

ABEYTA WATER RIGHTS ADJUDICATION:

SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, 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, AND THE 12 TAOS AREA MUTUAL DOMESTIC  
WATER CONSUMERS' ASSOCIATIONS

Dated December 12, 2012

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- 2 Taos Pueblo Lands Map
- 3 Documentation of OSE Taos Area Calibrated Groundwater Flow Model T17.0 and T17sup.M7
- 4 Taos Valley Map
- 5 Proposed Partial Final Judgment and Decree on the Water Rights of Taos Pueblo
- 6 Acequia Springs Claims List
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- 16 Waiver and Release of Claims by Taos Pueblo and the United States
- 17 Waiver and Release of Claims by Taos Pueblo Against the United States

This Settlement Agreement, dated December 12, 2012, is made among the Parties set forth in **Article 1** and memorializes the agreement of the Parties to set aside their different positions on legal and factual issues, including, but not limited to, matters of history, aboriginal and relative priority of water rights claims, and quantification of water right claims for the following purposes: (a) to avoid the cost and uncertainty of litigation; (b) to provide finality with respect to the quantification of Taos Pueblo's water rights; (c) to provide an opportunity for non-Pueblo irrigators in the Taos Valley to preserve their Acequias and for other non-Pueblo water rights owners to protect, develop, and maintain their water uses while establishing a means by which the Pueblo may put its decreed right to beneficial use; (d) to restore, preserve, and protect the Taos Pueblo Buffalo Pasture; and (e) to foster cooperation among all Taos Valley residents regarding the allocation and use of water supplies.

NOW, THEREFORE, the Parties agree and bind themselves as follows:

## **1. PARTIES TO THIS SETTLEMENT AGREEMENT.**

### **1.1.EPWS D**

El Prado Water and Sanitation District ("EPWS D"), that water and sanitation district duly organized and operated pursuant to NMSA 1978, § 73-21-1, *et seq.*, which has its place of operation in the vicinity of El Prado, New Mexico, and is a political subdivision of the State.

### **1.2.Acequias**

Fifty-five (55) individual Acequias, signatory hereto, which are political subdivisions of the State and members of the TVAA that represent and bind their respective Parciantes on common issues, in accordance with applicable law, including, but not limited to, water sharing with other Parties, protection from priority administration and calls, and waivers of protests to the permit applications and actions described in this Settlement Agreement. Such waivers of protests relate only to Parciantes' surface water rights and not to their groundwater rights, if any.

### **1.3.MDWCAs**

Mutual Domestic Water Consumers Associations ("MDWCAs"), which are those twelve (12) individual associations signatory hereto and incorporated pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1, *et seq.*, or its predecessor statutes, and are political subdivisions of the State.

### **1.4.State**

State of New Mexico ("State").

### **1.5.Pueblo**

Taos Pueblo (“Pueblo”), that federally recognized and sovereign Indian tribe located in the Taos Valley of New Mexico.

### **1.6.TVAA**

Taos Valley Acequia Association (“TVAA”) is that New Mexico non-profit corporation which represents itself and the fifty-five (55) community Acequias signatory to this Settlement Agreement.

### **1.7.Town**

Town of Taos (“Town”), that municipality located in Taos County and duly incorporated and operated pursuant to NMSA 1978, § 3-1-1, *et seq.*, and its ordinances.

### **1.8.United States**

The United States of America, acting solely in its capacity as trustee for the Pueblo (“United States”). References to the United States of America acting in a different capacity are specified in particular contexts of this Settlement Agreement.

## **2. DEFINITIONS.**

### **2.1.AFY**

“AFY” means acre-feet of water per year or per annum.

### **2.2.Aboriginal Priority Date**

“Aboriginal Priority Date” means the time immemorial water right priority that, under federal law, arises from Pueblo aboriginal occupancy and use.

### **2.3.Acequia**

“Acequia” means a community ditch association, as defined by and operated pursuant to NMSA 1978, §§ 73-2-1 *et seq.* and 73-3-1 *et seq.* and which is a signatory to this Settlement Agreement.

### **2.4.Adjudication**

“Adjudication” means the general adjudication of water rights entitled *State of New Mexico ex rel. State Engineer v. Abeyta* and *State of New Mexico ex rel. State Engineer v. Arellano*, Civil



Nos. 69cv07896-BB and 69cv07939-BB (consolidated), now pending in the United States District Court for the District of New Mexico.

### **2.5. Arroyo Seco Abajo**

“Arroyo Seco Abajo,” as used in **Article 8**, means that community the lands of which are irrigated by the Upper Manuel Andres Trujillo Ditch, the Lower Manuel Andres Trujillo Ditch, and the Juan Manuel Lucero Ditch.

### **2.6. Arroyo Seco Arriba**

“Arroyo Seco Arriba,” as used in **Article 8**, means that community the lands of which are irrigated by the Acequia Madre del Rio Lucero y del Arroyo Seco.

### **2.7. Attachment**

“Attachment” means those referenced documents attached to and included with this Settlement Agreement.

### **2.8. Buffalo Pasture**

“Buffalo Pasture” means that natural wetland, generally depicted in **Attachment 1**, which has cultural and religious significance to the Pueblo and is more fully defined in **Article 5.3.1**.

### **2.9. Buffalo Pasture Depletions**

“Buffalo Pasture Depletions” means those surface water depletion effects that the Settlement Model simulates as resulting from Future Groundwater Diversions and occurring in model Stream Segments Buffalo Pasture East and Buffalo Pasture West.

### **2.10. Buffalo Pasture Recharge Project**

“Buffalo Pasture Recharge Project” means the project described and identified in **Articles 5.3.3** and **7.3.1** of this Settlement Agreement and in the general location indicated in **Attachment 1**.

### **2.11. CIR**

“CIR” means Consumptive Irrigation Requirement, defined as the quantity of irrigation water, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface in a specific period of time. It may be calculated numerically by subtracting effective rainfall from consumptive use.

2.12. **El Prado**

“El Prado,” as used in **Article 8**, means that community the lands of which are irrigated by the Acequia Madre del Prado, and shall not mean EPWSD.

2.13. **Enforcement Date**

“Enforcement Date” means the date upon which the Secretary publishes the notice required by section 509(f)(1) of the Settlement Act.

2.14. **FDR**

“FDR” means Farm Delivery Requirement, defined as the quantity of water, exclusive of effective rainfall, that must be delivered to the farm headgate to satisfy the CIR of crops grown on the farm in a specific period of time. It may be calculated numerically by dividing the CIR by the on-farm irrigation efficiency.

2.15. **Forbear, Forbearance**

“Forbear” or “Forbearance” means to restrain, or the exercise of restraint, from asserting a water right’s Aboriginal Priority Date.

2.16. **Future Groundwater Diversions**

“Future Groundwater Diversions” means those groundwater diversions permitted or otherwise lawfully commenced after May 30, 2006 and all EPWSD groundwater diversions, notwithstanding the date of their permitting, but shall not include the Town’s groundwater diversions from its In-Town Well Field up to the diversion ceiling set forth in **Article 6.2.2.1**.

2.17. **GPM**

“GPM” means gallons per minute.

2.18. **HIA Right**

“HIA Right” means the Pueblo’s right to irrigate Historically Irrigated Acreage as described in **Article 5.1.1.1**.

2.19. **Historically Irrigated Acreage**

“Historically Irrigated Acreage” means those five thousand seven hundred twelve and seventy-eight hundredths (5,712.78) acres identified in the Taos Pueblo Water Use Survey, the irrigation of which forms the basis for the Pueblo’s HIA Right.

2.20. **Impair, Impairment**

“Impair” or “Impairment” has the meaning developed under New Mexico water law.

2.21. **Lawful Irrigation or Stock Uses**

“Lawful Irrigation or Stock Uses” means the actual and lawful use of surface waters for irrigation, livestock, and domestic uses, including amounts for conveyance from a stream diversion, within the parameters of a Subfile Order or other order of the Court in the Adjudication.

2.22. **Market, Marketing, Marketing Agreement**

“Market,” “Marketing,” or “Marketing Agreement” as used in **Article 5** means the assignment, exchange, lease, option to lease, contract, subcontract, or other temporary disposition of the water rights secured to the Pueblo under this Settlement Agreement and the Partial Final Decree.

2.23. **Mutual-Benefit Projects**

“Mutual-Benefit Projects” means the projects described and identified in **Articles 6 and 10.1** of this Settlement Agreement.

2.24. **Mutual-Benefit Projects Parties**

“Mutual-Benefit Projects Parties” means the Town, EPWSD, the Acequia Madre del Rio Lucero y del Arroyo Seco, the Acequia Madre del Prado, the Acequia del Monte, the Acequia Madre del Rio Chiquito, the Upper Ranchitos MDWCA, the Upper Arroyo Hondo MDWCA, the Llano Quemado MDWCA and the Pueblo.

2.25. **Parciante**

“Parciante” means an individual member of an Acequia.

2.26. **Partial Final Decree**

“Partial Final Decree” means the Decree (entitled “Partial Final Judgment and Decree”) entered in the Adjudication, for the resolution of the Pueblo’s water right claims and which is substantially in the form agreed to by the Parties and attached to this Settlement Agreement as **Attachment 5**.

2.27. **Party, Parties**

“Party” or “Parties” means one or more of those parties identified in **Article 1** of this Settlement Agreement.

2.28. **Pre-Basin Groundwater Right**

“Pre-Basin Groundwater Right” means a state law based right to divert and use groundwater with a priority date earlier than the State Engineer’s Declaration of Underground Water Basin in the area that includes the groundwater right’s point of diversion.

2.29. **PDR**

“PDR” means Project Diversion Requirement, defined as the quantity of water, exclusive of effective rainfall, that must be diverted from an off-farm source of water to satisfy the FDR and any adjudicated livestock or domestic uses in a specific period of time. It may be calculated numerically by dividing the FDR and any adjudicated livestock or domestic uses by the off-farm conveyance efficiency.

2.30. **Pueblo Lands**

“Pueblo Lands” means those lands located within the Taos Valley to which the Pueblo, or the United States in its capacity as trustee for the Pueblo, holds title subject to federal law limitations on alienation. Such lands include Tracts A, B, and C, the Pueblo’s land grant, the Blue Lake Wilderness Area, and the Tenorio and Karavas Tracts and are generally depicted in **Attachment 2**.

2.31. **San Juan-Chama Project**

“San Juan-Chama Project” means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96 and 97), and the Act of April 11, 1956 (70 Stat. 105).

2.32. **Secretary**

“Secretary” means the Secretary of the Interior.

2.33. **Settlement Act**

“Settlement Act” means the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291, tit. V, §§ 501-513, 124 Stat. 3064, 3122-34 (2010).

2.34. **Settlement Model**

“Settlement Model” means the New Mexico Office of the State Engineer numerical groundwater flow model Version T17.0 and T17sup.M7, as documented in **Attachment 3**, or any later version produced in accordance with **Article 7.2.2**.

2.35. **State Engineer**

“State Engineer” means the New Mexico State Engineer.

2.36. **Stream Segment, Stream Segments**

“Stream Segment” or “Stream Segments” means one or more of the stream segments for which depletions are simulated in the Settlement Model, as shown on **Attachment 10** and further identified as follows [Reference to specific Settlement Model cells is by row and column number as follows: (row, column).]:

- 2.36.1. “Upper Rio Hondo” shall mean the reach of the Rio Hondo starting with Settlement Model cell (5,42) and ending with Settlement Model cell (5,23), that is numbered Segment 1 in **Attachment 10**.
- 2.36.2. “Arroyo Seco” or “Rio Seco” shall mean the entire Arroyo Seco upstream of the confluence of the Arroyo Seco with the Rio Pueblo de Taos, that is numbered Segment 2 in **Attachment 10**.
- 2.36.3. “Upper Rio Lucero” shall mean the reach of the Rio Lucero upstream of the Buffalo Pasture, that is numbered Segment 3 in **Attachment 10**.
- 2.36.4. “Buffalo Pasture West” shall mean the western half of the Buffalo Pasture, that is numbered Segment 4 in **Attachment 10**.
- 2.36.5. “Buffalo Pasture East” shall mean the eastern half of the Buffalo Pasture, that is numbered Segment 5 in **Attachment 10**.
- 2.36.6. “Lower Rio Lucero” shall mean the reach of the Rio Lucero downstream of Buffalo Pasture and upstream of the confluence of the Rio Lucero with the Rio Pueblo de Taos, that is numbered Segment 6 in **Attachment 10**.

- 2.36.7. “Rio Pueblo de Taos A” shall mean the reach of the Rio Pueblo de Taos upstream of the confluence of the Rio Pueblo de Taos with the Rio Lucero, that is numbered Segment 7 in **Attachment 10**.
- 2.36.8. “Rio Fernando” shall mean the reach of the Rio Fernando de Taos upstream of the confluence of the Rio Fernando de Taos with the Rio Pueblo de Taos, that is numbered Segment 8 in **Attachment 10**.
- 2.36.9. “Rio Pueblo de Taos B” shall mean the reach of the Rio Pueblo de Taos downstream of the confluence of the Rio Pueblo de Taos with the Rio Lucero and upstream of the confluence with the Rio Fernando de Taos, that is numbered Segment 9 in **Attachment 10**.
- 2.36.10. “Rio Pueblo de Taos C” shall mean the reach of the Rio Pueblo de Taos downstream of the confluence of the Rio Pueblo de Taos with the Rio Fernando de Taos and upstream of the confluence of the Rio Pueblo de Taos with the Rio Grande del Rancho, that is numbered Segment 10 in **Attachment 10**.
- 2.36.11. “Rio Chiquito” shall mean the reach of the Rio Chiquito upstream of the confluence of the Rio Chiquito and the Rio Grande del Rancho, that is numbered Segment 11 in **Attachment 10**.
- 2.36.12. “Upper Rio Grande del Rancho” shall mean the reach of the Rio Grande del Rancho upstream of the confluence of the Rio Grande del Rancho and the Rio Chiquito, that is numbered Segment 12 in **Attachment 10**.
- 2.36.13. “Lower Rio Grande del Rancho” shall mean the reach of the Rio Grande del Rancho downstream of the confluence of the Rio Grande del Rancho with the Rio Chiquito, and upstream of the confluence of the Rio Grande del Rancho with the Rio Pueblo de Taos, that is numbered Segment 13 in **Attachment 10**.
- 2.36.14. “Rio Pueblo de Taos D” shall mean the reach of the Rio Pueblo de Taos starting with Settlement Model cell (46,27) and ending with Settlement Model cell (46,23), that is numbered Segment 14 in **Attachment 10**.
- 2.36.15. “Rio Pueblo de Taos E” shall mean the reach of the Rio Pueblo de Taos starting with Settlement Model cell (46,22) and ending with Settlement Model cell (60,5), that is numbered Segment 15 in **Attachment 10**.

2.36.16. “Lower Rio Hondo” shall mean the reach of the Rio Hondo starting with Settlement Model cell (5,22) and ending with Settlement Model cell (6,10), that is numbered Segment 16 in **Attachment 10**.

2.36.17. “Rio Grande Segment” shall mean the model cells that denote the Rio Grande Mainstem in Attachment 10, starting with Settlement Model cell (1,11) and ending with Settlement Model cell (60,4), that are numbered Segment 17 in **Attachment 10**. “Rio Grande,” not followed by “Segment,” refers more generally to the mainstem of this river in New Mexico, including but not limited to its course in the Taos area.

2.37. **Subfile Order**

“Subfile Order” means any order entered by the Court in this Adjudication that determines a water right or element thereof as between the State and a water right claimant with respect to water right claims that were filed with the Court prior to May 30, 2006.

2.38. **Taos Pueblo Water Use Survey**

“Taos Pueblo Water Use Survey” means the *Taos Pueblo Water Use Survey: Inventory of Water Uses on Taos Pueblo Indian Lands* (July 1997), authored by Edward L. Gonzales and Christopher Banet, which was filed with Court in 1997, as supplemented by the *2011 Supplement to Taos Pueblo Water Use Survey: Inventory of Water Uses on Taos Pueblo Indian Lands* (August 2011), authored by Christopher Banet. The entire Taos Pueblo Water Use Survey is included in **Attachment 7**.

2.39. **Taos Valley**

“Taos Valley” means the geographic area depicted in **Attachment 4**.

2.40. **Taos Valley Stream System**

“Taos Valley Stream System” means all surface or groundwater on or beneath the geographic area depicted in **Attachment 4**, which waters do not include the Rio Grande.

2.41. **Taos Valley Tributaries**

“Taos Valley Tributaries” means all Settlement Model Stream Segments except Rio Grande Segment, Buffalo Pasture East, and Buffalo Pasture West.

2.42. **Temporary Storage for Irrigation Use**

“Temporary Storage for Irrigation Use” means the storage of no more than five (5) AFY of a non-Indian irrigation surface water right, which irrigation right has been adjudicated by Subfile Order, for no more than thirty (30) days and where use of such stored water is limited to irrigation purposes.

2.43. **Tributary Depletions**

“Tributary Depletions” means surface water depletion effects calculated to occur in Stream Segments other than Buffalo Pasture East, Buffalo Pasture West, and Rio Grande Segment.

2.44. **Water Rights Owning Parties**

“Water Rights Owning Parties” means the Pueblo, the United States, the Town, EPWSD, TVAA and the fifty-five (55) individual Acequias, and the twelve (12) MDWCAs.

**3. MUTUAL BENEFITS AND CONSIDERATION.**

**3.1. IN GENERAL.**

The Parties shall be entitled to the benefits secured to them under this Settlement Agreement. The Parties have entered into this Settlement Agreement in consideration of the inherent mutual benefits, including, but not limited to:

- 3.1.1. avoiding the cost, uncertainty, and harm to relationships that would result from protracted litigation;
- 3.1.2. ensuring that the waters of the Taos Valley Stream System are managed for their present and future well-being; and
- 3.1.3. protecting the waters of the Taos Valley Stream System for cultural, irrigation, livestock, municipal, industrial, commercial, and domestic uses as well as enhancement of the natural environment.

**3.2. BUFFALO PASTURE PROTECTIONS.**

Restoration, preservation, and protection of the Buffalo Pasture have been central negotiation goals. Out of respect for the Buffalo Pasture’s cultural and religious importance to the Pueblo and in the spirit of cooperation, the Parties have agreed to projects and other measures that, among other things, are intended to accomplish these goals:



- 3.2.1. the Pueblo's development and implementation of the Buffalo Pasture Recharge Project, as described in **Article 7.3.1**, to restore and maintain surface and subsurface water levels within the Buffalo Pasture;
- 3.2.2. the limitation of groundwater diversions and consumption from certain existing Town and EPWSD municipal wells as described in **Article 6**; and
- 3.2.3. moving the Town's and EPWSD's development of future municipal water supply wells to areas located farther from the Buffalo Pasture, as described in **Article 6**, to allow for necessary increases in groundwater production without increasing adverse effects on the Buffalo Pasture.

### **3.3.SAN JUAN-CHAMA PROJECT WATER.**

The San Juan-Chama Project contracts to be issued under Section 508 of the Settlement Act are fundamental to resolving the Pueblo's water rights claims and providing an essential source of supply for municipal, commercial, and industrial uses in the Taos Valley.

### **3.4.RIO GRANDE SEGMENT DEPLETIONS.**

Rio Grande Compact compliance and minimization of this Settlement Agreement's effects on water users outside the Taos Valley have been central negotiation goals. Several projects and other measures provided for herein and developed by compromise of the Parties' various positions as set forth in this Settlement Agreement are intended to accomplish those goals.

### **3.5.MITIGATION WELL SYSTEM.**

The Parties recognize the mutual benefits to be achieved by using the Mitigation Well System, which is described in **Article 7.3.3.1**, to offset the surface water depletion effects resulting from Future Groundwater Diversions. These benefits include:

- 3.5.1. limiting future reliance on acquisition and retirement of water rights from Acequias to preserve those systems;
- 3.5.2. facilitating Pueblo acquisition of water rights, consistent with **Articles 5** and **8.6** and Section 505 of the Settlement Act, by reducing competition therefore; and
- 3.5.3. providing a means for critically needed and sustainable groundwater development in the Taos Valley.

### **3.6. ARROYO SECO ARRIBA PROJECT.**

The construction and operation of either the Arroyo Seco Arriba Aquifer Storage and Recovery (“ASR”) Project described in **Article 6.1.1.1** or the surface storage project described in **Article 6.1.1.2** provide a mutual benefit to the Pueblo and the Acequias by finally resolving allocation of the Rio Lucero.

### **3.7. WAIVER OF OBJECTIONS TO PARTIAL FINAL DECREE.**

The Parties waive any right to object and shall, in good faith, seek to deter objections by others to the entry of a Partial Final Decree that defines the Pueblo’s water rights consistent with **Attachment 5**.

### **3.8. WAIVER OF *INTER SE* CHALLENGES.**

The Water Rights Owning Parties agree to recognize one another’s water rights, as those rights are described in this Settlement Agreement or in any Subfile Order entered in the Adjudication. The Water Rights Owning Parties agree to waive their rights to file and shall abstain from filing, during the *inter se* phase or otherwise in the Adjudication, any objection to the water rights of any other Water Rights Owning Party, the water rights of individual Parciantes of the fifty-five (55) Acequias, or an Acequia as those rights are described in Subfile Orders. Nothing herein shall preclude one Acequia from challenging *inter se* the water rights of another Acequia’s Parciantes. Further, the Water Rights Owning Parties agree to waive their rights to file and shall abstain from filing, during the *inter se* phase or otherwise in the Adjudication, any objection to any Court order which recognizes any of the following: (1) subject to the agreement in **Article 8.5**, Acequia diversions of surface water from springs not to exceed those claims submitted to the State as itemized in **Attachment 6**; (2) inter- and intra-Acequia water-sharing customs; or (3) Lawful Irrigation or Stock Uses.

### **3.9. WAIVER OF CHALLENGES TO DOMESTIC WELLS.**

The Water Rights Owning Parties further agree to waive their rights to and shall abstain from filing *inter se* challenges to: (a) any domestic well right existing as of May 30, 2006 and which is permitted under NMSA 1978, § 72-12-1.1 or its predecessor statutes; and (b) any Pre-Basin Groundwater Right in the Taos Valley if claimed or used for domestic uses, livestock watering, or non-commercial irrigation of up to one (1) acre.

### **3.10. WAIVER OF ADMINISTRATIVE PROTESTS.**

As provided in **Article 6.5.1**, the Water Rights Owning Parties waive protests or objections to certain projects and water right transfers that are necessary for this Settlement Agreement.

#### **4. ENFORCEABILITY; PARTIES BOUND.**

##### **4.1.CONDITIONS PRECEDENT.**

This Settlement Agreement shall become enforceable and the releases and waivers set forth in **Article 12** shall become effective as of the date that the Secretary publishes the notice required by Section 509(f)(1) of the Settlement Act and that the conditions precedent set forth therein have been fulfilled.

##### **4.2.PROCEDURE FOR ENTRY OF PARTIAL FINAL DECREE.**

The Parties have filed a joint motion requesting that the Adjudication court enter an order approving procedures for providing notice of the proposed Partial Final Decree and this Settlement Agreement, and an opportunity to object and be heard, to all known and unknown claimants of water rights within the Taos Valley Stream System whether or not they have been joined as parties to the Adjudication. After the Court approves the procedure and the Settlement Agreement has been executed by the Parties and the Secretary, the Parties will file a Joint Motion for Entry of Partial Final Decree and Approval of the Settlement Agreement and request therein that the Court hear and decide all objections to the Partial Final Decree and the Settlement Agreement but defer entry of the Partial Final Decree until the Parties notify the Court that the conditions specified in Sections 509(f)(2)(D) through 509(f)(2)(F) of the Settlement Act have been satisfied. After the Parties file their joint motion for entry, the United States and the State will provide notice to all known and unknown claimants in the manner directed by the Court. Nothing herein precludes any Party from seeking inclusion of additional provisions in the Partial Final Decree, so long as such provisions are not inconsistent with the Settlement Act, this Settlement Agreement, or **Attachment 5**. Enforcement of the Partial Final Decree shall be subject to the terms and conditions of the Settlement Act, including Section 509(g), (h) and (j).

##### **4.3.ENFORCEABILITY OF SETTLEMENT AGREEMENT.**

The Parties shall be bound by all provisions of this Settlement Agreement, and this Settlement Agreement shall become enforceable and the waivers and releases executed pursuant to section 510 of the Settlement Act and the limited waiver of sovereign immunity set forth in section 511(a) of the Settlement Act shall become effective, as of the date that all conditions precedent set forth in **Article 4.1** have been fulfilled and the Secretary publishes the notice required by section 509(f)(1) of the Settlement Act.

#### **4.4.EXPIRATION DATE.**

4.4.1. IN GENERAL. If all of the conditions precedent set forth in **Article 4.1** and in section 509(f)(2) of the Settlement Act have not been fulfilled by the Expiration Date of March 31, 2017 specified by Section 509(h)(1) of the Settlement Act, or the Expiration Date as it may be extended pursuant to Section 509(j), this Settlement Agreement shall be null and void, the waivers and releases executed pursuant to section 510 of the Settlement Act and the sovereign immunity waivers in section 511(a) of the Settlement Act shall not become effective, and any unexpended Federal or State governmental funds, together with any income earned thereon, and title to any property acquired or constructed with expended Federal or State funds, shall be returned to the appropriating entity, unless otherwise agreed to by the Parties in writing and approved by Congress or the New Mexico Legislature, whichever is appropriate depending on the source of funding.

#### **4.4.2. EXCEPTIONS.**

4.4.2.1. Pursuant to section 509(h)(2), except as provided in section 509(i) of the Settlement Act, and notwithstanding any other provision of law or subsection 4.4.1, title to any property acquired or constructed with expended Federal funds made available under section 505(f) of the Settlement Act shall be retained by the Pueblo; and

4.4.2.2. Notwithstanding subsection 4.4.1, two hundred fifty thousand dollars (\$250,000) that was appropriated by the 2005 New Mexico Legislature for water rights for EPWSD shall not have to be returned to the State.

### **5. TAOS PUEBLO WATER RIGHTS.**

#### **5.1.SURFACE WATER.**

##### **5.1.1. HISTORICALLY IRRIGATED ACREAGE RIGHT.**

5.1.1.1. Subject to the other provisions of this Settlement Agreement, the Pueblo shall be entitled to divert and consume the surface waters of the Taos Valley Stream System to irrigate the five thousand seven hundred twelve and seventy-eight hundredths (5,712.78) acres shown on the Taos Pueblo Water Use Survey. Such right shall have an Aboriginal Priority Date. In exercising this right, the Pueblo shall be entitled to:

5.1.1.1.1. divert a combined total amount of water not to exceed that amount sufficient to irrigate the 5,712.78 acres, or twenty-two thousand five hundred eight and thirty-five hundredths (22,508.35) AFY, whichever is less; and

5.1.1.1.2. consume a combined total amount of water not to exceed that amount consumed by the irrigation of the 5,712.78 acres, or seven thousand eight hundred eighty-three and sixty-four hundredths (7,883.64) AFY, whichever is less.

