

# RECLAMATION

*Managing Water in the West*

## Final Environmental Assessment and Finding of No Significant Impact

San Juan–Chama Project Repayment Contracts

Taos Pueblo Indian Water Rights Settlement Act



U.S. Department of the Interior  
Bureau of Reclamation  
Albuquerque Area Office  
Albuquerque, New Mexico

November 2011

## **Mission Statements**

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The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

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Front Cover Photo: Taos Pueblo Area by Mark Hungerford  
July 7, 2011

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## **List of Acronyms and Abbreviations**

ABCWUA	Albuquerque Bernalillo County Water Utility Authority
AF	Acre-foot or AF
BA	Biological Assessment
BLM	Bureau of Land Management
BO	Biological Opinion
CEQ	Council of Environmental Quality
CFR	Code of Federal Regulations
cfs	Cubic feet per second
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPWSD	El Prado Water and Sanitation District
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
ITA	Indian Trust Assets
M&I	Municipal and Industrial
MRG	Middle Rio Grande
MRGCD	Middle Rio Grande Conservancy District
NEPA	National Environmental Policy Act
NRHP	National Register of Historic Places
Reclamation	Bureau of Reclamation
Service	US Fish and Wildlife Service
Settlement Parties	Town of Taos, EPWSD, Pueblo of Taos
SHPO	State Historic Preservation Office
SJCP	San Juan-Chama Project

## **Chapter 1. Purpose and Need**

### **1.1 Federal Action**

The federal action addressed in this Environmental Assessment (EA) is the execution of three repayment contracts by the U.S. Bureau of Reclamation (Reclamation) pursuant to the Taos Pueblo Indian Water Rights Settlement Act (Settlement Act). Reclamation proposes to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) of San Juan-Chama Project (SJCP) water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to execute the Taos Pueblo Indian Water Rights Settlement Agreement (Settlement Agreement), and to enter into these repayment contracts.

Repayment contracts provide for the repayment by the water user of the construction costs allocable to the water provided under the terms of the contract. The Settlement Act provides that the construction costs allocable to the Taos Pueblo's water allocation shall be nonreimbursable by the Taos Pueblo. Each contracting entity will be required to pay annual operation and maintenance (O&M) costs allocable to its proportionate share of SJCP water.

### **1.2 Purpose of and Need for Action**

The purpose of the proposed repayment contracts is to meet the requirements of the Settlement Act which authorizes the Secretary of the Interior to execute the Settlement Agreement, resolving the Taos Pueblo's water rights claims in the Rio Pueblo de Taos and Rio Hondo stream systems, tributaries to the Rio Grande. The settlement will fulfill the rights of Taos Pueblo consistent with Federal trust responsibility.

A contract with the Reclamation is required for an entity to receive an allocation of SJCP water, such water is the State of New Mexico's allocation of Colorado River Water under the Colorado River Compact, and the Secretary of the Interior and the State of New Mexico cooperate in allocating SJCP water.

### **1.3 Background**

The SJCP was authorized by Congress in 1962 through PL 87-483, which amended the Colorado River Storage Act of 1956 (PL 84-485) to allow diversion of Colorado River Basin water into the Rio Grande Basin of New Mexico. The original planning projections for the SJCP contemplated an ultimate diversion of 235,000 AF per year, with an initial phase development to accommodate an average annual diversion of up to 110,000 AF. Only the initial phase was authorized (by PL 87-483) and subsequently constructed by Reclamation. In 1989, a Reclamation hydrologic report addendum reduced estimates of the yield of the SJCP to 96,200 AF annually. The SJCP takes water from the Navajo, Little Navajo, and Blanco Rivers, which are upper tributaries of the San Juan River, itself a tributary of the Colorado River, for use in the Rio Grande Basin, New Mexico. Heron Reservoir serves as a storage facility for SJCP water. Reclamation operates and maintains the SJCP. Primary purposes of the SJCP are to furnish a water supply, via trans-basin diversions, to the Middle Rio Grande (MRG) valley for agricultural, municipal, domestic, and industrial uses. The SJCP is also authorized for incidental recreation, and fish and wildlife benefits.

SJCP water is imported to the Rio Grande Basin from the Colorado River to satisfy the State of New Mexico’s entitlement of Colorado River water pursuant to the Upper Colorado River Basin Compact of April 6, 1949 (63 Stat. 31). Delivery of New Mexico’s Colorado River Compact entitlement through the SJCP was authorized by the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105), and the Navajo Indian Irrigation Project and SJCP Project, Initial Stage Act of June 13, 1962 (76 Stat. 96).

Current and Expected Beneficial Uses

The entire available firm yield of the SJCP is currently committed by contract or identified for future contracts associated with Indian water rights settlements. Project water is committed, primarily by contract, to municipal, domestic, industrial, irrigation, and recreational uses. Most of the currently uncontracted 2,990 AF of SJCP water has been identified for the Settlement Agreement. Table 1 lists SJCP water contractors, water quantities and uses, and contract dates.

**Table 1. Current San Juan–Chama Project Water Contractors and Uses**

Contracting Entity	Quantity of Water Executed	Year Contract	Expires/Renewable
<i>Municipal, domestic, and industrial purposes:</i>			
City of Albuquerque (now ABCWUA)	48,200 ac-ft	1963	repayment/no expiration
Jicarilla Apache Nation	6,500 ac-ft	1992*	repayment/no expiration
City of Santa Fe	5,230 ac-ft	2006	repayment/no expiration
County of Santa Fe	375 ac-ft	2006	repayment/no expiration
San Juan Pueblo (now Ohkay Owingeh)	2,000 ac-ft	2001	repayment/no expiration
County of Los Alamos**	1,200 ac-ft	2006	repayment/no expiration
City of Española	1,000 ac-ft	2006	repayment/no expiration
Town of Belen	500 ac-ft	1990	repayment/no expiration
Village of Los Lunas	400 ac-ft	2006	repayment/no expiration
Town of Taos	400 ac-ft	2006	repayment/no expiration
Town of Bernalillo	400 ac-ft	1988	repayment/no expiration
Town of Red River	60 ac-ft	1990	repayment/no expiration
Village of Taos Ski Valley	15 ac-ft	2006	repayment/no expiration
<i>Allocated, but uncontracted, water currently identified for future Indian water rights settlements and or use:</i>			
	2,990 ac-ft		
<i>Irrigation:</i>			
Middle Rio Grande Cons. District	20,900 ac-ft	1963	repayment/no expiration
Pojoaque Valley Irrigation District***	1,030 ac-ft	1972	repayment/no expiration
<i>Recreation:****</i>			
COE - Cochiti Rec Pool	Up to 5,000 ac-ft	1964	
Total Allocation:	96,200 ac-ft		

\* Contract in effect mid-1999

\*\* County of Los Alamos obtained annual allocation from the Department of Energy in September 1998.

\*\*\* "Soft" number used to offset storage in Nambe Falls Reservoir. Has varied from 800 to 1300 AF on an annual basis.

\*\*\*\* Cochiti Recreation Pool allocations compensate for evaporation losses to maintain a minimum pool of 1,200 surface acres at Cochiti Lake. (PL 88-293.)

The proposed contracts will provide for the delivery of SJCP water for M&I use, and for the repayment of construction costs allocable to the allocation of SJCP water made to each contractor. As stated above, the costs of construction allocable to the Taos Pueblo’s contracted water will be nonreimbursable.

## **Chapter 2. Alternatives**

### **2.1 Proposed Action**

The Proposed Action is non-discretionary. The Congress has directed the Secretary of the Interior, through Reclamation, and pursuant to the Settlement Act, to enter into the three proposed contracts. Execution of the three contracts by Reclamation will fulfill part of the Secretary of the Interior’s responsibilities under the Settlement Act.

Reclamation will enter into three repayment contracts for the delivery of SJCP water in the following amounts:

- A. 2,215 AF/annum to the Pueblo of Taos
- B. 366 AF/annum to the Town of Taos.
- C. 40 AF/annum to EPWSD

### **2.2 No Action Alternative**

The No Action alternative is “the future without the federal project or activity.” It consists of Reclamation not executing repayment contracts with the Pueblo of Taos, Town of Taos, and the EPWSD for the SJCP water. If the No Action alternative is implemented, then there would be little change from the current condition and trends. This alternative was eliminated as infeasible due to the Settlement Act and would be contrary to Congress’ direction in the Act requiring the Secretary of the Interior to issue the contract.

### **Discussion of Proposed Action**

Reclamation has selected the proposed action as its preferred alternative because it would fulfill the requirements of the Settlement Act.

## **Chapter 3.    Affected Environment and Environmental Consequences**

### **3.1 Scope and Baseline of Analysis**

Federal regulations characterize an EA as a concise public document which has three defined functions. An EA briefly provides sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and it facilitates preparation of an EIS when one is necessary. Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. The present EA was prepared in accordance with these regulations. Resources potentially affected by implementation of the proposed action were assessed, but other resources were not addressed unless a specific legal requirement exists. Discussions are limited to information relevant to a determination of significance. The analysis included in this document are based on a sample of 7 SJCP contractors including the City and County of Santa Fe, County of Los Alamos, City of Espanola, Village of Los Lunas, Town of Taos, and Village of Taos Ski Valley. Figure 3 shows how much SJCP water as been stored in Heron Reservoir and the relative contribution of Water (8,620 ac-ft) allocated to these contractors.

### **3.2 Water**

#### **3.2.1 SJCP Municipal Water Uses**

Imported SJCP water allocated to contractors is stored in various New Mexico reservoirs upon release from Heron Reservoir and is re-released into the Rio Chama and Rio Grande at various times. Primary purposes of the SJCP are to furnish a water supply via trans-basin diversions to New Mexico beneficiaries for M&I as well as irrigation uses. Incidental benefits include recreation and fish and wildlife. This reservoir and river system is illustrated in Figure 1. The quantity of SJCP water that is currently allocated ranges from 15 ac-ft for Taos Ski Valley to 48,200 ac-ft for ABCWUA.

Contractors must take delivery of their water by December 31 of each year. Contractors take possession of the water at the outlet works of Heron Dam upon release. The no carryover requirement often results in contractors seeking to store their unused water in downstream reservoirs. Any contractor water remaining in Heron Reservoir after December 31 reverts to SJCP pool. Historically, contractors have stored SJCP water in El Vado Reservoir and in Abiquiu Reservoir. While Heron Reservoir storage is restricted to SJCP water, storage in El Vado and Abiquiu reservoirs has been comprised of both native Rio Grande and SJCP water (Figures 4 and 5). Native Rio Grande water is stored in Abiquiu Reservoir for flood control purposes due to downstream channel capacity constraints. Figures 6 and 7 show the historical contribution of SJCP water storage by contractors (only five contractors in Abiquiu) compared with the total volumes of SJCP stored in El Vado and Abiquiu reservoirs. In El Vado Reservoir, the quantity attributable to contractors appears relatively substantial; whereas, in Abiquiu Reservoir, the quantity appears minor in comparison to the total quantity of SJCP storage. Because SJCP water is introduced into the Rio Chama and Rio Grande, plots showing mean river flows during the period from 1983-1999 are included for gage sites on the Rio Chama below El

Vado Dam (Figure 8), on the Rio Chama below Abiquiu Dam (Figure 9), and at Otowi Gage on the Rio Grande (Figure 10).

During 1982-2000, contractors above Cochiti took delivery of almost all of their allocations from Heron Reservoir (Figure 11). City and County of Santa Fe took delivery of 97.7 percent of its water and Los Alamos County took delivery of 74 percent of its water. Overall during the past 19 years, contractors took delivery of 90.8 percent of their SJCP water. Once the water is released from Heron, it may be stored in a downstream reservoir, used by contractors to offset groundwater pumping effects per state permitting requirements, or leased to third parties for their needs. Some SJCP water is lost during transport and lost to evaporation during storage.

Water of contractors is also released to flow downstream in the Rio Grande for the primary purpose of offsetting ground water pumping effects per the various contractors' State Engineer permits. If the full amount were released to the Rio Grande, it is calculated that approximately 8,448 AF would pass the Otowi gage. This is equivalent to about 704 AF/month or 23 AF/day or a flow of about 11.6 cfs. Figure 10 shows that mean monthly Otowi flows range from roughly 1,000 cfs to 4,300 cfs during the year. According to accounting records from 1982 to 2002, 151,124 AF of a total 163,780 AF allocated to contractors was released from Heron Reservoir. Direct consumption by contractors may maximize the total release even further. If that were to occur, the Rio Chama and Rio Grande could experience an insignificant increase in discharge (12,656 AF over 19 years or grossly 666 AF/year). River flows and reservoir water levels would continue to fluctuate independent of the Proposed Action. If contractors conjunctively use surface and ground water supplies or switch entirely to surface water supply, then there could be a minor reduction in net ground water withdrawal. Information pertaining to water resources on SJCP water is incorporated by reference from the following documents which provide extensive detail on these subjects:

US Bureau of Reclamation (Reclamation), 2001. San Juan-Chama Water Contracts with Pueblo of San Juan Environmental Assessment. October 2001. Prepared by US Bureau of Reclamation. Available at: <http://www.usbr.gov/uc/albuq/library>

US Bureau of Reclamation (Reclamation), 2006. San Juan-Chama Water Contracts Amendments with City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, village of Taos ski Valley, Village of Los Lunas, and City of Espanola Environmental Assessment. May 2006. Prepared by US Bureau of Reclamation. Available at: <http://www.usbr.gov/uc/albuq/library>

