agreement among the Signatory Acequias of the Association of Community Ditches of Rio San José, Bluewater Toltec Irrigation District ("BTID"), and the Acequia Madre del Ojo del Gallo ("Ojo del Gallo"), an additional \$3,000,000.00 (three million dollars) to the Signatory Acequias Projects Fund, to be used by BTID and the Ojo del Gallo for the purposes described in Article 17.12.2. The additional \$3 million shall be indexed from July 1, 2023 to no more than five years after the Article 17 Enforceability Date.

**17.12.2. Authorized Uses.** The funding described above in Article 17.12.1 shall be used for the purpose of providing non-federal cost-share funding to BTID and the Ojo del Gallo for:

**17.12.2.1.** acquiring water rights or water supplies;

**17.12.2.2.** planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water diversion, production, treatment or delivery infrastructure for Signatory Acequia Offset Projects, including for provision of offsets for impacts to groundwater or surface water sources from Signatory Acequia Projects, on-farm improvements and wastewater infrastructure;



- 17.12.2.3.** watershed protection and enhancement, support of agriculture, water related community welfare and development, and costs related to the negotiation, authorization, and implementation of this Addendum;
- 17.12.2.4.** hydrologic and legal costs related to evaluation of proposed Pueblo or Navajo water supply projects for potential impacts to Acequia water supplies and participation in administrative and legal proceedings related to those Pueblo or Navajo projects;
- 17.12.2.5.** hydrologic and legal inventories of water rights, water uses and sources of water supply of BTID and Ojo del Gallo and their members and parciantes, in order to identify Signatory Acequia Projects for BTID and Ojo del Gallo; and
- 17.12.2.6.** all related administrative, and technical and legal costs and fees associated with the inventories, grant application, permitting, construction, implementation, maintenance, operation and replacement of the Signatory Acequia Projects for BTID and Ojo del Gallo.
- 17.12.3. Grants for Projects.** Grants for Signatory Acequia Projects for BTID and Ojo del Gallo to conserve or increase the amount of water available for beneficial use by the members or parciantes of those Signatory Acequias may include the net present value of the projected replacement costs necessary for a surface water project to be in full effect for 100 years and for a groundwater project to be in full effect for 40 years.
- 17.12.4. Additional Funding.** Notwithstanding Article 12.2.4, in the event that this additional \$3,000,000.00 (three million dollars), together with any portion of the \$12,000,000.00 (twelve million dollars) allocated to BTID and Ojo del Gallo from the funds provided by the State for the Signatory Acequias Projects Fund under Article 12.2.1, is insufficient for the purposes set forth in Article 17.12.2, the State, the Association and Signatory Acequias, the Navajo Nation and the Pueblos will then jointly cooperate and seek additional funding from the State in an amount necessary to meet the unmet need, not to exceed an additional \$2,000,000.0 (two million dollars), indexed from July 1, 2023 to no more than ten years after the Article 17 Enforceability Date.
- 17.12.5. Procedures and Requirements.**
- 17.12.5.1.** Prior to distribution of any funds for Acequia Projects from the Interstate Stream Commission, except for Article 12.3, the Association shall confer with its members and develop an allocation or a method for allocation of the available funds among the members, including requirements for identification of the proposed use(s) authorized by Articles 12.2.2 and 17.12.2 cost estimates with net present value of replacements costs, projections of expected Hydrologic Benefits for water supply and infrastructure improvements and water conservation projects and other benefits. The Association shall provide a copy of this allocation agreement to the Interstate Stream Commission, Navajo Nation, and the Pueblos prior to the distribution of funds. Funding for planning to develop this allocation agreement will be available upon request to the Interstate Stream Commission.
- 17.12.5.2.** Prior to the Article 17 Enforceability Date, the Interstate Stream Commission and the Association shall enter an agreement which establishes standards for distribution of available funds from the Signatory Acequias Project Fund to the Signatory Acequias and procedures and requirements for submission of applications for funding from Signatory Acequias, including certification of Hydrologic Benefits by the Signatory Acequia or

Association for water supply and infrastructure improvements and water conservation projects and other benefits.

**17.12.5.3. Records.** The Interstate Stream Commission shall maintain records of each application to the Signatory Acequia Settlement Fund and related documents and shall provide copies upon receipt or issuance to Navajo Nation and the Pueblos. The Signatory Acequia or Association will provide notification to the Interstate Stream Commission, Navajo Nation, and the Pueblos of a confirmation of completion for each Project.

**17.12.6.** BTID's or Ojo del Gallo's application for funding under this Article 17.12, a certification upon construction under this Article 17.12, an estimate of the Hydrologic Benefits under this Article 17.12, or other documents related to a Signatory Acequia Project of BTID or Ojo del Gallo shall be deemed to be an application, certification, estimate, or other documents, respectively, under Article 12 of the Local Settlement Agreement for purposes of supporting a Pueblo's finding of fact under Articles 11.6.3.4(D) and 11.6.4 of the Local Settlement Agreement, regardless of whether BTID or Ojo del Gallo has applied for funding under this Article 17.12. No findings by the Pueblo with regard to feasibility, funding status, completion status, operational status, or longevity of such a Signatory Acequia Project of BTID or Ojo del Gallo shall be required. Notwithstanding the foregoing, the affected Acequia may submit evidence regarding feasibility, funding status, Hydrologic Benefit, completion status, operational status or longevity of a Signatory Acequia Project to show the actual Hydrologic Benefit provided to the Signatory Acequia by a Signatory Acequia Project.

### **17.13. RELATION TO ALLOTMENTS.**

**17.13.1. No Effect on Claims for Allotments.** Nothing in this Addendum quantifies or diminishes any water right, or any claim or entitlement to water, of an Allottee.

**17.13.2. Relationship of the Partial Final Decree to Allotments.** Nothing in this Addendum precludes Allottees, or the United States, acting in its capacity as trustee for Allottees, from making claims for water rights in the Rio San José Stream System or the Rio Puerco Basin in New Mexico. To the extent authorized by applicable Federal law, Allottees, or the United States, acting in its capacity as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Rio San José Stream System or the Rio Puerco Basin.

**17.13.3. Adjudication of Article 17 Allotments.** Water rights for Article 17 Allotments shall be separately adjudicated from the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System. It is the United States' understanding that most of the Article 17 Allotments in the Rio San José Stream System and the Rio Puerco Basin are Article 17 Allotments held pursuant to Section 4 of the General Allotment Act. The Settling Parties agree that any future determination for any purpose whether an Article 17 Allotment is a Section 1 or Section 4 allotment is a decision exclusively of the Secretary. If the Secretary determines in the future that certain Article 17 Allotments are held pursuant to Section 1 of the General Allotment Act as allotments from Indian reservation lands, notwithstanding any provisions of the General Allotment Act, the water rights for those Article 17 Allotments will be adjudicated separately. No water rights for Article 17 Allotments, whether held pursuant to Section 1 or Section 4 of the General Allotment Act, will be included in the Partial Final Judgment and Decree of the Navajo Nation's Water Rights. None of the restrictions or conditions of the use of the

Navajo Nation's Water Rights in this Addendum, including but not limited to the requirement in Article 17.10.3 that the Navajo Nation issue Water Use Permits for uses on Navajo Nation Lands and that such Permits are subject to the no Impairment standard of Article 17.10.6.1, shall apply, by virtue of this Addendum, to the use of any Article 17 Allotment water rights adjudicated and separately decreed later. Any Article 17 Allotment that becomes Navajo Nation Lands shall be subject to the restrictions and conditions of use in this Addendum.

**17.13.4. Forbearance by Navajo Nation for Non-Stock Water Rights of Article 17 Allotments.**

**17.13.4.1.** In addition to forbearing pursuant to Articles 17.9.1 and 17.9.10, the Navajo Nation agrees to forbear use of its water rights set forth in Articles 17.4 or 17.5 to the extent the total non-stock water use by Article 17 Allotments (for purposes of this Article 17.13.4, defined as land that qualifies as an Article 17 Allotment as of the Enforceability Date, including any Article 17 Allotment that later becomes Navajo Nation Lands) or the total quantity of non-stock water rights adjudicated for Article 17 Allotments exceeds 300 AFY, or such other number pursuant to a correction under Article 17.13.5. If the total amount of water adjudicated for non-stock uses on Article 17 Allotments exceeds 300 AFY, or there is a showing under this Article 17.13.4.1 paragraph B by either the Navajo Nation or a non-Navajo party, then the Navajo Nation will forbear from using a portion of its adjudicated water rights, using either of the following methodologies:

- A. the Navajo Nation will forbear exercise of its water rights set forth in Articles 17.2, 17.4, or 17.5 by the amount that the total quantity of water adjudicated for non-stock uses on Article 17 Allotments exceeds 300 AFY; or
- B. after a showing based on substantial evidence of the total quantity of non-stock water being used on Article 17 Allotments on an annual basis, made to the decree court or, if the decree court does not have jurisdiction, a court of competent jurisdiction, the Navajo Nation will forbear exercise of its water rights set forth in Articles 17.2, 17.4, or 17.5 to the extent the use of water for non-stock purposes on Article 17 Allotments exceeds the 300 AFY.

**17.13.4.2.** Pre-adjudication Forbearance Following an Appropriate Showing. Prior to completion of adjudication of Article 17 Allotments, a non-Navajo party may require the Navajo Nation to forbear use of its water rights pursuant to this Article 17.13.4 upon a showing by the non-Navajo party under Article 17.13.4.1.B that the amount of water use for non-stock purposes on Article 17 Allotments exceeds 300 AFY.

**17.13.4.3.** Forbearance shall be of Same Types of Water Rights or Article 17.5. Water Rights. When forbearing under this Article 17.13.4, the Navajo Nation may forbear exercise of either or a combination of the following:

- A. a water right that is the same in terms of purpose of use, surface versus groundwater source, diversion and consumptive use quantities, and the basin of the point of diversion and place of use; or
- B. the Navajo Nation's additional groundwater right under Article 17.5.

**17.13.5. Technical Correction of Amounts.** If the Navajo Nation and the State become aware that the actual historical beneficial domestic use on Article 17 Allotments is greater than 300 AFY, the Navajo Nation and the State will work together to increase the 300 AFY by the additional amount, in consultation with the Settlement Parties. The 300 AFY

referred to in this Article 17.13.5 and Article 17.13.4 can be increased based on an agreement signed by the Navajo Nation and the State.

**17.13.6. Agreement to Not Object.** The Navajo Nation shall not object in any general stream adjudication, including the Adjudication, to the quantification of reasonable domestic, stock, and irrigation water uses on an Allotment, and shall administer any water use in accordance with applicable Federal law, including recognition of:

**17.13.6.1.** any water use existing on an Allotment as of the date of legislation enacted by Congress approving this Addendum;

**17.13.6.2.** reasonable domestic, stock, and irrigation water uses on an Allotment; and

**17.13.6.3.** any water right decreed to the United States in trust for an Allottee in a general stream adjudication, including the Adjudication, for use on an Allotment.

#### **17.14. GENERAL PROVISIONS.**

**17.14.1. Financial Obligation of the United States.** Nothing in this Addendum creates an obligation on the United States to construct any infrastructure, or to pay to construct any infrastructure, nor does the United States agree to pay for any operation and maintenance of such infrastructure. As its financial contribution to this Addendum, the United States agrees to deposit funds into the settlement funds under Article 17.11. Such deposits are the United States' only financial obligation under this Addendum. The United States does not agree to pay and shall not be liable to pay any monies to any Parties, or to any other entities, for any purpose related to this Addendum, other than to deposit funds into the settlement funds.

**17.14.2. Water Rights in Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System Shall be Held in Trust.** All water rights adjudicated to Navajo Nation under the Partial Final Judgment and Decree shall be held in trust by the United States on behalf of Navajo Nation and shall not be subject to forfeiture, abandonment, or permanent alienation.

**17.14.3. Water Uses.** Regardless of the means used for quantifying the Nation's water rights under the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System, Navajo Nation may devote such rights to any use. Such uses and any changes in points of diversion, place, or purpose of use, shall be subject to this Addendum, including but not limited to the provisions of Articles 17.9 and 17.10 and applicable law.

**17.14.4. Limited Waiver by Navajo Nation of Sovereign Immunity to Enforce the Terms of this Addendum and for Review of a Navajo Water Use Permit Decision in State Court.** Upon and after the Article 17 Enforceability Date, if any Settlement Party brings an action relating only and directly to the interpretation or enforcement of this Addendum or legislation enacted by Congress approving this Addendum, or if any party to an administrative process under Article 17.10.3 seeks review of a Navajo Nation Water Use Permit Decision under Article 17.10 then the Nation may be added as a party to any such action. Any claim by the Navajo Nation to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement or such review of a Navajo Nation Water Use Permit Decision. No waiver of sovereign immunity is made for any action against Navajo Nation that seeks money damages. Any Parties' action brought under this Addendum shall be brought in the State of New Mexico District Court for the 13<sup>th</sup> Judicial District.

**17.14.5. Recognition of McCarran Amendment as Limited Waiver by the United States of Sovereign Immunity to Enforce the Terms of this Addendum.** Except as provided in Subsections a–c of Sec. 208 of the Dept. of Justice Appropriation Act, 1953 (43 U.S.C. § 666) (“McCarran Amendment”), nothing in this Addendum waives the immunity of the United States.

**17.14.6. Limited Waiver by the State of Sovereign Immunity to Enforce the Terms of this Addendum.** Upon the Article 17 Enforceability Date, the State agrees to waive its sovereign immunity to any action relating only and directly to the interpretation or enforcement of this Article 17, the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System or legislation enacted by Congress approving this Addendum. However, no waiver of sovereign immunity shall be made for any action against the State that seeks money damages.

**17.14.7. Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System.**

**17.14.7.1. Procedure.**

- A. The Settlement Parties shall file a joint motion requesting that the Adjudication Court enter an order approving procedures for providing notice of the proposed Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System and this Addendum, and an opportunity to object and be heard, to all known and unknown claimants of water rights within the Rio San José Stream System whether or not they have been joined as parties to the Adjudication.
- B. After the Court approves the procedure and this Addendum has been executed by the Parties and the Secretary, the Parties will file a joint motion for entry of Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System and approval of this Addendum and request therein that the Court hear and decide all objections to the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System and this Addendum but defer entry of the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System until the Parties notify the Court that the Conditions Precedent specified in this Article 17.16 have been satisfied.

**17.14.7.2. Contents.** The Settlement Parties shall prepare a proposed form of Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System to be submitted to the Court for entry as an exhibit to the motion. The contents of the proposed form of Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System shall incorporate the following provisions, as well as any other provisions agreed to by the Parties:

- A. Setting forth all elements of Navajo Nation’s water rights described in Articles 17.2, 17.4, and 17.5;
- B. stating that the Court retains jurisdiction to interpret and enforce this Addendum and Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System and resolve disputes pertaining thereto;
- C. stating that the Court retains jurisdiction to review and from Navajo Water Right Permit decisions made under Articles 17.10;

- D. setting forth procedures for serving other parties to, and pursuing judicial review of, Navajo Water Right Permit decisions made under Article 17.10, substantially similar to the procedures set forth in NMSA 1978, § 39-3-1.1(B) & (C);
- E. adopting standard of review as set forth in Article 17.10.5.4;
- F. stating that, subject to the provisions of the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System and this Addendum, the State Engineer has authority under state law to administer water rights and to supervise the apportionment, diversion and use of the waters of the Rio San José Stream System and adjoining basins, including by appointment of Water Master(s), according to the orders and decrees of the Court, the licenses and permits issued by the State Engineer, State Engineer rules and regulations and District Specific Rules that may be adopted by the State Engineer for the basin under authority of Active Water Resource Management; and
- G. stating that where this Addendum or Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System conflict with Navajo law, this Addendum or Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System shall prevail.

**17.14.8. Article 17 Enforceability Date.** The Settlement Parties shall be bound by all provisions of this Addendum, and this Addendum shall become enforceable and the waivers and releases executed pursuant to Article 17.15 and the limited waivers of sovereign immunity set forth in Article 17.14 shall become effective, as of the date that the Secretary publishes the statement of findings that all Conditions Precedent set forth in Article 17.16 have been fulfilled.

**17.14.9. Effect of Addendum.** Nothing in this Addendum, except as expressly provided in this Addendum:

**17.14.9.1.** affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), and the regulations implementing those laws;

**17.14.9.2.** affects the ability of the United States to take actions in its capacity as trustee for any other Indian Pueblo or Tribe or allottee;

**17.14.9.3.** confers jurisdiction on any State Court to interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law or to conduct judicial review of Federal agency action;

**17.14.9.4.** affects the ability of the United States of America to take actions acting in its capacity as trustee for any other Indian tribe; or

**17.14.9.5.** shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water rights or lands in any judicial or administrative forum or proceeding.

**17.14.10. Evidentiary Effect of Negotiations.** The Settlement Parties have developed this Addendum through good faith negotiation for the purpose of resolving legal disputes,



including pending litigation. No conduct, statements, offers, or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding.

- 17.14.11. Authorship and Neutral Construction.** This Addendum reflects the joint drafting efforts of all Parties. In the event that any dispute, disagreement, or controversy arises regarding this Addendum, the Settlement Parties shall be considered joint authors and no provision shall be interpreted against any Settlement Party because of authorship.
- 17.14.12. Authorization to Execute.** Each Settlement Party represents and warrants that it is authorized to execute this Addendum on behalf of the respective Parties hereto and does so freely and voluntarily.
- 17.14.13. Effect of Execution.** Execution of this Addendum by all institutional entities signifies that all provisions of this Addendum have been approved by those entities' respective governing bodies and that those entities bind themselves to the obligations and benefits of this Addendum.
- 17.14.14. No Inducements.** Each Settlement Party acknowledges and represents that in executing this Addendum it has not relied on any inducements, promises, or representations made by the other Parties that are not reflected in this Addendum.
- 17.14.15. Advice of Counsel.** Each Settlement Party warrants and represents that, in executing this Addendum, it has relied upon legal advice from counsel of its choice; that the terms of this Addendum have been read, and its consequences have been completely explained to it by counsel; and that it fully understands the terms of this Addendum.
- 17.14.16. Contingent on Appropriation of Funds.** The expenditure or advance of any money or the performance of any obligation by the United States or the State under this Addendum is contingent upon appropriation of funds therefore. In the event Congress fails to appropriate funds, the United States shall not accrue liability under this Addendum. In the event the New Mexico Legislature fails to appropriate funds, the State shall not accrue liability under this Addendum.
- 17.14.17. Officials Not to Benefit.** No member of or delegate to Congress shall be admitted to any share or part of this Addendum or to any benefit that may arise here from. This restriction shall not be construed to extend to this Addendum if made by a corporation or company for its general benefit.
- 17.14.18. Counterparts.** This Addendum may be signed in counterparts by one or more of the Parties, and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all the Parties. An electronic copy of this Addendum and any signatures thereon will be considered for all purposes as originals.
- 17.14.19. Binding on Parties, Successors, and Assigns.** This Addendum shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the absence of any pending adjudication of the Rio Puerco Basin, the Parties agree that the recognition of Navajo Nation's water rights in the basin under Article 17.4 or 17.5 is binding on the Parties and enforceable through enforcement of the Addendum, legislation enacted by Congress approving this Addendum and Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System.
- 17.14.20. State Support for Out of Basin Terms.**

**17.14.20.1. State Support.** In the event that the recognition of any out of basin water rights of Navajo Nation described in Articles 17.4 or 17.5 is challenged in any administrative or judicial proceeding, then the State shall support and not oppose the recognition of the water rights of Navajo Nation as described in Articles 17.4 or 17.5 in such proceeding(s).

**17.14.20.2. Modification of Out of Basin Terms.** If any out of basin water rights of Navajo Nation described in Articles 17.4 or 17.5 are not recognized or upheld in any administrative or judicial proceeding, then the State, Navajo Nation, and the United States in its capacity as trustee for Navajo Nation shall convene and negotiate in good faith terms and provisions, which will provide mutually acceptable alternative solutions related to non-Rio San José Stream System source or sources of water to supply Navajo Nation use under Articles 17.4 or 17.5 to the extent such rights are not recognized or held not binding on other water uses. This provision imposes no obligation on the United States to fund or construct any infrastructure related to any alternative non-Rio San José Stream System sources.

## **17.15. WAIVERS AND RELEASES OF CLAIMS.**

**17.15.1. Waiver of Inter Se Challenges to Domestic Wells.** The Non-State Parties further agree to waive their rights to file and shall abstain from filing, during the inter se phase or otherwise in the Adjudication, challenges to:

**17.15.1.1.** any domestic well right existing as of the Article 17 Enforceability Date and which is permitted under NMSA 1978, §§ 72-12-1, 72-12-1.1, and 72-12-1.2, or their predecessor statutes; and

**17.15.1.2.** any Pre-Basin Groundwater Right in the Rio San José Stream System if claimed or used for domestic uses, livestock watering, or non-commercial irrigation of up to one (1) acre.

### **17.15.2. Waivers of Inter Se Challenges Among Non-State Parties to this Addendum.**

**17.15.2.1.** The Non-State Parties to this Addendum agree to waive their rights to file and shall abstain from filing, during the inter se phase or otherwise in the Adjudication, any objection to the water rights of the Navajo Nation as those rights are described in this Addendum.

**17.15.2.2.** The United States in its capacity as trustee to the Navajo Nation and the Navajo Nation agree to waive their rights to file and shall abstain from filing, during the inter se phase or otherwise in the Adjudication, any objection to water rights and surface water irrigation storage rights of any other Non-State Party to this Addendum and the water rights for irrigation and surface water irrigation storage rights of individual parciantes of the Signatory Acequias, provided that such waivers are limited to water rights with pre-Article 17 Enforceability Date priority dates in a subfile order adopted by the Adjudication Court.

**17.15.3. Agreement to Additional Waivers for the Benefit of the City of Grants and Village of Milan.** The United States in its capacity as trustee the Navajo Nation and the Navajo Nation waive their rights to challenge, in any other court or administrative proceeding, the particular permitted or licensed water rights held by Grants and Milan at the time of execution of the Local Settlement Agreement that are listed in Attachment D of the Local Settlement Agreement. Notwithstanding the forgoing, the United States and Navajo Nation reserve and retain:



**17.15.3.1.** the right to raise in such proceedings claims of abandonment or forfeiture of those rights based on events arising after the date the Local Settlement Agreement was executed; and

**17.15.3.2.** the right to challenge the rights listed in Attachment D of the Local Settlement Agreement in any administrative or court proceeding concerning:

- A. a change in purpose of use to a use that is not for the respective municipality's municipal use in the nature of domestic, commercial, industrial, and housing subdivisions;
- B. a change in place of use to a place of use that is not within the respective municipality's water service area as it exists at the time of execution of the Local Settlement Agreement,
- C. a change in point of diversion to a point of diversion that is not an existing groundwater point of diversion under any of the respective municipality's permits or licenses listed in Attachment D of the Local Settlement Agreement or a replacement well drilled within 100 feet and screened within the same aquifer of such existing point of diversion, or
- D. the rights of persons or entities other than Grants and Milan in such permits or licenses.

**17.15.4. Agreement to Additional Waivers for the Benefit of Signatory Acequias.** Subject to the proviso in Article 17.15.4.2, the United States in its capacity as trustee to the Navajo Nation and Navajo Nation agree to waive their rights to challenge, in any administrative or court proceeding, the water rights for irrigation or surface water storage for irrigation on a Signatory Acequia held by the respective Signatory Acequia or its members or parciantes at the time of execution of this Article 17 that are hereafter recognized in a subfile order in the Adjudication, or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC.

