

AAMODT SETTLEMENT HANDOUTS

Wednesday 2/24 Santa Fe County Pojoaque Satellite Office

Thursday 2/25 Nambe Headstart

Tuesday 3/2 Pojoaque Parrish Hall

Wednesday 3/3 El Rancho Community Center

Tuesday 3/9 Pojoaque Parrish Hall

Wednesday 3/10 Santa Fe County Pojoaque Satellite Office

Tuesday 3/16 Nambe Headstart

Wednesday 3/17 Santa Fe County Pojoaque Satellite Office

Tuesday 3/23 El Rancho Community Center

Wednesday 3/24 Santa Fe County Pojoaque Satellite Office



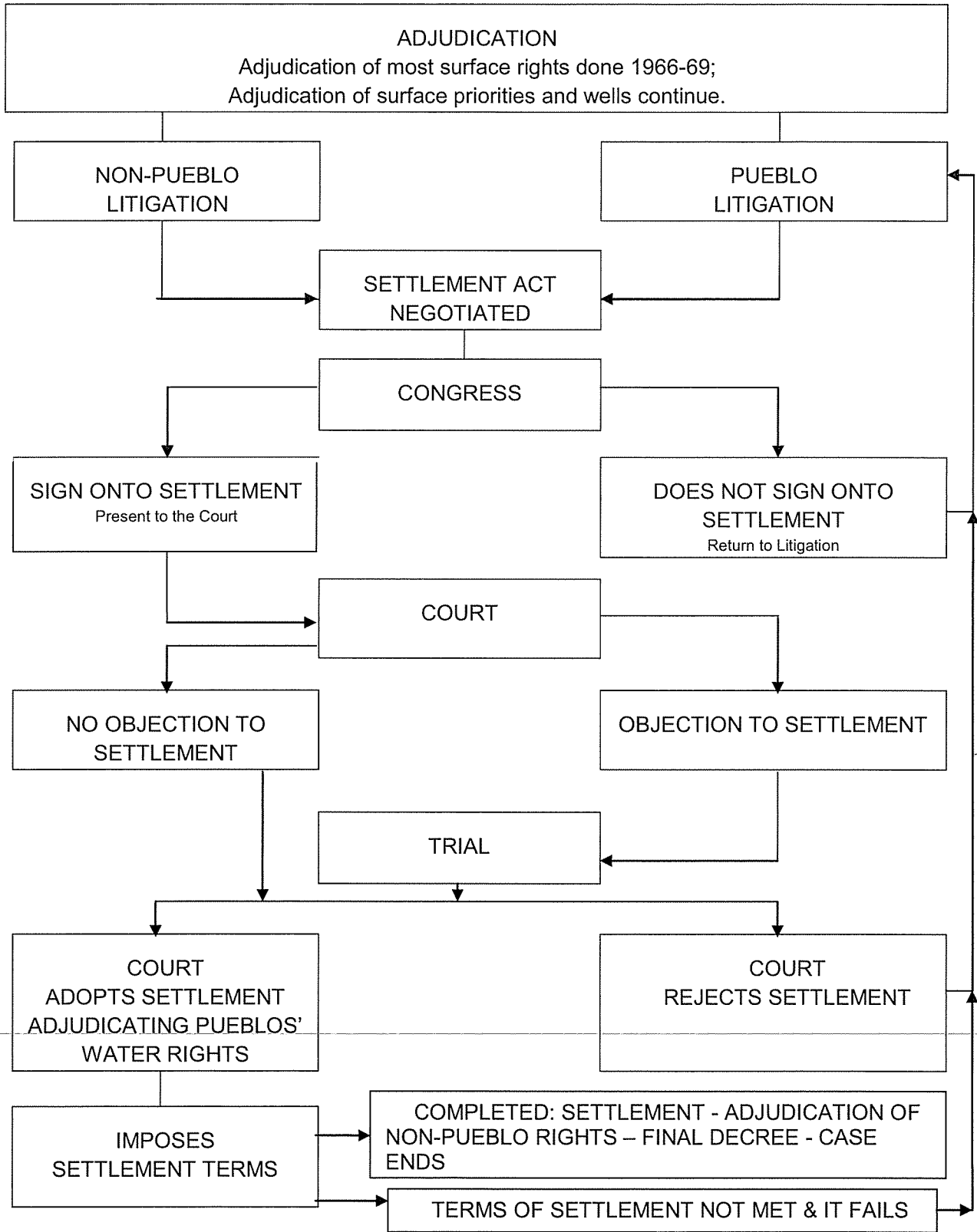
Darcy S. Bushnell
Program Director, Stell Ombudsman Program
Utton Center, UNM - School of Law
MSC11 6070
1 University of New Mexico
Albuquerque, New Mexico 87131-0001
505-277-0551 Toll Free 1-877-775-8333

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Aamodt Water Rights Adjudication Flowchart



Aamodt Settlement Frequently Asked Questions

The Proposed Aamodt Settlement Agreement is a complicated legal document. This handout answers some of the frequently asked questions regarding the Settlement Agreement. The responses to these questions are general and for exact answers please refer to the proposed Aamodt Settlement Agreement which is posted on the Office of the State Engineer Website at www.ose.state.nm.us.

What are the goals of the Settlement?

- Broadly, the goals of the Settlement are to resolve the Pueblos' water right claims while preserving existing non-Pueblo uses. This goal is achieved by bringing more water into the Basin.