Figure 1. Location Map

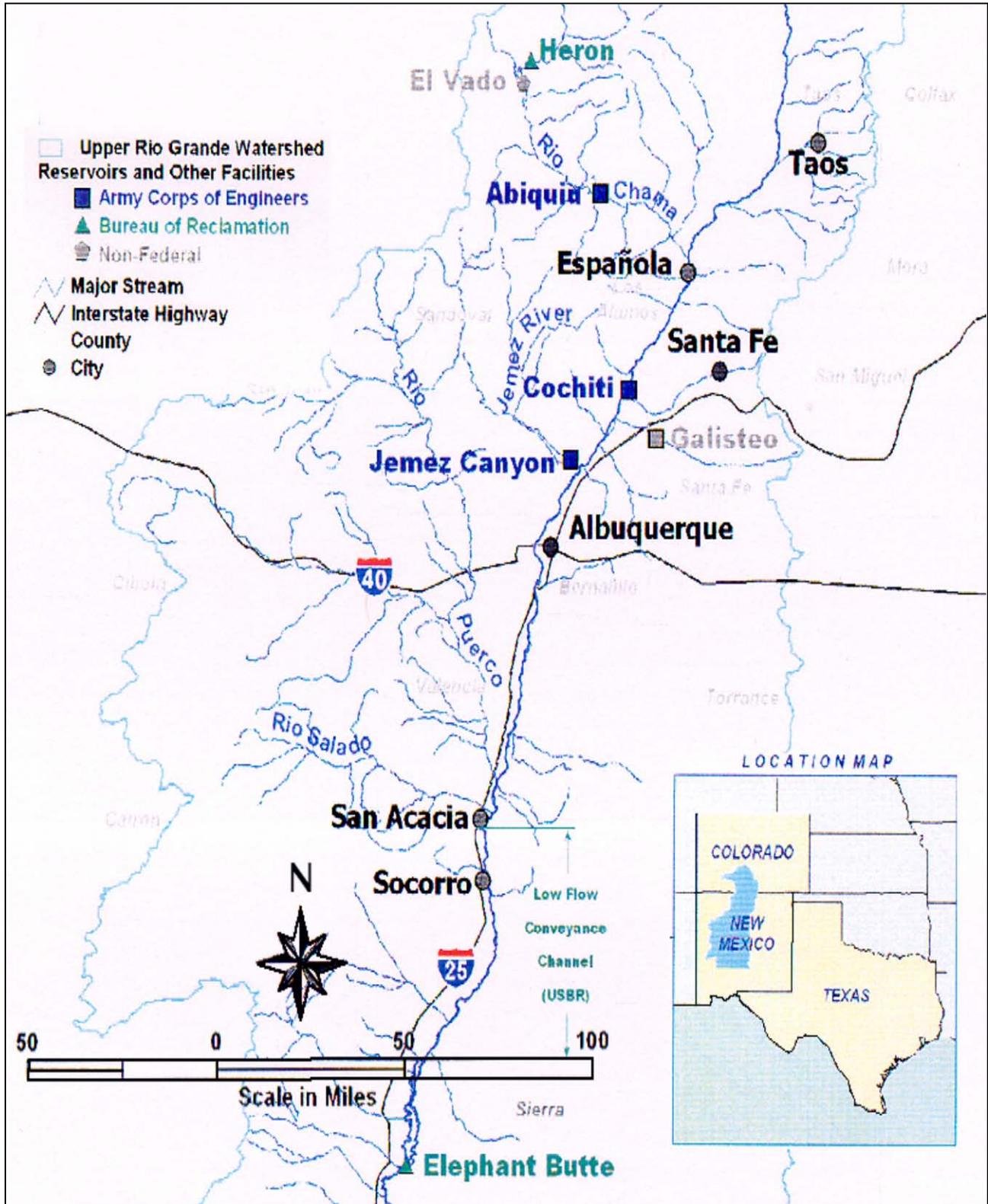


Figure 2

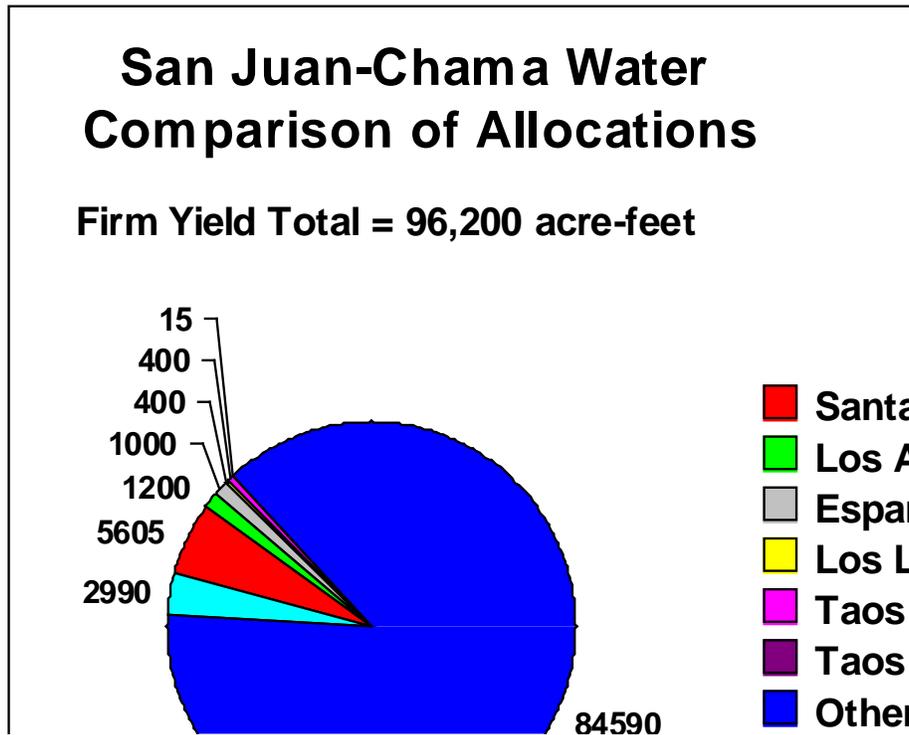


Figure 3

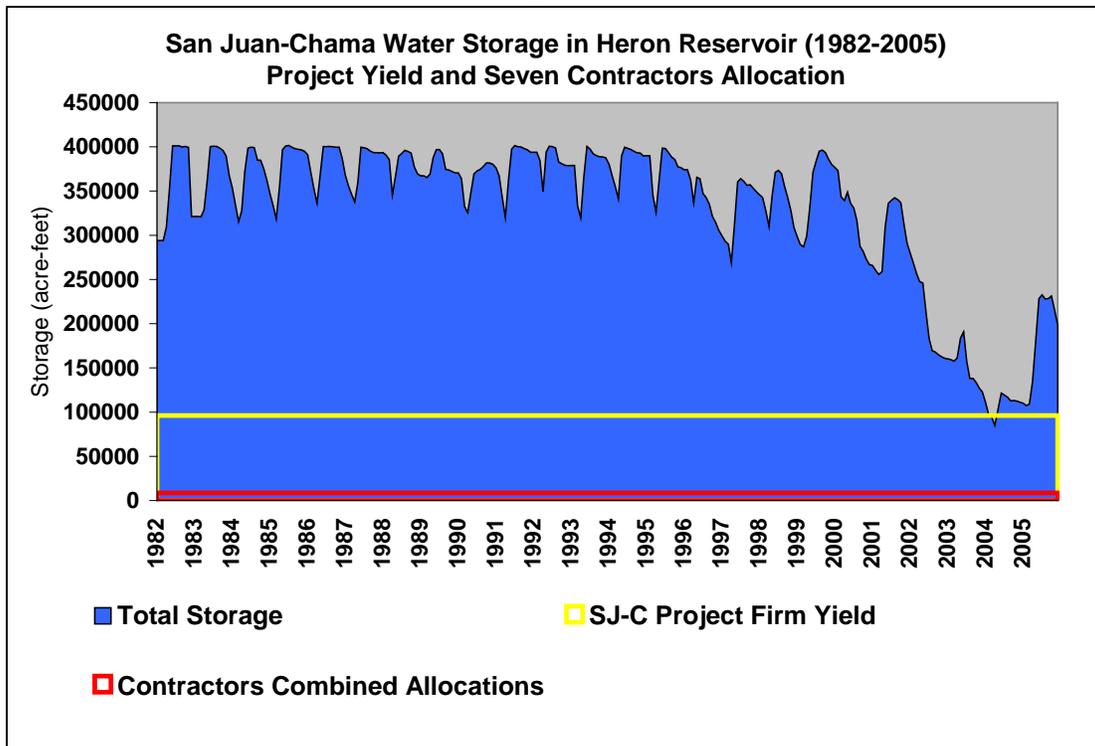


Figure 4

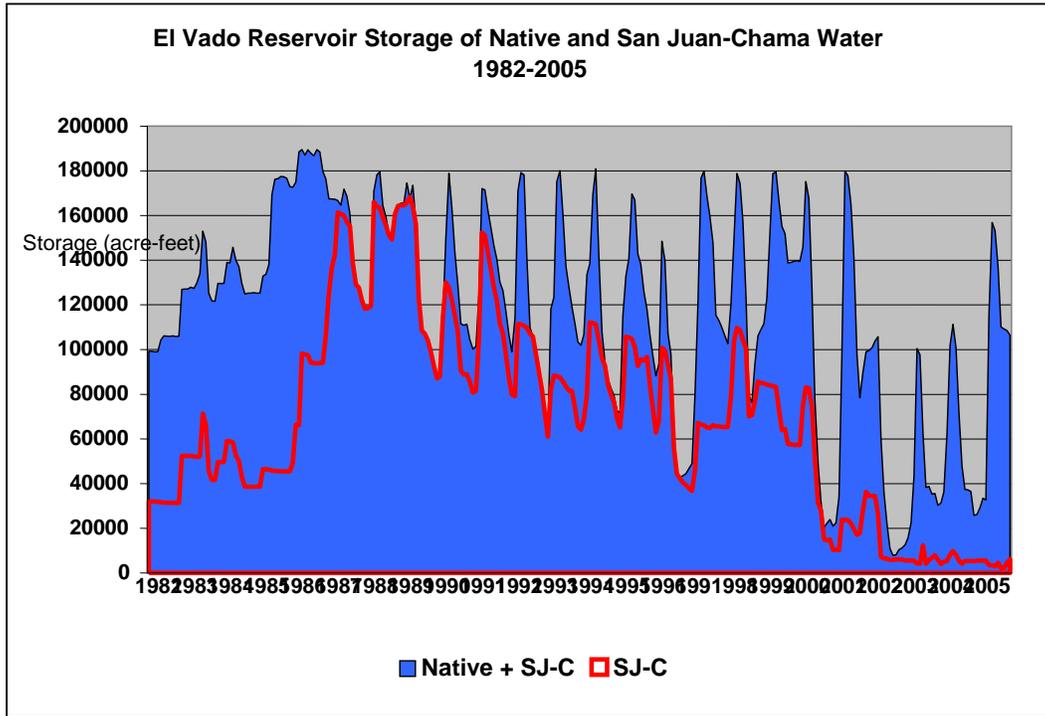


Figure 5

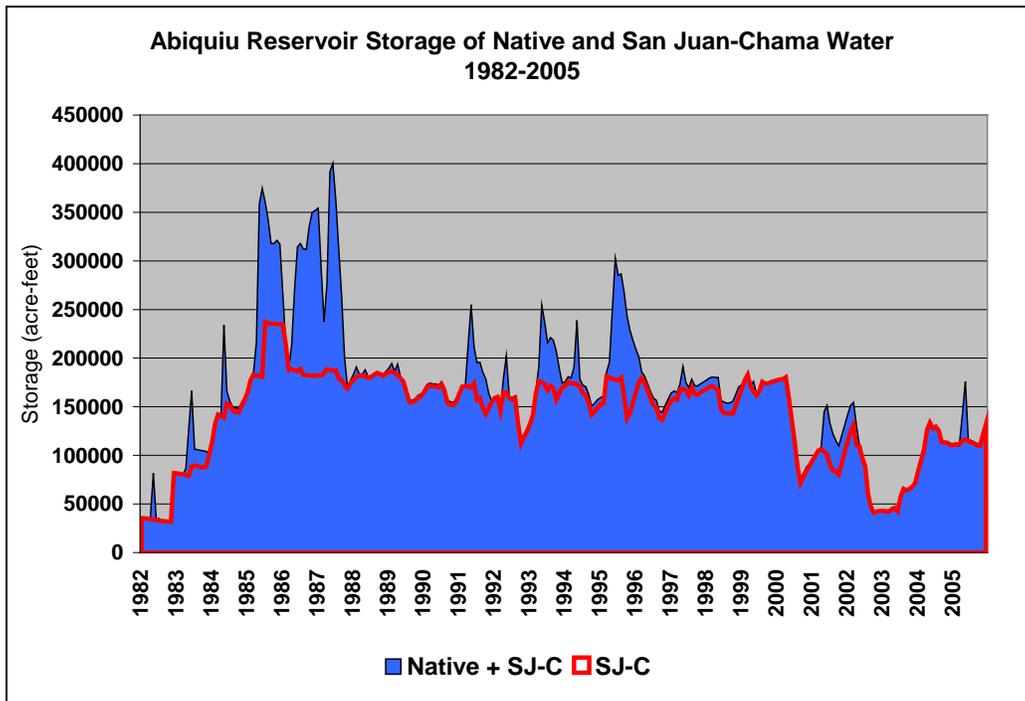


Figure 6

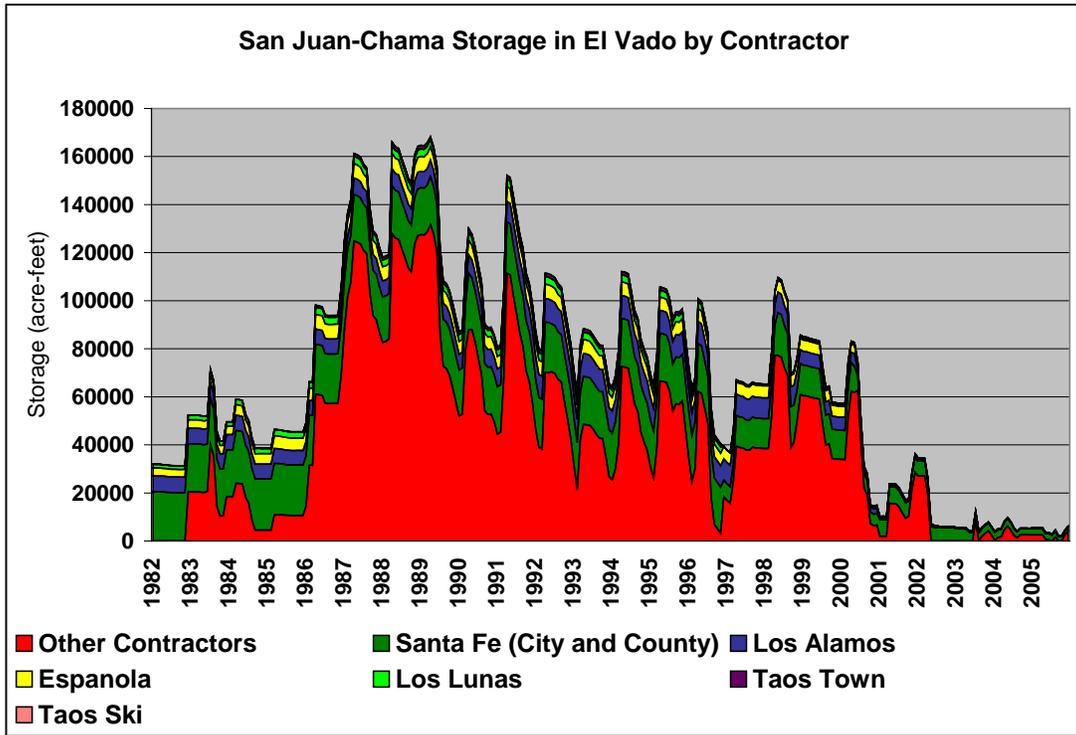


Figure 7

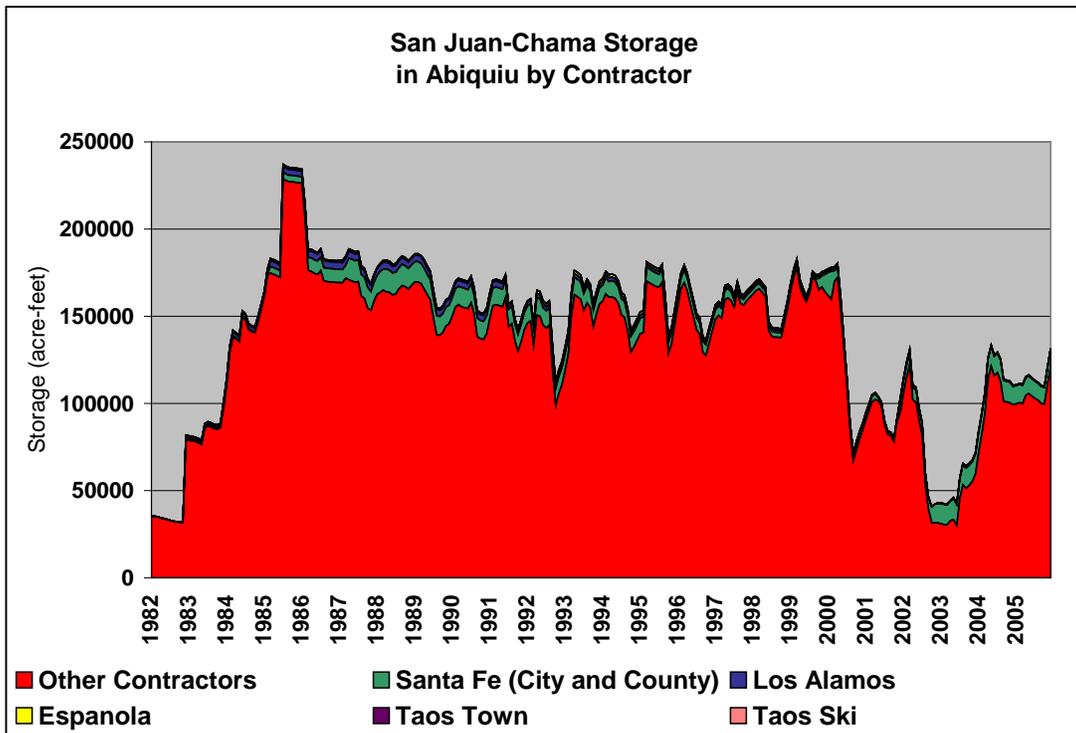


Figure 8

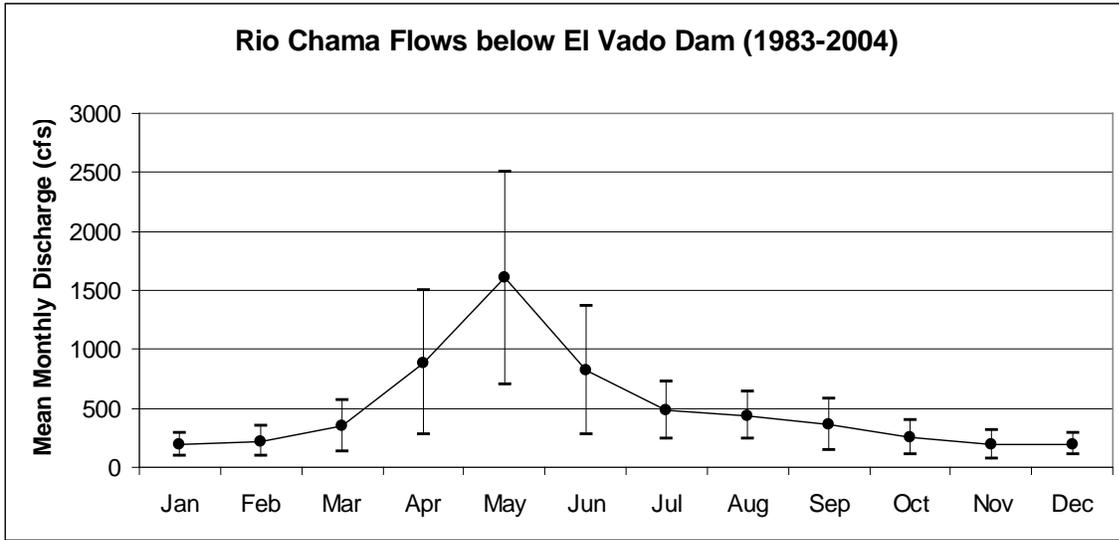


Figure 9

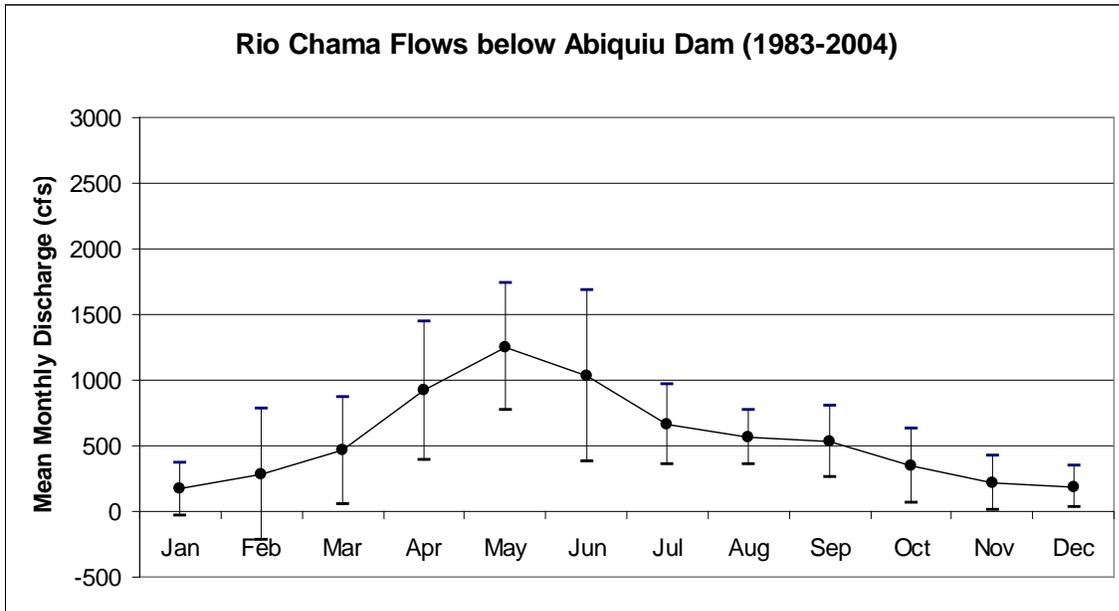
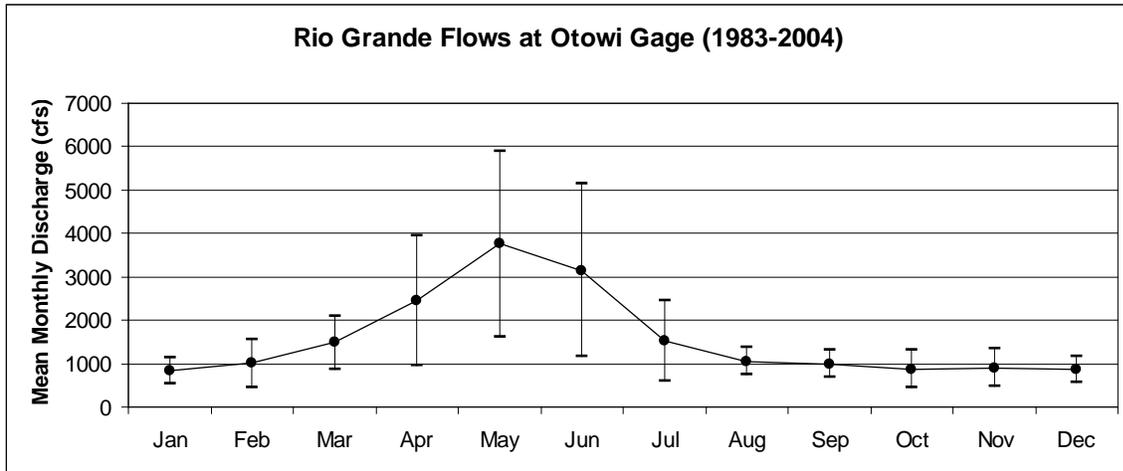


Figure 10



If the Proposed Action is implemented, Reclamation will meet the requirement to enter into three SJCP contracts prior to the settlement becoming final and enforceable. Fulfillment of the Taos Settlement resolves the water rights claims of Taos Pueblo, provides the settlement parties the ability to protect the sustainability of a traditional agricultural community, and assures the settlement parties access to water necessary to meet municipal and domestic needs.

The United States agrees to deliver Pueblo of Taos' 2,215 AF, EPWSDs' 40 AF, and the Town of Taos' 366 AF a year from the SJCP in accordance with the provision of the contracts. The point of delivery for SJCP water shall be at the existing outlet works at Heron Reservoir. There will be no holdover storage rights in Heron Reservoir from year to year. Water may be used or disposed of for any purpose desired by the settlement parties. The contracts stipulate "the parties hereto neither abandon nor relinquish any of the seepage or return flow water attributable to the use of the Project Water supply" and "water may be used or disposed of for any purpose desired by the 'entities' subject to the approval of the Secretary and/or the Contracting Officer, and in compliance with applicable state and federal law." Any water taken above the allocation provided would require a separate contract covering the lease of this water. Reclamation may exercise its right of refusal under the repayment contract on leases by the settlement parties to obtain the available water each year for the supplemental water program (program). This option is currently under negotiation with the Pueblo of Taos.

### **3.2.2 Supplemental Water Program (Program)**

The current Program consists of four components: water acquisition and storage, concurrence with waiver requests, the pumping and conveyance of water from the LFCC to the Rio Grande including the operation of an outfall near Escondida, and the implementation of water conservation practices by water contractors and municipal and industrial (M & I) users. Reclamation uses this program to benefit Rio Grande Silvery Minnow with a water source.

#### *Water Acquisition*

Reclamation will acquire water to provide supplemental flows to the Rio Grande. Reclamation will seek to purchase or lease water, water rights or the right to store water from willing parties for use in the Rio Grande. In addition to the specific water acquisition agreements described below, Reclamation will seek to enter into water acquisition and water management agreements with other interested parties, such as the New Mexico Interstate Stream Commission (NMISC) under the Strategic Water Reserve, and agreements for management of irrigation water with the Middle Rio Grande Conservancy District (MRGCD).

#### *San Juan-Chama Leases*

Fifteen entities have repayment contracts with Reclamation for the use of SJCP water. Some of these entities may be willing to temporarily lease back to Reclamation some of this contracted water for use in the Program. Reclamation will enter into lease-back agreements with such willing SJCP contractors. Reclamation is not proposing to take any actions that would involve reallocating contracted water or exceeding the firm yield of the SJCP. Reclamation will obtain

all permits required for implementation and will conduct required consultation with appropriate parties.

Reclamation expects to lease yearly after 2011, 10,000 to 15,000 af per year of SJCP contracted water. However, depending on environmental conditions, water availability, funding, and the willingness of SJCP water contractors to enter into leasing agreements with Reclamation, the quantity of SJCP water to be leased could be as low as 5,000 af per year or as great as 70,000 af per year. The M&I contractors from whom Reclamation could lease SJCP water include the following: ABCWUA, City of Santa Fe, Santa Fe County, Jicarilla Apache Nation, Ohkay Owingeh Pueblo, City of Espanola, County of Los Alamos, City of Belen, Town of Bernalillo, Town of Taos, Village of Los Lunas, Town of Red River, and the Village of Taos Ski Valley.

Reclamation will exchange the leased SJCP water with the MRGCD for native Rio Grande flows. The SJCP water leased each year by Reclamation will be used beneficially in New Mexico for irrigation, while native waters will augment stream flow and will benefit the silvery minnow.

If the No Action alternative is selected, then the current condition with existing trends would continue. The remaining 2,990 AF would continue to be allocated, but uncontracted as water currently identified for Native American water rights settlements and/or use. Reclamation would continue to release that portion of SJCP water from storage and exchange it with MRGCD, as described above, to serve the purposes of the Program. Contractors are expected to gradually grow and consume more water.

If the proposed action is implemented, the uncontracted SJCP water will be allocated in accordance with the Settlement Act. Once the Settlement Act is implemented, the uncontracted SJCP water may no longer be available for release from storage by Reclamation. However, Reclamation will pursue leasing this newly contracted water, as described above, if available.

### **3.3 Biological Resources**

Potential impacts to biological resources would result from any changes in water management that would result from the Proposed Action. New construction is not associated with the Proposed Action although the implementation of water diversion projects may proceed more quickly than they would under No Action. Resources that could potentially be affected would include aquatic species in the Rio Chama and Rio Grande and in Heron, El Vado, and Abiquiu reservoirs, as well as other species associated with those rivers and reservoirs. It is important to note that regardless of which alternative is implemented, the SJCP contractors may choose or may never choose to implement a water delivery/use system.

If the Proposed Action is implemented, future water development projects may proceed at a faster rate once contracts are executed. If water development projects proceed more quickly, then any potential impacts to biological resources associated with those kinds of projects would be accelerated. Potential impacts to riparian areas and fish and wildlife resources could occur sooner than they would under No Action. The types of resources that could be affected include vegetation that is removed or disturbed and aquatic species affected directly by in-river construction or through diversion operations. As communities grow, there would likely be more direct