5.1.1.2. FORBEARANCE. To avoid the disruption that the Pueblo’s immediately exercising its full Historically Irrigated Acreage Right (“HIA Right”) would cause to non-Indian irrigation in the Taos Valley and in consideration for this Settlement Agreement, the Pueblo shall forbear from the immediate full exercise of its HIA Right.

5.1.1.2.1. INITIAL FORBEARANCE. The Pueblo shall initially limit the exercise of its HIA Right to the irrigation of the two thousand three hundred twenty-two and forty-five hundredths (2,322.45) acres of recently irrigated acreage, which are those lands, allocated by ditch, identified in Table 1 below and consisting of seven hundred five and forty-nine hundredths (705.49) acres irrigated from the Rio Pueblo de Taos and one thousand six hundred sixteen and ninety-six hundredths (1,616.96) acres irrigated from the Rio Lucero, as of May 30, 2006. Any increase in the Pueblo’s exercise of its HIA Right above this initial amount shall be in accordance with **Article 5.1.1.2.2**.

<i>Ditch</i>	<i>Stream</i>	<i>Acreage</i>
“C”	Rio Pueblo de Taos	26.48
1908	Rio Lucero	280.34
Acequia de los Lovatos	Rio Pueblo de Taos	33.30
Acequia Madre del Medio	Rio Lucero	45.82
Acequia Madre de la Loma del Ranchito de Abajo	Rio Lucero	88.02
Acequia Madre del Prado	Rio Lucero	14.37
Acequia Madre del Pueblo	Rio Pueblo de Taos	93.60
Beeline	Rio Lucero	206.44
Buried Roots	Rio Pueblo de Taos	86.09
Cicada Nose	Rio Pueblo de Taos	29.04
Cortez y Cisneros	Rio Lucero	1.17
Deer Jaw	Rio Pueblo de Taos	80.26
Elk Horn	Rio Pueblo de Taos	8.42
Grouse (to Buffalo Pasture)	Rio Pueblo de Taos/Rio Lucero	55.20

<i>Table 1</i>		
<i>Ditch</i>	<i>Stream</i>	<i>Acreage</i>
Grouse	Rio Lucero	173.51
Indian	Rio Lucero	164.34
McClure	Rio Pueblo de Taos	11.40
Mirabal	Rio Pueblo de Taos	17.14
No. Trash Pile	Rio Pueblo de Taos	29.83
Phia-No	Rio Pueblo de Taos	74.30
Pottery	Rio Pueblo de Taos	57.52
Pull Leaf	Rio Pueblo de Taos	82.06
So. La Loma Lateral	Rio Lucero	4.26
So. Trash Pile	Rio Pueblo de Taos	38.58
Summer Spring Creek	Rio Lucero	12.59
Tenorio	Rio Lucero	598.50
Ventura Mirabal	Rio Pueblo de Taos	9.87

5.1.1.2.2. INCREASES IN PUEBLO EXERCISE OF ITS HIA RIGHT.

5.1.1.2.2.1. Consistent with **Article 8**, the Pueblo’s obligation to forbear shall be reduced, and the Pueblo may increase the exercise of its HIA Right to the full amount of that right, only as non-Indian irrigation surface water rights in the Taos Valley are reduced by any of the following:

5.1.1.2.2.1.1. the acquisition by the Pueblo of a non-Indian irrigation surface water right, which right has been adjudicated by Subfile Order, and the retirement of the acquired water right by the Pueblo filing with the State Engineer a Certificate of Retirement declaring the change in ownership of the acquired water right and stating that the Pueblo thereby irrevocably abandons the acquired water right, which shall be described in the Certificate of Retirement with particularity;

5.1.1.2.2.1.2. a change in the point of diversion of a non-Indian irrigation surface water right, which right has been adjudicated by Subfile Order, to a point of diversion outside of the Taos Valley and the subsequent curtailment of diversions at the move-to location as the result of the exercise and enforcement of the Pueblo’s Aboriginal Priority Date;

5.1.1.2.2.1.3. a change in the purpose of use of a non-Indian irrigation surface water right, which right has been adjudicated by Subfile Order, to a non-irrigation use of surface water (excepting those

changes to surface water uses for stock ponds or Temporary Storage for Irrigation Use) and the subsequent curtailment of diversions at the move-to location as the result of the exercise and enforcement of the Pueblo's Aboriginal Priority Date; or

5.1.1.2.2.1.4. the forfeiture or abandonment of a non-Indian irrigation surface water right under state law.

5.1.1.2.2.2. Upon the satisfaction of any of the conditions of **Articles 5.1.1.2.2.1.1** through **5.1.1.2.2.1.4**, the Pueblo shall have the right to increase the exercise of its HIA Right, on an acre-for-acre basis, by the reduction in the number of acres irrigated by the subject non-Indian irrigation surface water right. Any reduction in acreage irrigated by non-Indian surface water rights as the result of the satisfaction of any of the conditions of **Articles 5.1.1.2.2.1.1** through **5.1.1.2.2.1.4** does not make surface water available in the Taos Valley for new appropriation.

5.1.1.2.2.3. The Pueblo shall increase the exercise of its HIA Right on lands served by surface water diversions from a tributary within the Taos Valley Stream System only as non-Indian irrigation surface water rights served by surface water diversions from that particular tributary are reduced. Tributaries within that system include the Rio Hondo, Arroyo Seco, Rio Lucero, Rio Pueblo de Taos, Rio Fernando, Rio Chiquito, and Rio Grande del Rancho.

5.1.1.2.3. INITIAL PUEBLO SURFACE WATER ACQUISITIONS.

Consistent with **Article 8.6**, the Pueblo will seek to acquire and retire six hundred seventy-seven and fifty-three hundredths (677.53) acres of non-Indian irrigation surface water rights by the Enforcement Date.

5.1.1.2.4. CHANGE IN PLACE OF USE FOR CERTAIN HIA RIGHT

ACRES. The Pueblo has developed livestock impoundment rights on approximately twelve and ninety-three hundredths (12.93) acres of lands that also have an aboriginal HIA Right. Prior to the Pueblo's exercise of any portion of its HIA Right, which exercise shall be subject to **Article 5.1.1.2.2**, that the Taos Pueblo Water Use Survey indicates is on a parcel of land that also has a livestock impoundment right, the Pueblo shall change the place of use for that portion of its HIA Right to a new location.

5.1.2. LIVESTOCK IMPOUNDMENT RIGHT. The Pueblo shall have the right to fill and maintain fifty and twenty hundredths (50.20) acres of surface water impoundments for stock watering purposes, as those features are depicted on the Taos Pueblo Water Use Survey. Such right entitles the Pueblo to divert seventy-seven and fifty-one hundredths (77.51) AFY (*see* Table 2) and consume one hundred fourteen and thirty-five hundredths (114.35) AFY (*see* Tables 2 and 3).

5.1.2.1. DITCH-FED IMPOUNDMENTS. Of the Pueblo's Livestock Impoundment Right, it will have the right to fill and maintain seventeen and fifty-three hundredths (17.53) acres of stock ponds fed by ditches, as those impoundments are identified below in Table 2. The Inventory Numbers specified in Table 2 correlate to the identifications provided in the Taos Pueblo Water Use Survey. Pre-1935 priorities have been determined, in the absence of documentary evidence to the contrary, on the basis that the Pueblo was prepared to present supporting evidence that these impoundments were in existence prior to the dates specified.

<i>Inventory No.</i>	<i>Source</i>	<i>Ditch</i>	<i>Depletion (AFY)</i>	<i>Diversion (AFY)</i>	<i>Area (ac.)</i>	<i>Priority</i>
P-001	Rio Lucero	Tenorio	0.47	0.67	0.15	1989
P-002	Rio Lucero	Tenorio	0.27	0.39	0.06	1989
P-003	Rio Lucero	Tenorio	0.19	0.27	0.01	1991
P-004	Rio Lucero	Tenorio	0.47	0.67	0.14	1815
P-005	Rio Lucero	Tenorio	1.87	2.67	0.77	1815
P-006	Rio Lucero	Tenorio	0.35	0.50	0.03	1958
P-007	Rio Lucero	Tenorio	0.67	0.96	0.23	1989
P-008	Rio Lucero	Tenorio	0.57	0.81	0.17	1989
P-009	Rio Lucero	Tenorio	0.77	1.10	0.28	1815
P-010	Rio Lucero	Tenorio	0.87	1.24	0.30	1815
P-011	Rio Lucero	Tenorio	0.37	0.53	0.08	1815
P-012	Rio Lucero	Tenorio	0.57	0.81	0.17	1815
P-013	Rio Lucero	Tenorio	0.77	1.10	0.25	1989
P-014	Rio Lucero	Tenorio	1.27	1.80	0.47	1989
P-015	Rio Lucero	Tenorio	0.47	0.67	0.13	1815
P-016	Rio Lucero	Tenorio	0.77	1.10	0.25	1815
P-017	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-018	Rio Lucero	Tenorio	1.27	1.81	0.50	1991
P-019	Rio Lucero	Tenorio	0.19	0.27	0.01	1815
P-020	Rio Lucero	Tenorio	0.27	0.39	0.05	1815
P-021	Rio Lucero	Tenorio	0.19	0.27	0.01	1815
P-022	Rio Lucero	Tenorio	0.57	0.81	0.19	1815
P-023	Rio Lucero	Tenorio	1.37	1.96	0.55	1815
P-024	Rio Lucero	Tenorio	0.67	0.96	0.20	1815
P-025	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-026	Rio Lucero	Tenorio	0.19	0.27	0.01	1958
P-027	Rio Lucero	Tenorio	1.37	1.96	0.52	1815



<b><i>Inventory No.</i></b>	<b><i>Source</i></b>	<b><i>Ditch</i></b>	<b><i>Depletion (AFY)</i></b>	<b><i>Diversion (AFY)</i></b>	<b><i>Area (ac.)</i></b>	<b><i>Priority</i></b>
P-029	Rio Lucero	Tenorio	0.47	0.67	0.15	1815
P-030	Rio Lucero	Tenorio	0.19	0.27	0.01	1815
P-031	Rio Lucero	Tenorio	1.67	2.39	0.65	1815
P-032	Rio Lucero	Tenorio	1.77	2.53	0.69	1815
P-033	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-034	Rio Lucero	Tenorio	0.47	0.67	0.13	1815
P-035	Rio Lucero	Tenorio	0.27	0.39	0.06	1815
P-036	Rio Lucero	Tenorio	0.37	0.53	0.08	1989
P-037	Rio Lucero	Tenorio	0.77	1.10	0.25	1815
P-039	Arroyo Seco	Lower Manuel Andres Trujillo	1.15	1.64	0.40	1941
P-047	Rio Lucero	Tenorio	1.37	1.96	0.55	1815
P-048	Rio Lucero	Beeline	0.30	0.43	0.02	1958
P-049	Rio Lucero	Tenorio	0.67	0.96	0.23	1815
P-050	Rio Lucero	Beeline	0.27	0.39	0.01	1730
P-051	Rio Lucero	Beeline	0.27	0.39	0.01	1958
P-080	Rio Pueblo	Hail Creek	2.47	3.53	1.01	1730
P-081	Rio Pueblo	B Ditch	5.65	8.07	2.41	1730
P-082	Rio Pueblo	Mirabal	3.27	4.67	1.38	1730
P-083	Rio Pueblo	Mirabal	1.17	1.67	0.46	1730
P-084	Rio Pueblo	B Ditch	0.22	0.31	0.02	1730
P-085	Rio Pueblo	Phia-No	0.19	0.27	0.01	1991
P-086	Rio Lucero	Tenorio	0.27	0.39	0.03	1989
P-087	Rio Lucero	Tenorio	0.37	0.53	0.07	1815
P-088	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-089	Rio Pueblo	Phia-No	0.19	0.27	0.01	1989
P-090	Rio Pueblo	Phia-No	0.19	0.27	0.01	1991
P-091	Rio Pueblo	Acequia Madre del Pueblo	3.27	4.67	1.38	Same as Acequia
P-115	Rio Lucero	Tenorio	0.27	0.39	0.03	1958
P-116	Rio Lucero	Beeline	0.22	0.31	0.02	1730
P-117	Rio Lucero	Tenorio	0.27	0.39	0.03	1989
P-119	Rio Lucero	Tenorio	0.30	0.43	0.02	1815
P-120	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-121	Rio Lucero	Tenorio	0.87	1.24	0.29	1815
P-122	Rio Lucero	Tenorio	0.27	0.39	0.06	1989
P-123	Rio Lucero	Tenorio	0.27	0.39	0.06	1815
P-124	Rio Lucero	Tenorio	1.37	1.96	0.52	1815
P-125	Rio Lucero	Tenorio	0.37	0.53	0.09	1815
P-126	Rio Lucero	Tenorio	0.37	0.53	0.09	1815
P-127	Rio Lucero	Tenorio	0.67	0.96	0.23	1989
P-128	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-129	Rio Lucero	Indian/1908	0.27	0.39	0.01	1730
P-130	Rio Lucero	Tenorio	0.19	0.27	0.01	1991
P-132	Rio Lucero	Tenorio	0.57	0.81	0.16	1815
P-135	Rio Lucero	Tenorio	0.19	0.27	0.01	1989
P-136	Rio Lucero	Tenorio	0.19	0.27	0.01	1958
P-137	Rio Lucero	Tenorio	0.27	0.39	0.03	1989

<i>Inventory No.</i>	<i>Source</i>	<i>Ditch</i>	<i>Depletion (AFY)</i>	<i>Diversion (AFY)</i>	<i>Area (ac.)</i>	<i>Priority</i>
P-138	Rio Lucero	Beeline	0.30	0.43	0.02	1730
P-139	Rio Pueblo de Taos	Phia-No	0.19	0.27	0.01	1989
P-140	Rio Lucero	Tenorio	0.27	0.39	0.03	1958
P-141	Rio Pueblo de Taos	Acequia Madre Del Pueblo	0.27	0.39	0.06	Same as Acequia
P-142	Rio Lucero	Tenorio	0.22	0.31	0.02	1815
P-143	Rio Lucero	Tenorio	0.19	0.27	0.01	1815
P-144	Rio Lucero	Tenorio	0.19	0.27	0.01	1815
P-157	Rio Hondo	Cuchilla	0.30	0.43	0.02	1829
<b>Totals</b>	--	--	<b>54.26</b>	<b>77.51</b>	<b>17.53</b>	--

5.1.2.2. IMPOUNDMENTS NOT FED BY DITCHES. Of the Pueblo's Livestock Impoundment Right, it will have the right to fill and maintain in their present locations those thirty-two and sixty-seven hundredths (32.67) acres of stock water impoundments identified below in Table 3. The Inventory Numbers specified in Table 3 correlate to the identifications provided in the Taos Pueblo Water Use Survey. None of the impoundments identified in Table 3 will be subject to priority administration, nor will they be transferable to any surface water point of diversion away from the impoundment's associated arroyo or drainage within Pueblo Lands or to any groundwater point of diversion.

<i>Inventory No.</i>	<i>Area (ac.)</i>	<i>Depletion (AFY)</i>
R-028	0.02	0.28
R-038	0.23	0.55
R-040	1.77	2.95
R-041	0.52	1.05
R-042	1.62	2.65
R-043	2.75	4.35
R-044	0.23	0.55
R-045	0.40	0.85
R-046	0.34	0.75
R-052	0.10	0.45
R-053	0.21	0.55
R-054	0.29	0.65
R-055	0.90	1.65
R-056	1.03	1.75
R-057	1.72	2.85
R-058	3.67	5.75
R-059	0.51	1.05
R-060	0.69	1.25
R-061	3.10	4.95

<i>Inventory No.</i>	<i>Area (ac.)</i>	<i>Depletion (AFY)</i>
R-062	0.63	1.15
R-063	0.46	0.95
R-065	0.20	0.55
R-066	0.44	0.95
R-067	0.45	0.95
R-068	0.23	0.55
R-069	1.09	1.85
R-070	0.52	1.05
R-071	0.86	1.55
R-072	0.06	0.35
R-073	0.24	0.65
R-074	0.17	0.55
R-075	0.11	0.45
R-076	0.06	0.35
R-079	0.52	1.05
R-092	0.02	0.26
R-093	0.18	0.35
R-094	0.79	0.45
R-095	0.51	0.45
R-096	0.02	0.26
R-131	0.46	0.95
R-133	0.06	0.35
R-134	0.42	0.85
R-150	2.40	3.85
Buffalo Pasture Pond-03	0.24	0.79
Buffalo Pasture Pond-04	0.11	0.50
Buffalo Pasture Pond-05	0.27	0.86
Pit Tank-01	0.17	0.51
Pit Tank-02	0.53	1.05
Pit Tank-03	0.35	0.78
<b>Totals</b>	<b>32.67</b>	<b>60.09</b>

5.1.3. CHANGE OF POINT OF DIVERSION OF SURFACE WATER RIGHT.

Subject to this Settlement Agreement and applicable law, the Pueblo may change the point of diversion for any portion of its HIA Right available for exercise pursuant to **Article 5.1.1.2.2** or its stock pond right described in **Article 5.1.2.1** to a groundwater point of diversion.

**5.2.GROUNDWATER.**

5.2.1. MUNICIPAL, DOMESTIC, AND INDUSTRIAL WELLS. The Pueblo shall have the right to divert and consume three hundred (300) AFY of groundwater for municipal, domestic, and industrial uses as follows:

5.2.1.1. POINTS OF DIVERSION. This groundwater right is currently diverted in the quantities and at the locations shown in Table 4 below. The Inventory Numbers specified in the table set forth below correlate to the identifications provided in the Taos Pueblo Water Use Survey.

<i>Inventory No.</i>	<i>Field Name</i>	<i>Depletion (AFY)</i>
W-011	Spider Road (W) Community Well	50 (supp. to W-012, W-147, & W-150)
W-012	Spider Road (E) Community Well	50 (supp. to W-011, W-147, & W-150)
W-147	#2	50 (supp. to W-011, W-12, & W-150)
W-150	#1	50 (supp. to W-011, W-012, & W-147)
W-004	Taos Pueblo Forest Service Well	3
W-005	Pueblo War Chief Complex	3
W-091	Children's Art Center	3
W-149	Community Fire Station, Jail	3
W-161	Taos Elementary School	3
W-173	Pow-Wow Well – BIA4	3
W-178	War Chief's Office	3
W-205	Tribal Administration Building	3
Individual domestic wells	Various	76

5.2.1.2. PRIORITY. This groundwater right shall have an Aboriginal Priority Date.

5.2.2. LIVESTOCK WELLS. The Pueblo shall have the right to divert and consume fourteen and seventy-two hundredths (14.72) AFY of groundwater for stock watering purposes from the groundwater points of diversion and with the priorities identified below in Table 5. The Inventory Numbers specified in the table set forth below correlate to the identifications provided in the Taos Pueblo Water Use Survey.

<i>Inventory No.</i>	<i>Field Name</i>	<i>Gen. Location</i>	<i>Priority</i>	<i>Depletion (AFY)</i>
W-045	Carpio Bernal	Farm (near village)	1960	0.21
W-047	Frank Mirabal	Farm (near village)	1960	0.21
W-072	Cesario Gomez	Farm (near village)	1960	0.21
W-106	John D. Concha	Farm (near village)	1960	0.21
W-154	Frank Marcus	Farm (near village)	1960	0.21
W-163	RWP-3	Tract B	1958	0.86

<i>Inventory No.</i>	<i>Field Name</i>	<i>Gen. Location</i>	<i>Priority</i>	<i>Depletion (AFY)</i>
W-164	RWP-4	Tract B	1960	0.86
W-165	RWP-2	Tract A	1956	3.63
W-166	RWP-1	Tract A	1946	3.63
W-167	RWP-5	Tract A	1963	3.63
W-169	RWP-6/BIA-3	Grant (south)	1972	0.85
W-174	Paul Bernal	Farm (near village)	1960	0.21
<b>Total</b>	--	--	--	<b>14.72</b>

5.2.3. ADDITIONAL GROUNDWATER RIGHT. The Pueblo shall have the right to divert and consume one thousand three hundred (1,300) AFY of groundwater. This right shall have an Aboriginal Priority Date.

5.2.3.1. DEVELOPMENT PARAMETERS. No permit shall be required for the Pueblo's development and use of this water right. This right shall be developed in accordance with the following parameters:

5.2.3.1.1. EXISTING OR NEW WELLS. Up to one thousand sixty (1,060) AFY of groundwater diversions from the following wells or any well constructed to replace one of the following wells, provided that any such replacement well is constructed: (a) within two hundred (200) feet of the original well; and (b) subject to the same depth or aquifer specification, if any, as the original well:

5.2.3.1.1.1. Up to one hundred fifty (150) AFY from Settlement Model layers six (6) and seven (7) at Well BIA5 (W-171), which well is located in Tract A and is presently screened between 740 and 990 feet below ground level;

5.2.3.1.1.2. Up to one hundred fifty (150) AFY from Settlement Model layers six (6) and seven (7) at Well BOR6 (W-229), which well is located in Tract B and is presently screened between 1,335 and 1,775 feet below ground level;

5.2.3.1.1.3. Up to one hundred fifty (150) AFY from Settlement Model layers six (6) and seven (7) at Well K3 (W-227), which well is located in the Karavas Tract and is presently screened between 900 and 1,800 feet below ground level;

- 5.2.3.1.1.4. Up to one hundred (100) AFY from a new well constructed within the Karavas Tract, which well production shall not be limited to any particular Settlement Model layer;
  - 5.2.3.1.1.5. Up to one hundred fifty (150) AFY from Settlement Model layer six (6) and seven (7) at Well BOR5 (W-228), which well is located on the Pueblo Grant and is presently screened between 1,338 and 1,738 feet below ground level;
  - 5.2.3.1.1.6. A cumulative total of up to sixty (60) AFY from the two (2) Hail Creek Wells (W-223 and W-224) subject to the specific provisions of **Article 11.2.2.2.3.3**; and
  - 5.2.3.1.1.7. A cumulative total of up to three hundred (300) AFY from: (a) the Pueblo's existing municipal supply wells (*i.e.*, W-011, W-012, W-147, and W-150); or (b) new wells that are located within the Pueblo's Grant or Tenorio Tract, but no nearer than one-quarter (¼) mile to any boundary of those tracts.
- 5.2.3.1.2. RIO GRANDE CORRIDOR WELLS. Any portion of the one thousand three hundred (1,300) AFY of diversions not developed at those wells identified in **Article 5.2.3.1.1** may be diverted from no more than four (4) wells located within that corridor shown on **Attachment 10** that is no less than one (1) mile and no more than three (3) miles from the Rio Grande and which produce groundwater from Settlement Model layers six (6) and seven (7). Each well shall divert not more than three hundred fifty (350) AFY of the one thousand three hundred (1,300) AFY provided for in this **Article 5.2.3**, and no more than one (1) such well shall be located in Tract B for purposes of these diversions.
- 5.2.3.2. WELL SPACING.
- 5.2.3.2.1. Any new well constructed pursuant to **Article 5.2.3.1.1**, including any replacement well, shall not:
    - 5.2.3.2.1.1. be located within a one and one-quarter (1¼) mile radius of EPWSD's Las Colonias Well or a one (1) mile radius of EPWSD's El Torreon Well; or
    - 5.2.3.2.1.2. divert more than one hundred and fifty (150) AFY of the one thousand three hundred (1,300) AFY of water provided for in **Article**

**5.2.3** from a well located within: (a) that zone lying between a one and one-quarter (1¼) mile radius and a one and one-half (1½) mile radius of EPWSD's Las Colonias Well; or (b) that zone lying between a one (1) mile radius and a one and one-quarter (1¼) mile radius of EPWSD's El Torreon Well.

5.2.3.2.2. The well spacing provisions of this **Article 5.2.3.2** apply only to the Pueblo's development of wells for purposes of diverting the groundwater right provided for in **Article 5.2.3**.

5.2.3.2.3. The location of any new well constructed pursuant to **Article 5.2.3.1.1** shall be subject to **Article 11.2.2**.

5.2.3.3. **MITIGATION OF EFFECTS.** The Pueblo shall have no obligation to offset surface water depletion effects on the Rio Grande resulting from its diversion of the one thousand three hundred (1,300) AFY provided for in **Article 5.2.3**. It shall, however, have an obligation to offset Tributary Depletions resulting from such diversions and to mitigate Impairment as provided for in **Article 7** and shall offset such effects by use of the Mitigation Well System or use of a portion of its exercisable HIA Right in accordance with **Article 7.3.3.2**.

### **5.3.BUFFALO PASTURE.**

5.3.1. **IN GENERAL.** The Buffalo Pasture is the natural wetland located to the north and west of the Pueblo's traditional village area, as generally depicted in **Attachment 1**. This wetland is a critical Pueblo cultural resource on which its members have relied since time immemorial and which it continues to use for cultural and traditional purposes.

5.3.2. **BUFFALO PASTURE PROTECTIONS.** Restoration, preservation, and protection of the Buffalo Pasture are important goals of this Settlement Agreement, and several projects and other measures set forth in this Settlement Agreement are intended to accomplish those goals.

5.3.3. **BUFFALO PASTURE RECHARGE PROJECT.** The Buffalo Pasture Recharge Project and other mitigation provisions set forth in **Article 7.3.1** are material consideration for this Settlement Agreement, and the Buffalo Pasture Recharge Project shall serve as the preferred means for mitigating the Parties' Buffalo Pasture Depletions.

5.3.4. PUEBLO RIO GRANDE DEPLETION CREDIT. The Pueblo shall be entitled to deplete one hundred (100) AFY of surface waters from the Rio Grande without any offset or mitigation responsibility. Such credit shall be useable only to offset the Pueblo's shifted surface water depletion effects described in **Article 7.3.1.4**.

#### 5.4.SAN JUAN-CHAMA PROJECT REPAYMENT CONTRACT.

In consideration for the Pueblo's compromise of its water right claims in this Adjudication, to satisfy its present and future needs, and to provide resources necessary to support the Pueblo as a self-governing and sovereign Indian tribe, and as provided by section 508(b)(1)(A) of the Settlement Act, the Secretary shall enter into a repayment contract with the Pueblo that entitles the Pueblo to delivery of two thousand two hundred fifteen (2,215) AFY of San Juan-Chama Project water.

