

Pojoaque Pueblo Community Meeting

November 3, 2016

Pojoaque Pueblo

The questions below were received from attendees at the Pojoaque Community meeting. The first 32 questions were answered orally by the participants at the November 3, 2016 meeting. The remaining questions are answered in writing below.

- 1) What are the problems that have delayed the issuance of the draft Environmental Impact Statement?
- 2) What is the size of the tanks [that will be needed by the Regional Water System] and where will they be?
- 3) Tuesday evening at the County Commissioners Mtg Pueblo governors mentioned a water system is needed for our future in particular for economic development/growth. With growth comes taxes for fire department protection, police, water and sewer system and refuse. Is the growth on Pueblo lands? Because with the basin closed private land owners are limited. What then goes into the tax base for these systems and services?
- 4) Can the County provide information on where the water system will and will not be?
- 5) Sally Ely states this water system will create jobs. Will the Pueblos (natives) have first priority in employment?
- 6) Why is the water line going up to Bishops Lodge? Chupadero is part of the NPT but they have been ignored.
- 7) Is there going to be some way to assure non-pueblo members that the price of water will be reasonable and not skyrocket?
- 8) I can't afford another utility bill. What must I do?
- 9) How are you literally "bringing" in more water into the basin? (Paper water right **does not equal** more water)
- 10) There are water contamination problems thruout the U.S.A. What may we expect?
- 11) Is it the intention [of the JPA] that the two appointed directors be supplied by the County Water System?
- 12) Is there a plan on providing info/education to the parties on conserving water?
- 13) I own a vacant legal lot in Nambe with acequia water rights. If I decide to build a house on the lot before the water system is operational, can I drill a well for my domestic water supply?
- 14) If the water table doesn't come up like projected and the individuals who elected to keep their wells what is the cost going to be to get on the water system?
- 15) The springs which have provided water for irrigation in Cyemungue are just about none exciting any more. Is it because the Casino Buffalo Thunder?
- 16) How many wells are contaminated? What areas?
- 17) Is there any current research on the contamination of groundwater by the septic systems in the NPT basin?
- 18) Any plans on a sewer/water treatment system?

- 19) What are the rules and where are the stated?
- 20) Will the Pueblos/casinos to be allowed to put straws in the ground NPT basin?
- 21) Who will enforce rules and regulations?
- 22) How are the allotment of water going to be issued?
- 23) Presumptive use of 0.5 acre/ft per family-non-pueblo. What is the per family presumptive use amount for the pueblos?
- 24) If you elected to have or keep you well is it going to be metered?
- 25) How does one's historical benefit use proved?
- 26) Is it the official position of Santa Fe County to supports?
- 27) How is the issue of road easements, as currently connected with the County withholding funding for the water settlement, being resolved?
- 28) The County passed a resolution that they will not finance the system until all road easements are settled. Have they been settled to the satisfaction of the non-tribal community members?
- 29) The Post Settlement agreement allows 0.7 af/y indoors or out. Will this agreement continue to be honored?
- 30) If you go over the amount of water that you are allocated is there going to be a penalty?
- 31) If your well is metered who is going to do the observation and is there a cost?
- 32) If you have two dwellings on the same well but different plots how much water is going to be [given?] to each?

33) How and when can we move the amount of our water rights?

If you have an existing surface water right you can move or “transfer” it within the NPT Basin at any time after obtaining any necessary approval from any Acequia commission and filing an application with the OSE to change the place of use, point of diversion, or purpose of use of the water right, subject to state law. You may also be able to transfer commercial, industrial or agricultural groundwater rights by filing an application with the OSE.

34) To clarify does the well election option #3 require that property owners who share a well also connect to the RWS?

No. Each household can make its own choice about whether to join the Settlement and what to do with its share of the well water.

35) In Components of the Agreement, item (c) seems to say that the Pueblos will administer the non-Pueblo water rights. Clarify, please, what that means. Doesn't the State Engineer administer all water rights in NM?

The State Engineer will administer all non-Pueblo water rights. Through the Water Master, the OSE will also administer Pueblo water rights in accordance with the Settlement Agreement.

36) Tell us where Sandra's presentation can be found online?

Sandra's November 3, 2016 presentation on the Aamodt Settlement Agreement can be found on Santa Fe County's Aamodt webpage:

http://www.santafecountynm.gov/public_works/utilities/aamodt

37) If Native Americans inherit the property what happens then?

The property remains private property subject to the same State and County rules and regulations with regard to use of the property and use of water.