diversion projects, water treatment plants or plant expansions, and more pipelines constructed. There would be potential impacts to biological resources due to construction and operation of facilities.

If the No Action alternative is selected, then there would be no change from the current condition and existing trends. The remaining 2,990 AF would continue to be allocated, but uncontracted, water currently identified for Native American water rights settlements and or use.

To address supplemental water needs for endangered species, Reclamation would continue to seek to acquire SJCP water leases from willing contractors. The availability of SJCP water for Reclamation's supplemental water program is expected to decrease over time.

### Threatened and Endangered Species

This section contains information and Reclamation's effect determination intended to serve the requirements under the provisions of Section 7 of the Endangered Species Act regarding consultation with the U.S. Fish and Wildlife Service on potential effects to federally-listed species. Several threatened and endangered species occur in or along the Rio Grande and/or Chama. These include the Rio Grande silvery minnow (*Hybognathus amarus*) and the Southwestern willow flycatcher (*Empidonax traillii extimus*). In assessing potential impacts of the Proposed Action on endangered species, it was determined that the following factors should be considered: (1) flow changes in the Rio Chama and/or Rio Grande; (2) changes in Heron, El Vado, and Abiquiu reservoirs; and (3) new construction and/or new water diversions. As discussed above, potential impacts to biological resources due to implementation of the Proposed Action could be an acceleration of potential impacts to riparian areas and fish and wildlife resources. Implementation of the Proposed Action would not permit or authorize any new construction or any new water diversion. Water development will continue under either alternative, but it is expected that financing will be easier to obtain and therefore planning and construction of water development projects may precede at a faster rate once contracts are executed.

With implementation of the Proposed Action, flow changes in the Rio Chama and Rio Grande would be minimal. If flows increase, they will not be detectable or measurable. This undetectable increase would not affect the silvery minnow or the flycatcher. Likewise it would not improve habitat for any of these species. Changes in water storage in Heron Reservoir would not change significantly as this water has been leased and released previously as part of the supplemental water program. If this water is stored in El Vado or Abiquiu, then there would be an increase in those reservoirs. Fluctuations in reservoir elevations or surface acres would not be detectable or measurable. Any undetectable change in water storage would not affect silvery minnow or the flycatcher. Since the Proposed Action causes an important administrative change and very little, if any, actual change on-the-ground, Reclamation has determined that the contracts will not affect endangered species or their habitats.

### **3.4 Socioeconomic Considerations**

If the Proposed Action is implemented it would fulfill the Settlement Agreement and the affected settlement parties would see their water supplies as being more secure and the financing of water projects may be facilitated. So, it is possible that water development and use by the settlement

parties may continue at a faster rate than would occur under No Action. There may be a slight benefit to economic development attributable to implementation of the Proposed Action. There certainly would be a positive social impact if a needed water supply project moves forward more quickly.

If the No Action alternative is selected, the remaining 2,990 AF would continue to be allocated, but uncontracted, water currently identified for Native American water rights settlements and or use. Social and economic change would be expected to continue its course.

### **3.5 Cultural Resources**

Cultural resources could potentially be affected if river flows change, reservoir levels change, or if the level of construction activities would increase as a result of the Proposed Action. If the Proposed Action is implemented, then repayment contracts would be in place but there would be no on-the-ground activity attributable to the repayment contracts. There would be no detectable change in river flows or reservoir levels outside the range of normal operations. If water development projects proceed more quickly, then any potential impacts to cultural resources associated with those kinds of projects would be accelerated. The construction of diversion facilities, pipelines and water treatment plants could affect cultural resources. However, the Proposed Action does not authorize or permit any new construction activities. If a contractor chooses to pursue a water development project, environmental review would be required and potential site specific effects to cultural resources would be identified at that time.

If the No Action alternative is selected, then the water would remain uncontracted. Water use and water development would continue at its current trend. As time goes by, there would likely be construction of additional direct diversion projects, water treatment plants or plant expansions, and more pipelines. There would be potential impacts to cultural resources due to construction of facilities. However, this alternative does not authorize or permit any new construction activities. If a contractor chooses to pursue a water development project, environmental review would be required and potential site specific effects to cultural resources would be identified at that time.

### **3.6 Environmental Justice**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)*, directs federal agencies (as well as State agencies receiving federal funds) to assess the effects of their actions on minority and/or low-income populations within their region of influence. The order requires agencies to develop strategies to identify and address any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and/or low-income populations.

The U.S. Environmental Protection Agency (EPA) published the *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (1998)*, which indicates that a minority population exists when either:

- The minority population of the affected area is greater than fifty percent of the affected area's general population, or

- The minority population percentage of the affected area is meaningfully greater than the population percentage in the general population or other appropriate unit of geographic analysis.