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

- The Pueblos
 - Agree to not make a priority call for their Future Use rights (which amounts to two thirds of their first priority rights).

When the rights are administered, first, the Pueblos' first priority Existing Rights are satisfied (1391 a/f/y), then second, all non-Pueblo water rights of owners who join the Settlement are then satisfied according to their priorities, third, the Pueblos' Future Uses are satisfied.
 - Agree to ask the Court to dismiss their 535 *inter se* challenges to non-Pueblo water rights.
 - Agree not to pursue having the Court determine non-Pueblo priority on a tract-by-tract basis.
 - Agree to Settling non-Pueblos having a choice in whether to hook up to the Regional Water System.
 - Agree to allow Settling non-Pueblos who own post-Moratorium wells use of water outside of their homes up to a certain annual amount.
 - Agree to give up their right to appeal the case.
 - Agree to have the State Engineer - Water Master administer their water rights within the Basin.
 - Pojoaque Pueblo agrees to take its water, except for its Existing Rights, from the Regional Water System.
- The non-Pueblo well owners who join the Settlement:
 - Agree to either become part of the Regional Water System or limit their groundwater uses.

- Agree to discontinue domestic uses from their wells if they connect to the Regional Water System.
- Agree to settle the Nambé Reserved rights claims.
- Agree to not further challenge the Pueblos water rights

What alternatives are there to Settlement?

The alternative to the Settlement is many years of continued litigation in District Court, then likely the 10th Circuit Court of Appeals, and then possibly the United States Supreme Court.

What is the current status of the Settlement?

In January of 2010, the House of Representatives approved H.R.3342 and sent it to the Senate. Senate Bill, S. 1105 is the same as H.R. 3342. The Bill is currently waiting for action of the full Senate which could be later this year. For more information see the Ombudsman Program handout: "Aamodt Settlement, a Journey Through Congress".

If it is authorized, what will happen next?

The Court will set a schedule for receiving and hearing objections. For more information see the Ombudsman Program handout: "Aamodt Settlement, After Congress Is Done".

How will the Settlement affect my water rights?

The answer to this question depends on whether you have surface or groundwater water rights, or both. It also depends on whether you join the Settlement. For more information see Ombudsman Program handouts.

What will happen if I do not sign the Settlement?

If you do not join the Settlement, your rights may subject to further litigation of Pueblos' claims and Pueblo priority calls.

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

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

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

Under state law, water placed in a water bank is not subject to forfeiture for non-use if the water is used by the bank. Under the Settlement Agreement this does not change.

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

The Pueblos have agreed to not claim forfeiture or abandonment of on-Pueblo water rights based on past non-use. The Settlement will have no effect on future non-use. All non-Pueblo water rights are subject to a challenge from anyone in the Valley under state law if they are not used for an extended period. A New Mexico Court has ruled that a field which has not been irrigated for 16 years is presumed to have its water right abandoned.

What is the implementation timeline for the Settlement?

First Congress must pass authorizing legislation, followed by the President signing it into law. Then, the Court will order notice be made and have a hearing. If the Court approves it the Settlement it will

become effective and Congress will be asked to appropriate funds. For more information see the Ombudsman Program handout "Aamodt Settlement, After Congress is Done".

How will the Settlement be enforced?

The Settlement designates the State Engineer as Water Master and requires the Settlement parties to develop Water Master Rules. The Water Master will implement the Rules and administer the non-Pueblo water rights. The Water Master will participate in the administration of the Pueblos' water rights. Administrative disputes will be resolved through State Engineer processes. The federal District Court will retain jurisdiction to interpret and enforce the terms, provisions, and conditions of the Agreement, the Interim Administrative Order and the Final Decree.

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

Yes. The water for the senior Existing Uses of the Pueblos (1391 a/f/y) will be distributed first. The Settling non-Pueblos will then have their irrigation water distributed according to their priorities. The Pueblos Future Use rights which are under forbearance will receive their distribution.

Currently, Nambé Dam waters allocated proportionally to acreage under irrigation. Does this formula remain under the Aamodt Settlement?

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

How will the Settlement affect the value of my property?

- The Settlement will remove legal cloud over non-Pueblo water rights.
- Settling non-Pueblo surface water rights will be protected from most Pueblo priority calls.
- Existing non-Pueblo households will have a choice of continuing to use their domestic wells or of connecting to the regional water system.
- Post-moratorium domestic well owners, who are currently limited to indoor use, only will be able to use water outdoors up to specified annual limits.

Why is a regional water system included in the Settlement?

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

- By bringing up to 4,000 a/f/y (Pueblos 2500 a/f/y + County Water System 1500 a/f/y) into the basin, the Regional Water System has made Settlement possible by making the "pie bigger."
- Without this additional water, dividing up the available local supplies would be very difficult and the Pueblos would be unlikely to limit their in-basin claims.

What is the purpose of the system?

- The purpose of the system is to provide a clean, reliable and affordable supply to all residents with the service area.
- Service will be non-discriminatory and open to all residents within the service area.

- A key purpose of the system is to provide the Pueblos with additional water from a source outside the basin.
- Under the Settlement, the Pojoaque Pueblo golf course will be supplied either from the system or from treated effluent and will no longer be supplied from in-basin wells.

How much is it going to cost to build it?