**17.15.4.1.** Notwithstanding Article 17.15.4, the United States and the Navajo Nation reserve and retain the right:

- A. after determination of the water rights of a Signatory Acequia, its members or parciantes in a subfile order in the Adjudication, or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC, to raise claims of abandonment or forfeiture of those adjudicated water rights based on events arising after the date of such subfile order; and
- B. in the absence of a subfile order in the Adjudication or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC determining the water rights of a Signatory Acequia, its members or parciantes, to challenge the water rights in any administrative or court proceeding concerning:
  - 1. a change in purpose of use to a use that is not for the respective Signatory Acequia's members' and parciantes' irrigation or surface water storage reservoirs for irrigation use, small commercial greenhouse use not exceeding a parciante's

or member's water right, or the Acequia's irrigation storage use, on the Acequia or ditch;

2. a change in place of use to a place of use off the respective Signatory Acequia's Acequia or ditch;
3. a change in point of diversion that is not for a Signatory Acequia Project under Article 12 or Article 17.12, or for an irrigation reservoir or supplemental irrigation well for the Signatory Acequia or its members or parciantes, or for a surface water point of diversion of a Signatory Acequia supplied by springs on the slopes of Mount Taylor for use with respect to rights served by the respective Signatory Acequia; or
4. the rights of persons or entities other than the Signatory Acequia or its members or parciantes in such water rights.

**17.15.4.2. Proviso.** When the Adjudication Court enters a subfile order concerning the Signatory Acequia's or its member or parciante's water right, the waiver under Article 17.15.4 shall be limited to the right as recognized in the subfile order. When the Adjudication Court enters an order or decree concerning the Signatory Acequia's or its member or parciante's water right that supersedes the subfile order, the waiver under Article 17.15.4 shall be limited to the right as recognized in the Adjudication order or decree.

**17.15.5. Waivers and Releases of Claims by the Navajo Nation and the United States as Trustee for the Nation.** Subject to the reservation of rights and retention of claims set forth in Article 17.15.7 below, as consideration for recognition of Navajo Nation's Water Rights and other benefits, described in this Addendum and the legislation enacted by Congress approving this Addendum, the Navajo Nation, acting on behalf of the Nation and members of the Nation (but not any member of the Nation as an allottee) and the United States, acting as trustee for the Navajo Nation and members of the Nation (but not any member of the Nation as an allottee), shall execute a waiver and release with prejudice of:

**17.15.5.1.** all claims for water rights within the Rio San José Stream System the Navajo Nation or the United States acting as trustee for the Navajo Nation asserted, or could have asserted in any proceeding, including the Adjudication, on or before the Article 17 Enforceability Date, except to the extent that such rights are recognized in this Article 17 and the legislation enacted by Congress approving this Addendum;

**17.15.5.2.** all claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water rights (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) of waters in the Rio San José Stream System against any Settlement Party, including the members and parciantes of Signatory Acequias, that accrued at any time up to and including the Article 17 Enforceability Date pursuant to 17.14.8.

**17.15.6. Waivers and Releases of Claims by the Navajo Nation Against the United States.** Subject to the reservation of rights and retention of claims under Article 17.15.7, the Navajo Nation acting on behalf of the Nation and its members (but not any member of the Nation as an allottee), shall execute a waiver and release with prejudice of all claims against the United States including any agency or employee of the United States first arising before the Article 17 Enforceability Date relating to:

- 17.15.6.1.** water rights within the Rio San José Stream System that the United States acting as trustee for the Nation asserted, or could have asserted, in any proceeding, including the Adjudication, except to the extent that such rights are recognized under the legislation enacted by Congress approving this Addendum;
- 17.15.6.2.** foregone benefits from nontribal use of water, on and off Navajo Nation, including water from all sources within the Rio San José Stream System and for all uses within the Rio San José Stream System;
- 17.15.6.3.** damage, loss, or injury to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights; claims relating to interference with, diversion, or taking of water; or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure, within the Rio San José Stream System);
- 17.15.6.4.** a failure to provide operation, maintenance, or deferred maintenance for any irrigation system or irrigation project;
- 17.15.6.5.** a failure to establish or provide a municipal, rural, industrial water delivery system on Navajo Nation;
- 17.15.6.6.** the litigation of claims relating to the Navajo Nation’s water rights in the Rio San José Stream System in any proceeding, including the Adjudication; and
- 17.15.6.7.** the negotiation, execution, or adoption of this Addendum or the legislation enacted by Congress approving this Addendum.
- 17.15.7. Reservation of Rights and Retention of Claims.** Notwithstanding the waivers and releases in this Article 17.15, the Navajo Nation and the United States acting as trustee for the Navajo Nation, shall retain:
- 17.15.7.1.** all claims relating to:
- A.** the enforcement of, or claims accruing after the Article 17 Enforceability Date relating to water rights recognized under, this Article 17, the legislation enacted by Congress approving this Addendum, or the Partial Final Judgment and Decree of the Navajo Nation’s Water Rights in the Stream System entered in the Adjudication;
  - B.** the quality of water and the environment, including without limitation, the Navajo Nation’s rights and remedies under federal laws of general application for the protection of the environment (and regulations under such laws), including without limitation (1) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (2) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; (3) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (4) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (5) the Nuclear Waste Policy Act, 42 U.S.C. § 10101 et seq.; (6) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (7) the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; (8) the Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; (9) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (10) the Indian Lands Open Dump Cleanup Act of 1994, 25 U.S.C. § 3901 et seq.; (11) the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.; (12) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.; and (13) the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 2201 et seq.; and

C. activities affecting eligible historic properties or historic properties, including without limitation any claims under the National Historic Preservation Act of 1966 as amended (54 U.S.C. § 300101 et. seq.);

**17.15.7.2.** all rights to use and protect water rights acquired after the date of enactment of the legislation enacted by Congress approving this Addendum;

**17.15.7.3.** all claims for damages, losses, or injuries to land or natural resources that are (A) not due to loss of water or water rights (including but not limited to hunting, fishing, gathering or cultural rights) and (B) not covered by Articles 17.15.5.1 and 17.15.6;

**17.15.7.4.** all claims for water rights, and claims for injury to water rights, in basins other than the Rio San José Stream System, subject to Article 17.4.5 with respect to the claims of the Navajo Nation in the Rio Puerco Basin;

**17.15.7.5.** all claims, including environmental claims, under any laws including regulations and common law relating to human health, safety, or the environment; and

**17.15.7.6.** all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to this Addendum and the legislation enacted by Congress approving this Addendum.

#### **17.16. CONDITIONS PRECEDENT.**

The following are Conditions Precedent for the Article 17 Enforceability Date:

**17.16.1.** to the extent that this Addendum conflicts with legislation enacted by Congress to approve this Addendum, this Addendum has been revised to conform with the act of Congress;

**17.16.2.** this Addendum, so revised, including waivers and releases of claims set forth in Article 17.15 has been executed by the Parties, including the United States;

**17.16.3.** Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized in legislation enacted by Congress to approve this Addendum;

**17.16.4.** the State has fully appropriated all funds authorized under Article 17.12;

**17.16.5.** the State has enacted legislation that amends NMSA 1978, § 72-6-3 to state that a water use due under a water right secured to Navajo Nation under this Addendum or the Partial Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream System may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require that said amendment state that any state-law based water rights acquired by the Navajo Nation or by the United States on behalf of Navajo Nation may be leased for said term; and

**17.16.6.** the Decree Court has entered a final or interlocutory judgment and decree that (i) confirms the Navajo Nation's water rights consistent with this Addendum and (ii) with respect to the Navajo Nation's water rights, is final and non-appealable.

#### **17.17. EFFECT; ENFORCEABILITY DATES.**

Notwithstanding the provision in Article 17 of the "Rio San José Stream System Water Rights Local Settlement Agreement among the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José, and Nine Individual Acequias and Community

Ditches” dated May 13, 2022 (“Local Settlement Agreement”) that “[u]pon written consent by the Settlement Parties and the Navajo Nation, the Navajo Addendum will become part of this Local Settlement Agreement,” the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San José hereby agree that—

- 17.17.1.** upon the execution of this Addendum by the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San José, the Navajo Nation shall become a signatory Party to the Local Settlement Agreement;
- 17.17.2.** subject to Article 17.17.1, the Navajo Nation’s execution of this Addendum shall be deemed an execution of the Local Settlement Agreement and this Addendum;
- 17.17.3.** this Addendum shall become a part of the Local Settlement Agreement and the Local Settlement Agreement shall be deemed to be incorporated herein;
- 17.17.4.** Articles 1 through 17 of the Local Settlement Agreement, not including this Addendum, shall become final and enforceable when the Secretary of the Interior publishes in the Federal Register a statement of findings that the conditions precedent in Article 16, as amended by Congressional legislation approving the Local Settlement Agreement, have been met; and
- 17.17.5.** Articles 17.1 through 17.16 set forth in this Addendum shall become final and enforceable when the Secretary of the Interior publishes in the Federal Register a statement of findings that the conditions precedent in Article 17.16, as amended by Congressional legislation approving this Addendum, have been met.

**APPENDIX A to NAVAJO ADDENDUM  
(ARTICLE 17 OF THE LOCAL SETTLEMENT AGREEMENT)**

List of Allotments Related to Acoma and Laguna Pueblos in the Rio San José Stream System

<b>No. of Laguna Allotments</b>	<b>Allotment No.</b>	<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Quarter Section</b>	<b>Acreage</b>	<b>Within RSJ Basin</b>
1	18605	T8N	R4W	Sec 5	NE SE	40	Yes
2	20132	T8N	R5W	Sec 2	SE NE	40	Yes
3	2308	T8N	R5W	Sec 30	SE NE	40	Yes
4	18916	T8N	R5W	Sec 34	SE SE	40	Yes
5	18917	T8N	R5W	Sec 34	NE SE	40	Yes
6	4597	T8N	R5W	Sec 8	NE	160	Yes
7	20149	T8N	R6W	Sec 2	Lot 5	36.65	Yes
8	20146	T8N	R6W	Sec 2	Lot 6	36.34	Yes
9	19115	T8N	R6W	Sec 4	Lot 5; Lot 16	46.35	Yes
10	19110	T8N	R6W	Sec 6	Lot 5	36.18	Yes
11	20147	T8N	R6W	Sec 16	SE NW; NE SW; N SE	160	Yes
12	40141	T8N	R6W	Sec 18	SE SE; N SE	120	Yes
13	18626	T8N	R6W	Sec 20	NW NE	40	Yes
14	18639	T8N	R6W	Sec 22	SW SW	40.34	Yes
15	18640	T8N	R6W	Sec 22	NW SW	40.33	Yes
16	19094	T8N	R6W	Sec 3	NW NE; SE NW; S NE	160	Yes
17	19898	T8N	R7W	Sec 14	NE SE	40	Yes
18	20119	T9N	R4W	Sec 32	SW	160	Yes
19	20120	T9N	R4W	Sec 32	Lots 1-4; SE NW; S NE	160	Yes
20	19218	T9N	R4W	Sec 32	NE SE	40	Yes
21	42243	T9N	R4W	Sec 32	S SE; NW SE	120	Yes
<b>No. of Laguna Allotments</b>	<b>Allotment No.</b>	<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Quarter Section</b>	<b>Acreage</b>	<b>Within RSJ Basin</b>

22	18355	T9N	R4W	Sec 34	SW NW; S SW; NW SW	160	Yes
23	20150	T9N	R6W	Sec 36	NW SW	40	Yes
24	20151	T9N	R6W	Sec 36	NE SW	40	Yes
25	19946	T10N	R4W	Sec 26	SW SW	40	Yes
26	19947	T10N	R4W	Sec 26	NW SW; NW NW; S NW	160	Yes
27	43572	T7N	R6W	Sec 8	SE	160	Yes
28	39770	T7N	R6W	Sec 30	Lots 1-2; E NW	156.4	Yes
29	61842	T7N	R6W	Sec 28	All	640	Yes
30	12420	T7N	R6W	Sec 6	Lots 4-5	73.85	Yes
31	45282	T7N	R6W	Sec 20	S; NW; W NE	560	Yes
32	58934	T7N	R6W	Sec 30	E; E SW; Lots 3-4	475.6	Yes
33	23311	T7N	R6W	Sec 18	S SE; Lot 04; SE SW	158.33	Yes

No. of Acoma Allotments	Allotment No.	Township	Range	Section	Quarter Section	Acreage	Within RSJ Basin
1	59232	T8N	R9W	Sec 10	N	320	Yes

**APPENDIX B to NAVAJO ADDENDUM**  
**(ARTICLE 17 OF THE LOCAL SETTLEMENT AGREEMENT)**

**WATER INFRASTRUCTURE**

Navajo Nation proposed construction of a regional water supply to Navajo Nation communities in the Rio San José Stream System, to deliver 300 afy to Navajo Nation communities. The Nation will be able to provide water to the Navajo Nation communities in the Rio San José Stream System.

- Wastewater Development for the Rio San José Stream System Navajo Communities.
- Chlorination Station for the NGWSP Crownpoint Lateral extension.
- Four Water Hauling Stations for Smith Lake, Casamero Lake, Thoreau and To'hajiilee.
- Indian Health Service (IHS) has several projects on the Sanitation Deficiency System (SDS) Listing.

**Proposed Costs (as of February 2024):**

Regional Transmission Waterline & Navajo communities' connections	\$ 146,991,303
Wastewater Development	\$ 25,000,000
Chlorination Station	\$ 1,060,400
Five Water Hauling Stations	\$1,355,000
IHS-SDS Projects	\$ 13,822,245
Operation and Maintenance Trust Fund	\$ 23,000,000
Waterline Extensions and Bathroom Additions	\$ 5,730,000
Livestock Water-Related Projects	\$ 6,312,052
Settlement Fund for Rio Puerco Basin	\$ 20,000,000
<b>TOTAL</b>	<b>\$ 243,271,000</b>

25534542.1



*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

**NAVAJO ADDENDUM: ARTICLE 17 OF THE  
RIO SAN JOSÉ STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, THE STATE  
OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF MILAN, THE ASSOCIATION OF  
COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE NAVAJO NATION:**

\_\_\_\_\_

\_\_\_\_\_

Date

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_

Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
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OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF MILAN, THE ASSOCIATION OF  
COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE PUEBLO OF ACOMA:**

\_\_\_\_\_  
Randall Vicente, Governor  
Pueblo of Acoma

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Peter C. Chestnut  
Ann Berkley Rodgers  
Aaron M. Sims  
Chestnut Law Offices, P.A.

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
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OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF MILAN, THE ASSOCIATION OF  
COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE PUEBLO OF LAGUNA:**

\_\_\_\_\_  
Gaylord Siow, Acting Governor  
Pueblo of Laguna

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Ashley M. Sarracino  
Pueblo Secretary

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Susan G. Jordan  
Jordan Law Firm, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard W. Hughes  
Rothstein Donatelli, LLP

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE STATE OF NEW MEXICO:**

\_\_\_\_\_  
Michelle Lujan Grisham  
Governor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Hamman, P.E.  
State Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Raúl Torrez  
Attorney General

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Nathaniel Chakeres  
Kelly Brooks Smith  
Nicole Greenspan  
Susan Kery  
John Utton  
Special Assistant Attorneys General  
Office of the State Engineer

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
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AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, THE STATE  
OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF MILAN, THE ASSOCIATION OF  
COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE ASSOCIATION OF COMMUNITY DITCHES OF THE RIO SAN JOSÉ:**

\_\_\_\_\_  
Larry Carver  
President

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Bruce Boynton  
Rebecca Dempsey

\_\_\_\_\_  
Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
**(13<sup>th</sup> Jud. Dist. Ct.)**

**NAVAJO ADDENDUM: ARTICLE 17 OF THE  
RIO SAN JOSÉ STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, THE STATE  
OF NEW MEXICO, THE CITY OF GRANTS, THE VILLAGE OF MILAN, THE ASSOCIATION OF  
COMMUNITY DITCHES OF THE RIO SAN JOSÉ AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE CITY OF GRANTS:**

\_\_\_\_\_  
Erik Garcia  
Mayor

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Elizabeth Newlin Taylor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Frances Salas  
City Clerk

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
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COMMUNITY DITCHES**

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**FOR THE VILLAGE OF MILAN:**

\_\_\_\_\_  
Felix O. Gonzales  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
James Mercer  
Mayor Pro Tem

\_\_\_\_\_  
Date

\_\_\_\_\_  
Monica Sandoval  
Trustee

\_\_\_\_\_  
Date

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Christopher J. Archuleta  
Trustee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Roseanne Lopez  
Trustee

\_\_\_\_\_  
Date

Approved as to form:

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Brett J. Olsen

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Denise Baca  
Village Clerk

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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**FOR THE BLUEWATER TOLTEC IRRIGATION DISTRICT:**

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Date



*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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**FOR LA ACEQUIA MADRE DEL OJO DEL GALLO:**

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\_\_\_\_\_ Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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**FOR MOQUINO WATER USERS ASSOCIATION II:**

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Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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**FOR MURRAY ACRES IRRIGATION ASSOCIATION:**

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Date

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**FOR SAN MATEO IRRIGATION ASSOCIATION:**

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\_\_\_\_\_ Date

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**FOR SEBOYETA COMMUNITY IRRIGATION ASSOCIATION:**

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\_\_\_\_\_

Date

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**FOR CUBERO ACEQUIA ASSOCIATION:**

\_\_\_\_\_

\_\_\_\_\_ Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
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**FOR CEBOLLETITA ACEQUIA ASSOCIATION:**

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Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
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COMMUNITY DITCHES**

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**FOR THE COMMUNITY DITCH OF SAN JOSÉ DE LA CIENEGA:**

\_\_\_\_\_

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*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL  
SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE  
NAVAJO NATION, 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**

**MAY 13, 2022**

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, 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  
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## **ARTICLE 1: PARTIES TO THE SETTLEMENT AGREEMENT.**

The Parties to this Settlement Agreement are the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the United States of America, in its capacity as trustee for the Pueblo of Acoma, the Pueblo of Laguna and the Navajo Nation, the City of Grants, the Village of Milan, the nine (9) individual Acequias and Community Ditches (collectively, the "Acequias"), which are political subdivisions of the State, being Bluewater Toltec Irrigation District, La Acequia Madre del Ojo del Gallo, Moquino Water Users Association II, Murray Acres Irrigation Association, San Mateo Irrigation Association, Seboyeta Community Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, Community Ditch of San José de la Cienega, and the Association of Community Ditches of the Rio San José ("Association"), which is a New Mexico non-profit corporation representing itself and its Acequia members herein on common issues. The Parties acknowledge that the Navajo Nation has been an active participant in this negotiation and all parties herein agree that the Navajo Nation will become a party and a signatory to this Settlement Agreement upon the approval of the Navajo Nation leadership and as described in Article 17.

## **ARTICLE 2: PURPOSE.**

The purpose of this Settlement Agreement is to resolve the issues and controversies concerning water rights claims of the Pueblos of Acoma and Laguna, the Navajo Nation, and of the United States, in its capacity as trustee for the Pueblo of Acoma, the Pueblo of Laguna and the Navajo Nation, in the general stream adjudication of the Rio San Jose captioned *State of New Mexico ex rel. State Engineer v. Kerr-McGee, et al.*, Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated) ("*Kerr-McGee*"), pending in the Thirteenth Judicial District Court for the State of New Mexico, without needless expenditure of funds and other litigation resources. This Settlement is consistent with the policy of the United States of America ("United States") and the State of New Mexico ("State") favoring resolution of disputes concerning water rights through negotiation.

## **ARTICLE 3: DEFINITIONS.**

- 3.1. Adjudication.** "Adjudication" means the general adjudication of water rights entitled *State of New Mexico, ex rel. State Engineer v. Kerr-McGee, et al.*, Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated) now pending in the Thirteenth Judicial District Court of the State of New Mexico.
- 3.2. Adjudication Court or Court.** "Adjudication Court" or "Court" means the District Court for the Thirteenth Judicial District of the State of New Mexico in which the Partial Final Judgment and Decree will be entered.
- 3.3. AFY.** "AFY" means acre-feet of water per year or per annum.
- 3.4. Consumptive Irrigation Requirements or CIR.** "Consumptive Irrigation Requirement" or "CIR" means the quantity of irrigation water, exclusive of effective rainfall, that is consumptively used by plants and is evaporated from the soil surface in a specific period of time. It may be calculated numerically by subtracting effective rainfall from consumptive use.

**3.5. Enforcement Date.** “Enforcement Date” means the date upon which the Secretary publishes the statement of findings that all Conditions Precedent set forth in Article 16 have been fulfilled.

**3.6. Farm Delivery Requirements or FDR.** “FDR” or “Farm Delivery Requirement” means the quantity of water, exclusive of effective rainfall, that is delivered to the farm head gate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the consumptive irrigation requirement of crops grown on a farm during the irrigation accounting year, or as otherwise provided by permit.

**3.7. Impair or Impairment.** “Impair” or “Impairment” has the meaning developed under New Mexico water law.

**3.8. Local Settlement Agreement.** “Local Settlement Agreement” means the Settlement Agreement that has been signed by all Local Settlement Parties.

**3.9. Local Settlement Parties.** “Local Settlement Parties” means the Parties in Article 1, except for the United States.

**3.10. Non-State Parties to the Settlement Agreement.** “Non-State Parties to the Settlement Agreement” means the Pueblos, the United States in its capacity as trustee for the Pueblo of Acoma, the Pueblo of Laguna and the Navajo Nation, the City of Grants, the Village of Milan and the nine (9) individual Acequias and Community Ditches (collectively, the “Acequias”), which are political subdivisions of the State representing the common interests of its members, being Bluewater Toltec Irrigation District, La Acequia Madre del Ojo del Gallo, Moquino Water Users Association II, Murray Acres Irrigation Association, San Mateo Irrigation Association, Seboyeta Community Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, Community Ditch of San José de la Cienega, and the Association of Community Ditches of the Rio San José (“Association”), which is a New Mexico non-profit corporation representing itself and its Acequia members herein on common issues, as signatory parties to this Settlement Agreement.

**3.11. Office of the State Engineer.** “Office of the State Engineer” means the New Mexico Office of the State Engineer.

**3.12. Partial Final Judgment and Decree.** “Partial Final Judgment and Decree” means the judgment and decree entered in the Adjudication for the resolution of the water rights claims of the Pueblos and which is substantially in the form agreed to by the Settlement Parties and attached to the conformed Settlement Agreement.

**3.13. Project Diversion Requirement or PDR.** “Project Diversion Requirement” or “PDR” means the annual quantity of water necessary to be diverted from a source of surface water to satisfy the FDR and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.



**3.14. Pueblo or Pueblos.** “Pueblo” means the Pueblo of Acoma or the Pueblo of Laguna, and “Pueblos” means both.

**3.15. Pueblo Land or Pueblo Lands.** “Pueblo Land” or “Pueblo Lands” means any real property a) in the Rio San Jose Stream System that is held by the United States in trust for either Pueblo, or owned by either Pueblo, as of the Enforcement Date; b) in the Rio Salado Basin that is held by the United States in trust for Pueblo of Acoma, or owned by Pueblo of Acoma, as of the Enforcement Date; or c) in the Rio Puerco Basin that is held by the United States in trust for the Pueblo of Laguna, or owned by the Pueblo of Laguna, as of the Enforcement Date. Land placed in trust with the United States subsequent to the Enforcement Date for either Pueblo in the Rio San Jose Stream System, for Pueblo of Acoma in the Rio Salado Basin, or for Pueblo of Laguna in the Rio Puerco Basin, shall be considered Pueblo Land.

**3.16. Pueblo Water Right Permit.** “Pueblo Water Right Permit” means a document specifying terms and conditions for diversion and use of water on Pueblo Lands issued by the respective Pueblo within the scope of its authority under Article 11.3.1.

**3.17. Replacement of Water.** “Replacement of Water” means the furnishing of a substitute water supply, the modification of existing water supply facilities, the drilling of replacement wells, the assumption of additional operating costs, the procurement of documentation establishing a waiver of protection by owners of affected water rights and approved by the Acequia commission, artificial recharge or any other reasonable means to avoid Impairment of water rights.

