



Pojoaque Basin Regional Water Authority Joint Powers Agreement

Fact Sheet – March 11, 2015

What is the Pojoaque Basin Regional Water Authority? The Congressional Act that approved the Aamodt litigation settlement agreement calls for the formation of the Pojoaque Basin Regional Water Authority (Authority) to oversee the Regional Water System (RWS) that will deliver water to the Pojoaque Basin.

What is a Joint Powers Agreement? It is an agreement authorized by State law, pursuant to which two or more public agencies agree to jointly exercise a common power. Joint powers agreements must be approved by the New Mexico Secretary of Finance and Administration, a member of the New Mexico Governor's Cabinet. The Joint Powers Agreements Act authorizes the parties to create a commission or board separate from the parties to exercise the common powers in the agreement. Santa Fe County (County) has entered into such agreements in the past, such as the ones with the City of Santa Fe that created the Buckman Direct Diversion Board and Solid Waste Management Agency.

What would the Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA) do? Generally speaking, it would create the Authority, define its membership, define its powers, and prescribe the manner in which those powers are exercised. The Authority would consist of directors appointed by the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque and the County.

What is the process for developing the JPA? Santa Fe County Resolution No. 2012-53 provides, in part, as follows: "Once the County Attorney and Pueblo representatives have negotiated a draft of the JPA, the County shall consult with representatives of potential customers to receive comments regarding any additional provisions that may be needed. Once a final proposed JPA is prepared, it shall be placed on a meeting agenda of the Board of County Commissioners for consideration and action."

County staff has been in negotiations with Pueblo representatives for some time and received comments from representatives of some potential customers concerning an earlier draft of the JPA. In addition, on March 6, County staff provided Pueblo representatives with a new draft JPA, a copy of which is available on this webpage. Currently, County staff is actively soliciting additional comments on the draft JPA at this time.

Once County staff and Pueblo representatives have come to an agreement, the JPA must be approved by the Board of County Commissioners, the Pueblos, and the Secretary of Finance and Administration.

Is the JPA the only agreement that affects the RWS? No. There is the Settlement Agreement (and federal act approving it), the Cost-Sharing and System Integration Agreement, and the Operating Agreement, which has not yet been negotiated.

What are some of the more significant aspects of the current draft of the JPA?

1. **Board Representation:** The current draft JPA contemplates a five member Board with special majority voting provisions, where each party appoints one director (and one alternate) to the Board. County staff feels that such a Board is workable in size and equitable in representation, given the parties to the JPA, their respective interests in the system, and the special majority voting provisions. In particular, the current draft requires the concurrence of the County director and Pueblo de San Ildefonso director to a) approve the annual budget, b) hire or terminate the RWS general manager, c) approve delegation of any power of the Authority, d) borrow money in excess of \$125,000 or convey any of the Authority's assets and, e) enter into or terminate a contract greater than \$125,000 (Article 6.G). In addition, the offices of Chair and Vice-Chair will rotate among the parties (Article 6.C).