- The total cost to build out the full 4,000 acre-foot system, including the cost of connecting all customers over the life of the project, is expected to be over \$177.3 million (in 2006 dollars).
- Excluding connection costs, the cost to build out the system is expected to be over \$159 million (in 2006 dollars).
- A summary and allocation of costs is provided in the table below.

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

Where will the money come from?

- The Federal share will come from appropriations by Congress, within the U.S. Bureau of Reclamation’s budget. Also, if construction is delayed, beginning in 2020, the Reclamation Settlements Fund will make \$250 million available for the Aamodt and Taos Settlements to assist in building reclamation projects.
- The State’s share will come from State appropriations. Also, the State has already set aside \$10 million in its Indian Water Rights Settlement Fund, available for the Navajo, Aamodt and Taos Settlements.
- The County’s share of construction costs (excluding connection costs) will likely come from County bonding capacity. Under the Settlement, the County will receive \$5.4 million from the United States in payment for water rights previously acquired by the County. Customers not eligible for a free connection will pay for their own connection costs. For customers who are eligible, a connection fund of \$4,000,000 will be available.

How will it be managed and by whom?

- The system will be managed by a regional water authority that will be created under a Joint Powers Agreement among the four Pueblos and Santa Fe County.
- The water authority will own the jointly used infrastructure, will own rights of way and will have congressionally authorized powers to treat, transmit and deliver water.

- The make-up and voting rights of the water authority board are still under discussion but will be structured to protect and assure the water supply of its customers.

When will it be built? How long will it take to build it?

- Construction will likely not start until at least four years after approval of the Settlement by the Court. After approval, the final design will have to be completed as well as studies for EIS, NEPA, and archaeological assessments. Additional funds from Congress will have to be obtained for these purposes.
- Because construction will be dependent on annual funding, the project may be phased and could take six to eight years to complete.
- If insufficient funds are not available prior to 2020, completion of construction may have to be postponed until after funds from the Reclamation Settlements Fund are available starting in 2020.

Who will build it?

- The U.S. Bureau of Reclamation.

Where will it be built?

- Attached is a map showing the location of the system.

Who will own the system?

- The Regional Water Authority will own all of the common system, including easements and rights of way.
- Each Pueblo will own that portion of the system located within that Pueblo's lands that serves only that Pueblo.
- The County will own the portion of the system that serves water customers on non-Pueblo land.

What are the advantages and disadvantages of connecting?

- **Advantages:**
 - Settling parties who opt to connect when the System is available will receive a free hook-up, including the stretch from the road to the house.
 - Customers will receive their water supply from the water system and will no longer need to maintain their domestic wells.
- **Disadvantages:**
 - Customers will have to discontinue domestic use of their domestic wells.

How much will my monthly water bill be if I do connect?

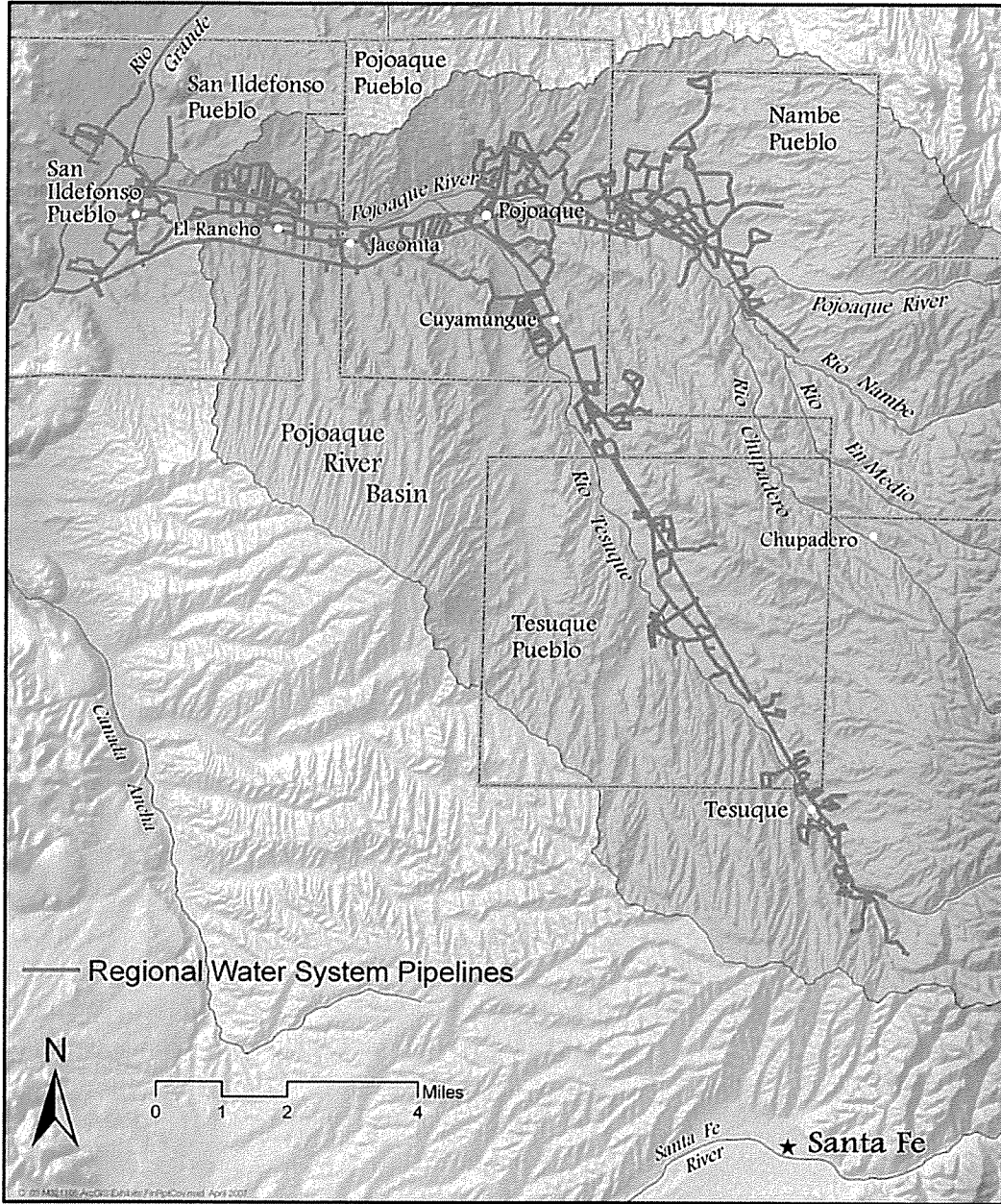
- Although final operating costs are not yet known, the County expects the average monthly residential bill to be in the range of \$55 to \$75 in 2010.
- For example, assuming current Santa Fe County Rates (\$15/month service, + \$5.32/1,000 gallons) and assuming current county rates, 102 gpcd (gallons per capita per day) and 2.3 persons per household, it would be about \$54/month in 2010 dollars.