An environmental justice screening analysis must determine whether any significant impacts of the Proposed Action (if any) would disproportionately adversely affect local low-income and/or minority populations. If a disproportionate impact is determined, mitigation measures must be implemented to reduce the adversity of the impact to a less-than-significant level. According to the federal guidelines, the environmental justice screening analysis assesses whether “the potentially affected community includes minority and/or low income populations.” The guidelines indicate that a minority population exists when the minority population is 50 percent or more of the affected area’s total population. The 50 percent threshold is also used to determine the presence of low-income populations in the study area.

For the purposes of this analysis, the affected area is considered to be Taos County, New Mexico. The three settlement parties are all located in this county. Table 2, below, shows the 2000 US Census minority and poverty data for each of the settlement parties.

**Table 2. Minority and Poverty Data for Settlement Parties (Taos County)** (Wikipedia, the free encyclopedia for Pueblo data and the ZipSkinny for Taos/El Prado)

<u>Jurisdiction</u>	<u>Percent White</u>	<u>Percent Native American</u>	<u>Percent Hispanic/Latino</u>	<u>Percent of Individuals in Poverty</u>
Town of Taos	35.3	13	48.40	22
El Prado	46.4	3	48.0	20.2
Pueblo of Taos	2.9%	95.02	4.11	31.6

If any impacts were to result from the Proposed Action, there is a potential that they could disproportionately affect minority populations in these jurisdictions.

The purpose of Executive Order 12898 is to ensure that federal agencies identify and address disproportionately high and adverse human health or environmental effects of federal projects on minority and low-income populations. The other impact analyses performed for the Proposed Action conclude that no significant impacts would occur as a result of the contracts. As this is a settlement for Indian water rights and the Pueblo of Taos would directly benefit from the 2,215 AF of water to be delivered it is determined no population, including populations defined as low-income or minority would be disproportionately impacted by the Proposed Action (other than positive).

Under the No Action alternative, there would likely be a negative impact to the settlement parties as the water would not be delivered and available to the populations for their beneficial use. There would be potential environmental justice impacts due to continued lack of water.

### 3.7 Indian Trust Assets

Indian trust assets (ITAs) are legal interests in property held in trust by the United States for Indian tribes or individuals. “Legal interest” means there is a property interest for which a legal remedy, such as compensation or injunction, may be obtained if there is improper interference.

For example, ITAs include land, minerals, hunting and fishing rights, and water rights. A characteristic of an ITA is that it cannot be sold, leased, or otherwise alienated without the United States' approval. Reclamation's Indian trust policy was stated in a July 2, 1993, memorandum from Reclamation's Commissioner. The policy statement is: "Reclamation will carry out its activities in a manner which protects trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation."

ITAs are identified primarily through consultations with federally recognized Indian tribes on a government-to-government basis (Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments).

Reclamation identified Indian water rights as an ITA that could be potentially affected by the Proposed Action. As part of its trust responsibility and effort to identify potential effects of the proposed project on trust resources and tribal cultural resources, Reclamation requested government-to-government consultation with Indian tribes (see Attachment 2.) Indian water rights are an ITA of concern and the settlement will satisfy the rights of Taos Pueblo consistent with the Federal trust responsibility.

The Proposed Action would execute three repayment contracts by Reclamation pursuant to the Settlement Act. The Proposed Action is not expected to interfere with the quantity or quality of surface or ground water supplies available.

If the No Action alternative is selected, then the status quo continues. There would be no activity resulting in effects to ITAs. Presumably, there would continue to be unmet tribal water needs, as well as efforts to acquire SJCP water for tribes.

### **3.8 Cumulative Effects**

NEPA defines cumulative effects as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions" (42 U.S.C. 4331-4335). Cumulative environmental impacts associated with the following projects have been evaluated for the following projects relative to the Proposed Action.

The City of Albuquerque (now ABCWUA) has developed its Drinking Water Project and consumes its allocation of SJCP water (48,200 af). Construction for ABCWUA water diversion project was completed in 2008. The City of Española is also considering direct use of its 1,000 af allocation and Los Alamos County is considering direct use of its 1,200 af allocation. With implementation of these M&I water projects, there would be less SJCP water available for other allowable uses. Currently, Reclamation seeks to lease water from SJCP contractors for temporary use in its supplemental water program to benefit threatened and endangered species. There are also water needs by tribes that remain unfulfilled. Even if the M&I diversion projects are delayed or are not constructed, the contractors plan to fully utilize their allotments to offset groundwater pumping effects or as leases to third parties as M&I demand continues to increase. The trend of decreased availability of SJCP water for use as supplemental water occurs

regardless of whether the No Action or the Proposed Action alternative is selected. In either case, Reclamation and other entities will seek and may acquire supplemental water from other sources in the future. Thus, the quantity of supplemental water that may be available in the future could fluctuate as it has since 1996, or it could decrease or increase substantially.

Fifteen entities have repayment contracts with Reclamation for the use of SJCP water. Some of these entities may be willing to temporarily lease back to Reclamation some of this contracted water for use in the Program. Reclamation would enter into lease-back agreements with such willing SJCP project contractors. Reclamation would exchange the leased SJCP water with the MRGCD for native Rio Grande flows. The SJCP water leased each year by Reclamation would be used beneficially in New Mexico for irrigation, while native waters would augment stream flow and would benefit the silvery minnow.

Reclamation is not proposing to take any actions that would involve reallocating contracted water or exceeding the firm yield of the SJCP. Reclamation will obtain all permits required for implementation and will conduct required consultation with appropriate parties.

The current 2003 Middle Rio Grande Water and River Maintenance Biological Opinion (BiOp) covers Reclamations actions associated with the operation of Heron Reservoir and Dam under the SJCP and also the lease and use of SJCP water as supplemental water as described above. Reclamation is currently involved in a new ESA, Section 7, consultation that, in part, analyzes the impacts of declining supplies of supplemental water on endangered species. The new BiOp is anticipated to be in place by March 2013 prior to the expiration of the 2003 BiOp.

**Summary Comparison of Impacts of Alternatives**

Affected Resource	No Action	Proposed Action
Water	There would be no change from the current condition with existing trends. Contractors are expected to gradually grow and consume more water. Surface water development projects for City of Santa Fe, County of Santa Fe, and City of Española of SJCP water are currently being planned and additional projects could be proposed in the future. This could introduce minor amounts of additional surface water into the Rio Chama and Rio Grande and reduce ground water withdrawals by a minor amount.	Fulfillment of the Taos Settlement Agreement would ensure water supplies as being more secure and the financing of water project may be facilitated.
Biological Resources	There would be no change from the current conditions with existing trends. As communities grow, there would likely be more direct diversion projects, water treatment plants or plant expansions, and more pipelines constructed. There would be potential impacts to biological resources due to construction and operation of facilities. Riparian areas and fish and wildlife resources could be affected.	If water development projects proceed more quickly, then any potential impacts to biological resources associated with those kinds of projects would be accelerated. There would potentially be very small percentage increase of flow in Rio Chama and Rio Grande and minute changes in reservoir storage in Heron, El Vado, and Abiquiu reservoirs. Reclamation would receive first right of refusal to use available water, which could provide beneficial impacts for threatened and endangered species under the supplemental water program. This first right of refusal to use available water option is currently under negotiation with the Pueblo of Taos.
Socioeconomic Considerations	No change from current condition with existing trends. Water may be viewed as a less secure source for settlement parties and their communities.	Fulfillment of the Taos Settlement Agreement would ensure water supplies as being more secure and the financing of water project may be facilitated. Any economic development implications may be realized sooner than under No Action.
Cultural Resources	There would be no change from the current conditions with existing trends. As noted above, there would likely be a trend of more direct diversion projects, water treatment plants or plant expansions, and more pipelines constructed. There would be potential impacts to cultural resources due to construction of facilities but this alternative does not authorize or permit any new project.	If water development projects proceed more quickly, then any potential impacts to cultural resources associated with those kinds of projects would be accelerated. Fulfillment of the Taos Settlement Agreement would ensure water supplies as being more secure and the financing of water project may be facilitated.
Environmental Justice	No disproportionately high and adverse human health or environmental effects on minority and low-income populations.	No disproportionately high and adverse human health or environmental effects on minority and low-income populations. Positive effect for the Pueblo and smaller communities which depend on agriculture.
Indian Trust Assets	No Indian trust assets have been identified that could potentially be affected by No Action.	There exist important present and future water needs by tribes and Reclamation is active in Native American water rights settlements.
Cumulative Effects	Other water needs in the basin such as for Indian tribes, endangered species, agriculture, and other M&I uses may not be fully satisfied.	Fulfillment of the Taos Settlement Agreement would ensure water supplies as being more secure and the financing of water project may be facilitated.

## **Chapter 4. Consultation & Coordination**

### **4.1 Public Involvement**

Public input is requested during scoping and during review of the Draft EA. In addition, Reclamation solicits input from agencies and tribal governments. Notice of the proposed contract actions will be published in the Federal Register.

### **4.2 Scoping Process**

The draft EA was sent to the three entities (settlement parties) for review. Comments/review were completed by the settlement parties, Reclamation published a news ad in three local papers as to the availability of the draft EA and web link. A 30-day review is given before the document is finalized. The current NEPA just covers the signing of the three repayment contracts.

### **4.3 Tribal Consultation**

Reclamation consults with Native American Tribes as part of its trust responsibility and seeks an exchange of information regarding potential project effects to Indian trust assets, sacred sites, other cultural or biological resources, tribal health and safety, or other aspects of cultural heritage. Formal requests for government-to-government consultations (Attachment 2) were sent to the following sovereigns: Pueblo of Isleta, Hopi, Kiowa, Jicarilla Apache Nation, Navajo Nation, Pueblo of Picuris, Pueblo of Ohkay Owingeh (previously San Juan), and Bureau of Indian Affairs, Albuquerque, NM.

### **4.4 Agency Coordination, Consultation and Cooperating Agencies**

Interested Parties letters were sent to ABCWUA, Service, Corps, MRGCD, New Mexico SHPO, Colorado Water Conservation Board and Administration Section, and to BLM. Letters were sent to each entity, the Pueblo of Taos, Town of Taos and the El Prado Water and Sanitation District inviting them to become cooperating agencies, all accepted (see Attachment 3).

### **4.5 Draft EA Comment Process**

This Draft EA is being distributed for 30-day public review and comment. The Draft EA is available for public review on the Albuquerque Area Office Reclamation website: <http://www.usbr.gov/uc/albuq/index.html>. This notice of availability of the draft EA is published in local news papers and hard copies of the document are available upon request.

## **Chapter 5. Environmental Commitments**

The following environmental commitments will apply if the Proposed Action is selected and implemented:

1. When available for Reclamation’s use, the subject SJCP water would be leased and used for environmental purposes to help sustain the Rio Grande silvery minnow, as described above.
2. Reclamation will continue to seek and manage supplemental water from all available sources for the benefit of the Rio Grande silvery minnow.
3. Reclamation will continue its strong role in Native American water rights settlements.

## **Chapter 6. List of Preparers**

<b>Name</b>	<b>Agency/Organization</b>	<b>Degree</b>	<b>Project Role</b>
Marsha Carra	Bureau of Reclamation	B.S., Anthropology, Geography	Environmental Protection Specialist-NEPA
Nancy Purdy	Bureau of Reclamation	B.A., Economics	Contracts & Repayment Specialist
Hector Garcia	Bureau of Reclamation	M.A., Anthropology Biology	Environmental Protection Specialist-NEPA/ESA

## **Chapter 7. References**

US Bureau of Reclamation (Reclamation), 2001. San Juan-Chama Water Contracts with Pueblo of San Juan Environmental Assessment. October 2001. Prepared by US Bureau of Reclamation. Available at: <http://www.usbr.gov/uc/albuq/library>

US Bureau of Reclamation (Reclamation), 2006. San Juan-Chama Water Contracts Amendments with City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, village of Taos ski Valley, Village of Los Lunas, and City of Espanola Environmental Assessment. May 2006. Prepared by US Bureau of Reclamation. Available at: <http://www.usbr.gov/uc/albuq/library>

US Bureau of Reclamation (Reclamation) 2001. Biological Assessment for the San Juan-Chama Water Contract with Pueblo of San Juan. August 2001. Prepared by US Bureau of Reclamation. Available at: <http://www.usbr.gov/uc/albuq/library>

**Attachment 1**

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(B) any funds made available to carry out the activities authorized in this title from other authorized sources.

**SEC. 416. ANTIDEFICIENCY.**

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this title (including any such obligation or activity under the Settlement Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111-11 or the “Emergency Fund for Indian Safety and Health” established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

Taos Pueblo  
Indian Water  
Rights  
Settlement Act.

**TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS**

**SEC. 501. SHORT TITLE.**

This title may be cited as the “Taos Pueblo Indian Water Rights Settlement Act”.

**SEC. 502. PURPOSES.**

The purposes of this title are—

(1) to approve, ratify, and confirm the Taos Pueblo Indian Water Rights Settlement Agreement;

(2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and this title; and

(3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and this title.

**SEC. 503. DEFINITIONS.**

In this title:

(1) **ELIGIBLE NON-PUEBLO ENTITIES.**—The term “Eligible Non-Pueblo Entities” means the Town of Taos, the El Prado Water and Sanitation District, and the New Mexico Department of Finance and Administration Local Government Division on behalf of 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 Mutual Domestic Water Consumers Association, the Upper Arroyo Hondo Mutual Domestic Water Consumers Association, and the Llano Quemado Mutual Domestic Water Consumers Association.

(2) **ENFORCEMENT DATE.**—The term “Enforcement Date” means the date upon which the Secretary publishes the notice required by section 509(f)(1).

(3) **MUTUAL-BENEFIT PROJECTS.**—The term “Mutual-Benefit Projects” means the projects described and identified in articles 6 and 10.1 of the Settlement Agreement.

(4) **PARTIAL FINAL DECREE.**—The term “Partial Final Decree” means the Decree entered in *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S. 6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated), 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 the Settlement Agreement as Attachment 5.

(5) **PARTIES.**—The term “Parties” means the Parties to the Settlement Agreement, as identified in article 1 of the Settlement Agreement.

(6) **PUEBLO.**—The term “Pueblo” means the Taos Pueblo, a sovereign Indian tribe duly recognized by the United States of America.

(7) **PUEBLO LANDS.**—The term “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 to the Settlement Agreement.

(8) **SAN JUAN-CHAMA PROJECT.**—The term “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).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(10) **SETTLEMENT AGREEMENT.**—The term “Settlement Agreement” means the contract dated March 31, 2006, between and among—

(A) the United States, acting solely in its capacity as trustee for Taos Pueblo;

(B) the Taos Pueblo, on its own behalf;

(C) the State of New Mexico;

(D) the Taos Valley Acequia Association and its 55 member ditches;

(E) the Town of Taos;

(F) the El Prado Water and Sanitation District; and

(G) the 12 Taos area Mutual Domestic Water Consumers Associations, as amended to conform with this title.

(11) **STATE ENGINEER.**—The term “State Engineer” means the New Mexico State Engineer.

(12) **TAOS VALLEY.**—The term “Taos Valley” means the geographic area depicted in Attachment 4 of the Settlement Agreement.

**SEC. 504. PUEBLO RIGHTS.**

(a) **IN GENERAL.**—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.

(b) **SUBSEQUENT ACT OF CONGRESS.**—The Pueblo shall not be denied all or any part of its rights held in trust absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

**SEC. 505. TAOS PUEBLO WATER DEVELOPMENT FUND.**

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Taos Pueblo Water Development Fund” (referred to in this section as the “Fund”) to be used to pay or reimburse costs incurred by the Pueblo for—

(1) acquiring water rights;

(2) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;

(3) restoring, preserving and protecting the Buffalo Pasture, including planning, permitting, designing, engineering, constructing, operating, managing and replacing the Buffalo Pasture Recharge Project;

(4) administering the Pueblo's water rights acquisition program and water management and administration system; and

(5) 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 the Settlement Agreement.

(b) **MANAGEMENT OF FUND.**—The Secretary shall 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.

