



REVISED AAMODT SETTLEMENT AGREEMENT FREQUENTLY ASKED QUESTIONS

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

Water Rights for the Pueblos of Nambe, Pojoaque, Tesuque, and San Ildefonso (the four Pueblos)

- 1. *The Settlement Agreement describes all water rights in terms of “consumptive use.” What is consumptive use?***

Water rights can be described in terms of diversion or depletion. Consumptive use is depletion - what is taken from the river or ground and never returned because it is consumed. The difference between diversion and depletion is the water that returns to the system.

Generally, for wells, it is assumed that the amount diverted (or pumped) from the well is fully consumed unless the well owner proves otherwise. For surface uses, there are formulas in place already due to past *Aamodt* court orders stating how much water can be diverted onto fields and how much water is consumed by crops. Those formulas apply to both Pueblos and non-Pueblos alike and were used in this settlement.

- 2. *Are both Pueblo and non-Pueblo water rights described in terms of consumptive use?***

Yes. All of the water rights, not just the Pueblos', are discussed in the Settlement Agreement in terms of consumptive use, not diversion. The one exception is the discussion of specific limitations on Tesuque Pueblo's ability to call priority for surface water at the Pueblo for irrigation purposes. That section of the Settlement Agreement, section 4.1.2, is framed in terms of maximum diversion amounts for purposes of calling priority on surface water uses.

3. What water rights are recognized for the four Pueblos under the terms of the Settlement Agreement?

The Settlement Agreement quantifies the four Pueblos water rights as follows:

In-Basin First Priority Water Rights

(Described in consumptive use in acre-feet per year (afy))

Ø Pueblo of Nambe	1,459
Ø Pueblo of Pojoaque	236
Ø Pueblo of San Ildefonso	1,246
Ø Pueblo of Tesuque	719

These first priority water rights are broken out into two categories - existing uses and future uses – for administrative purposes. See # 1 in section on administration below.

The settlement also recognizes that the Pueblo of Nambe and the Pueblo of San Ildefonso have federal reserved water rights for their lands held in reservation status in the following amounts (described in consumptive use in afy) and with the following priority dates:

Ø Pueblo of Nambe	302	(1902 priority)
Ø Pueblo of San Ildefonso	4.82	(1939 priority)

In addition, the settlement allocates an additional 2,500 afy of water to be acquired by the United States for the Pueblos’ portion of the regional water utility (pipeline) project to be diverted at the Rio Grande and imported for use in the Nambe-Pojoaque-Tesuque Basin as follows:

- Ø 475 to the Pueblo of Pojoaque
- Ø 375 to each of the four Pueblos for any purpose (1,500 total)
- Ø 525 total to be allocated amongst the Pueblos for economic development purposes

4. What is the basis for these numbers?

Aamodt court rulings provided the foundation for these numbers. In some instances, the court already made detailed findings based upon standards it set and those figures from those existing detailed findings were incorporated directly into the calculations. In other instances, the court set the specific standards but did not make the detailed findings prior to the parties entering negotiations. The standards issued by the court provided the basis for negotiating those portions of the calculations.

5. Do the Pueblos’ water rights include surface and groundwater? If so, why?

The *Aamodt* Court ruled in 1985 that the Pueblos have senior water rights to both the surface and interrelated ground water of the Nambe-Pojoaque-Tesuque Basin. In 1994, the *Aamodt* Court adopted a special master’s report regarding the hydrology of the basin, which contained an ultimate finding that all groundwater in the basin is hydrologically related to the surface water. The Pueblos can use their water rights from either the surface or the ground, subject to the specific administrative constraints outlined in the Settlement Agreement.

Administration

1. *What kind of priority calls can the Pueblos make under the terms of the Settlement Agreement?*

Regarding non-Pueblo surface water uses:

Priority calls are lessened considerably but not entirely eliminated against non-Pueblo surface water uses under the terms of the Settlement Agreement.

The Pueblos' first priority water rights quantified in the Settlement Agreement (see # 2 above in section regarding Pueblos' water rights) are broken out into two categories for purposes of administration: existing use rights and future use rights. The first category is based upon an approximation in the year 2000 of what amount of the Pueblos' first priority water rights were being used at that time by the Pueblos. The second category is the balance - that amount of the Pueblos' first priority water rights that were not currently being exercised, in other words the Pueblos' future use rights.

Non-Pueblo surface water uses are protected from priority enforcement of the Pueblos' future use portion of their first priority water rights. How and when Tesuque Pueblo may call priority against the upstream non-Pueblo surface water users for the Pueblo's existing use portion of its first priority water rights is described in greater detail in the Settlement Agreement as a result of negotiations between the Pueblo and the Rio Tesuque upstream ditch associations.

Regarding non-Pueblo ground water uses:

The Settlement Agreement provides mechanisms for well users to be free entirely from priority calls. What those mechanisms are, and the choices that the non-Pueblo well user can make to be free from priority enforcement, depend in part upon the type of ground water use at issue (domestic, commercial, agricultural, mutual domestic water consumers associations, etc.). The Settlement Agreement outlines choices that the non-Pueblo ground water users can make and the terms that the non-Pueblo ground water users must abide by in order to be free from any priority calls by the Pueblos.

2. *Does the Settlement Agreement affect the water right users ability to water bank?*

Nothing in the Settlement Agreement precludes the development of water banks as allowed under state law. 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. However, under the Settlement Agreement, if water is not used for five consecutive years without justification it may be subject to Pueblo priority call regardless of the placement of the water in the water bank.