When will all the contingencies and conditions of the Settlement Agreement be fulfilled so that we know if there is a final Settlement?

- A final decree incorporating the Settlement Agreement shall be approved by the court no later than 2012 upon certification to the court that all conditions of the Settlement Agreement have been satisfied.
- The substantial completion of the regional water system (pipeline) by 2016 will conclude the process. The specified dates are final deadlines but the parties will work for final approval of the Settlement Agreement and entry of a final decree before these deadlines.

However, many these dates may need to be adjusted to reflect dates in the Settlement Act.

Pojoaque Regional Water System Engineering Report

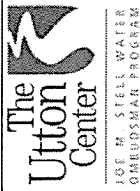


Prepared for
Northern Pueblo Tributary Water Rights Association

Prepared by



September 2008



Aamodt Settlement Surface Water Rights

	Join the Settlement	Do Not Join The Settlement
	Quantity as adjudicated in Subfile Order. Priority as between the Claimant and State (ditch-wide)	<ul style="list-style-type: none"> • Quantity as adjudicated in Subfile Order. • Priority possible tract-by-tract determination PC
Protection	<ul style="list-style-type: none"> • Subject to priority call from Pueblos' First Priority Existing Use rights or 1391 a/f/y. • Priority Protection from Pueblos' First Priority Future Use rights or 2269 a/f/a. • Pueblo <i>inter se</i> challenges will be dismissed. 	<ul style="list-style-type: none"> • None.
However	<ul style="list-style-type: none"> • Priority Protection from Pueblos' First Priority Future Use rights ends if water rights not exercised for five consecutive years following effective date of the Settlement Agreement. • Water right still exists. 	<ul style="list-style-type: none"> • Non-Pueblo rights subject to Pueblos First Priority rights priority call for 3660 a/f/y. • Subject to Pueblo <i>inter se</i> challenges.

* a/f/y = quantity of water measured by amount of water necessary to cover 1 acre (a) 1 foot deep (f) each in 1 year (y).
 3.0 acre feet = 977,553 gallons
 1.0 acre foot = 325, 851 gallons
 0.5 acre foot = 162,925.5 gallons



Aamodt Settlement Domestic Wells Drilled Before 1956

	Join the Settlement (A) Use Allowed Until Required To Connect When CWU Available	Join the Settlement (B) Use Allowed Until Required To Connect At Change Of Ownership	Join the Settlement (C) Use Of Well Allowed Forever	Do Not Join The Settlement
Cost	<p>Historic Beneficial Use but not less than .5 a/f/y*</p> <ul style="list-style-type: none"> Maintaining a well & pumping until hookup Cost of service after hookup No cost for water 	<p>Historic Beneficial Use Minus 10%, but not less than .5 a/f/y</p> <ul style="list-style-type: none"> Maintaining a well & costs of pumping Pass cost of hookup & service to next owner 	<p>Historic Beneficial Use Minus 15%, but not less than .5 a/f/y</p> <ul style="list-style-type: none"> Maintaining a well & costs of pumping 	<p>Historic Beneficial Use</p> <ul style="list-style-type: none"> Maintaining a well & costs of pumping No costs of water system
Pro	<ul style="list-style-type: none"> Access to Water Utility Connection Fund No maintenance of well Pueblos forebear priority call Minimum guaranteed amount Can continue to use well without Settlement limits and priority call until hookup is available 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount 	<ul style="list-style-type: none"> Not agreeing to reduce amount Preserve your right to oppose the settlement terms
Con	<ul style="list-style-type: none"> No access to well water after hookup unless transfer surface right into it. 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well 	<ul style="list-style-type: none"> Subject to priority calls and inter se challenges by Pueblos No access to Water Utility Connection Fund Subject to any water quality issues in well

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- 3.0 acre feet = 977,553 gallons
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According to the Office of the State Engineer, the average New Mexico family of 4 uses between .25 to .33 a/f/y.



