

**OBJECTIONS TO APPROVAL OF THE PROPOSED SETTLEMENT
AGREEMENT**

AND

**ENTRY OF A PROPOSED FINAL JUDGMENT ON THE WATER RIGHTS OF
THE PUEBLOS OF TESUQUE, POJOAQUE, NAMBE AND SAN ILDEFONSO**

I object to the approval of the proposed Settlement Agreement including its provisions relating to Subtitle A of The Indian Water Rights Settlement Act (Pojoaque Basin Regional Water System) and to the request for entry of a proposed final judgment on the water rights of the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso, Section B of the Act (Pojoaque Basin Indian Water Rights Settlement).

Subsections A and B of the Act have are intertwined in the proposed Settlement Agreement and the determination of the water rights of the Pueblo Parties is in fact a determination of the water rights of non-Pueblo water right holder Parties. Approval of the proposed Settlement Agreement would result in irreparable harm to the non-Pueblo water right holders for the following reasons among others:

**I. A. LACK OF OPPORTUNITY TO PARTICIPATE, OF ESSENTIAL
INTEGRAL PARTS OF THE PROPOSED SETTLEMENT AGREEMENT AND OF
SUFFICIENT OPPORTUNITY TO STUDY IMPACTS AND SEEK COUNSEL**

As a non-Pueblo water right holder Party, I object to the proposed Settlement Agreement. The settlement negotiations which began in 2010 excluded individual non-Pueblo water-right holder Parties from participation and even information. Representation of Parties at the negotiations was limited to Pueblos, and various governmental entities. The non-Pueblo water-right owner Parties were not permitted to have a representative committee present at the negotiations. Further, a gag order prevented all -access to information by non-Pueblo water-right owner Parties.. This exclusion unfairly prejudiced the non-Pueblo water-right owner Parties who, by the terms of the Order to Show Cause are now being required to understand all of the implications to their water rights and to make formal objections within a perilously short time frame or be deemed a Settlement Party and forfeit all or portion of their lawful water rights.

The proposed Settlement Agreement is dated April 19, 2012 but was not distributed to the non-Pueblo water-right owners. However, suddenly a letter from the Office of the State Engineer dated January 14, 2014 and mailed by regular mail was sent to non-Pueblo water-right owner Parties stating that they must respond to an Order to Show Cause why the proposed Settlement Agreement should not be approved by the Court. If non-Pueblo water-right holder Parties had received letter the next day, they would have had less than 60 business days prior to the deadline for filing objections. The process of delivery by regular mail and its unpredictability cut down even that short amount of time. Additionally shortening the time is the fact that the proposed Settlement Agreement was not included with the letter, nor did the letter say where one could be obtained.,

The letter referred to future public meetings to explain the proposed Settlement Agreement, but when these meetings did occur no copies of the actual proposed Settlement Agreement were available. Although the State Engineer's letter was dated January 14, 2014, the first public meeting was not held until Feb. 25, only 30 business days prior to the deadline and still, no copies of the proposed Settlement Agreement were available at those meetings. Attendees at these meetings were only advised where they could go to find a copy. The schedule of public meetings was limited to Tuesdays or Thursdays, none on weekends. One of the meetings was scheduled for April 3 at 6:00 pm leaving one business day before the deadline for filing objections.

The lack of a reasonable period of time to file objections is crucial because in order to determine the legitimacy of the proposed Settlement Agreement and to understand its effect on non-Pueblo water-right owner Parties, those Parties must familiarize themselves with the following important underlying and related documents:

1. The Indian Water Rights Settlement Act, Public Law No. 111-291 (also cited as the Claims Resolution Act of 2010, Title VI: the Aamodt Litigation Settlement (cited also as the Aamodt Litigation Settlement Act, the "Act").
2. The Cost-Sharing and System Integration Agreement executed March 14, 2013, which is the amended Cost-Sharing and System Integration Agreement dated August 27, provided for in the Act.
3. The Settlement Agreement dated April 19, 2012.

An integral and central component of the proposed Settlement Agreement is the establishment of a Regional Water System. This System as mandated by the proposed Settlement Agreement would directly and severely negatively impact all non-Pueblo water-right owners Parties, by among other things, a forfeit of all or a portion of the lawful water rights they presently own, for which they paid and which were confirmed by the Office of the State Engineer. The proposed Settlement Agreement includes specifies agreements and rules which affect non-Pueblo water-right owner Parties but which are not yet in existence and therefore do not allow for informed assessment of the impact of the proposed Settlement Agreement on non-Pueblo water-right owner Parties.