#### 5.5.GENERAL PROVISIONS.

##### 5.5.1. MARKETING.

5.5.1.1. PUEBLO WATER RIGHTS.—Subject to the approval of the Secretary in accordance with section 506(e) of the Settlement Act, the Pueblo may Market water rights secured to it under this Settlement Agreement and the Partial Final Decree, provided that such Marketing is in accordance with this **Article 5.5.1** and section 506 of the Settlement Act.

5.5.1.2. PUEBLO CONTRACT RIGHTS TO SAN JUAN-CHAMA PROJECT WATER.—Subject to the approval of the Secretary in accordance with subsection 506(e) of the Settlement Act, the Pueblo may subcontract water made available to the Pueblo under the contract authorized under section 508(b)(1)(A) of the Settlement Act to third parties to supply water for use within or without the Taos Valley, provided that the delivery obligations under such subcontract are not inconsistent with the Secretary's existing San Juan-Chama Project obligations and such subcontract is in accordance with this **Article 5.5.1** and section 506 of the Settlement Act.

##### 5.5.1.3. LIMITATION.

5.5.1.3.1. IN GENERAL.—Diversion or use of water off Pueblo Lands pursuant to Pueblo water rights or Pueblo contract rights to San Juan-Chama Project water shall be subject to and not inconsistent with the same requirements and conditions of state law, any applicable federal law, and any applicable interstate compact as apply to the exercise of water rights or



contract rights to San Juan-Chama Project water held by non-federal, non-Indian entities, including all applicable State Engineer permitting and reporting requirements.

5.5.1.3.2. EFFECT ON WATER RIGHTS.—Such diversion or use off Pueblo Lands under **Article 5.5.1.3.1** shall not Impair water rights or increase surface water depletions within the Taos Valley.

5.5.1.3.3. PUEBLO ACQUIRED STATE LAW WATER RIGHTS. —The Pueblo’s Marketing of any state law based water right (*i.e.*, any Pueblo acquired, state law based water right that is not retired in accordance with **Article 5.1.1.2.2.1.1**) shall carry with it its state law requirements and conditions.

5.5.1.4. MAXIMUM TERM.

5.5.1.4.1. IN GENERAL.—The maximum term of any water use lease or subcontract, including all renewals, shall not exceed 99 years in duration.

5.5.1.4.2. ALIENATION OF RIGHTS.—The Pueblo shall not permanently alienate any rights it has under this Settlement Agreement, the Partial Final Decree, and the Settlement Act.

5.5.1.5. APPROVAL OF SECRETARY.—The Secretary shall approve or disapprove any lease or subcontract submitted by the Pueblo for approval within a reasonable period of time after submission, provided that no Secretarial approval shall be required for any water use lease for less than 10 AFY with a term of less than 7 years, including all renewals.

5.5.1.6. NO FORFEITURE OR ABANDONMENT.—The nonuse by a lessee or subcontractor of the Pueblo of any right to which the Pueblo is entitled under the Partial Final Decree shall in no event result in a forfeiture, abandonment, relinquishment, or other loss of all or any part of those rights.

5.5.1.7. NO PREEMPTION.

5.5.1.7.1. IN GENERAL.—The approval authority of the Secretary provided under **Article 5.5.1.5** shall not amend, construe, supersede, or preempt any state or federal law, interstate compact, or international treaty that pertains to the Colorado River, the Rio Grande, or any of their tributaries, including

the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quantity of those waters.

5.5.1.7.2. **APPLICABLE LAW.**—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water made available under this Settlement Agreement.

5.5.1.8. **NO PREJUDICE.**—Nothing in this Settlement Agreement shall be construed to establish, address, prejudice, or prevent any party from litigating whether or to what extent any applicable state law, federal law, or interstate compact does or does not permit, govern, or apply to the use of the Pueblo’s water outside of New Mexico.

5.5.2. **WATER USES.** Regardless of the means used for quantifying the Pueblo’s water rights the Pueblo may devote such rights to any use. Such uses and any changes in points of diversion, place or purpose of use, shall be subject to this Settlement Agreement, including but not limited to the provisions of **Article 11.1.4**, and applicable law.

5.5.3. **INSTREAM FLOWS.** Subject to the other provisions of this Settlement Agreement, the Pueblo shall be entitled to change the place and purpose of use and point of diversion of any portion of its HIA Right available for exercise pursuant to **Article 5.1.1.2.2** or stock pond right described in **Article 5.1.2.1** to the maintenance of instream flows on Pueblo Lands to meet its traditional and cultural needs. Such instream flows shall not Impair the water rights of any Party.

5.5.4. **LIMITS ON ALIENATION.** Pursuant to section 504(a) of the Settlement Act, those rights to which the Pueblo is entitled under the Partial Final Decree shall be held in trust by the United States on behalf of the Pueblo and shall not be subject to forfeiture, abandonment, or permanent alienation. Any state law based water right acquired by the Pueblo, or the United States on the Pueblo’s behalf, and not retired in accordance with **Article 5.1.1.2.2.1** shall retain its state law requirements and conditions.

5.5.5. **NO EFFECT ON NATURAL PONDS AND LAKES.** Subject to the Act to Amend Section 4 of the Act of May 31, 1933, 84 Stat. 1437 (Dec. 15, 1970), nothing in this Settlement Agreement shall be construed as authorizing any human diversion or consumption of waters from or affecting any natural ponds or lakes within the Blue Lake Wilderness Area or as limiting the Pueblo’s lawful activities therein.

5.5.6. EMERGENCY GROUNDWATER PRODUCTION. Notwithstanding other provisions of this **Article 5**, the Water Right Owning Parties recognize the Pueblo's right to groundwater production from its wells as may be necessary in the event of fire or other emergency that poses a threat to the public health, safety, or welfare.

## 6. MUTUAL-BENEFIT PROJECTS.

### 6.1.TAOS VALLEY ACEQUIA ASSOCIATION.

6.1.1. ARROYO SECO ARRIBA PROJECT. As part of the resolution of a longstanding dispute involving allocation of the Rio Lucero, the Parties agree that the Acequia Madre del Rio Lucero y del Arroyo Seco shall receive an additional one hundred (100) AFY of depletion through water rights transfers pursuant to **Article 6.1.2**, and the Parties further agree that one of the projects described in **Article 6.1.1.1** or **6.1.1.2** will be developed for purposes of storing and using such water rights. All Acequia diversions for purposes of either of these projects shall be accounted as part of Arroyo Seco Arriba's 18.3% share of the Rio Lucero, which share shall be adjusted over time in accordance with **Article 8.2.1.2**. The Pueblo and the Acequia Madre del Rio Lucero y del Arroyo Seco agree that the operation of either project described in this **Article 6.1.1** shall not compromise the Acequia's right to its share of the Rio Lucero as provided in **Article 8.2.1.1** or the Pueblo's interest in and rights to the protection of the Buffalo Pasture.

6.1.1.1. AQUIFER STORAGE AND RECOVERY PROJECT. The Arroyo Seco Arriba Aquifer Storage and Recovery ("ASR") Project shall be constructed to deliver water rights purchased pursuant to **Article 6.1.2**. The community of Arroyo Seco Arriba, through the Acequia Madre del Rio Lucero y del Arroyo Seco, shall apply to the State Engineer for a permit for wells to store and recover the surface flows of the Rio Lucero in the amount necessary to provide the one hundred (100) AFY of depletion, with a diversion not to exceed two hundred sixty (260) AFY, acquired pursuant to **Article 6.1.2** for irrigation use during the irrigation season. These two 1,000 foot deep wells with approximately a 10 ¾ inch casing and an expected 330 GPM combined pumping capacity will be at the approximate locations as shown on **Attachment 10**. The project includes design, site purchases, permitting, NEPA compliance, diversion structure, lift pumps, wells, well pumps, pipelines, and the pipeline through the Taos Pueblo Tenorio Tract described below. Diversions from such wells shall be limited to six (6) months of each year, from May 1 to November 1. The Acequia Madre del Rio Lucero y del Arroyo Seco shall own, operate, and maintain these ASR Project wells. To eliminate conveyance losses, flows of the Acequia Madre del Rio Lucero y del Arroyo

Seco ditch will be conveyed through a 6,500 foot long pipeline through the Taos Pueblo Tenorio Tract, with a capacity of 44.8 cubic feet per second, from the Rio Lucero diversion to the vicinity of the ASR project.

6.1.1.2. SURFACE STORAGE PROJECT. As an alternative to the ASR Project described in **Article 6.1.1.1** and subject to all applicable water rights acquisition, transfer, and permitting requirements, the Parties agree that the one hundred (100) AFY of additional depletions or two hundred sixty (260) AFY of diversions may be diverted and stored in one or more surface reservoirs off Pueblo Lands. The project includes design, site purchases, permitting, NEPA compliance, construction of surface storage reservoirs, necessary infrastructure to connect the storage reservoirs to the Acequia Madre del Rio Lucero y del Arroyo Seco, and the pipeline through the Taos Pueblo Tenorio Tract described below. The ASR Project is the preferred project which will be pursued unless it is determined that it is not feasible. To eliminate conveyance losses, flows of the Acequia Madre del Rio Lucero y del Arroyo Seco ditch will be conveyed through a 6,500 foot long pipeline through the Taos Pueblo Tenorio Tract, with a capacity of 44.8 cubic feet per second, from the Rio Lucero diversion to the Acequia Madre del Rio Lucero y del Arroyo Seco diversion at the Arroyo Seco stream.

6.1.2. WATER RIGHTS ACQUISITION. Subject to the dollar limit in **Article 10.1.3.2**, the State shall provide funds to the Acequia Madre del Rio Lucero y del Arroyo Seco as necessary for: (a) acquisition of up to one hundred (100) AFY of consumptive use water rights from the Rio Grande or its tributaries; (b) all administrative, technical, and legal costs and fees associated with such acquisition; (c) all administrative, technical, and legal costs and fees associated with transferring those water rights; and (d) all necessary permits. Such water rights shall be for use in the ASR Project specified in **Article 6.1.1.1** or the Surface Storage Project specified in **Article 6.1.1.2**. The one hundred (100) AFY of consumptive use water rights may be acquired and transferred in one or multiple transactions, and the Acequia Madre del Rio Lucero y del Arroyo Seco intends to acquire these water rights on the Rio Grande and will acquire such water rights on the tributaries only if such rights are not available on the Rio Grande.

6.1.3. OPERATION, MAINTENANCE, AND REPLACEMENT SINKING FUND. Non-Federal funds shall be made available to the Acequia Madre del Rio Lucero y del Arroyo Seco to establish a sinking fund to provide for future operation, maintenance, and replacement of the ASR Project.

6.1.4. ACEQUIA MADRE DEL PRADO STREAM GAGE. To assist in the implementation of this Settlement Agreement and the water sharing provisions of **Article 8**, a stream gage shall be installed on the Rio Lucero at the diversion of the Acequia Madre del Prado.

6.1.5. FUTURE FUNDING. Nothing herein shall be construed as prohibiting future applications by Acequias for funding to acquire additional water rights or infrastructure sufficient to meet future needs.

## 6.2. TOWN OF TAOS.

6.2.1. CURRENT DIVERSIONS. The Water Rights Owning Parties agree that the Town has the right to operate and maintain in perpetuity its existing groundwater and surface water diversions, as currently permitted by the State Engineer, for municipal, domestic, irrigation, and industrial purposes with a total diversion amount of one thousand eight hundred fifty six and fifty-two hundredths (1,856.52) AFY and a consumptive use right of one thousand four hundred sixty-four and fifty-two hundredths (1,464.52) AFY. A table showing the quantity and distribution of the Town's permitted water rights is included herewith as **Attachment 8**. The Water Rights Owning Parties further agree that no additional surface water depletion offsets shall be required so long as the Town complies with its permits.

6.2.2. IN-TOWN WELL FIELD PRODUCTION. "In-Town Well Field" shall mean the Town's current municipal supply wells, which are permitted by the State Engineer as RG-7339, RG-7339-S, RG-7339-S-2, RG-7339-S-3, RG-7339-S-4, RG-7339-S-5, RG-7339-S-6, RG-17178, and RG-36130, or their replacements.

6.2.2.1. DIVERSION CEILING. The Town shall divert no more than one thousand one hundred (1,100) AFY from its In-Town Well Field, which total shall include:

6.2.2.1.1. the nine hundred seventeen and twenty-eight hundredths (917.28) AFY currently permitted to the In-Town Well Field;

6.2.2.1.2. the twenty-nine and thirteen hundredths (29.13) AFY currently permitted to the existing Kit Carson well (RG-17178);

6.2.2.1.3. the one hundred twenty-eight and fifteen hundredths (128.15) AFY of pending transfers referenced in **Article 6.2.3**; and

- 6.2.2.1.4. additional amounts, including any domestic well or footprint transfers, up to the diversion ceiling.
- 6.2.2.2. FUTURE DOMESTIC WELL TRANSFERS. To the extent such transfers are lawful and feasible and if the Settlement Model shows that such transfers would reduce net drawdown effects on the Buffalo Pasture, the Pueblo and the Town will discuss the possibility of future transfers of water rights associated with domestic wells to the Town's Jack Denver Well (RG-7339-S-3).
- 6.2.2.3. PUMPING CONFIGURATION. The Town shall continue to pump the In-Town Well Field as those wells are permitted by the State Engineer, subject to the terms and conditions of this Settlement Agreement and consistent with its obligations to provide for public health, safety, and welfare. Prior to submitting any application to change the permitted amount of groundwater diversions from any well within the In-Town Well Field, the Town shall notify the Pueblo, TVAA, and EPWSD in writing and consult with the Pueblo as to the effects such changes may have on the Buffalo Pasture and the Pueblo's water rights.
- 6.2.3. PENDING TRANSFERS. Within thirty (30) days of the execution of this Settlement Agreement by the Parties and the Secretary, and subject to **Article 7.3.1.5.2**, the Water Rights Owning Parties shall withdraw their protests, if any, to the Town's applications pending before the State Engineer for changes in points of diversion of the consumptive use of one hundred twenty-eight and fifteen hundredths (128.15) AFY to within the In-Town Well Field (excluding the Howell and Mitchell Wells), and shall refrain from filing any additional protests to such transfers. Any surface water depletion effects or Impairment from transferred production shall be offset and mitigated in accordance with applicable permit conditions.
- 6.2.4. PUMPING AND THE BUFFALO PASTURE. The Town recognizes the Buffalo Pasture's cultural and religious importance to the Pueblo. Therefore, consistent with **Article 3** and in the spirit of cooperation, the Town agrees to the following measures which are intended, among other things, to limit diversions and consumption from Town wells that are within the immediate vicinity of the Buffalo Pasture in exchange for construction of a Future Water Supply Well Field located further away from the Buffalo Pasture than the Town's In-Town Well Field. Such Future Water Supply Well Field will allow for increases in Town groundwater production while minimizing any increase in effects on the Buffalo Pasture:

6.2.4.1. HOWELL WELL (RG-40450/RG-7339-S-5). As of May 30, 2006, the Town shall cease all groundwater diversions from the Howell Well and such well shall not be used for any groundwater diversions and consumption, except in the event of fire or other emergency, consistent with **Article 6.5.4**, or for routine maintenance. Because the Howell Well is connected to EPWSD's existing infrastructure, the Town shall consult with EPWSD before any such emergency use. The Town shall inform the Pueblo of the use in a timely written communication directed to the Governor.

6.2.4.2. BATAAN WELL. The Town shall apply to the State Engineer for a permit to transfer the seventy (70) AFY of consumptive use water rights presently permitted to the Howell Well to a replacement well ("Bataan Well") to be located in Kit Carson Park but which shall be constructed no nearer to Pueblo Lands than the Town's existing Kit Carson Well. Any such transferred production shall be offset and mitigated in accordance with applicable permit conditions. The State Engineer has sent a letter to the Town, included as **Attachment 9**, regarding use of the Glover-Balmer hydrologic model in the transfer evaluation. The Water Rights Owning Parties shall not protest any application for action that is consistent with the terms of that letter. The planning, permitting, NEPA compliance, design, engineering and construction of this well will include water lines, booster pump, lift stations, appropriate housing, arsenic treatment facilities, primary electrical lines, the purchase of land, and any other equipment and appurtenances required for arsenic treatment and water distribution from this well to the Town's municipal distribution system. Pumping from this well shall be from model layers 4 and 5 or below.

6.2.4.3. MITCHELL WELL (RG-7339-S-6). As of May 30, 2006, the Town shall cease all groundwater diversions from the Mitchell Well for purposes of the Town's municipal drinking water system. The Town may divert no more than ten (10) AFY from the Mitchell Well for non-potable water purposes, such as road construction, or routine maintenance. The Town may also use the Mitchell Well in the event of fire or other emergency, consistent with **Article 6.5.4**.

6.2.4.4. REPAYMENT OF RIO LUCERO OVER-DIVERSIONS. The Water Rights Owning Parties support the Town's repayment of its past Rio Lucero over-diversions in accordance with the following plan:

6.2.4.4.1. The Town shall continue to make no groundwater diversions from its Howell Well (RG-40450/RG-7339S-5) until such time as the Rio Lucero

surface water depletions that resulted from its previous over-diversions from that well are repaid.

6.2.4.4.2. To expedite such repayment, the Town may transfer forty-two (42) AFY of the one hundred twenty-eight and fifteen hundredths (128.15) AFY of water rights transfers now pending before the State Engineer, as described in **Article 6.2.3**, to the Howell Well subject to an express condition that such transferred amount shall be used solely for accumulating surface water depletion credit on the Rio Lucero and shall not be diverted from the Howell Well.

6.2.4.4.3. Once its Rio Lucero over-diversions are repaid, the Town may apply for the appropriate State Engineer permit to transfer any existing excess Rio Lucero water rights from the Howell Well and the In-Town Well Field to one or more of the wells in the Future Water Supply Well Field or the Taos Regional Airport Well. Such transferred Rio Lucero water rights shall serve to offset Rio Lucero depletion effects that the Settlement Model shows as resulting from the Town's Future Groundwater Diversions and shall be used in lieu of the use of the Mitigation Well System as otherwise would be required by **Article 7.3.3.1**.

6.2.5. **FUTURE WATER SUPPLY WELL FIELD.** To provide groundwater production capacity necessary to satisfy the Town's growing service obligations in a manner that will minimize effects on the Buffalo Pasture, the Town shall apply for appropriate State Engineer permits for four (4) deep wells farther from the Buffalo Pasture than the Town's current In-Town Well Field. While the Water Rights Owning Parties have agreed to certain waivers of protests, this Settlement Agreement does not impose any diversion or consumptive use limitations on these four new wells. The four deep water supply wells are identified as (1) the Rio Pueblo well; (2) the National Guard well; (3) the Camino del Medio well; and (4) the Klauer well, and will be located as shown in **Attachment 10**. The planning, permitting, NEPA compliance, design, engineering and construction of these water supply wells will include water lines, booster pumps, lift stations, appropriate housing, arsenic treatment facilities, primary electrical lines, the purchase of land, and any other equipment and appurtenances required for arsenic treatment and water distribution from these wells to the Town's municipal distribution system, except that construction of the Camino del Medio well shall not be included because that well has already been constructed. Interconnection of the Camino del Medio well to the Town's municipal water system is included. The offset of any surface water depletion effects which result from Future Groundwater Diversions from these wells shall be in accordance with **Article 7**. Pumping from these wells



shall be from model layers 6 and 7 except that up to twenty percent (20%) of the screen in the Rio Pueblo well may be in model layer 5.

6.2.6. TAOS REGIONAL AIRPORT WELL. The Town may file an application with the State Engineer for a well to be located at the Taos Regional Airport which shall divert not more than fifty (50) AFY. The Town shall seek no state or federal funding through this Settlement Agreement for its Taos Regional Airport Well. The offset of surface water depletion effects that result from such diversions shall be in accordance with **Article 7**.

6.2.7. DIVERSIONS FROM MIDWAY AND RIO GRANDE WELLS. The Town is authorized under this Settlement Agreement to apply to the State Engineer to divert a combined total of up to one hundred (100) AFY from the Midway and Rio Grande Wells that will be owned by EPWSD. A May 17, 2006 Bilateral Agreement between EPWSD and the Town sets forth their agreement in whole on this issue. The offset of surface water depletion effects that result from such diversions shall be in accordance with **Article 7**.

6.2.8. REPLACEMENT PRODUCTION CAPACITY. The Town's existing In-Town Well Field has potential capacity to produce two thousand six hundred (2,600) GPM for a continuous 96-hour period. The Town has agreed to limit production from its existing In-Town Well Field to one thousand one hundred (1,100) AFY (equivalent to 1,100 GPM sixty (60) percent of the time) for the benefit of the Buffalo Pasture. The Water Rights Owning Parties agree that the Town may replace its production capacity of one thousand five hundred (1,500) GPM with the Future Water Supply Well Field and the Taos Regional Airport Well. If the Future Water Supply Well Field and the Taos Regional Airport Well do not produce at least one thousand five hundred (1,500) GPM, combined for a continuous 96-hour period, the Water Rights Owning Parties agree to assist the Town in obtaining additional funding outside of this Settlement Agreement to provide replacement capacity. Nothing in this Article is intended to affect the Town's water rights or constitute a waiver not expressly stated in **Article 6.5.1**.

6.2.9. PUEBLO-TOWN MARKETING. Recognizing the benefit that could be achieved through a cooperative Marketing relationship, the Pueblo shall give the Town the first and timely written notification when it has water available for Marketing and to negotiate, in good faith, toward terms acceptable to both parties as to the possible lease or subcontract of such waters to the Town. Nothing herein shall be construed as limiting the Pueblo's ability to Market its waters to the extent to which it is entitled under the Settlement Act and **Article 5.5.1**.

6.2.10. SAN JUAN-CHAMA PROJECT WATER SERVICE CONTRACT

CONVERSION. The Secretary has converted the Town's existing San Juan-Chama Project water service contract (Contract No. 2-07-53-X0552) for four hundred (400) AFY pursuant to 43 USC § 485h(c)(2) to a repayment contract pursuant to 43 USC § 485h(c)(1).

6.2.11. NEW SAN JUAN-CHAMA PROJECT REPAYMENT CONTRACT. In consideration for the Town's compromises in curtailing diversions from its existing wells and to provide for the public health, safety, and welfare, and as provided by section 508(b)(1)(B) of the Settlement Act the Secretary shall enter into a repayment contract with the Town that entitles the Town to delivery of three hundred sixty six (366) AFY of San Juan-Chama Project water.

6.2.12. FUTURE FUNDING. Nothing herein shall be construed as prohibiting the Town from pursuing future applications for funding to acquire additional water rights and infrastructure sufficient to meet its future needs.

**6.3.EL PRADO WATER AND SANITATION DISTRICT.**

6.3.1. PUMPING AND THE BUFFALO PASTURE. EPWSD recognizes the Buffalo Pasture's cultural and religious importance to the Pueblo. Therefore, consistent with **Article 3** of this Settlement Agreement, out of respect for this sensitive resource, and in the spirit of cooperation, EPWSD agrees to the following measures which are intended to limit groundwater diversions and consumption from EPWSD's three (3) existing wells that are located within the immediate vicinity of the Buffalo Pasture in exchange for funding construction of two (2) new wells to be located farther away from the Buffalo Pasture and acquisition of water rights consistent with **Articles 6.3.1.7** and **6.3.1.8**. These two new wells will allow EPWSD to provide groundwater for municipal, commercial, industrial, domestic, and mitigation purposes while minimizing any increase in effects on the Buffalo Pasture:

6.3.1.1. OVERLAND SHEEPSKIN WELL (RG-40450-S). The Overland Sheepskin Well, which is depicted in **Attachment 10**, is EPWSD's well that has the most immediate hydrologic effect on the Buffalo Pasture. Accordingly, it will be phased out of use. When the Rio Grande Well has been drilled and completed, the necessary infrastructure has been constructed to connect the Rio Grande and El Torreon Wells to EPWSD's existing system, and the State Engineer has issued all permits necessary for EPWSD to: (a) divert and consume one hundred-fifty (150) AFY from the El Torreon Well, which diversions shall not exceed the diversion schedule set forth in the May 30, 2006

Bilateral Agreement between EPWSD and the Pueblo, as amended; (b) divert and consume two hundred (200) AFY from the Rio Grande Well; and (c) offset all surface water depletion effects resulting from groundwater diversions set forth in the foregoing Subparts (a) and (b) of this **Article 6.3.1.1** and to mitigate any groundwater Impairment, then EPWSD shall limit diversions and consumption from the Overland Sheepskin Well to no more than two (2) AFY for the purpose of exercising and maintaining it for emergency purposes as set forth in **Article 6.5.4**. When the Overland Sheepskin Well, as presently drilled, is no longer capable of producing water, it shall go out of production and be plugged according to any applicable State Engineer rules and regulations or, alternatively, all equipment may be removed and the well may be used for monitoring. Until then, EPWSD reserves the right to maintain and repair the well, including replacing pumps, riser or column pipes, valves, chlorination equipment, wiring, electrical control equipment, and any other appurtenances necessary to keep the well operable.

6.3.1.2. EL TORREON WELL (RG-74803-Expl.). Because the El Torreon Well, as depicted on **Attachment 10**, is located in the immediate vicinity of the Buffalo Pasture, and consistent with the goals of restoring, preserving, and protecting the Buffalo Pasture, diversions from that well will be limited to substantially less than its production capacity. Accordingly, when either the Rio Grande or Midway Well has been drilled and completed, the necessary infrastructure has been constructed to connect either of those wells to EPWSD's existing system, and the State Engineer has issued all permits necessary for EPWSD to: (a) divert and consume two hundred (200) AFY from the Rio Grande Well or divert and consume one hundred fifty (150) AFY from the Midway Well; (b) divert and consume one hundred fifty (150) AFY from the El Torreon Well; and (c) offset all surface water depletion effects resulting from groundwater diversions set forth in the foregoing Subparts (a) and (b) of this **Article 6.3.1.2** and to mitigate any groundwater Impairment, then EPWSD shall limit diversions and consumption from the El Torreon Well to no more than one hundred fifty (150) AFY, which diversions shall not exceed the diversion schedule set forth in the Bilateral Agreement between EPWSD and the Pueblo.

