

# State of New Mexico Tribal Collaboration Act 2022 Annual Report



Double Rainbow north of Isleta Pueblo

John R. D'Antonio, Jr., PE  
**State Engineer**

Rolf Schmidt-Petersen  
**Interstate Stream Commission Director**

Myron Armijo  
**Tribal Liaison**

## **Table of Contents**

I.	Executive Summary	3
II.	Significant State-Tribal Issues, Recommendations and Priorities	5
III.	Status of Indian Water Rights Settlements	5
IV.	Office of the State Engineer/ Interstate Stream Commission Outreach	17
V.	Native American Programs and Services	21
VI.	Main Agency Accomplishments and Challenges Regarding Tribes:	22
VII.	Program Support Program Goals for Fiscal Year 2020:	23
VIII.	Agency Policy	24
IX.	Agency Efforts to Implement Policy	26
X.	Key Names and Contact Information	27
XI.	Appendices	28

**New Mexico  
Office of the State Engineer  
and  
Interstate Stream Commission**

**State of New Mexico  
Tribal Collaboration Act  
2021 Annual Report**

**State Engineer**  
John R. D. Antonio Jr., PE

**Interstate Stream Commission  
Director**  
Rolf Schmidt-Petersen

**Tribal Liaison**  
Myron Armijo



# I. EXECUTIVE SUMMARY

## Agency Overview



The State Engineer is statutorily charged with supervising the state's water resources through the measurement, appropriation, and distribution of all ground and surface water in New Mexico, including streams and rivers that cross state boundaries. Created as the Office of the Territorial Irrigation Engineer in 1905, seven years before statehood, the agency assumed responsibility over all surface water in 1907 and was renamed the Office of the Territorial Engineer. With statehood in 1912, the organization's responsibilities were expanded again to include all groundwater within declared groundwater basins – now 100 percent of the state – and the office was renamed the Office of the State Engineer.

The State Engineer's approval is required for every use of water in New Mexico. State Engineer permission is needed to make a new appropriation, drill a well, divert surface water, or change the place or purpose of use of an existing water right. The Office of the State Engineer acts on water rights applications, evaluates existing water rights, measures and tracks water use and resources, promotes conservation, and performs the scientific, historical, and legal research needed to support all of its activities. Additional duties include reviewing subdivision water supply plans submitted by counties, licensing water-well drillers, inspecting non-federal dams, and rehabilitating diversion dams and irrigation ditches.

Although separate under state law, the Interstate Stream Commission staff members function as a division within the Office of the State Engineer. The State Engineer, appointed by the Governor and confirmed by the state Senate, serves as the secretary of the Interstate Stream Commission. The Interstate Stream Commission Director serves as the deputy state engineer. The Legislature created the Interstate Stream Commission in 1935 and gave it broad powers to investigate, protect, conserve, and develop the state's water supplies. Its separate duties include protecting New Mexico's right to water under eight interstate stream compacts and ensuring the state complies with each of those compacts, as well as developing and promoting regional and statewide water planning.

Water management in New Mexico is guided by several 100-year-old principles in the New Mexico Constitution: (1) all un-appropriated water belongs to the public and is subject to appropriation by law. (2) The acquisition or continuation of a water right and where and how much water can be used is dependent on how the water is put to beneficial use. (3) Older water rights have priority over more recent water rights. Since 1907, a permit from the State Engineer has been required to divert surface water and put water to beneficial use. Permits are required for diverting groundwater anywhere that the State Engineer has declared a groundwater basin, which is now the entire state of New Mexico.

The Office of the State Engineer processes some 19,000 water rights documents a year, with the overwhelming majority involving groundwater. A third or more of those applications for new appropriations of groundwater concern domestic or livestock uses. More than 100 applications a year draw protests and are then subject to a formal hearing process.

Water management in New Mexico is complicated by the state's long history. Some uses have been in place for centuries, some before written records or water laws. Another key activity of the Office of the State Engineer is legally establishing existing water rights through

water rights adjudication. This court process is required by statute and is akin to a quiet title suit for establishing a clear title to land. The first phase of adjudication is a hydrographic survey to locate, quantify and date water uses within a stream system or underground aquifer. The second, or legal, phase of an adjudication starts with the filing of a lawsuit that names water right owners as defendants and ends with a court order that delineates the parameters and priority of each owner's water right. The process provides the water right owners with opportunities to challenge the state and each other and in almost all cases the preference is to negotiate. The Office of the State Engineer is involved in numerous adjudications, some of which were decades old but to date several have been resolved and are in some level of implementation.

Water management in New Mexico is further complicated by the scarcity of the supply and the eight interstate stream compacts. New Mexico is under pressure to meet its water delivery obligations to other states. Failure to comply can and often does result in litigation. For example, the U.S. Supreme Court in 1988 ordered New Mexico to pay damages to Texas for New Mexico's failure to meet its delivery obligations on the Pecos River and a court-appointed river master monitors New Mexico's ongoing compliance.

