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Date: October 28, 2024

To: Sen. George K. Muñoz, Chair, Legislative Finance Committee
Rep. D. Wonda, Johnson, Chair, Interim Indian Affairs Committee
Sen. Shannon D. Pinto, Vice Chair, Interim Indian Affairs Committee
Rep. Matthew McQueen, Chair, Interim Water and Natural Resources Committee
Sen. Elizabeth K. Stefanics, Vice Chair, Interim Water and Natural Resources Committee

From: Elizabeth K. Anderson, P.E., State Engineer 
Hannah Riseley-White, Director, Interstate Stream Commission 
Nat Chakeres, General Counsel to the State Engineer 

Re: 2024 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 2024.

I. Indian Water Rights Settlements – Status and Distribution of Funds § 72-1-11(B) (1) & (2)

- A. New Mexico presently has three congressionally approved Indian water rights settlements in various stages of implementation (see Table 1):
1. the Navajo Nation Water Rights settlement in the San Juan River adjudication;
 2. the settlement with the Pueblos of Nambé, Pojoaque, Tesuque, and San Ildefonso in the *Aamodt* adjudication; and
 3. the Taos Pueblo Water Rights settlement in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication.
- B. There are currently five finalized settlement agreements that are seeking congressional approval:
1. the settlement of the Pueblos of Jemez and Zia’s water rights in the Rio Jemez River Basin;
 2. the settlement of the Pueblos of Acoma and Laguna’s water rights in the Rio San José;
 3. the settlement of Navajo Nation’s water rights in the Rio San José;
 4. the settlement of Ohkay Owingeh’s water rights in the Rio Chama; and
 5. the settlement of the Zuni Tribe’s water rights in the Zuni River Basin.
- C. The State of New Mexico is currently in active negotiations or assessments of claims for three settlements:
1. the water rights of Ohkay Owingeh and the Pueblo of Santa Clara in the Rio Santa Cruz and Truchas Stream System;
 2. the water rights of the Ute Mountain Ute Tribe in the San Juan River Basin; and
 3. the water rights of the Pueblos of Cochiti, San Felipe, Santo Domingo/Kewa, Sandia, Santa Ana, and Isleta in the Middle Rio Grande.

Copies of the three fully executed settlement agreements and related documents can be found at: https://www.ose.nm.gov/Legal/settlements_IWR.php Construction work and other activities are occurring for each of the settlement agreements as described below.

A. Congressionally Approved Settlements in Implementation Phase

1. Navajo Nation San Juan River Basin Water Rights Settlement

a. Status of Settlement

Summary. 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- communities the San Juan River Basin. One of the primary elements of the settlement is the Northwestern New Mexico Rural Water Supply Project (more commonly known as the “Navajo-Gallup Water Supply Project” or “Project” herein) that includes a pipeline currently under construction by the Bureau of Reclamation (“Reclamation”) and a water treatment plant currently in operation. This project will provide a long-term, sustainable water supply of 22,650 AFY of clean drinking water to 43 Navajo

Chapters in northwestern New Mexico, and municipal and domestic uses to the City of Gallup and the southwestern portion of the Jicarilla Apache Nation.

The completion deadline for the Navajo-Gallup Water Supply Project is being extended to December 31, 2029, through an agreement between the United States, Navajo Nation, and State of New Mexico Interstate Stream Commission. In 2023, an amendment to the original legislation (S.1898/H.R.3977) was introduced and in the Senate Indian Affairs Committee. On July 23, 2024, the House Natural Resources Subcommittee on Water, Wildlife and Fisheries and is currently awaiting final Congressional approval.

Specifically, this amendment extends deadlines and otherwise revises the Navajo- Gallup Water Supply Project first authorized by the Omnibus Public Land Management Act of 2009, which settled the Navajo Nation's water rights in the San Juan Basin of New Mexico. The bill allows for additional project service areas, including approval for the Navajo Nation to expand the project service area to additional Navajo communities. Additionally, the bill directs the Department of the Interior to take certain land into trust for the benefit of the Navajo Nation and establishes two new trust funds: the Navajo Nation Operations, Maintenance, and Replacement Trust Fund; and the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund. There is no additional state cost-share for this amendment.