38) The Federal Government has a 19 or 20 trillion dollar deficit. Why in the * are they putting money into the water system?**

The Settlement Agreement represents a settlement of litigation by all parties, including the federal government. The federal government has a trust obligation to all four Pueblos to protect, defend and preserve their water rights. The Pueblos had significant claims against the federal government for the failure of the United States to protect, defend and preserve their water rights for over a century. The regional water system is an essential part of the settlement agreement necessary to settle the Pueblos' water rights claims including its claims against the United States. Congress and the Administration both concluded that the tangible and intangible benefits of the system justified the use of federal funds.

39) The State Government has a 200 million dollar deficit. Why in the ** are they financing this?**

See answer to Question 38.

40) Why is the Spanish Treaty not followed?

This issue was the subject of extensive litigation. The Court found that the extensive prior Pueblo rights recognized in the case were fully consistent with the terms of the Treaty of Guadalupe Hidalgo.

41) What happens to my surface water rights if I connect to RWS?

If you have adjudicated surface water rights the status of those surface water rights will not change if you connect to the Regional Water System. And, you will receive the benefits of the Settlement Agreement for purposes of protection of your surface water rights from priority calls by the Pueblos.

42) What happens to well owners who do not sign the settlement, whether they ignored the notifications or did not receive them?

One cannot ignore notifications from the Court and one should respond within the time frames provided in the notice. If someone who receives notice does not respond, the Settlement Agreement provides that the parties will request the Court to treat such individual as someone who has agreed to transfer their domestic well right to the County, connect to the regional water system and receive water from the system. The Court will make the final decision as to how to address this matter. If someone alleges

they never received notice they will have an opportunity to address that issue at the appropriate time.

43) Please tell us how you know the aquifer is being depleted. When will there be a current hydrology report?

There have been numerous hydrologic studies through the course of this long litigation with regard to the aquifer and interconnected streams and springs in the basin. The Environmental Impact Statement which will be released in draft in early 2017 will also contain additional study regarding the decline of the aquifer.

44) Does the money allocated cover complete pipelines? Complete meaning pipes connection to household for non-Pueblo?

Yes, for Settlement Parties who elect to connect to the County Water Utility as soon as service is available. In other words, people who elect to connect as soon as service is available receive the benefit of having the connection from their house to the meter box near the property line paid for by the State or County. The State's \$4 million contribution for such costs will be from the Pojoaque Valley Water Utility Connection Fund.

45) Will this money also cover old piping for both Pueblos and non-Pueblos?

No. The Pojoaque Valley Water Utility Connection Fund only for non-Pueblo water users who will be customers of the County water utility.

46) Does this open the door in the future for a dam?

No.

47) If the NPT Basin is a "Water Short Basin" why does the settlement allow the "Imported Water" to be leased outside the NPT Basin seems counter-intuitive?

The Settlement Agreement allows the County to lease water outside of the basin for a very limited amount of time. The Pueblos can also lease water available to them from the Regional Water System unless and until that water is necessary to meet demands within the Regional Water System. The system is intended to meet the long term needs of the Basin. Leasing is a way to help offset the costs of running the system until the full water supply is required to meet the long term needs.

48) I am 33% native American (lived in this community all my life- 5th generation), but not a Pueblo member). Can I get a waiver and not have to pay to tap into the RWS?

If you do not live on Pueblo land, you can choose whether to join the Settlement and the Regional Water System.

If you join the Settlement and agree to connect to the County Water Utility as soon as service is available, there is no cost to tap into the RWS. The Settlement Agreement specifies that no well user electing to connect to the County Water Utility will be required to cease use of their well and connect to the County water Utility unless all

connection expenses are paid by the Pojoaque Valley Water Utility Connection Fund or other third party (3.1.7.3).

- 49) Why do we need to move forward with a RWS that only puts the burden on a non-Pueblo users. 1) paying for service (unknown rates) 2) connection fee (proposed amount will only be available for a period of time) 3) private land interrupted 4) meter investment. Should all fail by 2024 my investment is a loss.**

The RWS is essential to settling the Aamodt litigation. Settling the lawsuit and avoiding future water rights litigation is in the best interest of all County residents. 1) We anticipate that water rates for County customers in the basin will be similar to rates paid by other County customers. 2) The connection fee fund is only available to non-Pueblo well owners that elect to connect to the County Water Utility as soon as it is available. After the well election, anybody connecting to the County Water Utility will have to pay all applicable fees for connection similar to other County of the residents. 3) Private well owners can elect not to be part of the settlement or the RWS. 4) Whether there is a Settlement Agreement or not, all well owners in the basin will be required to meter their well.