**3.18. Rio Puerco Basin.** “Rio Puerco Basin” means the area defined by USGS Hydrologic Unit Codes (HUC) 13020204 (Rio Puerco subbasin) and 13020205 (Arroyo Chico subbasin), and includes the hydrologically connected groundwater.

**3.19. Rio Salado Basin.** “Rio Salado Basin” means the area defined by USGS Hydrologic Unit Code (HUC) 13020209 (Rio Salado subbasin), and includes the hydrologically connected groundwater.

**3.20. Rio San Jose Stream System.** “Rio San Jose Stream System” means the Rio San Jose, its surface water tributaries, and the underground waters hydrologically related thereto, which may include the underground waters within the Glorieta Sandstone, the San Andres Limestone, the Chinle Formation, the Zuni Sandstone, the Morrison Formation, the Dakota Sandstone, the Gallup Sandstone, the Crevasse Canyon Formation, the alluvium of stream valleys, and other aquifers. The Bluewater Underground Water Basin is largely, but not entirely, within the Rio San Jose Stream System.

**3.21. Rio San Jose Mainstem.** “Rio San Jose Mainstem” means the Rio San Jose excluding tributaries.

**3.22. Secretary.** “Secretary” means the United States Secretary of the Interior.

**3.23. Settlement Act.** “Settlement Act” means the federal legislation that approves the Settlement Agreement.

**3.24. Settlement Agreement or Agreement.** “Settlement Agreement” or “Agreement” means this Settlement Agreement, including and incorporating all exhibits hereto, and as it may be revised pursuant to the terms of this Settlement Agreement.

**3.25. Settlement Party or Settlement Parties.** “Settlement Party” or the “Settlement Parties” means one or more of the signatories to this Settlement Agreement.

**3.26. Signatory Acequia.** “Signatory Acequia” means an Acequia that is a signatory to the Settlement Agreement.

**3.27. State Engineer.** “State Engineer” means the New Mexico State Engineer or a duly authorized representative thereof.

**3.28. Technical Committee.** “Technical Committee” means the committee composed of one expert from each Settlement Party established to review proposals and disputes for revision of the Settlement Model, as set forth in Article 10.3.

#### **ARTICLE 4: PUEBLOS’ WATER RIGHTS BASED ON PAST AND PRESENT USES.**

**4.1. Irrigation Uses.** Each Pueblo has a surface water right to irrigate the following number of acres based on past and present uses of water:

**Pueblo of Acoma:** 1,870 acres, consisting of:

<b>Acres:</b>	<b>Points of Diversion:</b>
1,275	Rio San Jose Mainstem
265	Rinconada Canyon
163	San Jose Canyon
167	Acoma Grant south of Rio San Jose Mainstem

**Pueblo of Laguna:** 3,216 acres, consisting of:

<b>Acres:</b>	<b>Points of Diversion:</b>
2,443	Rio San Jose Mainstem
215	Encinal Canyon
558	Paguete Canyon

**4.1.1. Quantity.** The uniform Consumptive Irrigation Requirement (CIR), Farm Delivery Requirement (FDR) and Project Diversion Requirement (PDR) specified in Article 10.4 apply to the Pueblos’ water rights. Ditch efficiency for calculation of PDR will be 70% unless a different efficiency is shown. Applying these requirements to the historically irrigated acreages in this Article 4.1, the Pueblos have the following respective quantities for irrigation:

<b>Pueblo of Acoma</b>			
	<b>CIR AFY</b>	<b>FDR AFY</b>	<b>Points of Diversion</b>
	2,677.5	3,825.0	Rio San Jose Mainstem
	556.5	795.0	Rinconada Canyon
	342.3	489.0	San Jose Canyon
	350.7	501.0	Acoma Grant South of Rio San Jose Mainstem
<b>Total:</b>	<b>3,927.0</b>	<b>5,610.0</b>	

<b>Pueblo of Laguna</b>			
	<b>CIR AFY</b>	<b>FDR AFY</b>	<b>Points of Diversion</b>
	5,130.3	7,329.0	Rio San Jose Mainstem
	451.5	645.0	Encinal Canyon
	1,171.8	1,674.0	Paguete Canyon
<b>Total:</b>	<b>6,753.6</b>	<b>9,648.0</b>	

**4.1.2. Priority Date.** The priority date of the Pueblos' past and present irrigation water rights is time immemorial. Article 10.1 addresses forbearance from priority calls.

**4.1.3. Places of Use and Points of Diversion Exhibits for Decree.** The Pueblos, State and United States shall jointly prepare exhibits identifying and mapping the places of use and points of diversion for inclusion in the Partial Final Judgment and Decree.

**4.1.3.1** The mapped place of use for each Pueblo's Rio San Jose Mainstem irrigation rights shall be the past and present service area under mainstem ditches. The points of diversion for each Pueblo's Rio San Jose Mainstem irrigation rights shall be the past and present Rio San Jose Mainstem points of diversion. No permit under Article 11.3 of this Agreement shall be required for a Pueblo to vary its usage among fields in its Rio San Jose Mainstem service area and its diversions among Rio San Jose Mainstem points of diversion identified in the exhibits to the Partial Final Judgment and Decree prepared pursuant to this Article 4.1.3.

**4.1.3.2.** The mapped place of use of each Pueblo's tributary irrigation rights shall be the past and present service area under ditches of the particular tributary. The points of diversion for each Pueblo's tributary irrigation rights shall be its past and present points of diversion on the particular tributary. No permit under Article 11.3 of this Agreement shall be required for a Pueblo to vary its usage among fields in a particular tributary service area and its diversions among tributary points of diversion identified in the exhibits to the Partial Final Judgment and Decree prepared pursuant to this Article 4.1.3.

**4.2. Domestic, Commercial, Municipal, and Industrial Uses.** Each Pueblo has a water right for past and present Domestic, Commercial, Municipal and Industrial uses, as follows:

**Pueblo of Acoma:** 693 AFY  
**Pueblo of Laguna:** 659 AFY.

**4.2.1. Priority Date.** The priority date for these uses from groundwater is time immemorial. The priority date for these uses from springs is time immemorial.

**4.2.2. Source of Supply.** The source of supply for these uses is groundwater and springs. The existing points of diversion will be included as an exhibit to the Partial Final Judgment and Decree.

**4.3. Livestock Uses.** The existing points of diversion and places of use will be quantified and described in an exhibit to the Partial Final Judgment and Decree. The quantities set forth below are subject to technical correction for the Partial Final Judgment and Decree.

**4.3.1. Source of Water.** This right may be exercised from any lawful water sources, including stock ponds, wells, springs, or water courses.

**4.3.2. Consumptive Use by Livestock.** Each Pueblo is entitled to a water right to divert and consume water on its Pueblo Lands as of the date on which a motion for entry of a Partial Final Judgment and Decree is filed, for the purpose of livestock and wildlife watering as follows:

**Pueblo of Acoma: 204 AFY**

**Pueblo of Laguna: 138 AFY.**

**4.3.3. Stock Ponds.**

**4.3.3.1. Stock Ponds Purpose of Use.** The primary purpose of use for stock ponds is livestock and wildlife watering, with incidental uses of flood control, erosion control, and sediment control.

**4.3.3.2. Stock Ponds Storage Right.** Each Pueblo is entitled to store water in stock ponds on a continuous basis as water is available. The quantified storage right for each Pueblo is expressed as a not-to-exceed aggregate of all stock ponds as follows:

**Pueblo of Acoma: 422 acre-feet**

**Pueblo of Laguna: 1,618 acre-feet.**

**4.3.3.3. Stock Ponds Consumptive Use Right.** Each Pueblo is entitled to a consumptive use right through evaporation from stock pond water surfaces of 3.4 acre-feet per acre of stock pond surface area as a not-to-exceed aggregate of evaporation of all stock ponds as follows:

**Pueblo of Acoma: 775 AFY**

**Pueblo of Laguna: 2,038 AFY.**

**4.3.3.4. Stock Ponds Limitations.** Stock pond water rights under this Article 4.3 are not transferable. Notwithstanding the foregoing, any stock pond may be reconstructed, rehabilitated, or replaced at its existing location or any other location on Pueblo Lands without a Pueblo Water Right Permit under Article 11.3, provided that:

**A.** The aggregate stock pond depletion for the respective Pueblo is not exceeded.

**B.** The change does not result in exceedance of the aggregate stock pond storage capacity for the respective Pueblo.

**C.** The purpose of use for the stock pond is not changed.

**D.** No water rights are Impaired by any relocation of stock pond storage rights.

**E.** The new place of use is not on the mainstem Rio San Jose.

**4.3.4. Stock Wells.**

**4.3.4.1. Stock Wells Points of Diversion.** Existing stock wells serving each Pueblo's livestock water rights under this Article 4.3.4 will be identified in exhibits to the Partial Final Judgment and Decree pursuant to Article 4.3.6.

**4.3.4.2. Stock Wells Limitations.** Any stock well may be reconstructed, rehabilitated, or replaced at its existing location or any other location on Pueblo Lands subject to Article 11.3, provided that the purpose of use is not changed.

**4.3.5. Priority Date.** The priority date for the Pueblos' past and present livestock uses is time immemorial, provided that the priority date for stock ponds on Pueblo fee lands is the construction date.

**4.3.6. Places of Use and Points of Diversion Exhibits for Partial Final Judgment and Decree.** The Pueblos, State, and United States will jointly prepare exhibits identifying and mapping the places of use and points of diversion for inclusion in the Partial Final Judgment and Decree. Stock pond exhibit lists will include stock pond identifier, location coordinates, surface area, and capacity. Stock wells exhibit lists will include well identifier and location coordinates.

**4.4. Reservoirs.** Each Pueblo has reservoir storage rights based on past and present uses of water, including the right to fill and refill, as quantified and further described in Attachment A, which is incorporated herein.

**4.5. State-law Based Water Rights.**

**4.5.1. Existing State-law Based Water Rights Claimed in Subproceeding 1.**

**4.5.1.1.** State-law based water rights are water rights acquired by prior owners under state law and subsequently acquired by each Pueblo.

**4.5.1.2.** The priority date of a state-law based water right is the date the water right was first put to beneficial use; provided that stock ponds will have time immemorial priority if held in trust, or date of construction priority if held in fee, at the time of filing of Motion for Entry of the Partial Final Judgment and Decree.

**4.5.1.3** All state-law based water rights acquired by a Pueblo shall retain their state law requirements and conditions; provided that, stock ponds on such acquired lands included in Subproceeding 1 claims shall be quantified for inclusion in the Partial Final Judgment and Decree using the same methodology used for Article 4.3 rights claimed in Subproceeding 1 and subject to the same limitations in Article 4.3.

**4.5.1.4** Upon Pueblo acquisition, a state-law based water right is not subject to forfeiture, abandonment, or permanent alienation.

**4.5.1.5** The rights set forth below are subject to technical correction for the Partial Final Judgment and Decree.

**Pueblo of Acoma:**

Pueblo of Acoma	Existing State-Law Based Water Rights -- Irrigation		
	Acres	CIR AFY (2.1)	Place of Use
	321		Berryhill Ranch
	49.2		Sanchez/Rinconada
	32.76		Gottlieb Ranch
	21.84		Rocking MC
<b>Total:</b>	<b>424.8 rounded to 425</b>	<b>892.5 AFY</b>	

Pueblo of Acoma	Existing State-Law Based Water Rights Wells for Domestic, Livestock and Commercial Uses		
	Purpose of Use	Quantity	Place of Use
	Domestic and Livestock	Minimum of up to 3 AFY per well but not less than historic use, whichever is less	
	Commercial	3 AFY	Stuckey's/Skyway
	Commercial	15 AFY	Bibo Ranch

**Pueblo of Laguna:** None claimed in Subproceeding 1.

**4.5.2. Additional State-Law Based Water Rights.**

**4.5.2.1.** The Pueblo of Laguna has acquired state-law based rights after a timeframe used by the United States for inclusion in a water use survey for Subproceeding 1 claims. Each Pueblo may also acquire additional state-law based water rights and appropriate groundwater on their respective Pueblo Lands subject to the requirements of Article 11.

**4.5.2.2.** Any such state-law based water rights acquired prior to the filing of a motion for the entry of a Partial Final Judgment and Decree will be quantified, and priority dates will be determined, based on state law of prior appropriation and beneficial use for inclusion in the Partial Final Judgment and Decree; provided that, stock ponds on such acquired lands not covered in Subproceeding 1 claims shall be quantified for inclusion in the Partial Final Judgment and Decree using the same methodology used for Article 4.3 rights claimed in Subproceeding 1 and subject to the same limitations in Article 4.3, and stock ponds will have time immemorial priority if held in trust or date of construction priority if held in fee at the time of filing of the Motion for Entry of the Partial Final Judgment and Decree.

**4.5.2.3.** The necessary information for inclusion of the state-law based water right must be provided to the State at least two months prior to the filing of the motion for entry of the Partial Final Judgment and Decree.

**4.5.2.4.** All water rights acquired by a Pueblo after the deadline date set forth above for inclusion in the Partial Final Judgment and Decree shall retain their state law requirements and conditions.

**4.5.2.5.** State law-based water rights acquired by a Pueblo, or by the United States on behalf of a Pueblo, after the date for inclusion in the Partial Final Judgment and Decree shall not be subject to forfeiture, abandonment, or permanent alienation from the time they are acquired.

**ARTICLE 5: TRADITIONAL PUEBLO AGRICULTURAL WATER USE PRACTICES.**

The Stipulation Concerning Certain Traditional Agricultural Water Use Practices of the Pueblos of Acoma and Laguna filed with the Court on May 12, 2015 and the Court Order Adopting Stipulation and Dismissing Certain Claims of the United States, the Pueblo of Acoma and the Pueblo of Laguna Regarding Certain Traditional Agricultural Water Use Practices filed with the

Court on May 12, 2015, collectively attached hereto as Attachment B, are incorporated by reference as though fully set forth herein.

## **ARTICLE 6: ADDITIONAL GROUNDWATER RIGHT.**

In addition to the water rights described in Article 4, each Pueblo has an Additional Groundwater Right as described in this Article 6.

**6.1. Quantity.**

**Pueblo of Acoma:** Right to divert and consume 1,300 AFY

**Pueblo of Laguna:** Right to divert and consume 1,300 AFY.

**6.2. Purpose of Use.** The purpose of use of each Pueblo's Additional Groundwater Right shall be domestic, commercial, municipal and industrial.

**6.3. Place of Use.**

**Pueblo of Acoma:** within Pueblo of Acoma Lands in the Rio San Jose Stream System and the Rio Salado Basin.

**Pueblo of Laguna:** within Pueblo of Laguna Lands in the Rio San Jose Stream System and the Rio Puerco Basin.

**6.4. Points of Diversion.**

**6.4.1. Pueblo of Acoma:**

**6.4.1.1. Rio San Jose Stream System:** Any portion of the Pueblo of Acoma's Additional Groundwater Right may be diverted from any new or existing well on Pueblo of Acoma Lands in the Rio San Jose Stream System screened in any aquifer below the alluvial aquifer.

**6.4.1.2. Rio Salado Basin:** Any portion of the Pueblo of Acoma's Additional Groundwater Right may be diverted from any new or existing well on Pueblo of Acoma Lands in the Rio Salado Basin screened in any aquifer.

**6.4.2. Pueblo of Laguna:**

**6.4.2.1. Rio San Jose Stream System:** Any portion of the Pueblo of Laguna's Additional Groundwater Right may be diverted from any new or existing well on Pueblo of Laguna lands in the Rio San Jose Stream System screened in any aquifer below the alluvial aquifer.

**6.4.2.2. Rio Puerco Basin:** Any portion of the Pueblo of Laguna's Additional Groundwater Right may be diverted from any new or existing well on Pueblo of Laguna's lands in the Rio Puerco Basin screened in any aquifer.

**6.5. Priority Date.** The priority date for each Pueblo's Additional Groundwater Right is time immemorial.

**6.6. Transferability and Permits.**

**6.6.1. Pueblo Permits Required.** Each Pueblo's diversion and use of its Additional Groundwater Right shall be subject to the permit requirements under Article 11.3.

**6.6.2. Transferability Limitations.** Each Pueblo's Additional Groundwater Right shall not be transferable to a) points of diversion or places of use off Pueblo lands, b) any surface water point of diversion, or c) a well screened in any alluvial aquifer in the Rio San Jose Basin.

## **ARTICLE 7: PUEBLO COOPERATION AGREEMENT.**

**7.1. Pueblos Joint Cooperation.** The Pueblos agree to cooperate in conducting a feasibility study for alternative Northwest Morrison water supply infrastructure and in planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, maintaining, and repairing any such Northwest Morrison water supply, including without limitation securing all necessary rights of way over federal, state, private and their respective Pueblo Lands. The Pueblos further agree to cooperate in constructing, reconstructing, replacing, rehabilitating, maintaining, and repairing the Acomita Reservoir Dam, its inlet works, its outlet works, and the North Acomita Ditch from the Acomita Reservoir outlet on the Pueblo of Acoma through its terminus on the Pueblo of Laguna.

**7.2. Pueblos Limitation on Shared Costs.** The Pueblos agree that neither Pueblo shall be required to contribute to the construction of alternative Northwest Morrison water supply infrastructure more than its respective percentage share under Article 13.1.2.2. The Pueblos further agree that neither Pueblo shall be required to contribute to the construction of alternative Northwest Morrison water supply infrastructure more than the respective dollar amounts in Article 13.1.2.2 as adjusted for inflation pursuant to Article 13.1.1.

**7.3 Pueblos Joint Cooperation on Irrigation Water Delivery.** In the interest of avoiding disputes between the Pueblos and limiting the need for Water Master involvement, the Pueblos agree that the Pueblo Governors, or their designee(s), shall meet annually prior to the start of the irrigation season, but no later than April 15th, and at any time during the irrigation season upon request of either Governor, to discuss issues of mutual concern related to irrigation, including but not limited to cooperation for the delivery of water and other irrigation issues. The Pueblos will utilize, as appropriate when needed, the technical assistance of the Bureau of Indian Affairs and the Water Master. The Pueblos agree that cooperation in the delivery of irrigation water for their respective mainstem irrigated acreage is in their mutual interests and their irrigation water operations on the mainstem Rio San Jose need to take into account mainstem flow, including tributary inflow, and the stored water available to each Pueblo in mainstem Rio San Jose reservoirs under Article 4.4 or any permits authorizing mainstem aquifer storage and recovery or mainstem alluvial groundwater diversions for irrigation purposes.

**7.4. Pueblos and Signatory Acequias Reciprocal Meet and Confer.**

**7.4.1.** Each Signatory Acequia shall identify in writing to each Pueblo's Governor its designated Commissioner point of contact for meeting and conferring pursuant to Article 11.6.3.2 and this Article 7.4. Such notification shall include the Commissioner's contact information.

**7.4.2.** If a Pueblo requests in writing to a Signatory Acequia to meet and confer about an application to the State Engineer by or on behalf of the Signatory Acequia, then the Pueblo and the Acequia Commission will meet and confer in good faith during the public notice period on such application.



**7.5. Joint Cooperation by Signatory Acequias and Pueblos on Project(s) to Provide Offsets for Impacts from Acequia Projects.** To facilitate Acequia projects under Article 12 (“Signatory Acequia Projects”) to improve Acequias’ water supplies and protect those supplies from impacts due to Pueblo water supply projects, and to facilitate Pueblo projects to improve Pueblo water supplies and protect Pueblo water supplies from impacts due to Acequia water supply projects, the Acequias and Pueblos agree:

7.5.1. to confer on a feasibility study or studies by Acequias for project(s) (“Signatory Acequia Offset Project”) to provide any offsets that may be required for impacts to surface and ground water sources from Signatory Acequia Projects; and,

7.5.2. with regard to a contemplated Signatory Acequia Offset Project involving a delivery of water to Pueblos, to confer on potential joint construction and operation of the Signatory Acequia Offset Project.

**7.6. Pueblos, Grants, and Milan Reciprocal Meet and Confer.**

7.6.1. Grants and Milan shall identify in writing to each Pueblo’s Governor its designated point of contact, including contact information, for meeting and conferring pursuant to Article 12 and this Article 7.6.

7.6.2. If a Pueblo requests in writing to Grants or Milan to meet and confer about an application to the State Engineer by the municipality, then the Pueblo and the municipality’s point of contact will meet and confer in good faith during the public notice period on such application.

7.6.3. Each Pueblo shall identify in writing to Grants and Milan its designated point of contact, including contact information, for meeting and conferring pursuant to Article 12 and this Article 7.6.

7.6.4. If Grants or Milan requests in writing to a Pueblo to meet and confer about an application to the State Engineer by the Pueblo or a Pueblo Water Right Permit application pending before the respective Pueblo during the public notice period, then the Pueblo’s and the municipality’s representatives will meet and confer in good faith during the public notice period on such application.

7.6.5. To facilitate municipal projects under Articles 12.5, 12.6 and 12.7 to improve the municipalities’ water supplies and protect those supplies from impacts due to Pueblo water supply projects, and to facilitate Pueblo projects to improve Pueblo water supplies and protect Pueblo water supplies from impacts due to municipal water supply projects, Grants and Milan and Pueblos agree to meet and confer:

7.6.5.1 on an estimate of the Hydrologic Benefit of the projects to be undertaken by Grants or Milan, or jointly by them, during the planning and design phase of the municipal project; and

7.6.5.2 on the Hydrologic Benefit of the municipal project upon completion of construction of a project.

**ARTICLE 8: PUEBLOS’ OUT OF BASIN WATER RIGHTS FOR PAST AND PRESENT USES.**

**8.1. In General.** In addition to the water rights recognized in Articles 4 and 6, each Pueblo has the water rights recognized in this Article 8 for past and present uses, including uses under a

plan of development, in the Rio Puerco Basin for the Pueblo of Laguna and the Rio Salado Basin for the Pueblo of Acoma. In consideration of the rights described in Article 6, the Pueblo of Laguna will not claim any additional water rights in the Rio Puerco Basin in excess of or in addition to those described in this Article 8, and the Pueblo of Acoma will not claim any additional water rights in the Rio Salado Basin in excess of or in addition to those described in this Article 8.

**8.2. Out of Basin Domestic, Commercial, Municipal, and Industrial Water Rights Under a Plan of Development.**

**8.2.1. Pueblo of Laguna.** The Pueblo of Laguna has existing and planned groundwater wells completed in the alluvial aquifer, the Santa Fe Group, Cretaceous-age beds, and the Morrison Formation in the Rio Puerco Basin on lands held in trust for the Pueblo by the United States. These wells are part of an existing plan of development. The water rights under this plan of development shall be recognized and quantified as set forth below. No permit under Article 11 and no depletion offset shall be required for the development and use of these water rights within the scope of this Article 8.2.1.

**8.2.1.1. Quantity:** the right to divert and consume 1,020 AFY.

**8.2.1.2. Purpose of Use:** Domestic, commercial, municipal and industrial.

**8.2.1.3. Points of Diversion:** existing groundwater points of diversion identified in the following table and additional wells as needed within the approximate area mapped in Attachment C.