Optimal management of New Mexico's water is dependent on good information and planning. Those needs have been highlighted both by the increasing demand placed on the limited resource by a growing population and by the added stress of a drought. Office of the State Engineer staff are developing more sophisticated tools for measuring and monitoring water resources, and in 2003 adopted a statewide water plan. More recently the OSE/ISC have been focusing on a 50 Year Water Plan as tasked by Governor Lujan Grisham, and the ISC is the primary lead in this process and reaching out to other agencies including Tribes, Pueblos and Nations to partner with in this endeavor.

## **Mission Statement**

The Office of the State Engineer and the Interstate Stream Commission is the preeminent water management agency, which is trusted by the public to effectively and transparently manage, allocate and protect New Mexico's water resources.



Snowy day along the Rio Jemez

## **Agency-specific and relevant state or federal statutes:**

- Statute 72-4A-4 Water Trust Board Created
- Statute 72-4A-5.1 Implementation of the State Water Plan
- Statute 72-5-22 Transfer of Water Rights
- Statute 72-5-24 Change of purpose; change of point of diversion
- Statute 75-5A-14 Obligations to Indian Nations, Tribes or Pueblos
- Statute 72-14-3.1 State Water Plan
- Statute 11-18 State Tribal Collaboration Act



- Statute 72-12A-1 Mine De-Watering Act
- Statute 72-6-1 Water Use Leasing
- Statute 72-4B-2 Water Data Act

## II. Significant State-Tribal Issues, Recommendations and Priorities:

Issues and concerns with water are always of paramount importance, as it pertains to Tribes, Pueblos and Nations. The Office of the State Engineer has had meetings with many tribal stakeholders to discuss issues such as water transfer policy, administrative guidelines, and Indian Water Rights Settlements, and acequia and other tribal water concerns. District offices are engaged with proposing ideas and solutions to help the staff navigate these sometimes-complicated issues. The agency works hard at setting the tone of cooperation and collaboration to preserve relations between the entities. The Office of the State Engineer staff is focusing on implementation of authorized settlements, continued negotiations with Tribes, Pueblos, and Nations to reach settlement of their water rights, water planning and the establishment of a Tribes, Pueblos and Nations Bureau.

## III. Status of Indian Water Rights Settlements

New Mexico has three Indian water rights settlements in different stages of implementation:

- The Navajo Nation Water Rights Settlement in Northwest New Mexico;
- The Aamodt Settlement with the four Pueblos of Nambe, Pojoaque, Tesuque, and San Ildefonso; and
- The Taos Pueblo Water Rights Settlement.



Cutter Lateral Blessing - Navajo Nation

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 Nambe, Pojoaque, Tesuque, and San Ildefonso in the Aamodt 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](http://www.ose.state.nm.us/Legal/settlements_IWR.php).

## **Navajo Nation Water Rights Settlement and Pipeline**

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 a 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 that authorizes the settlement and authorizing the appropriation of federal funds to plan, design, and authorizes 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 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 briefs 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 has 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 is 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.

## **Aamodt Settlement with the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso**



**Santa Fe National Forest - Fall sets in**

On May 3, 2006, the State of New Mexico, the Pueblos of Nambe, 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 Nambe- 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, although this capacity may be reduced if the County determines that non-Pueblo demand for water from the system will be less. In addition to increasing the amount of water available in the N-P-T, 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 N-P-T 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 Agreements 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 settlement 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 arguments 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.

#### 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, adopts 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 provides 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, 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 2019, 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 Representatives Ben Ray Lujan, Debra Haaland, and Xochitl Torres-Small introduced legislation to provide the necessary additional federal funding and extend the timeline for construction of the Pojoaque Basin 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 \$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, but with no further indexing on the additional amounts.

**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 \$39.85 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 - Nambe, 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.



## Taos Pueblo Water Rights Settlement

Negotiations for the settlement of Taos Pueblo's water rights began in earnest in 1989 between the parties of Taos Pueblo, State of New Mexico, Taos Valley Acequia Association, Town of Taos, El Prado Sanitation District, and the Mutual Domestic Water consumer associations. Several key benchmarks have been accomplished. On October 7, 2016, the Secretary of the Interior put in the Federal Register a Notice that all conditions precedent in the Taos Settlement Act had been met and that the Taos Pueblo Water Rights Settlement Agreement was effective as of that date. Funding that has been allocated to the Settlement from the Interstate Stream Commission and the State completes the funding obligations under the Taos Settlement. The Pueblo continues to work on the implementation and has had several key issues to resolve through the NMOSE, such as implementation coordination and Taos Pueblo forbearance for abandoned water rights. Other topics will be discussed as meetings are scheduled with the Office of the State Engineer.



Blue Lake at Taos Pueblo

On May 30, 2006, at a signing ceremony at Taos Pueblo, the Pueblo, the State of New Mexico, and several

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 in north central New Mexico. The Taos Pueblo Water Rights Settlement Agreement was developed through multi-party negotiations begun in 1989 between the Taos Pueblo, the State of New Mexico, 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, including the United States, 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 settlement 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.