The failure of RWS to be substantially complete by the established deadline is a significant risk. County staff is exploring ways to minimize or manage that risk. But no steps taken to date require the Board of County Commissioners to accept that risk and appropriate funds for the RWS. That decision will be made at a future date.

- 50) Do pueblos pay property taxes?**

The Pueblo individuals pay property taxes on non-Pueblo lands that they own. The Pueblos do not pay property taxes on the land they own as Pueblos because federal law exempts the land of Pueblos and tribes from state taxes, including property taxes.

- 51) Services: Jobs for the pueblo: No gross receipts. No payroll tax to state. Economic Development for Pueblos for Santa Fe County and not for NM. True or False?**

False. The Regional Water System design and construction will generate jobs within and without the basin which are available to all individuals regardless of Pueblo affiliation. Additionally, gross receipts tax is payable for all work not on Pueblo lands. Ultimately, the Regional Water System will secure a firm reliable supply of water for the entire basin for both domestic and commercial uses. This will support economic development throughout the basin.

- 52) Is it true that San Ildefonso can hire anyone to work on water system, Not County?**

This is not true. The Bureau of Reclamation initially, and then the County as system operator, will hire staff for the Regional Water System. San Ildefonso will not hire any employees. The Cost Sharing and System Integration Agreement, signed by the County, the four Pueblos and the United States provides a limited preference to San Ildefonso Pueblo members "to the extent authorized by law [for] employment preference and training to qualified members of the San Ildefonso community and second priority to

members of other Pueblos for construction, operation and maintenance of facilities located within the San Ildefonso Pueblo.” As noted, the preference is limited to facilities located within the San Ildefonso Pueblo.

53) When will well election notice be mailed?

The Court has not yet set a deadline for mailing of the election notice. We expect a deadline to be set sometime in the first quarter of next year. The election notice will include a response time in the notice.

54) Is there a point and time when the Joint Powers Agreement isn't worth the paper it's written on given the sovereignty of Pueblos?

No. The Pueblos will waive their sovereign immunity for purposes of enforcement of the Joint Powers Agreement.

55) Will Non-pueblo users be limited to 0.5 afy only when there is a priority call or always?

The .5 afy is not a limitation – rather it is the minimum amount (absent demonstration of a higher beneficial use) to which a water right could ever be limited. That would be the amount irrespective of a priority call.

56) What would justify a priority call?

A priority call is justified if there is insufficient physical water supply in the basin to satisfy all users. In that case, the State can enforce priority to allow senior users to take water first before more junior users—i.e. those with a later priority date. However, it does not permanently reduce the junior user's water right, but only for the time of the shortage as determined by the State Engineer.

57) Can I select to keep my well in perpetuity AND connect to the County water utility at the same time?

It depends upon the type of rights and the use.

Under the County's current Sustainable Land Use Code, a well owner cannot use their well for outdoor domestic purposes on a property supplied by the County Water Utility (7.13.3.7).

Under the Settlement Agreement, a former well owner could use their well if the County Water Utility is unable to deliver water through no fault of the former well owner. (3.1.8.4.1.) In addition, a well owner could use their well for outdoor, non-domestic purposes on property that is supplied by the County Water Utility under limited circumstances. Once the Section 72-12-1 well water right is transferred to the CWU; water can no longer be diverted from the well for domestic purposes. However, if a well has non-domestic rights (such as pre-basin or supplemental agricultural rights or livestock water rights), the well can continue to be used for those non-domestic purposes consistent with Section 3.1.7.2.1 of the Settlement Agreement. Also “the

owner of a pre-basin or permitted right, other than one permitted under Section 72-12-1, *may* convey title to and transfer that water right to the CWU for use in providing water to its customers in the Pojoaque Basin” (3.1.8.1). Thus, for non-domestic rights, the owner could keep those and continue to supply non-domestic uses from the well or transfer those rights to someone else, including the CWU.

The parties are evaluating whether there are circumstances under which a well owner with a domestic right could use their well for domestic purposes and connect to the County Water Utility. The County Code would have to be amended for this to happen.

58) What happens if an existing well is located on two parcels?

If an existing well serves two homes on two parcels, the Order adjudicating the well sets out the amount of water that is to be shared. Each household may choose the well election which best serves its owners. Thus, for example, one household may choose to join the Settlement and connect to the Regional Water System while the other owner elects to keep the well in perpetuity.

