

Indian Water Rights Litigation and Settlements

Nat Chakeres
General Counsel
Office of the State Engineer
August 26, 2024

Steps to Reaching a Final Settlement Agreement



- Federal Assessment Team
- Federal Negotiation Team
- Negotiations with Pueblo/Tribe/Nation, United States and State
- Negotiations expanded to include local entities, acequias, irrigation districts, municipalities, cities, etc.
- Local Settlement Agreement signed by all Parties but for United States
- Parties draft Federal Legislation
- Review by Working Group and SIWRO
- Federal Legislation - introduced in House and Senate; Congressional Hearings
- Once passed by Congress - parties conform the Settlement Agreement
- Approval and signing of conformed Settlement Agreement by DOI
- Regular court adjudication process for entry of a Partial Final Judgment and Decree adjudicating the water rights within a stream system/basin and accepting the Settlement Agreement (includes inter se)
- State funding process - Indian Water Rights Settlement Fund



Overview of Water Rights Settlements with Pueblos, Tribes, and Nations

7 Pueblos, Tribes, and Nations have reached final settlements with Congressional, State, and Judicial Approval:

- Jicarilla Apache Water Rights Settlement
- Taos/Abeyta Settlement Agreement
- Navajo San Juan Settlement Agreement)
- Aamodt Settlement Agreement (Nambé, Pojoaque, Tesuque, San Ildefonso Pueblos)

One Tribal Water Right Claim Was Litigated to Final Judgment:

- Mescalero Apache Tribe (Rio Hondo/Pecos River Stream System)

Recent Settlements During the Lujan Grisham Administration

Local settlement agreements have been signed and federal legislation has been introduced.

- **Rio San José Stream System**
 - Acoma Pueblo
 - Laguna Pueblo
 - Navajo Nation
- **Jemez River Stream System**
 - Zia Pueblo
 - Jemez Pueblo
- **Rio Chama Stream System** (Ohkay Owingeh)
- **Zuni River Stream System** (Zuni Pueblo)

Rio San José Settlements

Parties: Acoma Pueblo, Laguna Pueblo, Navajo Nation, State of New Mexico, City of Grants, Village of Milan, nine individual acequias and community ditches, Association of Community Ditches of the Rio San José

Federal funding:

- **\$850 million** (indexed) for Pueblos for alternative water supply infrastructure, operation and maintenance of alternative water supply project, Acomita Reservoir dam safety, and feasibility studies.
- **\$245 million** (indexed) for Navajo Nation for water infrastructure.

State funding:

- **\$39 million** (indexed) total
 - \$250,000 in early funding for needs assessment for acequias
 - \$15 million for water projects for acequias
 - \$500,000 mitigation fund
 - \$23.5 million for Grants and Milan for cost share for water projects

Rio Jemez Settlement

Parties: Jemez Pueblo, Zia Pueblo, State of New Mexico, Jemez River Basin Water Users Coalition, City of Rio Rancho.

Federal funding:

- **\$490 million** (indexed) for a mutual benefit water supply project and other infrastructure and costs.

State funding:

- **\$20 million** (indexed) total
 - \$3.4 million for capital and operating expenses for the San Ysidro Community Ditch Association
 - \$16.2 million for acequia ditch improvements for member acequias of the Jemez River Basin Water Users Coalition.
 - \$500,000 mitigation fund

Ohkay Owingeh Rio Chama Settlement

Parties: Ohkay Owingeh, State of New Mexico, City of Española, approximately 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.

Federal funding:

- **\$818.35 million** (indexed) for water projects and related purposes.