<b>Existing Wells Associated with Pueblo of Laguna Plan of Development</b>					
<b>Well name</b>	<b>Location (UTM, m)</b>		<b>Well name</b>	<b>Location (UTM, m)</b>	
	<b>East</b>	<b>North</b>		<b>East</b>	<b>North</b>
LPW-4	315,370	3,874,580	Casino Well 4	322,383	3,877,882
LPW-8	315,720	3,873,905	Casino Well 5	322,272	3,877,885
LPW-2	315,460	3,874,305	Casino Well 6	322,471	3,877,853
LT-2	315,470	3,874,320	Casino Well 7	322,469	3,877,945
LT-1	316,095	3,873,170	Casino Well 8	322,382	3,877,967
Casino Well 1	322,725	3,877,836	AG-1	318,181	3,876,701
Casino Well 2	322,816	3,877,617	AG-2	318,480	3,877,803
Casino Well 3	322,984	3,877,346	AG-3	317,948	3,875,715

**8.2.1.4. Places of use:** Pueblo of Laguna lands within the Rio Puerco Basin.

**8.2.1.5. Priority Date:** Time immemorial.

**8.2.2. Pueblo of Acoma.** None.

**8.3. Out of Basin Livestock Water Rights.** The water rights for past and present livestock uses in the Rio Salado Basin for the Pueblo of Acoma and the Rio Puerco Basin for the Pueblo of Laguna shall be subject to Articles 4.3.3.4 and 11.3 and will be quantified and described, using the same methodology used for the Rio San Jose Stream System livestock rights recognized in Article 4.3, in an exhibit to the Partial Final Judgment and Decree.

**8.4. Out of Basin State-Law Based Water Rights.**

**8.4.1. Existing State-Law Based Water Rights.** The Pueblo of Acoma's existing state-law based water rights in the Rio Salado Basin and the Pueblo of Laguna's existing state-law based water rights in the Rio Puerco Basin shall be subject to Article 4.5.1 and will be identified and described, using the methodology in Article 4.5.1 used for the Pueblos' existing state-law based water rights in the Rio San Jose Stream System, in exhibits jointly prepared by the Pueblos, the State and the United States for inclusion in the Partial Final Judgment and Decree or in a supplemental partial final judgment and decree.

**8.4.2. Additional State-Law Based Water Rights.** Each Pueblo may acquire additional state-law based water rights outside the Rio San Jose Stream System. The Pueblo of Acoma's additional state-law based water rights in the Rio Salado Basin and the Pueblo of Laguna's additional state-law based water rights in the Rio Puerco Basin shall be subject to Article 4.5.2. Such rights acquired at least two months prior to the filing of the motion for entry of the Partial Final Judgment and Decree will be identified and described, using the methodology in Article 4.5.2 used for the Pueblos' additional state-law based water rights in the Rio San Jose Stream System, in exhibits jointly prepared by the Pueblos, the State and United States, for inclusion in the Partial Final Judgment and Decree or in a supplemental partial final judgment and decree.

**8.5. Limitation of Claims.**

**8.5.1.** Subject to and in consideration of the rights described in Articles 6 and 8:

**8.5.1.1.** The Pueblo of Laguna will not claim any additional water rights, or divert water, appurtenant to their Pueblo Lands in the Rio Puerco Basin in excess of or in addition to those water rights described in Articles 6 and 8; and

**8.5.1.2.** The Pueblo of Acoma will not claim any additional water rights, or divert water, appurtenant to their Pueblo Lands in the Rio Salado Basin in excess of or in addition to those water rights described in Articles 6 and 8.

**8.5.2.** Notwithstanding Article 8.5.1, the Pueblos may acquire and use additional water rights in these basins, including without limitation by appropriation of groundwater on their respective Pueblo Lands subject to the requirements of Article 11, and such rights will be quantified pursuant to Article 8.4.

**8.5.3.** In the event that any of the water rights described in Article 6 or 8 of the respective Pueblo are not recognized or upheld in any administrative or judicial proceeding, the claims limitations in this Article 8.5 will no longer apply and the State and the respective Pueblo will activate the process under Article 14.20.2.

**ARTICLE 9: LEASING OF PUEBLO WATER RIGHTS.**

**9.1. Secretarial Approval.** Subject to the approval of the Secretary, each Pueblo may lease water rights secured to it under the Settlement Agreement and Partial Final Judgment and Decree.

**9.2. No Preemption.** The approval authority of the Secretary under Article 9.1 shall not amend, construe, supersede, or preempt any State or Federal law, interstate compact, or international treaty that pertains to the Rio Grande, or any of its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quantity of those waters.

**9.3. Maximum Term.** The maximum term of any water use lease, including all renewals, shall not exceed 99 years in duration. A Pueblo shall not permanently alienate any rights it has under the Settlement Agreement or the Partial Final Judgment and Decree.

**9.4. No Forfeiture or Abandonment.** The nonuse by a lessee of a Pueblo of any right to which the Pueblo is entitled under the Partial Final Judgment and Decree shall in no event result in a forfeiture, abandonment, or other loss of all or any part of those rights.

**9.5. No Prejudice.** Nothing in this Article 9 shall be construed to establish, address, prejudice, or prevent any Settlement Party from litigating whether or to what extent any applicable State law, Federal law, or interstate compact does or does not permit, govern, or apply to the use of a Pueblo's water outside of New Mexico.

#### **ARTICLE 10: BASIN ADMINISTRATION FOR PUEBLO AND NON-PUEBLO WATER RIGHTS.**

**10.1. Forbearance from Priority Calls by Pueblos.** To avoid disruption to lawful existing non-Indian water use, the Pueblos agree to forbear making any priority call based on their senior rights against any non-Indian administrable water right existing prior to the Enforcement Date and determined pursuant to 19.25.13.27 NMAC. Notwithstanding the foregoing, nothing in this Settlement Agreement affects the right of either Pueblo, or the United States in its trustee capacity on a Pueblo's behalf, to assert and defend its senior right in response to any priority call or priority administration made against Pueblo water rights.

**10.2. Priority Administration Among Junior Users.** In the event of priority administration among water rights users junior to Pueblo senior water rights, the Water Master shall administer priorities among the non-Pueblo water users. If a non-Pueblo water right owner requests a priority call, and if the Water Master grants such request, the Water Master will limit the scope of priority administration to users junior to the requesting owner in an amount necessary to satisfy the request.

**10.3. Hydrologic Model.** The Parties will cooperate in the development and agree to the use of a hydrologic model or models to be adopted and approved and used by the State Engineer for administration of the Rio San Jose Stream System and used by the Pueblos in the administration of water rights on Pueblo lands pursuant to Article 11 of this Settlement Agreement.

**10.3.1. Development of Settlement Model or Models.** Assuming the availability of adequate funding and staffing, the Hydrology Bureau, in consultation with the Parties choosing to be involved in the development process, shall develop a hydrologic model or models for use in the Rio San Jose Stream System after the Local Settlement Parties execute this Settlement Agreement, which will simulate the effects on groundwater and surface water from groundwater pumping and surface water diversions and be capable of quantifying effects on groundwater levels in wells. The hydrologic model or models shall be used in water rights management and administration, both for estimation of the incremental effects of a proposed change in water use and may be used for planning purposes. If a Settlement Party other than the Hydrology Bureau develops a model or models, the Hydrology Bureau shall still perform its remaining obligations under this Article 10.3.

**10.3.2. Approval Process for Development of Settlement Model.** When any model or models have been developed pursuant to Article 10.3.1, model files and documentation will be made available to the Settlement Parties by the Hydrology Bureau. The Hydrology Bureau will notify the Settlement Parties and request their approval or disapproval and comments. Parties will submit a notice of approval or disapproval with comments to the Hydrology Bureau within 90 days of receipt of the documents and files. A failure to respond within 90 days will be considered approval. If a notice of disapproval is timely submitted, the disapproving Settlement Party shall propose a change to the model that will satisfy their concerns to be considered by a Technical Committee convened by the Hydrology Bureau composed of one expert from each Settlement Party that chooses to participate. A hydrologist from the United States and a hydrologist from the Hydrology Bureau shall serve as Co-Chairs of the Technical Committee. If the Technical Committee, including the Co-Chairs, unanimously approves the change to the model, the Settlement Party requesting the change shall implement the agreed upon change, unless the Hydrology Bureau agrees to do so. If there is not unanimous approval of a requested change to the model or models, the State Engineer shall make the decision as to the model or models to be adopted for the uses set forth in Article 10.3.3. The term Settlement Model will be used to describe the model or models developed and approved through the process set forth herein. If a model has not been approved or is being disputed by the Technical Committee, the Hydrology Bureau and the Pueblos have the authority to use whatever hydrologic tool or tools each deem appropriate on a case-by-case basis.

**10.3.3. Circumstances of Use.** A Settlement Model or Models shall be used for circumstances described in Article 11 and for assessment by the Office of the State Engineer and the Pueblos of water rights applications within the Rio San Jose Stream System and may be used for other administration, planning and management purposes by any other party or person. The requirement for use of a Settlement Model does not preclude use of additional hydrologic tools by the Hydrology Bureau and the Pueblos. Under limited circumstances, the use of a Settlement Model will not be required. The types of applications for which use of a Settlement Model may not be required include but are not limited to:

**10.3.3.1.** Applications involving the change in point of diversion for which the move-from and move-to locations are within the same model cell.

**10.3.3.2.** Applications involving less than a certain volume of water per year. This amount will be determined by the Technical Committee following an evaluation of the completed Settlement Model.

**10.3.4. Revision of a Settlement Model.** Any Settlement Party may propose a revision to a Settlement Model by submitting to the Hydrology Bureau of the Office of the State Engineer (“Hydrology Bureau”) a written description of and justification for the proposed revision. If the Settlement Party has completed the proposed revisions and would like the proposed revised model to be considered, then the model files and revision documentation should also be submitted. A model revision is any revision which is not an extension of the historical period under Article 10.3.5.

**10.3.4.1. Technical Committee Review.** Upon receipt of any such proposal, the Hydrology Bureau shall provide written notice to the Settlement Parties and convene a Technical Committee. The Technical Committee shall review the proposed revision and attempt to reach a consensus recommendation on whether to adopt the proposed revision to the Settlement Model.

**10.3.4.2. Unanimous Consent.** If there is unanimous consent of the Technical Committee on a proposed revision to a Settlement Model, and the proposed model revisions have

been completed, the proposed revised model shall be adopted. If the proposed model revisions have not been completed, the model shall be revised by the Party who proposed the revision in collaboration with the members of the Technical Committee, unless the Hydrology Bureau agrees to revise the model. The process for reviewing completed model revisions that follow a proposed revision is described in Article 10.3.4.4.

**10.3.4.3. Non-Unanimous Consent.** If there is not unanimous consent of the Technical Committee to a proposed revision to the Settlement Model, the Hydrology Bureau shall make the final determination on whether the proposal to revise the Settlement Model should be adopted. A decision to adopt a proposed revision shall be based on the determination by the Hydrology Bureau that the adoption of the proposed revision would significantly enhance the utility of the Settlement Model in the administration of water rights, including but not limited to the determination of Impairment to existing water rights and the determination of offsets or mitigation necessary to prevent Impairment. If the Hydrology Bureau approves the proposal to revise the Settlement Model, and the proposed model revisions have been completed, the proposed revised model shall be adopted. If the Hydrology Bureau approves the proposal to revise the model and proposed model revisions have not been completed, the model shall be revised by the Settlement Party who proposed the revision in collaboration with the members of the Technical Committee, unless the Hydrology Bureau agrees to revise the model. The process for completing model revisions is described in Article 10.3.4.4.

**10.3.4.4. Process for Reviewing Completed Model Revisions that Follow a Proposed Revision.** If the proposed model revisions have been approved but not yet completed, upon completion of the revised Settlement Model pursuant to Articles 10.3.4.2 or 10.3.4.3, the final revised model documentation and model files shall be submitted to the Technical Committee for review. If the Technical Committee reaches unanimous consensus to approve the final revised model, it shall be approved. If unanimous consent among the Technical Committee members regarding the final revised model is not reached, the Hydrology Bureau shall make the final decision on whether to approve the final revised model if it determines that its adoption would significantly enhance the utility of the Settlement Model in the administration of water rights, including but not limited to the determination of Impairment to existing water rights and the determination of offsets or mitigation necessary to prevent Impairment.

**10.3.5. Extension of the Historical Period.** An extension of the historical period will not be considered a model revision unless it is part of a model validation process, model recalibration, and/or a Settlement Party's proposed changes to it as described in Article 10.3.6 adopted pursuant to Article 10.3.4.

**10.3.6. Sharing of Files for the Settlement Model or Models.** Every five years, the Hydrology Bureau will provide the other Parties with the most recent files for the Settlement Model or Models for hydrologic evaluation of water rights applications in the Rio San Jose Stream System, at which time a Settlement Party may propose a revision of the extension of the historical period to the model files that were provided pursuant to Articles 10.3.2 and 10.3.4. If model files are requested by a Settlement Party in a period less than five years, comments on an extension of the historical period for a model or models may be submitted to the Hydrology Bureau for consideration. If a Settlement Party wants to review or run the Settlement Model or Models, the Party should request the latest version of the model files from the Hydrology Bureau.



**10.4. Irrigation Water Requirements.** Prior to the entry of a Partial Final Judgment and Decree on the Pueblos' water rights, the Parties shall jointly move the Court to adopt the following values to apply to Pueblo water rights and certain non-Indian water rights in the Rio San Jose Stream System, including non-Indian irrigation rights for which declarations have been filed by water right claimants with different irrigation values:

**10.4.1.** Consumptive Irrigation Requirement ("CIR"): 2.1 AFY per acre;

**10.4.2.** Farm Delivery Requirement ("FDR"): 3.0 AFY per acre; and

**10.4.3.** Project Diversion Requirement ("PDR"): 4.3 AFY per acre, assuming 70% ditch efficiency, unless a different efficiency can be shown for a specific ditch on a case-by-case basis.

**10.5. Non-Agricultural Uses.** For non-agricultural uses on both Pueblo and non-Pueblo lands, the diversion amount shall be limited to the consumptive use amount unless a return flow plan is approved through the relevant permitting process consistent with Office of the State Engineer practice.

**10.6. District Specific Management.** An important purpose of District Specific Management is to monitor, support and protect stream flows, both on and off Pueblo lands. The State Engineer, in consultation with the Pueblos and the other Parties, shall promulgate district specific management tools by Order, District Specific Rules for the Rio San Jose Stream System, other lawful means under the State Engineer's Active Water Resource Management authority, or other legal authority prior to entry of the Partial Final Judgment and Decree on the Pueblos' Water Rights in the Stream System. Such management tools shall incorporate and implement the administrative provisions of this Settlement Agreement. In addition, the management tools may include other provisions for the administration of rights in the Rio San Jose Stream System in order to provide for administration pending adjudication of such rights. The management tools adopted by the State Engineer shall at a minimum:

**10.6.1. Water Right Validity.** Establish procedures to determine whether, and to what extent, a water right or claim to water right in the Bluewater Underground Water Basin is valid.

**10.6.2. Drawdowns.** Establish procedures to determine whether excessive drawdowns are predicted to occur in any area or areas within the Bluewater Underground Water Basin, due to the full exercise of existing water rights for which points and amounts of diversion have been identified, as determined valid in Articles 10.6.1 and 10.8 to delineate such area(s).

**10.6.3. Changes in Place of Use, Purpose of Use, or Point of Diversion.** Establish procedures to ensure that changes in place of use, purpose of use or point of diversion of existing water rights do not lead to excessive incremental drawdown effects in existing wells within areas where excessive drawdowns are predicted, due to full exercise of existing rights for which points and amounts of diversion have been identified, as determined in Articles 10.6.1 and 10.8.

**10.6.4. Wells.** Specify requirements for the metering, monitoring, and reporting of Pueblo and non-Pueblo wells, including scheduling of meter installation, calibration, and operation. This Article 10.6.4 does not apply to pre-basin domestic and livestock wells or domestic and livestock wells permitted by the State pursuant to NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-12-1.2 and equivalent uses on Pueblo lands. Requirements for Pueblo wells shall be consistent with Article 11.1 of this Agreement.

**10.6.5. Groundwater Level Measurements.** Specify requirements for periodic groundwater level measurement for Pueblo and non-Pueblo wells and well fields diverting ten (10) AFY or more.

**10.6.6. Ditches.** Specify requirements for the measurement of diversions into Pueblo and non-Pueblo ditches and data sharing. Requirements for Pueblo ditches shall be consistent with Article 11.1 of this Agreement.

**10.6.7. Record.** Establish procedures for maintenance of a record of all metering, monitoring, and reporting data, including any administrative and judicial changes to decreed water rights or permitted water uses, and including procedures for making Office of the State Engineer records and data readily available to the public on the Office of the State Engineer's website.

**10.6.8. Record of Owners.** Maintain a record of owners for all water rights and permittees.

**10.6.9. Water Master Responsibilities.** Establish duties and responsibilities of a Water Master or Water Masters including provision of an annual Water Master Report.

**10.7. Office of the State Engineer Consideration of Pueblo Water Rights.** The Office of the State Engineer shall take into account the water rights of the Pueblos recognized in the Partial Final Judgment and Decree, for which points and amounts of diversion have been identified in the Partial Final Judgment and Decree or subsequently by the respective Pueblo, including without limitation the rights recognized in Articles 6 and 8, in all (1) Office of the State Engineer water rights permitting decisions, (2) other Office of the State Engineer water rights administration actions, and (3) Office of the State Engineer assessment of effects of water use by others in any proceeding, including without limitation a court proceeding under NMSA 1978, § 72-12-28. To the extent that such decision, action or assessment includes analysis of full exercise quantities of existing rights, the Office of the State Engineer shall include the full exercise quantities of such Pueblo rights at such identified points and amounts of diversion.

**10.8. Hydrographic Survey.** The State shall establish a plan and commence a hydrographic survey of non-Pueblo surface water and groundwater water rights and uses in the Rio San Jose Stream System, excluding wells permitted under NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-12-1.2, within five years from the execution of the Local Settlement Agreement. The State will consult with the Pueblos and other Settlement Parties in developing the plan. The hydrographic survey will be completed within 10 years from the execution of the Local Settlement Agreement.

**10.9. Exclusion of Certain Permitted Domestic and Livestock Rights.** If the State determines that adjudication of all or a portion of State Engineer permitted rights under NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-12-1.2 is not necessary for administration of the Rio San Jose Stream System, the Parties agree not to oppose exclusion of those rights from the Adjudication; provided the State Engineer, in consultation with the Settlement Parties, first provides for administration of such excluded rights.

## **ARTICLE 11: PUEBLO WATER RIGHTS ADMINISTRATION.**

### **11.1. Measurement of Pueblo Diversions and Flow on Pueblo Lands.**

**11.1.1. Diversion Measurement In General.** Each Pueblo shall install and maintain flow-measuring devices or gaging stations of appropriate design and using appropriate technology on all surface-water diversions and all groundwater diversions within the Rio San Jose Stream System on Pueblo Lands unless exempted by Article 11.1.1.4.



**11.1.2. Diversion Measurement Design, Technology and Equipment.** The design and technology for each device or station required by Article 11.1 shall be subject to approval by the Bureau of Indian Affairs and Water Master. Each surface-water flow-measuring device and gaging station required by Article 11.1 shall be equipped with telemetry and data storage capability.

**11.1.3. Diversion Data Reading, Transmittal, and Posting.** Each Pueblo shall allow for the surface water telemetered data to be transmitted to the other Pueblo, the Bureau of Indian Affairs and the Water Master. The flow-measuring device at each groundwater diversion shall be read by the respective Pueblo at monthly intervals, or more frequently as may be required by the Bureau of Indian Affairs or Water Master, and the respective Pueblo shall submit the data to the Bureau of Indian Affairs and Water Master. The State shall post the data on the Office of the State Engineer's website monthly. The Bureau of Indian Affairs and Water Master shall maintain a permanent record of the surface-water and groundwater diversion data received pursuant to this Article 11.1.3.

**11.1.4. Exempt Diversions.** Diversions for the following purposes of use are exempt from this Article 11.1.

**11.1.4.1.** Individual household wells for domestic and livestock use diverting 3.00 AFY or less, and

**11.1.4.2.** Livestock wells diverting 3.00 AFY or less.

**11.1.5. Surface Water Flow Measurement.**

**11.1.5.1.** Flow-measuring devices or gaging stations of appropriate design and equipped with telemetry and data storage capability shall be installed and maintained by the Pueblos on the Rio San Jose and on each canal or ditch that crosses the boundary between the Pueblo of Acoma and the Pueblo of Laguna, at or near the boundary. Flow measuring devices capable of measuring instantaneous-rate flow, such as staff gages, and crest-stage gages, shall be installed and maintained by the Pueblos on tributaries to the Rio San Jose selected by each Pueblo. These gages shall be installed on each such tributary at the otherwise-suitable location closest to the confluence with the Rio San Jose.

**11.1.5.2. Data Reading, Transmittal and Posting.** Each Pueblo shall allow for the surface water telemetry data to be transmitted to the other Pueblo, the Bureau of Indian Affairs and the Water Master. The Bureau of Indian Affairs and the Water Master shall post the data on their respective websites.

**11.2. Annual Reports of Pueblo Diversions and Depletions.** Each Pueblo shall compile and submit an Annual Report of its diversions and depletions in the Rio San Jose Stream System pursuant to this Article 11.2.

**11.2.1. Content.** Each Annual Report shall contain the following information.

**11.2.1.1. Irrigated Acreage.** A summary by ditch of the acreage, including lands held by the United States in trust for the Pueblo and lands owned by the Pueblo in fee, irrigated in the previous calendar year from the Rio San Jose, its tributaries or underground water sources. The Water Master and Bureau of Indian Affairs shall be granted access to diversion data and irrigated acreage data, and shall be allowed to inspect flow and storage measurement facilities and gages upon request to the Pueblos of Acoma and Laguna, as may be necessary for the Water Master and Bureau of Indian Affairs to perform their duties under this Settlement Agreement.

**11.2.1.2. Diversions.** A tabulation of diversions of water by point of diversion and purpose and place of use. Reported diversions required to be measured by this Settlement

Agreement or a permit shall reflect actual measured diversions. Diversions not required to be measured by this Settlement Agreement or a permit shall be calculated by a methodology acceptable to the Bureau of Indian Affairs in consultation with the Water Master.

**11.2.1.3. Depletions.** A tabulation of depletions for all consumptive uses of water by point of diversion and purpose and place of use, calculated with a methodology acceptable to the Water Master in consultation with the Bureau of Indian Affairs.

**11.2.1.4. Adjustments for Data Quality.** Data may be adjusted for data quality in the preparation of annual reports. Such adjustments shall use a methodology acceptable to the Bureau of Indian Affairs in consultation with the Water Master.

**11.2.1.5. Stock Ponds.** A list of the stock ponds that have changed surface area or capacity or have been relocated or replaced. The list will include new location coordinates, surface area and capacity, supporting data including maximum pond depth, and channel/slope or dug out pond designation with the appropriate reservoir shape factor.

**11.2.2. Submittal.** Each Pueblo shall submit its annual report for the previous calendar year to the Bureau of Indian Affairs and the Water Master on or before March 31st of each year.

**11.2.3. Posting.** The Bureau of Indian Affairs and Water Master shall post each Pueblo's annual report for the previous calendar year on the Bureau of Indian Affairs and Office of the State Engineer websites, respectively, on or before April 15th of each year.

### **11.3. Pueblos' Water Right Permits.**

**11.3.1. In General.** The Pueblos shall have authority to change the purpose and place of use and point of diversion of a Pueblo water right to and from locations on their respective Pueblo Lands, including but not limited to changes from surface water to groundwater points of diversion, and to make new appropriations of groundwater from points of diversion on their respective Pueblo Lands for uses on Pueblo Lands, under a Pueblo Water Right Permit issued pursuant to this Article 11.3. Diversions limited to drilling and testing wells are not subject to the requirements of this Article 11.3.

**11.3.2. Permit Applications, Permit Decisions, Protests And Appeals Pursuant to Pueblo Water Code.** Upon the Enforcement Date, each Pueblo shall adopt and implement a Pueblo Water Code that is consistent with this Settlement Agreement and contains, at a minimum, the following provisions for applications for Pueblo Water Right Permits:

**11.3.2.1. Availability of Pueblo Water Code.** Each Pueblo shall make a copy of the Pueblo's Water Code publicly available on the Pueblo's website or by a link thereon.

