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OFFICE OF THE STATE ENGINEER

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Date: October 18, 2021

To: Rep. Patricia A. Lundstrom, Chair, Legislative Finance Committee
Rep. Georgene Louis, Co-Chair, Interim Indian Affairs Committee
Sen. Shannon D. Pinto, Co-Chair, Interim Indian Affairs Committee
Sen. Elizabeth Stefanics, Chair, Interim Water and Natural Resources Committee
Rep. Derrick J. Lente, Co-Chair, Interim Water and Natural Resources Committee

From: John R. D'Antonio Jr., P.E., State Engineer
Rolf Schmidt-Petersen, Director, Interstate Stream Commission

Handwritten signatures of John R. D'Antonio Jr. and Rolf Schmidt-Petersen.

Re: 2021 Indian Water Rights Settlement Fund Report

The 2005 Indian Water Rights Settlement Fund Act requires the State Engineer and the Interstate Stream Commission to report by November 15th every year to the Interim Indian Affairs Committee and to the Legislative Finance Committee on the following three subjects:

1. The status of proposed Indian water rights settlements requiring state financing;
2. The distribution of funds from the Indian water rights settlement fund to implement approved settlements; and
3. Recommendations on appropriations to the fund necessary to timely implement action of Indian water rights settlements.

NMSA 1978, § 72-1-11 (B). This memorandum presents the report of the State Engineer and the Interstate Stream Commission for 2021.

1. Status of Proposed Indian Water Rights Settlements – § 72-1-11 (B)(1)

New Mexico presently has three Indian water rights settlements in various stages of implementation: the Navajo Nation Water Rights settlement in the San Juan River adjudication, the settlement with the Pueblos of Nambé, Pojoaque, Tesuque, and San Ildefonso in the *Aamodi* adjudication, and the Taos Pueblo Water Rights settlement in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication.

For each of these three settlements, a settlement agreement was executed in 2005 or 2006 by the tribe or Pueblos and the State of New Mexico. The *Aamodt* and Taos Pueblo settlement agreements also were executed by other water rights owning parties. Subsequent to the passage of federal legislation authorizing each of the settlements in 2009 and 2010, the Secretary of the U.S. Department of the Interior signed all three settlement agreements on behalf of the United States. Copies of the three fully-executed settlement agreements and related documents can be found at: www.ose.state.nm.us/Legal/settlements_IWR.php.

A. Navajo Nation Water Rights Settlement

On April 19, 2005, the Navajo Nation and the State of New Mexico executed a settlement agreement to resolve the claims of the Navajo Nation for use of waters in the San Juan River Basin in northwestern New Mexico. The Navajo settlement provides water development projects for the benefit of the Navajo Nation and non-Navajo communities in exchange for a release of the Navajo Nation's claims to water that potentially could displace existing non-Indian water uses in the basin. One of the primary elements of the settlement is the Northwestern New Mexico Rural Water Supply Project (also known as the Navajo-Gallup Water Supply Project, or "Project") that includes a pipeline currently under construction by the Bureau of Reclamation ("Reclamation"). The project will provide long-term, sustainable water supply of 22,650 AFY to provide municipal and domestic water to 43 Navajo Chapters in northwestern New Mexico, the City of Gallup and the southwestern portion of the Jicarilla Apache Nation.

1) Key benchmarks for implementation of the Navajo Settlement include:

Federal Legislation. On March 30, 2009, President Obama signed federal legislation approving the settlement and authorizing the appropriation of federal funds to plan, design and construct the Project (*Northwestern New Mexico Rural Water Projects Act*, Public Law 111-11, Title X, Subtitle B) ("Navajo Settlement Act"). This Act also established the Reclamation Water Settlements Fund to provide funds to implement Indian water rights settlement agreements approved by Congress.