2. **Reliability of Service:** Congress, the Pueblos, the County, and potential customers of the RWS have a common interest in reliable service. The draft JPA and other agreements attempt to achieve this common interest in the following, among other, ways:
 - a. Easements and rights of way for the RWS – whether acquired from the United States, a Pueblo, the County, or private landowners – are required to last “for so long as required for construction, use, operation, maintenance, repair and replacement of the [RWS].” (Cost-Sharing Agreement, Section 2.3.)
 - b. The United States, Pueblos, and County are required to grant easements and rights of way for the RWS at no cost. (Cost-Sharing Agreement, Section 2.3.)
 - c. County and Pueblo de San Ildefonso director approval is necessary to convey any of the Authority’s assets. (JPA, Article 6.G.)
 - d. Ownership of any portion of the RWS can only be transferred pursuant to a subsequent act of Congress. (Cost-Sharing Agreement, Section 2.4.) Among other things, this means that the parties could not convey the RWS (or their individual systems) to a private utility company, for instance.
 - e. The JPA does not allow one party to unilaterally withdraw. Instead, agreement by all parties and an act of Congress is required for the JPA to terminate. (JPA, Article 24.)
3. **Individual Utilities Establish Customer Water Rates:** Under the current draft JPA, the Authority does not establish water rates charged to customers of the County Water Utility or a Pueblo Water Facility. Instead, the current draft requires that the billing of County and Pueblo customers must conform to the policies of the County and applicable Pueblo Water Facility (Article 5.E). In other words, the current draft JPA embodies the concept that the Authority is a wholesale supplier of water to the County Water Utility and Pueblo Water Facilities. Each utility decides how to pay for that supply of water. When setting rates it charges its customers, the County follows industry standards, consistent with those established by the American Water Works Association, and includes an analysis of the cost of service.
4. **Transparency and Accountability:** The current draft JPA makes explicit what was always implicit: namely, that the Authority is subject to all of the laws that are applicable to the County. (JPA, Article 27.) In addition to that general statement, the JPA specifically notes applicability of the New Mexico Open Meetings Act, requiring all meetings to be held in the Pojoaque Basin or elsewhere in Santa Fe County (JPA, Article 6.F), the New Mexico Inspection of Public Records Act (JPA, Article 13), the New Mexico Audit Act (JPA, Article 9.B), and the New Mexico Procurement Code (JPA, Article 8.A).
5. **County to Serve as Initial Fiscal Agent and System Operator.** The current draft JPA includes language designating the County as the Fiscal Agent and System Operator (JPA, Articles 10.B and 12.A) and contemplates that the County will contract with the Authority for these services. In essence, this means that the County will initially be responsible for the Authority’s fiscal and administrative functions as well as the operation, maintenance, and repair of the RWS.
6. **Capital Expenditures:** Capital expenditures are subject to the special majority voting provisions, requiring County and Pueblo of San Ildefonso director approval of budgets and contracts in excess of \$125,000. (JPA, Article 6.C). In addition, the Authority will be required to follow the New Mexico Procurement Code (JPA, Article 8.A).
7. **Dispute Resolution:** Article 19 includes binding and enforceable dispute resolution mechanisms.

How can potential customers provide additional comments on the latest draft JPA? If you would like to provide comments, please email them to sely@santafecountynm.gov or mail them to Sandra Ely at 424 NM HWY 599, Frontage Rd, Santa Fe, NM 87507 by March 31. This will help ensure that County staff can timely consider them during negotiations with Pueblo representatives. For questions you may email or call Ms. Ely at 505-986-2426.

For additional information about the Regional Water System, please visit the following websites:

http://www.santafecountynm.gov/county_commissioners/henry_roybal/aamodt_outreach,
<http://uttoncenter.unm.edu/ombudsman/npt.php>, <https://sites.google.com/site/pbwatereis/>, and
http://www.ose.state.nm.us/legal_ose_aamodt_info.html

March 6, 2015 Draft

JOINT POWERS AGREEMENT
POJOAQUE BASIN REGIONAL WATER AUTHORITY

This Agreement creating the Authority is entered into by, between, and among the Parties, each acting as a public agency under the New Mexico Joint Powers Agreements Act, as of the date it is approved by the New Mexico Secretary of Finance and Administration.

RECITALS

WHEREAS, the Parties are signatories to the Settlement Agreement; and

WHEREAS, the Parties are signatories to the Cost-Sharing Agreement, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

WHEREAS, the Act approved the Settlement Agreement and the Cost-Sharing Agreement; and

WHEREAS, the Act authorizes the United States Secretary of the Interior to construct the Regional Water System; and

WHEREAS, the Act, the Cost-Sharing Agreement, and the Settlement Agreement call for formation by the Parties of the Authority to supply water for domestic, municipal, industrial, irrigation, commercial, and all other approved uses throughout the Regional Water System and as otherwise authorized by the Act; and

WHEREAS, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Authority shall be exercised consistent with the terms and conditions of the Operating Agreement; and

WHEREAS, the Parties desire that the Authority have the power to carry out the

purposes and functions as authorized by the Act and as set forth herein in order to provide integrated service throughout the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth here and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

As used herein, the following terms have the following meanings unless the context clearly indicates otherwise:

1. “Aamodt Case” means the federal litigation styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.).
2. “Act” means Title VI, Aamodt Litigation Settlement, of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.
3. “Agreement” means this Joint Powers Agreement unless context indicates otherwise.
4. “Authority” means the Pojoaque Basin Regional Water Authority created by this Agreement and defined in Section 1.13 of the Cost-Sharing Agreement.
5. “Board” means the Authority’s Board of Directors.