**11.3.2.2. Application Content.** An application for a Pueblo Water Right Permit must contain information comparable to that required in an application under state law.

**11.3.2.3. Timing of Application.** Prior to commencing a diversion requiring a Pueblo Water Right Permit, the respective Pueblo shall submit an application to the Pueblo agency or office specified in the Pueblo Water Code.

**11.3.2.4. Initiation of Hydrologic Analysis.** Upon receipt of an application, the Pueblo will perform a hydrologic analysis with opportunity for input from the Bureau of Indian Affairs to assess groundwater drawdown and surface water depletion effects of the proposed Pueblo Water Right Permit. At the written request of the Pueblo, the Office of the State Engineer will confer with the Pueblo regarding the application.

**11.3.2.5. Requirements of Hydrologic Analysis; Report.** The Pueblo shall prepare a Hydrologic Analysis Report that includes the findings of the Pueblo regarding the groundwater drawdown and surface water depletion effects that the proposed Pueblo Water

Right Permit might have, and whether and how the drawdown and depletion effects can be avoided or mitigated. For Pueblo Water Right Permits requiring public notice under Article 11.3.3, the Hydrologic Analysis Report shall be completed by the date the public notice is posted under Article 11.3.3.

**11.3.2.6. Use of Settlement Model(s).** In evaluating a Pueblo Water Right Permit application under this Article 11.3, the Pueblo shall use the Settlement Model(s) approved and adopted by the State Engineer pursuant to Article 10.3. In applying the Settlement Model(s) to Pueblo Water Right Permit applications, the Pueblo shall use the Office of the State Engineer specific guidelines related to the calculation and assessment of hydrologic impacts as identified in Office of the State Engineer regulations and/or guidelines applicable statewide or to the specific basin.

**11.3.2.7. Model Files Availability.** The Pueblo shall preserve their hydrologic model input and output files and make copies of those model files available promptly upon written request by a Settlement Party. The Pueblo shall make hydrologic model input and output files available for review promptly upon written request by a protestant with standing who timely filed a protest.

**11.3.2.8. Public Notice.** The Pueblo Water Code shall contain notice provisions as provided in Article 11.3.3.

**11.3.2.9. Protests and Hearings.** The Pueblo Water Code shall contain provisions for protesting the issuance of a Pueblo Water Right Permit application and provide for an administrative hearing of the protest as provided in Article 11.4.

**11.3.2.10. Appeal of Pueblo Administrative Decision.** The Pueblo Water Code shall specify that the time for appeal shall not be less than thirty days after receipt by a party to the administrative hearing of the written decision by certified mail and shall contain provisions for the manner in which the appeal shall be taken, as provided in Article 11.5.

**11.3.2.11. Applicable Standards.** The Pueblo Water Code shall contain the applicable standards for review of Pueblo Water Right Permit applications as provided in Article 11.5.

**11.3.2.12. Retention of Records of Permits.** The Pueblo shall retain records of all Pueblo Water Right Permits issued under this Article 11.3 and related hydrologic analyses.

### **11.3.3. Public Notice.**

**11.3.3.1. Limited Exemption.** The Pueblo is not required to provide public notice of an application for a Pueblo Water Right Permit where the diversion amount is equal to or less than 3 AFY for domestic or stock watering purposes. The Pueblo may proceed with issuing such a Permit without notice, subject to Article 11.3.3.5.

**11.3.3.2. In General.** Subject to the limited exemption from notice requirements in Article 11.3.3.1, the Pueblo is required to provide prior public notice pursuant to this Article 11.3.3.2 of an application for a Pueblo Water Right Permit for (1) a diversion amount of greater than 3 AFY for domestic or stock watering purposes, or (2) any diversion for purposes other than domestic and stock watering purposes.

**11.3.3.3. Electronic Posting.** When prior public notice is required, no later than 70 days prior to the deadline for filing protests in Article 11.4.4, the Pueblo shall post electronically on the Pueblo's public website at a webpage viewable through the Office of the State Engineer website link under Article 11.3.3.6 a notice that contains the essential facts of the application, the Hydrologic Analysis Report, the contact information of the Pueblo where the application and supporting documentation are located, and the date and manner by which protests may be filed.

**11.3.3.4. Newspaper Publication.** In addition to electronic posting, the Pueblo shall publish the notice in a newspaper with local circulation once a week for three consecutive weeks with the last date of publication at least 10 days prior to the deadline for protests of the application. If state law changes to eliminate a requirement for publication in a newspaper or to require a different method for providing public notice, the Pueblo will not be required to publish in a newspaper any notice that is published on the Pueblo's public website and shall utilize a notice method comparable to the method or methods required by state law.

**11.3.3.5. Records of Non-Public Notice Actions.** Non-public notice Pueblo Water Right Permits shall be listed and described in the annual report provided to the Water Master pursuant to Article 11.2. A copy of each non-public notice Pueblo Water Right Permit shall be provided to the Water Master along with the annual report.

**11.3.3.6. Office of the State Engineer Link to Pueblo Notices.** The Pueblos shall provide written notice to the District Manager of the Office of the State Engineer District 1 Office in Albuquerque at the same time that the Pueblos provide public notice pursuant to this Article 11.3.3. The State Engineer shall maintain a link on its legal notice webpage to each Pueblo's legal notice webpage to enable viewing of Pueblo legal notices through the Office of the State Engineer webpage.

#### **11.4. Protests of and Hearings on Pueblo Water Right Permits.**

**11.4.1.** Any person with standing under Article 11.4.3 may submit to the Pueblo a written protest of a Pueblo Water Right Permit, provided that the protest contains the protestant's water right point of diversion, purpose and place of use and the number of the subfile, permit, license, or declaration, if any.

**11.4.2.** At its discretion, the Office of State Engineer may appear as a party or a witness in the administrative proceeding. Upon a reasonable written request to the State Engineer by a Settlement Party, the State Engineer will consider whether to designate a representative to appear and testify as a witness at the Pueblo administrative hearing.

**11.4.3. Standing.** The Pueblos shall recognize the standing of (1) any owner of water rights who objects that the Pueblo Water Right Permit would Impair his or her surface water or groundwater right and (2) any Acequia or community ditch which objects that the Pueblo Water Right Permit would Impair water rights of the Acequia's or community ditch's parcientes or members.

**11.4.4. Deadline.** Protests shall be submitted by the date set forth in the public notice given pursuant to Article 11.3.3, which date shall be 70 days after posting on the Pueblo website pursuant to Article 11.3.3.3.

**11.4.5. Hearings.** The Pueblo Water Code shall provide for administrative hearings for protested applications and applications which are denied, including without limitation provisions for written notice of hearing, opportunity for discovery, opportunity for presentation of evidence and cross-examination of witnesses, and a full record of the hearing. Protestants shall be entitled to be represented by legal counsel, at their own expense, in compliance with Pueblo requirements for attorney admission. The Pueblo Water Code will provide that members of the New Mexico State Bar in good standing may appear in the Pueblo administrative proceeding under this Article upon the completion of forms and documentation and payment of fees required by the Pueblo.

**11.4.6. Record of Proceedings.** The record of proceedings shall include, at a minimum, the Hydrologic Analysis Report prepared in accordance with Article 11.3.2.5; all pleadings, motions, and intermediate rulings; evidence admitted at hearing; matters or items

administratively noticed; questions and offers of proof, and objections and rulings thereon; any proposed findings submitted; the transcript or recordings of the administrative hearing; and any decision, opinion, or report by the Pueblo decision-maker or hearing examiner who conducted the hearing.

**11.5. Appeal of Pueblo Water Right Permit Decisions.**

**11.5.1.** Upon issuance of a decision on the application for Pueblo Water Right Permit in the Pueblo administrative process under Article 11.3, any party to the administrative process under Article 11.4 may pursue judicial review of the Pueblo Water Right Permit decision in the State of New Mexico District Court for the 13th Judicial District pursuant to the Court's retention of jurisdiction pursuant to Article 14.7.2.3, and as provided in the Partial Final Judgment and Decree and the limited waiver of sovereign immunity in Article 14.4. Concurrently with seeking legislation that amends NMSA 1978, § 72-6-3 under Article 16.1.5, the Parties will seek legislation adopting a specific provision in Chapter 72 of the New Mexico Statutes setting forth a process for appeals from a Pueblo Water Right permit decision, consistent with this Settlement Agreement, under existing State Court jurisdiction.

**11.5.2.** Appeal of a decision of the District Court to the New Mexico Court of Appeals and Supreme Court may be taken in the same manner as provided under New Mexico law. The Parties will not object to a motion filed by the State Engineer to appear as *amicus curiae* in the State appellate process.

**11.5.3.** Judicial review shall be based on the record developed through the Pueblo's administrative process.

**11.5.4.** The standard of judicial review shall be limited to determining whether the Pueblo decision on the application for Pueblo Water Right Permit is supported by substantial evidence, is not arbitrary, capricious, or contrary to law, is not in accordance with this Settlement Agreement or the Partial Final Judgment and Decree, or shows that the Pueblo acted fraudulently or outside the scope of its authority.

**11.6. Substantive Standards Applicable to Pueblo Water Right Permit Decisions.**

**11.6.1. No Impairment.** A Pueblo Water Right Permit shall not Impair existing surface water or groundwater rights and each Pueblo Water Right Permit shall so state as a condition of the Permit. Impairment will be determined based on state law standards.

**11.6.2. Offsets of Surface Water Depletion Effects from Groundwater Pumping.** The following terms and conditions will apply to each Pueblo's use of surface water rights to offset surface water depletion effects from Pueblo groundwater pumping under a Pueblo Water Right Permit:

**11.6.2.1.** Surface water depletion effects greater than the effects at the move-from place of use or point of diversion, and surface water depletion effects from new appropriations, shall be offset unless otherwise provided in this Settlement Agreement.

**11.6.2.2.** Subject to Articles 11.6.2.6 and 11.6.5, each Pueblo may meet its offset obligation under this Article 11.6.2. for the sum of calculated surface water depletion effects anywhere within the Rio San Jose Stream System, on the mainstem Rio Puerco, and on the mainstem Rio Grande with any of its irrigation water rights under Article 4.1; provided that:

**A.** The Pueblo of Laguna may use no more than a total of 205 AFY in the aggregate of its water rights under Article 4.1 to offset effects on the Rio Grande from the exercise of all of its Pueblo Water Right Permits. In order to exceed 205 AFY of effects on the

Rio Grande in the aggregate of all of its Pueblo Water Right Permits, the Pueblo of Laguna shall obtain a State Engineer permit or other approval from the State Engineer to offset any effects on the Rio Grande calculated to exceed a total of 205 AFY;

**B.** Pueblo of Acoma may use no more than a total of 133 AFY in the aggregate of its water rights under Article 4.1 to offset effects on the Rio Grande from the exercise of all of its Pueblo Water Right Permits. In order to exceed 133 AFY of effects on the Rio Grande in the aggregate of all of its Pueblo Water Right Permits, Pueblo of Acoma shall obtain a State Engineer permit or other approval from the State Engineer to offset any effects on the Rio Grande calculated to exceed a total of 133 AFY.

**11.6.2.3.** The Pueblo Water Right Permit shall identify the amount of the mainstem or particular tributary Article 4.1 water right used for the offset.

**11.6.2.4.** No reduction for historic supply or historic beneficial use shall apply to the Pueblo irrigated acreage right used for offsets under Article 11.6.2.

**11.6.2.5.** The portion of a Pueblo's irrigated acreage right used for offsets shall not be available for irrigation or any other use.

**11.6.2.6.** Depletion effects on a source of supply of an Acequia shall be offset in accordance with Article 11.6.3. No further offsets will be required for those depletion effects if the provisions of Article 11.6.3 are satisfied.

**11.6.3. Avoiding or Mitigating Impairment of Acequia Member and Parciante Water Rights and Offsetting Surface Water Depletion Effects to Acequia Sources.**

**11.6.3.1.** If the Hydrologic Analysis Report prepared pursuant to Article 11.3.2.5 indicates that the proposed Pueblo change in a water right or new appropriation may cause surface water depletion effects to the source of supply of an Acequia, the Pueblo will provide a copy of the Hydrologic Analysis Report to the affected Acequia prior to or at the time of the publication of the public notice under Article 11.3.3.

**11.6.3.2.** If the Commission of an affected Signatory Acequia requests in writing to the Pueblo at the address provided in the public notice under Article 11.3.3 to meet and confer with the Pueblo, the Pueblo and the Acequia Commission will meet and confer in good faith during the public notice period under Article 11.3.3.3 regarding the application, the Hydrologic Analysis Report, the effects on the Acequia water supply calculated by the Model and the Pueblo's proposed mechanisms for offsets. In the event the Pueblo and affected Acequia cannot agree on the mechanisms for offsets, the affected Acequia may protest the application.

**11.6.3.3.** The Pueblo Water Right Permit shall identify the offset mechanism(s) determined in the Pueblo Water Right Permit decision.

**11.6.3.4.** The Parties agree that the mechanism(s) the Pueblo may employ to avoid or mitigate the Impairment to water rights of members or parciantes of an Acequia and to offset the surface water depletion effects to the source of supply of an Acequia, subject to appeal pursuant to Article 11.5 of the Pueblo Water Right Permit decision by the affected Acequia, are:

- A.** Replacement of Water; or
- B.** Improvements to the Acequia's infrastructure to increase efficiencies sufficient to offset the surface water depletion effects or Impairment; or
- C.** Procurement of documentation establishing (i) a waiver of protest to the Application by the Commission of the affected Acequia, (ii) agreement with a Pueblo's proposed mitigation measure by the Commission of the affected Acequia, or (iii) approval by the Commission of an Acequia on the affected tributary for transfer of a surface water irrigation right from that Acequia to offset the surface water depletion effects; or



**D.** Substantial evidence in the Pueblo administrative record supporting a finding or findings of fact pursuant to Article 11.6.4 in the Pueblo Water Right Permit decision that the Hydrologic Benefit to the Signatory Acequia, or its members or parciantes, from a Signatory Acequia Project offsets or avoids the calculated surface water depletion or mitigates the groundwater drawdown effects of the proposed Pueblo Water Right Permit so that Impairment is avoided; or

**E.** With respect to Acequias supplied by springs on the slopes of Mount Taylor (Moquino Water Users Association II, San Mateo Irrigation Association, Seboyeta Community Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, and Community Ditch of San José de la Cienega), offsets for surface water depletion effects on tributary sources of supply to an Acequia shall not be required for Pueblo diversions from the Dakota, Morrison and/or San Andres-Glorieta aquifers; or

**F.** A combination of any of the above mechanisms.

**11.6.4. Findings of Fact Regarding Hydrologic Benefit.** A Pueblo may use, at its discretion and without limitation, an Acequia's application for funding under Article 12.2, a certification upon construction under Article 12, an estimate of the Hydrologic Benefits under Article 12, or other documents related to a Signatory Acequia Project of an affected Acequia as evidence to support a finding of fact under Article 11.6.3.4(D). The mechanism under Article 11.6.3.4(D) shall be available to a Pueblo regardless of whether the Acequia has applied for funding under Article 12. No findings by the Pueblo with regard to feasibility, funding status, completion status, operational status or longevity of a Signatory Acequia Project shall be required. Notwithstanding the foregoing, the affected Acequia may submit evidence regarding feasibility, funding status, Hydrologic Benefit, completion status, operational status or longevity of a Signatory Acequia Project to show the actual Hydrologic Benefit provided to the Signatory Acequia by a Signatory Acequia Project.

**11.6.5. Surface Water Replacement Supply.** If a Pueblo Water Right Permit reduces the surface water supply otherwise available for diversion by the other Pueblo, the Pueblo making the change shall replace the diminishment in surface water supply.

**11.6.6. Fund for Avoiding Domestic Well and Livestock Well Impairment.** The State shall create and administer in accordance with this Agreement a fund to be used to mitigate Impairment to non-Pueblo groundwater rights as a result of new Pueblo water use, as described in Article 12.4.

**11.6.7. Mitigation of Non-Pueblo Domestic Well and Livestock Well Impairment.** The State's agreement to create and administer a fund, pursuant to Article 12.4, to be used to mitigate Impairment to non-Pueblo domestic well and livestock well water rights as a result of new Pueblo water use shall be deemed sufficient mitigation for Impairment to non-Pueblo domestic well and livestock well water rights.

**11.6.8. Mitigation of Impairment of Grants and Milan Water Rights.** A Pueblo may use, at its discretion and without limitation, documents related to a Project for the respective municipality under Article 12 as evidence to support a finding of fact in the Pueblo Water Right Permit decision that the Hydrologic Benefit of an Article 12 project avoids Impairment that would otherwise result from the Pueblo Water Right Permit. The finding of fact must be supported by substantial evidence and is subject to appeal pursuant to Article 11.5.

**11.7. Rules Governing Appropriation of Groundwater.** In the event that the State Engineer enters an order closing or restricting the Rio San Jose Stream System, the Rio Salado Basin or

the Rio Puerco Basin to new appropriations of groundwater or promulgates District Specific Rules adopting provisions governing the appropriation of groundwater in any of those basins, notice shall be provided by the State Engineer to each Pueblo. Each Pueblo agrees to amend its Pueblo Water Code to conform to such closure or restrictions on appropriations within 120 days of receipt of such notice. Pueblo Water Right Permits issued and applications for Pueblo Water Right Permits filed prior to date of adoption by the Pueblo of the Pueblo Water Code amendment shall not be subject to such amendment. Such amendments shall not preclude a Pueblo from changing the source of supply of its surface water rights described in Article 4 to groundwater, pursuant to this Article 11.

**11.8. Consistency With This Settlement Agreement.** No Pueblo Water Right Permit may be inconsistent with this Settlement Agreement.

**11.9. Transfer To Or From Non-Pueblo Lands.**

**11.9.1.** A change in point of diversion or place or purpose of use of Pueblo water rights adjudicated under this Settlement Agreement to a location off the respective Pueblo's Lands shall be made pursuant to an application to the New Mexico Office of the State Engineer in accordance with state law, provided that any increase in depletions of the Rio Grande shall be offset in accordance with state law.

**11.9.2.** A change in point of diversion or place or purpose of use of water rights from a location off Pueblo Lands to a location on either Pueblo's Lands shall be made pursuant to an application to the New Mexico Office of the State Engineer in accordance with state law.

**ARTICLE 12. STATE FUNDING FOR MUNICIPAL AND ACEQUIA PROJECTS.**

**12.1. In General.** The funding agreed to by the Settlement Parties in this Article 12 is provided in whole or partial fulfillment of the non-federal cost-share requirements for municipal and Acequia Settlement Parties' projects and uses to be carried out under the Settlement Agreement. The Settlement Parties agree that full appropriation for such municipal and Acequia projects and deposit in appropriate accounts in accordance with this Article 12 are essential components of this Settlement Agreement and shall be a Condition Precedent. Nothing herein is intended to limit the ability of any Settlement Party or Parties to seek other sources of funding for municipal and Acequia projects; however, any such additional funding is not the subject of the provisions of this Article 12.

**12.2. Signatory Acequias Projects Funding.**

**12.2.1. Amount.** The State of New Mexico shall make available, pursuant to a funding or allocation agreement among the Signatory Acequias of the Association of Community Ditches of the Rio San Jose, a total of \$12,000,000.00 (twelve million dollars) for the Signatory Acequias Projects Fund, indexed from July 1, 2023, to no more than five years after the Enforcement Date. Inflation adjustments shall be based on the Bureau of Reclamation Construction Cost Trends-Composite Index.

**12.2.2. Authorized Uses.** The Signatory Acequias Project Fund shall be used for the purpose of providing non-federal cost-share funding to the Signatory Acequias for:

**12.2.2.1.** acquiring water rights or water supplies;



**12.2.2.2.** planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water diversion, production, treatment or delivery infrastructure for Signatory Acequia Offset Projects, including for provision of offsets for impacts to groundwater or surface water sources from Signatory Acequia Projects, on-farm improvements and wastewater infrastructure;

**12.2.2.3.** watershed protection and enhancement, support of agriculture, water-related community welfare and development, and costs related to the negotiation, authorization, and implementation of this Settlement Agreement;

**12.2.2.4.** hydrologic and legal costs related to evaluation of proposed Pueblo water supply projects for potential impacts to Acequia water supplies and participation in administrative and legal proceedings related to those Pueblo projects;

**12.2.2.5.** hydrologic and legal inventories of water rights, water uses and sources of water supply of Signatory Acequia and their members and parciantes, in order to identify Signatory Acequia Projects, and

**12.2.2.6.** all related administrative, and technical and legal costs and fees associated with the inventories, grant application, permitting, construction, implementation, maintenance, operation and replacement of the Signatory Acequia Projects.

**12.2.3.** Grants for Signatory Acequia Projects to conserve or increase the amount of water available for beneficial use by the members or parciantes of the Signatory Acequia may include the net present value of the projected replacement costs necessary for a surface water project to be in full effect for 100 years and for a groundwater project to be in full effect for 40 years.

**12.2.4.** In the event that the funds are inadequate to cover the costs for a Signatory Acequia Project sufficient to offset impacts to an affected Acequia from a proposed Pueblo project, the State, Pueblos and affected Acequia will jointly seek additional funding.

**12.2.5. Procedures and Requirements.**

**12.2.5.1.** Prior to distribution of any funds for Acequia Projects from the Interstate Stream Commission, except for Article 12.3, the Association shall confer with its members and develop an allocation or a method for allocation of the available funds among the members, including requirements for identification of the proposed use(s) authorized by Article 12.2.2, cost estimates with net present value of replacements costs, projections of expected Hydrologic Benefits for water supply and infrastructure improvements and water conservation projects and other benefits. The Association shall provide a copy of this allocation agreement to the Interstate Stream Commission and the Pueblos prior to the distribution of funds. Funding for planning to develop this allocation agreement will be available upon request to the Interstate Stream Commission.

**12.2.5.2.** Prior to the Enforcement Date, the Interstate Stream Commission and the Association shall enter an agreement which establishes standards for distribution of available funds from the Signatory Acequias Project Fund to the Signatory Acequias and procedures and requirements for submission of applications for funding from Signatory Acequias, including certification of Hydrologic Benefits by the Signatory Acequia or Association for water supply and infrastructure improvements and water conservation projects and other benefits.

**12.2.5.3. Records.** The Interstate Stream Commission shall maintain records of each application to the Signatory Acequia Settlement Fund and related documents and shall provide copies upon receipt or issuance to the Pueblos. The Signatory Acequia or Association will

provide notification to the Interstate Stream Commission and the Pueblos of a confirmation of completion for each Project.

**12.3. Hydrologic Needs Assessment Funding.** As soon as possible after execution of the Local Settlement Agreement and prior to the Enforcement Date, the State shall make up to a total of \$250,000 (two hundred fifty thousand dollars) of the Signatory Acequias Project Fund available to conduct a hydrologic needs assessment for each Signatory Acequia and their respective members to determine the most appropriate projects to implement for each Signatory Acequia.

**12.4. Funding for Avoiding Domestic Well and Livestock Well Impairment.** The State shall provide for and administer funding in accordance with this Agreement to be used to mitigate Impairment to non-Pueblo domestic and livestock groundwater rights as a result of new Pueblo water use in the amount of \$500,000 (five hundred thousand dollars). The funding may be used to provide an alternative water supply or for the cost to drill a replacement well.

**12.4.1.** Any entitlement to payment from funding pursuant to this Agreement shall be subject to appropriations by the New Mexico State Legislature. The unavailability of funding under this Article shall not affect the right of the Pueblos to utilize their water rights as provided in this Agreement

**12.4.2.** The Water Master shall investigate any claim of Impairment under this Article 12.4 from a water right owner of record using the hydrologic model identified in this Settlement Agreement. The Water Master may request additional information from the owner of record.