59) I’m 76 years old. Who will climb down into my well to read the meter?

Arrangements can be made with the Water Master to read your meter.

60) Do the attorneys representing State Engineer’s office have target date for federal court filing to readjudicate shared domestic wells previously adjudicated as single user well to multi-user well?

The State expects to have the last of the corrective motions filed by Friday, November 18, 2016.

61) Was the 0.5 afy minimum modified by 1994 court decision to the lessor of 0.5 or actual historic use?

No. The July 22, 1994 *Order* (No. 4391) amended all previous orders adjudicating domestic wells to state “Amount of Water: not to exceed a diversion of 3.0 acre-feet per year from the well described above or the historic beneficial use, whichever is less.” The amount of 0.5 was never spoken to.

62) Is there a plan for Pueblo current use and the future allocation?

The water rights adjudicated to the Pueblos within the basin and made available through the Regional Water System will be used for all beneficial uses of water needed to support the respective individual Pueblo communities in perpetuity. Accordingly, the water will be used for community uses, domestic purposes, irrigation, commercial purposes to satisfy current demands within the Pueblo communities as well as future demands related to domestic use and economic development.

63) What happens if flows on the Rio Grande are severely reduced?

The water rights available to the Regional Water System will come from a variety of sources including San Juan Chama water imported from the San Juan Basin. The amount of water which could be diverted at full demand by the Regional Water System (4,000 acre-feet per annum) represents just .4% of the amount historically (prior 60+ years) available in the Rio Grande at the proposed point of diversion for the Regional Water System. The Regional Water System will build in back up strategies such as storage and other mechanisms to ensure supply in times of shortage. As in any municipal system there could be a time where water saving measures were implemented by the respective county water utility and the Pueblos. In that event the entities are required to share in shortages on a pro-rata basis-- everyone on the system will share any shortage. The benefit of a pooled or shared supply by the County and the Pueblos is that this kind of shortage is not expected. In the event there is a complete failure of supply by the Regional Water System which resulted in an inability to supply water to customers, those who connected to the system are allowed by the Settlement Agreement (3.1.8.4.1) to reactivate their domestic wells.

- 64) New water system will provide 0.5 afy to each household, most of the water will return back to the aquifer. Is this calculation considered?**
Reclamation will consider and evaluate this issue in the context of the EIS.
- 65) Has Nambe Pueblo already made a priority call on the lions share of irrigation waters?**
No, the Pueblo and PVID have agreed on various practical measures to provide the water to which each is entitled. Discussions about those provisions take place every year and affect both Pojoaque and San Ildefonso as well.
- 66) Does the same rules apply to Pueblo and non-Puebloe to the tie-in to the new water system?**
The Regional Water System will be owned and operated jointly by the County and the Pueblos as to the diversion, treatment facility, the main trunk line and other shared facilities. Each entity will establish the rules applying to water users connecting to their system. The distribution of water from the system will be divided into five separate distribution systems, owned respectively by the County, and each of the four Pueblos. All non-Pueblo water users will be County customers and connect to the County water utility and all Pueblo water users residing on a Pueblo will connect to their respective Pueblo distribution system.
- 67) In the future how can be assured that they don't make it a monopoly?**
The Regional Water System will be owned and operated by the County and the four Pueblos in strict accordance with the federal legislation approving the Aamodt Settlement, and the Settlement Agreement and Cost Sharing and System Integration Agreement. A Joint Powers Agreement and Operating Agreement will be entered into as directed and required by the federal legislation. The specific requirements of the federal Act will require the system to be jointly operated to ensure a firm and reliable water supply for the customers of all five entities – the Pueblos and the County. The

federal Act does not allow for any individual Pueblo, the Pueblos collectively, or the County to create a monopoly.

68) What guarantee do non-Indian users have that the Pueblos will not arbitrarily raise prices or water limitations?

The County will have sole authority to set prices for non-Indian users who will be customers of the County water utility. The Pueblos have no authority to set prices with regard to non-Indian users. The operation of the system will be tightly constrained by the legislation, Cost Sharing and System Integration Agreement, Joint Powers Agreement, and Operating Agreement to ensure that the costs are equitably distributed among the five governments.

69) How are they going to charge for the water?

Under the draft Joint Powers Agreement, the Authority would not establish water rates charged to customers of the County Water Utility or a Pueblo Water Facility. Instead, the billing of County and Pueblo customers would conform to the policies of the County and applicable Pueblo Water Facility.