6. “Cost-Sharing Agreement” means that certain Cost-Sharing and System Integration Agreement, signed by the parties on March 14, 2013.
7. “County” means the County of Santa Fe, a political subdivision of the State of New Mexico.
8. “County Distribution System” has the same meaning as set forth in Section 1.5 of the Cost-Sharing Agreement.
9. “Director”, in the context of quorum and voting requirements and limitations, includes alternate directors attending meetings with voting rights.
10. “Operating Agreement” means that agreement required by Section 612 of the Act, the text of which is appended hereto.
11. “Parties” means all of the signatories to this Agreement – the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and County – collectively; “Party” means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, or County individually.
12. “Pueblo Water Facility” has the same meaning as set forth in Section 1.13 of the Cost-Sharing Agreement.
13. “Regional Water System” means the system defined in Section 602(18) of the Act.
14. “Settlement Agreement” means that certain Settlement Agreement dated April 19, 2012, and signed by the Parties on March 14, 2013, in the Aamodt Case.

ARTICLE 2 – AUTHORIZATION; FORMATION

Pursuant to the provisions of the Joint Powers Agreements Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties hereby create the Authority, a separate legal entity organized and empowered as set forth herein.

ARTICLE 3 - PURPOSES

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply for domestic, municipal, industrial, irrigation, commercial and all other approved uses throughout the Regional Water System and as otherwise authorized by the Act;

2. The construction, management, ownership, operation and maintenance of diversion, collection, treatment, storage, and transmission facilities as well as all related real and personal property, facilities and equipment as may be reasonably necessary to achieve the purposes of and discharge the powers of the Authority; and

3. Providing integrated service throughout the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under, this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, and the Act.

ARTICLE 4 – DURATION

This Agreement shall continue in full force and effect unless terminated pursuant to Article 24.

ARTICLE 5 - POWERS

To the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement, the Authority is empowered and authorized:

- A. To own, construct, operate, manage, and maintain the facilities of the Authority;
- B. To construct, operate, manage, and maintain the Regional Water System;
- C. To own, construct, operate, manage, and maintain wastewater collection and treatment systems;
- D. To acquire and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;
- E. To bill and collect payments from and on behalf of the Parties as required by the Operating Agreement, provided that any billing of and collection from a water customer served from the County Distribution System must conform to policies of the County and any billing of and collection from a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;
- F. To establish policies and enforcement mechanisms for delivery and use of water, provided that any suspension of service to a water customer served from the County Distribution System must conform to policies of the County and any suspension of service to a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;
- G. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation;

H. To make expenditures, incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements, and expansion of the facilities of the Authority and to otherwise carry out the purposes of the Authority;

I. To provide services to and lease to others any of the Authority's assets;

J. To open and maintain bank accounts, and to invest the Authority's funds, for its benefit, to the extent and in the manner that County funds may be invested under New Mexico law;

K. To sell any of the Authority's assets deemed by the Board to be unnecessary, excess, obsolete, or scrap;

L. To employ and enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;

M. To apply for and to receive grants, appropriations or other funds; and

N. To do any and all other lawful things consistent with its purposes and powers as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

ARTICLE 6 - BOARD OF DIRECTORS

A. Composition and Appointment. The business and affairs of the Authority shall be controlled by the Board, which shall be composed of five (5) directors. Each Party shall appoint one director. Each Party may establish its own qualifications for appointment of its respective director and an alternate director to serve in the director's absence.

B. Terms of Directors. The term of each director shall be indefinite or as otherwise determined by the Party appointing that director. A director shall continue to serve after expiration of the director's term until a successor has been appointed. Each director shall serve at the pleasure of the Party that appointed the director and may be replaced at any time by formal action of the appointing Party. A director shall be deemed to have resigned upon missing three consecutive duly called meetings of the Board, and the Board shall give written notice of such resignation to the Party that appointed such director, which shall appoint a replacement director. Should a Party fail to be represented at three consecutive duly called meetings of the Board through a director or alternative director, the number of directors constituting a quorum and whose votes are required for those actions set for in paragraph (G) of this Article shall be reduced by one until such time as the Party is represented at a Board meeting.