(c) **INVESTMENT OF FUND.**—Upon the Enforcement Date, the Secretary shall invest amounts in the Fund in accordance with—

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

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

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

(d) **AVAILABILITY OF AMOUNTS FROM FUND.**—Upon the Enforcement Date, all monies deposited in the Fund pursuant to section 509(c)(1) or made available from other authorized sources shall be available to the Pueblo for expenditure or withdrawal after the requirements of subsection (e) have been met.

(e) **EXPENDITURES AND WITHDRAWAL.**—

(1) **TRIBAL MANAGEMENT PLAN.**—

(A) **IN GENERAL.**—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.

(B) **REQUIREMENTS.**—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 subsection (a).

(2) **ENFORCEMENT.**—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 subsection (a).

(3) **LIABILITY.**—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.

(4) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Pueblo shall submit to the Secretary for approval an expenditure plan for any portions of the funds made available under this title that the Pueblo does not withdraw under paragraph (1)(A).

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(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this title.

(5) ANNUAL REPORT.—The Pueblo shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) AMOUNTS AVAILABLE ON APPROPRIATION.—Notwithstanding subsection (d), \$15,000,000 of the monies deposited in the Fund—

(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 the 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 subsection (a), or costs related to the negotiation, authorization, and implementation of the 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

(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 paragraph (1) for which the monies will be used after a cost-effectiveness determination by the Secretary has been made as described in paragraph (1). The Secretary shall make the determination described in paragraph (1) within a reasonable period of time after receipt of the notice and resolution.

Notice.

Determination.

(g) NO PER CAPITA DISTRIBUTIONS.—No portion of the Fund shall be distributed on a per capita basis to members of the Pueblo.

**SEC. 506. MARKETING.**

(a) PUEBLO WATER RIGHTS.—Subject to the approval of the Secretary in accordance with subsection (e), the Pueblo may market water rights secured to it under the Settlement Agreement and Partial Final Decree, provided that such marketing is in accordance with this section.

(b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-CHAMA PROJECT WATER.—Subject to the approval of the Secretary in accordance with subsection (e), the Pueblo may subcontract water made available to the Pueblo under the contract authorized under section 508(b)(1)(A) 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 section.

(c) LIMITATION.—

(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.

(2) EFFECT ON WATER RIGHTS.—Such diversion or use off Pueblo lands under paragraph (1) shall not impair water rights or increase surface water depletions within the Taos Valley.

(d) MAXIMUM TERM.—

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

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

(e) 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 acre-feet per year with a term of less than 7 years, including all renewals.

(f) 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.

(g) NO PREEMPTION.—

(1) IN GENERAL.—The approval authority of the Secretary provided under subsection (e) 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.

(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 the Settlement Agreement.

(h) NO PREJUDICE.—Nothing in this title 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.

**SEC. 507. MUTUAL-BENEFIT PROJECTS.**

(a) IN GENERAL.—Upon the Enforcement Date, the Secretary, acting through the Commissioner of Reclamation, shall provide financial assistance in the form of grants on a nonreimbursable basis to Eligible Non-Pueblo Entities to plan, permit, design, engineer, and construct the Mutual-Benefit Projects in accordance with the Settlement Agreement—

(1) to minimize adverse impacts on the Pueblo's water resources by moving future non-Indian ground water pumping away from the Pueblo's Buffalo Pasture; and

(2) to implement the resolution of a dispute over the allocation of certain surface water flows between the Pueblo and non-Indian irrigation water right owners in the community of Arroyo Seco Arriba.

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(b) COST-SHARING.—

(1) FEDERAL SHARE.—The Federal share of the total cost of planning, designing, and constructing the Mutual-Benefit Projects authorized in subsection (a) shall be 75 percent and shall be nonreimbursable.

(2) NON-FEDERAL SHARE.—The non-Federal share of the total cost of planning, designing, and constructing the Mutual-Benefit Projects shall be 25 percent and may be in the form of in-kind contributions, including the contribution of any valuable asset or service that the Secretary determines would substantially contribute to completing the Mutual-Benefit Projects.

(3) ADDITIONAL STATE CONTRIBUTION.—As a condition of expenditure by the Secretary of the funds made available under section 509(c)(2), the State shall—

(A) appropriate and make available the non-Federal share described in paragraph (2); and

(B) agree to provide additional funding associated with the Mutual-Benefit Projects as described in paragraph 10 of the Settlement Agreement.

SEC. 508. SAN JUAN-CHAMA PROJECT CONTRACTS.

(a) IN GENERAL.—Contracts issued under this section shall be in accordance with this title and the Settlement Agreement.

(b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT WATER.—

(1) IN GENERAL.—The Secretary shall enter into 3 repayment contracts within a reasonable period after the date of enactment of this Act, for the delivery of San Juan-Chama Project water in the following amounts:

(A) 2,215 acre-feet/annum to the Pueblo.

(B) 366 acre-feet/annum to the Town of Taos.

(C) 40 acre-feet/annum to the El Prado Water and Sanitation District.

(2) REQUIREMENTS.—Each such contract shall provide that if the conditions precedent set forth in section 509(f)(2) have not been fulfilled by March 31, 2017, the contract shall expire on that date.

Deadline.  
Expiration date.

(3) APPLICABLE LAW.—Public Law 87-483 (76 Stat. 97) applies to the contracts entered into under paragraph (1) and no preference shall be applied as a result of section 504(a) with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.

(c) WAIVER.—With respect to the contract authorized and required by subsection (b)(1)(A) and notwithstanding the provisions of Public Law 87-483 (76 Stat. 96) or any other provision of law—

(1) the Secretary shall waive the entirety of the Pueblo's share of the construction costs, both principal and the interest, for the San Juan-Chama Project and pursuant to that waiver, the Pueblo's share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest shall be nonreimbursable; and

(2) the Secretary's waiver of the Pueblo's share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall

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be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior.

**SEC. 509. AUTHORIZATIONS, RATIFICATIONS, CONFIRMATIONS, AND CONDITIONS PRECEDENT.**

**(a) RATIFICATION.—**

**(1) IN GENERAL.—**Except to the extent that any provision of the Settlement Agreement conflicts with any provision of this title, the Settlement Agreement is authorized, ratified, and confirmed.

**(2) AMENDMENTS.—**To the extent amendments are executed to make the Settlement Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

**(b) EXECUTION OF SETTLEMENT AGREEMENT.—**To the extent that the Settlement Agreement does not conflict with this title, the Secretary shall execute the Settlement Agreement, including all exhibits to the Settlement Agreement requiring the signature of the Secretary and any amendments necessary to make the Settlement Agreement consistent with this title, after the Pueblo has executed the Settlement Agreement and any such amendments.

**(c) FUNDING.—**

**(1) TAOS PUEBLO WATER DEVELOPMENT FUND.—**

**(A) MANDATORY APPROPRIATION.—**Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary for deposit in the Taos Pueblo Water Development Fund established by section 505(a), for the period of fiscal years 2011 through 2016, \$50,000,000, as adjusted by such amounts as may be required due to increases since April 1, 2007, in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

**(B) AUTHORIZATION OF APPROPRIATIONS.—**In addition to the amount made available under subparagraph (A), there is authorized to be appropriated to the Secretary for deposit in the Taos Pueblo Water Development Fund established by section 505(a) \$38,000,000, as adjusted by such amounts as may be required due to increases since April 1, 2007, in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved, for the period of fiscal years 2011 through 2016.

**(2) MUTUAL-BENEFIT PROJECTS FUNDING.—**

**(A) FUNDING.—**

**(i) MANDATORY APPROPRIATION.—**Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to provide grants pursuant to section 507 \$16,000,000 for the period of fiscal years 2011 through 2016.

**(ii) AUTHORIZATION OF APPROPRIATIONS.—**In addition to the amount made available under clause (i), there is authorized to be appropriated to the Secretary to provide grants pursuant to section 507 \$20,000,000 for the period of fiscal years 2011 through 2016.

**(B) DEPOSIT IN FUND.—**The Secretary shall deposit the funds made available pursuant to subparagraph (A) into a noninterest-bearing fund, to be known as the "Taos

PUBLIC LAW 111-291—DEC. 8, 2010

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Settlement Fund”, to be established in the Treasury of the United States so that such funds may be made available on the Enforcement Date as set forth in section 507(a).

(3) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under paragraphs (1)(A) and (2)(A)(i), without further appropriation, to remain available until expended.

(d) AUTHORITY OF SECRETARY.—The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Agreement and this title.

Contracts.

(e) ENVIRONMENTAL COMPLIANCE.—

(1) EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.—The Secretary’s execution of the Settlement Agreement shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In carrying out this title, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(f) CONDITIONS PRECEDENT AND SECRETARIAL FINDING.—

(1) IN GENERAL.—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register a statement of finding that the conditions have been fulfilled.

Federal Register, publication.

(2) CONDITIONS.—The conditions precedent referred to in paragraph (1) are the following:

(A) The President has signed into law the Taos Pueblo Indian Water Rights Settlement Act.

(B) To the extent that the Settlement Agreement conflicts with this title, the Settlement Agreement has been revised to conform with this title.

(C) The Settlement Agreement, so revised, including waivers and releases pursuant to section 510, has been executed by the Parties and the Secretary prior to the Parties’ motion for entry of the Partial Final Decree.

(D) Congress has fully appropriated or the Secretary has provided from other authorized sources all funds made available under paragraphs (1) and (2) of subsection (c).

(E) The Legislature of the State of New Mexico has fully appropriated the funds for the State contributions as specified in the Settlement Agreement, and those funds have been deposited in appropriate accounts.

New Mexico.

(F) The State of New Mexico has enacted legislation that amends NMSA 1978, section 72-6-3 to state that a water use due under a water right secured to the Pueblo under the Settlement Agreement or the Partial Final Decree may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require that said amendment state that any State law based water rights acquired by the

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Publication.  
Notice.

Pueblo or by the United States on behalf of the Pueblo may be leased for said term.

(G) A Partial Final Decree that sets forth the water rights and contract rights to water to which the Pueblo is entitled under the Settlement Agreement and this title and that substantially conforms to the Settlement Agreement and Attachment 5 thereto has been approved by the Court and has become final and nonappealable.

(g) ENFORCEMENT DATE.—The Settlement Agreement shall become enforceable, and the waivers and releases executed pursuant to section 510 and the limited waiver of sovereign immunity set forth in section 511(a) shall become effective, as of the date that the Secretary publishes the notice required by subsection (f)(1).

(h) EXPIRATION DATE.—

(1) IN GENERAL.—If all of the conditions precedent described in section (f)(2) have not been fulfilled by March 31, 2017, the Settlement Agreement shall be null and void, the waivers and releases executed pursuant to section 510 and the sovereign immunity waivers in section 511(a) shall not become effective, and any unexpended Federal funds, together with any income earned thereon, and title to any property acquired or constructed with expended Federal funds, shall be returned to the Federal Government, unless otherwise agreed to by the Parties in writing and approved by Congress.

(2) EXCEPTION.—Notwithstanding subsection (h)(1) or any other provision of law, except as provided in subsection (i), title to any property acquired or constructed with expended Federal funds made available under section 505(f) shall be retained by the Pueblo.

(i) RIGHT TO SET-OFF.—If the conditions precedent described in subsection (f)(2) have not been fulfilled by March 31, 2017, and the Settlement Agreement is null and void under subsection (h)(1)—

(1) the United States shall be entitled to set off any Federal funds made available under section 505(f) that were used for purposes other than the purchase of water rights against any claim of the Pueblo against the United States described in section 510(b) (but excluding any claim retained under section 510(c)); and

(2) the Pueblo shall have the option either—

(A) to accept an equitable credit for any water rights acquired with funds made available under section 505(f) against any water rights secured for the Pueblo by the Pueblo, or by the United States on behalf of the Pueblo, in any litigation or future settlement of the case styled *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated); or

(B) to convey to the United States any water rights acquired with funds made available under section 505(f).

(j) EXTENSION.—The dates in subsections (h) and (i) and section 510(e) may be extended if the Parties agree that an extension is reasonably necessary.

**SEC. 510. WAIVERS AND RELEASES OF CLAIMS.**

(a) CLAIMS BY THE PUEBLO AND THE UNITED STATES.—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 the Settlement Agreement and this title, the Pueblo, on behalf of itself and its members, and the United States acting in its capacity as trustee for the Pueblo are authorized to execute a waiver and release of claims against the parties to *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated) from—

(1) all claims for water rights in the Taos Valley that the Pueblo, or the United States acting in its capacity as trustee for the Pueblo, asserted, or could have asserted, in any proceeding, including but not limited to in *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated), up to and including the Enforcement Date, except to the extent that such rights are recognized in the Settlement Agreement or this title;

(2) all claims for water rights, whether for consumptive or nonconsumptive use, in the Rio Grande mainstream or its tributaries that the Pueblo, or the United States acting in its capacity as trustee for the Pueblo, asserted or could assert in any water rights adjudication proceedings except those claims based on Pueblo or United States ownership of lands or water rights acquired after the Enforcement Date, provided that nothing in this paragraph shall prevent the Pueblo or the United States from fully participating in the inter se phase of any such water rights adjudication proceedings;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking) in the Rio Grande mainstream or its tributaries or for lands within the Taos Valley that accrued at any time up to and including the Enforcement Date; and

(4) all claims against the State of New Mexico, its agencies, or employees relating to the negotiation or the adoption of the Settlement Agreement.

(b) CLAIMS BY THE PUEBLO AGAINST THE UNITED STATES.—The Pueblo, on behalf of itself and its members, is authorized to execute a waiver and release of—

(1) all claims against the United States, its agencies, or employees relating to claims for water rights in or water of the Taos Valley that the United States acting in its capacity as trustee for the Pueblo asserted, or could have asserted, in any proceeding, including but not limited to in *New Mexico v. Abeyta and New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated);

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including but not limited to damages, losses or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion or taking of water or water rights, or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) in the Rio Grande mainstream or its tributaries or within the Taos

Valley that first accrued at any time up to and including the Enforcement Date;

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by the Act of March 4, 1929 (45 Stat. 1562), the Act of March 4, 1931 (46 Stat. 1552), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of this Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblo's water rights in *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated); and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Final Decree, or this title.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Pueblo on behalf of itself and its members and the United States acting in its capacity as trustee for the Pueblo retain—

(1) all claims for enforcement of the Settlement Agreement, the Final Decree, including the Partial Final Decree, the San Juan-Chama Project contract between the Pueblo and the United States, or this title;

(2) all claims against persons other than the Parties to the Settlement Agreement for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water rights (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) within the Taos Valley arising out of activities occurring outside the Taos Valley or the Taos Valley Stream System;

(3) all rights to use and protect water rights acquired after the date of enactment of this Act;

(4) all rights to use and protect water rights acquired pursuant to State law, to the extent not inconsistent with the Partial Final Decree and the Settlement Agreement (including water rights for the land the Pueblo owns in Questa, New Mexico);

(5) all claims relating to activities affecting the quality of water including but not limited to any claims the Pueblo might have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including but not limited to claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations implementing those Acts;

(6) all claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including but not limited to hunting, fishing, gathering, or cultural rights); and

PUBLIC LAW 111-291—DEC. 8, 2010

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(7) all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to this title and the Settlement Agreement.

(d) EFFECT.—Nothing in the Settlement Agreement or this title—

(1) affects the ability of the United States 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;

(2) affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee;

(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

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

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the earlier of—

(A) March 31, 2017; or

(B) the Enforcement Date.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) LIMITATION.—Nothing in this subsection precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

**SEC. 511. INTERPRETATION AND ENFORCEMENT.**

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—Upon and after the Enforcement Date, if any Party to the Settlement Agreement brings an action in any court of competent jurisdiction over the subject matter relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, and names the United States or the Pueblo as a party, then the United States, the Pueblo, or both may be added as a party to any such action, and any claim by the United States or the Pueblo to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement, and no waiver of sovereign immunity is made for any action against the United States or the Pueblo that seeks money damages.

(b) SUBJECT MATTER JURISDICTION NOT AFFECTED.—Nothing in this title shall be deemed as conferring, restricting, enlarging, or determining the subject matter jurisdiction of any court,

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PUBLIC LAW 111–291—DEC. 8, 2010

including the jurisdiction of the court that enters the Partial Final Decree adjudicating the Pueblo's water rights.