Conformed Settlement Agreement. The Navajo Settlement Act authorized the Secretary of Interior to execute, on behalf of the United States, a revised settlement agreement consistent with the Act ("conformed Settlement Agreement") with the State of New Mexico and the Navajo Nation. The conformed Settlement Agreement was executed on December 17, 2010 and included proposed Partial Final Judgments and Decrees of the Navajo Nation's water rights to be entered in the San Juan River adjudication, *State of New Mexico ex rel. State Engineer v. United States, et al.*, San Juan County Dist. Ct. No. CV-75-184.

Environmental Impact Statement. On July 6, 2009, the Planning Report and Final Environmental Impact Statement for the Navajo-Gallup Water Supply Project was

filed with the Environmental Protection Agency and released to the public. On October 1, 2009, Secretary of the Interior Ken Salazar signed the Record of Decision making official the Environmental Impact Statement for the Project.

Court Approval. On November 1, 2013, the adjudication court entered two Partial Final Judgments and Decrees (“decrees”) adjudicating the water rights of the Navajo Nation. The decrees resolve the Navajo Nation’s water rights claims and adjudicate its rights to use the waters of the San Juan River stream system in New Mexico in accordance with the terms of the Settlement Agreement. In December 2013, four parties to the adjudication filed notices of appeal of the decrees and a related order of the court in the New Mexico Court of Appeals. Three New Mexico legislators also filed an amicus brief in one of the appeals. On April 3, 2018, the Court of Appeals issued its decision denying the appeals and affirming the entry of the decrees, but on new legal grounds. The State and other parties petitioned the New Mexico Supreme Court for writs of certiorari to review, which were granted. The parties have briefs in chief and responses and were waiting for the Court to issue a decision or schedule oral argument, when the Court issued an order quashing the writs as improvidently granted in early 2021. The state filed a motion for rehearing, which is pending before the Court.

2) Funding for Navajo-Gallup Water Supply Project

Settlement Project Costs. The federal legislation authorizes the appropriation of \$870,000,000 to Reclamation to plan, design and construct the Navajo-Gallup Water Supply Project. The total estimated cost for the Settlement has now increased to approximately \$1.363 billion based on Reclamation’s 2018 price levels for the Project.

For federal fiscal years 2010 to 2020, Congress has appropriated to and provided mandatory funding for the Navajo-Gallup Water Supply Project totaling \$868.5 million. For federal fiscal year 2021, the President recommended appropriations to the Project totaling \$140.3 million.

State Contribution. The settlement legislation requires a \$50 million (“cost share”) contribution by the State toward Project construction costs, less funds the State has already contributed that are determined to have reduced overall Project costs (“cost share credit”). Additionally, the State may, but is not obligated to provide \$10 million for non-Indian ditch rehabilitation.

Status of State Contribution. On June 27, 2011, the State and the federal government, through the Secretary of the Interior, executed a Cost Share Agreement for the State’s cost share obligation. Pursuant to the terms of the agreement, beginning October 1, 2016, New Mexico’s remaining cost share balance was indexed for inflation. However, Reclamation has represented that it will not index the State’s cost share balance if New Mexico can demonstrate receipt of appropriations prior to October 1, 2016 that have been allocated to the Navajo settlement. The New Mexico Interstate Stream Commission has submitted the

necessary documentation to Reclamation and has been waiting for an official response waiving the indexing requirement.

Based on New Mexico's total cash contributions toward the Project and conservative estimates of anticipated cost share credit, the State has met its cost share obligation:

- a) Cash contributions: New Mexico has made cash contributions totaling \$13.6 million toward the Project from appropriations made to the Indian Water Rights Settlement Fund ("Fund").
- b) Cost share credit: In addition to the \$13.6 million cash contributions from the Fund, Reclamation has granted the State a cost share credit of \$18.6 million. Reclamation also has preliminarily approved an additional \$8.8 million cost share credit submitted by the State, bringing the State's total contributions toward elements of the Project to \$41.0 million.
- c) Remaining appropriations for which the State will seek cost share credit total approximately \$11.1 million. Once these appropriations are fully expended towards elements of the Project, the State will submit cost share credit requests to Reclamation for approval. It is conservatively anticipated that the State may receive up to 91% credit for these appropriations, or \$10.1 million, which will bring the total State contributions to \$51.1 million. No additional funding is being requested at this time and the State's total cost contributions of \$50 million to the Project will meet the State's funding obligation under the Navajo Nation Water Rights Settlement.