**12.4.3.** If the Water Master determines that an owner of record of a water right is subject to reimbursement from the mitigation fund, the Water Master will notify the owner of record and require the submission of a proposal for mitigation of the Impairment and estimated cost of the mitigation with supporting documentation.

**12.4.4.** The Water Master will submit a recommendation to the State Engineer for review for approval of the proposal. If approved by the State Engineer, the Water Master will notify the owner of record and require the submission of an accounting of the amount paid by the owner to mitigate the Impairment of their water right.

**12.4.5.** Upon acceptance of the accounting, the State Engineer shall direct the funding agent to reimburse the owner of record for the mitigation costs, which may be limited to the amount of the approved estimate.

**12.4.6.** Payments from the mitigation fund shall be contingent upon the receipt of sufficient appropriations. The State shall not have any liability or responsibility to make payments if the fund is insufficient to cover those costs.

**12.5. Funding for Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San Jose.**

**12.5.1.** The State of New Mexico shall make available a total of \$16,000,000 (sixteen million dollars), indexed from July 1, 2023, to no more than five years after the Enforcement Date, for settlement of claims in this Adjudication to be paid as a lump sum settlement payment to each municipality in the amount of \$8,500,000 (eight million five hundred thousand dollars) to Grants and \$7,500,000 (seven million five hundred thousand dollars) to Milan. The funds are to be used for the non-federal cost-share funding for 90% of the cost of the Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San Jose (“Joint

River Augmentation Project') described in Article 12.5.2. The funding under this Article 12.5 shall be available for the costs of planning, designing, engineering, permitting, and constructing projects and all related administrative, training, technical, and legal costs and fees associated with the construction and implementation of the project. The total budget for the project includes a 10% local cost-share by each municipality.

**12.5.2.** Currently, Milan's sanitary sewer system, constructed in the 1950s and 1960s, carries waste from Milan to the Waste Water Treatment Plan ("WWTP") operated by Grants at its municipal golf course. The WWTP currently is a zero-discharge plant, which uses some of the effluent to irrigate the golf course and allows much of it to evaporate in ponds at the golf course. The settlement funds will be used to make improvements to conveyance and treatment systems in both municipalities to conserve water and augment the flow of the Rio San Jose. Project components would include improvements to Milan's sanitary sewer system to stop leaks from its aging sewer system, redesigning and lining holding ponds at Grants' WWTP to stop seepage, redesigning the golf course to be more water-wise, and other improvements to the WWTP and infrastructure needed for augmentation of the Rio San Jose. The City of Grants and the Village of Milan shall confer with the Pueblos upon a request by the Pueblos about any proposed conveyance system to augment flows to the Rio San Jose.

## **12.6. Village of Milan Projects Funding.**

**12.6.1. In General.** The State of New Mexico shall make available a total of \$3,500,000 (three million five hundred thousand dollars), indexed from July 1, 2023, to no more than five years after the Enforcement Date, for settlement of claims in this Adjudication to be paid to Milan as a lump sum settlement payment. The funds are to be used for the non-federal cost-share funding of 90% of the cost of Milan's water supply and infrastructure improvements and water conservation projects in the Rio San Jose Stream System, including but not limited to the municipal drinking water production and distribution system repairs and improvements ("Drinking Water System Projects") described in Article 12.6.2. The funding under this Article 12.6 shall be available for the costs of (a) planning, designing, engineering, permitting, and constructing projects, and (b) all related administrative, training, technical and legal costs and fees associated with the construction and implementation of the projects. The budget for projects and improvements referenced in this Article 12.6 shall include a 10% local cost-share from Milan.

**12.6.2. Drinking Water System Projects.** Milan's municipal drinking water system is comprised of three wells, three storage tanks, and water mains and lines serving residential and commercial water users within the Village's service area. Settlement funding will be used for a number of projects to repair deteriorating facilities, improve system efficiency, conserve water, and ensure compliance with water quality and other safety standards. Projects include: installation of Supervisory Control and Data Acquisition ("SCADA") into the water distribution system for better monitoring, faster leak detection, and increased system service life and sustainability; replacement of existing water mains and valves; repair, replacement and extension of water lines throughout the municipal service area; repair and deepening or replacement of Milan's municipal wells to maintain production; structural repairs and replacement of disinfection systems at well pump houses; repair and repurposing of other Village wells not currently connected to the municipal system; interior and exterior repair and rehabilitation of water storage tanks; installation of fencing and other security equipment to protect system

facilities; and road and other surface work in connection with water line repairs and improvements.

**12.7. City of Grants Projects Funding.**

**12.7.1. In General.** The State of New Mexico shall make available a total of \$4,000,000 (four million dollars), indexed from July 1, 2023, to no more than five years after the Enforcement Date, for settlement of claims in this Adjudication to be paid to the City of Grants as a lump-sum payment. The funds are to be used for non-federal cost-share funding of 90% of the cost of Grants' water supply and infrastructure improvements and water conservation projects in the Rio San Jose Stream System including but not limited to the municipal drinking water production and distribution system repairs and improvements ("Drinking Water System Project") described in Article 12.7.2. The funding under this Article 12.7 shall be available for the costs of planning, designing, engineering, permitting, and constructing projects and all related administrative, training, technical, and legal costs and fees associated with the construction and implementation of the projects.

**12.7.2. Drinking Water System Project.** Grants' water line on Roosevelt Avenue has high pressure problems that cause frequent line breaks and leaks. A conservative estimate of the amount of water leaked is 2,000,000 (two million) gallons a week, or about 320 AFY. Settlement funding will be used to add a parallel water line approximately one-third of a mile long on Roosevelt Avenue with a pressure reducing valve on each end of the new line.

**12.8. State Engineer Staff Funding.** The State shall contribute funding for two full time employee positions for the Office of the State Engineer, to include a Water Master and staff position to carry out the State's obligations to perform Water Master and administrative duties in accordance with this Settlement Agreement. This obligation shall not come into effect unless and until the State Engineer appoints a Water Master for the Rio San Jose Stream System.

**ARTICLE 13: SETTLEMENT FUNDING FOR PUEBLOS.**

**13.1. Settlement Funding for Pueblos.**

**13.1.1. In General.** Settlement funding for the Pueblos shall consist of the trust funds described in this Article 13. These trust funds shall be 100% federally funded. Trust fund amounts are subject to negotiation with the United States in the federal process for authorization and approval of the Settlement Act. Authorized funding shall include an inflation adjustment from the date of estimate to the date that the settlement becomes final and enforceable. Inflation adjustments shall be based on the Bureau of Reclamation Construction Cost Trends-Composite Index and shall apply to the entirety of each trust fund. Management, investment, expenditure, and withdrawal of funds shall be subject to the American Indian Trust Fund Reform Act and other applicable federal law. Investment of each fund shall commence upon the deposit of each appropriation into the respective account in the United States Treasury.

**13.1.2. Water Rights Settlement Trust Funds for Each Pueblo.** Each Pueblo shall receive a Water Rights Settlement Trust Fund.

**13.1.2.1. Authorized Purposes of Use.** Each Pueblo may use its Water Rights Settlement Trust Fund to pay or reimburse costs incurred by the Pueblo for:

- A. acquiring water rights or water supplies;

B. planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;

C. Pueblo water rights management and administration; and

D. watershed protection and enhancement, support of agriculture, water-related Pueblo community welfare and economic development, and costs related to the negotiation, authorization, and implementation of this Settlement Agreement.

**13.1.2.2. Calculation of Amounts.** The amount of each Pueblo's Water Rights Settlement Trust Fund shall be calculated as the Pueblo's respective share of the estimated \$560,000,000 (five hundred sixty million dollars) cost to plan, permit, design, engineer and construct alternative Northwest Morrison water supply infrastructure capable of delivering a combined total of 7,807.8 AFY of water treated to suitable quality, consisting of \$196,000,000 (one hundred ninety-six million dollars) (2,677.5 AFY or 35%) for the Pueblo of Acoma and \$364,000,000 (three hundred sixty-four million dollars) (5,130.3 AFY or 65%) for the Pueblo of Laguna, plus \$100,000,000 (one hundred million dollars) per Pueblo, plus the inflation adjustment pursuant to Article 13.1.1.

**13.1.3. Operations and Maintenance Settlement Trust Funds for Each Pueblo.** Each Pueblo shall receive a Water Infrastructure Operations and Maintenance Trust Fund for the purpose of use described in Article 13.1.3.1.

**13.1.3.1. Authorized Purpose of Use.** Each Pueblo's Water Infrastructure Operations and Maintenance Fund may be used to pay or reimburse costs for operation and maintenance of water infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses from any water source.

**13.1.3.2. Calculation of Amounts.** The amount of each Pueblo's Water Infrastructure Operations and Maintenance Fund shall be calculated as the portion of the \$40,000,000 (forty million dollars) in estimated operations and maintenance expense for a period of 12 years, including but not limited to well field, transmission and treatment costs, for an alternative Northwest Morrison water supply capable of delivering a combined total of 7,807.8 AFY of water treated to suitable quality, consisting of \$14,000,000 (fourteen million dollars) (2,677.5 AFY or 35%) AFY for the Pueblo of Acoma and \$26,000,000 (twenty-six million dollars) (5,130.3 AFY or 65%) for the Pueblo of Laguna, plus the inflation adjustment pursuant to Article 13.1.1.

**13.1.4. Acomita Reservoir Dam Safety, Inlet and Outlet Works Settlement Fund.** An Acomita Reservoir Dam Safety, Inlet and Outlet Works Settlement Fund shall be established in the United States Treasury for the benefit of both Pueblos for the purpose of use described in Article 13.1.4.1.

**13.1.4.1. Authorized Purposes of Use.** The Acomita Reservoir Dam Safety, Inlet and Outlet Works Settlement Fund may be used for planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, maintaining, or repairing Acomita Reservoir, its dam, inlet works, outlet works, and the North Acomita Ditch from the Acomita Reservoir outlet on the Pueblo of Acoma through its terminus on the Pueblo of Laguna.

**13.1.4.2. Amount.** The joint settlement fund amount shall be \$45,000,000 (forty-five million dollars) plus the inflation adjustment pursuant to Article 13.1.1.

**13.1.5. Feasibility Studies Settlement Funds for Each Pueblo.** Each Pueblo shall receive a Feasibility Studies Settlement Fund for the purpose of use described in Article 13.1.5.1.

**13.1.5.1. Authorized Purpose of Use.** Each Pueblo's Feasibility Studies Settlement Fund may be used to pay or reimburse costs for feasibility studies of Northwest Morrison water supply infrastructure and alternatives to serve Pueblo domestic, commercial, municipal, and industrial water uses.

**13.1.5.2. Amounts.** The amount of each Pueblo's Feasibility Studies Settlement Fund shall be \$1,750,000 (one million seven hundred fifty thousand dollars) for the Pueblo of Acoma and \$3,250,000 (three million two hundred fifty thousand dollars) for the Pueblo of Laguna.

**13.1.6. Limited Availability Upon Appropriation.** The amounts authorized under Articles 13.1.4 and 13.1.5 shall be available upon appropriation or availability of the funds from other authorized sources, provided that such funds may be expended prior to the Enforcement Date in accordance with the requirements of the Settlement Act.

**13.1.6.1. Acomita Reservoir Dam Safety, Inlet and Outlet Works.** Funds shall be distributed by the Secretary on receipt by the Secretary of a written notice signed by both Pueblos' Governors and a Tribal Council resolution that describes the purposes under Article 13.1.4.1 for which the monies will be used.

**13.1.6.2. Feasibility Studies.** Funds shall be distributed by the Secretary on receipt by the Secretary of a written notice signed by the respective Pueblo's Governor and a Tribal Council resolution that describes the purposes under Article 13.1.5.1 for which the monies will be used.

## **ARTICLE 14: GENERAL PROVISIONS.**

**14.1. Financial Obligation of the United States.** Nothing in this Settlement Agreement creates an obligation on the United States to construct any infrastructure, or to pay to construct any infrastructure, nor does the United States agree to pay for any operation and maintenance of such infrastructure. As its financial contribution to this Settlement, the United States agrees to deposit funds into the settlement funds under Article 13. Such deposits are the United States' only financial obligation under this Agreement. The United States does not agree to pay and shall not be liable to pay any monies to any Parties, or to any other entities, for any purpose related to this Agreement, other than to deposit funds into the settlement funds.

**14.2. Water Rights in Partial Final Judgment and Decree Shall be Held in Trust.** All water rights adjudicated to each Pueblo under the Partial Final Judgment and Decree shall be held in trust by the United States on behalf of the respective Pueblo and shall not be subject to forfeiture, abandonment, or permanent alienation.

**14.3. Water Uses.** Regardless of the means used for quantifying the Pueblos' water rights under the Partial Final Judgment and Decree, each Pueblo may devote such rights to any use. Such uses and any changes in points of diversion, place, or purpose of use, shall be subject to this Settlement Agreement, including but not limited to the provisions of Article 11, and applicable law.

**14.4. Limited Waiver by the Pueblos of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Upon and after the Enforcement Date, if any Settlement Party brings an action relating only and directly to the interpretation or enforcement of the Settlement



Agreement or Settlement Act, or appeals from a Pueblo Water Right Permit decision under Article 11.5, and names the Pueblo as a party, then the Pueblo, may be added as a party to any such action, and any claim by the Pueblo to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement or such appeals, and no waiver of sovereign immunity is made for any action against the Pueblo that seeks money damages.

**14.5. Recognition of McCarran Amendment as Limited Waiver by the United States of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Except as provided in Subsections a–c of Sec. 208 of the Dept. of Justice Appropriation Act, 1953 (43 U.S.C. § 666) (“McCarran Amendment”), nothing in this Agreement waives the immunity of the United States.

**14.6. Limited Waiver by the State of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Upon the Enforcement Date the State agrees to waive its sovereign immunity to any action relating only and directly to the interpretation or enforcement of this Settlement Agreement, Partial Final Judgment and Decree or the Settlement Act. However, no waiver of sovereign immunity shall be made for any action against the State that seeks money damages.

**14.7. Partial Final Judgment and Decree.**

**14.7.1. Procedure.**

**14.7.1.1.** The Settlement Parties shall file a joint motion requesting that the Adjudication Court enter an order approving procedures for providing notice of the proposed Partial Final Judgment and Decree and this Settlement Agreement, and an opportunity to object and be heard, to all known and unknown claimants of water rights within the Rio San Jose Stream System whether or not they have been joined as parties to the Adjudication.

**14.7.1.2.** After the Court approves the procedure and the Settlement Agreement has been executed by the Parties and the Secretary, the Parties will file a joint motion for entry of Partial Final Judgment and Decree and approval of the Settlement Agreement and request therein that the Court hear and decide all objections to the Partial Final Judgment and Decree and the Settlement Agreement but defer entry of the Partial Final Judgment and Decree until the Parties notify the Court that the Conditions Precedent specified in this Article 14 have been satisfied.

**14.7.2. Contents.** The Settlement Parties shall prepare a proposed form of Partial Final Judgment and Decree to be submitted to the Court for entry as an exhibit to the motion. The contents of the proposed form of Partial Final Judgment and Decree shall incorporate the following provisions, as well as any other provisions agreed to by the Parties:

**14.7.2.1.** setting forth all elements of each Pueblo’s water rights described in Articles 4, 6 and 8;

**14.7.2.2.** stating that the Court retains jurisdiction to interpret and enforce the Settlement Agreement and Partial Final Judgment and Decree and resolve disputes pertaining thereto;

**14.7.2.3.** stating that the Court retains jurisdiction to review and resolve appeals from Pueblo Water Right Permit decisions made under Article 11;

14.7.2.4. setting forth procedures for serving other parties to, and perfecting an appeal from, Pueblo Water Right Permit decisions made under Article 11.3, substantially similar to the procedures set forth in NMSA 1978, § 39-3-1.1(B) & (C);

14.7.2.5. adopting standard of review as set forth in Article 11.5.4; and

14.7.2.6. stating that, subject to the provisions of the Partial Final Judgment and Decree and the Settlement Agreement, the State Engineer has authority under state law to administer water rights and to supervise the apportionment, diversion and use of the waters of the Rio San Jose Stream System and adjoining basins, including by appointment of Water Master(s), according to the orders and decrees of the Court, the licenses and permits issued by the State Engineer, State Engineer rules and regulations and District Specific Rules that may be adopted by the State Engineer for the basin under authority of Active Water Resource Management.

**14.8. Enforcement Date.** The Settlement Parties shall be bound by all provisions of this Settlement Agreement, and this Settlement Agreement shall become enforceable and the waivers and releases executed pursuant to Article 15 of this Agreement and the limited waivers of sovereign immunity set forth in Article 14 of this Agreement shall become effective, as of the date that the Secretary publishes the statement of findings that all Conditions Precedent set forth in Article 16 have been fulfilled.

**14.9. Effect of Settlement Agreement.** Nothing in the Settlement Agreement, except as expressly provided in the Settlement Agreement:

14.9.1. affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), and the regulations implementing those laws

14.9.2. affects the ability of the United States to take actions in its capacity as trustee for any other Indian Pueblo or Tribe or allottee;

14.9.3. confers jurisdiction on any State Court to: interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law or to conduct judicial review of Federal agency action;

14.9.4. affects the ability of the United States of America acting in its sovereign capacity to take actions authorized by law, including but not limited to any laws relating to health, safety, or the environment, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), and the regulations implementing such Acts;

14.9.5. affects the ability of the United States of America to take actions acting in its capacity as trustee for any other Indian tribe; or

14.9.6. shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water rights or lands in any judicial or administrative forum or proceeding.



**14.10. Evidentiary Effect of Negotiations.** The Settlement Parties have developed this Settlement Agreement through good faith negotiation for the purpose of resolving legal disputes, including pending litigation. No conduct, statements, offers, or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding.

**14.11. Authorship and Neutral Construction.** This Settlement Agreement reflects the joint drafting efforts of all Parties. In the event that any dispute, disagreement, or controversy arises regarding this Settlement Agreement, the Settlement Parties shall be considered joint authors and no provision shall be interpreted against any Settlement Party because of authorship.

**14.12. Authorization to Execute.** Each Settlement Party represents and warrants that it is authorized to execute this Settlement Agreement on behalf of the respective Parties hereto and does so freely and voluntarily.

**14.13. Effect of Execution.** Execution of this Settlement Agreement by all institutional entities signifies that all provisions of this Settlement Agreement have been approved by those entities' respective governing bodies and that those entities bind themselves to the obligations and benefits of this Settlement Agreement.

**14.14. No Inducements.** Each Settlement Party acknowledges and represents that in executing this Settlement Agreement it has not relied on any inducements, promises, or representations made by the other Parties that are not reflected in this Settlement Agreement.

**14.15. Advice of Counsel.** Each Settlement Party warrants and represents that, in executing this Settlement Agreement, it has relied upon legal advice from counsel of its choice; that the terms of this Settlement Agreement have been read, and its consequences have been completely explained to it by counsel; and that it fully understands the terms of this Settlement Agreement.

**14.16. Contingent on Appropriation of Funds.** The expenditure or advance of any money or the performance of any obligation by the United States or the State of New Mexico under this Settlement Agreement is contingent upon appropriation of funds therefore. In the event Congress fails to appropriate funds the United States shall not accrue liability under this Settlement Agreement. In the event the New Mexico Legislature fails to appropriate funds the State of New Mexico shall not accrue liability under this Settlement Agreement.

**14.17. Officials Not to Benefit.** No member of or delegate to Congress shall be admitted to any share or part of this Settlement Agreement or to any benefit that may arise here from. This restriction shall not be construed to extend to this Settlement Agreement if made with a corporation or company for its general benefit.

**14.18. Counterparts.** This Settlement Agreement may be signed in counterparts by one or more of the Parties, and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all the Parties. An electronic copy of this Settlement Agreement and any signatures thereon will be considered for all purposes as originals.

**14.19. Binding on Parties, Successors, and Assigns.** This Settlement Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the absence of any pending adjudication of the Rio Puerco Basin or the Rio Salado Basin, the Parties agree that the recognition of the Pueblos' water rights in those basins under Articles 6 and 8 is binding on the Parties and enforceable through enforcement of the Settlement Agreement, Settlement Act and Partial Final Judgment and Decree.

**14.20. State Support for Out of Basin Terms.**

**14.20.1. State Support.** In the event that the recognition of any out of basin water rights of either Pueblo described in Articles 6 or 8 is challenged in any administrative or judicial proceeding, then the State shall support and not oppose the recognition of the water rights of the Pueblos as described in Articles 6 or 8 in such proceeding(s).

**14.20.2. Modification of Out of Basin Terms.** If any out of basin water rights of either Pueblo described in Articles 6 or 8 are not recognized or upheld in any administrative or judicial proceeding, then the State, the affected Pueblo(s), and the United States in its capacity as trustee for the Pueblo of Acoma and the Pueblo of Laguna shall convene and negotiate in good faith terms and provisions which will provide mutually acceptable alternative solutions related to non-Rio San Jose Stream System source or sources of water to supply the affected Pueblo use under Articles 6 and 8 to the extent such rights are not recognized or held not binding on other water uses. This provision imposes no obligation on the United States to fund or construct any infrastructure related to any alternative non-Rio San Jose Stream System sources.

**ARTICLE 15: WAIVERS AND RELEASES OF CLAIMS.**

**15.1. Waiver of *Inter Se* Challenges to Domestic Wells.** The Non-State Parties further agree to waive their rights to file and shall abstain from filing, during the *inter se* phase or otherwise in the Adjudication, challenges to: (a) any domestic well right existing as of the Enforcement Date and which is permitted under NMSA 1978, §§ 72-12-1, 72-12-1.1 and 72-1-1.2 or their predecessor statutes; and (b) any Pre-Basin Groundwater Right in the Rio San Jose Stream System if claimed or used for domestic uses, livestock watering, or non-commercial irrigation of up to one (1) acre.

**15.2. Waivers of *Inter Se* Challenges Among Non-State Parties to the Settlement Agreement.**

**15.2.1.** The Non-State Parties to the Settlement Agreement agree to waive their rights to file and shall abstain from filing, during the *inter se* phase or otherwise in the Adjudication, any objection to the water rights of the Pueblos as those rights are described in the Settlement Agreement.

**15.2.2.** The United States in its capacity as trustee to the Pueblos and the Pueblos agree to waive their rights to file and shall abstain from filing, during the *inter se* phase or otherwise in the Adjudication, any objection to water rights and surface water irrigation storage rights of any other non-State Party to the Settlement Agreement and the water rights for irrigation and surface water irrigation storage rights of individual parciantes of the Signatory Acequias, provided that such waivers are limited to water rights with pre-Enforcement Date priority dates in a subfile order adopted by the Adjudication Court.

**15.2.3. Agreement to Additional Waivers for the Benefit of the City of Grants and Village of Milan.** The United States in its capacity as trustee to the Pueblos and the Pueblos waive their rights to challenge, in any other court or administrative proceeding, the particular permitted or licensed water rights held by Grants and Milan at the time of execution of the Local Settlement Agreement that are listed in Attachment D. Notwithstanding the forgoing, United States and the Pueblos reserve and retain:

**15.2.3.1.** the right to raise in such proceedings claims of abandonment or forfeiture of those rights based on events arising after the date the Local Settlement Agreement was executed; and

**15.2.3.2.** the right to challenge the rights listed in Attachment D in any administrative or court proceeding concerning:

**A.** a change in purpose of use to a use that is not for the respective municipality's municipal use in the nature of domestic, commercial, industrial, and housing sub-divisions,

**B.** a change in place of use to a place of use not within the respective municipality's water service area as it exists at the time of execution of the Local Settlement Agreement,

**C.** a change in point of diversion to a point of diversion that is not an existing groundwater point of diversion under any of the respective municipality's permits or licenses listed in Attachment D or a replacement well drilled within 100 feet and screened within the same aquifer of such existing point of diversion, or

**D.** the rights of persons or entities other than Grants and Milan in such permits or licenses.

**15.2.4. Agreement to Additional Waivers for the Benefit of Signatory Acequias.** Subject to the proviso in Article 15.2.4.2, the United States in its capacity as trustee to the Pueblos and the Pueblos agree to waive their rights to challenge, in any administrative or court proceeding, the water rights for irrigation or surface water storage for irrigation on a Signatory Acequia held by the respective Signatory Acequia or its members or parciantes at the time of execution of the Local Settlement Agreement that are hereafter recognized in a subfile order in the Adjudication, or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC.