(c) REGULATORY AUTHORITY NOT AFFECTED.—Nothing in this title 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.

**SEC. 512. DISCLAIMER.**

Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of any other Indian tribe.

**SEC. 513. ANTIDEFICIENCY.**

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under this title (including any such obligation or activity under the Agreement) if adequate appropriations are not provided expressly to carry out the purposes of this title by Congress or there are not enough monies available to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111–11 or the “Emergency Fund for Indian Safety and Health” established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

Aamodt  
Litigation  
Settlement Act.

**TITLE VI—AAMODT LITIGATION  
SETTLEMENT**

**SEC. 601. SHORT TITLE.**

This title may be cited as the “Aamodt Litigation Settlement Act”.

**SEC. 602. DEFINITIONS.**

In this title:

(1) AAMODT CASE.—The term “Aamodt Case” means the civil action entitled State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

(2) ACRE-FEET.—The term “acre-feet” means acre-feet of water per year.

(3) AUTHORITY.—The term “Authority” means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.

(4) CITY.—The term “City” means the city of Santa Fe, New Mexico.

(5) COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.—The term “Cost-Sharing and System Integration Agreement” means the agreement, dated August 27, 2009, to be executed by the United States, the State, the Pueblos, the County, and the City that—

**Attachment 2  
Correspondence Related to Tribal Scoping Comments  
and Government-to-Government Consultation**

APR 08 2011

ALB-186  
ENV-1.10

Honorable Richard Mermejo  
Governor, Pueblo of Picuris  
P.O. Box 127  
Penasco, NM 87553

Subject: Consultation Invitation Regarding the Bureau of Reclamation's Execution of  
Three Repayment Contracts for the Taos Pueblo Indian Water Rights Settlement  
(Settlement Act)

Dear Governor Mermejo:

Reclamation is preparing an Environmental Assessment (EA) for the execution of three repayment contracts by Reclamation pursuant to the Settlement Act. The Settlement Act was signed into law in December 2010 as part of the Claims Resolution Act of 2010. The Settlement Act directs Reclamation to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) of San Juan-Chama Project (SJCP) water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Department of Interior to execute the Taos Pueblo Indian Water Rights Settlement Agreement dated March 31, 2006 (Settlement Agreement), and to enter into these repayment contracts.

Repayment contracts provide for the repayment by the water user of the construction costs allocable to the water provided under the terms of the contract. The Settlement Act provides that the construction costs allocable to the Taos Pueblo's water allocation shall be non-reimbursable, but the Taos Pueblos will incur an annual percentage of the operation, maintenance and replacement costs.

The purpose of this letter is to invite your pueblo's involvement on a government-to-government basis to identify any concerns your pueblo may have regarding the potential effects of our future activities on trust assets, cultural and biological resources, or tribal health and safety. Reclamation wants to ensure that you have an opportunity to help us identify and address any issues important to your pueblo.

Reclamation will gladly provide any additional information needed by you or your staff to describe the EA in further detail. To discuss the EA or arrange a meeting, please contact Ms. Marsha Carra, Environmental Protection Specialist, at 505-462-3602.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

Identical Letters sent to:

Mr. Bill Walker  
Acting Regional Director  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567

Mr. Dewey Tsonetokoy  
Kiowa NAGPRA Representative  
P.O. Box 369  
Carnegie, OK 73015

Mr. Leigh Kuwanwisiwma  
Director  
Hopi Tribe Cultural Preservation Office  
P.O. Box 123  
Kykotsmovi, AZ 86039

President Levi Pesata  
Jicarilla Apache Tribal Council  
P.O. Box 507  
Dulce, NM 87528

Honorable Donnie Tofpi  
Chairman, Kiowa Business Committee  
P.O. Box 369  
Carnegie, OK 72015

Honorable Joe Shirley  
President, Navajo Nation  
P.O. Box 9000/Navajo Tribal Hill  
Window Rock, AZ 86515

Honorable Earl Salazar  
Governor, Ohkay Owingeh  
P.O. Box 1099  
San Juan Pueblo, NM 87566

Honorable Robert Benavides  
Governor, Pueblo of Isleta  
P.O. Box 1270  
Isleta, NM 87022

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ALB-186  
ENV-1.10

Ms. Jennifer Gimbel  
Director  
Colorado Water Conservation  
Board & Administration Section  
1313 Sherman St. Room 721  
Denver, CO 80203

Subject: Scoping Notice Regarding the Bureau of Reclamation's Execution of Three  
Repayment Contracts for the Taos Pueblo Indian Water Rights Settlement  
(Settlement Act)

Dear Ms. Gimbel:

Reclamation is preparing an Environmental Assessment (EA) for the execution of three repayment contracts by Reclamation pursuant to the Settlement Act. The Settlement Act was signed into law in December 2010 as part of the Claims Resolution Act of 2010. The Settlement Act directs Reclamation to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) of San Juan-Chama Project (SJCP) water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Department of Interior to execute the Settlement Act Agreement dated March 31, 2006 (Settlement Agreement), and to enter into these repayment contracts.

Repayment contracts provide for the repayment by the water user of the construction costs allocable to the water provided under the terms of the contract. The Settlement Act provides that the construction costs allocable to the Taos Pueblo's water allocation shall be non-reimbursable, but the Taos Pueblos will incur an annual percentage of the operation, maintenance and replacement costs.

Scoping, as defined in the Council on Environmental Quality regulations for the National Environmental Policy Act is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." This scoping period is meant to provide interested members of the public, Native American tribes, local governments, and organizations an opportunity to comment on the proposed projects and to obtain information that will focus the EA on important issues.

A

The scoping process helps us to identify the following:

- The important issues, resource concerns, and possible impacts to be addressed in the EA;
- Eliminated from further study those issues that are not important, or that have been addressed by prior environmental review;
- Existing information sources;
- Other environmental review, permits, and consultation requirements; and
- Alternatives to be evaluated in the EA.

Reclamation will gladly provide any additional information needed by you or your staff to describe the EA in further detail. To discuss the EA or arrange a meeting, please contact Ms. Marsha Carra, Environmental Protection Specialist, at 505-462-3602.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

cc: Ms. Jan V. Biella  
NM State Historic Preservation Officer  
Department of Cultural Affairs  
Historic Preservation Division  
Bataan Memorial Building  
407 Galisteo Street, Suite 236  
Santa Fe, NM 87501

Ms. Deanna Cummings  
US Army of Corps of Engineers  
Albuquerque District Office  
4101 Jefferson Plaza NE, Room 313  
Albuquerque, NM 87109-3435

Mr. Rolf Schmidt-Petersen  
Rio Grande Basin Bureau Chief  
New Mexico Interstate Stream Commission  
5550 San Antonio Dr. NE  
Albuquerque, NM 87109

Mr. John Stomp  
Albuquerque Bernalillo County  
Water Utility Authority  
P.O. Box 1293  
Albuquerque, NM 87103-1293

Ms. Linda Rundell  
State Director  
Bureau of Land Management  
P.O. Box 27115  
Santa Fe, NM 87502-0115

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**Ad Cost:** \$ 37.80  
**Tax @ 7.0000%:** \$ 2.65  
**Tax @ 7.4375%:** \$  
**Tax @ 8.1875%:** \$  
**Total:** \$ 40.45

Ad Copy:

**Draft Environmental Assessment and Finding of No Significant Impact for the San Juan-Chama Project Repayment Contracts, Taos Pueblo Indian Water Rights Settlement**

The United States Bureau of Reclamation has prepared a draft environmental assessment for the execution of three repayment contracts pursuant to the Taos Pueblo Indian Water Rights Settlement Act. Reclamation proposes to contract with the Taos Pueblo for an allocation of 2,215 acre-feet of San Juan-Chama Project water, with the town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District for 40 acre-feet of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to execute the Settlement Act by entering into these repayment contracts.

Reclamation has prepared a DEA for the contracts under the Settlement Act pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality implementing regulations (40 CFR 1500). Based on the analysis presented in the DEA, Reclamation has determined there will be no significant adverse impacts associated with the proposed project. Reclamation makes this preliminary "Finding of No Significant Impact" pursuant to the above referenced law and regulations. Reclamation has also determined the

**\* \* \* Proof \* \* \***

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proposed action does not constitute a major federal action which would significantly affect the human environment. Therefore, no environmental impact statement will be prepared. Reclamation plans to finalize the DEA and FONSI in 30 days, on November 21, 2011.

For further information, contact Marsha Carra at Reclamation's Albuquerque Area Office, (505) 462-3602 or e-mail mcarra@usbr.gov.  
Journal: October 21, 2011

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BUREAU OF RECLAMATION  
COUNTY OFFICE  
RECEIVED

**AFFIDAVIT OF PUBLICATION**

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Legal No. 12,414  
Draft Environmental  
Assessment and  
Finding of No  
Significant Impact  
for the San  
Juan-Chama Project  
Repayment  
Contracts, Taos  
Pueblo Indian Water  
Rights Settlement

The United States Bureau of Reclamation has prepared a draft environmental assessment for the execution of three repayment contracts pursuant to the Taos Pueblo Indian Water Rights Settlement Act. Reclamation proposes to contract with the Taos Pueblo for an allocation of 2,215 acre-feet of San Juan-Chama Project water, with the town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District for 40 acre-feet of SJCP water. The facilities also provide substantial flood control, recreation, and fish and wildlife benefits. Visit our website at www.usbr.gov

(Legal No. 12,414; Pub. Oct. 20, 2011).

STATE OF NEW MEXICO } SS.  
County of Taos

I, Linda Lewis being first duly sworn, declare and say that I am the Customer Service Supervisor of the TAOS NEWS, a weekly newspaper, published in the English language, and having a general circulation in the City and County of Taos, State of New Mexico, and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 of the Session Laws of 1987; that the publication, a copy of which is hereby attached, was published in said paper for 1 insertions and on Thursday of each week in the regular issue of the paper during the time of publication, and that the notice was published in the newspaper proper and not in any supplement, for 1 insertions the first publication being on the 20th day of October 2011, and the last publication being on the 20th day of October 2011; that payment for said advertisement has been (duly made) or (assessed as court costs); that the undersigned has personal knowledge of the matters and things set forth in this affidavit.

PUBLISHER'S BILL

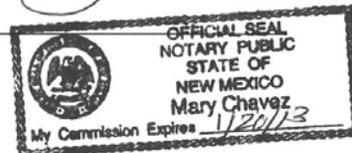
1 lines 1 times at \$ 86.91  
Sub-Total \$ 86.91  
Tax \$ 7.12  
Total \$ 94.03

[Signature]  
Customer Service Supervisor

SUBSCRIBED AND SWORN to before me this 20th day of October, A. D. 2011

Received Payment  
[Signature]  
By 10/17/11

[Signature] Notary Public  
My Commission expires  
January 20, 2013



SEP. 16. 2011 3:36PM PUEBLO OF TAOS

NO. 7177 P. 2



P.O. Box 1846 Taos, New Mexico 87571 Governor's Office Ph: (505) 758-9593 Fax: (505) 758-4604

September 16, 2011

*Via Facsimile (505) 462-3783 and Email*

Mr. Mike A. Hamman, Area Manager  
U.S. Dept. of the Interior  
Bureau of Reclamation  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque N.M. 87102-2352

**Re: Taos Pueblo Cooperating Agency Comments on August 2011 "Draft Environmental Assessment San Juan- Chama Project Repayment Contracts Taos Pueblo Indian Water Rights Settlement Act"**

Dear Mr. Hamman:

As a cooperating agency, we are pleased to submit comments on the Draft Environmental Assessment San Juan-Chama Project Repayment Contracts Taos Pueblo Indian Water Rights Settlement Act, and look forward to continuing to work with you toward our mutual goal of executing Taos Pueblo's contract before year-end.

Sincerely,

Governor Nelson J. Cordova  
Taos Pueblo

War Chief Edwin Concha  
Taos Pueblo

cc: Ernesto Luhan, Tribal Council Secretary, Taos Pueblo  
Luis Romero, Lt. Governor, Taos Pueblo  
Antonio K. Mondragon, Tribal Secretary, Taos Pueblo  
Curtis Sandoval, Lt. War Chief, Taos Pueblo  
Benito M. Concha, War Chief Secretary, Taos Pueblo  
Gilbert Suazo, Sr., Water Resources Specialist, Taos Pueblo  
John E. Peterson, Abeyta Federal Negotiation Team Chair, Bureau of Reclamation  
Bradley S. Bridgewater, Indian Resources Section, U.S. Department of Justice

SEP. 16. 2011 3:36PM PUEBLO OF TAOS

NO. 7177 P. 3

Mr. Mike A. Hamman  
September 16, 2011  
Page 2

Sue Umshler, Office of the Regional Solicitor, Department of the Interior  
Chris Banet, Trust Resources and Protection Manager, Bureau of Indian Affairs,  
Southwest Regional Office  
Marsha F. Carra, Bureau of Reclamation  
Joshua S. Mann, Bureau of Reclamation  
Chris Rich, Solicitor's Office, Bureau of Reclamation, Upper Colorado Region  
Michael Loring, Bureau of Reclamation, Upper Colorado Region  
Susan G. Jordan, Nordhaus Law Firm, LLP

SEP. 16. 2011 3:36PM

PUEBLO OF TAOS

NO. 7177 P. 4

**Taos Pueblo Cooperating Agency Comments on  
August 2011 "Draft Environmental Assessment San Juan- Chama Project  
Repayment Contracts Taos Pueblo Indian Water Rights Settlement Act"  
September 16, 2011**

Taos Pueblo appreciates the opportunity to submit these comments in its capacity as a Cooperating Agency on the Environmental Assessment (EA). If Reclamation does not agree with any of these comments, we ask that you consult with the Pueblo expeditiously on a government-to-government basis to resolve the comment prior to the release of the Draft EA for public comment.

**Page 1, Section 1.2, Purpose of and Need for Action:**

1. In the first paragraph, "tributaries the Rio Grande" should read "tributaries to the Rio Grande".
2. In the second paragraph, the sentence stating "Because SJCP water is the State of New Mexico's allocation of Colorado River Water under the Colorado River Compact, the Secretary of the Interior and the State of New Mexico cooperate in allocating SJCP water" should be deleted. Taos Pueblo questions this statement, particularly in the context of the Congressional directive to the Secretary of the Interior to issue the contracts here. Further, the sentence is unnecessary for this EA.

**Page 2, Section 1.3, Background:**

3. Delete the paragraph stating "SJCP water is imported to the Rio Grande Basin from the Colorado River to satisfy the State of New Mexico's entitlement of Colorado River Water . . . . Delivery of New Mexico's Colorado River Compact entitlement . . . ." See explanation in comment 2 above.

**Page 3, Chapter 2, Proposed Action & Alternatives:**

4. The unnumbered "Proposed Action" and "No Action Alternative" sections on page 3 should be incorporated into the sections with the same titles numbered 2.1 and 2.2, respectively, on page 4.
5. The map entitled "Location of proposed action" is unclear. Some explanation in the text and labeling of the red areas is needed. More substantively, this map seems to omit part of the downstream potentially impacted area discussed in Chapter 3 of the EA, and should be corrected to be consistent with the text in Chapter 3.
6. In the last sentence under "No Action Alternative" which reads "This alternative was eliminated and infeasible due to the Settlement Act" insert "and would be contrary to Congress' direction in the Act requiring the Secretary to issue the contracts" at the end of the sentence.

SEP. 16. 2011 3:36PM

PUEBLO OF TAOS

NO. 7177 P. 5

**Page 4, Section 3.2, Water:**

7. In the second sentence of the first paragraph of the subsection entitled "SJCP Municipal Water Uses," delete "to the MRG valley."
8. In the second paragraph of the same subsection, the references to "the seven contractors" is inconsistent with the actual number of contractors shown in Table 1 on page 2.