### **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 has appropriated to and provided direct funding for the Taos Pueblo Settlement totaling approximately \$145.7 million.

State Contribution. The Taos Settlement Act requires 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 is 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.

#### **1. 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 Act. In 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.

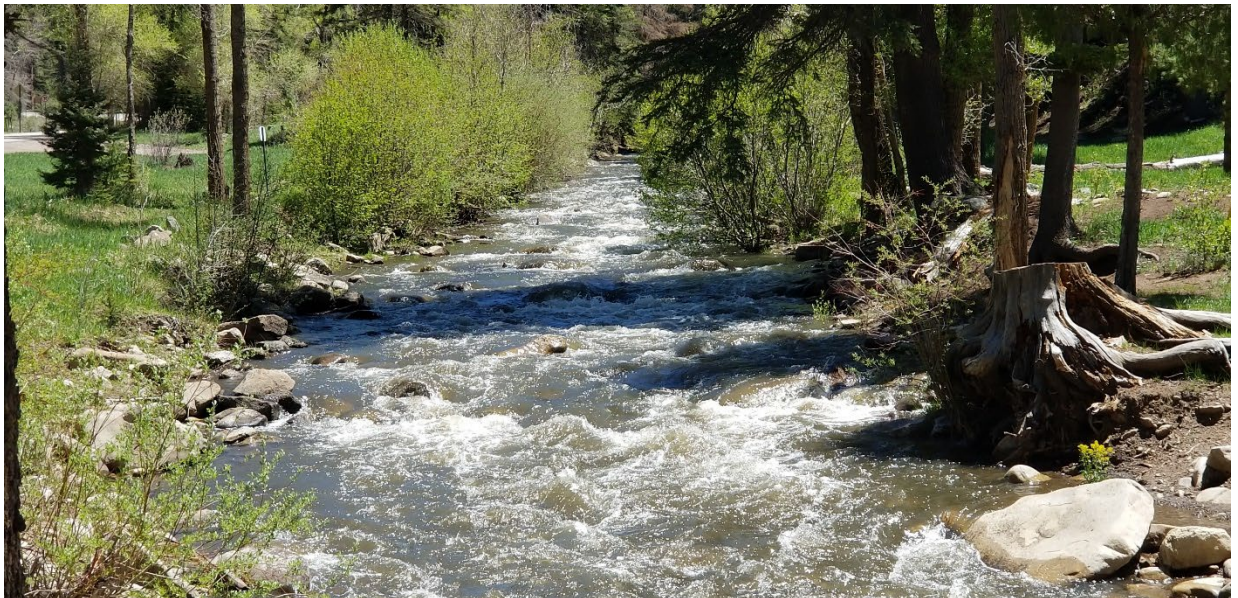
During the 2018 regular session, the Legislature appropriated \$6.175 million in STBs and \$2.825 million from the Water Projects Fund to the Fund for a total of \$9 million. In April 2018, the Interstate Stream Commission certified to the Board of Finance the sale of the entire \$6.175 million bond 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.

## **2. 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 for its future funding per requests in future ICIP requests.



**Rio Pueblo near Sipapu**



## IV. Office of the State Engineer/ Interstate Stream Commission Outreach

Tribal Liaison Myron Armijo participated and coordinated in the following meetings and activities for the Office of State Engineer and Interstate Stream Commission:

- **Ohkay Owingeh** - Stream Systems: a) Chama River Stream System, b) Santa Cruz/Truchas Stream Systems. Active settlement negotiations of Ohkay Owingeh's water rights claims began in 2001 and on the Rio Chama in 2013. The Pueblo of Santa Clara's water rights on the Santa Cruz were added in 2021. Mediators for the negotiations were hired to help facilitate the negotiations also included is a federal negotiation team. Parties involved in the process are the United States, Ohkay Owingeh, Pueblo of Santa Clara, State of New Mexico, Rio Chama Acequia Association, City of Espanola, Asociacion de Acequias Norteñas de Rio Arriba, Truchas Acequias (El Rito Ditch Association & members), Gallina-Capulin Acequia Association & members, La Asociacion de las Acequias del Rio Tusas, Vallecitos y. Ojo Caliente & members. Parties are meeting on a regular basis, however as the negotiations continue, it the goal of Ohkay Owingeh to reach settlement soon so the meetings may become more frequent.
- **Pueblos of Jemez and Zia** – Stream System: Jemez River Stream System. Negotiations ceased for a while, the talks and discussions resumed in 2018. There is no mediator for these discussions, but a federal negotiation team was requested and appointed. Parties in the negotiations are the United States, State of New Mexico, San Ysidro Acequia Association and the City of Rio Rancho. The parties are meeting regularly and is conceivable that the parties may reach a settlement agreement in the spring.
- **Pueblos of Acoma and Laguna** – Stream System: Rio San Jose Stream System. Active settlements negotiations began in March of 2014. A mediator was hired, Ramsey Kropf, has been hired and is paid by the United States, Pueblos, and the State. A federal negotiation team was requested and appointed. Parties in involved are State of New Mexico, United States, Navajo Nation, City of Grants, Village of Milan, and the Association of Community Ditches of Rio San Jose, comprised of the following community ditches/acequias: Bluewater Toltec Irrigation District, La Acequia Madre del Ojo del Gallo, Moquino Water Users Association II, Murray Acres Irrigation Association, San Mateo Irrigation Association, Seboyeta Community Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, San Jose De La Cienega Acequia Association. A technical committee is also working on modeling and researching for potential projects. The parties have been meeting regularly and a goal is to reach a settlement agreement sometime in the coming year.
- **Pueblo of Zuni** – Stream System: **Zuni Stream System**. Settlement discussions resumed in 2020. Federal negotiation team appointed (includes Ramah Navajo Nation). Parties involved in settlement talks: State of New Mexico, United States, Zuni Pueblo and a Technical committee has been meeting regularly and are working on a model to assess settlement options.