6.3.1.3. LAS COLONIAS WELL (RG-40450-S-2). If production from the Las Colonias Well, as depicted in **Attachment 10**, is limited and additional pumping is moved closer to the Rio Grande, there will be reduced depletion effects on the Buffalo Pasture. Accordingly, diversions from this well will be limited to less than its production capacity. EPWSD shall file an application to increase its water rights in the Las Colonias Well from thirteen and five-tenths

(13.5) AFY to seventy-five (75) AFY. Any permit to increase water rights shall not authorize the Impairment of existing surface or groundwater rights. EPWSD shall limit its diversions and consumption from the Las Colonias Well to no more than seventy-five (75) AFY when the Midway Well has been drilled and completed, the necessary infrastructure has been constructed to connect that well to EPWSD's existing system, and the State Engineer has issued all permits necessary for EPWSD to: (a) divert and consume one hundred-fifty (150) AFY from the Midway Well; (b) divert and consume seventy-five (75) AFY from the Las Colonias Well; and (c) offset all surface water depletion effects resulting from groundwater diversions set forth in the foregoing Subparts (a) and (b) of this **Article 6.3.1.3** and to mitigate any groundwater Impairment.

6.3.1.4. **RIO GRANDE WELL.** To provide groundwater production capacity necessary to satisfy EPWSD's growing municipal, commercial, industrial, domestic, and mitigation obligations in a manner that will minimize effects on the Buffalo Pasture and to provide alternative production capacity in light of the groundwater diversion limits imposed on the El Torreon, Las Colonias, and Sheepskin Wells, EPWSD shall file an application with the State Engineer to divert and consume groundwater from a new well ("Rio Grande Well") located farther away from the Buffalo Pasture than the existing Sheepskin, Las Colonias, and El Torreon Wells and within two and one-half (2½) miles of the Rio Grande near the U.S. Highway 64 corridor to the Rio Grande Bridge. Specifically, the Rio Grande Well will be located within the model cell identified by row and column as (23, 13) in **Attachment 10**. The planning, permitting, NEPA compliance, design, and construction of the Rio Grande Well will include the well (pumping from layer 6 or below), pump, pump appurtenances, water lines, booster pumps and appropriate housing, lift stations, arsenic treatment facilities (where necessary), storage facilities, primary electrical lines, the purchase of land, and any other equipment and appurtenances required for arsenic treatment and water distribution from the Rio Grande Well to connect to EPWSD's municipal distribution system. While the Water Rights Owning Parties have agreed to certain waivers of protests described in **Article 6.5.1**, this Settlement Agreement does not impose any diversion or consumptive use limitations on the Rio Grande Well. Because the Rio Grande Well has not yet been drilled and its production capabilities are unknown, EPWSD may apply to the State Engineer for a permit to drill replacement or supplemental wells within a two (2) mile radius of the Rio Grande Well if the Rio Grande Well does not produce at least one thousand (1,000) GPM for a continuous ninety-six (96) hour period to replace a portion of EPWSD's production capacity limited by this Settlement Agreement,

notwithstanding the two and one-half (2½) mile limitation set forth immediately above. Under no circumstances will the Rio Grande Well, its replacement well, or wells supplemental thereto be located closer to Las Colonias than where the present Taos Landfill Road intersects U.S. Highway 64, as depicted in **Attachment 10**.

6.3.1.5. MIDWAY WELL. To provide groundwater production capacity necessary to satisfy EPWSD's growing municipal, commercial, industrial, domestic, and mitigation obligations in a manner that will minimize effects on the Buffalo Pasture and to provide alternative production capacity in light of the groundwater production limits imposed on the El Torreon, Las Colonias, and Sheepskin Wells, EPWSD shall file an application with the State Engineer to divert and consume groundwater from a new well ("Midway Well") located farther away from the Buffalo Pasture than EPWSD's existing wells and one and one-half (1½) miles west of the existing Las Colonias Well. Specifically the Midway Well will be within the model cells identified by row and column as cells (24,21), (24,22), (25,21), (25,22), and (25,23) in **Attachment 10**. The planning, permitting, NEPA compliance, design, and construction of the Midway Well will include the well (pumping from layers 5, 6, or below), pump, pump appurtenances, water lines, booster pumps and appropriate housing, lift stations, arsenic treatment facilities (where necessary), storage facilities, primary electrical lines, the purchase of land, and any other equipment and appurtenances required for arsenic treatment and water distribution from the Midway Well to connect to EPWSD's municipal distribution system. While the Water Rights Owning Parties have agreed to certain waivers of protests as described in **Article 6.5.1**, this Settlement Agreement does not impose any diversion or consumptive use limitations on the Midway Well. Because the Midway Well has not yet been drilled and its production capabilities are unknown, EPWSD may apply to the State Engineer for a permit to drill replacement or supplemental wells within a one (1) mile radius of the Midway Well if the Midway Well does not produce at least five hundred seventy-five (575) GPM for a continuous ninety-six (96) hour period to replace a portion of EPWSD's production capacity limited by this Settlement Agreement. Under no circumstances will the Midway Well, its replacement well, or wells supplemental thereto be located within one and one-half (1½) miles of EPWSD's existing Las Colonias Well or within one-half (½) mile of the Town's Airport Well.

6.3.1.6. REPLACEMENT PRODUCTION CAPACITY. EPWSD's existing wells have the potential capacity to produce one thousand eight hundred (1,800) GPM for a continuous ninety-six (96) hour period. Because EPWSD has agreed

to limit production from its existing wells to the average annual equivalent of two hundred twenty-five (225) GPM for the benefit of the Buffalo Pasture, EPWSD is seeking replacement capacity of one thousand five hundred seventy-five (1,575) GPM with the Rio Grande and Midway Wells. If the Rio Grande and Midway Wells do not produce at least one thousand five hundred seventy-five (1,575) GPM combined for a continuous ninety-six (96) hour period, the Water Rights Owning Parties agree to assist EPWSD in obtaining additional funding outside of this Settlement Agreement to provide replacement capacity. Nothing in this Article is intended to affect EPWSD's water rights or constitute a waiver not expressly stated in **Article 6.5.1**.

6.3.1.7. **SAN JUAN-CHAMA PROJECT REPAYMENT CONTRACT.** In consideration for EPWSD's compromises in curtailing diversions from its existing wells and to provide for the public health, safety, and welfare, and as provided by section 508(b)(1)(C) of the Settlement Act the Secretary shall enter into a repayment contract with EPWSD that entitles EPWSD to delivery of forty (40) AFY of San Juan-Chama Project water.

6.3.1.8. **WATER RIGHTS ACQUISITION.** Subject to the dollar limit in **Article 10.1.2.2**, the State shall provide funds to EPWSD as necessary for: (a) acquisition of up to one hundred (100) AFY of consumptive use water rights from the Rio Grande or its tributaries, exclusive of water rights acquired with money appropriated by the 2005 New Mexico Legislature; (b) all administrative, technical, and legal costs and fees associated with such acquisition, inclusive of such costs and fees for water rights acquired with money appropriated by the 2005 New Mexico Legislature; (c) all administrative, technical, and legal costs and fees associated with transferring those water rights; and (d) all necessary permits. The one hundred (100) AFY of consumptive use water rights may be acquired and transferred in one or multiple transactions. EPWSD intends to acquire these water rights on the Rio Grande and will acquire such water rights on the tributaries only if the Mitigation Well System described at **Article 7.3.3.1** does not adequately mitigate EPWSD's tributary impacts.

6.3.2. **TREATMENT OF CLAIMED PAST OVER-DIVERSIONS.** The State Engineer has sent a letter to EPWSD, included as **Attachment 11** regarding methods acceptable to the State Engineer to pay back claimed over-diversions by EPWSD from permitted wells. The Water Rights Owning Parties shall not protest any payback action or application for such action that is consistent with the terms of that letter.

6.3.3. FUTURE FUNDING. Nothing herein shall be construed as prohibiting future EPWSD applications for funding to acquire additional water rights and infrastructure sufficient to meet its future needs.

**6.4.TAOS AREA MUTUAL DOMESTIC WATER CONSUMER ASSOCIATIONS.**

6.4.1. CURRENT DIVERSIONS. The Water Right Owning Parties agree that the twelve MDWCAs have the right to operate and maintain in perpetuity their existing groundwater diversions as described in and subject to their respective Subfile Orders and State Engineer permits, set forth in Table 6 below, for community domestic water supply purposes. With respect to those current diversions, the Water Rights Owning Parties further agree that no additional surface water depletion offsets shall be required so long as the MDWCAs comply with their respective permits. Any MDWCA diversions in excess of current diversions shall be subject to all mitigation and offset requirements under **Article 7**.

<i>Table 6</i>	
<i>MDWCA</i>	<i>Current Diversions</i>
Arroyo Seco MDWCA	120.00 AFY
Cañon MDWCA	58.34 AFY
El Salto MDWCA	25.66 AFY
Llano Quemado MDWCA	58.31 AFY
Lower Arroyo Hondo MDWA	24.30 AFY
Lower Des Montes MDWCA	23.02 AFY
Ranchos de Taos MDWCA	105.00 AFY
Talpa MDWCA	64.48 AFY
Upper Arroyo Hondo MDWA	26.60 AFY
Upper Des Montes MDWCA	17.76 AFY
Upper Ranchitos MDWCA	18.15 AFY
Valdez MDWCA	11.50 AFY
<b>Total</b>	<b>553.12 AFY</b>

6.4.2. CONSENT ORDERS. Validly executed Consent Orders finally adjudicating the water rights of the twelve (12) MDWCAs have been filed in the Adjudication. The adjudicated amounts for each of the 12 MDWCAs are as set forth in Table 7 below:

<i>Table 7</i>	
<i>MDWCA</i>	<i>Adjudicated Amount</i>
Arroyo Seco MDWCA	120.00 AFY
Cañon MDWCA	58.34 AFY
El Salto MDWCA	16.33 AFY
Llano Quemado MDWCA	42.11 AFY
Lower Arroyo Hondo MDWA	24.30 AFY
Lower Des Montes MDWCA	21.59 AFY
Ranchos de Taos MDWCA	105.00 AFY

<i>Table 7</i>	
<i>MDWCA</i>	<i>Adjudicated Amount</i>
Talpa MDWCA	64.48 AFY
Upper Arroyo Hondo MDWA	26.60 AFY
Upper Des Montes MDWCA	9.07 AFY
Upper Ranchitos MDWCA	18.15 AFY
Valdez MDWCA	11.50 AFY
<b>Total</b>	<b>517.47 AFY</b>

6.4.3. **DIVERSIONS PURSUANT TO PERMIT.** The letter from the State Engineer attached to this Settlement Agreement as **Attachment 12** describes certain previously issued permits and diversion amounts, which amounts equal thirty-five and sixty-five hundredths (35.65) AFY for El Salto, Llano Quemado, Lower Des Montes, and Upper Des Montes. These permitted diversions are separate from the adjudicated water rights described in **Article 6.4.2**.

6.4.4. **WATER RIGHTS ACQUISITION.** Subject to the dollar limit in **Article 10.1.4.1**, the State shall provide funds to the eleven (11) water rights acquiring MDWCAs listed in Table 8 below (those with non-zero entries in the column labeled “Water Rights to Be Acquired”) as necessary for: (a) acquisition of up to one hundred forty-five (145) AFY of consumptive use water rights from the Rio Grande or its tributaries; (b) all administrative, technical, and legal costs and fees associated with such acquisition; (c) all administrative, technical, and legal costs and fees associated with transferring those water rights; and (d) all necessary permits. The allocation of water rights acquired with these funds shall be as described in Table 8 below. In the event that this funding is insufficient to acquire the full one hundred forty-five (145) AFY of consumptive use water rights, allocation of the acquired water rights shall be *pro rata* among the same said eleven (11) MDWCAs according to Table 8 below. The one hundred forty-five (145) AFY may be acquired and transferred in one or multiple transactions. The MDWCAs intend to acquire these water rights on the Rio Grande and will acquire such water rights on the tributaries only if the Mitigation Well System described in **Article 7.3.3.1** does not adequately mitigate MDWCA tributary impacts.

<i>Table 8</i>	
<i>MDWCA</i>	<i>Water Rights to be Acquired</i>
Arroyo Seco MDWCA	0.00 AFY
Cañon MDWCA	21.81 AFY
El Salto MDWCA	14.24 AFY
Llano Quemado MDWCA	40.39 AFY
Lower Arroyo Hondo MDWA	4.75 AFY
Lower Des Montes MDWCA	8.13 AFY



<i>Table 8</i>	
<i>MDWCA</i>	<i>Water Rights to be Acquired</i>
Ranchos de Taos MDWCA	3.50 AFY
Talpa MDWCA	28.62 AFY
Upper Arroyo Hondo MDWA	2.02 AFY
Upper Des Montes MDWCA	11.64 AFY
Upper Ranchitos MDWCA	7.40 AFY
Valdez MDWCA	2.50 AFY
<b>Total</b>	<b>145.00 AFY</b>

6.4.5. FUTURE FUNDING. Nothing herein shall be construed as prohibiting future MDWCA applications for funding to acquire additional water rights or infrastructure sufficient to meet their future needs.

**6.5.GENERAL.**

6.5.1. PERMITTING WAIVERS. Because the infrastructure and projects identified in **Articles 6** and **7** are for the mutual benefit of the Parties and are consideration for this Settlement Agreement, the Water Rights Owning Parties agree to the following waivers of protests, objections, or opposition in any manner.

6.5.1.1. CONSTRUCTION AND OPERATION PERMITS. The Water Rights Owning Parties shall waive any and all protests, objections, or opposition in any manner to the issuance of permits that are consistent with this Settlement Agreement and that are necessary for the construction and operation of the projects identified in this **Article 6.5.1**, including any required New Mexico Environment Department permits.

6.5.1.2. WATER RIGHTS PERMITS. The Water Rights Owning Parties shall not oppose, interfere with, delay, or deny any application or proposal to transfer water rights, and shall waive any and all protests, objections, or opposition in any manner to applications filed with the State Engineer for permits that are consistent with this Settlement Agreement and that are necessary for the following water rights actions:

6.5.1.2.1. TOWN ACTIONS.

6.5.1.2.1.1. An application or applications to divert and consume up to eight hundred (800) AFY from the Town’s Future Water Supply Well Field, so long as tributary surface water depletion effects are offset by the Buffalo Pasture Recharge Project, the Mitigation Well System, and

transfers to offset Rio Lucero depletion effects as provided in **Article 6.2.4.4.3**, and so long as Rio Grande effects are offset, all as provided in this Settlement Agreement;

6.5.1.2.1.2. The change in point of diversion for up to seventy (70) AFY of consumptive-use water rights from the Howell Well (RG-40450/RG-7339-S-5) to the Bataan Well, so long as surface water depletion effects are offset and any Impairment of existing water rights is mitigated; and

6.5.1.2.1.3. An application or applications to divert and consume from the Town's In-Town Well Field up to the one thousand one hundred (1,100) AFY diversion ceiling described in **Article 6.2.2.1**, so long as surface water depletion effects are offset and any Impairment of existing groundwater rights is mitigated.

6.5.1.2.1.4. An application or applications to change the point of diversion of any existing excess Rio Lucero water rights on its Howell Well or In-Town Well Field to one or more of the wells in its Future Water Supply Well Field or the Taos Regional Airport Well, so long as surface water depletion effects are offset and any Impairment of existing groundwater rights is mitigated.

6.5.1.2.2. EPWSD ACTIONS.

6.5.1.2.2.1. An application or applications to divert and consume up to two hundred (200) AFY from the Rio Grande Well;

6.5.1.2.2.2. An application or applications to divert and consume up to one hundred fifty (150) AFY from the Midway Well;

6.5.1.2.2.3. An application or applications to divert and consume up to one hundred fifty (150) AFY from the El Torreon Well;

6.5.1.2.2.4. An application or applications to divert and consume up to seventy-five (75) AFY from the Las Colonias Well;

6.5.1.2.2.5. An application or applications to divert and consume up to thirty (30) AFY from the Sheepskin Well, which shall then be phased out of use in accordance with **Article 6.3.1.1**; and

- 6.5.1.2.2.6. An application or applications to offset all surface water depletion effects resulting from groundwater diversions set forth in **Articles 6.5.1.2.2.1** through **6.5.1.2.2.6** and to mitigate any groundwater Impairment.
- 6.5.1.2.3. ACEQUIA ACTIONS.
- 6.5.1.2.3.1. An application or applications to change the place, purpose of use, and point of diversion of up to one hundred (100) AFY of consumptive-use water rights to be diverted for the Arroyo Seco Arriba Project, so long as diversions are allowed only in accordance with **Article 6.1.1**. The Pueblo's waiver of protest relating to the ASR Project is conditioned on the Settlement Model's showing that its operation will cause no Buffalo Pasture Depletions. In the event the Settlement Model shows such depletions the Pueblo and TVAA shall negotiate a resolution.
- 6.5.1.2.3.2. An application or applications to change the place, purpose of use, and point of diversion of up to twenty (20) AFY of consumptive use water rights for irrigation or livestock use storage by the Upper and Lower Manuel Andreas Trujillo ditches.
- 6.5.1.2.4. MDWCA ACTIONS. Applications to divert and consume up to one hundred forty-five (145) AFY of consumptive use water rights for eleven (11) Mutual Domestic Water Consumer Associations, as described in Table 8 in **Article 6.4.4**, so long as surface water depletion effects are offset and any Impairment of existing groundwater rights is mitigated.
- 6.5.1.2.5. JOINT ACTIONS. The use of the Mitigation Well System to offset Taos Valley Tributary surface water depletion effects resulting from groundwater diversions specified in **Article 7.3.3.1.5** and **7.3.3.1.10**.
- 6.5.1.2.6. GENERAL ACTIONS. Upon the execution of an agreement to allocate additional capacity in the Mitigation Well System as set forth in **Article 7.3.3.1.11**, any application or applications to divert and consume groundwater over and above the quantities set forth in **Article 7.3.3.1.10** as long as such application or applications are consistent with such agreement to allocate additional capacity and the Buffalo Pasture Recharge Project and the Mitigation Well System are specified as the means for offsetting surface water depletion effects.

- 6.5.1.3. GENERAL LIMITATION ON WAIVER. The waivers set forth above extend only as far as the subject applications are in accordance with the terms of this Settlement Agreement.
- 6.5.1.4. PUBLIC WELFARE AND CONSERVATION OF WATER. The Water Rights Owning Parties agree that implementation of the projects identified in **Articles 6** and **7.3.3.1** will promote the public welfare and not be contrary to the conservation of water within the State.
- 6.5.1.5. ADMINISTRATIVE DISCRETION. Nothing herein shall be construed as limiting administrative discretion in acting on any application within the scope of this **Article 6.5.1**.
- 6.5.2. FOOTPRINT QUANTITY TRANSFERS. Subject to the other provisions of this Settlement Agreement, the Water Rights Owning Parties shall waive protests to any future transfer of surface water rights from the footprint of any structure permanently affixed to the ground to a mutual domestic water consumer association, a water and sanitation district, the Town, or other provider of municipal water service. Such waivers shall only apply to those transfers for purposes of the transferor's connection to the transferee's water distribution system. Such waivers shall only apply to transfers of no more than thirty-eight hundredths (0.38) AFY per footprint.
- 6.5.3. REPLACEMENT, SUPPLEMENTAL, OR DEEPENED WELLS. Unless otherwise specifically provided in this Article, nothing in this Settlement Agreement shall be construed as limiting or preventing any Party from applying to the State Engineer for a permit or permits to replace, supplement, or deepen any well provided for in this **Article 6**.
- 6.5.3.1. RIO GRANDE AND MIDWAY WELLS. No Water Rights Owning Party will protest any EPWSD application to replace, supplement, or deepen its proposed Rio Grande or Midway Wells with a well or wells proposed to be located within one thousand (1,000) feet of the then-existing Rio Grande and Midway Well locations and in a manner otherwise consistent with **Articles 6.3.1.4, 6.3.1.5, and 11.2.2**.
- 6.5.3.2. EL TORREON WELL. No Water Rights Owning Party shall protest any EPWSD application to replace, supplement, or deepen its El Torreón Well with a well proposed to be located within one thousand (1,000) feet of the present well location. The El Torreón Well shall under no circumstances be

replaced or supplemented in a manner that would increase Buffalo Pasture Depletions as simulated by the Settlement Model.

- 6.5.3.3. LAS COLONIAS WELL. No Water Rights Owning Party shall protest any EPWSD application to replace, supplement, or deepen its Las Colonias Well with a well proposed to be located within one thousand (1,000) feet of the present well location. The Las Colonias Well shall, under no circumstances, be replaced or supplemented in a manner that would increase its surface water depletion effects on the Arroyo Seco or cause groundwater Impairment as simulated by the Settlement Model.
- 6.5.3.4. EXISTING TOWN WELLS. No Water Rights Owning Party shall protest any Town application to replace, supplement, or deepen any of its existing wells (except the Howell or Mitchell Wells) unless the Settlement Model shows such replacement, supplemental, or deepened well would increase Buffalo Pasture Depletions. Such replacement or supplemental wells shall be drilled within one hundred (100) feet of the present well locations and in a manner otherwise consistent with **Article 11.2.2**.
- 6.5.3.5. BATAAN WELL. No Water Rights Owning Party shall protest any Town application to replace, supplement, or deepen its Bataan Well specified in **Articles 6.2.4.2** unless the Settlement Model shows such replacement, supplemental, or deepened well would increase Buffalo Pasture Depletions or surface water depletions on the Rio Fernando de Taos or Rio Pueblo de Taos. Such replacement or supplemental well shall be drilled within one hundred (100) feet of the future well location and in a manner otherwise consistent with **Article 11.2.2**.
- 6.5.3.6. TOWN'S FUTURE WATER SUPPLY WELL FIELD. No Water Rights Owning Party shall protest any Town application to replace, supplement, or deepen any of its four new future water supply wells unless the Settlement Model shows such replacement, supplemental, or deepened well would increase Buffalo Pasture Depletions or surface water depletion effects that the Settlement Model simulates for the following Stream Segments: Upper Rio Grande del Rancho, Lower Rio Grande del Rancho, Rio Pueblo de Taos C, Rio Pueblo de Taos D, and Rio Pueblo de Taos E. Such replacement or supplemental wells shall be drilled within one thousand (1,000) feet of the present well locations and in a manner otherwise consistent with **Article 11.2.2**.
- 6.5.3.7. MITIGATION WELLS. No Water Rights Owning Party shall protest any application to replace, supplement, or deepen any of the five (5) wells that

comprise the Mitigation Well System described in **Articles 7.3.3.1.9.1** through **7.3.3.1.9.5**. Unless otherwise agreed pursuant to **Article 7.3.3.1.9**, replacement, supplemental, or deepened wells shall be drilled within two hundred (200) feet of the then-existing well location and otherwise shall be located in a manner that will not increase Buffalo Pasture Depletions as simulated by the Settlement Model.

6.5.3.8. **ARROYO SECO ARRIBA ASR WELLS.** No Water Rights Owning Party shall protest any application by the Acequia Madre del Rio Lucero y del Arroyo Seco to replace, supplement, or deepen the Arroyo Seco Arriba ASR Project with a well proposed to be located within two hundred (200) feet of the proposed well locations as depicted on **Attachment 10** unless the Settlement Model shows such replacement, supplemental, or deepened well would cause Buffalo Pasture Depletions.

6.5.3.9. **EXISTING MDWCA WELLS.** No Water Rights Owning Party shall protest any MDWCA application to replace, supplement, or deepen any MDWCA well existing as of May 30, 2006 with a well proposed to be located within two hundred (200) feet of the well location unless the Settlement Model shows such replacement, supplemental, or deepened well would increase Buffalo Pasture Depletions.

6.5.4. **EMERGENCY GROUNDWATER PRODUCTION.** Notwithstanding other provisions of this **Article 6**, the Water Rights Owning Parties recognize the right of the Town, EPWSD, and the MDWCAs to groundwater diversions from their wells as may be necessary in the event of fire or other emergency that poses a threat to the public health, safety, or welfare.

## **7. OFFSET OF SURFACE WATER DEPLETION EFFECTS AND MITIGATION OF IMPAIRMENT TO GROUNDWATER RIGHTS.**

### **7.1.OFFSETS AND MITIGATION.**

The surface waters of the Taos Valley are fully appropriated. Therefore, unless specifically set forth to the contrary herein, the Parties must offset their surface water depletion effects on the Buffalo Pasture, Rio Grande Segment, and Taos Valley Tributaries that result from their Future Groundwater Diversions. In addition, the Parties must mitigate any Impairment of existing groundwater rights that result from their Future Groundwater Diversions. Each Party's annual surface water depletion effects and groundwater effects that result from their Future Groundwater Diversions shall be calculated using the Settlement Model. The Parties will not be

liable or obligated for any instream flow protection so long as they offset their surface water depletion effects resulting from their Future Groundwater Diversions as set forth in **Article 7**.

## **7.2.SETTLEMENT MODEL.**

A properly calibrated numerical groundwater flow model that reasonably reflects the hydrogeology of an area can be an appropriate tool for calculating surface water depletions and groundwater level changes from past and proposed groundwater diversions. The State Engineer, in cooperation with the other Parties, has developed such a model for the Taos Valley. This Settlement Model, which is fully documented in **Attachment 3**, represents the Taos Valley Stream System and can be used to calculate the surface water depletion effects on the Rio Grande Segment, Taos Valley Tributaries, and the Buffalo Pasture that have been or will be caused by any Taos Valley groundwater diversions. It can also be used to simulate groundwater level declines associated with those groundwater diversions. The Settlement Model has been reviewed by all Parties and has been accepted by them for purposes of this Settlement Agreement.

7.2.1. **USE OF SETTLEMENT MODEL.** The annual surface water depletion effects of each Party's Future Groundwater Diversions shall be simulated with the Settlement Model using the Party's actual annual diversion amounts and actual well locations. Surface water depletion offsets required under this Settlement Agreement shall be calculated using a superposition application of the Settlement Model in which the simulated effects on evapotranspiration caused by Future Groundwater Diversions have been distributed to the Taos Valley Tributaries and 35% of the tributary offsets required on the Rio Pueblo de Taos Stream Segments A through D and on the Upper and Lower Rio Lucero Stream Segments shall be offset by use of the Buffalo Pasture Recharge Project.

7.2.2. **PROCEDURE TO UPDATE SETTLEMENT MODEL.** The following procedures shall control any updates of the Settlement Model.

7.2.2.1. **NOTICE OF PROPOSED UPDATE.** If any Party seeks to update the Settlement Model, they shall notify all Parties in writing that they are invoking this Settlement Model update procedure.

7.2.2.2. **INFORMATION.** The Party proposing the update shall provide the following to all Parties:

7.2.2.2.1. a written description of and justification for the proposed update, and

7.2.2.2.2. the modified model input files.

7.2.2.3. COMMENTS AND OBJECTIONS. All Parties will have ninety (90) days to evaluate the materials supporting the proposed update, request and evaluate additional materials if necessary, and submit written comments and objections to the proposing Party and the other Parties. If no response is received from a Party within this time period, it will be assumed that the proposed update is acceptable to that Party.