In order for non-Pueblo water-right owner Parties to understand the effect of the Regional Water System created by the proposed Settlement Agreement on their ability to have an adequate water supply, and for them to make a rational determination to approve or object to the proposed Settlement Agreement they must know the provisions of the following aspects of it:

1. The Joint Powers Agreement to establish a Pojoaque Regional Water Authority (RWA) as a separate legal entity to own, operate and maintain

it. This document is not available to non-Pueblo water-right owner Parties. An attorney for the County of Santa Fe has specifically denied a request to review its current status, stating that it is not a public document. The Pueblo and governmental Parties all have access to this agreement or are participating in its negotiation.

2. An Operating Agreement for the Regional Water System which would implement the System. This document is not available for review by non-Pueblo water-right owner Parties. The Pueblo and governmental Parties all have access to this agreement or are participating in its negotiation.

3. The Water Master's Rules which will among other things, set out how compliance with the water allocations can be enforced, restrictions on priority calls and the drilling and re-drilling of new wells.

4. Also certain acquisitions, subject to protest, are required by the proposed Settlement Agreement:

Acquisition by the Secretary of 1141 afy of the water right commonly referred to as "Top of the World". This, along with 611 afy to be acquired by the County, comprises the entire amount of afy entitlement of the County Water Utility on which non-Pueblo water-right holders will rely if the proposed Settlement Agreement is approved.

This to-be-acquired water is downstream from water-right holders in Taos, who have made public their intention to protest a transfer. In fact, no transfer request has as yet even been made in spite of the fact that the proposed Settlement Agreement was entered into two years ago.

For all of or even any of the above reasons, approval of the proposed Settlement Agreement would deprive the non-Pueblo water-right owner Parties of procedural fairness if the April 7th deadline for objections is not extended until the terms of the proposed Settlement Agreement are complete with the required agreements and rules. have been made specific by the completion of the foregoing.

Approval of the proposed Settlement Agreement in its present incomplete state would unfairly deprive the non-Pueblo water-right owner Parties of any opportunity to object to aspects of those incomplete parts of it which negatively impact them. The failure of the Pueblo and governmental Parties to complete the missing terms of the proposed Settlement Agreement prior to requesting an Order to Show Cause is unfair and prejudicial to the non-Pueblo water-right owners. It is requested that the Court does not approve the Proposed Settlement Agreement or enter a Partial Final Judgment until those items are final.

II. THE ENVIRONMENT IMPACT SURVEY

Section 616(a) of the Act requires compliance with the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973. An Environmental Impact Survey has been undertaken but there is as of yet no opportunity to object to its findings, recommendations or mitigation proposals. Therefore there is no way for the non-Pueblo water right holders to understand the potential impact of the Regional Water System on the Nambe, Pojoaque, Tesuque Basin, whether water can be delivered by the County Utility at a reasonable price and the overall effect on their surface and ground-water rights, and the potential effect on their water right and to make an informed decision to object or agree to the proposed Settlement Act.

III. FAILURE TO NOTIFY ALL PARTIES OF THE ORDER TO SHOW CAUSE

Notice of the Order to Show Cause was not properly given, nor was it given to all non-Pueblo water-right owners.

Notice of the Order to Show Cause was included as an enclosure to a letter from the Office of the State Engineer. The letter was dated January 14, 2014 and was mailed by regular mail. A badly outdated mailing list was used; the list either mis-addressed or omitted many non-Pueblo water-right owner Parties. The Office of the State Engineer was advised on more than one occasion that the list was badly out of date, in many cases using a system of addresses not in use for several years. Many non-Pueblo water-right owner Parties did not receive any notice. Some of those who did not receive notice later learned of it from friends or neighbors. Those who learned this way had even less time to attempt to understand the implications of the proposed Settlement Agreement, to seek Counsel, or to file objections. Those who did not receive notice due to use of a patently outdated mailing list have been deprived altogether of their right to object to the proposed Settlement Agreement, and if they are considered non-responding Parties will forfeit their water right without having been notified of an opportunity to object.

The failure to notify all Parties of the Order to Show Cause has prejudiced me and all other non-Pueblo water-right owner Parties by depriving us of the benefit of other objections.