3. ***The 2004 version of the Settlement Agreement stated that non-Pueblo participants could lose priority protection after 5 years of not beneficially using their surface water and that this loss of priority protection could occur without any notification. Is this provision in the revised Settlement Agreement? If so, why is there no notice provision?***

There is a distinction between loss of a water right entirely through forfeiture under state law because of a non-excused lack of irrigation, and the loss of priority protection under the Settlement Agreement because of a non-excused lack of irrigation. The provision regarding loss of priority protection remains in the revised Settlement Agreement. However, the State Engineer will issue an annual report identifying irrigated acreage that may lose priority protection. That information will be available to the parties and the public.

4. ***Will a water utility system still have deep wells for back up?***

The water utility system will have some number of deep wells to provide a back-up system in the event of insufficient surface water in the Rio Grande. These wells will be managed so that surface supplies diverted from the Rio Grande for the regional water system (pipeline) will be used to the greatest extent possible, and so that any temporary use of deep wells does not result in mining of the deep aquifer. The number and location of wells needed for the regional water system (pipeline) is still being determined.

5. ***The Settlement Agreement states that the County of Santa Fe will secure 750 afy for future non-Pueblo water uses within the basin. The Settlement Agreement also provides that the county can use this water for other purposes until it is needed for use by the future customers of the County Water Utility (non-Pueblo water utility). Why is this water only for future customers and what are the other purposes for which the county may use that water in the interim?***

This additional water is not needed for existing non-Pueblo well users who choose to join a County Water Utility (non-Pueblo water utility) because those existing well users can transfer their existing well use rights to be served instead from the new pipeline diversion and water treatment facilities on the Rio Grande. Those existing well users who choose this option will get credit for the transfer of their well use rights and will not have to pay any water cost for any amount of water use from the water utility. New uses of water in the basin can come from the 750 afy reserved by the county for growth of the water utility. The total supply from the county water utility will be 1500 afy. This amount is projected to be enough water to supply both existing and future non-Pueblo uses within the basin.

The Settlement Agreement does not spell out the specific purposes that the County of Santa Fe may use the 750 afy of water in the interim until it is needed for the County Water Utility (non-Pueblo water utility) customers. One use, however, is specified in the document. The Settlement Agreement specifies that, unless and until there are County Water Utility (non-Pueblo water utility) distribution lines in the area above Tesuque Pueblo actually serving County Water Utility (non-Pueblo water utility) customers in that area, up to 100 afy of the County's 750 afy supply will be delivered to Tesuque Pueblo through Tesuque Pueblo's portion of the regional water utility (pipeline).

6. *How will we know how much the Pueblos are pumping?*

The Settlement Agreement requires all water uses in the basin - Pueblo and non-Pueblo alike - to be metered and reported. These reports will be public information.

7. *How will impairment of wells be determined?*

The Settlement Agreement specifies the broad contours of when the water master and when the Office of the State Engineer make determinations regarding impairment. The Settlement Agreement also states that the settlement parties shall develop rules for the water master establishing procedures for determining impairment of ground water uses. These rules must be developed and submitted to the *Aamodt* Court with an opportunity for input before an Interim Administrative Order is adopted. The State Engineer will develop rules and regulations for access to an impairment fund.

Miscellaneous

1. *How can we settle if the United States takes the position it does?*

The Departments of Justice and Interior almost always oppose proposals such as this. Funding and the final decision is up to Congress and the President, and our effort will be to win over our delegation in Congress.

Given the need for legislation to gain U.S. approval of the Settlement Agreement, local expression of support directed to our congressional delegation is essential to the success of the settlement.

2. *Was the hydrology report of the Pojoaque Basin Water Alliance addressed by the negotiators?*

Yes. Although no formal review process was set up to specifically comment on the report, the negotiators certainly took the report into consideration during their deliberations. Like all technical reports generated as part of the negotiation process, not every party to the negotiations agreed with every sentence or assumption in that report. Rather than debate the differences between technical reports, which is what expert witnesses would do during litigation, the negotiators looked for where common themes emerged between the different technical experts that could assist in the negotiations.

3. *The settlement discusses Nambe Reservation water and Nambe Reservoir water. What is the difference in this terminology and how does the Settlement Agreement affect these water sources?*

The Nambe Reservation water refers to the 302 afy reserved for the Nambe Pueblo by the United States government. Nambe Reservoir water is available for use by members of Pojoaque Valley Irrigation District and Pueblos under contracts with the Bureau of Reclamation. The Settlement Agreement provides for the final allocation of water stored in Nambe Reservoir as required by the existing contracts.

4. ***How will costs be allocated for a regional water system (pipeline)? Who will pay for the non-Pueblos' portion? Will the County, State, or non-Pueblos have to pay for any of the Pueblos' portion of the regional water utility (pipeline)?***

The allocation of costs is not determined in the Settlement Agreement. The County of Santa Fe and the State of New Mexico will allocate costs between them to add trunk line capacity to allow for present and future non-Pueblo water users to later be served by distribution systems built by the County to supply water diverted from the Rio Grande. The County must analyze the feasibility of building various distribution systems for the County Water Utility (non-Pueblo water utility). The non-federal governmental parties will negotiate a proposed allocation of cost in the Cost Sharing and System Integration Agreement. The non-federal parties expect the United States to pay for the Pueblo portion of the regional water system (pipeline).

5. ***What happens if there is not sufficient funding for a regional water utility (pipeline)?***

There are different components related to the regional water utility (pipeline). The state and Santa Fe County will pay for the non-Pueblo portion of the diversion, treatment, and transmission works needed as part of the build out of the initial core project components. Distribution systems will be constructed where there are enough customers in that area of the basin to support the construction and operation of such works. In the event that the County Water Utility does not extend distribution lines to a well owner who has chosen to connect, that well owner may continue to rely on their well.

6. ***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.