7.2.2.4. PROCESS AFTER COMMENT PERIOD. Following the 90-day comment period:

7.2.2.4.1. If no objections are raised, the State Engineer shall approve the proposed update to the Settlement Model. Upon the State Engineer's approval of the proposed update, the State Engineer shall provide to all Parties copies of the amended model and the associated model documentation.

7.2.2.4.2. If objections are raised, the Party proposing the update shall attempt to address these objections to the satisfaction of all Parties. If necessary, a revised proposed model with documentation shall be distributed to all Parties, and a second round of comments shall be solicited, subject to the same time limit established in **Article 7.2.2.3**.

7.2.2.5. TECHNICAL COMMITTEE. In the event comments and objections cannot be resolved during a second round of comments, a technical committee composed of experts designated by each Party that chooses to participate ("Technical Committee") shall be convened to address the unresolved comments and objections.

7.2.2.5.1. The Technical Committee shall have sixty (60) days to resolve all comments and objections using a process agreeable to all members. The results of the Technical Committee's deliberations shall be summarized in a written report. If the Technical Committee is unable to reach consensus on all objections and comments to the proposed update, then the Committee's report shall indicate the areas of disagreement and afford all Parties the opportunity to explain why their objections or comments have not been resolved.

7.2.2.5.2. At the conclusion of the Technical Committee's deliberations, the Committee's report and recommendation regarding the proposed update shall be submitted to the State Engineer for action. All Parties shall be afforded the opportunity to fully present their positions to the State



Engineer. The State Engineer shall approve the proposed update if: (a) there is unanimous agreement among the Technical Committee, or (b) adoption of the proposed update would significantly enhance the utility of the Settlement Model in the administration of water rights, including the determination of Impairment to existing water rights and the determination of offsets necessary to prevent Impairment. Upon the State Engineer's approval of the proposed update, the State Engineer shall provide to all Parties copies of the amended model and the associated model documentation.

7.2.3. PERIODIC REVIEW OF SETTLEMENT MODEL. No less than five (5) years after the Enforcement Date or the date of approval of any update to the Settlement Model, the State Engineer shall notify the Water Rights Owning Parties that a Technical Committee, as described in **Article 7.2.2.5**, shall convene to consider whether the Settlement Model should be updated. The Technical Committee's written report and recommendation shall be forwarded to the State Engineer consistent with **Article 7.2.2.5.2**.

### **7.3.OFFSETS OF SURFACE WATER DEPLETION EFFECTS.**

The methods identified in **Articles 7.3.1, 7.3.2, and 7.3.3** are intended to offset surface water depletion effects as required by **Article 7.1**.

7.3.1. BUFFALO PASTURE MITIGATION. The Buffalo Pasture is an important Pueblo cultural resource. However, because of the location of wells in the Taos Valley, the Buffalo Pasture is affected by groundwater diversions, and due to the nature of the Buffalo Pasture, existing State Engineer permitting requirements cannot offset effectively the Buffalo Pasture Depletions resulting from groundwater diversions made from points of diversion located outside of Pueblo Lands. Furthermore, the Mitigation Well System described in **Article 7.3.3.1** is neither designed nor intended to deliver waters to the Buffalo Pasture. The Parties, therefore, agree to the following mechanisms to offset Buffalo Pasture Depletions and achieve the goals identified in **Article 5.3.2**.

7.3.1.1. BUFFALO PASTURE RECHARGE PROJECT. The Pueblo shall design, construct, and operate the Buffalo Pasture Recharge Project to offset surface water depletion effects on the Buffalo Pasture and to ensure that the goals of restoring, preserving, and protecting this resource are achieved.

7.3.1.2. DIVERSION OF RECHARGE WATERS. The Pueblo may divert surface waters from the Rio Pueblo de Taos in an amount not to exceed one

thousand (1,000) AFY from October 1 through March 15 of the following year for purposes of the Buffalo Pasture Recharge Project. Such diversions shall be measured and shall not be made in a manner detrimental to downstream surface water rights. Such diversion shall not constitute a water right, is independent of the Pueblo's water rights described in **Article 5**, and shall be subject to the provisions of **Article 7.3.1.4**.

7.3.1.3. **RECHARGE FACILITIES.** Recharge waters shall be diverted into recharge facilities for purposes of restoring and maintaining the surface and shallow groundwater systems on which the Buffalo Pasture depends. The recharge facilities will include a series of recharge ponds, a water distribution network consisting of ditches and pipelines, and a monitoring system.

7.3.1.4. **BUFFALO PASTURE RECHARGE PROJECT; OFFSET OF DEPLETION EFFECTS.** Each Water Rights Owning Party shall provide offsets on the Rio Grande equal to 100% of its portion of Buffalo Pasture Depletions that is offset by the Buffalo Pasture Recharge Project. In addition, to offset the effects of changes in the timing of surface flows, that Water Rights Owning Party shall provide offsets on the Rio Grande equal to 11.1% of its portion of Buffalo Pasture Depletions that is offset by the Buffalo Pasture Recharge Project. Subject to the Rio Grande depletion credit provided for in **Article 5.3.4**, the Pueblo shall provide offsets to the Rio Grande equal to 11.1% of any diversions made into the Buffalo Pasture Recharge Project in excess of what is required to offset all Buffalo Pasture Depletions. Any evapotranspiration depletions associated with any Pueblo expansion of the Buffalo Pasture shall be offset by the Pueblo on the Rio Grande or, in the alternative, in any other manner consistent with an intergovernmental agreement approved by the State and the Pueblo. The sources of offsets, timing of offsets, and legal control of the sources of offsets set forth in this **Article 7.3.1.4** shall be accomplished as set forth in **Articles 7.3.2.3, 7.3.2.4, and 7.3.2.5**.

7.3.1.5. **BUFFALO PASTURE MITIGATION IN LIEU OF RECHARGE PROJECT.**

7.3.1.5.1. **EPWSD MITIGATION.** For any period of time during which the Buffalo Pasture Recharge Project: (a) is not operational; or (b) fails to offset Buffalo Pasture Depletions as agreed between EPWSD and the Pueblo, and provided that the El Torreón Well is operational, has water rights, and is connected to EPWSD's water supply system, EPWSD shall provide a quantity of water to the Pueblo in an amount equal to the quantity

of water that the Settlement Model simulates as the Buffalo Pasture Depletions resulting from EPWSD's actual groundwater diversions. All deliveries of water to the Pueblo pursuant to this Article shall be made in a mutually agreed upon time, place, and manner. If necessary to provide efficient delivery, EPWSD and the Pueblo shall work together to obtain funding for infrastructure related to such deliveries.

7.3.1.5.2. TOWN MITIGATION. Notwithstanding the waivers of protest in **Article 6.5.1.2.1.3**, if by September 30, 2017 the Buffalo Pasture Recharge Project cannot offset or otherwise mitigate Buffalo Pasture Depletions resulting from the future increases in Taos Valley groundwater production, the Town shall be obligated under **Article 7.1** to offset Buffalo Pasture surface water depletion effects that the Settlement Model simulates as resulting from diversions of groundwater from the In-Town Well Field in excess of nine hundred forty-two and thirteen hundredths (942.13) AFY. Upon agreement with the Pueblo, the Town may offset those depletions by one or more methods as follows: (a) reconfiguring diversions within the In-Town Well Field to reduce surface water depletion effects on the Buffalo Pasture; (b) transferring water rights from the In-Town Well Field to the Town's Future Water Supply Well Field in order to reduce surface water depletion effects on the Buffalo Pasture and reducing the diversion ceiling specified at **Article 6.2.2.1** by an amount equal to the transferred amount; (c) providing a quantity of water to the Pueblo equal to such surface water depletion effects on the Buffalo Pasture; or (d) any other mutually acceptable means for reducing the Town's hydrologic effects on the Buffalo Pasture.

7.3.1.6. BUFFALO PASTURE RECHARGE PROJECT COSTS. The design, construction, operation, maintenance, and replacement of the Buffalo Pasture Recharge Project shall be funded through the Taos Pueblo Water Development Fund provided for in **Article 9** and section 505 of the Settlement Act. All of the Parties agree to support the Pueblo's acquisition of sufficient funding for the design, construction, and operation of the Buffalo Pasture Recharge Project.

7.3.1.7. INTERGOVERNMENTAL COOPERATION. The Pueblo, the United States, and the State shall consult and cooperate and, to the extent feasible, coordinate technical resources for the development and improvement of mechanisms to restore, preserve, and protect the Buffalo Pasture.

7.3.2. RIO GRANDE OFFSETS. Offsets to depletions on the Rio Grande required by **Article 7.1** shall be accomplished as provided in this **Article 7.3.2**.

7.3.2.1. **OFFSET OF DIRECT EFFECTS.** For each Water Rights Owning Party's surface water depletion effects that result from its Future Groundwater Diversions as simulated by the Settlement Model in the Stream Segments of the Settlement Model that are:

7.3.2.1.1. designated as Rio Grande or Rio Pueblo de Taos E, that Water Rights Owning Party shall provide offsets to the Rio Grande equal to 100% of their effects; and

7.3.2.1.2. designated as Lower Rio Hondo, that Water Rights Owning Party shall provide offsets to the Rio Grande or the Lower Rio Hondo equal to 100% of their effects.

7.3.2.2. **OFFSET OF DEPLETION EFFECTS SHIFTED TO THE RIO GRANDE SEGMENT.** The intended effect of using the Buffalo Pasture Recharge Project and the Mitigation Well System will be to offset surface water depletion effects on the Buffalo Pasture and Taos Valley Tributaries, respectively, as well as additional effects resulting from the withdrawal of groundwater for mitigation purposes, and to shift depletion effects to the Rio Grande Segment. One effect of the ASR Project will also be to shift depletion effects to the Rio Grande Segment. The Town, EPWSD, MDWCAs, and Pueblo shall each be responsible for offsetting their proportionate share of those shifted surface water depletion effects, which effects may vary annually depending on the quantity and location of groundwater actually diverted. The ASR Project shall not be operated to cause depletions greater than one hundred (100) AFY. The Rio Grande Segment depletions that will result from the ASR Project shall be offset by acquisition of one hundred (100) AFY in accordance with **Article 6.1.2**. The offset of surface water depletion effects shifted to the Rio Grande Segment by the Buffalo Pasture Recharge Project shall be accomplished as set forth in **Article 7.3.1** and offset of surface water depletion effects shifted to the Rio Grande Segment by the Mitigation Well System and ASR Project shall be accomplished as set forth in **Article 7.3.3**.

7.3.2.3. **SOURCES OF OFFSETS.** For all Rio Grande Segment depletion effects required to be offset by **Article 7.1**, offsets may be made by:

7.3.2.3.1. change of point of diversion of Rio Grande water rights;

7.3.2.3.2. delivery of San Juan-Chama Project or other imported water into the Rio Grande at or above the confluence of the Rio Chama and the Rio Grande; or

7.3.2.3.3. delivery of water into the Rio Grande or a tributary pursuant to any other method approved by the State Engineer.

7.3.2.4. TIMING OF OFFSETS. For all Rio Grande Segment offsets required by **Article 7.1**, offsets for each calendar year shall be provided in full not later than May 15 of the following year.

7.3.2.5. LEGAL CONTROL OF SOURCES OF OFFSETS. With respect to Future Groundwater Diversions, a Water Rights Owning Party shall have legal control of sources of offsets in an amount not less than its total reasonably anticipated annual diversions prior to commencing those diversions. Nothing in this **Article 7.3.2.5** shall affect the obligation of any Party to provide offsets in the full amounts required by **Article 7.1**.

### 7.3.3. TAOS VALLEY TRIBUTARY OFFSETS.

#### 7.3.3.1. MITIGATION WELL SYSTEM.

7.3.3.1.1. IN GENERAL. A system of mitigation wells shall be the preferred method for providing offsets for the Water Rights Owning Parties' Tributary Depletions resulting from Future Groundwater Diversions. These wells will balance the interests of supporting continued acequia irrigation and allowing for flexibility in the delivery of municipal water. The Town, EPWSD, and MDWCAs agree to use the Mitigation Well System to offset at least fifty (50) percent of their Tributary Depletions resulting from all of their respective Future Groundwater Diversions. This commitment is not intended to impose undue burdens upon the Town, EPWSD, or the MDWCAs in connection with the permitting of transfers linked to use of the Mitigation Well System, while at the same time limiting the acquisition of acequia water rights for offset purposes.

#### 7.3.3.1.2. EXCLUSION OF CERTAIN WATER RIGHTS FROM 50% CALCULATION.

7.3.3.1.2.1. With respect to EPWSD, the following shall be excluded from the 50% calculation referenced in **Article 7.3.3.1.1**: (a) existing permitted water rights; and (b) water rights owned but not permitted, up to 23 AFY on the Rio Lucero and 2 AFY on the Rio Pueblo. The water rights that are excluded under (a) and (b) above are those that exist as of January 1, 2006.

7.3.3.1.2.2. Footprint transfers to the Town, EPWSD, or the MDWCAs pursuant to **Article 6.5.2** shall be counted toward the 50% calculation unless they are the subject of a protest by a non-Party, in which case they shall not count toward the 50%.

7.3.3.1.3. **AGREEMENT TO RESOLVE UNDUE PERMITTING BURDEN.**  
 In light of uncertainty related to permitting requirements that may be imposed in the future by the State Engineer in connection with footprint transfers pursuant to **Article 6.5.2**, the Town, EPWSD, MDWCAs, and TVAA agree that, in the event such requirements appear to the Town, EPWSD, or the MDWCAs to impose undue burdens, they will jointly address and resolve concerns related to future footprint transfers and the 50% calculation. This agreement includes a commitment to use mediation in the event the Town, EPWSD, the MDWCAs, and TVAA are unable to reach a mutually acceptable resolution within 90 days of such concerns being brought to their attention.

7.3.3.1.4. **NO IMPAIRMENT OF EXISTING RIGHTS.** No transfer of water rights shall Impair existing water rights.

7.3.3.1.5. Five (5) wells shall be developed, completed, and equipped with pumps, necessary appurtenances, and connections to Acequias, tributary streams, and MDWCAs. The wells would be located as shown in **Attachment 10** and pursuant to **Article 7.3.3.1.9**. The project includes design, planning, permitting, site purchase, NEPA clearance, wells, pumps, pump appurtenances, pipelines, appropriate housing, electrical lines, and arsenic treatment if required for the wells listed below.

<b>Well</b>	<b>Operator</b>
A – Rio Hondo	Upper Arroyo Hondo MDWCA
B – Rio Lucero/Rio Pueblo de Taos	Upper Ranchitos MDWCA
C – Rio Fernando de Taos	Town of Taos
D – Rio Grande del Rancho	Llano Quemado MDWCA
E – Rio Chiquito	Acequia Madre del Rio Chiquito

These wells, all of which will be located outside of Pueblo Lands, shall divert from model layer 5 or below and shall be operated to offset Tributary Depletions resulting from those Future Groundwater Diversions described in **Article 7.3.3.1.10**.

7.3.3.1.6. The Acequia Madre del Rio Lucero y del Arroyo Seco shall operate the ASR wells described in **Article 6.1.1** in part as a mitigation well to offset Arroyo Seco surface water depletion effects resulting from those Future Groundwater Diversions described in **Article 7.3.3.1.10**.

7.3.3.1.7. **BENEFIT OF SYSTEM.** It is the Parties' intent that the development and use of this Mitigation Well System shall provide the following benefits:

7.3.3.1.7.1. avoid diminishment of non-Indian irrigation that would otherwise result from acquisition and transfer or retirement of surface water rights required to offset Tributary Depletions resulting from Future Groundwater Diversions described in **Article 7.3.3.1.10**;

7.3.3.1.7.2. provide supplemental capacity to the three (3) MDWCAs identified in **Article 7.3.3.1.9**, as permitted by the State Engineer and subject to use of such wells for mitigation purposes;

7.3.3.1.7.3. provide for deeper MDWCA wells to protect the groundwater system, including that which affects the Buffalo Pasture; and

7.3.3.1.7.4. shift the Tributary Depletions of Future Groundwater Diversions to the Rio Grande Segment, for which offset acquisition and transaction costs are expected to be lower.

7.3.3.1.8. **MDWCA, ACEQUIA, AND TOWN INTEREST IN MITIGATION WELLS.** The three (3) MDWCAs identified in **Articles 7.3.3.1.9.1, 7.3.3.1.9.4, and 7.3.3.1.9.5** shall own, operate, and maintain their respective mitigation wells, and each may use its well as permitted by the State Engineer to supplement its existing water rights, subject to the use of those wells for mitigation purposes described above. The Acequia Madre del Rio Chiquito and Acequia del Monte shall jointly own, operate, and maintain their mitigation well described in **Article 7.3.3.1.9.2**. The Town shall own, operate, and maintain the mitigation well described in **Article 7.3.3.1.9.3** and may use such well for up to four (4) AFY of additional capacity.

7.3.3.1.9. MITIGATION WELL LOCATIONS AND BENEFITTED

STREAM SEGMENTS. The Water Rights Owning Parties shall work together on planning the final location, design, and construction of the mitigation wells and any replacement, supplemental, or deepened mitigation wells. The mitigation wells and their points of discharge to the streams shall be generally located as follows and shall be operated to benefit the Settlement Model Stream Segments described below:

- 7.3.3.1.9.1. The Rio Grande del Rancho Well shall be located as depicted on **Attachment 10** and connected to the Llano Quemado MDWCA. This well shall deliver water to the Llano Quemado MDWCA system and discharge to the Rio Grande del Rancho above the Acequia Abajo de la Loma diversion from that stream via a new pipeline estimated to be 7,000 feet long and in a manner that offsets the surface water depletion effects modeled in the Upper Rio Grande del Rancho and Lower Rio Grande del Rancho Stream Segments.
- 7.3.3.1.9.2. The Rio Chiquito Well shall be located as depicted on **Attachment 10**. This well shall deliver water to the Rio Chiquito above the Acequia Madre del Rio Chiquito diversion from that stream via a pipeline estimated to be 4,000 feet long and in a manner that offsets the surface water depletion effects modeled in the Rio Chiquito Stream Segment.
- 7.3.3.1.9.3. The Rio Fernando de Taos Well shall be located as depicted on **Attachment 10**. This well shall deliver water via pipeline to the Rio Fernando at a location near the well and in a manner that offsets the surface water depletion effects modeled in the Rio Fernando Stream Segment.
- 7.3.3.1.9.4. The Rio Lucero/Rio Pueblo de Taos Well shall be located as depicted on **Attachment 10** and connected to the Upper Ranchitos MDWCA. This well shall deliver water to the Rio Pueblo de Taos near the crossing of Ranchitos Road via a new pipeline, estimated to be 6,000 feet long, and in a manner that offsets the surface water depletion effects modeled in the following Stream Segments: Rio Pueblo de Taos A through D. This well shall also deliver water to the Rio Lucero near the crossing of Millicent Rogers Road via the same pipeline stated above and in a manner that offsets the surface water depletion effects modeled in the Lower Rio Lucero Stream Segment.



7.3.3.1.9.5. The Rio Hondo Well shall be located as depicted on **Attachment 10** and connected to the Upper Arroyo Hondo MDWCA. This well shall deliver water to the Rio Hondo at a point just above the diversions of the Acequia Atalaya and Acequia Madre del Llano from that stream via a pipeline estimated to be 3,000 feet long and in a manner that offsets the surface water depletion effects modeled in the Upper Rio Hondo Stream Segment.

7.3.3.1.9.6. The ASR Project wells shall be located as depicted on **Attachment 10** and shall deliver water via pipeline to the Arroyo Seco near the point where the Acequia Madre del Rio Lucero y del Arroyo Seco crosses the Arroyo Seco and in a manner that offsets the surface water depletion effects modeled in the Arroyo Seco Stream Segment.

7.3.3.1.10. INITIAL ALLOCATION OF CAPACITY. The Water Rights Owning Parties agree to an initial allocation of capacity in the Mitigation Well System to offset the ultimate Tributary Depletions resulting from the following amounts of Future Groundwater Diversions:

7.3.3.1.10.1. the Town's diversions of up to eight hundred (800) AFY from its Future Water Supply Well Field;

7.3.3.1.10.2. EPWSD's diversions of up to five hundred seventy-five (575) AFY;

7.3.3.1.10.3. the Pueblo's diversions of up to two thousand (2,000) AFY; and

7.3.3.1.10.4. the MDWCAs' diversions of up to one hundred forty-five (145) AFY.

7.3.3.1.11. ADDITIONAL CAPACITY.

7.3.3.1.11.1. USE FOR SUPPLEMENTAL OR ADDITIONAL CAPACITY. Any capacity in the five (5) Mitigation Well System wells identified in **Article 7.3.3.1.9.1** through **7.3.3.1.9.5** that exceeds what is necessary to offset the ultimate Tributary Depletions resulting from the Future Groundwater Diversions identified at **Article 7.3.3.1.10** shall be available as supplemental production capacity for the owner-MDWCA or as up to four (4) AFY of additional capacity for the Town on the Rio Fernando de Taos Well identified in **Article 7.3.3.1.9.3**.

- 7.3.3.1.11.2. **ALLOCATION OF ADDITIONAL CAPACITY.** If there is diversion capacity over and above what is required to fulfill the parties' requirements in **Articles 7.3.3.1.10** and **7.3.3.1.11.1**, such capacity shall be allocated for use in offsetting additional Tributary Depletions by written agreement among the Pueblo, the Town, EPWSD, the MDWCAs that use the Mitigation Well System for surface water depletion offset purposes and the affected Acequias.
- 7.3.3.1.11.3. **UNUSED ALLOCATED CAPACITY.** Capacity in each well that has been allocated to a Water Rights Owning Party pursuant to **Article 7.3.3.1.10** but has not been used shall not be subject to an agreement for allocation of additional capacity pursuant to **Article 7.3.3.1.11.2**, but such unused capacity shall instead remain reserved and can be used by the Water Rights Owning Party that received the initial allocation of capacity.
- 7.3.3.1.12. **MITIGATION WELL SYSTEM; OFFSET OF DEPLETION EFFECTS.** For each Water Rights Owning Party's Tributary Depletions for which the Mitigation Well System is used to offset surface water depletion effects, that Water Rights Owning Party shall comply with **Article 7.3.2.2** by providing directly on the Rio Grande offsets equal to 100% of the Tributary Depletions plus 33% of that Party's total Mitigation Well System diversions. The sources of offsets, the timing of offsets, and the legal control of the sources of the offsets required by this **Article 7.3.3.1.12** shall be accomplished as set forth in **Articles 7.3.2.3, 7.3.2.4, and 7.3.2.5.**
- 7.3.3.1.13. **TIMING OF MITIGATION WELL SYSTEM USE.** The Mitigation Well System shall provide water during the irrigation season to maintain Acequias' surface water supplies that would otherwise be depleted by groundwater development. Subject to the other provisions of this Article and any applicable State Engineer permit requirements, the timing and use of the Mitigation Well System on each tributary stream shall be determined on or before June 1 of each year by majority vote of the commissions of the Acequias within that tributary stream having points of diversion located downstream of the mitigation well point of delivery to the stream. The commissioners of the Acequias benefited by each mitigation well, including the ASR Project wells, shall appoint one person to consult with the system operator for the respective mitigation well owner concerning actual operation of the well. Deliveries of offsets of the previous year's Tributary Depletions from the Mitigation Well System shall be made

annually unless the State Engineer approves a different schedule. In the event Acequias on a tributary stream are unable to agree on operation of any mitigation well, the State Engineer shall determine timing and use of that mitigation well for that calendar year.

7.3.3.1.14. EPWSD ARROYO SECO MITIGATION. EPWSD agrees to the following measures in lieu of utilizing the Mitigation Well System to offset its surface water depletion effects on the Arroyo Seco. Subject to the other provisions of this Article and any applicable State Engineer permit requirements, EPWSD shall divert that quantity of water that the Settlement Model simulates that EPWSD has depleted the Arroyo Seco and transport it to the Arroyo Seco at a point where it intersects with U.S. Highway 64 in Las Colonias for use by the Lower Manuel Andres Trujillo Ditch. The Lower Manuel Andres Trujillo Ditch shall request and EPWSD shall deliver the annual offset in a period of time not to exceed one (1) month. In addition, the Lower Manuel Andres Trujillo Ditch may postpone delivery of water for one year and receive that postponed delivery in the following year, in which case EPWSD shall deliver two (2) years of offset water during a period of time not to exceed two (2) months.

7.3.3.1.15. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.

7.3.3.1.15.1. SINKING FUND. Operation, maintenance, and replacement costs shall be paid out of a sinking fund established pursuant to **Article 10.1.5.2.**

7.3.3.1.15.2. COSTS REVIEW AND RECOMMENDATIONS. The Water Rights Owning Parties using a particular mitigation well shall have the right to annually review records relating to the operation and maintenance of that well to ensure a safe and efficient operation. The Water Rights Owning Parties shall also have the right to make written recommendations to the operator of a mitigation well copied to all Mitigation Well System users, for more cost effective and efficient operations and maintenance, consistent with the operating practices recommended by the American Waterworks Association. If a Water Rights Owning Party has made written recommendations concerning system operation and maintenance that have not been implemented by the well operator in a timely manner, then that Party shall not be responsible for costs incurred because of operator negligence.

7.3.3.1.15.3. COOPERATIVE AGREEMENTS. The Water Rights Owning Parties shall execute, as appropriate, any cooperative agreement or agreements that may be necessary with respect to operation, maintenance, and replacement costs associated with the delivery of offsets by the Mitigation Well System.

7.3.3.1.16. APPLICATIONS TO STATE ENGINEER. The Pueblo, Town, EPWSD, the Llano Quemado, Upper Arroyo Hondo, Upper Ranchitos Mutual Domestic Water Users Associations, Acequia Madre del Rio Lucero y del Arroyo Seco, Acequia Madre del Rio Chiquito, and Acequia del Monte shall cooperate in the preparation and filing of respective applications to the State Engineer for the necessary permits to divert groundwater for mitigation of Tributary Depletions as described in **Article 7.3.3.1**, as a supplemental source of supply for each of the applicant MDWCAs, and to operate the ASR Project as a mitigation well.

7.3.3.1.17. PROPORTIONAL RESPONSIBILITY. In the event that operation of any mitigation well results in Impairment to the water rights of any non-Party, the Party or Parties that benefit from operation of the well shall assume responsibility for mitigating such Impairment in proportion to their use of the well for mitigation or supplemental domestic purposes.

7.3.3.1.18. RESERVED TO WATER RIGHTS OWNING PARTIES. The Mitigation Well System is reserved for use by the Water Rights Owning Parties only.