- **Ute Mountain Ute Tribe – Stream System: San Juan River Stream System.** Settlement discussions began in 2015 and regular meetings began in 2020. No Mediator for this settlement discussions and a federal negotiation team has not been appointed. Parties involved Ute Mountain Ute Tribe, State of New Mexico, United States, and Navajo Nation.
- **Interim Indian Affairs Committee Hearing** – State Engineer reported to the IIAC on the status of Indian Water Rights Settlements negotiations. Many legislators voiced concern over the costs of the settlements from the State’s cost share standpoint. The legislators did acknowledge that the settlements that the OSE staff is negotiating are necessary in order to bring certainty to the different basins and stream systems.
- As the end of the year 2021 approaches, the OSE is focusing Gen Fund expansions and in the face of on-going drought and climate change issues the recommendation for the agency positions the State to confront the serious challenges we face with water management in these uncertain times.
- Pueblos of Jemez and Zia – Close Out meeting 2021 Irrigation Season, both Governors of Jemez and Zia present including the primary member of the Jemez Valley Water Users Association. A short presentation was provided to the parties by the OSE. No real issues came out of this meeting, but just comments that next season All just need to make a concerted effort to stay on track with the Shortage sharing agreement.
- Tribal Liaison attended the 66<sup>th</sup> Annual Water Conference; “Reality and Resilience: Planning for New Mexico’s Water Future via the Net. The Conference was sponsored by the New Mexico Water Resources Research Institute
- The Office of the State Engineer convened a Stakeholders at the direction of Governor Lujan-Grisham regarding Middle Rio Grande Issues. In light of ongoing concerns about surface flows in the Middle Rio Grande, multiple stakeholders requested a review of the Middle Rio Grande Administrative Area Guidelines for Review of Water Right Applications. In particular, stakeholders have concerns with transfers of downstream water rights to offset upstream groundwater pumping. The Guidelines were last updated in 2000. The discussion was about the possible changes to the guidelines, as well as other issues related to improving surface flows in the Middle Rio Grande. Participants in the meeting were Indian Affairs Department, Middle Rio Grande Conservancy District, Six Middle Rio Grande Pueblos, City of Rio Rancho, WildEarth Guardians, Bureau of Reclamation, Albuquerque-Bernalillo County Water Utility Authority, City of Santa Fe, Corps of Engineers, Town of Bernalillo, Business/Industry representatives.
- The Office of the State Engineer staff drafted and finalized a support letter for the Coalition of Six Middle Rio Grande Pueblos request for a Federal Assessment Team to begin work on the water Rights claims of the Middle Rio Grande Pueblos. The Office of the State Engineer articulated that its experience is to settle water rights claims rather than it become an adversarial issue to instead having to litigate the claims.

The main mission is to protect and manage the water resources for New Mexico. The letter was sent to the Department of Interior Secretary Deb Haaland and Assistant Secretary for Water and Science Tanya Trujillo.