C. Officers. Officers of the Board shall consist of a Chairperson and Vice-Chairperson. Except for the first Chairperson and Vice-Chairperson, the terms of the offices of Chairperson and Vice-Chairperson shall be for two years, from February 1 until January 31 two years later. The terms of the first Chairperson and Vice-Chairperson shall end on January 31 of the year following the year in which their terms begin. The offices of Chairperson and Vice-Chairperson shall rotate every two years among the Parties. At the first meeting of the Board, directors shall draw from a hat numbers to determine the order in which the offices of Chairperson and Vice-Chairperson shall rotate among the Parties. Should the Chairperson and Vice-Chairperson be absent from a meeting, the remaining directors shall elect a director to perform the function of Chairperson at the meeting. The officers shall perform the following respective functions:

1. Chairperson. The Chairperson shall preside at all meetings of the Board, shall execute documents and agreements on behalf of the Authority as authorized by the Board, and shall otherwise represent the Board, as authorized by the Board.

2. Vice-Chairperson. The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

D. Alternate Directors. Each Party may, in addition to appointment of a regular director, appoint one alternate director to the Board, who shall act in the absence or incapacity of the director and when so acting shall have all the powers, duties and responsibilities of the director; provided, however, that an alternate director shall not assume the office of Chairperson or Vice-Chairperson in the director's absence. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the regular director.

E. Compensation and Expenses. The Authority shall not pay directors salaries or other compensation for their service as directors or expenses associated with such service, such as per diem or mileage. Each Party shall develop compensation and expense reimbursement policies for its directors and shall be solely responsible for paying any compensation and reimbursing any expenses due under those policies for its director and alternate.

F. Board Meetings. The Board shall meet monthly or as may be determined by the Board at convenient locations within the Pojoaque Basin, or at such other places within the county of Santa Fe, and at times as shall be determined by the Board. Special meetings of the Board may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors. Emergency meetings called to address emergency matters, as

defined in the New Mexico Open Meetings Act, Chapter 10, Article 15, may be called upon not less than one day's notice; provided, however, that an emergency meeting may be called on less than one day's notice if each Party's director or alternate will be present at the emergency meeting. Directors may attend Board meetings by telephone or video conference, in accordance with policies to be established by the Board. Board meetings shall be in compliance with the New Mexico Open Meetings Act and in accordance with Robert's Rules of Order.

G. Quorum; Special Majority Required. A quorum for the conduct of business at any meeting of the Board shall be four (4) directors, present either in person or by telephone or video conference. Each director shall have one vote. Voting by proxy is prohibited except by an alternate director serving in place of an absent director. The action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board, except that affirmative votes by the directors appointed by Pueblo de San Ildefonso and the County shall be required for any of the following actions:

1. to approve the annual budget and any budget amendments of the Authority, which shall be submitted to and shall not be effective until approved by a minimum of four directors of the Board; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Board;
2. to hire or terminate or enter into, modify, or terminate the contract for the general manager of the Authority;
3. to approve delegation of any power of the Authority;
4. to borrow money in an amount in excess of \$125,000 or to convey, pledge or encumber any of the Authority's assets;

5. to enter into, terminate or modify the System Operator Agreement, the Fiscal Services Agreement, or any contract for an amount greater than \$125,000, exclusive of applicable gross receipts tax or governmental gross receipts tax, with an entity that is not a Party or entity controlled by a Party.

The Board may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority under subparagraphs 4 and 5 above.

H. Contract Party or Affiliated Entity. Notwithstanding Section 5.G.5, any action to enter into, terminate, or modify any contract with a Party or an entity controlled by a Party shall require the affirmative vote of the other four (4) directors. No Party's director may vote to enter into, modify, or terminate a contract between the Authority and the Party represented by that director.

I. Duties. The Board shall: manage and oversee the Authority to assure that the Authority carries out its duties and exercises its powers in accordance with this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, the Act, and all other applicable laws and agreements; adopt, and from time to time amend, the Authority's policies, By-Laws, and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; approve or disapprove any and all acquisitions, dispositions, or the pledging of real property or interests therein by the Authority; approve or disapprove all Authority contracts, including contracts with consultants, engineers, legal counsel, and for other services but excluding employment contracts delegated to the general manager; and to exercise or delegate the powers of the Authority and duties of the Board in accordance with this Agreement .

J. Committees. The Board may establish such advisory committees of the Board as it deems appropriate. Any action proposed by a committee shall be advisory only unless and until presented to and approved by the Board.