**15.2.4.1.** Notwithstanding Article 15.2.4, the United States and the Pueblos reserve and retain the right:

**A.** after determination of the water rights of a Signatory Acequia, its members or parciantes in a subfile order in the Adjudication, or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC, to raise claims of abandonment or forfeiture of those adjudicated water rights based on events arising after the date of such subfile order; and

**B.** in the absence of a subfile order in the Adjudication or a Water Master determination on an interim basis of the elements of the water right pursuant to 19.25.13.7.B NMAC and 19.25.13.27 NMAC determining the water rights of a Signatory Acequia, its members or parciantes, to challenge the water rights in any administrative or court proceeding concerning:

**(1)** a change in purpose of use to a use that is not for the respective Signatory Acequia's members' and parciantes' irrigation or surface water storage reservoirs for irrigation use, small commercial greenhouse use not exceeding a parciante's or member's water right, or the Acequia's irrigation storage use, on the Acequia or ditch;

(2) a change in place of use to a place of use off the respective Signatory Acequia's Acequia or ditch;

(3) a change in point of diversion that is not for a Signatory Acequia Project under Article 12, or for an irrigation reservoir or supplemental irrigation well for the Signatory Acequia or its members or parciantes, or for a surface water point of diversion of a Signatory Acequia supplied by springs on the slopes of Mount Taylor for use with respect to rights served by the respective Signatory Acequia; or

(4) the rights of persons or entities other than the Signatory Acequia or its members or parciantes in such water rights.

**15.2.4.2. Proviso.** When the Adjudication Court enters a subfile order concerning the Signatory Acequia's or its member or parciante's water right, the waiver under Article 15.2.4 shall be limited to the right as recognized in the subfile order. When the Adjudication Court enters an order or decree concerning the Signatory Acequia's or its member or parciante's water right that supersedes the subfile order, the waiver under Article 15.2.4 shall be limited to the right as recognized in the Adjudication order or decree.

**15.3. Waivers and Releases of Claims by the Pueblos and the United States as Trustee for the Pueblos.** Subject to the reservation of rights and retention of claims set forth in Article 15.5 below, as consideration for recognition of the Pueblo Water Rights and other benefits, described in the Settlement Agreement and the Settlement Act, the Pueblos acting on behalf of Pueblos and their members, and the United States, acting as trustee for the Pueblos and members of each Pueblo, shall execute a waiver and release with prejudice of:

**15.3.1.** all claims for water rights within the Rio San Jose Stream System that the Pueblos or the United States acting as trustee for the Pueblos asserted, or could have asserted in any proceeding, including the Adjudication, on or before the Enforcement Date, except to the extent that such rights are recognized in the Settlement Agreement and the Settlement Act; and

**15.3.2.** all claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water rights (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) in waters in the Rio San Jose Stream System against any Settlement Party, including the members and parciantes of Signatory Acequias, that accrued at any time up to and including the Enforcement Date.

**15.4. Waivers and Releases of Claims by the Pueblos Against the United States.** Subject to the reservation of rights and retention of claims under Article 15.5, the Pueblos acting on behalf of their members, shall execute a waiver and release with prejudice of all claims against the United States including any agency or employee of the United States first arising before the Enforcement Date relating to:

**15.4.1.** water rights within the Rio San Jose Stream System that the United States acting as trustee for the Pueblos asserted or could have asserted, in any proceeding, including the Adjudication, except to the extent that such rights are recognized under the Settlement Act;

**15.4.2.** foregone benefits from nontribal use of water, on and off Pueblo Lands, including water from all sources and for all uses);

**15.4.3.** damage, loss, or injury to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights; claims relating to interference with,

diversion, or taking of water; or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure, within the Rio San Jose Stream System);

**15.4.4.** a failure to provide operation, maintenance, or deferred maintenance for any irrigation system or irrigation project;

**15.4.5.** a failure to establish or provide a municipal, rural, or industrial water delivery system on Pueblo lands;

**15.4.6.** the litigation of claims relating to the Pueblos' water rights in the Rio San Jose Stream System in any proceeding, including the Adjudication; and

**15.4.7.** the negotiation, execution, or adoption of the Settlement Agreement or the Settlement Act.

**15.5. Reservation of Rights and Retention of Claims.** Notwithstanding the waivers and releases in this Article 15, the Pueblos and the United States acting as trustee for the Pueblos shall retain:

**15.5.1.** all claims relating to:

**15.5.1.1.** the enforcement of, or claims accruing after the Enforcement Date relating to water rights recognized under, the Settlement Agreement, the Settlement Act, or the Partial Final Judgment and Decree entered in the Adjudication;

**15.5.1.2.** the quality of water and the environment, including without limitation, the Pueblos' rights and remedies under federal laws of general application for the protection of the environment (and regulations under such laws), including without limitation (1) the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (2) the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; (3) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (4) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (5) the Nuclear Waste Policy Act, 42 U.S.C. § 10101 *et seq.*; (6) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (7) the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*; (8) the Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*; (9) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (10) the Indian Lands Open Dump Cleanup Act of 1994, 25 U.S.C. § 3901 *et seq.*; (11) the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*; (12) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*; and (13) the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 2201 *et seq.*; and

**15.5.1.3.** activities affecting eligible historic properties or historic properties, including without limitation any claims under the National Historic Preservation Act of 1966 as amended (54 U.S.C. § 300101 *et seq.*);

**15.5.2.** all rights to use and protect water rights acquired after the date of enactment of the Settlement Act;

**15.5.3.** all claims for damages, losses, or injuries to land or natural resources that are (a) not due to loss of water or water rights (including but not limited to hunting, fishing, gathering or cultural rights) and (b) not covered by Articles 15.3.2 and 15.4;

**15.5.4.** all claims for water rights, and claims for injury to water rights, in basins other than the Rio San Jose Stream System;

**15.5.5.** all claims, including environmental claims, under any laws including regulations and common law relating to human health, safety, or the environment; and

**15.5.6.** all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to the Settlement Agreement or the Settlement Act.

## **ARTICLE 16: CONDITIONS PRECEDENT.**

**16.1.** The following are Conditions Precedent pursuant to Article 14.8:

**16.1.1.** to the extent that the Settlement Agreement conflicts with legislation enacted by Congress to approve the Settlement Agreement, the Settlement Agreement has been revised to conform with the act of Congress;

**16.1.2.** the Settlement Agreement, so revised, including waivers and releases of claims set forth in Article 15 has been executed by the Parties, including the United States;

**16.1.3.** Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized in legislation enacted by Congress to approve the Settlement Agreement;

**16.1.4.** the State of New Mexico has fully appropriated all funds authorized under Article 12; and

**16.1.5.** the State of New Mexico has enacted legislation that amends NMSA 1978, § 72-6-3 to state that a water use due under a water right secured to a Pueblo under the Settlement Agreement or the Partial Final Judgment and Decree may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require that said amendment state that any state-law based water rights acquired by a Pueblo or by the United States on behalf of a Pueblo may be leased for said term; and

**16.1.6.** the Decree Court has entered a final or interlocutory judgment and decree that (i) confirms the Pueblos' water rights consistent with this Settlement Agreement and (ii) with respect to the Pueblos' water rights, is final and non-appealable.

## **ARTICLE 17: SETTLEMENT TERMS WITH NAVAJO NATION**

The Settlement Parties intend to reach a settlement agreement with the Navajo Nation that will be in the form of an addendum to this Settlement Agreement. Upon written consent by the Settlement Parties and the Navajo Nation, the Navajo Addendum will become part of this Local Settlement Agreement.

## ATTACHMENT A

### Pueblo of Acoma and Pueblo of Laguna Reservoir Storage Rights

*Note: Reservoir evaporation quantities are quantified as the evaporation rate of 3.4 acre-feet per acre times the reservoir surface area, at spillway crest at the time of construction, associated with the reservoir's capacity. The evaporation and capacity quantities stated below for LP-696 are subject to technical correction in an exhibit to the Partial Final Judgment and Decree jointly prepared by the Pueblos, the United States and the State. The priority date for each reservoir that has a "prior to" date in its description below is subject to technical correction to identify the earlier date in an exhibit to the Partial Final Judgment and Decree jointly prepared by the respective Pueblo, the United States and the State. The place of use for each reservoir is identified as the reservoir's location, and the exhibit to the Partial Final Judgment and Decree jointly prepared by the Pueblos, the United States and the State will contain coordinates for each reservoir's location and a location map.*

- A. Reservoir storage rights (Pueblo of Acoma) (shared with Pueblo of Laguna pursuant to 1937 Agreement, and the capacity and evaporation quantities in A(3) and C(3) are the combined totals for both Pueblos)**
- (1) Name of owner of the right: Pueblo of Acoma
  - (2) Name of reservoir: Acomita
  - (3) The amount of water:
    - (a) 850 af storage capacity
    - (b) 238 AFY evaporation
  - (4) Source of water: surface waters of the Rio San Jose and its tributaries
  - (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Acoma)
  - (6) Past or present purpose of use: irrigation; recreation
  - (7) Priority: 1937
- B. Reservoir storage right (Pueblo of Acoma)**
- (1) Name of owner of the right: Pueblo of Acoma
  - (2) Name of reservoir: Largo Canyon
  - (3) The amount of water:
    - (a) 280 af storage capacity
    - (b) 70 AFY evaporation
  - (4) Source of water: Largo Canyon
  - (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Acoma)
  - (6) Past or present purpose of use: irrigation
  - (7) Priority: prior to 1935 (date of construction)

- C. Reservoir storage rights (Pueblo of Laguna) (shared with Pueblo of Acoma pursuant to 1937 Agreement, and the capacity and evaporation quantities in A(3) and C(3) are the combined totals for both Pueblos)**
- (1) Name of owner of the right: Pueblo of Laguna
  - (2) Name of reservoir: Acomita
  - (3) The amount of water:
    - (a) 850 af storage capacity
    - (b) 238 AFY evaporation
  - (4) Source of water: surface waters of the Rio San Jose and its tributaries
  - (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Acoma)
  - (6) Past or present purpose of use: irrigation
  - (7) Priority: 1937
- D. Reservoir storage rights (Pueblo of Laguna) (mainstem)**
- (1) Name of owner of the right: Pueblo of Laguna
  - (2) Name of reservoir: New Laguna
  - (3) The amount of water:
    - (a) 800 af storage capacity
    - (b) 683 AFY depletion (evaporation)
  - (4) Source of water: surface waters of the Rio San Jose and its tributaries
  - (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
  - (6) Past or present purpose of use: irrigation; incidental livestock and domestic
  - (7) Priority: time immemorial/prior to 1910/prior to 1850 (date of construction of historical antecedent reservoirs)
- E. Reservoir storage rights (Pueblo of Laguna) (mainstem)**
- (1) Name of owner of the right: Pueblo of Laguna
  - (2) Name of reservoir: Seama
  - (3) The amount of water:
    - (a) 435 af storage capacity
    - (b) 119 AFY depletion (evaporation)
  - (4) Source of water: surface waters of the Rio San Jose and its tributaries
  - (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
  - (6) Past or present purpose of use: irrigation; incidental livestock and domestic
  - (7) Priority: time immemorial/prior to 1910/prior to 1850 (date of construction of historical antecedent reservoirs)
- F. Reservoir storage rights (Pueblo of Laguna) (mainstem)**
- (1) Name of owner of the right: Pueblo of Laguna
  - (2) Name of reservoir: LP-696
  - (3) The amount of water:
    - (a) 40 af storage capacity (subject to technical correction)



- (b) 46 afy depletion (evaporation) (subject to technical correction)
- (4) Source of water: surface waters of the Rio San Jose and its tributaries
- (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
- (6) Past or present purpose of use: livestock
- (7) Priority: prior to 1949 (date of construction)

**G. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Paguete-Mesita
- (3) The amount of water:
  - (a) 965 af storage capacity
  - (b) 321 AFY depletion (evaporation)
- (4) Source of water: Paguete Creek
- (5) Past or present place of use: Lands within the Pueblo of Laguna
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: prior to 1939 (date of construction)

**H. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Upper Paguete
- (3) The amount of water:
  - (a) 270 af storage capacity
  - (b) 53 AFY depletion (evaporation)
- (4) Source of water: Paguete Creek
- (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: prior to 1988 (date of construction)

**I. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Baca Reservoir
- (3) The amount of water:
  - (a) 13 af storage capacity
  - (b) 4 AFY depletion (evaporation)
- (4) Source of water: Encinal Creek
- (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: prior to 1934 (date of construction)

**J. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Encinal Reservoir No. 1

- (3) The amount of water:
  - (a) 8 af storage capacity
  - (b) 3 AFY depletion (evaporation)
- (4) Source of water: Encinal Creek
- (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: 1938 (date of construction)

**K. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Encinal Reservoir No. 2
- (3) The amount of water:
  - (a) 2 af storage capacity
  - (b) 2 AFY depletion (evaporation)
- (4) Source of water: Encinal Creek
- (5) Past or present place of use: (actual reservoir location on lands within the Pueblo of Laguna)
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: prior to 1934 (date of construction)

**L. Reservoir storage rights (Pueblo of Laguna) (tributary)**

- (1) Name of owner of the right: Pueblo of Laguna
- (2) Name of reservoir: Encinal Lower Reservoir
- (3) The amount of water:
  - (a) 9 af storage capacity
  - (b) 7 AFY depletion (evaporation)
- (4) Source of water: Encinal Creek
- (5) Past or present place of use: (actual reservoir location on lands with the Pueblo of Laguna)
- (6) Past or present purpose of use: irrigation; incidental livestock and domestic
- (7) Priority: prior to 1936 (date of construction)

**ATTACHMENT B**

*KERR-McGee Settlement Agreement*  
**EXHIBIT B - Article 5**

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DISTRICT COURT CLERK  
5/12/2015 3:34:33 PM  
KATHY GALLEGOS

Pablita Cohoe

STATE OF NEW MEXICO  
COUNTY OF CIBOLA  
THIRTEENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, <i>ex rel.</i>	)	
State Engineer,	)	
	)	No. CB-83-190-CV and
Plaintiff,	)	CB-83-220-CV (Consolidated)
vs.	)	
	)	Subproceeding 1 on Past and
KERR-McGEE CORPORATION, et al.,	)	Present Use Water Rights of
	)	Pueblos of Acoma and Laguna
Defendants.	)	
	)	Hon. James J. Wechsler
	)	Presiding Judge

**ORDER**  
**ADOPTING STIPULATION AND DISMISSING CERTAIN CLAIMS OF THE UNITED STATES, THE PUEBLO OF ACOMA AND THE PUEBLO OF LAGUNA REGARDING CERTAIN TRADITIONAL AGRICULTURAL WATER USE PRACTICES**

This matter comes before the Court at a hearing held May 12, 2015 on the *Motion for Court to Adopt Stipulation and Dismiss Certain Claims of the United States, the Pueblo of Acoma and the Pueblo of Laguna regarding Certain Traditional Agricultural Water Use Practices* filed by the Pueblo of Acoma, the Pueblo of Laguna, the United States of America, the State of New Mexico, the Association of Community Ditches of the Rio San Jose, Tri-State Generation and Transmission Association, Inc., and Atlantic Richfield Company (collectively "the Movants") on April 17, 2015. The Stipulation was attached to the Motion. The Motion was served that day on all parties listed on the Thirty-Third Amended List of All Active Parties (April 10, 2015) ["All Active Parties"]. On April 22, 2015, the Court filed a *Notice of Briefing Schedule and Hearing Regarding Motion to Adopt Stipulation*. The Notice was served on all parties listed on All Active Parties on April 24, 2015. The notice stated that "responses to the motion must be filed no later than May 5, 2015...". No responses were filed by that date.

The Court FINDS that the motion is well taken and Movants are entitled to the relief requested.

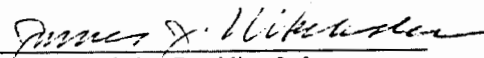
THEREFORE IT IS ORDERED that the Stipulation concerning Traditional Agricultural Water Use Practices of the Pueblos of Acoma and Laguna attached to this Order is adopted and approved.

IT IS FURTHER ORDERED that the Stipulation shall be incorporated into the partial final judgment and decree to be entered in Subproceeding 1 of this matter.

AND IT IS FURTHER ORDERED that the following claims are dismissed with prejudice:

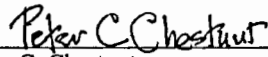
- (a) for the United States: claims set forth in paragraph 12 and 21 of the United States' Subproceeding Answer;
- (b) for the Pueblo of Acoma: claims set forth in paragraph 37 only in so far as it claims water rights based on ak-chin (water harvesting or water spreading irrigation) techniques; and paragraphs 49-51 of the Pueblo of Acoma's Answer, Counterclaim and Cross-Claim; and
- (c) for the Pueblo of Laguna: claims set forth in paragraph 2, only in-so-far as it adopts claims of the United States of America stated in paragraph 21 of the United States' Subproceeding Answer, and paragraph 4 of the Pueblo of Laguna's Subproceeding Supplemental Answer and Cross-Claim.

IT IS SO ORDERED.

  
James J. Wechsler, Presiding Judge

Submitted by:

THE PUEBLO OF ACOMA

  
Peter C. Chestnut  
Ann Berkley Rodgers  
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*Attorneys for the Pueblo of Acoma*

THE UNITED STATES OF AMERICA

*Electronically Approved – 5-11-2015*  
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U.S. Department of Justice  
ENRD-Indian Resources Section  
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Ben Franklin Station  
Washington, D.C. 20044-7611  
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*Attorney for the United States of America*


Approved as to form:

THE STATE OF NEW MEXICO

*Electronically Approved – 5-11-2015*  
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ASSOCIATION OF COMMUNITY DITCHES  
OF THE RIO SAN JOSÉ

*Electronically Approved - 5/11/2015*  
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(505) 954-7373  
*Attorneys for the Association Community  
Ditches of the Rio San Jose*

STATE OF NEW MEXICO  
COUNTY OF CIBOLA  
THIRTEENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel.	)	
State Engineer,	)	
	)	No. CB-83-190-CV and
Plaintiff,	)	CB-83-220-CV (Consolidated)
vs.	)	
	)	Subproceeding 1 on Past and
KERR-McGEE CORPORATION, et al.,	)	Present Use Water Rights of
	)	Pueblos of Acoma and Laguna
Defendants.	)	
_____	)	

**STIPULATION CONCERNING CERTAIN TRADITIONAL AGRICULTURAL  
WATER USE PRACTICES OF THE PUEBLOS OF ACOMA AND LAGUNA**

WHEREAS, the Pueblos of Acoma and Laguna (the "Pueblos") engage in certain traditional and ongoing agricultural water use practices that involve the manipulation of ephemeral water on their lands to produce crops, enhance forage, control erosion, and prevent flooding;

WHEREAS, all active non-Indian parties to this Subproceeding 1 were invited to participate and certain ones went on tours of some locations on Pueblo lands where some of these practices have occurred, and the Pueblos, the United States, and the undersigned non-Indian parties have conferred regarding the nature of these practices; and

WHEREAS, the parties desire to enter into this stipulation to address these traditional agricultural water use practices that are defined and referred to for this stipulation as "Seasonal Works Farming" and "Soil Conservation Practices."

WHEREFORE, the undersigned parties hereby stipulate as follows.

1. For purposes of this stipulation, certain terms are defined as follows.

850204.1

**EXHIBIT 1**

a. "Ephemeral Water" means water which flows over the surface of the ground, is of short duration, flows only in direct response to precipitation or snow melt, and does not reach a perennial watercourse or perennial stream. Ephemeral Water does not include flows originating from springs or groundwater.

b. "Pueblo Lands" means lands for which title is held in restricted fee by a Pueblo or in trust by the United States on a Pueblo's behalf as of September 2002.

c. "Seasonal Works Farming" means the ongoing traditional practice of Acoma or Laguna to grow crops by the use of Ephemeral Water when and where it is naturally available, and without storage of water, and without diversion of water from a perennial stream or perennial watercourse, a spring, groundwater or permanent irrigation ditches. Seasonal Works Farming fields are positioned adjacent to or downslope from where Ephemeral Water flows naturally, and field locations change over time due to soil erosion and deposition patterns, the movement of people or villages, and changing precipitation patterns. Seasonal Works Farming methods include constructing temporary rock and brush structures, similar to check dams, on the land to direct or slow down Ephemeral Water flow; constructing small, low earthen berms within and around fields; and using hand tools to manipulate water flow during run-off events. Minor, incidental supplemental watering of individual plants or trees in a Seasonal Works Farming field by water hand-carried in small containers such as ceramic pots filled with Ephemeral Water is a recognized part of this practice.

d. "Soil Conservation" means the use of earthen dikes to reduce the velocity of Ephemeral Water flows and to redirect that water for the primary purpose of preventing or remedying erosion, without diversion of water from a perennial stream or perennial

watercourse, groundwater, or a spring, and without storage of water. Due to their erosion prevention, water slowing and dispersing effects, such practices may also enhance forage or support Seasonal Works Farming on adjoining lands.

2. Due to the extreme variability and unpredictable character of Ephemeral Water manipulated by these practices and the changing nature of the locations where these practices occur, Seasonal Works Farming and Soil Conservation cannot be quantified nor can specific tracts of land where these practices occur be specified.

3. The Pueblos of Acoma and Laguna and their members have the right to engage in the practices of Seasonal Works Farming and Soil Conservation as herein defined on their respective Pueblo Lands, excluding the Pueblo of Laguna's Mt. Taylor Ranch (73 Fed. Reg. 7582, (February 8, 2008) within the area comprising the geographic scope of the Rio San José Stream Adjudication.

4. The practices of Seasonal Works Farming and Soil Conservation neither establish nor constitute a water right. The Pueblos, their members, and the United States shall not claim, assert, or be entitled to a quantified or transferable water right for Seasonal Works Farming and Soil Conservation, and these practices shall not be a basis for the United States, the Pueblos, or their members to assert any right to groundwater.

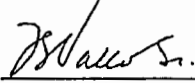
5. The practices of Seasonal Works Farming and Soil Conservation shall not be subject to priority administration of water rights, and neither Pueblo, nor their members, nor the United States may make a priority call to serve such practices. No other party to this adjudication may seek to enjoin or otherwise prohibit either Pueblo or its members from engaging in Seasonal Works Farming and Soil Conservation.



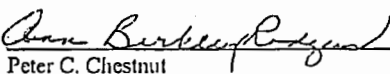
6. The Parties hereto agree that they will file this Stipulation, and jointly move the Court for an Order (1) adopting the Stipulation in this subproceeding which recognizes the Pueblos and their members have the right to engage in Seasonal Works Farming and Soil Conservation practices in accordance with the terms of this Stipulation; and (2) dismissing with prejudice all claims for water rights associated with such practices in this subproceeding, including those set out in the United States' Subproceeding Answer at paragraphs 12 and 21; the Pueblo of Acoma's Answer, Counterclaim, and Cross-Claim in Subproceeding on Past and Present Use Water Rights of Pueblos at paragraphs 37, 49-51; and the Pueblo of Laguna's Subproceeding Supplemental Answer and Cross-Claim at paragraphs 2 and 4.