State funding:

- **\$131 million** (indexed) total, \$7 million of which is for “early funding”
 - \$11.5 million for acquisition of water storage space and water rights for RCAA
 - \$17.5 million for improvements to diversion structures for senior RCAA acequias
 - \$13.125 million for additional RCAA projects
 - \$25.875 million for Acéquias Norteñas projects
 - \$15.25 million for Vallecitos/Tusas/Ojo Caliente projects
 - \$15.25 million for El Rito projects
 - \$32 million for City of Espanola for development of additional production wells
 - \$500,000 mitigation fund

Zuni Indian Tribe Settlement

Parties: Zuni Indian Tribe, State of New Mexico

Federal funding:

- **\$719.5 million** (indexed) for water projects and related purposes.

State funding:

- \$750,000 for development of groundwater monitoring program and to assess impacts to Zuni Salt Lake
- \$500,000 mitigation fund

Status of Federal & State Future Funding Commitments As of 8/22/2024

Settlement Agreement	Total Funding (State & Fed)	Federal Funding	State Funding	Early State Funding	Status of Congressional Approval
The Pueblos of Jemez and Zia Rio Jemez Water Rights Settlement Agreement	\$510,059,000	\$490,000,000 - Zia \$200 mil - Jemez \$290	\$20,059,000 - San Ysidro Community Ditch Association \$3.4 mil - 11 Acequias \$16,159,000 - Impairment Fund \$500k		S. 595/H.R. 1304 – 2023 Intro & referral – Senate Committee on Indian Affairs hearing held, reported favorably w/o amendment & rec for the bill pass (Report No. 118-131); House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries hearing held 7/23/2024
The Pueblos of Acoma Laguna Rio San Jose Stream System Water Rights Settlement Agreement	\$886,000,000	\$850,000,000 - Acoma \$311,750,000 - Laguna \$493,250,000 - Acoma Reservoir Fund \$45,000,000	\$36,000,000 - City of Grants \$12.5 mil - Village of Milan \$11 mil - RSJ Acequia Assoc \$12 mil - Impairment Fund \$500k	\$250,000 (Pending)	S. 595/H.R. 1304 – 2023 Intro & referral – Senate Committee on Indian Affairs, reported favorably w/o amendment & rec for the bill pass (Report No. 118-131); - House Committee on Natural Resources, Subcommittee on Water, Wildlife & Fisheries hearing held 7/23/2024
Navajo Nation Rio San Jose Water Rights Settlement Agreement	\$226,271,000	\$223,271,000	\$3,000,000 - RSJ Acequias (Bluewater Toltec Irrigation District & Acequia Madre del Ojo del Gallo)		H.R. 9845 - Intro 7/8/2024 – House Committee on Natural Resources, Subcommittee on Water, Wildlife, Fisheries hearing held 7/23/2024
Settlement Agreement to Quantify Water Rights of the Zuni Indian Tribe and to Protect the Zuni Salt Lake	\$686,250,000	\$685,000,000	\$1,250,000 - Monitoring Critical Protection Areas & Zuni Salt Lake \$750k - Impairment Fund \$500k		S.4643 – Intro 7/9/2024; Referred to Senate Committee on Indian Affairs H.R.8951 – Intro 7/8/2024; Referred to House Committee on Natural Resources, Subcommittee on Water, Wildlife, & Fisheries hearing held 7/23/2024
Ohkay Owingeh Rio Chama Water Rights Settlement	\$876,000,000	\$745,000,000 - WR Claims - Bosque Takings vs. U.S.	\$131,000,000 - Acequias \$98.5 mil** - City of Espanola \$32 mil - Impairment Fund \$500k	\$7,000,000 - Rio Chama & Acequia Norteña Acequia Assoc	S. 4505 – Intro 6/2023; Referred to Committee on Indian Affairs, hearing held 7/25/2024 H.R. 8685 – Intro 6/11/2024; Referred to House Committee on Natural Resources, Subcommittee on Water, Wildlife, & Fisheries hearing held 7/23/2024
Taos Pueblo Indian Water Rights Settlement Amendments Act	TBD	TBD	\$43,076,803 - \$5.075 Capital Outlay FY24 - \$5 Water Trust Board - \$5.6 OSE Special FY25 \$27,401,803 remaining	TBD	TBD – Drafting legislation
TOTAL	\$3,184,580,000	\$2,993,271,000	\$191,309,000 [\$234,385,803*(with Taos)]	\$7,250,000	
Navajo-Gallup Water Supply Project Amendments (Navajo & Jicarilla Apache)	\$1,500,000,000 (approx.) No State Contribution for this Amendment.				S. 1898 – Intro 6/8/2024; Senate Committee on Indian Affairs, hearing held 7/12/2023, reported favorably w/ amendment (11/15/2023); H.R. 3977 – Intro 6/9/2023; House Committee on Natural Resources, Subcommittee on Water, Wildlife, & Fisheries hearing held 7/23/2024