Implementation. Reclamation has the overall responsibility for the design and construction of the project, which consists of two separate branches, the Cutter and San Juan Laterals; approximately 300 miles of pipeline; two water treatment plants; and several pumping plants and storage tanks. The work being completed by the City and Navajo Nation is funded through financial assistance agreements between the two entities and Reclamation. Final design work, design data collection, environmental and cultural resources permitting, and right-of-way acquisition continues on those reaches of the Project that are not yet under construction.

The Cutter Lateral pipeline and treatment plant, which includes the southern portion of the Jicarilla Apache Nation, have been constructed and were pre-commissioned in the summer of 2020. Construction of the San Juan Lateral is on hold because Reclamation estimates the costs to increase to approximately \$1.8 billion, with a budget shortfall of \$330 million in 2020 dollars. Reclamation held a multi-day Value Planning Session in November 2020 with the goal of trimming some of the estimated cost overruns, and to consider the pros and cons of a river diversion at the San Juan Generating Station, with its reservoir, rather than at Hogback. At its September 21, 2021, public meeting, the New Mexico Interstate Stream Commission ("ISC")

voted to allow the ISC Director to sign Project Issue Notice (“PIN”) No. 047 dated August 16, 2021, thereby concurring with the U.S. Bureau of Reclamation’s recommendation to select the San Juan Generating Station Water Conveyance Facilities as the intake location of the San Juan Lateral. The Commission directed the ISC Director to coordinate with the Department of the Interior and the Navajo Nation regarding extension of the deadline for completion of the Project, if one is necessary. Any extension of the Project construction completion deadline pursuant to Section 10701(e)(1)(B) of the Settlement Act (P.L. 111-11) requires the approval of the Secretary of the Interior, the Navajo Nation, and the Commission.

B. *Aamodt* Settlement with the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso

On May 3, 2006, the State of New Mexico, the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso, the County of Santa Fe and the City of Santa Fe executed a Settlement Agreement to resolve the claims of the four Pueblos to the use of waters in the Nambé-Pojoaque-Tesuque stream system (“NPT”), a tributary of the Rio Grande in north central New Mexico, in *State of New Mexico ex rel. State Engineer v. Aamodt, et al.*, U.S.D.C. No. 66cv06639 WJ/WPL. While most of the Pueblos’ water rights are adjudicated with senior priorities, the Settlement Agreement provides protections for non-Pueblo junior water rights in exchange for a regional water system to be constructed by the United States to serve the Pueblos and non-Pueblo residents of the NPT. The United States has acquired 2,381 acre-feet per year (AFY) of water to be delivered to the Pueblos, including 1,079 AFY of San Juan Chama Project water, reducing the effect of the Pueblos’ senior water rights on existing water supplies in the basin.

Construction of the system is being funded by the United States, the State, Santa Fe County, and the Pueblos. The Pojoaque Basin Regional Water Authority will operate the system. The portion of the system that will serve non-Pueblo residents in the basin will be paid for by the State and the County and was originally projected to deliver up to about 1,500 AFY. In addition to increasing the amount of water available in the NPT, the settlement agreement limits the amount of the Pueblos’ water rights that can be exercised with a senior priority, thereby protecting existing junior water rights in the NPT from possible curtailment in times of shortage.

- 1) Key benchmarks for implementation of the *Aamodt* Settlement include:

Federal Legislation. Federal legislation approving the Settlement Agreement was enacted into law on December 8, 2010, when President Barack Obama signed the *Claims Resolution Act of 2010*, Title VI of which is the *Aamodt Litigation Settlement Act*. P.L. No. 111-291, § 601, et seq. (hereafter “*Aamodt* Settlement Act”).