Aamodt Settlement Domestic Wells Drilled Between 1956-1982

	Join the Settlement (A) Use Allowed Until Required To Connect When CWU Available	Join the Settlement (B) Use Allowed Until Required To Connect At Change Of Ownership	Join the Settlement (C) Use Of Well Allowed Forever	Do Not Join The Settlement
	3.0 a/f/y or Historic Beneficial Use Whichever is less, but not less than .5 a/f/y	Historic Beneficial Use Minus 10% , But not less than .5 a/f/y	Historic Beneficial Use Minus 15%, But not less than .5 a/f/y	3.0 a/f/y or Historic Beneficial Use Whichever is less
Cost	<ul style="list-style-type: none"> Maintaining a well & pumping until hookup Cost of service after hookup No cost for water 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping Pass cost of hookup & service to next owner 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping No costs of water system 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping No costs of water system
Pro	<ul style="list-style-type: none"> Access to Water Utility Connection Fund No maintenance of well Pueblos forebear priority call Minimum guaranteed amount Can continue to use well w/out Settlement limits and priority call until hookup is available 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount 	<ul style="list-style-type: none"> Not agreeing to reduce amount Preserve your right to oppose the settlement terms
Con	<ul style="list-style-type: none"> No access to well water after hookup unless transfer surface right into it. 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well 	<ul style="list-style-type: none"> Subject to priority calls and inter se challenges by Pueblos No access to Water Utility Connection Fund Subject to any water quality issues in well

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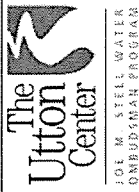


Aamodt Settlement Domestic Wells Drilled After 1982 & Joined 1999 Well Settlement

	Join the Settlement (A) Use Allowed Until Required To Connect When CWU Available	Join the Settlement (B) Use Allowed Until Required To Connect At Change Of Ownership	Join the Settlement (C) Use Of Well Allowed Forever	Do Not Join The Settlement
	.7 a/f/y or Historic Beneficial Use, Whichever is less, But not less than .5 a/f/y	.7 a/f/y or Historic Beneficial Use, Whichever is less, But any use over .5 a/f/y subject to Priority Call	.7 a/f/y or Historic Beneficial Use, Whichever is less, But any use over .5 a/f/y subject to Priority Call	.7 a/f/y or Historic Beneficial Use Whichever is less
Cost	<ul style="list-style-type: none"> Maintaining a well & pumping until hookup Cost of service after hookup No cost for water 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping Pass cost of hookup & service to next owner 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping 	<ul style="list-style-type: none"> Maintaining a well & costs of pumping No costs of water system
Pro	<ul style="list-style-type: none"> Access to Water Utility Connection Fund No maintenance of well Pueblos priority protection Minimum guaranteed amount Can use well w/out Settlement limits until hookup is available Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos priority protection Minimum guaranteed amount Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos priority protection Minimum guaranteed amount Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not agreeing to reduce amount Preserve your right to oppose the settlement terms Indoor/outdoor use allowed
Con	<ul style="list-style-type: none"> No access to well water after hookup unless transfer surface right into it. 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well Subject to Pueblo priority call for uses above .5 a/f/y 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well Subject to Pueblo priority call for uses above .5 a/f/y 	<ul style="list-style-type: none"> Subject to priority calls and inter se challenges by Pueblos No access to Water Utility Connection Fund Subject to any water quality issues in well

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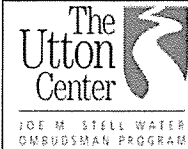


Aamodt Settlement Domestic Wells Drilled After 1982 & Did Not Join 1999 Well Settlement

	Join the Settlement (A) Use Allowed Until Required To Connect When CWU Available	Join the Settlement (B) Use Allowed Until Required To Connect At Change Of Ownership	Join the Settlement (C) Use Of Well Allowed Forever	Do Not Join The Settlement
Cost	<p>.7 a/fly or Historic Beneficial Use, Whichever is less, But not less than .5 a/fly Indoor/Outdoor Use Allowed</p> <ul style="list-style-type: none"> Maintaining a well & pumping until hookup Cost of service after hookup No cost for water 	<p>Indoor use only or Up to 0.3 a/fly For indoor/outdoor use combined</p> <ul style="list-style-type: none"> Maintaining a well & pumping until hookup Pass cost of hookup & service to next owner \$1,000 CWU fee to replace well 	<p>Indoor use only Up to 0.3 a/fly For indoor/outdoor use combined</p> <ul style="list-style-type: none"> Maintaining a well & pumping until hookup 	<p>Indoor use only</p> <ul style="list-style-type: none"> Maintaining a well & pumping until hookup
Pro	<ul style="list-style-type: none"> Access to Water Utility Connection Fund Pueblos forebear priority call Minimum guaranteed amount Allowed to use water outside Can continue to use well without Settlement limits or priority call until hookup is available. Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not affected by water quality from another source Pueblos forebear priority call Minimum guaranteed amount Indoor/outdoor use allowed 	<ul style="list-style-type: none"> Not agreeing to reduce amount. Preserve your right to oppose the settlement terms. No concerns about contaminates from Rio Grande water. Do not have to hookup to water system.
Con	<ul style="list-style-type: none"> Pay for Cost of Service Only No access to well water after hookup unless transfer surface right into it 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount Subject to any water quality issues in well 	<ul style="list-style-type: none"> No access to Water Utility Connection Fund Reduction in amount \$1,000 CWU fee to replace well Subject to any water quality issues in well 	<ul style="list-style-type: none"> Subject to Pueblos priority call Late priorities Strictly limited to indoor only No access to Water Utility Connection Fund Subject to any water quality issues in well

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Aamodt Settlement Considerations for Non-Pueblo Water Right Owners

Benefits to the Pojoaque Basin:

- The Settlement the litigation will end for Pueblo water rights and the Pueblos will seek no appeal.
- The uncertainty about Pueblo water rights will end.
- The Pueblo water uses will be metered and reported.
- Imported water supply.