ARTICLE 7 – GENERAL MANAGER

The Authority shall hire and set compensation for a general manager and may authorize such other employment positions as the Board deems necessary. Except as otherwise provided by the Board and subject to Article 10.F, the general manager shall have the authority and duty to oversee and manage the Authority’s day-to-day affairs; to hire, supervise, discipline, and fire employees of the Authority, consistent with employment preferences benefiting members of the San Ildefonso Pueblo and other Party-Pueblos in accordance with Section 3.4 of the Cost-Sharing Agreement; to manage all Authority contracts (including the Fiscal Services Agreement and System Operator Agreement), and to perform such other duties and tasks as the Board may from time to time delegate to the general manager. The general manager shall be an at-will employee and serve at the pleasure of the Board.

ARTICLE 8 – PROCUREMENT; EMPLOYMENT PREFERENCES; TAXES

A. The Authority shall procure goods and services in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 *et seq.* The Authority may contract with the Fiscal Agent, pursuant to Article 9 of this Agreement, to provide necessary procurement and administrative services for the Authority.

B. Pursuant to Section 3.4 of the Cost-Sharing Agreement, to the extent authorized by law, the Authority shall provide an employment preference to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo

Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

C. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities undertaken by the Authority for delivery to the Parties, unless the tax, fee, or special assessment is specifically authorized in the Operating Agreement.

This section does not prohibit any taxes, fees, or special assessments imposed by a Party in connection with the sale of water by that Party to the Party's customers.

ARTICLE 9 – FINANCIAL ACCOUNTABILITY

A. As provided in NMSA 1978, Section 11-1-4 (as amended), the Authority shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete, and correct records and statements pertaining to receipts, disbursements, and all other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority's finances to be performed in accordance with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and implementing regulations; the audit shall be provided to each Party and shall be made available to the public.

C. Upon reasonable notice, the records and statements prepared by the Authority pursuant to this paragraph shall be open to inspection at any reasonable time by the Parties, their accountants, and agents.

D. The Authority shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the Parties, at reasonable

intervals, such reports and accounting as the Parties may from time to time request.

ARTICLE 10 – FISCAL AGENT

A. The Authority may enter into a Fiscal Services Agreement with a Fiscal Agent to provide procurement, payroll, financial and accounting, record keeping, and other fiscal and administrative services as determined by the Board.

B. The initial Fiscal Agent shall be the County. The Fiscal Services Agreement with the County may be terminated pursuant to Article 6.H, or pursuant to the terms of the Fiscal Services Agreement; provided, however, that the Fiscal Services Agreement shall provide that the Agreement shall not terminate on less than one (1) year's written notice, except for the material breach thereof; and provided further that, if the Authority terminates the Fiscal Services Agreement with the County for convenience and does not affirmatively resolve to be its own Fiscal Agent, the termination shall not go into effect until a new Fiscal Services Agreement is approved pursuant to Article 6.G.5 and the successor Fiscal Agent is ready, willing, and able to perform its duties under the Agreement. Upon providing or receiving notice of the intent to terminate, the Board shall exercise diligence in identifying and contracting with a new Fiscal Agent. Except as provided above, in the event the Fiscal Services Agreement terminates before a new Agreement is in place, the Board shall act as Fiscal Agent in the interim.

C. The Fiscal Agent shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the Authority, at the direction of the Board. The Fiscal Agent and the Authority may contract for additional services (including procurement services). In performing any procurement services, the Fiscal Agent shall abide by Section 3.4 of the Cost-Sharing Agreement, which requires that, to the extent authorized by law, the Authority provide

an employment preference to qualified members of the San Ildefonso Pueblo, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

D. The Fiscal Agent may receive reasonable compensation for fulfilling the duties required herein as agreed to by the Parties to the Fiscal Services Agreement, as set out in the Fiscal Services Agreement.

E. The funds of the Authority shall be held by the Fiscal Agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement or third parties. All contributions of and other payments by the Parties shall be initially deposited directly into a general fund created by the Fiscal Agent for the Authority.

F. The initial Fiscal Services Agreement with the County shall provide that, subject to this Agreement, employees of the Authority shall be employees of the County and entitled to the same benefits and privileges as customarily provided by the County, subject to the following:

1. The Board shall recommend to the County employment of the General Manager, who shall be an exempt employee of the County. The General Manager shall report solely to the Board. The Board shall have supervisory authority over the General Manager and shall have the sole right to recommend any necessary personnel decisions concerning the General Manager to the County.