Conformed Settlement Agreement. The *Aamodt* Settlement Act authorized the Secretary of the Interior to execute, on behalf of the United States, a revised settlement agreement consistent with the Act (“conformed Settlement Agreement”) with the State of New Mexico and the other settlement parties. The conformed Settlement Agreement was executed by the parties in March 2013.

Conformed Cost Sharing and System Integration Agreement. The Cost Sharing and System Integration Agreement (“Cost Sharing Agreement”) was also executed by the settlement parties in March 2013. The Cost Sharing Agreement sets out the funding obligations of the governmental parties to the settlement and establishes the fundamental operational agreements among the parties that will be operating the regional water system.

Funding Agreement. On July 29, 2014 the State and Reclamation executed a funding agreement setting out the terms and conditions for the State’s payment of its share of costs for planning, design and construction of the regional water system. The future value of the estimated outstanding State obligation for construction is \$62.8 million indexed to October 2018 price levels. But *see* “Settlement Project Costs” discussion, below. Although the State is not obligated to make payments until construction begins, the State, in its discretion, may make accelerated contributions and prepayments prior to commencement of construction. However, the State’s obligation continues to be indexed for inflation until the State’s portion of the contributions have been expended.

Both the Cost Sharing Agreement and the funding agreement were amended in 2020 to reflect additional funding and other provisions contained in the 611(g) Agreement, executed in September 2019. *See* Settlement Project Costs, below.

San Juan Chama Project Water. The *Aamodt* Settlement Act authorizes the allocation of 1,079 (AFY) of water supply contracts from the San Juan Chama Project to fulfill water supply needs for the *Aamodt* settlement. In January 2016, the Pueblos and Reclamation executed a contract for the full 1,079 AFY of San Juan Chama Project water. In July and August 2017, the State Engineer issued permits to the Regional Water Authority for the diversion and consumptive use of 2,381 AFY, including the 1,079 AFY of San Juan Chama Project water.

Court Approval. The Court entered the Partial Final Judgment and Decree adjudicating the Pueblos’ water rights on March 23, 2016, and the Final Judgment and Decree adjudicating all water rights (both Pueblo and Non-Indian) in the *Aamodt* adjudication on July 14, 2017, bringing 51 years of litigation to a final conclusion. On September 7, 2017 a group of Defendants-Objectors filed a Notice of Appeal appealing the decrees and the decision approving the Settlement Agreement to the United States Court of Appeals for the Tenth Circuit. After hearing oral argument in Denver in May 2018, the Tenth Circuit denied the appeal for lack of standing in November 2018.

State Engineer Administration. On September 12, 2017, the State Engineer promulgated administrative Rules for the Nambe-Pojoaque-Tesuque Water Master District: Active Water Resource Management, and on October 3, 2017 issued a Metering Order for metering of all wells in the NPT Water Master District. The deadline for installation was subsequently extended to October 3, 2019.

On September 15, 2017, the Secretary of the Interior published Notice in the Federal Register that all the conditions precedent in the *Aamodt* Settlement Act had been met and that the Settlement Agreement was effective as of that date.

On September 11, 2019, the Secretary issued the Record of Decision for the Final EIS for the Regional Water System.

2) Funding for the Regional Water System

Settlement Project Costs. The *Aamodt* Settlement Act calls for the United States to build the regional water system, except for individual non-Pueblo service connection lines. The portion of the system that will serve the Pueblos will be paid for entirely by the United States and it will deliver about 2,500 AFY to them.

Original Authorized Funding. With indexing to 2018 as provided for in the Cost Sharing Agreement, the total amount of federal funding currently authorized to construct the Project under the 2010 *Aamodt* Litigation Settlement Act is \$139.8 million, the State's allocation (exclusive of service connection costs) is \$62.8 million, and the County's allocation (exclusive of service connection costs) is \$10.4 million, for a total of \$213 million.