7.3.3.2. PUEBLO HIA OFFSETS. For those Tributary Depletions which the Pueblo desires to offset by use of the Pueblo's HIA Right, the Pueblo shall change the point of diversion of a portion of its HIA Right available for exercise pursuant to **Article 5.1.1.2** to the groundwater point of diversion of the well causing the depletion effects. The amount of the offset shall be equal to the amount of the consumptive use of the HIA Right transferred to the well as limited by the historically available surface water supply or supplies on which that portion of the HIA Right relied.

## **8. SURFACE WATER SHARING.**

### **8.1.SURFACE WATER PRIORITY.**

In general, to avoid the disruption to non-Indian irrigation in the Taos Valley that would result from the Pueblo's immediately putting its full HIA Right to use, the Pueblo agrees to forbear

from making priority calls against non-Indian surface water rights as long as those rights are used within the Taos Valley Stream System pursuant to a Subfile Order for Lawful Irrigation or Stock Uses. The Water Rights Owning Parties therefore agree that the surface water rights of the Pueblo, the Acequias, and their Parciantes shall be administered solely in accordance with this **Article 8** and shall not be subject to priority administration. The Pueblo, TVAA, Acequias, and Parciantes may enforce the provisions of this **Article 8** and, likewise, be subject to actions properly taken to enforce the provisions of this **Article 8**.

## 8.2.WATER SHARING.

The waters of the Rio Lucero and the Rio Pueblo de Taos shall be shared as follows:

### 8.2.1. RIO LUCERO.

8.2.1.1. RIO LUCERO WATER SHARING. The waters of the Rio Lucero shall be shared consistent with the 1893 Rio Lucero decree as modified by this **Article 8**:

Taos Pueblo	46.7%
El Prado	35%
Arroyo Seco Arriba	18.3%
Arroyo Seco Abajo	surplus flows.

Taos Pueblo's share shall be adjusted over time in accordance with **Article 8.2.1.2**, along with the shares of El Prado and Arroyo Seco Arriba. Arroyo Seco Arriba shall have an irrigation storage project, as described in **Article 6.1.1**, to manage its share of the Rio Lucero. Arroyo Seco Abajo's share shall be calculated in accordance with **Article 8.2.1.1.3**. Diversions of all the shares shall not exceed the PDR of the acequia necessary to serve those acres under Lawful Irrigation or Stock Uses.

8.2.1.1.1. ALLOCATION AND MEASUREMENT OF SHARES. The percentage shares set forth in **Article 8.2.1.1** shall be allocated at U.S.G.S. Gage No. 08271000 located at the mouth of the Rio Lucero canyon based on stream flow measured at that gage, and the Pueblo and the Acequias shall bear the burden of their own losses resulting from use of points of diversion downstream from the gage.

8.2.1.1.2. DIVERSIONS OF SHARES.

- 8.2.1.1.2.1. EXISTING PUEBLO DIVERSIONS. The Pueblo share may be taken, in whole or in part, at the Indian, Tenorio, Beeline, Grouse/Rock Bridge, or 1908 ditch diversions.
- 8.2.1.1.2.2. EXISTING EL PRADO DIVERSION. The El Prado share shall continue to be taken from the Rio Lucero at the diversion of the Acequia Madre del Prado.
- 8.2.1.1.2.3. EXISTING ARROYO SECO ARRIBA DIVERSION. The Arroyo Seco Arriba share shall continue to be taken from the Rio Lucero at the diversion of the Acequia Madre del Rio Lucero y del Arroyo Seco.
- 8.2.1.1.2.4. EXISTING ARROYO SECO ABAJO DIVERSIONS. The Arroyo Seco Abajo share shall continue to be taken from the Rio Lucero at:
- 8.2.1.1.2.4.1. the diversion of the Acequia Madre del Rio Lucero y del Arroyo Seco for the Upper Manuel Andres Trujillo Ditch and the Lower Manuel Andres Trujillo Ditch, and
- 8.2.1.1.2.4.2. the diversion of the Juan Manuel Lucero Ditch.
- 8.2.1.1.3. ARROYO SECO ABAJO SHARE. The Arroyo Seco Abajo community retains its right to surplus flows in the Rio Lucero.
- 8.2.1.1.3.1. DETERMINATION OF SURPLUS. For purposes of this **Article 8.2.1.1.3**, a surplus shall exist when the surface flows of the Rio Lucero are greater than what is necessary to serve the PDR associated with the Pueblo's, Arroyo Seco Arriba's, and El Prado's Rio Lucero water rights. As of May 30, 2006, determinations of PDR shall be based on the following acreages, which amounts shall be adjusted in accordance with **Article 8.2.1.2**:
- |             |  |
|-------------|--|
| Taos Pueblo | one thousand six hundred sixteen and ninety-six hundredths (1,616.96) acres of irrigated Pueblo Lands and eleven and fifteen hundredths (11.15) acres of livestock impoundments; |
|-------------|--|

El Prado	nine hundred fifty-one and one tenth (951.1) acres of irrigated non-Indian lands plus fourteen and thirty-seven hundredths (14.37) acres of irrigated Pueblo Lands and one and thirty-eight hundredths (1.38) acres of livestock impoundments;
Arroyo Seco Arriba	one thousand three hundred seventy-six and five tenths (1,376.5) acres of irrigated non-Indian lands, which amount includes stockponds; and
Arroyo Seco Abajo	one thousand eighty-four and twenty hundredths (1,084.20) acres of irrigated non-Indian lands.

For purposes of determining a surplus, the PDR for the Pueblo's Rio Lucero water rights shall be increased, on an acre-for-acre basis, by the amount of the reduction in non-Indian irrigation, in accordance with **Article 5.1.1.2**, from the Acequias identified in **Article 8.2.1.1.2.4**. Such increase in the Pueblo's PDR on these grounds shall not cause an adjustment to the Rio Lucero shares described in **Article 8.2.1.1**.

8.2.1.1.3.2. **DIVERSION OF SURPLUS.** Surpluses determined under this **Article 8.2.1.1.3** shall be left in the Rio Lucero to be available for diversion at the points of diversion identified in **Article 8.2.1.1.2.4** to satisfy the PDR associated with the Acequias identified in that Article.

8.2.1.1.3.3. **SURPLUSES IN EXCESS OF ARROYO SECO ABAJO'S USES.** For purposes of satisfying its HIA Right, the Pueblo shall be entitled to increase its diversions from the Rio Lucero equal to an amount that such surplus exceeds the PDR for the Acequias identified in **Article 8.2.1.1.2.4**.

8.2.1.1.4. **PUEBLO USES.** Any portion of the Pueblo's share that is allowed to flow downstream for any lawful purpose shall not be available for non-Indian diversions at the Acequia Madre del Lucero y del Arroyo Seco, Juan Manuel Lucero ditch, or the Acequia Madre del Prado.

8.2.1.2. SHARING ADJUSTMENTS. The Pueblo's percentage share of the Rio Lucero, as specified in this Article, shall be increased and the El Prado or Arroyo Seco Arriba percentage share shall be reduced by the amount of the reduction of non-Indian surface water rights within the El Prado or Arroyo Seco Arriba systems that results from those circumstances identified in **Article 5.1.1.2** that occur within those two acequia systems. The PDR for those acequias in each community identified above shall be adjusted as irrigated acreage is reduced or increased.

8.2.1.3. ADJUSTMENT CALCULATIONS. For purposes of calculating **Article 8.2.1.2** sharing adjustments, 1% of the surface flows of the Rio Lucero shall equal:

8.2.1.3.1. ACEQUIA MADRE DEL PRADO. Twenty-seven and fifty-eight hundredths (27.58) acres (965.47 acres divided by 35), of which nine hundred fifty-one and one tenth (951.1) acres are non-Indian lands and fourteen and thirty-seven hundredths (14.37) acres are Pueblo Lands, all of which are presently served by the Acequia Madre del Prado; or

8.2.1.3.2. ACEQUIA MADRE DEL RIO LUCERO Y DEL ARROYO SECO. Seventy-five and two tenths (75.2) acres (1,376.5 acres divided by 18.3) of non-Indian land served by the Acequia Madre del Rio Lucero y del Arroyo Seco pursuant to the Consent Order entered in the Adjudication on March 14, 2005. The one thousand three hundred seventy-six and five tenths (1,376.5) acres used for purposes of this Article excludes those acres served by the Temporales ditch which do not use waters from the Rio Lucero.

8.2.1.4. TIMING OF SHARING ADJUSTMENTS. **Article 8.2.1.2** sharing adjustments shall be calculated and made annually between January 1 and March 1.

8.2.1.5. PROTECTION OF ARROYO SECO ABAJO SURPLUS. Consistent with the 1893 Rio Lucero decree as modified by this **Article 8**, no Party shall take any action to prevent surplus water from reaching Arroyo Seco Abajo up to the PDR for those Acequias identified in **Article 8.2.1.1.2.4**. Nothing herein shall preclude the Pueblo, Arroyo Seco Arriba, or El Prado from taking its full allocation of water as determined under **Articles 8.2.1.1** and **8.2.1.2**.

8.2.2. RIO PUEBLO DE TAOS.



- 8.2.2.1. **RIO PUEBLO DE TAOS SHORTAGE SHARING.** In times of shortage, the waters of the Rio Pueblo de Taos shall be divided consistent with the 1893 sharing agreement as modified by this **Article 8**, entitling the Pueblo to four and one half (4½) days of the surface flows and the Acequia Madre del Pueblo to two and one half (2½) days of the surface flows. Such division notwithstanding, diversions into the Acequia Madre del Pueblo shall not exceed the PDR of the Acequia necessary to serve those acres for Lawful Irrigation or Stock Uses.
- 8.2.2.2. **PUEBLO AND ACEQUIA CONSULTATIONS.** On or about July 1 of each year, the Pueblo and the Acequia Madre del Pueblo shall meet and determine when to implement the water sharing provisions of this **Article** for that irrigation season. Nothing herein precludes the Pueblo and the Acequia Madre del Pueblo from meeting earlier than July 1 for those purposes.
- 8.2.2.3. **DETERMINATION OF SHORTAGE; SHORTAGE ALLOCATION PERIODS.** A shortage shall exist on the Rio Pueblo when its flow is insufficient to provide the PDR for the Lawful Irrigation or Stock Uses for the Pueblo and the Acequia Madre del Pueblo. In times of shortage and consistent with **Article 8.2.2.4**, the Pueblo will cease diversions upstream from the Acequia Madre del Pueblo during the two and one-half (2½) day period of each week that the shortage exists. Regardless of the Acequia Madre del Pueblo's project delivery requirement, the Pueblo may use two (2) cubic-feet per second flow during those days for purposes of stockwatering and domestic uses.
- 8.2.2.4. **ADJUSTMENTS IN UPSTREAM DIVERSIONS DURING SHORTAGE PERIODS.** In the event that, during the Acequia Madre del Pueblo's two and one-half (2½) day shortage allocation period, flows at the diversion point of the Acequia Madre del Pueblo are in excess of the PDR of the acequia necessary to serve those acres for Lawful Irrigation or Stock Uses, the Pueblo may increase its upstream diversions equal to the amount of the excess.
- 8.2.2.5. **PUEBLO IRRIGATION FROM THE ACEQUIA MADRE DEL PUEBLO.** The Pueblo shall have the right to irrigate those lands identified in Table 1 as served by the Acequia Madre del Pueblo during the Pueblo's four and one-half (4½) day shortage allocation period. Within the non-Indian two and one-half (2½) day shortage allocation period and on an acre-for-acre basis, the Pueblo may irrigate additional Historically Irrigated Acreage from the Acequia Madre del Pueblo by the amount of the reduction of non-Indian irrigation within the Acequia Madre del Pueblo that results from those

circumstances identified in **Article 5.1.1.2**. Pueblo irrigation from the Acequia Madre del Pueblo during the two and one-half (2½) day shortage allocation period shall be in accordance with the acequia's rotation schedule applicable to the formerly irrigated non-Indian lands.

8.2.3. **OTHER TAOS VALLEY TRIBUTARIES.** With respect to those tributaries on which no sharing arrangement is in effect as between the Pueblo and any Acequia and consistent with **Article 5.1.1.2**, the Pueblo shall forbear from making priority calls against non-Indian surface water rights so long as those rights are used for Lawful Irrigation or Stock Uses.

### **8.3.PUEBLO USE OF CERTAIN DITCHES.**

The Pueblo, TVAA, Acequias, and their respective member Parciantes make the following agreements with respect to those acequia systems that serve both Pueblo and non-Indian lands. Nothing in this **Article 8.3** shall be construed as prohibiting or limiting the Pueblo's right to irrigate any of its Historically Irrigated Acreage in a manner consistent with this Settlement Agreement.

8.3.1. **IDENTIFICATION OF DITCHES AND PUEBLO ACREAGES.** The Pueblo has the following quantity of Historically Irrigated Acres associated with the following ditches:

- 8.3.1.1. forty-five and eighty-two hundredths (45.82) acres from the Acequia del Medio;
- 8.3.1.2. one hundred eight and five hundredths (108.05) acres from the Acequia Madre de la Loma del Ranchito de Abajo;
- 8.3.1.3. one hundred sixteen and eighty hundredths (116.80) acres from the Acequia Madre del Prado;
- 8.3.1.4. twenty-six and sixty-five hundredths (26.65) acres from the Cortez y Sisneros ditch;
- 8.3.1.5. fourteen and forty-six hundredths (14.46) acres from the South Loma lateral;
- 8.3.1.6. forty-six and fifty-six hundredths (46.56) acres from the Acequia de los Lovatos;
- 8.3.1.7. twenty-one hundredths (0.21) acres from the Acequia de los Archuletas;

- 8.3.1.8. one hundred sixty-two and sixty-five hundredths (162.65) acres from the Acequia Madre del Pueblo; and
- 8.3.1.9. fifty-four and ninety-five hundredths (54.95) acres from the McClure ditch.
- 8.3.2. INCREASES IN PUEBLO IRRIGATION. Consistent with **Article 5.1.1.2.2**, the Pueblo may increase its irrigation from the initial amount specified in Table 1 to the total Historically Irrigated Acreage identified above and associated with each ditch.
- 8.3.3. COOPERATION ON MAINTENANCE, REPAIR, AND WATER DELIVERIES. The Pueblo and the mayordomos and commissioners on those Acequias identified in **Article 8.3.1** shall cooperate in the maintenance, repair, and scheduling of water deliveries with respect to those Acequias. Nothing herein shall be construed as a limitation or a change to the rights or powers to which either party may be entitled under applicable law.
- 8.3.4. PUEBLO TRANSFERS FROM CERTAIN DITCHES. Upon the Enforcement Date and in accordance with this Settlement Agreement, the Pueblo shall transfer to new points of diversion, not on the below identified ditches, those portions of its HIA Right that are identified in the Taos Pueblo Water Use Survey as appurtenant to the following acres:
- 8.3.4.1. ninety-seven and ninety-five hundredths (97.95) acres and the stockpond (P-157) associated with the Cuchilla ditch;
- 8.3.4.2. nine (9.00) acres associated with the Upper Manuel Andres Trujillo ditch; and
- 8.3.4.3. forty-one and fifty hundredths (41.50) acres associated with the Juan Manuel Lucero ditch.
- 8.3.5. CONCHO DITCH. The Pueblo shall be entitled to irrigate annually up to twenty (20) acres of land identified in the Taos Pueblo Water Use Survey which are served by the Concho Ditch, notwithstanding the provisions of **Article 5.1.1.2**. Increases in Pueblo irrigation from the Concho Ditch shall be in accordance with that **Article 5.1.1.2**. All Pueblo irrigation from this ditch shall be in accordance with and included in, without discrimination, the irrigation rotation and allocation schedule of the Acequia Madre del Rio Lucero y del Arroyo Seco.

8.3.6. ACEQUIA MADRE DEL PRADO. The Acequia Madre del Prado and the Pueblo shall reestablish the ditch so that it is able to serve the Karavas Tract and reconnect with the Acequia del Medio del Prado. The ditch shall be further restored through the Karavas Tract, so that tail waters will be drained to the Acequia Madre de la Loma del Ranchito de Abajo. The Acequia is responsible for specifying the location of the reestablished ditch with respect to non-Pueblo lands. The Pueblo shall pay 60% of costs associated with equipment, materials, and labor for the reconstruction and the Acequia shall pay 40% of those costs. The Pueblo shall contribute annually to future ditch maintenance and repair by providing labor or payment. Such contribution shall be in proportion to its acreage irrigated under the ditch and calculated at the same rate that would apply to non-Indian ditch users. Pueblo irrigation from this ditch shall be in accordance with this Settlement Agreement and included in, without discrimination, the irrigation rotation schedule of the Acequia Madre del Prado. This provision resolves all outstanding issues between the Pueblo and the Acequia regarding ditch maintenance and repairs.

8.3.7. LOWER MANUEL ANDRES TRUJILLO DITCH.

8.3.7.1. P-039 STOCK IMPOUNDMENT. The Pueblo, the Upper Manuel Andres Trujillo Ditch, and Lower Manuel Andres Trujillo Ditch shall coordinate with respect to water deliveries from those Acequias to P-039, a Pueblo livestock impoundment located in Tract B. The Pueblo shall use its own water, including water provided for under **Articles 8.2.1.1** and **8.2.1.1.3.3**, for purposes of that impoundment and contribute annual labor or payment toward ditch maintenance and repair in proportion to its acreage under the Lower Manuel Andres Trujillo Ditch. Further, in cooperation with the Acequia, the Pueblo will build a permanent headgate on the Lower Manuel Andres Trujillo Ditch for purposes of delivering water from the Acequia to P-039. The Acequia will not protest or otherwise object to the Pueblo's use of a Tract B livestock well for purposes of serving P-039.

8.3.7.2. STORAGE. The Water Rights Owning Parties will not oppose off-Pueblo storage of up to twenty (20) AFY for the use by owners of water rights on either the Upper or Lower Manuel Andres Trujillo Ditches, which storage project shall be funded outside of this Settlement Agreement unless made a part of the Surface Storage Project provided for in **Article 6.1.2**. Such storage facility shall not be operated in a manner that interferes with deliveries of Pueblo water to P-039.

#### 8.4.ACEQUIA ACCESS TO PUEBLO LANDS.

The Pueblo recognizes the legitimate need for the Acequias to access their ditch systems within Pueblo Lands and the Acequias recognize the Pueblo's legitimate need to protect its lands. In accordance therewith, non-Indian acequia officials shall obtain and abide by Pueblo land access permits for purposes of access for operation, maintenance, and repair of acequia irrigation systems. The Pueblo Governor's Office shall issue such permits in accordance with the Pueblo Code and shall not unreasonably condition such permits for Acequia use that is consistent with this Article. A copy of a standard form land access permit application is included herewith, as **Attachment 13**, as an example of the appropriate form.

#### 8.5.ACEQUIA SPRINGS CLAIMS.

The Acequias have filed with the Court springs claims that are within the subject matter of the Adjudication. With respect to those claims, the TVAA, the Acequias, and the Pueblo make the following agreement:

8.5.1. SPRINGS ARISING OUTSIDE OF PUEBLO LANDS. The Pueblo waives any right to file an *inter se* objection to any order entered in the Adjudication regarding an Acequia claim to a spring that arises outside of Pueblo Lands. However, such order shall not serve as a basis for precluding the Pueblo from the non-consumptive use of the affected spring for aboriginal or historic cultural purposes. Any right established by such an order and which pertains to an acequia that irrigates both Pueblo and non-Indian lands shall go to the benefit of both the Pueblo and the non-Indian irrigators.

#### 8.5.2. SPRINGS ARISING WITHIN PUEBLO LANDS.

8.5.2.1. EL AGUITA SPRINGS. With regard to the claim of the Acequia Madre del Rio Lucero y del Arroyo Seco to the right to receive water from the El Aguita Springs, that claim shall be withdrawn upon enactment of the settlement legislation in consideration of the construction of the pipeline, which is a component of the Arroyo Seco Arriba ASR Project or alternative project described in **Articles 6.1.1.1 and 6.1.1.2**.

8.5.2.2. BUFFALO PASTURE DISCHARGES. The Pueblo and the Acequia Medio del Prado jointly affirm a shared interest in protecting the waters of the Buffalo Pasture and in the maintenance of the points of diversion identified below.

8.5.2.2.1. POINTS OF DIVERSION. The point of diversion for the Acequia del Medio del Prado from the Rio Lucero is x=701,180 and y=1,977,160 NM State Plane Coordinate System, Central Zone, NAD 1927, as shown in **Attachment 14**. The Acequia also has a point of diversion from Unnamed Watercourse 1 at x=701,436 and y=1,977,185 NM State Plane Coordinate System, Central Zone, NAD 1927, as also shown in **Attachment 14**, which unnamed watercourse collects waters discharged from certain springs arising on Pueblo Lands. These points of diversion are located on Pueblo Lands and benefit both Pueblo and non-Pueblo uses.

8.5.2.2.2. MAINTENANCE AND REPAIR PERMITS. The Acequia shall comply with **Article 8.4** with respect to Pueblo land access permits for purposes of maintenance and repair of these points of diversion.

8.5.2.2.3. PUEBLO-ACEQUIA DEL MEDIO DEL PRADO COOPERATION. Consistent with **Article 8.3.6**, the Acequia del Medio del Prado and the Pueblo shall work together to reestablish the ditch and to restore its connection to the Acequia Madre del Prado. The Pueblo shall pay 60% of costs associated with equipment, materials, and labor for the reconstruction and the Acequia shall pay 40% of those costs. The Acequia and the Pueblo agree that Pueblo irrigation of its lands under this ditch shall be in accordance with this Settlement Agreement and included in, without discrimination, the irrigation rotation schedule of the Acequia del Medio del Prado, and the Pueblo shall contribute to ditch maintenance and repair by providing annual labor or payment in proportion to its acreage under the ditch. The Acequia shall support the Pueblo's legal position and shall not oppose it in any necessary legal action to reestablish the connection between the Acequia del Medio and the Acequia Madre del Prado.

8.5.2.2.4. RETENTION OF PUEBLO PARTICIPATION IN *INTER SE* PROCEEDINGS. The Pueblo retains its right to participate in any *inter se* proceedings on the Acequia del Medio del Prado's springs claims to the extent necessary to ensure that the agreement in this **Article 8.5.2.2** is included in any Subfile Order on the Acequia's rights.

8.5.2.3. KARAVAS TRACT SPRINGS.

8.5.2.3.1. POINTS OF DIVERSION. The Acequia Madre de la Loma del Ranchito de Abajo diverts water into its acequia and such waters are

naturally discharged from springs arising on Pueblo Lands, as shown in **Attachment 15**. Such springs benefit both Pueblo and non-Pueblo uses.

8.5.2.3.2. RETENTION OF PUEBLO PARTICIPATION IN *INTER SE* PROCEEDINGS. The Pueblo retains its right to participate in any *inter se* proceedings on the Acequia Madre de la Loma del Ranchito de Abajo's springs claims to the extent necessary to ensure that the agreement in this **Article 8.5.2.3** is included in any Subfile Order on the Acequia's rights.

## 8.6. INITIAL PUEBLO SURFACE WATER ACQUISITIONS.

8.6.1. PUEBLO-TVAA COOPERATION AS TO INITIAL ACQUISITIONS. As a goal of this settlement and in accordance with **Article 5.1.1.2**, the Pueblo will seek to expand the exercise of its HIA Right to an amount at least sufficient to irrigate three thousand (3,000) acres as of the Enforcement Date. TVAA shall work with the Pueblo toward the initial goal of three thousand (3,000) acres of irrigation waters on the following basis:

8.6.1.1. TVAA shall inform acequia commissioners and mayordomos of the terms of this Settlement Agreement in order to facilitate the necessary Pueblo acquisition of surface water rights from within the Taos Valley; and

8.6.1.2. TVAA and acequia commissioners and mayordomos shall notify and share with the Pueblo information as to water rights available for possible purchase by the Pueblo for purpose of this Settlement Agreement.

8.6.2. NON-APPLICATION OF CERTAIN LAWS. The Pueblo, TVAA, and Acequias agree that, pursuant to subsection (E) of NMSA 1978, § 72-5-24.1 (2003), the other provisions of that statute do not and shall not apply with respect to Pueblo acquisition, transfer, and retirement of surface water rights under this Settlement Agreement.

8.6.3. NO LIMITATION ON ACQUISITIONS. Nothing herein shall be construed as limiting the Pueblo's ability to acquire and retire non-Indian surface water rights in an amount sufficient to allow the full exercise of the Pueblo's HIA Right, as that right is defined in **Article 5.1.1**.

## **9. THE TAOS PUEBLO WATER DEVELOPMENT FUND.**

### **9.1. ESTABLISHMENT.**

Section 505 of the Settlement Act established in the Treasury of the United States a fund to be known as the “Taos Pueblo Water Development Fund” (referred to in this Article as the “Fund”) to be used to pay or reimburse costs incurred by the Pueblo for—

- 9.1.1. acquiring water rights;
- 9.1.2. planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure;
- 9.1.3. on-farm improvements, or wastewater infrastructure;
- 9.1.4. restoring, preserving and protecting the Buffalo Pasture, including planning, permitting, designing, engineering, constructing, operating, managing and replacing the Buffalo Pasture Recharge Project;
- 9.1.5. administering the Pueblo’s water rights acquisition program and water management and administration system; and
- 9.1.6. watershed protection and enhancement, support of agriculture, water-related Pueblo community welfare and economic development, and costs related to the negotiation, authorization, and implementation of this Settlement Agreement.

### **9.2. MANAGEMENT OF FUND.**

Section 505(b) of the Settlement Act requires the Secretary to manage the Fund, invest amounts in the Fund, and make monies available from the Fund for distribution to the Pueblo consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (hereinafter, “Trust Fund Reform Act”), this title, and the Settlement Agreement.

### **9.3. INVESTMENT OF FUND.**

Section 505(c) of the Settlement Act provides that, upon the Enforcement Date, the Secretary shall invest amounts in the Fund in accordance with—

- 9.3.1. the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C.161);



9.3.2. the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

9.3.3. the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

#### **9.4.AVAILABILITY OF AMOUNTS FROM FUND.**

Section 505(d) of the Settlement Act provides that, upon the Enforcement Date, all monies deposited in the Fund pursuant to section 509(c)(1) of the Settlement Act or made available from other authorized sources shall be available to the Pueblo for expenditure or withdrawal after the requirements of Section 505(e) of the Settlement Act have been met.

#### **9.5.EXPENDITURES AND WITHDRAWAL.**

##### **9.5.1. TRIBAL MANAGEMENT PLAN.**

9.5.1.1. **IN GENERAL.** Pursuant to Section 505(e)(1)(A) of the Settlement Act, the Pueblo may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

9.5.1.2. **REQUIREMENTS.** Section 505(e)(1)(B) of the Settlement Act provides that in addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Pueblo spend any funds in accordance with the purposes described in Section 505(a) of the Settlement Act.