- The Office of the State Engineer and Tribal Liaison continue work with the Pueblo of Taos on the Implementation of the Taos-Abeyta Water Settlement. The agency in 2021 held five direct discussions with the Pueblo and federal team, this also includes five meetings in 2020.
- **Pueblo of Picuris** and the Office of the State Engineer reached an impasse on the discussions on how to find resolutions for the problems with the Trans-Mountain diversion. COVID also played a part in making it difficult to get all the parties together. A workshop is being planned and OSE Staff is working to research and looking at water data in the region. Governor Lujan Grisham has directed the OSE to continue to work with all parties on this issue.
- **Ft. Sill Apache Tribe** – The Office of the State Engineer District 3 office in Deming, NM requested the Tribal Liaison to look into an issue on the Tribes Akela Flats property east of Deming. The issue centered on a well on the property and the Tribe possibly wanting to rehab or drill a new well. OSE District 3 office wanted to know if the land was Federal Trust land or Fee lands. In discussing the concern with the Tribes lobbyist, the land was indeed trust land.
- **Pueblo of San Ildefonso**- The Interstate Stream Commission (ISC) continues to conduct its stream gage measurements on the Rio Grande at the Otowi gage which is on the lands of the Pueblo of San Ildefonso
- **Ohkay Owingeh** – the Pueblo requested to have meetings periodically with the State Engineer and Director of the Interstate Stream Commission to discuss the status of on-going water settlement negotiations, bosque restoration, 50 Year Water Planning and funding issues. The State Engineer and Director both indicated that these meetings should occur periodically.
- **NEWS** – Cabinet Secretary John R. D’ Antonio, Jr., indicated in an internal meeting that at the end of the calendar year he would be stepping down as State Engineer.
- **Taos Pueblo** – Letter to the Tribal Liaison from the Office of the Governor; Clyde M. Romero and the Office of Warchief; Fred L. Romero regarding the concerns the Pueblo has on Weather Modification projects. The Interstate Stream Commission’s (ISC) approach to consultation and public notice was lacking in not directly informing the Pueblo a clouding seeding project which would have occurred over most of the land base of Taos Pueblo. Tribal Liaison informed the ISC Director about the situation and for any future projects the Pueblo will be informed and including another Tribes, Pueblo and Nations that may be affected by the weather modification projects

Outreach continues to the Tribes, Pueblos and Nations and to federal agencies, non-governmental organizations, and other state agencies where issues of water may have impacts to native communities and the Office of the State Engineer. The OSE Tribal Liaison will continue to assist in resolving issues related to water including conducting Government to Government consultation as requested by the Tribes, Pueblos, and Nations and the OSE. The OSE Tribal Liaison also continues to monitor the current drought conditions and its effects on Tribes, Nations and Pueblos, providing internal briefings to senior management in the agency.



## V. Native American Programs and Services

The Native American Water Resources Program, created by the governor in 1995, aims to promote a spirit of coordination, communication, and good relations between tribal and state governments as separate sovereigns. During Governor Bill Richardson's administration, a statement of policy and process was signed with Governors of the 19 New Mexico Pueblos to work in good faith to amicably and fairly resolve issues and differences in a government-to-government relationship. This policy and process also extends to other tribes and nations within New Mexico. The policy was signed in 2003; even today the document has language that still resonates in the 2009 State-Tribal Collaboration Act, with respect to government-to-government consultation and taking reasonable steps in working with the Tribes, Pueblos and Nations.



**Rio San Jose during a monsoonal event**

Rights to water on Indian grant lands and reservations in New Mexico fall within one or a combination of three different doctrines: Pueblo historic use water rights, federal reserved water rights, or water rights established under the laws of the state of New Mexico. Water rights administration, litigation and negotiation leading to a settlement of rights to water are exceedingly complex when Native American water rights are involved.

The Tribal Liaison deals with matters related to adjudication of tribal and Pueblo water rights, negotiations regarding these rights, and assistance to the individual tribes and Pueblos. The Tribal Liaison's role is to advocate equal protection of all water users, emphasizing conservation and the development of feasible alternative water supplies. An important goal is to resolve disputes between the state of New Mexico and Indian tribes, Pueblos, and nations, without costly litigation. While the State Engineer began adjudicating water rights on tributaries to the state's major rivers more than 30 years ago, the water rights for most of the state's 23 Indian tribes, Pueblos and nations have not been quantified.

## VI. Main Agency Accomplishments and Challenges Regarding Tribes

- The Office of the State Engineer continues to participate as requested through the Tribal Liaison to participate in several activities, meetings, and conferences. The Tribal Liaison has also assisted other governmental agencies in their outreach activities.
- In the Aamodt Settlement, the agency played a key role in negotiating and reaching consensus on the 611(g) Agreement with the Pueblos of Nambe, Pojoaque, Tesuque, and San Ildefonso; the Bureau of Reclamation and Santa Fe County. This included amendments to several agreements and consensus design concept. The entire process culminated in the signing of the agreements with the parties which included Governor Michelle Lujan-Grisham.
- The challenges this year have been many. One issue for the OSE in the last year has been our ability to respond to issues in a timely manner, which has been affected by loss of personnel, many through normal attrition and some due to retirements. In the 2021 legislative session the State Engineer, in conjunction with DFA approval, will request additional funding to properly staff a dedicated Indian water rights settlement team. During these challenging financial times, many employees have stepped up to ensure that the work and mission of the OSE continues.