Benefits to non-Pueblos who join the Settlement:

- Court will dismiss 535 existing *inter se* challenges to non-Pueblo rights by the Pueblos.
- The Pueblos' rights given first priority status are reduced from 3435.68 a/f/y to 1391 a/f/y, the quantity of their Existing Uses.
- The Pueblos do not give up the first priority status to the remaining 2269 a/f/y for their Future Uses, but agree not to make (forbear) priority calls on that amount.
- All existing surface water rights of non-Pueblo Settling Parties will have second priority, that is, better priority than the Pueblo Future Uses amount.

Surface water priorities		
First Priority	Pueblo Historic Use Rights	1391 a/f/y CU
Second Priority	Non-Pueblo surface rights	Approximately 3700 a/f/y
Third Priority (as administered)	Pueblos first priority rights for Future Uses	2269 a/f/y at the time the Settlement is adopted.

- State Engineer will be the Water Master on Non-Pueblo lands and has responsibilities regarding Pueblo water rights. The Pueblos will administer their rights.
- Non-Pueblo Settling Parties can participate in making of Water Master Rules.
- Pueblos will get 2500 a/f/y from outside of the Basin for economic development, acquired water and the supplemental water for Pojoaque once the Regional Water System is available. One purpose of the Settlement is to protect existing Basin water rights, bring more water to the Basin in the form of recharge and allow the Pueblos to provide for their economic futures.
- Once the Water System is available, Pojoaque Pueblo will discontinue irrigating its golf course from groundwater.
- Domestic and commercial rights of non-Pueblo Settling Parties are protected from Pueblo priority calls.
- Pueblos will give Future Use priority call protection to surface water of non-Pueblo Settling Parties. However, this protection is lost after 5 consecutive years of non-use after the Court adopts the Settlement. After 5 years of non-use, priority call protection ends.
The water rights continue to exist.
- Non-Pueblo Settling Parties may continue to use their domestic wells unless they hook up to water system.
- Non-Pueblos can move surface rights into the wells. These rights will carry the same priority as they had as surface water.
- Non-Pueblo settling well users who agree to hook up as soon as the system is available have access to the Water Utility Connection Fund.
- Non-Pueblo Settling Parties whose water rights are impaired by Pueblo activities will have access to compensation from the Impairment Fund.

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

- Some risks that existed before the Settlement remain.
 - Non-Pueblos can still make a priority call on any other non-Pueblo's water right.
 - Anyone can make abandonment or forfeiture challenges to non-Pueblo water rights.
- Some considerations associated with the Settlement
 - Tying into the system results in a monthly fee from the Regional Water Utility.
 - County's cost share will come from local funds such as those derived from property and gross receipt taxes.
 - Like many the water of other public water systems, Regional Water System water may have chemical, pharmaceutical and naturally occurring contaminants within in allowable state and federal limits.
 - Groundwater in domestic wells may have naturally occurring, animal and human waste contaminates.
 - Non-Pueblos who do not elect to tie into the Regional Water System when it is available will not have access to the Water Utility Connection Fund.
 - Non-Pueblos who do not join the Settlement:
 - have no access to the Impairment Fund and
 - may be subject to Pueblo First Priority for 3660 a/f/y in a priority call.
 - Priority Calls
 - Pueblos can make a priority call against all surface water users to the degree that the Pueblos' 1391 a/f/y first priority rights are not met. Settling domestic well owners who stay within their specified limits are exempt from ANY Pueblo priority call.
 - Non-Pueblos surface water users who join the settlement get priority protection Pueblo Future Use priority calls. However, that protection will be lost after 5 consecutive years of non-use.
 - No water rights are lost, but if the Pueblos need to make a priority call, these rights along with those of people who did not join the settlement will be subject to the call and shut down until the water shortage is over.
 - Administrative consequences: Pueblo first priority rights increase from 1391 a/f/y and their third priority rights decrease from 2269 a/f/y to the extent that non-Pueblo surface water rights lose priority protection.
 - No more new water rights, but old uses can be transferred around the Basin.
 - Some people believe and have completing information that:
 - The water system is not feasible, will cost too much, and will not accomplish the goals of the settlement.
 - The United States will not be able to find out-of-basin water rights for the Water System.

RISKS TO NON-PUEBLOS IF NO SETTLEMENT

- Unknown how long the litigation will last, the cost and what the Pueblos will get in the end.
- Unknown how Pueblo Future Use claims will be resolved through the Appellate Courts.
- No limit to Pueblos' right to call priorities or pursue *inter se* claims.
- Unknown how much water the Pueblos' will end up with.
- Unknown what 10th Circuit Court of Appeals & US Supreme Court will do.
- No community-based groundwater/surface water protection.
- No public notice as to how much water the Pueblos are using.
- No imported water supply for Pueblos or non-Pueblos.
- No Water System.

