

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
ENGINEER,)	
)	
Plaintiff,)	CASE NO. 6:66-cv-6639 WJ/WPL
)	
v.)	
)	
R. LEE AAMODT, <i>et al.</i> ,)	
)	
Defendants,)	
)	
and)	
)	
UNITED STATES OF AMERICA)	
PUEBLO DE NAMBÉ,)	
PUEBLO DE POJOAQUE)	
PUEBLO DE SAN ILDEFONSO,)	
and PUEBLO DE TESUQUE,)	
)	
Plaintiffs-in-Intervention.)	
_____)	

NOTICE OF CERTIFICATION
BY SANTA FE COUNTY AND CITY OF SANTA FE
OF SATISFACTION OF CONDITIONS

Pursuant to Section 9.9.1 of the April 19, 2012 Settlement Agreement approved by the Court on March 21, 2016 (Doc. No. 7970-1) (“Settlement Agreement”), Santa Fe County (the “County”) and the City of Santa Fe (the “City”) certify that the conditions described in Sections 9.1 through 9.5 of the Settlement Agreement have been met in a manner acceptable for entry of the Final Decree.

Section 9.9.1 of the Settlement Agreement provides:

Prior to entry of the Final Decree, counsel for the United States, the State of New Mexico acting through the State Engineer, each of the Pueblos, the County of Santa Fe, and the City of Santa Fe, and active counsel for Non-Pueblo Settlement Parties shall file a Certification of Satisfaction of Conditions with the Decree Court, stating that the conditions described in Sections 9.1 through 9.5 have been met in a manner acceptable to each of the certifying parties.

As identified below, Sections 9.1 through 9.5 of the Settlement Agreement identify certain agreements and actions that must be completed.

1. Cost-Sharing and System Integration Agreement

Section 9.1 of the Settlement Agreement provides:

The United States, the State acting through the State Engineer, each of the Pueblos, the County of Santa Fe, and the City of Santa Fe shall execute the Cost-Sharing and System Integration Agreement.

The County and the City join with the United States, the Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo de San Ildefonso, the Pueblo of Tesuque and the State of New Mexico (the “US-State-Pueblo Parties”) in certifying that on March 14, 2013, the Cost-Sharing and System Integration Agreement was executed by the United States, the State acting through the State Engineer, the Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo de San Ildefonso, the Pueblo of Tesuque, the County and the City.

2. Pueblo Agreements

Section 9.2 of the Settlement Agreement provides:

9.2.1 The United States and the Pueblo of Nambé shall execute a purchase agreement for the Pueblo of Nambé’s water right described in Section 613(a)(1)(A) of the Act, and Section 2.6.2.

9.2.2 The Pueblo Economic Development Water agreement referred to in Section 2.7 shall be executed and approved.

The County and the City join with the US-State-Pueblo Parties in certifying that on September 23, 2016, the United States and the Pueblo of Nambé executed a purchase agreement for the Pueblo of Nambé's water right described in Section 613(a)(1)(A) of the Act and Section 2.6.2 of the Settlement Agreement. Further, the County and the City join with the US-State-Pueblo Parties in certifying that the Pueblo Economic Development Water agreement referred to in Section 2.7 of the Settlement Agreement was executed by the Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo de San Ildefonso and the Pueblo of Tesuque on July 18, 2013, and approved by the United States on August 28, 2013.

3. Federal Appropriations

Section 9.3 of the Settlement Agreement provides:

Prior to entry of the Final Decree, all federal funds authorized by the Act must have been appropriated, except for the portion of such funding required under Section 617 (a)(1) of the Act.

The County and the City join with the US-State-Pueblo Parties in certifying that on or before December 9, 2016, all federal funds authorized by the Act, except for the portion of such funding required under Section 617 (a)(1) of the Act, have been appropriated.

4. State Legislation and Funding

Section 9.4 of the Settlement Agreement provides:

9.4.1 Prior to the entry of the Final Decree, the State must, by legislation, regulation or administrative order:

9.4.1.1 Confirm, if the constituting documents of the [Regional Water Authority (“RWA”)] so provide, that the RWA is not subject to the New Mexico Procurement Code, §§ 13-1-28 through 13-1-199, NMSA 1978, New Mexico Audit Act, §§ 12-6-1 through 12-6-14, NMSA 1978, or any successor to either such law, or to any law governing or relating to public officers and employees, and authorize the RWA to adopt procurement, audit, and personnel policies;

9.4.1.2 Authorize the retirement and transfer of existing, and limitation on further, Non-Pueblo wells within the Pojoaque Basin as required by Section 3;

9.4.1.3 Authorize the establishment of a Pojoaque Valley Water Utility Connection Fund pursuant to Section 3.1.7.3 in the amount specified in the Cost-Sharing and System Integration Agreement, which fund shall be used to connect Non-Pueblo well users to the CWU;

9.4.1.4 Authorize the establishment of an Impairment Fund pursuant to Section 5.5 in the amount specified in the Cost-Sharing and System Integration Agreement; and

9.4.1.5 Exempt leases of Pueblo water rights for use outside Pueblo lands from the term duration limitation in NMSA 1978, § 72-6-3 (2003).