With regard to County water rates, the County sets water rates through a public process. Any rates must be approved by the Board of County Commissioners at a public meeting. When setting rates, the County follows industry standards consistent with those established by the American Water Works Association (AWWA). The AWWA provides a few options for determining utility revenue needs and rate schedules (by customer class) by conducting a cost-of-service analysis.

In addition, the County will also have sole authority over suspension of service to its customers. No other party will have authority to deny service to a County customer.

70) Up to what distance will the water line be provided from main line under the agreement?

The initial width of the County Water Utility service area will not be based on a specific distance from the main water line, but the cost to construct the connection from the distribution line to the house. Under the Settlement Agreement, service is not considered available if the cost to connect to the CWU is greater than \$7,000 in 2006 dollars (3.1.7.2.3). Well owners that elect to connect to the County water Utility as soon as service is available to them will have access to the Pojoaque Valley Water Utility Connection Fund.

It should be noted that the locations of the distribution lines coming off the main transmission line will be based, in part, on the well election. If, for example, the majority of well owners in a particular neighborhood elect not to connect to the County Water Utility, it is unlikely that a distribution line would be constructed to that neighborhood because there is no demand. In addition, the location and length of the distribution lines will also be based on available budget.

While the extent of the distribution system could be scaled back during the initial planning and design, should demand increase, the system could be expanded after the initial construction of the RWS is complete in 2024.

71) What will be the size of the water main?

The diameter of the transmission pipeline line is expected to range from 4 to 18 inches depending on the location.

72) Will hydrants be installed?

Yes. Although the final extent of fire protection to be included has not yet been decided, the Bureau of Reclamation design includes the installation of some fire hydrants.

73) Reaching out NOW? After gag orders and 50+ years of litigation I don't trust what is coming down. What can you say that would encourage me to literally buy into this?

Litigation by definition is divisive with winners and losers. The settlement is much different and intended to be a win-win situation with a common goal of providing a reliable water supply to all residents of the NPT Basin. It is not perfect but that doesn't mean that it is not good. If all affected parties work together it can achieve its objectives. Put another way, the Pueblos like everybody else have a stake in making it work.

Many public meetings have been held over the course of the last decade. The Pueblos and its Settlement partners are hopeful that a positive dialogue can commence and continue with regard to the shared use of water within the Basin.

74) We are not in favor of the Aamodt Settlement. As a non-pueblo person the way it is written now. How can you force us to be a part of this Settlement? It is non constitutional.

No one is forced to be part of the Aamodt Settlement. The Settlement does not require anyone to connect to the system or otherwise become a settling party. If one chooses not become a settlement party, you will not receive the benefits of the settlement agreement including protections from priority enforcement and the certainty of a clean reliable supply of water.

75) With money allotted, Does the also cover the sewer, will pipes be covered with this money?

Wastewater treatment and infrastructure is not part of the Aamodt settlement. However, the construction of the Regional Water System and the easements obtained for the water supply infrastructure will provide an opportunity for future development of wastewater facilities.

76) What assurances do we have that San I will not charge us extra or try to take away our participation in the Regional Water System plant like they are attempting to with County Rd. 84?

The only charges you will get for receiving water service from the Regional Water System will be from the County Water Utility. The Pueblos agreed to have the United States grant easements for rights of way for the pipelines and facilities necessary for the Regional Water System at no cost. Those easements will be in place before the system begins operation. All five governments have an interest in maximizing the number of individual hook-ups, to share the operations costs over the largest possible base.

The allocation of water rights and capacity to the County is protected by federal law and no other party has discretion to obstruct the County's allocation and delivery of supply for its customers.

77) Will San I have the right to charge us an easement or access fee for the WTP?

No.

78) How will the two new members of the JPA be chosen?

The current of the Joint Powers Agreement, provides that in addition to the County and each Pueblo appointing a member, the County and the four Pueblos will appoint two additional members who are customers of the Regional Water System.

79) Can we respond so that we are a "responder" to the settlement agreement without "agreeing" to the settlement agreement? What are the ramifications if we do this?

If you filed an objection to the Settlement Agreement with the federal court, you have already indicated you do not agree to the Settlement Agreement and you have already responded. Therefore, no further action is required on your part. However, given that all objections have been overruled by the Court, you will have an opportunity to elect to become a settling party. If you did not file an objection and choose not to become a settlement party the form will provide an opportunity to state that. However, no further objections to the Settlement Agreement are permitted.