Increased Costs and 611(g) Agreement. In July 2018 the Secretary determined that the costs of the construction would exceed the authorized amounts, and initiated negotiations with the parties to the Cost Sharing Agreement under Section 611(g) of the Settlement Act for an agreement to identify cost-saving measures to allow the Regional Water System to be completed. The resulting 611(g) Agreement, executed in September 2019, adopted a Consensus Design Concept for the Regional Water System that reduced the scope and size of the system and changed the definition of substantial completion; allocated the additional costs between the parties; and provided for the commencement of limited construction by January 2020.

Additional contributions. In the 611(g) Agreement the United States agreed to contribute an additional \$137 million in 2018 dollars, contingent upon Congress amending the Settlement Act. On April 5, 2019, Governor Lujan Grisham signed legislation appropriating \$20 million to the Indian Water Rights Settlement Fund (\$2 million in addition to the \$18 million for the State's scheduled cost-share contribution) with the specific provision that this \$20 million appropriated in 2019 "constitutes approximately twenty percent of the state's contribution toward the *Aamodt* settlement to pay both the state's current cost-share obligation and additional

amounts necessary for the state's share of non-federal cost overruns.” Accordingly, the State’s contribution in the 611(g) Agreement is an additional amount that, after indexing of the State’s current obligation in the Cost-Sharing Agreement, provides a combined total of \$104.5 million for the State’s contribution. The County is contributing an additional \$4 million in 2018 dollars and deferring \$24 million.

Under the 611(g) Agreement, the combined funding for the project is to be provided as follows: \$276.8 million by the United States, \$104.5 million by the State, and \$38.4 million by Santa Fe County. The non-federal funding is to pay for the non-Pueblo portion of the proposed regional water system. The \$406.3 million construction cost number does not include the water rights acquisition (County responsibility), service connections, or mitigation costs required by the settlement.

Federal Contribution. Between federal fiscal years 2012 and 2020, Congress has appropriated to and provided direct funding for the Aamodt Settlement totaling approximately \$135.5 million. Additionally, the 2022 President’s budget recommendation for the Settlement is \$23.0 million. In June 2019, New Mexico Reps. Ben Ray Luján, Debra Haaland, and Xochitl Torres Small introduced legislation to provide the necessary additional federal funding and extend the timeline for construction of the regional water system. Final amendments were included in the FY 2021 Consolidated Appropriations Act, signed by the President in December 2020, increasing federal funding from \$106.4 million to \$243.4 million, approving the 611(g) Agreement, and extending the deadline for substantial completion of the system from 2024 to June 2028.

State Contribution. The *Aamodt* Settlement Act provides for a State contribution to the non-Pueblo portion of the settlement of \$50 million, plus increases based on the Bureau of Reclamation’s construction cost index. Under the 611(g) Agreement, the State agreed to provide up to \$104.5 million both for the State's current cost-share obligation and additional amounts necessary for the State's share of non-federal cost overruns.

Status of State Contribution. On September 26, 2014, the State made a contribution of \$15 million toward its share of costs for the regional water system under the Cost Sharing Agreement. The Legislature appropriated \$9 million to the Fund in 2018, \$20 million in 2019, \$9 million in 2020 and \$9M again in 2021. The remaining state obligation is \$42.5 million.

Implementation The Bureau of Reclamation responsible for the construction of the regional water system. It began limited construction of Phase 1 of the regional water system under existing authorizations in May 2020 and is proceeding to complete construction of Phase 1. Reclamation is also moving forward with design of Phase 2, which is estimated to be completed in the year 2026 to comply with the extended substantial completion deadline of 2028. Phase 2 is being designed by Reclamation’s

Technical Service Center in Denver (TSC), with engineering oversight performed by Reclamation's Albuquerque Area Office. Phase 2 has been broken into three design stages (Stage 1 – Nambé, Stage 2 – South Pojoaque & Tesuque, Stage 3 – Bishop's Lodge). The Stage 1 design package is estimated to be completed in March 2022 and out for bid by June 2022. The subsequent design packages for Stage 2 & 3 are estimated to be complete by 2026.