Pond at Ohkay Owingeh

## ϡII. GOALS FOR FISCAL YEAR 2023

- ϡIII. Continued outreach to all 23 Tribes, Pueblos and Nations by the State Engineer, Tribal Liaison, and members of the agency.
- IE. The agency continues its work on the adjudication of Indian water rights claims through settlement discussions and changes being made in the agency are becoming more productive in making progress in several of the stream systems and settlements being negotiated. The issue of Indian water rights continues to be an ongoing work in progress and a priority for the agency.
- E. Another goal is to hire more staff in many areas of the agency to assist in addressing Indian water rights throughout the state. The agency has made this a priority through the legislative process for funding and budget appropriations for coming 2023 Legislative session.
- EI. With the creation of Bureau for Tribes, Pueblos and Nations for the year 2023, the goal is to continue to work on pending Indian Water RIghts settlements and other native water issues throughout the state.
- EII. Another goal is to continue the work on the implementation of the three existing water right settlements, which are all in different phases of implementation. Continued meetings with Taos Pueblo with 10 meetings total, the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso are on track with construction of the Pojoaque Basin Regional Water System, Navajo Nation and the Navajo-Gallup Water Supply pipeline and Cutter Lateral are both making progress.

## **VIII. AGENCY POLICY**

### **OFFICE OF THE STATE ENGINEER/INTERSTATE STREAM COMMISSION** **PILOT TRIBAL CONSULTATION PLAN**

**Pursuant to Executive Order No. 2005-004, adopted by Governor Richardson on February 1, 2005, the Office of the State Engineer, and the Interstate Stream Commission (OSE/ISC) adopt the following Pilot Tribal Consultation Plan.**

1. On December 17, 2003, the Interstate Stream Commission adopted the State Water Plan.
2. The OSE/ISC utilizes the State Water Plan for strategic planning purposes. New Mexico law requires that the State Water Plan be periodically reviewed, updated, and amended in response to changing conditions, and at a minimum, a review shall be undertaken every five years. (NMSA 72-14-3.1(H)).
3. The State Water Plan provides an opportunity for interaction between the OSE/ISC and tribal governments.
4. The statute authorizing the State Water Plan required consultation with tribal governments regarding coordination of the water plans of Indian nations, Tribes and Pueblos with the State Water Plan. (NMSA 72-14-3.1(E)).
5. The OSE/ISC consulted with Tribes and Pueblos in developing the State Water Plan and four public meetings were held on Tribal or Pueblo lands.
6. During the development of the State Water Plan, at least eight private meetings were held between State and Tribal/Pueblo representatives and many other communications and public meetings occurred.
7. Nothing in the State Water Plan shall be construed to determine, abridge, or affect the water rights of Indian nations, tribes, or pueblos. (NMSA 72-14-3.1 (J)).
8. As part of the periodic review of the State Water Plan, the OSE/ISC will continue to consult with Tribes and Pueblos to gather input and to provide technical assistance to Tribes and Pueblos regarding water-planning issues.
9. The State Water Plan requires the ISC to continue its coordinated and concerted efforts to convene a variety of water planners and stakeholders to advise the State Engineer and Interstate Stream Commission on issues relating to State Water Plan development and implementation. (Section F).
10. The State Water Plan (Section E) contains several policy statements relating to tribal water issues:
  - a) No injury to Pueblo and Tribal Water Rights
  - b) Respect of Pueblo and Tribal Rights



- c) Cultural and Traditional Importance of Water
  - d) Sovereign Status of Pueblos and Tribes
  - e) Government-to-Government Consultations for Water Planning
  - f) Government-to-Government Consultation for Water Settlements and Adjudications
- 11.** The OSE/ISC is committed to meeting with Tribes and Pueblos on a Government-to-Government basis to work cooperatively with Tribes and Pueblos to develop and implement these policy statements.
- 12.** The OSE/ISC will seek meaningful consultations on a Government-to-Government basis directly with each Tribe, Nation and Pueblo regarding the coordination and integration of the water plans of Tribes, Nations and Pueblos. (Section E)
- 13.** The OSE/ISC will continue to hold meetings with Tribes, Pueblos and Nations at the State-Tribal Water Institutes meetings.



**Sandia Mountains View from the Middle Rio Grande at the Bosque**

## **IX. AGENCY EFFORTS TO IMPLEMENT POLICY**

### **Protecting and Promoting New Mexico's Environmental Group**

Executive Order No. 2005-004 – Statewide Adoption of Pilot Tribal Consultation Plans.

The State Engineer promulgated Rules and Regulations in the Pojoaque Basin and the objective of this policy is to provide for the allocation, distribution, and administration of the available water supply. This will also prevent illegal diversions and over-diversions and implement the Aamodt settlement.

### **Current and Planned Programs and Services for American Indians**

The Office of the State Engineer has provided suggestions and recommendations to the Tribes, Pueblos and Nations on an as requested basis on the resources which are provided by several funding agencies, such as NRCS, USDA, U. S. Army Corps of Engineers and the Water Trust Board, including the Tribal Infrastructure Fund. The Tribal Liaison will continue efforts to look for other resources as part of the outreach process to help the Tribes, Pueblos, and Nations with their water projects where it will be feasible. Funds could be available through the ARPA process for infrastructure and other needs.