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. The Cutter Lateral is completed and is operational as summarized below; the San Juan Lateral is not. Infrastructure for the Project includes approximately 300 miles of pipeline; two water treatment plants; and several pumping plants and storage tanks. Work is also being done by the City and Navajo Nation funded through financial assistance agreements between the two entities and Reclamation.

Project Status. The Cutter Lateral pipeline and treatment plant, which includes the southern portion of the Jicarilla Apache Nation, have been constructed and were commissioned in 2021. Operations and maintenance responsibility on the Reclamation-owned reaches of the Cutter Lateral was transferred to the Navajo Nation and the Navajo Tribal Utility Authority in June 2022.

Construction of the San Juan Lateral is about 50% complete with significant work. 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. However, there is a sizeable budget shortfall, in excess of \$600 million in 2022 dollars, and this budget shortfall will need to be overcome to ensure successful completion of the San Juan Lateral.

b. Funding for Navajo-Gallup Water Supply Project

Federal Contribution. The original federal legislation (Omnibus Public Land Management Act of 2009) authorized the appropriation of \$870,000,000 to Reclamation to plan, design and construct the Navajo-Gallup Water Supply Project. The total estimated cost has now increased to approximately \$1.996 billion based on Reclamation's April 2022 working cost estimate for the Project.

For federal fiscal years 2010 to 2023, Congress appropriated to and provided funding for the Navajo-Gallup Water Supply Project totaling \$1.331 billion. For fiscal year 2024, \$164 million was provided through the Indian Water Rights Completion Fund.

State Contribution. The 2009 settlement legislation required 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").

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. On October 13, 2022, Reclamation approved the State's final cost share credit request for Cutter Lateral phases 2 and 3 of the Project. With this approval, the State of New Mexico's \$50 million cost share obligation towards the Project has been fully met and formally recognized by the United States.

Supplemental Funding. The Interstate Stream Commission ("ISC") has executed funding agreements with the City of Gallup to disburse to the City an \$8 million special appropriation approved in 2022 by the New Mexico Legislature to help fund construction of new water wells that will help the City with its water supply pending completion of the San Juan Lateral.

In 2023, Navajo Nation submitted an amendment to the 2009 Act (S. 1898/H.R. 3977) to increase the time allotted for completion of the project and to extend the project to reach more communities. The amendment was introduced in 2023 and reported out of the Senate Indian Affairs Committee favorably on November 15, 2023. The House Committee Natural Resources Subcommittee on Wildlife, Fisheries and Water heard H.R. 3977 on July 23, 2024.

In 2024, the *Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act* (S.3496/H.R.659) was heard in both the House and Senate, but is still awaiting final approval. This bill will correct an interest miscalculation by the federal government and Navajo Nation will receive \$6,357,674.46 for this settlement. There is no state contribution for this bill.

2. **Aamodt Settlement of Pojoaque River Basin Water Rights for the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso**

a. **Status of Settlement**

Summary. 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 on-going and 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.

Implementation. On September 11, 2019, the Secretary issued the Record of Decision for the Final EIS for the Regional Water System. Reclamation began limited construction in May 2020 and has completed construction of that Phase. and Phase 2 is being constructed at this time. The Phase 1 and construction work consists of installing collector well systems near river and associated pipelines as well as site preparation for the water treatment plant. The work can be seen when driving from Pojoaque to Los Alamos at the turnoff for El Rancho and north of the river bridge over the Rio Grande. The water treatment plant for the project, which will be located near El Rancho, is anticipated to be completed near the end of 2025.

b. **Funding of Settlements**

Project Costs and Federal Contribution. The 2010 *Aamodt* Litigation Settlement Act (P.L. 111-291) 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.

The total funding for the Settlement and the time frame for expending it has increased a number of times. The 2021 Annual Report provides background information on the cost share and construction timeline.

Under the most recent agreement, the 611(g) Agreement, the combined funding for the project is \$406.3 million and 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. Accordingly, the State's contribution in the 611(g) Agreement is an additional amount that, after indexing of the State's current obligation in a 2018 Cost-Sharing Agreement, provides the combined State total of \$104.5 million. The County is contributing an additional \$4 million in 2018 dollars and deferring \$24 million.