2. The General Manager shall have general supervisory authority over employees of the Authority.

3. The General Manager shall recommend to the County, consistent with the County's personnel rules and any applicable collective bargaining agreement, the hiring, firing

and disciplining of all employees of the Authority.

ARTICLE 11- ANNUAL BUDGET AND FINANCIAL PROVISIONS

A. Each Party shall contribute its share of the amount necessary to meet the Authority's operating expenses. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and Section 612 of the Act, the basis for each Party's contribution shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority's operations and expenses shall be in compliance with an annual budget for each fiscal year beginning July 1 and ending June 30. The annual budget shall include all expenses necessary to operate, manage, and maintain the Regional Water System.

C. No later than five months prior to the beginning of the next fiscal year, the Board shall consider and approve the annual budget for the next fiscal year, which shall be sufficient to cover all annual expenses and required reserves of the Authority. At least one month prior to the Board's consideration, the General Manager shall prepare, submit to the Board, and provide a copy to each Party a detailed proposed budget for the Board's consideration, including a calculation of each Party's proportionate contribution in accordance with the Operating Agreement. The General Manager shall prepare the proposed budget after consulting with the Parties. The Parties may provide written comments on the General Manager's proposed budget to the Board, copies of which shall be provided to the General Manager and the other Parties. The Board shall thereafter approve and adopt a budget after considering the written and oral comments of the General Manager and the Parties, making such changes to the General Manager's proposed budget as the Board deems appropriate. In the event that the annual budget is not approved prior to commencement of the fiscal year, the prior year's budget shall constitute the budget for the

fiscal year without further action of the Board until such time as the Board adopts a budget for the fiscal year. By the beginning of each fiscal year, each party shall (i) appropriate adequate funds to meet its financial obligations to the Authority as reflected in the Authority's budget for the fiscal year or (ii) give notice to the Authority and other Parties that it has failed to do so.

D. Any amendments increasing the annual budget in total by more than five percent shall require approval of all the Parties.

E. The Authority may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds.

F. No Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.

G. The annual budget shall include a provision for the Authority to maintain a Capital Replacement Fund, which shall be utilized to replace obsolete, worn out or unusable equipment of the Authority, in accordance with the Operating Agreement.

H. The Authority shall maintain adequate and correct accounts of its funds, properties and business transactions. Upon reasonable notice and in accordance with applicable law, the accounts shall be open to inspection at any reasonable time by the Parties, their accountants or their agents.

ARTICLE 12- REGIONAL WATER SYSTEM OPERATOR

A. The Authority shall enter into a System Operator Agreement with the County to serve as System Operator and be responsible for the operation, maintenance and repair of the Regional Water System. The County shall cooperate with the U.S. Bureau of Reclamation in

training and certification of employees to achieve a smooth transition for operating the Regional Water System and for the purpose of Article 7.B of this Agreement.

B. The System Operator Agreement with the County (and any subsequent System Operator Agreement) shall provide that it cannot be terminated by either the Authority or the System Operator on less than two (2) years' notice except for the material breach thereof; and provided further that, if the Authority terminates the System Operator Agreement with the County for convenience and does not affirmatively resolve to be the System Operator, the termination shall not go into effect until a new System Operator Agreement is approved pursuant to Article 6.G.5 and the successor System Operator is ready, willing, and able to perform its duties under the Agreement. In the event the Authority provides or receives notice of intent to terminate the System Operator Agreement, the Authority shall exercise diligence in identifying and contracting with a new System Operator. Except as provided above, in the event the System Operator Agreement terminates before a new Agreement is in place, the Authority shall be responsible for operating the Regional Water System.

C. The County's policies regarding billing and collection and suspension of service for customers of the County Distribution System shall apply, as provided in Article 5.F –E, regardless of whether the County is the System Operator.

D. System Operator Agreements shall provide employment preferences in accordance with Section 3.4 of the Cost-Sharing and System Integration Agreement, which requires that, to the extent authorized by law, employment preferences be given to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within

San Ildefonso Pueblo

E. If the System Operator Agreement is terminated and the County no longer serves as System Operator, the Authority may enter into an agreement with any one of the following to serve as System Operator: (1) one of the Pueblo Parties; (2) the Authority; or (3) another entity, as determined by the Authority.

ARTICLE 13 – INSPECTION OF PUBLIC RECORDS

The services provided by the Fiscal Agent under the Fiscal Services Agreement shall include compliance with the Inspection of Public Records Act, NMSA 1978. § 14-2-1 et. seq., on behalf of the Authority.