C. Taos Pueblo Settlement

On May 30, 2006, at a signing ceremony at Taos Pueblo, the Pueblo, the State of New Mexico, and Taos-area water right owning parties executed a settlement agreement to resolve the claims of Taos Pueblo to the use of waters in the Rio Pueblo de Taos and Rio Hondo stream systems, tributaries of the Rio Grande. The Taos Pueblo Water Rights Settlement Agreement was developed through multi-party negotiations initiated in 1989 between the Taos Pueblo, the State, the Taos Valley Acequia Association (and its 55 member acequias), the Town of Taos, El Prado Water and Sanitation District (EPWSD), and the 12 Taos area mutual domestic water consumer associations. The Taos Pueblo Settlement Agreement settles Taos Pueblo's water rights claims and expedites the final adjudication of non-Pueblo claims to water rights in the ongoing Taos area water rights adjudication suit, *State of New Mexico ex rel. State Engineer v. Abeyta, et al.*, U.S.D.C. No. 69cv07896 MV and 69cv7939 MV, Consolidated.

In exchange for adjudication of the Pueblo's water rights with senior priorities, the Settlement Agreement provides funding for new production wells and other water infrastructure improvements and mitigation mechanisms for offsetting surface water depletion effects of groundwater pumping ("Mutual Benefits Projects"); preserves existing acequia water uses and historic water sharing arrangements between the Pueblo and non-Pueblo acequias on the Rio Lucero and Rio Pueblo; and authorizes the United States to allocate 2,621 AFY of water supply contracts from the San Juan Chama Project to the Pueblo, the Town of Taos, and EPWSD.

- 1) Key benchmarks for implementation of the Taos Pueblo Settlement include:

Federal Legislation. Federal legislation approving the Settlement Agreement was enacted into law on December 8, 2010, when President Barack Obama signed the *Claims Resolution Act of 2010*, Title V of which is the *Taos Pueblo Indian Water Rights Settlement Act*. P.L. No. 111-291, § 501, et seq. (hereafter "Taos Settlement Act").

Conformed Settlement Agreement. The Taos Settlement Act authorized the Secretary of the Interior to execute, on behalf of the United States, a revised settlement agreement consistent with the Act ("conformed Settlement Agreement") which was executed by all the settlement parties in January 2013.

San Juan-Chama Project Water. The Taos Settlement Act authorizes the allocation of 2,621 AFY of water supply contracts from the San Juan Chama Project to fulfill

water supply needs for the settlement. In 2012, contracts were executed by Reclamation and various settlement parties for the full 2,621 AFY allocation.

Court Approval. The Taos Settlement Act set March 31, 2017 as the deadline for the court to enter the Partial Final Judgment and Decree. The Taos adjudication court conducted an expedited *inter se* proceeding to determine whether to approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree. On February 11, 2016 the adjudication Court entered the Partial Final Judgment and Decree adjudicating the Pueblo's water rights in accordance with the conformed Settlement Agreement. No notice of appeal was filed.

On October 7, 2016, the Secretary of the Interior published Notice in the Federal Register that all the conditions precedent in the Taos Settlement Act had been met and that the Settlement Agreement was effective as of that date.

2) Funding for the Pueblo Water Development Fund and Mutual Benefit Projects

Settlement Project Costs. According to the terms of the Taos Settlement Act, the total cost of the Settlement is \$144 million. Of that amount, \$88 million of federal funds will be allocated to the Pueblo Water Development Fund, \$48 million (\$36 million federal, \$12 million State) will fund the Mutual Benefit Projects, \$1.15 million will be deposited by the State into a sinking fund for operations, maintenance and replacement for the Mutual Benefits Projects, and \$6.9 million will be contributed by the State to the non-Pueblo settlement parties for acquisition of water rights. Between federal fiscal years 2012 and 2015, Congress appropriated to and provided direct funding for the Taos Settlement totaling approximately \$145.7 million.

State Contribution. The Taos Settlement Act required the State to contribute the following: \$12 million of the non-Pueblo portion of planning, design and construction of the Mutual Benefits Projects; \$6.9 million for the acquisition of water rights by the non-Pueblo parties; and, \$1.15 million for the operation, maintenance and replacement for the Mutual Benefits Projects. The State's total required contribution of \$20.05 million was not subject to indexing for inflation.