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.

Reclamation has informed the settlement parties in 2024 that, due to greater than anticipated cost increases, there may be the need for additional funding beyond the amounts that have been appropriated. The precise scope of the potential funding shortfall has not been determined as of the date of this report.

Status of State Contribution. As of September 30, 2024, the State has made a total contribution of \$86.2 million toward its share of costs for the regional water system under the Cost Sharing Agreement. The Legislature has appropriated all of the remaining funding needed to meet the State cost share. The remaining state obligation is \$0.00.

Supplemental Funding. In 2024, the *Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act* (S. 3496/H.R.659) was heard in both the House and Senate. This bill will correct an interest miscalculation by the federal government and the Pueblos of Nambé, Pojoaque,

Tesuque, and San Ildefonso will receive \$4,314,709.18 for this settlement. There is no State contribution for this bill.

3. Taos Pueblo Abeyta Water Rights Settlement

a. Status of Settlement

Summary. 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.

Implementation. The Rio Grande del Rancho Mitigation Well site moved from its original location (which was about one mile away from the discharge point next to the domestic water storage tanks) to approximately five miles from the discharge point. The Llano Quemado Mutual Domestic Water Consumer Association has attained the well site, contracted a geohydrologist and professional engineer, and planned the preliminary design for the mitigation well. It has published a request for proposals and has selected a well driller. The well driller has constructed the drilling platform and drilling of the test well will commence in 2024. To complete the Rio Grande del Rancho Mitigation Well Llano Quemado is seeking an additional \$1.6 million from the State, in addition to the \$1.76 million already funded by the Abeyta Settlement. The OSE has committed to funding this project from the special appropriation awarded during the 2024 legislative session.

The Acequia del Monte del Rio Chiquito and the Acquia Madre del Rio Chiquito will need to move the location of the Mitigation Well E because the

location under the agreement is not advisable according to the new studies done on the south end of Taos Valley. They are currently finalizing negotiations to purchase a well site that has been recommended by the geohydrologist. Acequia del Monte has estimated that they will have enough money from the original Settlement funding to drill a well, provide a pump, and assure that the well produces sufficient quantity and quality of water to meet the Settlement requirements. However, there is not enough funding to provide supporting infrastructure or the proposed pipeline to the point of discharge. They will need \$1,800,000 to plan, design, construct and equip a mitigation well for the acequia del Monte del Rio Chiquito in Taos County. The OSE has committed to funding this project from the special appropriation awarded during the 2024 legislative session.

El Prado Water and Sanitation District (“EPWSD) is still short of funding to drill and build the infrastructure for the Rio Grande Well Project required under the Settlement. The State of New Mexico has committed an additional \$7,275,000.00 to complete the Midway Wells project and all the associated infrastructure necessary to bring these 2 wells online and connected to EPWSD's current water system. This phase of the project will be brought online this summer. In FY2024, EPWSD received \$5.075 million in capital outlay and the OSE has committed to another \$2.2 million from the special appropriation awarded during the 2024 legislative session.

b. Funding for the Pueblo Water Development Fund and Mutual Benefit Projects

Settlement Project Costs. According to the terms of the Taos Pueblo Indian Water Rights 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. (Public Law 111-291, Title V of the Claims Resolution Act of 2010).

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.

Status of State Contribution. The State funding obligation under the Taos Settlement has been met. On February 29, 2012, the ISC, for the State, allocated \$5 million 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 and \$915,000 in earlier direct appropriations to some of the Settlement parties. The ISC has also 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 ISC 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.

On January 28, 2016, the State, through the ISC 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.

Supplemental Funding. In 2024, the *Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act* (S. 3496/H.R.659) was heard in both the House and Senate. This bill will correct an interest miscalculation by the federal government and Taos Pueblo will receive \$7,794,297.52 for this settlement. There is no State contribution for this bill.

The settlement parties have indicated that the amounts appropriated by the State and Federal Government are insufficient to complete the Mutual Benefit Projects required under the Agreement. The settlement parties have presented revised cost estimates and a draft bill to be reviewed by the Department of Interior. This will likely result in an amendment to the 2010 bill to authorize additional federal funding, as well as a request for additional state funding. The proposed funding for this bill is \$281,230,408 in total, of which the State would be obligated to pay 25% of these costs. The Department of Interior has not yet agreed to support this bill, and discussions are ongoing.