ARTICLE 14 – FUTURE CONNECTIONS AND EXPANSIONS

A. The Parties agree to cooperate to facilitate customer connections to the Regional Water System.

B. To the extent the Parties own land or interests in land, the Parties shall continue to provide easements at no cost in accordance with the Cost-Sharing Agreement as necessary to connect customers to the Regional Water System, including extensions and additions to the County Distribution System.

ARTICLE 15 - LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. By entering into this Agreement, no Party waives, relinquishes or limits its sovereign immunity, except as expressly provided in Article 18 of this Agreement. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 19.

B By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the Authority's or another Party's acts or omissions.

C Any liability incurred by the Authority is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended.

D This Agreement does not modify, in any way, the Parties' liabilities or sovereign immunity as to third parties, which is governed by federal and state law, including the New Mexico Tort Claims Act. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

E The Operating Agreement required by Section 612 of the Act shall set forth the financial obligations of each Party for the Regional Water System and shall provide for a limited waiver of sovereign immunity of each Party solely for the enforcement of such financial obligations.

ARTICLE 16 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY

A The officers and directors of the Board shall be immune from any liability for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal and state law, including the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as amended, or by any successor section.

B The Authority may authorize the indemnification of its officers and directors by the Authority for personal liability and for reasonable expenses, costs and attorney's fees incurred by them or any of them in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been

a director or officer acting in good faith, to the fullest extent permitted by federal law or by the New Mexico Tort Claims Act, as amended, or by any successor section. Subject to the liability of such officer or director to the Authority in the event that a court of competent jurisdiction determines that indemnification is inappropriate or unlawful, an officer or director shall have the right to be reimbursed for his or her reasonable costs of defense as same are incurred.

C. The indemnification provided for in this Article 16 is not self-executing and does not independently provide officers and directors with the right to indemnification. Indemnification shall only be provided and be available pursuant to policies and procedures adopted by the Board, which shall include notice requirements as well as the right of the Authority (or its insurance carriers) to control the defense and resolution of claims brought against officers and directors.

ARTICLE 17 – INSURANCE

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority shall purchase insurance for the directors and officers of the Board and the Authority against any suit which may be brought against them in connection with their duties under this Agreement.

C. The Authority shall carry and maintain fire and extended insurance coverage on

all Authority buildings, structures and improvements, and on upon all of the contents and other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers' Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et seq., if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as necessary or appropriate for employees and staff, subject to Article 10(F) of this Agreement.

F. The expense of obtaining and maintaining the required insurance shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

ARTICLE 18 – NO THIRD-PARTY BENEFICIARY

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person or other entity, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**ARTICLE 19 – ARBITRATION AND OTHER METHODS OF
ALTERNATIVE DISPUTE RESOLUTION**

A. The Parties agree to submit any and all issues, disputes and controversies of every kind and nature between or among the Parties regarding this Agreement to binding arbitration by three arbitrators in accordance with the provisions below, including but not limited to issues, disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement.

B. Any Party may demand arbitration by making a demand in writing, which demand shall include the name of the arbitrator proposed by the Party demanding arbitration, together with a statement of the matter of controversy.

C. Within 20 days after such demand, any other Party may name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint an arbitrator within 30 days of the request therefore, the appointment shall be made by the American Arbitration Association.

D. The arbitration costs and expenses of each Party shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties.

E. The arbitration hearing shall be held at such time and place within the county of Santa Fe as designated by the arbitrators on at least 20 days' written notice to the Parties.

F. The award rendered by a majority of the arbitrators appointed pursuant to this Agreement, including an award that quantifies and requires a Party to pay its proportionate

contribution under Article 11 of this Agreement pursuant to an approved budget of the Board and lawful appropriations made by the Party, shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award. The Parties shall comply with such award within thirty (30) days of the date thereof or such other time as the majority of arbitrators may specify.

G. The Parties waive their sovereign immunity only as to suits brought in the United States District Court for the District of New Mexico and only for the limited purposes of: (1) enforcing the requirement to arbitrate pursuant to this Agreement, and (2) obtaining judicial declaratory and/or injunctive relief to enforce an award of the arbitrators pursuant to this Agreement; provided, however, that if the United States District Court of New Mexico finds that it does not have jurisdiction, or refuses to exercise jurisdiction for any reason, the suit may be brought in the First Judicial District Court of New Mexico, Santa Fe County.

H. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

I. Except as provided in paragraph G of this Article, the Parties expressly waive their right to file suit in federal, state, and tribal court to resolve any issue, dispute or controversy that is subject to arbitration under this Agreement. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to

any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

J. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

K. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

L. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another the Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this Agreement.

M. This Agreement shall be subject to the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Except to the extent of a conflict with this Agreement or the Federal Arbitration Act, the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7-1 through 44-7-22, shall also apply to the arbitration provisions of this Agreement; provided, however, that no Party waives its sovereign immunity from suit in state court except as provided in paragraph G of this Article.

N. Nothing in this Article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The Parties agree that prior to resorting to arbitration as set forth above they shall use their best efforts to resolve any dispute by such non-binding and informal means.

O. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in paragraph G of this Article.

ARTICLE 20 - AMENDMENTS

This Agreement may only be amended by a mutual written agreement of all the Parties. No amendment shall be effective until approved by the New Mexico Secretary of Finance and Administration.

ARTICLE 21 - SEVERABILITY

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable or otherwise unenforceable by a Court of competent jurisdiction, then the remainder of this Agreement shall continue in full force and effect and this Agreement shall thereafter be construed as if such unlawful, voided or unenforceable provision(s) had never been a part hereof; provided, however, that this Agreement shall terminate if the Agreement, as severed, would violate the requirements of the Act, the Settlement Agreement, or the Cost-Sharing Agreement.

ARTICLE 22 – EFFECTIVE DATE; EFFECT OF AGREEMENT

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the New Mexico Secretary of Finance and Administration. This Agreement may be executed in counterparts, which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In

construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Party or Parties.

ARTICLE 23 – NOTICES

Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To The County:

Santa Fe County Utilities Director
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504
Phone: 505.992-9870
Fax: 505.992.3028

With A Copy To:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6200
Fax: 505.986.6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6279
Fax: 505.986.6362

To Pueblo of Nambe :

Phone:

Fax:

With A Copy To:

Phone:

Fax:

To Pueblo of Pojoaque:

Phone:

Fax:

With A Copy To:

Phone:

Fax:

To Pueblo de San Ildefonso:

Office of Governor
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: (505) 455-2273
Fax: (505) 455-7351

With A Copy To:

Phone:

Fax:

To Pueblo of Tesuque

Phone:

Fax:

With A Copy To:

Phone:

Fax:

ARTICLE 24 - TERMINATION

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party; and
2. approval by an Act of Congress or if one or more of the conditions precedent set forth in Section 623 of the Act have not been fulfilled by the applicable deadline set forth therein.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the extent necessary to wind down the affairs of the Authority, make an effective disposition of property, provide a full accounting, and distribute surplus funds in proportion to the contributions made.

C. Upon termination of this Agreement pursuant to an Act of Congress, the property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

ARTICLE 25 – ASSIGNMENT AND DELEGATION

No Party shall assign this Agreement unless such assignment is approved by all four (4) directors of the other Parties.

ARTICLE 26 – NON-APPROPRIATION CLAUSE

So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's obligations in future fiscal years are contingent upon sufficient appropriations and authorizations being made by the Board of County Commissioners of the County. The County is expressly not committed to expenditure of any funds until such time as

they are programmed, budgeted, encumbered and approved for expenditure. The County's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties.

ARTICLE 27 – COMPLIANCE WITH LAWS APPLICABLE TO THE COUNTY

The Authority shall exercise its powers and conduct its operations in accordance with all laws applicable to the County.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

PUEBLO OF POJOAQUE

PUEBLO DE SAN ILDEFONSO

Joseph M. Talachy, Governor

James Mountain, Governor

PUEBLO OF NAMBE

PUEBLO OF TESUQUE

Phillip A. Perez, Governor

Mark Mitchell, Governor

SANTA FE COUNTY

(name) _____
(title) _____

Appendix

An Act

This Act may be cited as “The Claims Resettlement Act of 2010.”.

TITLE VI—AAMODT LITIGATION SETTLEMENT

Subtitle A—Pojoaque Basin Regional Water System

SEC. 612. OPERATING AGREEMENT.

(a) **IN GENERAL.**—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) **APPROVAL.**—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) **CONTENTS.**—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

DRAFT