### **Training and Employee Notification**

The Office of the State Engineer is fully aware of the requirements needed to meet, consult with the native communities throughout the State and will avail itself of Cultural Competency training as it becomes available. As a former governor, the liaison recognizes the communities and has learned the protocols of each individual Tribe, Pueblo and Nation (TPN). The TPN's are deeply connected to their water resources through their customs and traditions that have been passed down through the generations and place a deep respect on the resource. Pursuant to 2009 legislation, the Senate Bill 196 State-Tribal Collaboration Act established a process for collaboration and consultation. The OSE/ISC will continue its practice for informing and consulting in good faith on a government-to-government basis.

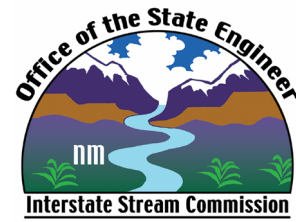
**Drought on the Rio Tesuque**



**X. KEY NAMES AND CONTACT INFORMATION**  
**List of OSE/ISC Personnel having periodic Communications with Tribes, Pueblos and Nations.**

<b>CONTACT</b>	<b>PHONE</b>	<b>EMAIL</b>
John D'Antonio Jr., PE State Engineer	505-827-6091	john.dantonio@state.nm.us
Rolf Schmidt Petersen ISC Director	505-827-6103	rolf.schmidt@state.nm.us
Greg Ridgley OSE General Counsel	505-827-6174	greg.ridgley@state.nm.us
Myron Armijo Tribal Liaison	505-699-1725	myron.armijo@state.nm.us
John Romero Water Resource Allocation Program Director and Water Rights Director	505-827-4187	john.romero1@state.nm.us
Brian Gallegos Acequia Liaison / AWRM Manager	505-827-3903	brian.gallegos@state.nm.us
Wayne Canon District I – Albuquerque Manager	505-383-4000	wayne.canon@state.nm.us
Doug Crosby District VI – Santa Fe Acting Co-Manager	505-827-6139	doug.crosby@state.nm.us
Ramona Martinez District VI – Santa Fe CO- Acting Manager	505-827-3870	ramona.martinez2@state.nm.us
Kristina Eckhart Acting Public Information Officer State Engineers Administrative Manager	505-827-6091	kristina.eckhart@state.nm.us
Uday Joshi Hearing Unit Managing Attorney	505-476-7405	uday.joshi@state.nm.us
Arianne Singer ISC General Counsel	505-827-6149	arianne.singer@state.nm.us
Lucia Sanchez Water Planner Manager	505-476-5397	lucia.sanchez@state.nm.us
Page Pegram Rio Grande Bureau Chief	505-383-4051	page.peggram@state.nm.us
Grace Haggerty MRG ESA Program Manager	505-383-4042	grace.haggerty@state.nm.us

## XI. APPENDICES



<b>1. Protecting and Promoting NM Environment Group</b>	<b>29</b>
<b>2. Map of Indian Reservations in NM</b>	<b>31</b>
<b>3. OSE/ISC Organization Chart</b>	<b>33</b>