Funding Agreement. On January 28, 2016 the State, through the New Mexico Interstate Stream Commission and the Department of Finance and Administration, executed a Contributed Funds Agreement with Reclamation to provide the State's share of funding for the Mutual Benefits Projects.

Status of State Contribution. On February 29, 2012, the Interstate Stream Commission, by resolution, allocated \$5 million dollars to the Taos Pueblo Settlement from the Indian Water Rights Settlement Fund. This was in addition to the Commission's allocation in 2011 of \$1.4 million for the Taos Pueblo Settlement (see below) and \$915,000 in earlier direct appropriations to some of the Settlement parties. The \$5 million allocation was part of a larger, \$15 million appropriation made by the Legislature to the Fund during the 2011 special New Mexico Legislative

Session. The State, through the Interstate Stream Commission, has been making funds available to the non-Pueblo settlement parties from the Indian Water Rights Settlement Fund for water rights acquisition (up to \$6.9 million per the terms of the Settlement). In its 2015 special session, the New Mexico Legislature appropriated \$12.7 million to the Fund, which the Interstate Stream Commission allocated in July 2015 to the Taos Settlement. This appropriation, combined with \$35,000 allocated to the Settlement from the Commission's operating budget, completed the State's funding obligations under the Taos Settlement.

2. Appropriations and distribution of monies from the Indian Water Rights Settlement Fund – § 72-1-11 (B)(2)

In 2009, the Board of Finance issued severance tax bonds (STB) in the amount of \$10 million for deposit in the Indian Water Rights Settlement Fund. The Interstate Stream Commission allocated \$1.4 million of this total to the Taos non-Pueblo parties for water rights acquisition, and allocated the remaining \$8.6 million for implementation of the Navajo Settlement.

At the special session in 2011, the Legislature appropriated an additional \$15 million in STB authorization to the Fund. On December 1, 2011, the ISC certified to the Board of Finance the sale of the entire \$15 million bond authorization for the December 2011 sale. The Interstate Stream Commission subsequently allocated the \$15 million appropriation in three equal amounts of \$5 million each to the Navajo, *Aamodt* and Taos Pueblo Settlements.

During its 2013 regular session, the Legislature appropriated an additional \$10 million in STB authorization to the Fund. In April 2014, the Interstate Stream Commission certified to the Board of Finance the sale of the entire \$10 million bond authorization. The Commission subsequently allocated the \$10 million to satisfy the state's obligation under the *Aamodt* Settlement.

During its 2015 special session, the Legislature appropriated \$12.7 million to the Fund from several sources, including STBs, General Fund, the Tribal Infrastructure Project Fund and the Water Project Fund. On July 22, 2015, the Interstate Stream Commission allocated the entire \$12.7 million to the Taos Settlement to complete the State's cost share obligation under the Settlement.

During the 2018 regular session, the Legislature appropriated \$6.175 million in STBs and \$2.825 million from the Water Projects Fund to the Fund for a total of \$9 million. In April 2018, the Interstate Stream Commission certified to the Board of Finance the sale of the entire \$6.175 million bond authorization. These funds are being allocated to the State's cost share under the *Aamodt* Settlement.

During the 2019 regular session, the Legislature appropriated \$17.0 million from the General Fund and \$3.0 million from the Water Projects Fund to the Indian Water Rights Settlement Fund for a total of \$20 million. During the 2020 regular session, the Legislature

appropriated \$9.0 million in STB's to the Indian Water Rights Settlement Fund, and another \$9.0 million in the 2021 regular session. The Commission is in the process of allocating this funding to Reclamation for the State's cost share of the construction of the regional water system under the *Aamodt* Settlement.

