



OVERVIEW OF THE REVISED *AAMODT* SETTLEMENT AGREEMENT

The *Aamodt* adjudication of the Nambe-Pojoaque-Tesuque stream system (N-P-T Basin) is one of the longest running federal cases in the United States. Negotiations to settle the case have resulted in the development of a revised Settlement Agreement. After the original proposed Settlement Agreement was released and presented in public meetings in 2004, representatives of non-Pueblo water users who had raised concerns about the proposed Settlement Agreement were brought into the mediation group so that their input could be better incorporated into the negotiations. Continued negotiations were designed to address concerns and objections of non-Pueblo water users. These negotiations have resulted in the formulation of the revised Settlement Agreement.

(For the purpose of this fact sheet, when the term "County Water Utility" (CWU) is used it refers to the non-Pueblo portion of the water utility system)

General Framework of the Revised *Aamodt* Settlement:

The settlement agreement is a complex document based upon the following key concepts:

1. The Pueblos would agree to forbear from making priority calls beyond the Pueblos' existing water uses against non-Pueblo surface water users even though the Pueblos have senior water rights status in the N-P-T Basin.
2. The Pueblos would agree to not make any priority calls against non-Pueblo well users provided non-Pueblo users agree to one of two options. The two options are to either: (a) eventually get, or have their successors-in-interest get, their water supply from a non-Pueblo water utility system when the water utility system is available; or (b) if water use exceeds a minimum, at or above the state average, they must reduce their use in order to keep their well and be free from priority administration.
3. A regional water system (pipeline) would be constructed to deliver treated water from the Rio Grande to Pueblo water users in the N-P-T Basin and, to the extent there is sufficient demand in various locations within the N-P-T Basin, to those non-Pueblo water users in the N-P-T Basin who elect to get their water supply from a County Water Utility (CWU).
4. No water user will be required to cap their wells unless they choose to connect to the regional water system (pipeline). Connecting up to the pipeline is optional.
5. The United States would acquire 2,500 acre-feet per year of imported water in the N-P-T Basin for use by the four Pueblos from the regional water system (pipeline), intended, in part, to compensate them for their agreement to not fully exercise their right to call priority within the N-P-T Basin. This additional pipeline water may not be physically exported out of the N-P-T Basin.

Neither the United States nor its representatives in these negotiations have approved the proposed settlement. The United States has not committed to provide any funding or any specific amount of imported water for the Agreement. Further, the United States opposes any settlement proposal that would require the United States to provide the majority of the funding.

6. Santa Fe County would be responsible for acquiring 750 acre-feet per year of imported water for the benefit of future non-Pueblo water users in the N-P-T basin. The total supply available from the County Water Utility would be 1,500 acre-feet per year for use by non-Pueblo water users in the N-P-T Basin.
7. Through the mechanisms outlined in the Settlement Agreement, the parties seek to lessen impacts to the aquifer over time while providing greater reliability of supply in a chronically water-short basin.

The Aamodt Settlement Process:

Non-Pueblo water users can choose either to settle under the terms of the revised Settlement Agreement or to continue litigation.

- For those who choose to settle and abide by the terms of the Settlement Agreement:
 - The Pueblos will not challenge amount or priority of settling non-Pueblo water rights.
 - Existing surface users who continue those uses will be protected from having priority enforcement of the full extent of the Pueblos' first priority water rights (Pueblos will limit priority calls to their existing uses) Non-Pueblo well users can be free from priority enforcement for uses below specified amounts (see attached table).
 - Pueblo water rights and conflicts between Pueblo and non-Pueblo water users will be resolved with finality and certainty.
- For those who object to the terms of the Settlement Agreement and choose to continue litigation:
 - They will be entitled to argue their case to the court but there will be uncertainty as to the length of time, the costs, and the results of such litigation.
 - If their water rights were previously challenged by the Pueblos or are still subject to challenge by the Pueblos, Pueblos can continue those challenges or mount challenges to the amount and priority of their water rights.
 - The Pueblos can continue priority calls against non-Pueblo water uses without the limitations on priority calls described in the Settlement Agreement.

The revised Settlement Agreement sets out a framework of how the N-P-T Basin will be administered and describes the sequence of events that the settlement parties must accomplish to implement the settlement. Best estimates of deadlines associated with those different steps are outlined in the document entitled *Projected Aamodt Settlement Implementation Process*.

The United States would not be a party to this agreement unless federal legislation, which approves the agreement and authorizes the settlement project, is enacted and signed into law. Unless such law is enacted, the United States has made clear that it does not support the funding level and water acquisition costs anticipated as necessary to implement the Settlement Agreement.