**Page 5, Section 3.2, Biological Resources:**

9. In the paragraph beginning, "During 1982-2000," the references to "the seven municipalities" needs correction or clarification. See comment 8 above.
10. In the paragraph beginning, "Water of the seven contractors," the reference to "seven" needs to be corrected. See comment 8 above.
11. References to "municipalities" throughout this page is not entirely accurate and should be changed to "contractors." For example, one of the tribal contractors, Ohkay Owingeh, is in a location that would allow it to directly divert SJCP water.
12. In the first sentence of the last paragraph on page 5, beginning "If the Proposed Action is implemented," the phrase "prior to the settlement becoming final and enforceable" should be deleted. The fact that the contracts will be issued before the settlement becomes final and enforceable is not relevant to the point being made in this paragraph.

**Page 13, Section 3.2, Biological Resources:**

13. The second to last sentence of the first paragraph on Page 13 refers to return flow "credit." This sentence should be reworded to use the actual language of the proposed contract.
14. The second to last sentence of the first paragraph on Page 13 states that the settlement parties have the right to subcontract with the approval of the "contracting officer." For the Pueblo, at least, this should be changed to state with the approval of the "Secretary," the term used in the Settlement Act. This approval authority presumably will be delegated, though not necessarily to the contracting officer.
15. The last sentence of the first paragraph on Page 13 states: "Reclamation may exercise its right of refusal under the repayment contract on leases by the settlement parties to obtain the available water each year for the supplemental water program." This is not true of Taos Pueblo's contract and must be a drafting mistake in the EA. The Pueblo's right to subcontract was negotiated with the federal

SEP. 16. 2011 3:36PM

PUEBLO OF TAOS

NO. 7177 P. 6

Administration and expressly authorized by Congress in the Settlement Act. The Act contains no condition of the Pueblo's right to subcontract on granting Reclamation a right of refusal. We do not believe that Reclamation intends to attempt to insert such a right into the Pueblo's SJCP contract, as doing so would violate Congress' plain intent for the Pueblo to have the right to market its water subject only to the Settlement Agreement and the approval requirements stated in the Act.

16. The subsection heading "Supplemental Water Program" should be in the same format (bold, not underlined) as the "SJCP Municipal Water Uses" on page 5. Numbering these subsections 3.2.1 and 3.2.2, respectively, would be helpful.

17. The term Supplemental Water Program should be briefly defined and explained.

18. The Supplemental Water Program subsection appears to be excerpted from an environmental compliance document for that Program, and consequently it confusingly reads as though the Supplemental Water Program is part of the Proposed Action here. The text should be revised to describe the Program (see comment 17 above). For example, the sentence "Reclamation will enter into lease-back agreements with such willing SJCP contractors" should read "Under the existing Supplemental Water Program, Reclamation enters into lease-back agreements with such willing SJCP contractors."

19. In the first sentence of the first paragraph under "San Juan-Chama Leases," the statement that "Fifteen entities have repayment or water service contracts with Reclamation for use of SJCP water" appears to be incorrect since the water service contracts have been converted to repayment contracts.

20. Section 3.2 does not contain any discussion of potential impacts on waters of the Taos Valley and the Rio Grande downstream to the confluence with the Chama or water rights owners. Although no adverse impacts on these waters or water rights owners are anticipated, and therefore no such impacts need to be discussed in the EA, it may be prudent to explain in the EA how the potential for such impacts was considered.

**Page 14, Section 3.3, Biological Resources:**

21. The first paragraph uses the term "direct diversion project" which is not familiar to all readers. This term should be explained in the text as a project that would divert the SJCP contractor's allocation of SJCP water, or a portion of it, directly from the Rio Chama or the Rio Grande downstream from its confluence with the Rio Chama. It should be noted that this is an unlikely scenario for Taos Pueblo and the other two contractors here because we are located far upstream in the Taos Valley. Since there is a possibility that Taos Pueblo could, for example, subcontract water to another entity that has the ability to make a direct diversion, the paragraph so clarified should remain in the EA.

SEP. 16. 2011 3:37PM PUEBLO OF TAOS

NO. 7177 P. 7

22. Section 3.3 does not contain any discussion of potential impacts on biological resources of the Taos Valley or the Rio Grande downstream to the confluence with the Rio Chama. Although no such adverse impacts are anticipated, and therefore no such impacts need to be discussed in the EA, it may be prudent to explain in the EA how the potential for such impacts was considered.

**Page 17, Section 3.7, Indian Trust Assets:**

23. The first sentence of section 3.7 contains a statement about the United States' trust responsibility that appears to inadvertently overlook the fact that the United States has a trust responsibility to Indian Pueblos, including Taos Pueblo, regardless of the fact that they are not treaty tribes or reservation tribes. The sentence is unnecessary to this section and should be deleted. The next sentence should start: "The United States' trust responsibility to Indian tribes requires ...."

**Page 20, Table entitled Summary Comparison of Impacts of Alternatives:**

24. Biological Resources under Proposed Action: Delete the sentence "Reclamation would receive first right of refusal ...." See comment 15 above.

25. Environmental Justice under Proposed Action: "Pueblos" should read "Pueblo".

26. Indian Trust Assets under Proposed Action: the second sentence, "Potentially foreclosing a speculative future opportunity to reallocate water supply to Indian tribes is not an adverse effect to Indian water rights/trust applications," is unclear, is subject to different interpretations, and does not reflect the text of the Indian Trust Assets section. The sentence should be deleted.

**Unnumbered Page 21, Chapter 4:**

27. Strike the third sentence of the paragraph under section 4.2, which states: "When implementation of actual delivery system is foreseeable, a new EA or NEPA will be completed, currently this action appears to be more than 5 years out." This sentence must be from an EA for a different project. It does not make sense here, where construction of a delivery system is not contemplated.



United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

IN REPLY REFER TO:

ALB-186  
ENV-1.10

OCT 06 2011

Honorable Nelson J. Cordova  
Taos Pueblo  
P.O. Box 1846  
Taos, New Mexico 87571

Subject: Responses to Comments on San Juan-Chama Project Repayments Contracts Taos Pueblo Indian Water Rights Settlement Act Draft Environmental Assessment (EA), Taos Pueblo, Letter dated September 16, 2011

Dear Governor Cordova:

Thank you for your review and comment on the August 2011 San Juan-Chama Project Repayments Contracts Taos Pueblo Indian Water Rights Settlement Act Draft EA. Your thoughtful and specific comments, received September 16, 2011, are appreciated. Your letter sections and corresponding response are listed below.

**Page 1, Section 1.2, Purpose of and Need for Action:**

1. In the first paragraph, "tributaries the Rio Grande" should read "tributaries to the Rio Grande".

Response: Noted, changed in DEA as suggested.

2. In the second paragraph, the sentence stating "Because SJCP water is the State of New Mexico's allocation of Colorado River Water under the Colorado River Compact, the Secretary of the Interior and the State of New Mexico cooperate in allocating SJCP water" should be deleted. Taos Pueblo questions this statement, particularly in the context of the Congressional directive to the Secretary of the Interior to issue the contracts here. Further, the sentence is unnecessary for this EA.

Response: Noted. Sentence is explanatory to all SJCP contracts and has been left in the document.

**Page 2, Section 1.3, Background**

3. Delete the paragraph stating "SJCP water is imported to the Rio Grande Basin from the Colorado River to satisfy the State of New Mexico's entitlement of Colorado River Water.....Delivery of New Mexico's Colorado River Compact entitlement...." See explanation in comment 2 above.

Response: Noted, this further explains SJCP water and has been left in the document.

**Page 3, Chapter 2, Proposed Action and Alternatives:**

4. The unnumbered "Proposed Action" and "No Action Alternative" sections on page 3 should be incorporated into the sections with the same titles numbered 2.1 and 2.2, respectively, on page 4.

Response: Numbering has been corrected.

5. The map entitled "Location of proposed action" is unclear. Some explanation in the text and labeling of the red areas is needed. More substantively, this map seem to omit part of the downstream potentially impacted area discussed in Chapter 3 of the EA, and should be corrected to be consistent with the text in Chapter 3.

Response: Map has been deleted.

6. In the last sentence under "No Action Alternative" which reads "This alternative was eliminated and infeasible due to the Settlement Act" insert "and would be contrary to Congress' direction in the Act requiring the Secretary to issue the contract" at the end of the sentence.

Response: Noted, text has been added as requested.

**Page 4, Section 3.2, Water:**

7. In the second sentence of the first paragraph of the subsection entitled "SJCP Municipal Water Uses" delete "to the MRG valley."

Response: Noted, *to the MRG valley*, has been changed to New Mexico beneficiaries.

8. In the second paragraph of the same subsection, the reference to "the seven contractors is inconsistent with the actual number of contractor shown in Table 1 on page 2.

Response: Reference to "seven" contracts has been deleted, seven contractors are those reflected in figure 11 which has been deleted. Pages 5 and 6 have been reworded.

**Page 5, Section 3.2 Biological Resources:**

9. In the paragraph beginning "During 1982-2000," the reference to "the seven municipalities" needs correction or clarification. See comment 8 above.

Response: See Response to number 8 above.

10. In the paragraph beginning, "Water of the seven contractors," the reference to "seven" needs to be corrected. See comment 8 above.

Response: See Response to number 8 above.

11. Reference to “municipalities” throughout this page is not entirely accurate and should be change to “contractors.” For example, one of the tribal contractors, Ohkay Owingeh, is in a location that would allow it to directly divert SJC water.

Response: Reference has been removed and changed to contractors.

12. In the first sentence of the last paragraph on page 5, beginning “If the Proposed Action is implemented,” the phrase “prior to the settlement becoming final and enforceable” should be deleted. The fact that the contracts will be issued before the settlement becomes final and enforceable is not relevant to the point being made in this paragraph.

Response: Comment noted.

**Page 13, Section 3.2, Biological Resources:**

13. The second to lasts sentence of the first paragraph on Page 13 refers to return flow “credit.” This sentence should be reworded to use the actual language of the proposed contract.

Response: Noted, changed in the document to match the actual language.

14. The second to last sentence of the first paragraph on Page 13 states that the settlement parties have the right to subcontract with the approval of the “contracting officer.” For the pueblo, at least, this should be changed to state with the approval of the “Secretary,” the term used in the Settlement Act. This approval authority presumably will be delegated, though not necessarily to the contracting officer.

Response: Noted, text changed to include “Secretary.”

15. The last sentence of the first paragraph on Page 13 states: “Reclamation may exercise its right of refusal under the repayment contract on leases by the settlement parties to obtain the available water each year for the supplemental water program.” This is not true of Pueblo’s contract and must be a drafting mistake in the EA. The Pueblos’ right to subcontract was negotiated with the federal Administration and expressly authorized by Congress in the Settlement Act. The Act contains no condition of the Pueblo’s right to subcontract on granting Reclamation a right of refusal. We do not believe that Reclamation intends to attempt to insert such a right into the Pueblo’s SJCP contract, as doing so would violate Congress’ plain intent for the the Pueblo to have the right to market its water subject only to the Settlement Agreement and the approval requirements stated in the Act.

Response: Noted, this sentence was added to the paragraph in question: “ This option is currently under negotiation with the Pueblo of Taos.” This issue will be negotiated and resolved by the Pueblo and Reclamation, and the final EA and contract will contain the appropriate language and corrected at that time.

16. The subsection heading "Supplemental Water program: should be in the same format (bold, no underlined) as the "SJCP Municipal Water Uses: on page 5. Numbering these subsection 3.2.1 and 3.2.2, respectively, would be helpful.

Response: Noted. Corrected to reflect bold with no underline and numbered appropriately.

17. The term Supplemental Water Program should be briefly defined and explained.

Response: Noted, text added "The Supplemental Water Program consists of four (4) components: water acquisition and storage, concurrence with waiver requests, the pumping and conveyance of water from the Low Flow Conveyance Channel (LFCC) to the Rio Grande including the operation of an outfall near Escondida, and the implementation of water conservation practices by water contractors and municipal and industrial users." Reclamation uses this program to benefit Rio Grande Silvery Minnow.

18. The Supplemental Water Program subsection appears to be excerpted from an environmental compliance document for that program, and consequently it confusingly reads as though the Supplemental Water Program is part of the Proposed Action here. The text should be revised to describe the Program (see comment 17 above). For example, the sentence "Reclamation will enter into leaseback agreements with such willing SJCP contractors."

Response: Noted, text added to reflect as changed in response 17.

19. In the first sentence of the first paragraph under "San Juan-Chama Leases," the statement that "Fifteen entities have repayment or water service contract with Reclamation for the use of SJCP water" appears to be incorrect since the water service contracts have been converted to repayment contracts.

Response: Noted, changed to repayment.

20. Section 3.2 does not contain any discussion of potential impacts on waters of the Taos Valley and the Rio Grande downstream to the confluence with the Chama or water rights owners. Although no adverse impacts on these waters or water rights owners are anticipated, and therefore no such impacts need to be discussed in the EA, it may be prudent to explain in the EA how the potential for such impacts was considered.

Response: Subject EA is limited to evaluating the signing of the three contracts. As stated there should be no impact to other water rights in the area. Separate NEPA will be completed before Reclamation provides grants for the Mutual Benefits Projects.

**Page 14, Section 3.3, Biological Resources:**

21. The first paragraph uses the term "direct diversion project" which is not familiar to all readers. This term should be explained in the text as a project that would divert the SJCP contractor's allocation of SJCP water, or a portion of it, directly from the Rio Chama or the Rio Grande downstream from its confluence with the Rio Chama. It should be noted that this is an unlikely scenario for Taos Pueblo and the other two contractors here because we are located far upstream in the Taos Valley. Since

*there is a possibility that Taos Pueblo could, for example, subcontract water to another entity that has the ability to make a direct diversion, the paragraph so clarified should remain in the EA.*

Response: Noted, “direct diversion project” changed to read “a water delivery and use system.”

*22. Section 3.3 does not contain any discussion of potential impacts on biological resource of the Taos Valley or the Rio Grande downstream to the confluence with the Rio Chama. Although no such adverse impacts are anticipated, and therefore no such impacts need to be discussed in the EA, it may be prudent to explain in the EA how the potential for such impacts was considered.*

Response: Subject EA is limited to evaluating the signing of the three contracts. As stated there should be no impact to other water rights in the area. Separate NEPA will be completed before Reclamation provides grants for the Mutual Benefits Projects.

**Page 17, Section 3.7, Indian Trust Assets**

*23. The first sentence of section 3.7 contains a statement about the United States’ trust responsibility that appears to inadvertently overlook the fact that the United States has a trust responsibility to Indian Pueblos, including Taos Pueblo, regardless of the fact that they are not treaty tribes or reservation tribes. The sentence is unnecessary to this section and should be deleted. The next sentence should start “The United States’ trust responsibility to Indian tribes requires....”*

Response: Noted, text changed in EA.

**Page 20-, Table entitled Summary Comparison of Impacts Alternatives:**

*24. Biological Resources under Proposed Action: Delete the sentence “Reclamation would receive first right of refusal....” See comment 15 above.*

Response: Noted, this sentence was added to the paragraph in question: “ This option is currently under negotiation with the Pueblo of Taos.” This issue will be negotiated and resolved by the Pueblo and Reclamation, and the final EA and contract will contain the appropriate language and corrected at that time.

*25. Environmental Justice under Proposed Action: “Pueblos” should read “Pueblo”.*

Response: Noted, text changed in the EA

*26. Indian Trust Assets under Proposed Action: The second sentence, “Potentially foreclosing a speculative future opportunity to reallocate water supply to Indian tribes is not an adverse effect to Indian water rights/trust application.” is unclear, is subject to different interpretations, and does not reflect the test of the Indian Trust Assets section. The sentence should be deleted.*

Response: Noted, sentence deleted.

**Unnumbered Page 21, Chapter 4:**

27. *Strike the third sentence of the paragraph under section 4.2, which states: "When implementation of actual delivery system if foreseeable, a new EA or NEPA will be completed, currently this action appears to be more than 5 years out." This sentence must be from an EA for a different project. It does not make sense here, where construction of a delivery system is not contemplated.*

Response: Title V, Section 505 refers to the Taos Pueblo Water Development Fund; (2) which references "planning, permitting, designing, engineering, constructing replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;" This statement was the basis for subject sentence, although it is at the prerogative of the Pueblo and the other two contractors as to what work will actually be done. Language will stay as is in the EA.