Current Indian Water Rights Negotiations

Santa Cruz/Truchas Stream System

- Ohkay Owingeh
- Santa Clara Pueblo

Middle Rio Grande

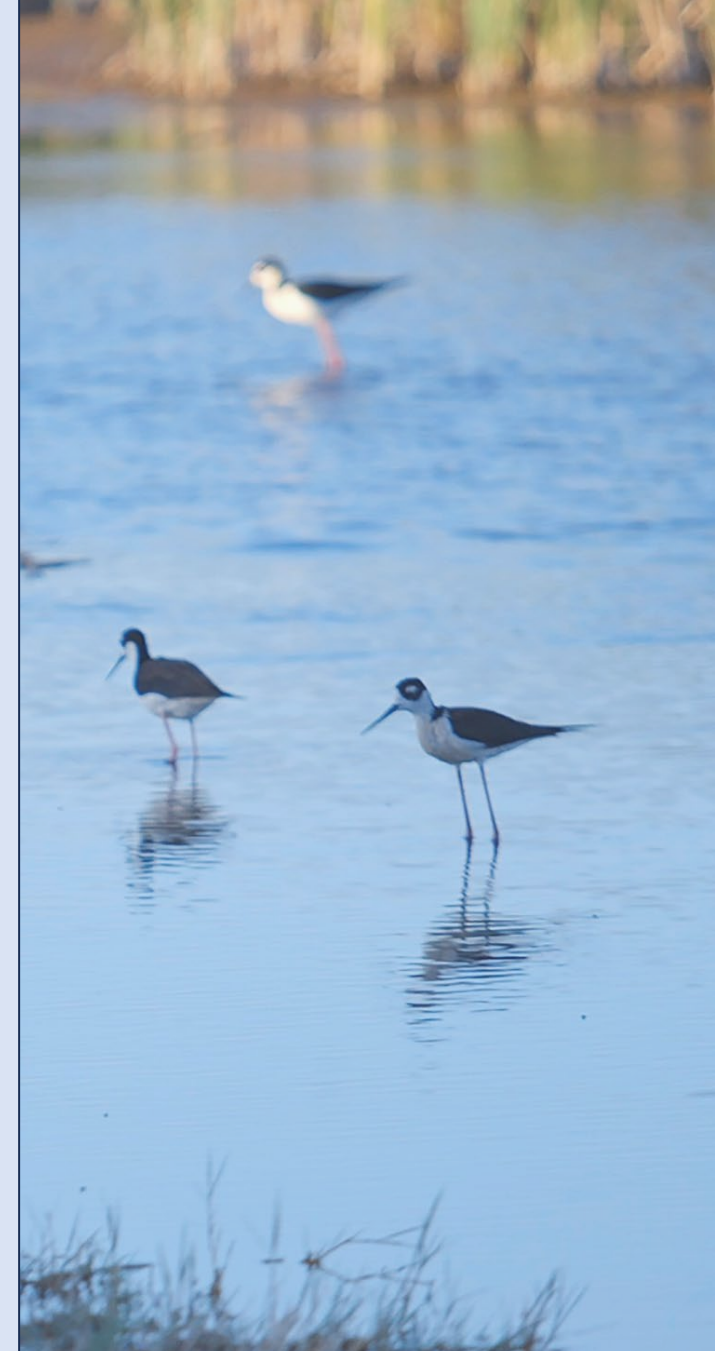
- Cochiti Pueblo
- Santo Domingo/Kewa Pueblo
- San Felipe Pueblo
- Santa Ana Pueblo
- Sandia Pueblo
- Isleta Pueblo

