

Subj: Re: Aamodt Settlement: Comments on Draft Rules & Regs Date: 12/4/2015 6:55:25  
P.M. Mountain Daylight Time  
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Dear All:

Attached is my redline of the proposed Water Master Rules and Regulations distributed by the US/Pueblos on or about October 30, 2015. I am also attaching my re-drafts of 19.25.XX.106 and 19.25.XX.108. The attached is certainly not intended to be my "final" suggested changes or comments but will, in addition to the US/Pueblos suggested changes and comments, provide for extensive discussions at the December 18, 2015 meeting. Many of the changes I have made are not officially "formatted" as such is beyond my familiarity with Word.

In general, as I have stated in previous meetings, in my opinion the proposed rules and regs are substantially greater in length and complexity than the Settlement Agreement (SA) and will need more than a first round of the exchange of redlines to complete. While I appreciate the substantial work that was obviously put into them by the OSE, I believe that to the extent it paraphrases provisions in the SA or adds additional matters, such only invites ambiguity which may lead to additional litigation, even though in some cases they do clarify certain provisions in the SA. As I have also stated, my preference would be to attach a copy of the SA to those rules and regs, and not attempt to re-invent or re-iterate the provisions in the SA in the rules and regs. Nevertheless, I have not "guttled" the rules and regs but have worked with them as they were provided to me.

Specifically, in my opinion, even though the OSE may have rule making authority and could make rules and regs governing the Pojoaque Basin absent the SA, nevertheless it is Section 5 of the SA that specifically called for their promulgation in accordance with, and to implement, the SA. Both the OSE and State are signatories to the SA which was approved by an act of Congress. I think it beyond question that the SA agreement controls any ambiguity between it and the rules and regs and is binding on the OSE. Based upon the above, I have included the SA as authority for the proposed rules and regs and provided that in the event of ambiguity, the SA controls. I have included further references to the SA throughout the proposed rules and regs.

The most significant changes that I am proposing are to 19.25.XX.106 (Exceptions to the administration ...of the Pueblos First Priority Rights); 19.25.XX.108 (Use and Administration of ... by non-Pueblos); and the elimination of 19.25.XX.118 (Reporting of non-Pueblo lands to be irrigated) for the reasons set forth in my comments thereto. My revisions to 106 and 108 are in the main document but I have also attached them separately in a non-redlined format (I think ???) so that they are easier to follow. For me, those provisions in the October 30, 2015 draft were hard to follow, certain paragraphs included many different provisions of the SA and, in some cases

was redundant. Obviously it is up to the group.

Finally, with respect to non-Pueblo wells making an election and being in conformity with that election, the SA, Section 4.4 protects them from a Pueblo priority call or the administration of the Pueblos' rights. Section 3.1.7.2 of the SA, however, provides freedom of those rights from any enforcement or priority administration in the Pojoaque Basin, period. I assume that total freedom was curtailed out of a concern that it would protect a settling, conforming, junior groundwater right from a priority call from a senior, non- settling right and therefore arguably be contrary to law and provide objectors a valid objection to the SA. I am not sure I agree and such needs further discussion. See you all on December 18 and if you have questions, please call.

Larry White

RdT Association Exhibit A