Thank you again for your EA comments. If you wish to discuss the responses, please contact Marsha Carra at [mcarra@usbr.gov](mailto:mcarra@usbr.gov), or 505-462-3602. Reclamation also would welcome the opportunity to discuss the project.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

bc: ALB-150, ALB-186, ALB-101

WBR:MCarra:kchapman:09/30/11:505-462-3602

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**Attachment 3**  
**Agency Correspondence**



IN REPLY REFER TO:

ALB-186  
ENV-7.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

**FEB 25 2011**

Honorable Nelson J. Cordova  
Governor, Pueblo of Taos  
P.O. Box 1846  
Taos, NM 87571

Subject: Invitation to Participate as Cooperating Agencies on the San Juan-Chama Project  
(SJCP) Repayment Contract, Taos Pueblo Indian Water Rights Settlement  
Environmental Assessment (EA)

Dear Governor Cordova:

The Bureau of Reclamation invites the Pueblo of Taos to participate as a cooperating agency in the preparation of an EA concerning the execution of three repayment contracts by Reclamation pursuant to the Taos Pueblo Indian Water Rights Settlement Act (Settlement Act). The Settlement Act directs Reclamation to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) SJCP water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to enter into these repayment contracts.

The purpose of this letter is to invite your tribe's involvement on a government-to-government basis to identify any concerns your tribe may have regarding the potential effects of our future activities on trust assets, cultural and biological resources, or health and safety. Reclamation wants to ensure that you have an opportunity to help us identify and address any issues important to your tribe.

As a cooperating agency, Reclamation anticipates that your involvement would include providing background information, assisting with alternatives development, identifying potential effects of the alternatives from your tribe's perspective, participating in meetings, and reviewing the EA in draft and final form.

Thank you for your consideration. If you have any questions about the project, please contact Ms. Marsha Carra at Reclamation, telephone 505-462-3602, for additional information. Please provide a written response to this request by March 11, 2011, to indicate your interest in becoming a cooperating agency and your agency representative during this process.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

MAR. 14. 2011 10:37AM

PUEBLO OF TAOS

NO. 6402 P. 2

**TAOS**



**PUEBLO**

**Governor's Office**

P.O. BOX 1846 • TAOS, NEW MEXICO 87571 • (575) 758-9593 • FAX (575) 758-4604

March 14, 2011

Mr. Mike A. Hamman, Area Manager  
U.S. DOI – Bureau of Reclamation  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, N.M. 87102-2352

Dear Mr. Hamman:

We are in receipt of your letter of February 25, 2011 about the "Invitation to Participate as Cooperating Agencies on the San Juan Chama Project (SJCP) Repayment Contract, Taos Pueblo Water Rights Settlement Environmental Assessment (EA)."

As you know we have been looking forward to keep the SJCP Repayment Contract process moving so that the Pueblo can begin to benefit from the Project. We are pleased about the invitation to participate on a government-to-government basis in the EA process.

We will participate in the EA as a cooperating agency and will provide information needed as well as participate in meetings and in review of and comment on the draft and final EA.

Mr. Gilbert Suazo, Sr., who is coordinating the settlement implementation activities spoke with Ms. Marsha Carra, today, March 14, 2011, and informed her that this letter would be forthcoming. Mr. Suazo will be the point of contact and if you have any questions, please call him at 575-758-8626, Extension 122.

Sincerely,

A handwritten signature in black ink, appearing to be "N. Cordova". The signature is fluid and cursive, written over a horizontal line.

Governor Nelson J. Cordova  
Taos Pueblo

MAR. 14. 2011 10:37AM PUEBLO OF TAOS

NO. 6402 P. 3

Cc: John Peterson, Bureau of Reclamation  
Gilbert Suazo, Sr., Water Resources  
Susan Jordan, Attorney, Nordhaus Law Firm



IN REPLY REFER TO:

ALB-186  
ENV-7.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

**FEB 25 2011**

Ms. Joy Garcia  
Manager  
El Prado Water and Sanitation District  
P.O. Box 1110  
El Prado, NM 87529

Subject: Invitation to Participate as Cooperating Agencies on the San Juan-Chama Project (SJCP) Repayment Contract, Taos Pueblo Indian Water Rights Settlement Environmental Assessment (EA)

Dear Ms. Garcia:

The Bureau of Reclamation invites the El Prado Water and Sanitation District to participate as a cooperating agency in the preparation of an EA concerning the execution of three repayment contracts by Reclamation pursuant to the Taos Pueblo Indian Water Rights Settlement Act (Settlement Act). The Settlement Act directs Reclamation to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) SJCP water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to enter into these repayment contracts.

The purpose of this letter is to invite your agency involvement on a government-to-government basis to identify any concerns your agency may have regarding the potential effects of our future activities on trust assets, cultural and biological resources, or health and safety. Reclamation wants to ensure that you have an opportunity to help us identify and address any issues important to your agency.

As a cooperating agency, Reclamation anticipates that your involvement would include providing background information, assisting with alternatives development, identifying potential

effects of the alternatives from your agency perspective, participating in meetings, and reviewing the EA in draft and final form.

Thank you for your consideration. If you have any questions about the project, please contact Ms. Marsha Carra at Reclamation, telephone 505-462-3602, for additional information. Please provide a written response to this request by March 11, 2011, to indicate your interest in becoming a cooperating agency and your agency representative during this process.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

**Telesfor R. Gonzales, Chairman**  
**Cris J. Cisneros, Vice Chairman**  
**Elaine Trujillo, Secretary/Treasurer**  
**John S. Painter, Member**  
**Fernando Miera, Member**

**El Prado Water and Sanitation District**  
**P.O. Box 1110**  
**El Prado, NM 87529**

BUREAU OF RECLAMATION  
ALB. AREA OFFICE  
RECEIVED

2011 MAR 11 PM 4:22  
575-751-3333

March 9, 2011

Mr. Mike A. Hamman  
Area Manager  
United States Department of the Interior  
Bureau of Reclamation  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, New Mexico 87102-2352

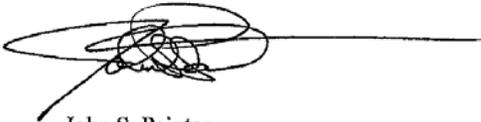
Subject: Invitation to Participate as Cooperating Agencies on the San Juan-Chama Project (SJCP) Repayment Contract, Taos Pueblo Indian Water Rights Settlement Environmental Assessment (EA)

Dear Mr. Hamman:

The El Prado Water and Sanitation District would be pleased to become a cooperating agency in the environmental assessment process concerning the three San Juan-Chama Project Contracts pursuant to the Taos Pueblo Indian Water Rights Settlement Act. I, John Painter, will be the agency representative during this process.

The District has waited a long time to see this whole process come to fruition and we look forward to working with you on this endeavor.

Sincerely,



John S. Painter  
Board Member



IN REPLY REFER TO:

ALB-186  
ENV-7.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

FEB 25 2011

Mayor Darren Cordova  
Town of Taos  
400 Camino Del Las Placita  
Taos, NM 87571

Subject: Invitation to Participate as Cooperating Agencies on the San Juan-Chama Project  
(SJCP) Repayment Contract, Taos Pueblo Indian Water Rights Settlement  
Environmental Assessment (EA)

Dear Mr. Cordova:

The Bureau of Reclamation invites the El Prado Water and Sanitation District to participate as a cooperating agency in the preparation of an EA concerning the execution of three repayment contracts by Reclamation pursuant to the Taos Pueblo Indian Water Rights Settlement Act (Settlement Act). The Settlement Act directs Reclamation to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) SJCP water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to enter into these repayment contracts.

The purpose of this letter is to invite your agency involvement on a government-to-government basis to identify any concerns your agency may have regarding the potential effects of our future activities on trust assets, cultural and biological resources, or health and safety. Reclamation wants to ensure that you have an opportunity to help us identify and address any issues important to your agency .

As a cooperating agency, Reclamation anticipates that your involvement would include providing background information, assisting with alternatives development, identifying potential effects of the alternatives from your agency perspective, participating in meetings, and reviewing the EA in draft and final form.

Thank you for your consideration. If you have any questions about the project, please contact Ms. Marsha Carra at Reclamation, telephone 505-462-3602, for additional information. Please provide a written response to this request by March 11, 2011, to indicate your interest in becoming a cooperating agency and your agency representative during this process.

Sincerely,

**MIKE A. HAMMAN**

Mike A. Hamman  
Area Manager

*Darren M. Cordova, Mayor*

*Councilmembers:  
Rudy C. Abeyta  
A. Eugene Sanchez  
Amy J. Quintana  
Michael A. Silva*

*Daniel R. Miera, Town Manager  
Abigail R. Adame, Assistant Town Manager*



**Taos Municipal Building  
400 Camino de la Placita  
Taos, New Mexico 87571  
(575) 751-2000  
Fax (575) 751-2026**

*Visit us on our Website at:  
[www.taosgov.com](http://www.taosgov.com)*

March 7, 2011

Mike A. Hamman  
Area Manager  
Bureau of Reclamation  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

RE: Invitation to Participate as Cooperating Agency on San Juan-Chama Project (SJCP) Repayment Contract, Taos Pueblo Indian Water Rights Settlement Environmental Assessment (EA) (ALB-185, ENV-7.00)

Dear Mr. Hamman:

This responds to your letter of February 25, 2011 on the above topic. The Town of Taos does wish to become a "cooperating agency" concerning the EA for the SJCP repayment contracts. The Town's representatives in this matter will be:

Abigail Adame  
Assistant Town Manager  
Phone: (575) 751-2002 or 751-2007

Allen R. Ferguson, Jr.  
Town Attorney  
Phone: (575) 751-2010 or 751-2012

The mailing address for both representatives appears in the letterhead above. The Town of Taos looks forward to cooperating with the Bureau of Reclamation and the other cooperating agencies in this important matter.

Sincerely,

  
Darren M. Cordova  
Mayor

Cc: Daniel Miera, Town Manager  
Abigail Adame, Assistant Town Manager  
Allen R. Ferguson, Jr., Town Attorney

**"La Ciudad de Don Fernando de Taos"  
Incorporated May 7, 1934**

MAR 10 2011

**U.S. Department of the Interior**

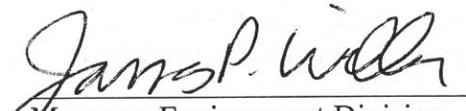
**BUREAU OF RECLAMATION**

**Albuquerque Area Office**

**Albuquerque, New Mexico**

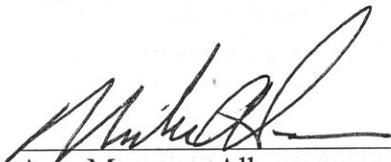
**Finding of No Significant Impact**

**San Juan-Chama Project Repayment Contracts Taos Pueblo Indian Water  
Rights Settlement Act Environmental Assessment**

  
\_\_\_\_\_  
Manager, Environment Division

11/29/11  
Date

Approved by:

  
\_\_\_\_\_  
Area Manager, Albuquerque, New Mexico

11/29/11  
Date

AAO-11-008  
FONSI Number

## **BACKGROUND**

The federal action addressed in the Environmental Assessment (EA) is the execution of three repayment contracts by the U.S. Bureau of Reclamation (Reclamation) pursuant to the Taos Pueblo Indian Water Rights Settlement Act (Settlement Act). Reclamation proposes to contract with the Taos Pueblo for an allocation of 2,215 acre-feet (AF) of San Juan-Chama Project (SJCP) water, with the Town of Taos for 366 AF of SJCP water, and with El Prado Water and Sanitation District (EPWSD) for 40 AF of SJCP water. The Settlement Act authorizes and directs the Secretary of the Interior to execute the Taos Pueblo Indian Water Rights Settlement Agreement (Settlement Agreement), and to enter into these repayment contracts.

Repayment contracts provide for the repayment by the water user of the construction costs allocable to the water provided under the terms of the contract. The Settlement Act provides that the construction costs allocable to the Taos Pueblo's water allocation shall be nonreimbursable. Each contracting entity will be required to pay annual operation and maintenance (O&M) costs allocable to its proportionate share of SJCP water.

## **SUMMARY OF THE PROPOSED ACTION**

Reclamation proposes to enter into repayment contracts to meet the requirements of the Settlement Act which authorizes the Secretary of the Interior to execute the Settlement Agreement, resolving the Taos Pueblo's water rights claims in the Rio Pueblo de Taos and Rio Hondo drainage systems, tributaries of the Rio Grande. The settlement will fulfill the rights of Taos Pueblo consistent with Federal trust responsibility.

## **ENVIRONMENTAL IMPACTS RELATED TO THE RESOURCES OF CONCERN**

The effects of the proposed action and reasons for a Finding of No Significant Impacts are addressed in detail in the EA and are summarized below.

Water Resources— The Proposed Action would execute three repayment contracts by Reclamation pursuant to the Settlement Act. The Proposed Action is not expected to interfere with the quantity or quality of surface or ground water supplies available.

Biological Resources— With implementation of the Proposed Action, flow changes in the Rio Chama and Rio Grande would be minimal. If flows increase, they will not be detectable or measurable. This undetectable increase would not affect the silvery minnow or the flycatcher. Likewise, it would not improve habitat for these species.

Socioeconomics— If the Proposed Action is implemented, it would fulfill the Settlement Agreement and the affected settlement parties would see their water supplies as being more secure, and the financing of projects may be facilitated.

Cultural Resources— If the Proposed Action is implemented, the repayment contracts would be in place but there would be no on-the-ground activities attributable to the repayment contracts. There would be no detectable change in river flows or reservoir levels outside the range of ongoing normal operations.

Environmental Justice— As this proposed action is a result of a settlement for Indian water rights lawsuits and the Taos Pueblo would directly benefit from the 2,215 AF of water to be delivered it is determined no population, including populations defined as low-income or minority would be disproportionately impacted by the Proposed Action (other than positive).

Indian Trust Assets—No Indian Trust Assets have been identified in the project area, and no Indian Trust Assets are believed to be affected. Reclamation provided tribes and pueblos with the draft EA and afforded them the opportunity to comment and enter into government-to-government consultation.

Cumulative Effects— Other water needs in the basin such as for Indian tribes, endangered species, agriculture, and other M&I uses may not be fully satisfied. Fulfillment of the Taos Settlement Agreement would ensure water supplies as being more secure and the financing of water project may be facilitated.

## **ENVIRONMENTAL COMMITMENTS**

The following environmental commitments will apply if the Proposed Action is selected and implemented:

1. When available for Reclamation’s use, the subject SJCP water would be leased and used for environmental purposes to help sustain the Rio Grande silvery minnow, as described above.
2. Reclamation will continue to seek and manage supplemental water from all available sources for the benefit of the silvery minnow.
3. Reclamation will continue its strong role in Native American water rights settlements.

## **COORDINATION**

Agencies and other entities contacted formally or informally to coordinate efforts in preparation of this EA include: ABCWUA, Service, Corps, MRGCD, New Mexico SHPO, Colorado Water Conservation Board and Administration Section, BLM, the Pueblo of Taos, Town of Taos, El Prado Water and Sanitation District, Pueblo of Isleta, Hopi, Kiowa, Jicarilla Apache Nation, Navajo Nation, Pueblo of Picuris, Pueblo of Ohkay Owingeh (previously San Juan), and Bureau of Indian Affairs, Albuquerque, NM.

## **CONCLUSION**

Based on the analysis performed in the environmental assessment, no significant adverse impacts to the natural or human environment will result from implementation of the project. This Finding of No Significant Impact (FONSI) has been determined pursuant to the NEPA (42 U.S.C. 4321et seq.). It has been determined that the proposed action does not constitute a major federal action that would significantly affect the human environment. Therefore, an environmental impact statement will not be prepared for this project.