In the interest of fairness to all non-Pueblo water-right owners, and equitable treatment of those non-Pueblo water-right owner Parties not receiving notice, the Court is requested to extend the deadline for filing objections and to order the Office of the State Engineer to identify the addresses which are part of the system no longer in use and to send notice of the Order to Show Cause to the correct addresses for those Parties.

IV. UNFAIR TREATMENT OF NON-PUEBLO WATER-RIGHT OWNER PARTIES

The proposed Settlement Agreement is unfair and damages to non-Pueblo water-right owner Parties in that, among other things:

1. Non-Pueblo water-right owner Parties are required to show historic beneficial use of their water right and then forfeit all or a portion of that. The Pueblo Parties have no requirement to demonstrate historic beneficial use. Those Parties are

simply allocated a water right to support desired use, including such non-historic uses as golf courses. However, the proposed Settlement Agreement grants to Pojoaque Pueblo over and above a primary allocation, an additional 475 afy (called a 'supplemental allocation') which will provide for its golf course. Not only is this supplemental allocation to Pojoaque Pueblo not related to beneficial historical use but funding the facility to provide it is given an early priority for funding. The County Water Utility to provide water for non-Pueblo water-right owner Parties has no priority at all.

2. Water rights owned by non-Pueblo Parties are subject to forfeiture, abandonment, relinquishment or other loss of by non-use. The proposed Settlement Agreement specifically exempts Pueblo Parties from such loss by non-use.

3. The Pueblo Parties will receive \$37,500,000 from the United States government to assist them in paying the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System. The County Water Utility, will have no such financial assistance, and the burden of similar millions of dollars for the operation, maintenance and replacement of the County Water Utility facilities will fall solely on the non-Pueblo water-right owner Party users. In addition the proposed Settlement Agreement provides that a pro rata share of the costs of the operation, maintenance and replacement of the Regional Water System will be transferred to the non-Pueblo users of the County Water Utility even though those costs were subsidized.

4. The proposed Settlement Agreement imposes penalties on non-Pueblo water-right holder Parties with a newly created \$1,000 permit fee solely applicable to them. The permit fee applies to all non-Pueblo water-right owner Parties who need to move their wells. It is a punitive fee and a coercive measure to force non-Pueblo water-right owners to forfeit their water right to the County and to connect to the County Water Utility in order to support the mandated Regional Water System. No such permit fee is imposed on Pueblo Party well owners.

5. The proposed Settlement subjects non-Pueblo water right-owner Parties to a loss of their water right through non-use (Sec.4.2.1), however, it specifically exempts Pueblos from loss (Sec (Sec. 2.8) "nonuse of the water supply secured by the Secretary for the Pueblos shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof."

6. In addition to the \$37,500,000 the Pueblos are to receive from the United States government, \$15,000,000 is to be granted "for the rehabilitation, improvement, maintenance, and replacement of the agricultural delivery facilities, waste water systems and other water-related infrastructure"

No waste water system is being implemented for non-Pueblo water-right owner Parties and no federal assistance is available for them. It is provided that the County set up a fund of \$4,000,000 to assist with connection expenses for non-Pueblo water-right holder Parties. This amount is acknowledged to be inadequate, and further Sec. 3.1.4.3 provides that "The requirement to connect to the CWU pursuant to

this section shall not be dependent on access to the Pojoaque Valley Water Utility Connection Fund.

7. The Pueblos can lease their water right to others for up to 99 years. Although the proposed Settlement Agreement states that the leased water must be used in the Basin, there is no protection against a sub-lessee removing the water from the Basin, thus the lease provision as written adds to the likelihood of a first priority call by the Pueblos if water is removed from the Basin..

V. CLOSING OF THE BASIN

The proposed Settlement Agreement declares the Pojoaque Basin fully appropriated and provides for the closing of the Basin to any new permits. The available data regarding the amount of water in the Basin aquifer indicates that the aquifer contains millions of acre-feet of water. I object to the closing of the Basin to new permits because the State Engineer has not provided data to support his conclusion that the Basin is fully appropriated.

VI. ADOPTION OF ALL OBJECTIONS

I have not had sufficient time to review and understand all of the effects of the proposed Settlement Agreement on my water right. However, I am affected by the proposed Settlement Agreement in the same way as all other non-Pueblo water right owner Parties who may be more knowledgeable or may have the benefit of counsel. I therefore adopt all other objections which have been filed as my own.