9.4.2 Prior to the entry of the Final Decree, the State shall have executed the contributed funds agreement required by Section 3.1.6 of the Cost Sharing and System Integration Agreement, for the purpose of satisfying the requirements of Section 623(a)(2)(F) of the Act.

The requirement of Section 9.4.1.1 is conditioned upon the “constituting documents” of the RWA providing that it is not subject to the New Mexico Procurement Code, the New Mexico Audit Act, or to any law governing or relating to public officers and employees. The constituting document, the Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA), does not so provide. The JPA expressly provides the Authority is subject to the New Mexico Procurement Code (Article 8(A)), Audit Act (Article 9(B)), the Inspection of Public Records Act (Article 13(A)), Open Meetings Act (Article 6(F)), and other applicable laws, generally (Article 23). Accordingly, the County and the City concur with the US-State-Pueblo Parties that the requirement of Section 9.4.1.1 is without effect and there is no requirement for certification.

Pursuant to legislation, regulation, administrative order or other act specified below, the State has or is in the process of:

1) authorizing the retirement and transfer of existing, and limitation on further, Non-Pueblo wells within the Pojoaque Basin as required by Section 3, by the State Engineer's adoption, on June 20, 2017, of proposed *Rules for the Nambé-Pojoaque-Tesuque Water Master District: Active Water Resource Management*,¹ which would satisfy the requirement of Section 9.4.1.2;

2) authorized (a) the establishment of a Pojoaque Valley Water Utility Connection Fund pursuant to Section 3.1.7.3 in the amount specified in the Cost-Sharing and System Integration Agreement and (b) the establishment of an Impairment Fund pursuant to Section 5.5 in the amount specified in the Cost-Sharing and System Integration Agreement, by the New Mexico Department of Finance and Administration's establishment of a Connection Fund and an Impairment Fund under the Indian Water Rights Settlement Fund on May 2, 2017, satisfying the requirements of both Sections 9.4.1.3 and 9.4.1.4; and

3) exempted leases of Pueblo water rights for use outside Pueblo lands from the term duration limitation in NMSA 1978, § 72-6-3 (2003), by the State Legislature's amendment of Section 72-6-3 in 2014 to provide that "water use due under an adjudicated water right secured to a pueblo pursuant to the settlement agreements approved in Title 5 and Title 6 of the federal Claims Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or in the partial final judgments and decrees entered pursuant to those settlement agreements,

¹ Adoption of the proposed rules will be in accordance with Section 72-2-8 NMSA 1978 and the requirements of the New Mexico Register. A hearing on the proposed rules will be held in Santa Fe in August of 2017.

may be leased for a term, including all renewals, not to exceed the term specifically authorized in that act,” NMSA 1978, § 72-6-3 (D), satisfying the requirements of Section 9.4.1.5.

Finally, the State and the United States have entered into a contributed funds agreement, satisfying the requirements of Section 9.4.2. On July 29, 2014, the State, acting through the Interstate Stream Commission, entered into an agreement titled, *Funding Agreement between the United States of America Department of the Interior Bureau of Reclamation and the State of New Mexico for the State of New Mexico’s Share of Costs for Planning, Design and Construction of the Pojoaque Basin Regional Water System*, with the Secretary of the Interior as required by Section 3.1.6 of the Cost Sharing and System Integration Agreement. The Funding Agreement sets forth a schedule of anticipated State contributions each federal fiscal year through fiscal year 2024, which payments are subject to future appropriation(s) being made by the State Legislature.

5. Formation of the Regional Water Authority

Section 9.5 of the Settlement Agreement provides:

The Regional Water Authority to be known as the Pojoaque Basin Regional Water Authority shall have been established by the County and the Pueblos in accordance with the provisions of this Agreement and the Cost-Sharing and System Integration Agreement, with authorization to commence operations.

The County and the City certify that the County, the Pueblos, and the United States have approved the JPA, which will establish the RWA. The JPA will become effective upon approval of the Secretary of Finance and Administration. On July 13, 2017, the Secretary of Finance and Administration wrote that she intends to approve the JPA provided that it satisfies the requirements of the Court and the state statute governing joint powers agreements and once the parties submit

to her the fully executed JPA and all of the resolutions of the parties approving it. Pursuant to Article 5 of the JPA, once approved by the Secretary of the Administration, the Authority will be empowered to commence operations.

Respectfully submitted on this 13th day of July 2017.

By: /s/ John W. Utton

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CERTIFICATE OF SERVICE

I hereby certify that, on July 13, 2017, the foregoing was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on July 14, 2017, copies of the foregoing were mailed, by first-class U.S. mail, to the following non-CM/ECF participants:

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