**Table 1. Indian Water Rights Settlement Fund
Federal, State and Local Funds
(in Millions of Dollars)**

Settlement Agreement	Project-Based Settlement Costs	Federal Appropriations	State Funding Appropriated for Non-Tribal Settlement Costs	Current Estimated Outstanding Local Funding Obligation	Total Funding Appropriated to Date	Outstanding State Obligation
The Pueblos of Pojoaque, Tesuque, Nambe, San Ildefonso (<i>Aamodt</i>) Settlement Agreement	\$430	\$140	\$105	\$38	\$282	\$0
Taos Water Rights Settlement Agreement	\$144	\$146	\$20		\$166	\$0
Navajo Nation San Juan Basin Settlement Agreement	\$2,001	\$1,195	\$60	\$54	\$1,309	\$0
Total:	\$2,575	\$1,480	\$185	\$93	\$1,757	\$0

B. Finalized Settlements Seeking Congressional Approval

All of the recently completed settlements (Rio Jemez, Rio San José, Rio Chama, and Zuni River Basin) must still be approved by Congress. Once that occurs, the United States will be a party to the settlements as well.

In addition, the settlements are contingent upon the appropriation of the necessary funds by Congress and the New Mexico Legislature. While none of these settlements includes immediate outstanding financial obligations from the State of New Mexico, the current budget surplus (and the possibility that multiple settlements could be approved simultaneously) means that this year presents a good opportunity to make a sizeable contribution to the Indian Water Rights Settlement Fund. The OSE and ISC’s funding recommendation is set forth below.

1. The Pueblos of Jemez and Zia Rio Jemez Water Rights Settlement Agreement

a. Summary of Settlement

On June 7, 2022, the State signed a water rights settlement that will settle the claims of Jemez and Zia Pueblos on the Rio Jemez stream system. The parties to the Rio Jemez settlement are Jemez Pueblo, Zia Pueblo, the State, the Jemez River Basin Water Users Coalition, and the City of Rio Rancho.

In 2022, *The Pueblos of Jemez and Zia Rio Jemez Water Rights Settlement Act* was introduced in both branches of Congress and received a hearing in the Senate Indian Affairs Committee. The bill was combined with the Rio San José legislation in 2023 and reintroduced as the *Rio San José and Rio Jemez Water Settlements Act of 2023* and reported favorably out of the Senate Indian Affairs Committee. The House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries hearing held July 23, 2024

The Rio Jemez Settlement contemplates federal funding of \$290 million to Jemez Pueblo and \$200 million to Zia Pueblo, to be placed in settlement funds for each Pueblo, for planning, permitting, designing, engineering, constructing, and operating etc., a water supply augmentation project, as well as other water infrastructure and watershed protection costs. These amounts are indexed for inflation and are not subject to a state cost share. This settlement is a fund-based, and not a project-based settlement.

b. Funding

In the Rio Jemez settlement, the State cost share of the funding totals \$20,059,000 and would be disbursed as follows (all amounts indexed for inflation):

- \$ 3.4 million for capital and operating expenses for the San Ysidro Community Ditch Association, indexed for inflation from July 1, 2023. This funding would be paid as a lump sum to the Association.
- \$16.159 million for acequia ditch improvements within the member acequias of the Jemez River Basin Water Users Coalition, indexed for inflation from July 1, 2023. This funding would be administered by the NMISC through the Indian Water Right Settlement Funds.
- \$500,000 for a Mitigation Fund for non-Pueblo users whose rights are found to be impaired by Pueblo water uses.
- Sufficient funding for two new full-time employees of the Office of the State Engineer to perform Water Master duties and administrative duties that are required under the settlement.

2. The Pueblos of Acoma and Laguna Rio San José Stream System Water Rights Settlement Agreement

a. Summary of Settlement

On June 7, 2022, the State signed a settlement agreement that will settle the water rights claims of Acoma Pueblo and Laguna Pueblo within the Rio San José stream system. The parties to the Rio San José settlement are Acoma Pueblo, Laguna Pueblo, the State, the City of Grants, the Village of Milan, nine individual acequias and community ditches, and the Association of Community Ditches of the Rio San José. The parties are currently working with the Navajo Nation to resolve Navajo claims within the Rio San José stream system as well, and if that negotiation is successful, the Navajo claims will be brought within this settlement as well.