9.5.2. **ENFORCEMENT.** Section 505(e)(2) provides that the Secretary may take judicial or administrative action to enforce the requirement that monies withdrawn from the Fund are used for the purposes specified in Section 505(a) of the Settlement Act.

9.5.3. **LIABILITY.** Section 505(e)(3) of the Settlement Act provides that if the Pueblo exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

##### **9.5.4. EXPENDITURE PLAN.**

9.5.4.1. **IN GENERAL.** Section 505(e)(4)(A) of the Settlement Act requires the Pueblo to submit to the Secretary for approval an expenditure plan for any portions of the funds made available under the Settlement Act that the Pueblo does not withdraw under Section 505(e)(1)(A) of the Settlement Act.

9.5.4.2. DESCRIPTION. Section 505(e)(4)(B) of the Settlement Act requires the expenditure plan to describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

9.5.4.3. APPROVAL. Section 505(e)(4)(C) of the Settlement Act provides that, on receipt of an expenditure plan under Section 505(e)(4)(A) of the Settlement Act, the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with the Settlement Act.

9.5.5. ANNUAL REPORT. Section 505(e)(5) of the Settlement Act requires the Pueblo to submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

#### **9.6.AMOUNTS AVAILABLE ON APPROPRIATION.**

Section 505(f) of the Settlement Act provides that, notwithstanding Section 505(d) of the Settlement Act, \$15,000,000 of the monies deposited in the Fund—

9.6.1. shall be available upon appropriation or availability of the funds from other authorized sources for the Pueblo's acquisition of water rights pursuant to **Article 5.1.1.2.3** of this Settlement Agreement, the Buffalo Pasture Recharge Project, implementation of the Pueblo's water rights acquisition program and water management and administration system, the design, planning, engineering, permitting or construction of water or wastewater infrastructure eligible for funding under Section 505(a) of the Settlement Act, or costs related to the negotiation, authorization, and implementation of this Settlement Agreement, provided that such funds may be expended prior to the Enforcement Date only for activities which are determined by the Secretary to be more cost effective when implemented as early as possible; and

9.6.2. shall be distributed by the Secretary to the Pueblo on receipt by the Secretary from the Pueblo of a written notice and a Tribal Council resolution that describes the purposes under Section 505(f)(1) of the Settlement Act for which the monies will be used after a cost-effectiveness determination by the Secretary has been made as described in Section 505(f)(1) of the Settlement Act. Pursuant to Section 505(f)(2) of the Settlement Act, the Secretary is required to make the determination described in Section 505(f)(1) of the Settlement Act within a reasonable period of time after receipt of the notice and resolution.

## 9.7. NO PER CAPITA DISTRIBUTIONS.

Section 505(g) of the Settlement Act provides that no portion of the Fund shall be distributed on a per capita basis to members of the Pueblo.

## 10. MUTUAL-BENEFIT PROJECTS FUNDING.

### 10.1. IN GENERAL.

The Parties agree that funding for the Mutual-Benefit Projects, which are described in detail in **Article 6**, is an essential component of this Settlement Agreement. Pursuant to Section 509(c)(2) of the Settlement Act, the federal financial assistance to be provided to plan, permit, design, and construct the Mutual-Benefit Projects, inclusive of any required federal and state grant administration costs and NEPA compliance costs, will total 75% of the total cost, but not to exceed \$36,000,000, and will be provided in the form of grants on a nonreimbursable basis. Pursuant to Section 507(b)(2) of the Settlement Act, the non-federal State share of the cost of planning, permitting, designing and constructing the Mutual-Benefit Projects, inclusive of any required federal and state grant administration costs and NEPA compliance costs, is to be 25 % of the total cost, but not to exceed \$12,000,000, and may be in the form of in-kind contributions subject to the terms of the Settlement Act. Nothing herein is intended to limit the ability of any party to seek other sources of funding for Mutual-Benefit Projects; however, any such additional funding is not the subject of the provisions of this **Article 10**.

10.1.1. KLAUER, NATIONAL GUARD, CAMINO DEL MEDIO, RIO PUEBLO, AND BATAAN WELLS. The Town agrees not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$12,616,584 and a matching 25 % non-federal State contribution exceeding \$4,205,528 to plan, permit design, engineer, and construct those wells and infrastructure specified in **Articles 6.2.4.2** and **6.2.5**.

10.1.2. RIO GRANDE AND MIDWAY WELLS.

10.1.2.1. WELL CONSTRUCTION. EPWSD agrees not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$11,658,767 and a matching 25 % non-federal State contribution exceeding \$3,886,255 to plan, permit, design, engineer, and construct those wells and infrastructure specified in **Articles 6.3.1.4** and **6.3.1.5**.

10.1.2.2. WATER RIGHTS ACQUISITION. The State shall provide up to two million dollars (\$2,000,000) to the Local Government Division of the New Mexico Department of Finance and Administration on behalf of EPWSD as

necessary for water rights acquisition specified in **Article 6.3.1.8**, inclusive of the two hundred fifty thousand dollars (\$250,000) that was appropriated by the 2005 New Mexico Legislature.

#### 10.1.3. ARROYO SECO ARRIBA PROJECT.

10.1.3.1. **CONSTRUCTION.** The Acequia Madre del Rio Lucero y del Arroyo Seco and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequia, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$6,103,470 and a matching 25 percent non-federal State contribution in an amount exceeding \$2,034,490 to plan, permit, design, engineer and construct those wells and infrastructure and Acequia Madre pipeline specified in **Article 6.1.1.1** or surface water storage and Acequia Madre pipeline specified in **Article 6.1.1.2**.

10.1.3.2. **WATER RIGHTS ACQUISITION.** The State shall provide up to two million dollars (\$2,000,000) to the Local Government Division of the New Mexico Department of Finance and Administration on behalf of the Acequia Madre del Rio Lucero y del Arroyo Seco as necessary for water rights acquisition specified in **Article 6.1.2** and on behalf of the Upper and Lower Manuel Andres Trujillo Ditches as necessary for water rights acquisition for purposes of storage described at **Article 8.3.7.2**.

10.1.3.3. **OPERATION, MAINTENANCE, AND REPLACEMENT SINKING FUND.** The State shall provide up to \$121,000 to the Local Government Division of the New Mexico Department of Finance and Administration on behalf of the Acequia Madre del Rio Lucero y del Arroyo Seco to establish a sinking fund for the Arroyo Seco Arriba Project, as specified in **Article 6.1.3**.

#### 10.1.4. MUTUAL DOMESTIC WATER CONSUMER ASSOCIATIONS.

10.1.4.1. **WATER RIGHTS ACQUISITION.** The State shall provide up to two million nine hundred thousand dollars (\$2,900,000) to the Local Government Division of the New Mexico Department of Finance and Administration on behalf of the eleven (11) Taos-area MDWCAs as necessary for water rights acquisition specified in **Article 6.4.4**.

#### 10.1.5. MITIGATION WELL SYSTEM.

10.1.5.1. WELL CONSTRUCTION. Funding to plan, permit, design, engineer, and construct the Mitigation Well System shall be as set forth below:

10.1.5.1.1. The Llano Quemado MDWCA and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the MDWCA, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$1,321,344 and a matching 25 % non-federal State contribution in an amount exceeding \$440,448 to plan, permit, design, engineer, and construct the well and infrastructure specified in **Article 7.3.3.1.9.1.**

10.1.5.1.2. The Acequia Madre del Rio Chiquito, the Acequia del Monte and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequias, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$884,489 and a matching 25 % non-federal State contribution in an amount exceeding \$294,830 to plan, permit, design, engineer, and construct the well and infrastructure specified in **Article 7.3.3.1.9.2.**

10.1.5.1.3. The Town agrees not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in the amount exceeding \$949,163 and a matching 25 % non-federal State contribution exceeding \$316,388 to plan, permit, design, engineer, and construct the well and infrastructure specified in **Article 7.3.3.1.9.3.**

10.1.5.1.4. The Upper Ranchitos MDWCA and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the MDWCA, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$1,459,655 and a matching 25 % non-federal State contribution in an amount exceeding \$486,552 to plan, permit, design, engineer, and construct the well and infrastructure specified in **Article 7.3.3.1.9.4.**

10.1.5.1.5. The Upper Arroyo Hondo MDWCA and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the MDWCA, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$998,335 and a matching 25 % non-federal State

contribution in an amount exceeding \$332,778 to plan, permit, design, engineer, and construct the well and infrastructure specified in **Article 7.3.3.1.9.5**.

10.1.5.2. OPERATION, MAINTENANCE, AND REPLACEMENT SINKING FUND. Non-federal funding in the amount of \$1,033,997 shall be made available to the Local Government Division of the New Mexico Department of Finance and Administration on behalf of the non-Indian Water Rights Owning Parties (other than the United States) to establish a sinking fund specified in **Article 7.3.3.1.15.1**. In the event that the State cost share of the total cost to plan, design, permit, and construct the Mutual-Benefit Projects is less than \$12,000,000, the State shall make an additional contribution to this sinking fund in the amount of such savings, but not to exceed \$1,179,585. In the event that the fund is inadequate to cover such costs, the non-Indian Water Rights Owning Parties (other than the United States) will jointly seek alternative funding. Notwithstanding the availability of funding, each Water Rights Owning Party will be responsible only for its proportionate share of the operation, maintenance, and replacement costs relating to its actual use of the Mitigation Well System for purposes of offsetting surface water depletion effects resulting from Future Groundwater Diversions or supplemental diversions.

10.1.6. ACEQUIA MADRE DEL PRADO STREAM GAGE. The Acequia Madre del Prado and the State, acting through the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequia, agree not to seek or accept grant funding pursuant to Section 507(a) of the Settlement Act in an amount exceeding \$8,193 and a matching 25 % non-federal State contribution in an amount exceeding \$2,731 to install a stream gage on the Rio Lucero at the diversion for the Acequia Madre del Prado specified in **Article 6.1.4**.

10.1.7. MODIFICATION BY AGREEMENT. Notwithstanding any other provision of this Settlement Agreement, the Mutual-Benefit Projects Parties may by unanimous consent agree that any one or more of them may seek and accept funding pursuant to Section 507(a) of the Settlement Act exceeding the amounts set forth in **Articles 10.1.1, 10.1.2.1, 10.1.3.1, 10.1.5.1** or **10.1.6** (the "Construction Funding Articles"). In the event that any of the Mutual-Benefit Projects costs would exceed the maximum grant funding request specified for that project in the Construction Funding Articles, then the Mutual-Benefit Projects Parties, the United States, and the State will cooperate to make funding allocation adjustments. No Mutual-Benefit Projects Party whose Mutual-Benefit Project is fully constructed and operational shall withhold agreement for another Mutual-Benefit Projects Party to seek grant

funding pursuant to Section 507(a) in an amount more than that specified in the applicable provisions of the Construction Funding Articles. For purposes of this **Article 10.1.7** only, each Mitigation Well to be constructed pursuant to **Article 10.1.5.1** shall be considered to be a project of any Party named in **Article 7.3.3.1.10** in addition to the Party who shall own and operate the well pursuant to **Articles 7.3.3.1.6** and **7.3.3.1.8**.

10.2. **PROJECT FUNDING TOTALS.**

10.2.1. WATER RIGHTS ACQUISITION FUNDING. Total water rights acquisition funding specified in **Articles 10.1.2.2, 10.1.3.2, and 10.1.4.1** is up to six million nine hundred thousand dollars (\$6,900,000). The State shall contribute 100% of this funding.

10.2.2. OPERATIONS, MAINTENANCE, AND REPLACEMENT FUNDING. Total operations, maintenance, and replacement funding for Mutual-Benefit Projects specified in **Articles 10.1.3.3 and 10.1.5.2** is \$1,154,997. The United States shall not be obligated to pay any portion of these costs.

10.2.3. CONSTRUCTION FUNDING. Total Mutual-Benefit Projects planning, design, and construction funding specified in **Articles 10.1.1, 10.1.2.1, 10.1.3.1, 10.1.5.1, and 10.1.6** is forty-eight million dollars (\$48,000,000).

10.2.4. COST SHARE. Cost-sharing for Mutual-Benefit Projects shall be as provided by Section 507(b) of the Settlement Act.

10.3. **EARLY STATE FUNDING FOR MUTUAL-BENEFIT PROJECTS.**

Prior to the Enforcement Date, the State shall make settlement funds available *pro rata* on the same schedule that the United States makes settlement funds available. The State and the other Parties recognize the desirability of making State funds available for water rights acquisitions, as provided in this Article, ahead of any schedule by which the United States makes settlement funds available, and the non-federal Parties shall request that the New Mexico Legislature make such funds available as expeditiously as possible.

10.4. **NON-FEDERAL COST-SHARE ACCOUNTING.**

Any funds that the State makes available after January 1, 2005, to the non-Pueblo Parties identified in **Article 10.1** for purposes of the acquisition of water rights or for any of the settlement-related projects and associated costs, as set forth in **Article 10.1**, shall be deemed to be in satisfaction of the State's obligations under this Settlement Agreement.

## 10.5. **PROCESS FOR PROVIDING FINANCAL ASSISTANCE**

The Parties agree that funding to plan, permit, design, engineer, and construct the Mutual-Benefit Projects pursuant to this **Article 10** and the Settlement Act will be provided in accordance with applicable federal and state financial assistance laws, regulations, and procedures. In collaboration with the Mutual-Benefit Projects Parties, the State and the Secretary, acting through the Bureau of Reclamation shall, within a reasonable amount of time, negotiate and enter into one or more memoranda of understanding and other appropriate instruments which will describe the process to be followed for providing financial assistance and to effect the transfer of funds to plan, permit, design, engineer, and construct the Mutual-Benefit Projects. The memoranda of understanding and other appropriate instruments will identify the parties, define roles and responsibilities in the financial assistance process, establish the framework for planning, permitting, designing, engineering and construction funds to flow between the parties, and set associated time frames.

## **11. ADMINISTRATION.**

### 11.1. **PUEBLO WATER CODE.**

The Pueblo agrees that any exercise by it of administrative authority, regardless of the source from which such authority arises, over water rights secured to it under this Settlement Agreement and the Partial Final Decree shall comply with this Settlement Agreement and the Pueblo Water Code.

11.1.1. **PROMULGATION.** Not later than twenty-four (24) months after the Enforcement Date, the Pueblo shall enact a Pueblo Water Code. Such Code shall be consistent with this Settlement Agreement and include the provisions of this **Article 11.1.**

### 11.1.2. **PUEBLO PERMIT ACTIONS.**

11.1.2.1. **PERMIT APPLICATIONS.** Unless otherwise provided in this Settlement Agreement, a Pueblo permit shall be required for any change in point of diversion or place or purpose of use of a Pueblo water right secured under this Settlement Agreement and the Partial Final Decree that is within the Pueblo's administrative authority.

11.1.2.2. **ADMINISTRATIVE DECISION.** Any Pueblo decision on a permit application shall be made in accordance with the procedural and substantive standards of the Pueblo Water Code. Prior to the promulgation and approval of the Pueblo Water Code as provided in **Article 11.1.1**, any Pueblo decision on a



permit application shall be made in accordance with the procedural and substantive standards of **Articles 11.1.3.1** through **11.1.3.5** and **11.1.4.1** through **11.1.4.4**.

11.1.3. PROCEDURAL STANDARDS. The Pueblo agrees that the Pueblo Water Code shall provide for the following:

11.1.3.1. NOTICE.

11.1.3.1.1. PUBLIC NOTICE. Subject to **Article 11.1.3.1.2**, the Pueblo shall publish Public Notice in the Taos News or another newspaper of general circulation within the Taos Valley within thirty (30) days of receiving a complete permit application. Such notice will appear at least once per week for three (3) consecutive weeks. Such notice shall include quantity of water, the point of diversion, and place and purpose of use at both move-from and move-to locations encompassed by the proposed action.

11.1.3.1.2. NON-PUBLIC NOTICE ACTIONS. Public Notice shall not be required for the following types of permit applications:

11.1.3.1.2.1. to divert or deplete less than three (3) AFY for stock watering or domestic uses;

11.1.3.1.2.2. to transfer a water right to an in-stream flow, Buffalo Pasture recharge, or ceremonial use; or

11.1.3.1.2.3. that the Settlement Model shows as having no groundwater drawdown effect or surface water depletion effect outside of Pueblo Lands.

11.1.3.1.3. RECORDS OF NON-PUBLIC NOTICE ACTIONS. For Non-Public Notice Actions described in **Article 11.1.3.1.2**, the Pueblo shall compile and retain records of those actions by January 31 and July 31 of each year. Upon a Party's request, the Pueblo shall grant reasonable access to such records. The requesting Party shall pay any reasonable associated document reproduction costs.

11.1.3.2. STANDING. The Pueblo shall recognize the standing of any owner of water rights in the Taos Valley who objects that a permit action Impaired or would Impair his or her surface water or groundwater right.

11.1.3.3. PROTEST. Persons with standing may:

11.1.3.3.1. within ten (10) days of the last date of publication of Public Notice in accordance with **Article 11.1.3.1.1** or within forty-five (45) days of the compilation of records in accordance with **Article 11.1.3.1.2**, submit to the Pueblo a written protest of a permit application or permit action;

11.1.3.3.2. participate as a protestant in Pueblo administrative proceedings to argue that the permit application or permit action Impaired or would Impair his or her water right; and

11.1.3.3.3. be represented by legal counsel, at his or her own expense, in Pueblo administrative proceedings.

11.1.3.4. **HEARING.** Pueblo administrative decisions will be based on a hearing at which protestants will be entitled to present evidence and cross-examine witnesses.

11.1.3.5. **REVIEW.** Upon exhaustion of Pueblo remedies, any person who participated as a protestant in a Pueblo administrative proceeding may challenge *de novo* the final Pueblo decision by pursuing judicial action to enforce or interpret this Settlement Agreement in accordance with **Article 13.14**.

11.1.4. **SUBSTANTIVE STANDARDS.** The Pueblo Water Code shall provide for the following:

11.1.4.1. rules for the management, regulation, and control of Pueblo water resources and which, at a minimum, establish conditions, limitations, and permit requirements related to the exercise of Pueblo water rights within Pueblo Lands;

11.1.4.2. a requirement that offsets be made for surface water depletion effects resulting from permit actions except as otherwise provided in this Settlement Agreement;

11.1.4.3. a requirement that: (a) approval of any proposed permit action will not Impair existing surface water or groundwater rights; and (b) Impairment of non-Indian rights will be determined based on state law standards; and

11.1.4.4. a requirement that the Pueblo will use the Settlement Model in making any administrative assessments of surface and groundwater effects.

11.1.5. AVAILABILITY OF PUEBLO WATER CODE. A copy of the Pueblo Water Code, including updates thereto, shall be made available to the federal district court, the United States Department of Justice (Environment and Natural Resources Division), the State Engineer, and the Town of Taos Public Library. A single photocopy of the Pueblo Water Code, including updates thereto, shall be provided to each Party upon request. Copies may be reviewed by interested persons at the Pueblo, and additional copies shall be made available at cost.

11.2. **GENERAL GROUNDWATER PROVISIONS.**

11.2.1. GROUNDWATER PRIORITY. The Water Rights Owning Parties agree that groundwater rights owned by a Party shall not be subject to priority enforcement through either an administrative, judicial, or other legal proceeding as among the Parties. Nothing in this Article shall be construed to limit the authority of the State Engineer to administer groundwater rights by priority on the Rio Grande, or in the Taos Valley Stream System, for the protection of water rights outside such stream system, for the enforcement of **Article 5.1.1.2.2.1.2**, or to ensure compliance with the Rio Grande Compact.

11.2.2. WELL SPACING AND DIVERSION LIMITS.

11.2.2.1. PUEBLO-TOWN WELL SPACING AND DIVERSION LIMITS.

11.2.2.1.1. DIVERSION LIMIT ZONES. Subject to the provisions of the June 2012 Bilateral Agreement between Taos Pueblo and the Town of Taos, the following reciprocal limits apply to: (a) the Town's groundwater diversions from wells within those zones centered on any of the Pueblo's existing Bureau of Reclamation, Bureau of Indian Affairs, or municipal system wells; and (b) the Pueblo's groundwater diversions from wells within those zones centered on any well that is part of the Town's In-Town Well Field or presently proposed for its Future Water Supply Well Field. For purposes of the diversion limit zones set forth below, all wells identified in this **Article 11.2.2.1.1** shall be considered "Protected Wells":

11.2.2.1.1.1. ZONE ONE. No diversions within a (1/4) mile radius of a Protected Well;

11.2.2.1.1.2. ZONE TWO. No more than seventy-five (75) AFY of diversions within that zone lying between a one-quarter (1/4) mile radius and a one-half (1/2) mile radius of a Protected Well;

11.2.2.1.1.3. ZONE THREE. No more than one hundred fifty (150) AFY of diversions, inclusive of those diversions allowable under **Article 11.2.2.1.1.2**, within that zone lying between a one-half ( $\frac{1}{2}$ ) mile radius and a three-quarter ( $\frac{3}{4}$ ) mile radius of a Protected Well; and

11.2.2.1.1.4. ZONE FOUR. No more than three hundred fifty (350) AFY of diversions, inclusive of those diversions allowable under **Articles 11.2.2.1.1.2** and **11.2.2.1.1.3**, within that zone lying between a three-quarter ( $\frac{3}{4}$ ) mile and a one (1) mile radius of a Protected Well.

11.2.2.1.2. GENERAL SET-OFFS. The Town shall not construct any well as part of its Future Water Supply Well Field within one quarter ( $\frac{1}{4}$ ) mile of any Pueblo Lands, and the Pueblo shall not construct any new well within a one half ( $\frac{1}{2}$ ) mile radius of any well that is part of the Town's Future Water Supply Well Field.

11.2.2.2. EPWSD WELL SPACING AND DIVERSION LIMITS.

11.2.2.2.1. EPWSD DEVELOPMENT ZONE. Unless a specific exception is set forth below, no Party, other than EPWSD, shall construct any new well within that zone that lies between the Pueblo's Tracts A and B and which is depicted on **Attachment 10** ("EPWSD Development Zone").

11.2.2.2.2. COORDINATION ZONE. Subject to the limitation set forth in **Article 11.2.2.2.6**, EPWSD and the Pueblo shall consult with one another with respect to any well that either Party intends to construct within one-quarter ( $\frac{1}{4}$ ) mile of the Tract A or Tract B boundaries that mark the southwest and northeast boundaries, respectively, of the EPWSD Development Zone.

11.2.2.2.3. EL TORREON WELL. There will be no groundwater diversions by any Party within one (1) mile of EPWSD's El Torreon Well, with the following exceptions related to the Pueblo and the Town:

11.2.2.2.3.1. The Pueblo shall not construct any new wells within one-half ( $\frac{1}{2}$ ) mile of the El Torreon Well.

11.2.2.2.3.2. The Pueblo may divert up to sixty (60) AFY from within that zone lying within a three-quarter ( $\frac{3}{4}$ ) mile radius to the east and a one (1) mile radius to the west of EPWSD's El Torreon Well as set forth on **Attachment 10**.

- 11.2.2.2.3.3. If the Pueblo replaces, supplements, or deepens either or both of its two (2) Hail Creek wells, it will do so at a location or locations: (a) no closer to EPWSD's El Torreon Well than the existing wells; and (b) no closer than two hundred (200) feet from the existing wells. Diversions from the two (2) Hail Creek wells, including any replacement, supplemental, or deepened wells, shall be subject to the diversion limitation set forth in **Article 11.2.2.2.3.2**.
- 11.2.2.2.3.4. No limitation under this **Article 11.2.2.2** shall apply with respect to Pueblo groundwater diversions or construction of new wells outside of that zone defined by a three-quarter ( $\frac{3}{4}$ ) mile radius to the east and a one (1) mile radius to the west centered on the El Torreon Well.
- 11.2.2.2.3.5. No limitation under this **Article 11.2.2.2** shall apply with respect to Town groundwater diversions from the Mitchell well pursuant to **Article 6.2.4.3** or from wells permitted by the State Engineer as RG-7339-S-2 pursuant to **Articles 6.2.1** and **6.2.2**.
- 11.2.2.2.4. LAS COLONIAS WELL. No Party shall construct a new well within a one (1) mile radius of EPWSD's Las Colonias Well. The Pueblo's BOR 4 and 6 and BIA 10 and 11 presently exist and shall not be considered "new" wells.
- 11.2.2.2.5. MIDWAY WELL. No Party shall construct a new well within a one (1) mile radius of EPWSD's Midway Well or, prior to the actual construction of that well, its proposed location. The Pueblo's BOR 4 and 6 and BIA 10 and 11 presently exist and shall not be considered "new" wells.
- 11.2.2.2.6. RIO GRANDE WELL. No Party shall construct a new well within a one (1) mile radius of EPWSD's Rio Grande Well or, prior to the actual construction of that well, its proposed location, with the following exceptions related to the Pueblo:
- 11.2.2.2.6.1. EPWSD shall construct the Rio Grande Well no closer than two thousand two hundred fifty-four (2,254) feet from the Pueblo's Tract A boundary, and the Pueblo shall not construct any wells within a four thousand eight hundred ninety-four (4,894) foot radius of the Rio Grande Well's proposed location or, once that well has been constructed, its actual location.

11.2.2.2.6.2. The Pueblo shall divert no more than three hundred fifty (350) AFY within that zone that lies between a four thousand eight hundred ninety-four (4,894) foot radius and a two (2) mile radius of the Rio Grande Well's proposed location or, once that well has been constructed, its actual location.

11.2.2.2.6.3. THE TOWN'S TAOS REGIONAL AIRPORT WELL. The Town's existing Airport Well that is located at the Taos Regional Airport as depicted in **Attachment 10** will be limited to no more than fifty (50) AFY of groundwater diversion as further set forth in **Article 6.2.6**.

11.2.2.2.7. THE TOWN'S REGIONAL LANDFILL WELLS. The Town has one existing domestic well and existing water level monitoring wells at the Taos Regional Landfill. The Town may replace the monitoring wells as required by the New Mexico Environment Department.

11.2.2.3. WAIVERS. The Pueblo, the Town, and EPWSD may waive or modify any of the provisions of this **Article 11.2.2** if, based on the satisfactory exchange of hydrologic data, the potentially affected Party executes a written and dated document that expressly states the waiver, its scope, and the reason therefor.

11.2.2.4. PLANNING COORDINATION. To the greatest extent possible, the Parties will coordinate and share hydrologic information with respect to the planned location of future wells in the Taos Valley.