The Aamodt Case Timeline

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

04-24 & 09-09: Court quantifies Pueblos' Historically irrigated acres (HIA) on grant lands.

Tesuque	241.500 ac
Nambe	427.261 ac
Pojoaque	59.794 ac
<u>San Ildefonso</u>	<u>364.472 ac</u>
Total:	1,094.027 ac

- 1987-2000** Parties work on Pueblos' water rights under the Pueblos Lands Act of 1924 a/k/a Pueblos' replacement water rights.
- 1990s** Parties work on Pueblo domestic and livestock quantification.
- 1990** Court defines quantification methods and measures and decides that they are the same for Pueblos and non-Pueblos. Non-Pueblo issues are addressed.
- 1990-93** Parties work on Pueblos' reserved or Winters' water rights.
12/29/93: Court rejects claims for Winters rights with first priority on Pueblo grant lands.
- 1991** **07/11:** Special Master reports on Forest Service water rights for fire fighting and road construction.
- 1993-99** Court delays work on non-Pueblo water rights.
- 1994** **07/22:** Court limits 72-12-1 wells to historic beneficial use or 3 afy, whichever is less.
- 1999** **10/ 04:** Domestic well agreement for post-1982 well quantity limit of .7 afa, outside watering, metering and appointment of water master to manage wells. Settlement resolves non-Pueblo challenges to Court's 1983 Order limiting water use to indoors. About 1/3 of post-1982 well owners sign on. Adjudication of settling claimants' wells begins.
- 2000** Court orders administration of domestic wells which signed onto the 1999 agreement.
- 2000-8** Settlement talks conducted.
- 2007** **12/18:** Court approves procedures for consideration of Settlement Agreement (if Congress approves) and entry of final decree.
06/14: Court orders adjudication of remaining post-1982 wells.
- 2007-present** Parties work on adjudication of remaining post-1982 wells.
- 2008-present** Congress considers Settlement Agreement.
Parties work on adjudicating surface right priorities for non-Pueblo ditches.

Aamodt Settlement Negotiations History

- 1966 **Apr:** State of New Mexico files case.
- 2000 Court-Ordered mediation begins.
- 2004 First Proposed Settlement Agreement made public.
- Feb-Apr:** 12 public meetings held in NPT Basin to explain the settlement and to take public comments.
- May:** Judge Vasquez appoints three opponents of the Settlement as community representatives to attend all future mediations.
- Summer – Fall:** Pojoaque Basin Water Alliance (Alliance) is formed. Membership is largely made up of opponents to the Settlement. Fred Waltz, Esq. is hired to represent the Alliance. Mr. Waltz and clients regularly participate in negotiation sessions.
- 2005 **Jun 15:** Gov. Richardson announces the completion of a “Conceptual Proposal” to modify the 2004 proposed settlement
- Jul 12:** Public Meeting held at Tesuque Elem. School about Conceptual Proposal.
- Jul 26:** Public Meeting held at Pojoaque Elem. School about Conceptual Proposal.
- 2006 **Feb 01:** OSE issues a press release about the posting on the OSE website of the Final Revised Settlement Agreement Answers to Frequently Asked Questions are posted shortly thereafter.
- Feb 20:** Public meeting held in Tesuque about the Final Revised Settlement Agreement.
- Feb 27:** Public meeting held in Tesuque about the Final Revised Settlement Agreement.
- 2006 **May 03:** Aamodt Signing Ceremony held at the Roundhouse.
- 2006- Meetings of the Impairment Fund Committee begin with members of the
present Alliance and other interested citizens.
- 2007 **Feb 26:** Domestic Well Owner Public Open House at Chupadero Community Center to allow the public to examine the OSE’s records about wells, to learn about the hydrographic survey process, to meet the OSE surveyors who would be collecting data on wells and address settlement questions.
- 2008 **Jan 31:** Fred Waltz, Esq. withdraws from representing the Alliance. Members of the Alliance continue to attend mediations and Impairment Fund Committee meetings.

Aamodt Settlement: A Journey Through Congress

Federal legislation regarding the Aamodt Settlement is working through the process.

1. **Completed:** Identify the backstop funding mechanism for the federal share.
Legislation: Omnibus Public Lands Management Act of 2009.
Public Law 111-11 signed by President Obama on March 30, 2009.
Funding Mechanism: Reclamation Water Settlements Fund.
2. **In Progress:** Congressional consideration of the proposed Aamodt Litigation Settlement Act (see below)
3. **In Future:** The settlement parties seek funds from Congress to implement the settlement before 2020. Initial funding is needed for engineering and other work needed to create a final design, and NEPA compliance including an EIS to evaluate the environmental effects expected from the Regional Water System project. By 2017, the Settlement requires funding for the construction of the water system and the Pueblo funds. Reclamation Water Settlements Fund comes into effect, if necessary, in 2020.



Important dates for tracking Aamodt Litigation Settlement Act through Congress

2008 July 31: Sen. Domenici & Sen. Bingaman introduce Sen. Bill, S. 3382, which covered both the Aamodt Settlement (Title I) and the Taos settlement (Title II). House bill introduced as H.R. 6768.

Sept 1: Senate Committee on Indian Affairs held hearings on S. 3382.

Sept 23: Senate Committee on Indian Affairs approved and ordered a favorable report of S. 3382 to the Senate, without amendment.

The House Committee on Natural Resources, Subcommittee on Water & Power held hearings on H.R. 6768.