7. The effective date of this stipulation shall be the last date of signature below.

FOR THE PUEBLO OF ACOMA:

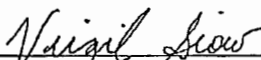
  
\_\_\_\_\_  
Fred S. Vallo, Sr., Governor  
Pueblo of Acoma

April 13, 2015  
Date

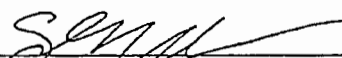
  
\_\_\_\_\_  
Peter C. Chestnut  
Ann Berkley Rodgers  
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121 Tijeras NE, Suite 2001  
Albuquerque, New Mexico 87102  
Phone: (505) 842-5864  
COUNSEL TO THE PUEBLO OF ACOMA

April 16, 2015  
Date

FOR THE PUEBLO OF LAGUNA:

  
\_\_\_\_\_  
Virgil Siow, Governor  
Pueblo of Laguna

4/15/15  
Date

  
\_\_\_\_\_  
Susan G. Jordan  
Jordan Law Firm, LLC  
552 Agua Fria Street  
Santa Fe, NM 87501-2508  
(505) 819-0123

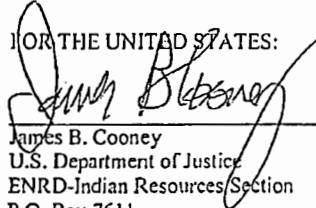
4/17/15  
Date

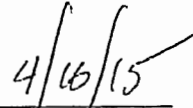
Jessica R. Aberly  
Special Counsel to Jordan Law Firm, LLC  
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Richard W. Hughes  
Rothstein, Donatelli, Hughes, Dahlstrom,  
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(505) 988-8004

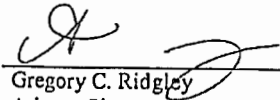
COUNSEL TO THE PUEBLO OF LAGUNA

FOR THE UNITED STATES:

  
\_\_\_\_\_  
James B. Cooney  
U.S. Department of Justice  
ENRD-Indian Resources Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
COUNSEL FOR THE UNITED STATES

  
\_\_\_\_\_  
Date

FOR THE STATE OF NEW MEXICO:

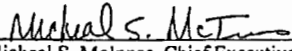
  
\_\_\_\_\_

Gregory C. Ridgley  
Arienne Singer  
Office of the State Engineer  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
COUNSEL FOR THE STATE OF NEW MEXICO


4/17/2015  
Date

Stipulation Concerning Certain Traditional Agricultural Water Use Practices Of  
The Pueblos of Acoma And Laguna  
7

FOR TRI-STATE GENERATION AND  
TRANSMISSION ASSOCIATION, INC.:

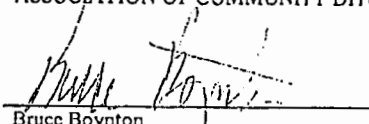
  
Micheal S. McInnes, Chief Executive Officer  
Tri-State Generation and Transmission Association, Inc.

15 APR 2015  
Date

  
Sunny J. Nixon  
Post Office Box 1357  
Santa Fe, NM 87504-1357  
(505) 954-3917 – Telephone  
(505) 954-3942 – Facsimile  
COUNSEL FOR TRI-STATE GENERATION AND  
TRANSMISSION ASSOCIATION, INC.

April 16, 2015  
Date

ASSOCIATION OF COMMUNITY DITCHES:



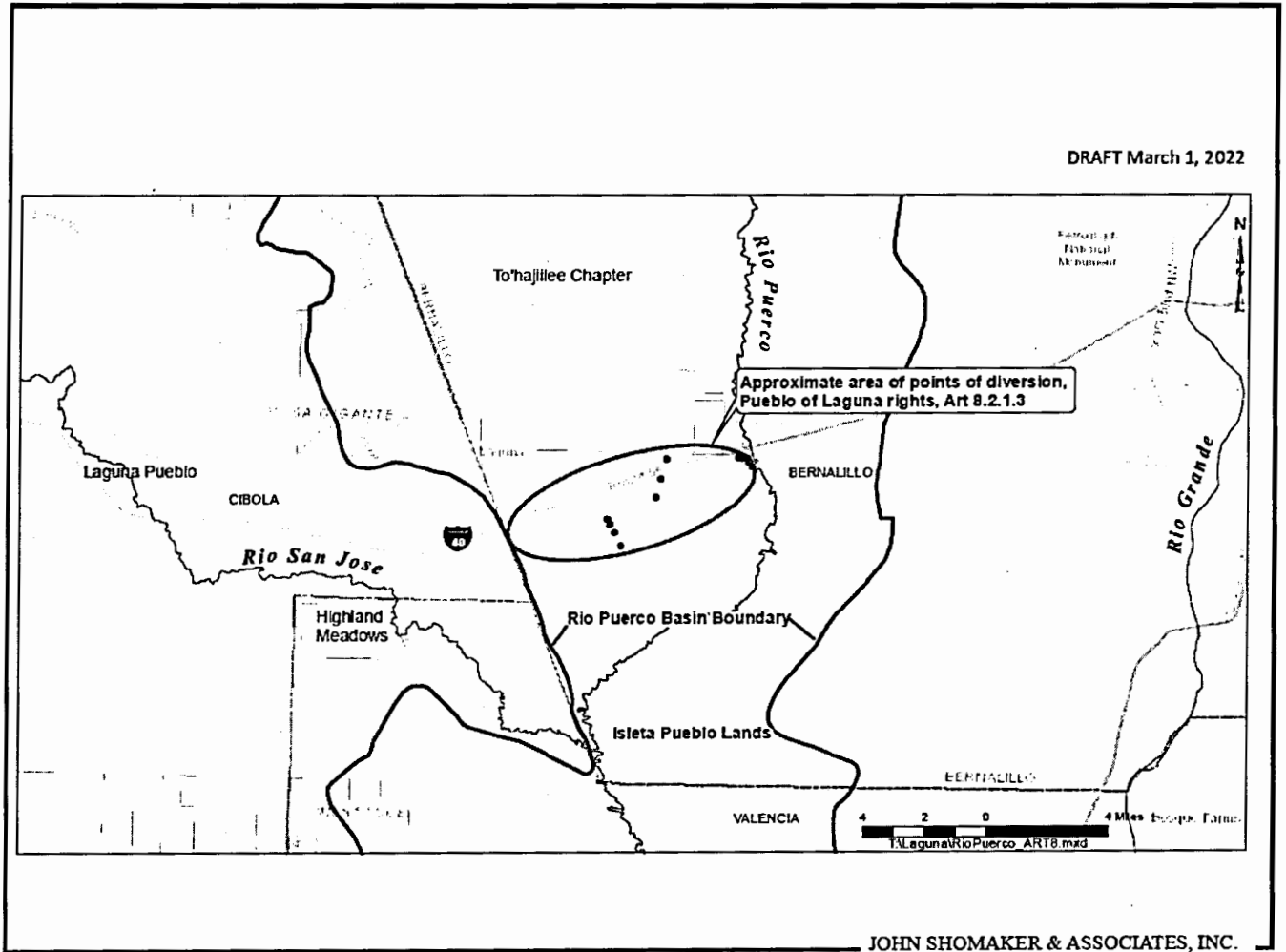
Bruce Boynton  
Post Office Box 1239  
Grants, NM 87020-1239  
(505) 285-4242

04/14/15  
/ / Date

COUNSEL FOR ASSOCIATION OF COMMUNITY DITCHES  
OF THE RIO SAN JOSE

**ATTACHMENT C**

**Map of Approximate Area of Points of Diversion, Pueblo of Laguna Rights,  
Article 8.2.1.3**



**ATTACHMENT D**

**Particular Permitted or Licensed Municipal (Non-Irrigation) Water Rights Held by the City of Grants and the Village of Milan at the Time of Execution of the Local Settlement Agreement Addressed by Article 15.2.3**

**City of Grants:**

<b>Permit Number</b>	<b>Well Numbers</b>	<b>AFY Diversion</b>
B-38	B-38 POD5, B-38-S POD8, B-39 POD7, B-40 POD6, B-40-POD2	2,877.089
B-39		
B-40		
B-73 through B-77 into B-38 <i>et al.</i>		
B-32-A into B-38 <i>et al.</i>		
B-25-A into B-38 <i>et al.</i>		
B-37-A, B-37-B-A, B-37-B-B & B-37-B-C into B-40		

**Village of Milan:**

<b>Permit Number</b>	<b>Well Numbers</b>	<b>AFY Diversion</b>
B-24	B-21, B-22, B-23, B-24	598.2
B-35	B-21, B-22, B-23, B-24, B-35	664.86
B-35-B	B-35	75.0
License No. 1605, B-49, B-50	B-50	56.93
License No. 1605 and B-28 (B-28-B)	B-28-B	45.67 (diversion and consumptive use)



***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
**(13<sup>th</sup> Jud. Dist. Ct.)**

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, 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**

**SIGNATURE PAGE**

**FOR THE PUEBLO OF ACOMA:**

\_\_\_\_\_  
Randall Vicente, Governor  
Pueblo of Acoma

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Peter C. Chestnut  
Ann Berkley Rodgers  
Aaron M. Sims  
Chestnut Law Offices, P.A.

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE PUEBLO OF LAGUNA:**

\_\_\_\_\_  
Martin Kowemy, Jr., Governor  
Pueblo of Laguna

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Marvin A. Trujillo  
Pueblo Secretary

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Susan G. Jordan  
Jordan Law Firm, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard W. Hughes  
Rothstein Donatelli, LLP

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
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COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE STATE OF NEW MEXICO:**

\_\_\_\_\_  
Michelle Lujan Grisham  
Governor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Hamman, P.E.  
State Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hector Balderas  
Attorney General

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Nathaniel Chakeres  
Kelly Brooks Smith  
Nicole Greenspan  
Susan Kery  
John Utton  
Special Assistant Attorneys General  
Office of the State Engineer

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
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COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE ASSOCIATION OF COMMUNITY DITCHES OF THE RIO SAN JOSE:**

\_\_\_\_\_  
Larry Carver  
President

Date

Approved as to form:

\_\_\_\_\_  
Bruce Boynton  
Rebecca Dempsey

\_\_\_\_\_  
Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
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COMMUNITY DITCHES OF THE RIO SAN JOSE AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE CITY OF GRANTS:**

\_\_\_\_\_  
Erik Garcia  
Mayor

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Elizabeth Newlin Taylor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Frances Salas  
City Clerk

\_\_\_\_\_  
Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
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COMMUNITY DITCHES OF THE RIO SAN JOSE AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR THE VILLAGE OF MILAN:**

\_\_\_\_\_  
Felix O. Gonzales  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Vivian L. Brumbelow  
Mayor Pro Tem

\_\_\_\_\_  
Date

\_\_\_\_\_  
James Mercer  
Trustee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christopher J. Archuleta  
Trustee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Roseanne Lopez  
Trustee

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Brett J. Olsen

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Denise Baca  
Village Clerk

\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, 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**

**SIGNATURE PAGE**

**FOR THE BLUEWATER TOLTEC IRRIGATION DISTRICT:**

\_\_\_\_\_

\_\_\_\_\_ Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, 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**

**SIGNATURE PAGE**

**FOR LA ACEQUIA MADRE DEL OJO DEL GALLO:**

\_\_\_\_\_

\_\_\_\_\_ Date



*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
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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**

**SIGNATURE PAGE**

**FOR MOQUINO WATER USERS ASSOCIATION II:**

\_\_\_\_\_

\_\_\_\_\_ Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
**(13<sup>th</sup> Jud. Dist. Ct.)**

**RIO SAN JOSE STREAM SYSTEM WATER RIGHTS LOCAL SETTLEMENT AGREEMENT  
AMONG THE PUEBLO OF ACOMA, THE PUEBLO OF LAGUNA, THE NAVAJO NATION, 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**

**SIGNATURE PAGE**

**FOR MURRAY ACRES IRRIGATION ASSOCIATION:**

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\_\_\_\_\_  
Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
(13<sup>th</sup> Jud. Dist. Ct.)

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**SIGNATURE PAGE**

**FOR SAN MATEO IRRIGATION ASSOCIATION:**

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\_\_\_\_\_

Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
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**SIGNATURE PAGE**

**FOR SEBOYETA COMMUNITY IRRIGATION ASSOCIATION:**

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Date

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**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
**(13<sup>th</sup> Jud. Dist. Ct.)**

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COMMUNITY DITCHES OF THE RIO SAN JOSE AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR CUBERO ACEQUIA ASSOCIATION:**

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Date

*Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,*  
Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)  
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COMMUNITY DITCHES**

**SIGNATURE PAGE**

**FOR CEBOLLETITA ACEQUIA ASSOCIATION:**

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Date

***Kerr-McGee Corp, et al. v. State of New Mexico, ex rel. State Engineer,***  
**Case Nos. D-1333-CV-1983-00190 and D-1333-CV1983-00220 (consolidated)**  
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COMMUNITY DITCHES OF THE RIO SAN JOSE AND NINE INDIVIDUAL ACEQUIAS AND  
COMMUNITY DITCHES**

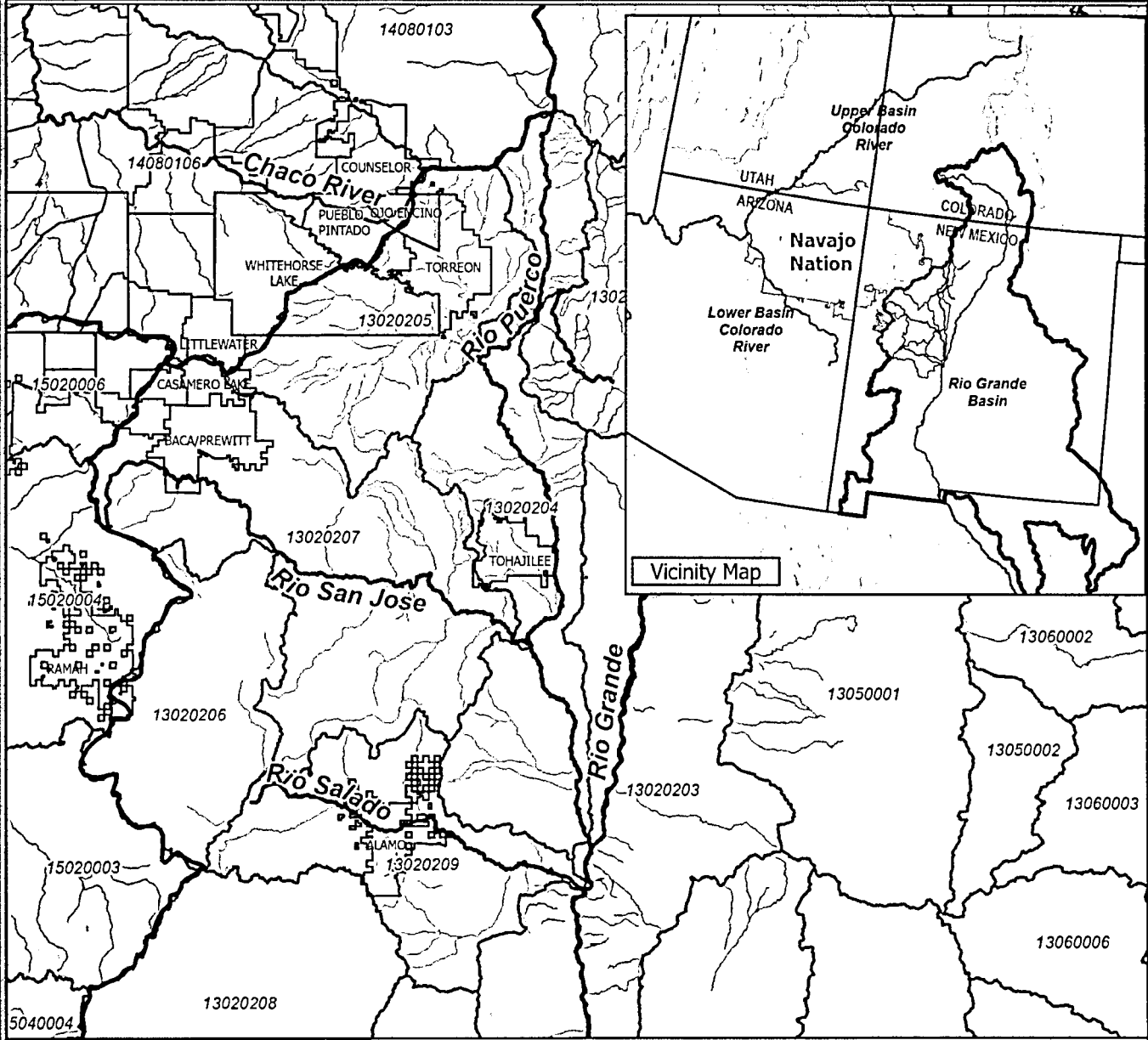
**SIGNATURE PAGE**

**FOR THE COMMUNITY DITCH OF SAN JOSÉ DE LA CIENEGA:**

\_\_\_\_\_

\_\_\_\_\_ Date

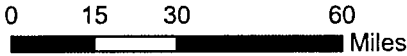
# RIO GRANDE BASIN MAP



Vicinity Map

**Legend**

- Stream
- ▭ Rio San Jose Subbasin
- ▭ Rio Puerco Subbasin
- ▭ Rio Salado Subbasin
- ▭ Rio Grande Basin
- ▭ 8-digit USGS Hydrologic Unit Code
- ▭ Navajo Nation Chapter Boundary







NNWRC-2024-013

**RESOLUTION OF THE  
NAVAJO NATION WATER RIGHTS COMMISSION**

**Endorsing the Rio San José Stream System Water Rights Settlement Agreement and  
Recommending Approval by the Resources and Development and Naabik'iyati' Committees and  
the Navajo Nation Council.**

**WHEREAS**

1. The Navajo Nation Council, pursuant to Resolution CAP-39-02, established the Navajo Nation Water Rights Commission (the "Commission"); and
2. The Commission works to ensure that the water rights of the Navajo Nation are vigorously pursued and effectively coordinated, and to enhance the communication between all entities engaged in water rights efforts on behalf of the Navajo Nation; and
3. The Commission is authorized to establish and supervise negotiating teams for any and all Navajo Nation water rights negotiation efforts to ensure consistency of positions and to maximize success consistent with the Navajo Nation water strategy; and
4. The Commission recommends resolutions to Standing Committees of the Navajo Nation Council to enhance the Navajo Nation position on water rights claims; and
5. In recognition of *Tó'ée'iiná At'e* (Water is Life), the Navajo Nation Council has determined that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
6. Navajo communities located in the Rio San José Stream System and Rio Puerco Basin, in northwestern New Mexico, have severe water infrastructure deficiencies that negatively impact the health, economy, and welfare of the Navajo people; and
7. In the 1980s, proceedings were initiated in the Rio San José Stream System in Cibola County, New Mexico. The Pueblos of Laguna and Acoma, the United States, and other defendants, both public and private were brought into the present adjudication; and
8. In 1987, the Navajo Nation joined the proceedings and filed the original statement of claims within the Rio San José Stream System; and
9. In addition to the other major water users in the Rio San José Stream System, the Navajo Nation has been actively engaged in settlement negotiations; and
10. 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 José and nine individual Acequias and Community Ditches entered into the Rio San José Stream System Water Rights Local Settlement Agreement dated May 13, 2022; and
11. The Navajo Nation, with the other parties, finalized a proposed settlement that would resolve the Navajo Nation's water rights claims within the Rio San José Stream System and Rio Puerco Basin

benefiting fifteen Navajo Nation chapter communities; and


12. The proposed Rio San José Stream System Water Rights Settlement Agreement, if approved and ratified by Congress, would recognize the water rights of the Navajo Nation in the Rio San José Stream System and the Rio Puerco Basin and provide funding for infrastructure development that would benefit members of the Navajo Nation; and
13. The Commission, with legal and technical assistance from the Department of Justice Water Rights Unit and the Department of Water Resources, gave presentations on the Settlement Agreement to the chapter communities that will be impacted, the Eastern Agency Council and the Eastern Land Commission; and
14. Consistent with the concept of *Tó'éí'íiná At'e* (Water is Life), the Navajo Nation Water Rights Commission determines that it is in the best interest of the members and chapters of the Navajo Nation residing within the Rio San José Stream System and Rio Puerco Basin and the Navajo Nation in general, to recommend approval by the Resources and Development and Naabik'iyati'Committees and the Navajo Nation Council of the proposed Rio San José Stream System Water Rights Settlement Agreement.

**NOW THEREFORE BE IT RESOLVED:**

The Navajo Nation Water Rights Commission hereby endorses the Rio San José Stream System Water Rights Settlement Agreement, attached here as Exhibit A, and recommends that the Resources and Development and Naabik'iyati'Committees and the Navajo Nation Council approve the Settlement Agreement.

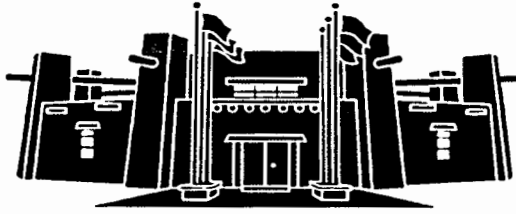
**CERTIFICATION**

I hereby certify that the foregoing resolution, **Endorsing the Rio San José Stream System Water Rights Settlement Agreement and Recommending Approval by the Resources and Development and Naabik'iyati' Committees and the Navajo Nation Council**, was duly considered by the Navajo Nation Water Rights Commission at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and consensus was reached this 9<sup>th</sup> day of May, 2024.

  
\_\_\_\_\_  
Joelynn Ashley, Chairperson  
Navajo Nation Water Rights Commission

Motioned: Commissioner Lani Tsinnajinnie  
Seconded: Commissioner Jason John

Office of Legislative Counsel  
Telephone: (928) 871-7166  
Fax No.: (928) 871-7576



Honorable Crystalayne Curley  
Speaker  
25<sup>th</sup> Navajo Nation Council

## MEMORANDUM

TO: Hon. Crystalayne Curley, Speaker  
25<sup>th</sup> Navajo Nation Council

FROM: Mariana Kahn  
Mariana Kahn, attorney  
Office of Legislative Counsel

DATE: May 10, 2024

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTON RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'IYATI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE RIO SAN JOSE STREAM SYSTEM WATER RIGHTS SETTLEMENT AGREEMENT; AND APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW CERTAIN ACTIONS TO BE BROUGHT IN STATE OF NEW MEXICO COURT

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees' powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0107-24\_

SPONSOR: Crystalyn Curley

**TITLE: An Action Relating to Resource and Development and Naabik'iyáti' Committees and the Navajo Nation Council; Approving the Rio San José Stream System Water Rights Settlement Agreement; and Approving a Limited Waiver of Sovereign Immunity to Allow Certain Actions to be Brought in State of New Mexico Court**

*Date posted:* May 10, 2024 at 9:27PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

**Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586**

**Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.**

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0107-24

SPONSOR: Honorable Crystalyne Curley


**TITLE: An Action Relating to Resource and Development and Naabik'íyáti' Committees and the Navajo Nation Council; Approving the Rio San José Stream System Water Rights Settlement Agreement; and Approving a Limited Waiver of Sovereign Immunity to Allow Certain Actions to be Brought in State of New Mexico Court**

Posted: May 10, 2024 at 9:27 PM

5 DAY Comment Period Ended: May 15, 2024

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Patrick Johnson

  
\_\_\_\_\_  
Legislative Secretary II  
Office of Legislative Services  
  
\_\_\_\_\_  
May 16, 2024; 8:45 AM  
Date/Time

Reply all | Delete | Junk | ...



[EXTERNAL]



Patrick Johnson

Today, 8:00 AM

comments

Inbox

How is this a big move there is a pipeline from San Juan River right through the Navajo Nation to Gallup

[Yahoo Mail: Search, Organize, Conquer](#)

WARNING: External email. Please verify sender before opening attachments or clicking on links.