3. Funding Recommendation – § 72-1-11 (B)(3)

The Office of the State Engineer requested funding in the FY23 Infrastructure Capital Improvement Plan (ICIP) in the amount of \$9 million for FY23 and will request funding according to the amounts listed in the new funding agreement for the next five fiscal years to meet the State's cost share obligation for the Aamodt settlement. Appropriation of these funds is especially critical for the State's timely contribution to construction of the project, which began on May 15, 2020.

As the funding is appropriated towards the outstanding State cost share, and the obligation is reduced, the ISC will make appropriate adjustments in future ICIP requests.

IWRS Federal, State and Local Funds
Funding in thousands

	Total Settlement Costs			Settlement Totals	Federal Appropriations			Initial Total State Required Contribution - Non-Pueblo			State Totals (not indexed)	Current Estimated Outstanding State Obligation	Current Estimated Outstanding Local Obligation Project Construct
	Project Construct	Water Rights Acquisition	Other Settlement Costs		Appropriated & Mandatory Funding to date	FY2022 Budget Rec.	Project Construct	Water Rights Acquisition	Other Settlement Costs	Project Construct			
Aamodt	\$ 405,300.0 ¹	\$ 5,400.0 ²	\$ 18,000.0 ³	\$ 429,703.0	\$ 135,559.0 32%	\$ 23,000.0 37% ⁴	\$ 100,000.0	\$ 4,500.0	\$ 104,500.0 ⁵	\$ 42,500.0	\$ 38,400.0 ⁶		
Taos	\$ 48,000.0	\$ 20,000.0	\$ 76,000.0	\$ 144,000.0	\$ 145,741.0 101%	\$ - 101%	\$ 12,000.0	\$ 1,150.0	\$ 20,050.0 ⁷	\$ -	\$ -		
Navajo	\$ 1,705,174.0 ⁸	\$ 103,000.0 ⁹	\$ 1,808,174.0	\$ 1,808,174.0	\$ 912,105.9 50%	\$ 56,342.0 54%	\$ 50,000.0 ¹⁰	\$ 10,000.0 ¹¹	\$ 60,000.0	\$ -	\$ 54,321.0		
Total	\$ 2,159,474.0	\$ 25,400.0	\$ 197,000.0	\$ 2,381,877.0	\$ 1,193,405.9	\$ 79,342.0	\$ 162,000.0	\$ 15,650.0	\$ 184,550.0 ¹²	\$ 42,500.0	\$ 92,721.0		

Notes:

- 1 Reclamations engineering indices are as of October 2018 price levels
- 2 Other settlement costs include service connections and mitigation costs
- 3 The NM Legislature has authorized up to \$104.5M. The 611G agreement with BOR was approved on 10/2/2020.
- 4 The percentage represents the Federal amount appropriated & the President's current budget recommendation of the total respective Settlement costs was approved on 8/26/2020 and the revised funding agreement with BOR was approved on 9/17/2019, the revised cost-sharing & system integration agreement was approved on 10/2/2020.
- 5 Total state contribution requirement was met in the 2015 legislation to include assuming credit for past appropriations in the amount of \$915k
- 6 Reclamations engineering indices are as of October 2018 price levels
- 7 Other settlement costs includes \$30M for Conjunctive Use Wells + \$23M for SJ River Irrigation Project Improvements & \$50M for the Trust Fund
- 8 To date, approximately \$52M has been appropriated through WTB grants and capital outlay appropriations for the Settlement projects, but will not be approved by the Bureau until the appropriations are fully expended towards the Settlement projects and officially requested to be approved. It is anticipated that the State will receive approximately 75% credit of the future expenditures that have not received final approval or have been preliminary approved
- 9 Non-mandatory cost for Non-Indian ditch rehabilitation. The state provided capital outlay appropriations to various ditches in the area in 2019 and 2020.
- 10 Appropriations to date to the IWR Fund is \$94.7 M (\$10M (2009)+\$15M (2011) + \$10M (2013) + \$12.7M (2015)+ \$9M (2018)+\$20M (2019)+\$9M (2020)+\$9M (2021)
- 11 Requested \$9M for FY2022 in the Infrastructure Capital Improvement Plan