In 2022, the *Pueblos of Acoma and Laguna Rio San José Water Rights Settlement Act* (S.595/H.R.1304) was introduced in both branches of Congress and received a hearing in the Senate Indian Affairs Committee. The bill was combined with the Rio San José legislation in 2023 and reintroduced as the “Rio San José and Rio Jemez Water Settlements Act of 2023” and reported favorably out of the Senate Indian Affairs Committee. A hearing with the Natural Resources Committee in 2024. The House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries hearing held on July 23, 2024.

b. Funding

The Rio San José settlement contemplates federal funding of \$850 million, indexed for inflation, into various federally administered funds, as follows:

- \$760 million into the Pueblos’ Water Rights Settlement Trust Funds, for planning, permitting, designing, engineering, constructing, etc., alternative water supply infrastructure (\$296 million for Pueblo of Acoma; \$464 million for Pueblo of Laguna).
- \$40 million into the Pueblos’ Infrastructure Operations and Maintenance Funds, for the operation and maintenance of the alternative water supply project (\$14 million for Pueblo of Acoma; \$26 million for Pueblo of Laguna).
- \$45 million for an Acomita Reservoir Dam Safety, Inlet and Outlet Works Settlement Fund.
- \$5 million for the Pueblos’ Feasibility Studies Settlement Fund (\$1.75 million for Pueblo of Acoma; \$3.25 million for Pueblo of Laguna).

In the Rio San José settlement, the State cost share of the funding totals \$36,000,000 and would be disbursed as follows (all amounts indexed for inflation until disbursed):

- \$12 million for a Projects Fund for the signatory Acequias, for the purpose of providing non-federal matching/cost share funding to the signatory Acequias for acquiring water rights, infrastructure projects, and costs associated with protecting acequia water sources and water rights. The NMISC has approved funding through the Acequia & Community Ditch Fund for \$250,000 to the signatory Acequias to conduct a hydrologic needs assessment to determine the most appropriate projects to implement, as set forth in the Local Settlement Agreement. This amount will be counted towards the overall State obligation.
- \$500,000 for a Mitigation Fund for non-Pueblo users whose rights are found to be impaired by Pueblo water uses.
- \$16 million for Grants and Milan for the non-federal cost share for a joint project for water re-use, conservation, and augmentation of the Rio San José (allocated as \$8.5 million to Grants and \$7.5 million to Milan).

- \$3.5 million as a lump sum payment to the Village of Milan for the non-federal cost share for water supply and infrastructure improvements and water conservation projects, including drinking water system projects.
- \$4 million as a lump sum payment to the City of Grants for the non-federal cost share for water supply and infrastructure improvements and water conservation projects, including drinking water system projects.
- Sufficient funding for two new full-time employees of the Office of the State Engineer to perform Water Master duties and administrative duties that are required under the settlement.

3. Navajo Nation Rio San José Stream System Water Rights Settlement Agreement

a. Summary of Settlement

On June 11, 2024, the *Navajo Nation Rio San José Stream System Water Rights Settlement Agreement* was finalized as the “Article 17” addendum to the Water Rights Settlement for the Pueblos of Acoma and Laguna. The Parties to the settlement agreement are the Navajo Nation, the Pueblos of Acoma and Laguna, the State of New Mexico, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José and all the community irrigation ditches or Acequias in the Rio San José Stream System. The Navajo claims will be included in the Pueblos’ settlement when the settlement agreements are conformed to the approved federal legislation.

The *Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024* (S. 4998/H.R.8945) was introduced to both the House and Senate this year. A hearing was held on September 25, 2024, in the Senate Indian Affairs Committee and the House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries heard the bill on July 23, 2024.

b. Funding

Navajo Nation’s Rio San José settlement contemplates federal funding of \$245,271,000 indexed for inflation, to pay or reimburse costs incurred by it for planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure of the water infrastructure. This includes importing water and extending the Navajo pipeline to communities in the Rio Puerco Basin.