Highlights of the Revised *Aamodt* Settlement Agreement:

Non-Pueblo well users who settle have choices under the revised *Aamodt* Settlement Agreement.

- Connecting to the CWU will be entirely voluntary.
- In exchange for not having a priority call made against them by the Pueblos, non-Pueblo domestic well users must choose one of the following:
 - 1.** Join the CWU when the County of Santa Fe extends service to a given area and use their wells without any reduction in use (and in some cases with additional water use allowed) until service is available
--OR--
 - 2.** Have their property, upon transfer of that property, be subject to water service by the CWU when service is extended to a given area by the County of Santa Fe with some reductions in water use from their wells in the interim
--OR--
 - 3.** Continue to use their wells in perpetuity without any obligation to join the CWU when service is extended to a given area by the County of Santa Fe in exchange for a permanent limit, and in some cases, reduction in use of their wells. These choices are outlined in greater detail for domestic wells in the attached table.
- Amounts of water use relating to the choices described above also correlate to the type of use of water from the wells (domestic, commercial, agricultural, etc.) and the date when the well was drilled. No less than .3 acre-feet per year (97,755 gallons), and in many cases up to .5, will be recognized for domestic. The State Engineer has found that less than .3 acre-feet per year (97,755 gallons) is the average usage by domestic well users. (See attached table for more specific information)
- The Santa Fe County will acquire 750 acre-feet per year for the benefit of future non-Pueblo water utility customers in the N-P-T Basin. The county and the state will add sufficient capacity (1500 acre-feet per year) to the main portions of pipeline to allow present and future non-Pueblo water users to be served by distribution systems that will supply water from the Rio Grande. Where and when any county water utility distribution system is built depends upon having an adequate customer base. Settlement well users who elect to receive treated water from and transfer their domestic well water rights to a county water utility system will pay for cost of service but will not pay for cost of water.
- A **Connection Fund** will be created to pay for the cost of connecting to the pipeline for those who voluntarily choose to receive treated water from a water utility system.
- An **Impairment Fund** will be created to provide some remedy to non-Pueblo well users in the event impairment is caused by new Pueblo uses of water. Rules governing access to the fund will be developed.

The Pueblos will receive new water distribution systems to replace their outdated, and in some cases, unsafe, existing systems. This allows Pueblos to make better use of the pipeline water, which also is a benefit to non-Pueblo users by bringing more water into the basin.

- To the maximum extent that it is feasible - and provided the Pueblos receive the funding they need for their portion of operations of the pipeline - the Pueblos will take water from the pipeline before initiating additional groundwater uses in the N-P-T Basin. This will help to limit impairment of non-Pueblo wells.

Note: *The original Aamodt case was filed by the New Mexico State Engineer in 1966. There are more than 2,500 defendants in the case. The Aamodt Settlement Agreement is important because it would resolve the claims of Nambé, Pojoaque, Tesuque, and San Ildefonso Pueblos as well as non-Pueblo water users for the use of waters of the Nambé-Pojoaque-Tesuque stream system in north central New Mexico.*

The following table is a condensed version of the tables that can be found on pages 24-26 of the *Aamodt Settlement Agreement*.

Wells: Not required to connect to CWU. For protection from priority administration must be a "Settlement Party" and elect either to: 1) connect when service available; 2) reduce use & keep well; or 3) reduce use & connect upon transfer of property.			
Category of Well	Use protected under 1 until connect, afy	Reduction required under 2	Reduction required under 3
Pre-basin (prior to 1956)	HBU, not less than .5	HBU - 15%, not less than .5	HBU - 10%, not less than .5
72-12-1 permitted prior to Jan. 13, 1983	Lesser of 3 or HBU, not less than .5	HBU - 15%, not less than .5	HBU - 10%, not less than .5
Post Moratorium, signed Post 1982 well agreement	Lesser of 0.7 or HBU, not less than .5	Lesser of 0.7 or HBU, use over 0.5 subject to priority	Lesser of 0.7 or HBU, use over 0.5 subject to priority
Post Moratorium, did not sign Post 1982 well agreement	Lesser of 0.7 or HBU, not less than .5	Indoor use only or up to 0.3 in and out	Indoor use only or up to 0.3 in and out
	Connection paid, No water cost	\$1000.00 "replacement fee"	\$1000.00 "replacement fee"
Existing Agricultural Wells	Same Section 4 Protection as surface; To be free from priority administration, elect under 2) or 3) and demonstrate reduction		

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