San Juan Stream System

- Ute Mountain Ute Tribe

Zuni River Stream System

- Navajo Nation



Implementing Existing Settlements

Taos/Abeyta Settlement Agreement

- Original funding for mutual benefits projects was not indexed
- The shortfall is approximately \$220 million
- With a 75/25 federal/state cost share breakdown, the state share is ~ \$43 million
- Existing appropriations would cover approximately \$10.7 million, leaving a need to fill an additional **\$32.3** million in state funding
- Parties are working with Congressional delegation to obtain needed federal funding
- Parties are engaged in securing DOI support for funding request

Aamodt Settlement Agreement

- Construction on water supply project is underway
- Reclamation has alerted parties to likely significant cost increases – parties are working with Reclamation on review of indexing for the project to determine actual amounts
- Updates are likely in the coming months

Navajo San Juan Settlement

- Portion of project is operational, construction on remaining portion is underway
- Parties are working with Congressional delegation to secure passage of act to make needed amendments to authorizing legislation
- OSE/ISC working with City of Gallup on additional groundwater wells to bridge supply gap

Thank you!

Bureau for Pueblos, Tribes, & Nations Office of the State Engineer

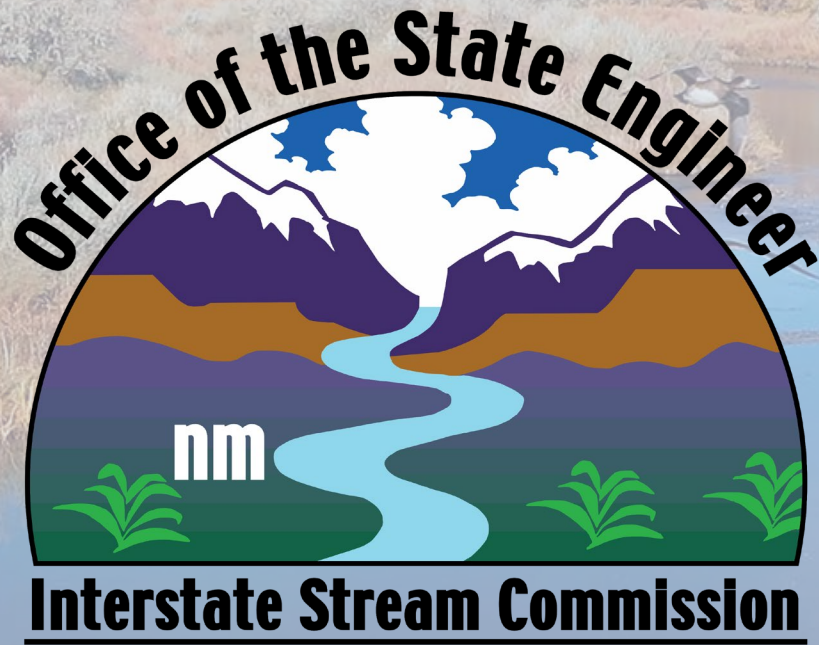
Nicole Greenspan
Nicole.Greenspan@ose.nm.gov

Tomas Stockton
Tomas.Stockton@ose.nm.gov

Miguel Munoz
Miguel.Munoz@ose.nm.gov

Nat Chakeres, General Counsel
Nathaniel.Chakeres@ose.nm.gov

Office of the State Engineer
Tribal Liaison:
Governor Myron Armijo
Myron.Armijo@ose.nm.gov



Office of the State Engineer

nm

Interstate Stream Commission