11.2.3. GROUNDWATER DEVELOPMENT INFRASTRUCTURE. As a result of EPWSD's limiting its groundwater production capacity from existing wells and replacing a portion of that lost capacity farther away from the Buffalo Pasture, it will be necessary for EPWSD to construct new infrastructure to connect the wells providing the replacement production capacity to its existing water delivery system. Subject to the conditions set forth in the May 30, 2006 Bilateral Agreement between EPWSD and the Pueblo, as amended, and existing Acequia easements, the Water Rights Owning Parties shall not protest or otherwise object to EPWSD's constructing all necessary infrastructure required to connect its Rio Grande, Midway, and El Torreon Wells to its existing water supply system, including pipelines, well houses, and water storage tanks. This **Article 11.2.3** does not affect existing property rights. EPWSD agrees to obtain all easements and rights of way in accordance with New Mexico law.

11.3. **GENERAL SURFACE WATER PROVISIONS.**

11.3.1. **UNIFORM IRRIGATION REQUIREMENTS.** Prior to the entry of a Partial Final Decree on the Pueblo's water rights, the Parties shall jointly move the Court to adopt the following values to be used for adjudication of all Pueblo and non-Indian water rights in the Taos Valley Stream System.

11.3.1.1. **CONSUMPTIVE IRRIGATION REQUIREMENT.** The CIR shall be one and thirty-eight hundredths (1.38) AFY per acre.

11.3.1.2. **FARM DELIVERY REQUIREMENT.** The FDR shall be two and seventy-six hundredths (2.76) AFY per acre (50% on-farm efficiency).

11.3.1.3. **PROJECT DIVERSION REQUIREMENT.** The PDR shall be three and ninety-four hundredths (3.94) AFY per acre (70% ditch efficiency), unless a different efficiency can be shown for a specific ditch on a case-by-case basis.

11.3.2. **SURFACE-TO-GROUNDWATER TRANSFERS.** With respect to non-Indian Water Rights Owning Parties, surface water to groundwater transfers shall be made in accordance with state law. With respect to Pueblo surface water to groundwater transfers, the quantity of water which may be diverted from a well or wells will be limited to the consumptive use of the lands from which the surface transfer is being made as limited by the historically available surface water supply or supplies on which that portion of the HIA Right relied. Surface water diversions shall cease for any water right or portion thereof that is changed to a groundwater point of diversion. Such reductions in diversions shall not be a basis for any conclusion that surface waters have been made available for appropriation by other parties. Reductions in diversions required under this Article shall be made consistent with **Article 7**.

11.4. **DATA COLLECTION AND SHARING.**

11.4.1. **GROUNDWATER.**

11.4.1.1. **GROUNDWATER DIVERSION DATA.** For purposes of enforcing the provisions of this Settlement Agreement, the Water Rights Owning Parties shall install and maintain totalizing meters or other appropriate measuring devices on all wells diverting more than three (3) AFY, collect and compile diversion data, and make such data available to the other Parties upon reasonable request and payment of reasonable costs.

11.4.1.2. **GROUNDWATER LEVEL MEASUREMENTS.** The Water Rights Owning Parties shall measure the groundwater levels in each of their respective wells two (2) times each year, the first time being within five (5) days of April 15 and the second time being within five (5) days of October 15. The Water Rights Owning Parties shall maintain records of daily diversions for fifteen (15) days prior to their water level measurements and the length of time the well was off before the measurement. Unless otherwise agreed to by the Water Rights Owning Parties, no data shall be required to be collected for those wells diverting ten (10) AFY or less. Data required pursuant to this **Article 11.4.1.2** shall be collected, compiled, and made available to the other Parties upon reasonable request and payment of reasonable costs.

11.4.2. **SURFACE WATER.** To the extent stream flows or diversions are required to be measured under this Settlement Agreement, such data shall be collected, compiled, and made available to the other Parties upon reasonable request and payment of reasonable costs.

11.4.3. **COMPREHENSIVE MONITORING PROGRAM.**

11.4.3.1. The Water Rights Owning Parties shall continue negotiations, outside of this Settlement Agreement, on the design and implementation of a comprehensive surface and groundwater monitoring system for the collection of data for the improvement of the understanding of Taos Valley hydrology. Important principles include but are not limited to:

11.4.3.1.1. identifying or creating a network of wells that effectively covers the Taos Valley to monitor water levels in different levels of the aquifers, including the shallow aquifer;

11.4.3.1.2. measuring groundwater levels at least twice a year, before the beginning of the irrigation season and after it ends;

11.4.3.1.3. regularly measuring groundwater diversions; and

11.4.3.1.4. making the data available to all Parties.

11.4.3.2. When the Parties agree upon a comprehensive monitoring program as set forth in **Article 11.4.3.1**, it shall replace the requirements of **Articles 11.4.1** and **11.4.2**.



## **12. WAIVERS AND RELEASES OF CLAIMS.**

### **12.1. PUEBLO AND UNITED STATES CLAIMS.**

In return for recognition of the Pueblo's water rights and other benefits, including but not limited to the commitments by non-Pueblo Parties, as set forth in this Settlement Agreement and the Settlement Act, the Pueblo, on behalf of itself and its members, and the United States, acting in its capacity as trustee for the Pueblo, shall execute the waiver and release authorized by Section 510(a) of the Settlement Act and included as **Attachment 16** to this Settlement Agreement.

### **12.2. PUEBLO CLAIMS.**

The Pueblo, on behalf of itself and its members, shall execute the waiver and release authorized by Section 510(b) of the Settlement Act and included as **Attachment 17** to this Settlement Agreement.

### **12.3. RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.**

The waivers and releases described in **Articles 12.1** and **12.2** notwithstanding, the Pueblo on behalf of itself and its members and the United States acting in its capacity as trustee for the Pueblo shall retain all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to the Settlement Act and the Settlement Agreement, as described in Section 510(c) of the Settlement Act, and in **Attachments 16** and **17**.

### **12.4. EFFECT OF SETTLEMENT AGREEMENT AND SETTLEMENT ACT**

Nothing in the Settlement Agreement or the Settlement Act—

12.4.1. affects the ability of the United States of America acting in its sovereign capacity to take actions authorized by law, including but not limited to any laws relating to health, safety, or the environment, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing such Acts;

12.4.2. affects the ability of the United States of America to take actions acting in its capacity as trustee for any other Indian tribe or allottee;

12.4.3. confers jurisdiction on any state court to (A) interpret federal law regarding health, safety, or the environment or determine the duties of the United States or

other parties pursuant to such federal law; or (B) conduct judicial review of federal agency action; or

12.4.4. waives any claim of a member of the Pueblo in an individual capacity that does not derive from a right of the Pueblo.

### 12.5. **EFFECTIVENESS OF WAIVERS.**

Nothing in this Article acknowledges the existence or validity of any claims that are being waived and released. The waivers referenced in this Article shall become effective on the Enforcement Date and are subject to the terms of the Settlement Act, including Sections 509(g) and (h) and 510.

## 13. **GENERAL PROVISIONS.**

### 13.1. **CONSISTENCY WITH SETTLEMENT ACT.**

In the event any provision of this Settlement Agreement is held to be inconsistent with the Settlement Act, the Parties agree that the terms of the Settlement Act shall control and that all other provisions of this Settlement Agreement, insofar as consistent with the Settlement Act, shall remain effective and binding.

### 13.2. **REGIONAL WATER PLANNING.**

The negotiations leading to this Settlement Agreement have provided the opportunity to discuss the non-federal Parties' common interests in, and the mutual benefits of, regional water planning and supply, improved efficiencies, water quality, and water conservation measures. If studies of these benefits are sought, such studies will not be included or funded as a component of this Settlement Agreement.

### 13.3. **PROJECT MODIFICATION OR FAILURE.**

If, after the Enforcement Date, any of the projects or other measures set forth in **Articles 5.2.3.1, 6, 7.3.1, or 7.3.3** fail, are determined to be infeasible, do not receive necessary permits, or for any other reason fail to meet the objectives of the Parties as reflected in the terms of this Settlement Agreement, the Parties shall reconvene and negotiate in an attempt to agree on modified or alternative projects or measures that are otherwise consistent with this Settlement Agreement and secure to the Parties the benefits of their bargain, including the permit exemptions and the waiver of protests, objections, or opposition in any manner to any applicable permits that are consistent with the Settlement Agreement and that are necessary for the construction and operation of the modified or alternative projects or measures contained in this Settlement Agreement. In addition, if, after the Enforcement Date, EPWSD, TVAA, or the MDWCAs receive funding from

the State that is not adequate to acquire and transfer the water rights set forth in **Articles 6.1.2, 6.3.1.8, and 6.4.4**, the Water Rights Owning Parties shall reconvene and negotiate in an attempt to obtain funding sufficient to complete the acquisition and transfer of those water rights. The Mitigation Well System is an integral part of this Settlement Agreement. If it fails or is not used as the means of providing surface water offsets required by the Water Rights Owning Parties' Future Groundwater Diversions as set forth in **Article 7.3.3.1.10**, then a critical part of the Settlement Agreement which all Parties have bargained for will be removed. Under such circumstances, the Water Rights Owning Parties shall reconvene and negotiate terms and provisions which will provide mutually acceptable alternative solutions.

**13.4. DISCLAIMER.**

Nothing in this Settlement Agreement shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water rights or lands in any judicial or administrative forum or proceeding.

**13.5. EVIDENTIARY EFFECT OF NEGOTIATIONS.**

The Parties have developed this Settlement Agreement through good faith negotiation for the purpose of resolving legal disputes, including pending litigation. No conduct, statements, offers, or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding.

**13.6. AUTHORSHIP.**

This Settlement Agreement reflects the joint drafting efforts of all Parties. In the event that any dispute, disagreement, or controversy arises regarding this Settlement Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

**13.7. AUTHORIZATION TO EXECUTE.**

Each Party represents and warrants that it is authorized to execute this Settlement Agreement on behalf of the respective Parties hereto and does so freely and voluntarily.

**13.8. EFFECT OF EXECUTION.**

Execution of this Settlement Agreement by all institutional entities signifies that all provisions of this Settlement Agreement have been approved by those entities' respective governing bodies and that those entities bind themselves to the obligations and benefits of this Settlement Agreement.

**13.9. NO INDUCEMENTS.**

Each Party acknowledges and represents that in executing this Settlement Agreement it has not relied on any inducements, promises, or representations made by the other Parties that are not reflected in this Settlement Agreement, except to the extent that such Party is also a party to the May 30, 2006 Bilateral Agreement between the Pueblo and TVAA, the May 30, 2006 Bilateral Agreement between the Pueblo and EPWSD, as amended, the May 17, 2006 Bilateral Agreement between EPWSD and the Town, the May 17, 2006 Bilateral Agreement between the Acequia Madre del Prado and the Town, or the June 2012 Bilateral Agreement between Taos Pueblo and the Town of Taos. Any inducements, promises or representations made in one of these separate agreements are applicable only to the parties to that agreement.

**13.10. ADVICE OF COUNSEL.**

Each Party warrants and represents that, in executing this Settlement Agreement, it has relied upon legal advice from counsel of its choice; that the terms of this Settlement Agreement have been read, and its consequences have been completely explained to it by counsel; and that it fully understands the terms of this Settlement Agreement.

**13.11. CONTINGENT ON APPROPRIATION OF FUNDS.**

The expenditure or advance of any money or the performance of any obligation by the United States or the State of New Mexico under this Settlement Agreement is contingent upon appropriation of funds therefor. In the event Congress fails to appropriate funds the United States shall not accrue liability under this Settlement Agreement. In the event the New Mexico Legislature fails to appropriate funds the State of New Mexico shall not accrue liability under this Settlement Agreement.

**13.12. OFFICIALS NOT TO BENEFIT.**

No member of or delegate to Congress shall be admitted to any share or part of this Settlement Agreement or to any benefit that may arise here from. This restriction shall not be construed to extend to this Settlement Agreement if made with a corporation or company for its general benefit.

**13.13. COUNTERPARTS.**

This Settlement Agreement may be signed in counterparts by one or more of the Parties, and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all the Parties.

**13.14. INTERPRETATION AND ENFORCEMENT.**

Subject to Section 511 of the Settlement Act:

13.14.1. **ACTIONS.** Actions to enforce or interpret this Settlement Agreement or the Settlement Act may be brought in a court of competent jurisdiction over the subject matter.

13.14.2. **SUBJECT MATTER JURISDICTION NOT AFFECTED.** Nothing in this Settlement Agreement shall be deemed as conferring, restricting, enlarging, or determining the subject matter jurisdiction of any court, including the jurisdiction of the court that enters the Partial Final Decree adjudicating the Pueblo's water rights.

13.14.3. **CONSENT TO SUIT.**

13.14.3.1. Section 511(a) of the Settlement Act specifies the extent to which the sovereign immunities of the United States and of the Pueblo are waived for purposes of enforcement or interpretation of this Settlement Agreement or the Settlement Act.

13.14.3.2. Upon the Enforcement Date the State agrees to waive its sovereign immunity to any suit in a court of competent jurisdiction over the subject matter for purposes of enforcement or interpretation of this Settlement Agreement or the Settlement Act. However, no waiver of sovereign immunity shall be made for any action against the State that seeks money damages.

13.14.4. **REGULATORY AUTHORITY NOT AFFECTED.** Nothing in this Settlement Agreement shall be deemed to determine or limit any authority of the State or the Pueblo to regulate or administer waters or water rights now or in the future.

**13.15. GOVERNING LAW.**

This Settlement Agreement shall be construed in accordance with applicable law.

**13.16. SUCCESSORS AND ASSIGNS.**

This Settlement Agreement shall, unless otherwise indicated, be binding on and inure to the benefit of the Parties and their respective successors and assigns.

13.17. INTEGRATION.


This Settlement Agreement incorporates all Attachments included herewith and sets forth the entire agreement of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended only by written agreement executed by all of the Parties and approved by the Court.

14. TERM.

The Parties agree that the term of this Settlement Agreement shall be perpetual.

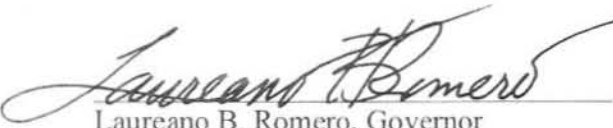
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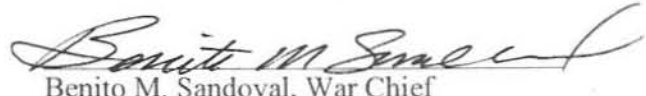
UNITED STATES OF AMERICA

  
Ken Salazar  
Secretary  
U.S. Department of the Interior

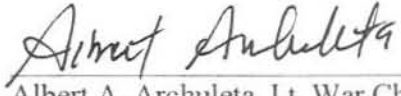
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TAOS PUEBLO


  
Laureano B. Romero, Governor


  
Benito M. Sandoval, War Chief

  
Gilbert Suazo, Sr., Lt. Governor

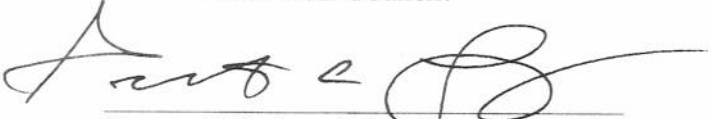
  
Albert A. Archuleta, Lt. War Chief

Attest:

  
Patrick J. Romero, Tribal Secretary

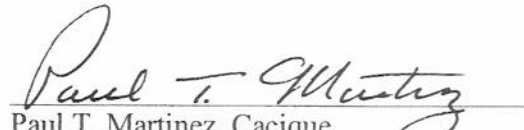
  
Harold Lefthand, War Chief Secretary

Taos Tribal Council:




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Ernesto C. Luhan, Tribal Council Secretary



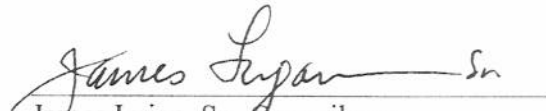
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Paul T. Martinez, Cacique



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Nelson J. Cordova, Councilman



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James Lujan, Sr., Councilman



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Ruben A. Romero, Councilman



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Edwin Concha, Councilman




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Robert Espinosa, Councilman



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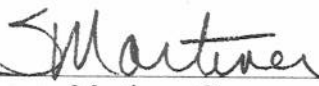
Bernard Lujan, Councilman

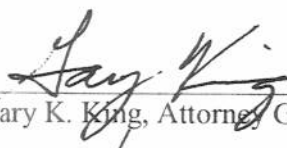


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Luis Romero, Councilman

STATE OF NEW MEXICO

By:   
Susana Martinez, Governor

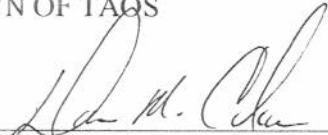
By:   
Gary K. King, Attorney General

By:   
Scott Verhines, State Engineer

Date: 1/24/13



TOWN OF TAOS

By:   
Darren M. Cordova, Mayor

Date: 12-19-12

EL PRADO WATER AND SANITATION DISTRICT

By: \_\_\_\_\_  
Telesfor R. Gonzales, Chairman

Date: \_\_\_\_\_

TOWN OF TAOS

By: \_\_\_\_\_  
Darren M. Cordova, Mayor

Date: \_\_\_\_\_

EL PRADO WATER AND SANITATION DISTRICT

By: Telesfor R. Gonzales  
Telesfor R. Gonzales, Chairman

Date: 12/18/12

TAOS VALLEY ACEQUIA ASSOCIATION

By: Palemon A. Martinez  
Its Palemon A. Martinez, President

Date: Dec. 19, 2012

ACEQUIA DE LA ATALAYA

By: Richard Mc Groden  
Its Commissioner

Date: 12/20/2012

ACEQUIA DE LA PLAZA

By: Peter Mendez  
Its Commissioner

Date: 12/20/12

ACEQUIA MADRE DEL LLANO

By: Jenaro Montez  
Its Commissioner

Date: 12/21/2012

CAÑONCITO NORTH DITCH

By: Herbert Garcia  
Its Commissioner, Herbert Garcia

Date: 12-19-12

CAÑONCITO SOUTH DITCH

By: Herbert Garcia  
Its Commissioner, Herbert Garcia

Date: 12-19-12  
Commissioner

DES MONTES DITCH

By: Dennis Johnson  
Its Commissioner, Dennis Johnson

Date: 12/19/12

REBALSE DITCH

By: Dean Archuleta  
Its Commissioner, Dean Archuleta

Date: 12/19/12

ACEQUIA ABAJO LA LOMA

By: Adelaida Tola Romero  
Its Commissioner

Date: 12/19/12

ACEQUIA DE PONCE DE LEON

By: Joe Palfid  
Its Commissioner

Date: 12/20/12

ACEQUIA DEL ANTONIO MARIA GRAHAM

By: Arthur Coca  
Its Commissioner

Date: 12/20/12

ACEQUIA DEL FINADO FRANCISCO MARTINEZ

By: Bennie Mondragón  
Its Commissioner

Date: 12/19/12

ACEQUIA DEL MONTE

By: Jaël Minton  
Its Commissioner

Date: 12.19.12

ACEQUIA DEL TIO GERBACIO

By: Mario Barba  
Its Commissioner

Date: 12-20-12

ACEQUIA EN MEDIO LOS RIOS

By: Carpio O. Torres  
Its Commissioner

Date: 12-19-12

ACEQUIA EN MEDIO/MATT HART

By: Manuel V. Fujici  
Its Commissioner

Date: 12-20-12

ACEQUIA JAROSO

By: Tobias A. Martinez  
Its Commissioner, Tobias A. Martinez  
Date: 12-19-12

ACEQUIA MADRE DEL RIO CHIQUITO

By: Aaron Romero  
Its Commissioner, Aaron Romero  
Date: 12/19/12

ACEQUIA MADRE DEL RIO GRANDE

By: Tobias A. Martinez  
Its Commissioner, Tobias A. Martinez  
Date: 12-19-12

ACEQUIA SAUCITO

By: Joe L. Mondragon  
Its Commissioner, Joe L. Mondragon  
Date: Dec. 19, 2012

EMILIO CHAVEZ DITCH

By: [Signature]  
Its COMMISSIONER  
Date: 12/20/12

LOS CORDOVAS ACEQUIA NO. 1

By: Tomas Chavez Sanchez  
Its Commissioner  
Date: 12/20/12

LOS CORDOVAS ACEQUIA NO. 2

By: [Signature]  
Its commissioner - Acting mayordomo  
Date: 12-20-2012

TALPA RESERVOIR DITCH

By: [Signature]  
Its Chairman  
Date: 12/20/2012



ACEQUIA MADRE DE LA LOMA DEL RANCHITO DE ABAJO

By: Leroy Graham  
Its Commissioner, Leroy Graham

Date: 12/19/12

ACEQUIA DEL MEDIO DEL PRADO

By: John P. Cruz  
Its Commissioner

Date: 12-19-12

ACEQUIA MADRE DEL PRADO

By: Jesus R. Gonzalez  
Its Commissioner

Date: 12/20/12

MCCLURE DITCH

By: Kevin D. DeHolly  
Its Commissioner

Date: 12/20/12

PACHECO COMMUNITY DITCH ASSOCIATION

By: John P. Miera  
Its: ~~John P. Miera~~ Commissioner  
Date: 12/21/12

ACEQUIA DE SAN FRANCISCO DE PAUDA

By: R. Val  
Its: COMMISSIONER  
Date: DEC 19, 2012

SPRING DITCH

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

LA ACEQUIA DE LOS LOVATOS

By: [Signature]  
Its: COMMISSIONER  
Date: 12.20.2012

EL MOLINO DITCH (EAST)

By: Joseph A. Cruz  
Its COMMISSIONER

Date: December 20, 2012

ACEQUIA DE LOS MOLINOS A/K/A EL MOLINO DITCH (WEST)

By: Stephen C. Compton  
Its Commissioner

Date: December 19, 2012

CORTEZ Y CISNEROS DITCH

By: Carl Rosenberg  
Its Commissioner, Carl Rosenberg

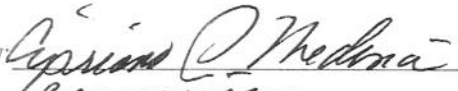
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ACEQUIA MADRE DEL SUR DEL CANON

By: Miguel A. Santistevan  
Its Commissioner, Miguel A. Santistevan

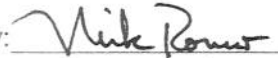
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VIGIL Y ROMO DITCH

By:   
Its Commissioner


Date: 12/20/12

ACEQUIA LA LOMA ABAJO

By:   
Its Commissioner, Nick Romero


Date: 12/19/12

ANDERSON ACEQUIA

By:   
Its Commissioner, David R. Shoemaker

Date: 12/19/12

LOWER ARROYO SECO DITCH

By:   
Its 12/21/12 commissioner, Shantal Goodwin

Date: 12/21/12

ACEQUIA DE LOS OJITOS (LATERAL OF ACEQUIA MADRE DE LA LOMA DEL RANCHITO DE ABAJO)

By: Leroy Graham  
Its Commissioner, Leroy Graham  
Date: 12/19/12

ACEQUIA DE LOS ALAMITOS (RIO FERNANDEZ)

By: Leroy Graham  
Its Commissioner, Leroy Graham  
Date: 12/19/12

ACEQUIA DE JOSE VENITO MARTINEZ

By: [Signature]  
Its Commissioner  
Date: 12/20/12

DAN ARCHULETA DITCH

By: Lilly Fernandez  
Its Commissioner, Lilly Fernandez  
Date: 12/20/12

ACEQUIA DE LOS ALAMITOS (RIO PUEBLO)

By: Patrick J. Weaver  
Its Commissioner

Date: 12.20.2012

UPPER MANUEL ANDRES TRUJILLO COMMUNITY DITCH ASSOCIATION

By: Phillip Castore  
Its Commissioner

Date: 12-19-12

ACEQUIA DEL LA OTRA BANDA

By: Mark A. Schuetz  
Its Commissioner

Date: 12/19/12

ACEQUIA DE LOS SANCHEZ

By: Eugene A. Sanchez  
Its PRESIDENT

Date: 12/20/12

ACEQUIA MADRE DEL RIO LUCERO Y DEL ARROYO SECO

By: Melvin E. Garcia  
Its \_\_\_\_\_

Date: 12-19-12

JUAN MANUEL LUCERO COMMUNITY DITCH ASSOCIATION

By: Feli Santolova  
Its COMMISSIONER

Date: 12/19/12

ACEQUIA MADRE DEL PUEBLO

By: Will Romo  
Its COMMISSIONER, Nick Romero

Date: 12/19/12

LOWER MANUEL ANDRES TRUJILLO COMMUNITY DITCH ASSOCIATION

By: Feli Santolova  
Its 12/19/12

Date: Commissioner

ACEQUIA MADRE DEL NORTE DEL CANON

By: Nick Romero  
Its COMMISSIONER, Nick Romero

Date: 12/19/12

RANDALL RESERVOIR ACEQUIA ASSOCIATION

By: Hilda Colson  
Its Commissioner

Date: 12/19/2012

ACEQUIA DE LOS PRANDOS

By: Salem A. Martinez  
Its Chairman

Date: Dec. 19, 2012


ACEQUIA DE SAN ANTONIO

By: Elias Espinoza  
Its Commissioner

Date: 12 - 19 - 2012

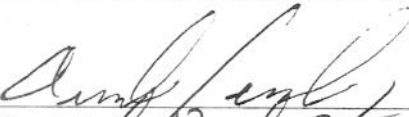


ARROYO SECO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By:  DIANA BOYD  
Its PRESIDENT

Date: 12/20/12

CAÑON MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By:   
Its Angel B. B. B. Member

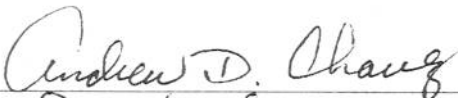
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EL SALTO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By:   
Its President

Date: 12/20/2012

LLANO QUEMADO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By:   
Its President

Date: 12-21-12

LOWER ARROYO HONDO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Isabelle T. Rendón  
Its President

Date: 12-21-12

LOWER DES MONTES MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: John Monte  
Its President

Date: 12-20-12

RANCHOS DE TAOS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Leony Pacheco  
Its Pres.

Date: 12-12-2012

TALPA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Raul G. Vigil  
Its Vice President

Date: 12-20-12

UPPER ARROYO HONDO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Fernando G. Maly  
Its President  
Date: 12/20/2012

UPPER DES MONTES MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Don Romero  
Its President  
Date: 12/20/2012

UPPER RANCHITOS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Ronald Hill  
Its President  
Date: 12/21/12

VALDEZ MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Elias Espinoza  
Its President  
Date: 12-20-2012