The State of New Mexico has committed to funding \$3 million specifically for the Signatory Acequias of the Association of Community Ditches of Rio San José, Bluewater Toltec Irrigation District (“BTID”), and the Acequia Madre del Ojo del Gallo (“Ojo del Gallo”). The additional \$3 million will be indexed from July 1, 2023, to no more than five years after the Article 17 Enforceability Date.

This amount builds upon the \$12,000,000 in State funds allocated to BTID and Ojo del Gallo for the Signatory Acequias Projects Fund under the Pueblos’ Rio

San José Agreement. Should the total amount be insufficient for the purposes set forth in Article 17.12.2, the State, the Association and Signatory Acequias, the Navajo Nation and the Pueblos will then jointly cooperate and seek additional funding from the State in an amount necessary to meet the remaining need, not to exceed an additional \$2,000,000, indexed from July 1, 2023, to no more than ten years after the Article 17 Enforceability Date.

4. Ohkay Owingeh Rio Chama Water Rights Settlement

a. Summary of Settlement

On July 31, 2023, the State signed a settlement agreement that would settle the water rights claims of Ohkay Owingeh on the Rio Chama within the Rio Chama Stream System adjudication. *New Mexico v. Aragon*, Case No. 69-cv-07941-KWR/KK (U.S. D. Ct. N.M.). The parties to the Ohkay Owingeh Rio Chama Water Rights Settlement include Ohkay Owingeh, the State, the United States, City of Española (“Española”), and over 80 acequias from the Asociación de Acéquias Norteñas de Rio Arriba (“Acéquias Norteñas”), Rio de Chama Acéquia Association (“RCAA”), La Asociación de las Acéquias del Rio Vallecitos, Tusas y Ojo Caliente, and El Rito Ditch Association.

In 2024, the *Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024* (S.4505/H.R.8685) was introduced in both the House and Senate. A hearing was held on September 9, 2024, in the Senate Indian Affairs Committee and reported out favorably. The House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries heard the bill on July 23, 2024.

b. Funding

The Ohkay Owingeh settlement calls for the Pueblo to receive federal funding in the amount of \$818,350,000, indexed for inflation from date of execution of the settlement agreement through date of deposit into a Water Rights Settlement Trust Fund.

The State cost share of the funding totals \$131,000,000 and shall be distributed as follows:

- \$11,500,000 paid to the Rio Chama Acéquia Association for acquisition of storage space in existing reservoirs and for acquisition of water or water rights for impoundment in storage in existing reservoirs for use in increasing supply during shortage sharing pursuant to an acquisition plan approved by the Rio Chama Acéquia Association.
- \$17,500,000 for the State’s share of, and improvements to, the two diversion structures serving the Acéquia de Chamita, Acéquia de los Salazares, and Acéquia de Hernandez, and for ditch improvements to those three acéquias, pursuant to an allocation plan approved by the three acéquias.
- \$25,875,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the Acéquias Norteñas,

pursuant to an allocation plan approved by the Acéquias Norteñas. \$3,881,250 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

- \$15,250,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of El Rito Ditch Association, pursuant to an allocation plan approved by El Rito Ditch Association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$15,250,000 for planning and feasibility studies for infrastructure and
- ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of La Asociación de las Acéquias del Rio Vallecitos, Tusas, y Ojo Caliente, pursuant to an allocation plan approved by the association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$13,125,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the RCAA not receiving funding under Article 12.1.1.2, pursuant to an allocation plan approved by the RCAA. \$1,968,750 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.
- \$32,000,000 to the City of Espanola for the development of production wells and related infrastructure costs to provide additional sources of safe drinking water.
- \$500,000 for a Mitigation Fund for non-Pueblo users whose rights are found to be impaired by Pueblo water uses

5. Zuni Indian Tribe Settlement

a. Summary of Settlement

On May 1, 2023, the Zuni Indian Tribe and the State signed a settlement agreement resolving the claims of the Zuni Indian Tribe in the Zuni River Stream System adjudication in FY 2023. *U.S. v. A&R Production, et al.*, Case No. 6:01-00072-DHYU-JHR (D.N.M.).