Sept 25: Session ended before Congress could act on this bill.

2009 Sessions of Congress last two years, and at the end of each session all proposed bills and resolutions that haven't passed are cleared from the books. Members often reintroduce bills that did not come up for debate under a new number in the next session.

May 20: Sen. Bingaman and Sen. Udall introduce Sen. Bill, S. 1105, the 'Aamodt Litigation Settlement Act'. The Bill is referred to the Committee on Indian Affairs.

July 24: Rep. Lujan introduces House Bill, H.R. 3342, and it is referred to the House Committee on Natural Resources.

Sept 09: Water & Power Subcommittee of the House Committee on Natural Resources hearing held on H.R. 3342.

Sept 10: Sen. Committee on Indian Affairs adopts S. 1105 with minor amendments and ordered the bill reported to the Senate with a recommendation to pass

Sept 30: House Committee on Natural Resources approves H.R.3342 with the same amendments made in the Senate Committee and recommended a favorable report to the House of Representatives.

2010 **Jan 21:** House of Representatives approves H.R.3342 and sends it to the Senate. S. 1105 is the same as H.R. 3342.



Aamodt Settlement: After Congress Is Done

When Congress has finished with the Aamodt Litigation Settlement Act, activity regarding the Pueblos' water rights will return to New Mexico and the federal District Court.

- ❖ Surface water priorities determination will continue no matter what Congress does.
- ❖ Domestic well determination will continue no matter what Congress does.

A. If Congress rejects the Aamodt Litigation Settlement Act, the Pueblos' water rights will return to litigation:

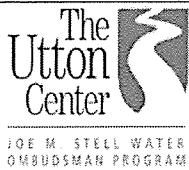
1. The Court will schedule a hearing to figure out what to do next.
2. Court action will continue for years as it is likely that Parties will appeal decisions made by the District Court to the Court of Appeals in Denver and possibly to the United States Supreme Court.

B. If Congress passes the Aamodt Litigation Settlement Act: (See Court's Order Dec 18, 2007)

# Days	Action To Be Taken
	Congress passes Aamodt Litigation Settlement Act
Before 30 Days After Act	State has all claimants joined and has updated service list. (subject to change)
30 Days After Act	State tells the Court of the passage of the Act, required changes to the Settlement Agreement and proposed schedule for making changes.
30 Days After Modified Agmt Filed With Court	Court enters Order to Show Cause (OTSC) which the State will mail to all parties, publish in the newspaper, post in public places and post on the State's website.
90 Days After OTSC	Objections to Settlement Agreement filed and mailed to Settlement Parties. Settlement Parties have an opportunity to accept or oppose the Settlement and Partial Final Decree and to file Notices of Intent to Participate.
180 Days After Act	State, US, Pueblos, County of Santa Fe and City of Santa Fe execute Cost Sharing and System Integration Agreement (can be extended 180 days)

180 Days After Act	United States and Pueblo of Nambe execute Agreement about lease of Nambe reserved water rights.
	Pueblo Economic Development Water Agreement developed.
60 Days After Congress & State Pass Legislation	County of Santa Fe and Pueblos form Pojoaque Basin Water Authority a/k/a Regional Water Authority.
Within 5 Calendar Years After The Act	Secure the water supply from outside of Basin.
Effective Date Of Settlement	Date Court approves Settlement and enters Interim Administrative Order.
1 Year After Effective Date	State Engineer adopts rules governing his responsibilities following consultation with the Settling Parties.
Before Final Decree	<p>Congress must pass legislation each year for appropriations as set forth in the Settlement Agreement at § 9.3.</p> <p>State must pass legislation for appropriations and other matters as set forth in the Settlement Agreement.</p> <p>County Water Authority is set up.</p> <p>Settlement Parties file with the Court a Certificate of Satisfaction of Conditions which includes the Regional Water System.</p>
Contingencies	Necessary for Settlement Agreement to remain viable
Dec. 2012	Entry of Final Decree.
	Funding of § 9.3 Funds described in Settlement Agreement.
June 2016	Substantial completion of Regional Water System.
Deadline June 20, 2021 or Completion of Water System	Right to void Final Decree and the Settlement Agreement and have Court determine remaining water rights.

These dates will be adjusted according to the Legislation passed by Congress.



Aamodt Settlement And The Pueblo Communities

What are the Pueblos giving up if the Settlement goes through?

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

The Pueblos' forbearance of the 2269 a/f/y first priority Future Use rights effectively gives all the acequias Second Priority status in times of shortage.

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

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

What did the Pueblos gain?

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



Aamodt Settlement: Pueblos' Water Rights

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

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

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

1. **STATUS QUO:** Today, after 44 years of litigation, and without the Settlement, the Pueblos' federal water rights look like this:

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

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

2. UNDER THE SETTLEMENT AGREEMENT

Rights to Natural Flows	Rights to Imported Water
Existing Uses 1391 a/f/y CU First Priority	Acquired Water 1500 a/f/y CU No Priority
Future Uses 2269 a/f/y CU First Priority deferred to third place Thus Pueblos share shortages with Non-Pueblos None for Pojoaque	Supplemental Water 475 a/f/y CU No Priority For Pojoaque only From well until hookup available
	Economic Development Water 525 a/f/y CU No Priority
Total in basin water right 3660 a/f/y CU	Total imported (out of basin) water right 2500 a/f/y CU