Fall on the Rio Grande at San Ildefonso



# 1. "Protecting and Promoting New Mexico's Environment Group"

## Office of the State Engineer Tribal Communication and Collaboration Policy



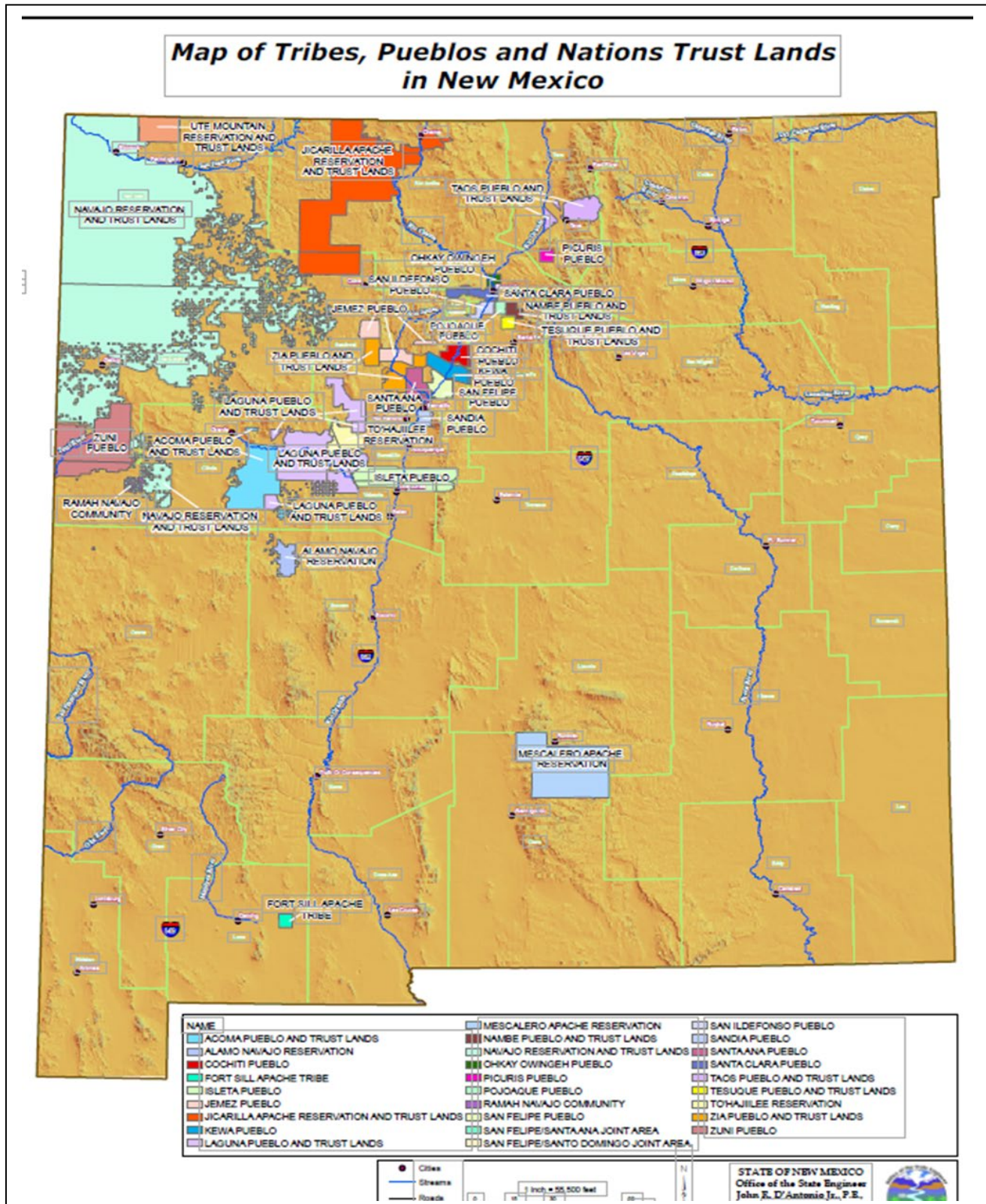
### BACKGROUND

- A. In 2003, Governor Bill Richardson and Tribal Governments in New Mexico signed a *Statement of Policy and Process* ("Statement") to "establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences." The Statement "recognizes and respects [tribal] sovereignty" and directs State and Tribal Governments "to respect the principles of government-to-government relations."
- B. In 2005, Governor Bill Richardson issued Executive Order 2005-004, *Statewide Adoption of Tribal Consultation Plans*. Executive Order 2005-004 expanded on the 2003 Statement by directing 17 State agencies to consult with all of New Mexico's 22 Indian Nations, Tribes, and Pueblos in adopting tribal consultation plans that address "the agency's operations that involve interaction with tribal governments, communities, and/or tribal members within New Mexico."
- C. On March 19, 2009, Governor Bill Richardson signed the New Mexico State – Tribal Collaboration Act ("Act") into law. The Act directs each state agency to designate a tribal liaison at each state agency, establishes an annual summit with New Mexico tribal leadership, and requires development of cultural competency training for state employees and development of state -tribal communication and collaboration policies for state agencies.
- D. In the fall of 2009, the Governor's Office established the "Protecting and Promoting New Mexico's Environment Group" composed of representatives from the New Mexico Energy, Minerals and Natural Resources Department, New Mexico Department of Game and Fish, New Mexico Office of State Engineer, New Mexico Environment Department, and New Mexico Department of Agriculture ("Agency" or "Agencies"). The Group was established to develop an overarching tribal communication and collaboration policy that:
  - i. Promotes effective communication and collaboration between the state agency and New Mexico Indian nations, tribes, and pueblos,
  - ii. Promotes positive government-to-government relations between the state and New Mexico Indian nations, tribes, and pueblos.
  - iii. Promotes cultural competency in providing effective services to New Mexico Indian nations, tribes, and pueblos; and



- iv. Establishes a method for notifying state agency employees of the purpose and requirements of the tribal communication and collaboration policy.
- E. The Agency submits the Tribal Collaboration and Communication Policy ("Policy") to the Indian Affairs Department in accordance with the State – Tribal Collaboration Act, NMSA 1978, § 11-18-4(C) (2009).
- F. The adoption of this Policy does not preclude the Agency from further developing or updating agency-specific implementation plans, or consultation policies.

## 2. Map of Tribes Pueblos and Nations Trust Lands in New Mexico



---

## Four Tribal Nations

Jicarilla Apache	Navajo Nation
Mescalero Apache	Fort Sill Apache



## Nineteen Pueblos

Acoma	Taos
Cochiti	Sandia
Pojoaque	Santa Ana
Isleta	Santa Clara
Jemez	Santa Domingo
Laguna	San Felipe
Nambe	San Ildefonso
Ohkay Owingeh	Tesuque
Picuris	Zia
Zuni	

### 3. New Mexico Office of The State Engineer/Interstate Stream Commission Organization Chart