In 2024, the *Zuni Indian Tribe Water Rights Settlement Act of 2024* (S.4643/H.R.8951) was introduced in both the House and Senate. A hearing was held on September 18, 2024, in the Senate Indian Affairs Committee and the House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries heard the bill on July 23, 2024.

b. Funding

The settlement calls for the Tribe to receive federal funding in the amount of \$719,500,000, which shall be deposited in a Water Rights Settlement Fund and indexed for inflation from date to be agreed upon between the Tribe and the United States. The settlement calls for the establishment of an additional federally funded Water Infrastructure Operations and Maintenance Trust Fund in the amount of \$29,600,000, calculated as estimated operations and maintenance expense for a period of 10 years, to be used to pay or reimburse costs for operation and maintenance of water infrastructure to serve Zuni Tribe irrigation, livestock, domestic, commercial, municipal, and industrial water uses from any water source.

The State shall provide \$750,000 to develop monitoring programs to further assess impacts on spring and stream flows from groundwater development within the Critical Protection Area and to assess impacts to Zuni Salt Lake, as well as a fund in the amount of \$500,000 to mitigate impairment to non-tribal groundwater rights for domestic and livestock use as a result of new Zuni water use. In addition, the State shall contribute funding for up to two full time employee positions in the Office of the State Engineer to perform water master and administrative duties in accordance with the settlement agreement.

C. Current Settlement Assessments and Negotiations

1. Pueblo of Santa Clara and Ohkay Owingeh – Rio Santa Cruz- Truchas

While the *Aragon* Settlement resolves the claims of Ohkay Owingeh on the Rio Chama, Ohkay Owingeh and Santa Clara Pueblos have outstanding water rights claims on the Santa Cruz/Truchas stream system. The State, the Pueblos, and other interested parties are currently engaged in negotiations regarding those water rights.

2. Ute Mountain Ute Tribe – San Juan River Basin

OSE and ISC staff are engaged in negotiations with representatives from the Ute Mountain Ute Tribe. No mediator has been hired for these settlement discussions and a federal negotiation team has not been appointed. A federal assessment team was appointed in 2024. Parties involved include Ute Mountain Ute Tribe, State of New Mexico, United States, Upper La Plata Conservancy District, San Juan Water Commission, and Navajo Nation.

3. Six Middle Rio Grande Pueblos

OSE and ISC staff are engaged in discussions with the Six Middle Rio Grande Pueblos (Pueblos of Cochiti, Sandia, Isleta, Kewa/Santo Domingo, San Felipe and Santa Ana) as well as representatives from various federal agencies, regarding the upcoming adjudication of the Pueblos' Middle Rio Grande water rights. A federal negotiation team has been appointed to assist in this process.

II. Indian Water Rights Settlement Fund Appropriations

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.

During the 2022 regular session, the Legislature appropriated \$10.6 million in STB's, and another \$32.0 million in the 2022 regular session to the Indian Water Rights Settlement Fund. Consequently, the full \$104.5 million of state cost share has been provided or made available for use. The Commission is in the process of allocating the funding to Reclamation for construction of the regional water system under the *Aamodt* Settlement.

In 2024, the NM Legislature appropriated \$20,000,000 to the OSE for Indian Water Rights Settlements related expenses for FY2025. This funding is not held within the IWRS Fund but can be used to help meet the State's cost share obligations for settlements that have not received Congressional approval. Disbursement of these funds is on-going and will include

funding to the Signatory Acequias under the Rio Chama Settlement Agreement, and, for supplemental funding needed under the Taos-Abeyta Settlement Agreement, to El Prado Water & Sanitation District, Llano Quemado MDWCA, and Acequia del Monte del Rio Chiquito.

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

This year, the OSE has submitted a request to the Executive for a special appropriation of \$40 million to support Indian Water Rights Settlements. This will serve three purposes: First, it will help ensure that Congress knows the State's level of commitment as they consider authorizing new settlements and can begin meeting its funding obligations. Second, a significant appropriation this year will send a strong signal to the settlement parties that the State is serious about implementing the new settlements, which will also allow them to advocate effectively in Congress to spur necessary federal authorization. And third, it will help ensure that New Mexico can fund its obligations on the timetables set forth in the settlements.