

Comparative Print: Changes in Existing Law for Bill number:

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Summary

- (1) 2 amendments.
- (2) 0 automated notifications.

Current Law(s) being amended

[1. Aamodt Litigation Settlement Act](#)

Comparative Print: Changes in Existing Law

1. Aamodt Litigation Settlement Act

[As Amended Through P.L. 117–342, Enacted January 5, 2023]

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TITLE VI—AAMODT LITIGATION SETTLEMENT

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Subtitle **B**—Pojoaque Basin Indian Water Rights Settlement

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Sec. **623**. CONDITIONS PRECEDENT AND ENFORCEMENT DATE.

(a) Conditions Precedent.—

(1) **In general.**— Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register by September 15, 2017, a statement of findings that the conditions have been fulfilled.

(2) **Requirements.**— The conditions precedent referred to in paragraph (1) are the conditions that—

(A) to the extent that the Settlement Agreement conflicts with this subtitle, the Settlement Agreement has been revised to conform with this subtitle;

(B) the Settlement Agreement, so revised, including waivers and releases pursuant to section 624, has been executed by the appropriate parties and the Secretary;

(C) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized by section 617, with the exception of subsection (a) (1) of that section;

(D) the Secretary has acquired and entered into appropriate contracts for the water rights described in section 613(a);

(E) for purposes of section 613(a), permits have been issued by the New Mexico State Engineer to the Regional Water Authority to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of at least 2,381 acre-feet by the Pueblos as part of the water supply for the Regional Water System, subject to the conditions that—

(i) the permits shall be free of any condition that materially adversely affects the ability of the Pueblos or the Regional Water Authority to divert or use the Pueblo water supply described in section 613(a), including water rights acquired in addition to those described in section 613(a), in accordance with section 613(g); and

(ii) the Settlement Agreement shall establish the means to address any permit conditions to ensure the ability of the Pueblos to fully divert and consume at least 2,381 acre-feet as part of the water supply for the Regional Water System, including defining the conditions that will not constitute a material adverse affect;

(F) the State has enacted any necessary legislation and provided any funding that may be required under the Settlement Agreement;

(G) a partial final decree that sets forth the water rights and other rights to water to which the Pueblos are entitled under the Settlement Agreement and this subtitle and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico;

(H) a final decree that sets forth the water rights for all parties to the Aamodt Case and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico; and

(I) the waivers and releases described in section 624 have been executed.

(b) **Expiration Date.**— If all the conditions precedent described in subsection (a)(2) have not been fulfilled by September 15, 2017—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases described in the Settlement Agreement and section 624 shall not be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(c) **Enforcement Date.**— The Settlement Agreement shall become enforceable beginning on the date on which the United States District Court for the District of New Mexico enters a partial final decree pursuant to subsection (a)(2)(G) and an Interim Administrative Order consistent with the Settlement Agreement.

(d) **Effectiveness of Waivers.**— The waivers and releases executed pursuant to section 624 shall become effective as of the date that the Secretary publishes the notice required by subsection (a) (1).

(e) **Requirements for Determination of Substantial Completion of the Regional Water System.**—

(1) **Criteria for substantial completion of regional water system.**— Subject to the provisions of section 611(d) concerning the extent, size, and capacity of the County Distribution System, the Regional Water System shall be determined to be substantially completed if—

(A) the infrastructure has been constructed capable of—

(i) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos consistent with the Engineering Report (as amended by the 611(g) Agreement and the Operating Agreement); and

(ii) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System and consistent with the Engineering Report (as amended by the 611(g) Agreement and the Operating Agreement); or

(B) the Secretary—

(i) issues a notice to proceed authorizing the commencement of Phase I construction of the Regional Water System by December 31, 2019, and subsequently commences construction of the Regional Water System;

(ii) diligently proceeds to construct the Regional Water System in accordance with the Engineering Report (as amended by the 611(g) Agreement), on a schedule for completion by June 30, 2028;

(iii) expends all of the available funding provided to construct the Regional Water System under section 611(f)(1)(A), in the Cost-Sharing and System Integration Agreement, and in the 611(g) Agreement;

(iv) complies with the terms of the 611(g) Agreement; and

(v) despite diligent efforts cannot complete construction of the Regional Water System as described in the final Engineering Report (as amended by the 611(g) Agreement), due solely to the lack of additional authorized funding.

(2) **Consultation.**— On or after June 30, 2025, at the request of 1 or more of the Pueblos, the Secretary shall consult with the Pueblos and confer with the County and the State on whether the criteria in paragraph (1) for substantial completion of the Regional Water System have been met or will be met by June 30, 2028.

(3) **Written determination by secretary.**— Not earlier than June 30, 2025, at the request of 1 or more of the Pueblos and after the consultation required by paragraph (2), the Secretary shall—

(A) determine whether the Regional Water System has been substantially completed based on the criteria described in paragraph (1); and

(B) submit a written notice of the determination under subparagraph (A) to—

(i) the Pueblos;

(ii) the County; and

(iii) the State.

(4) **Right To Review.**—

(A) **In general.**— A determination by the Secretary under paragraph (3)(A) shall be considered to be a final agency action subject to judicial review by the Decree Court under sections 701 through 706 of title 5, United States Code.

(B) **Failure to make timely determination.**—

(i) **In general.**— If a Pueblo requests a written determination under paragraph (3) and the Secretary fails to make such a written determination by the date described in clause (ii), there shall be a rebuttable presumption that the failure constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of title 5, United States Code.

(ii) **Date.**— The date referred to in clause (i) is the date that is the later of—

(I) the date that is 180 days after the date of receipt by the Secretary of the request by the Pueblo; and

(II) June 30, 2027.

(C) **Effect of title.**— Nothing in this title gives any Pueblo or Settlement Party the right to judicial review of a determination of the Secretary regarding whether the Regional Water System has been substantially completed except under subchapter II of chapter 5,

and chapter 7, of title 5, United States Code (commonly known as the “**Administrative Procedure Act**”).

(5) Right to void final decree.—

(A) In general.— Not later than June 30, 2028, on a determination by the Secretary, after consultation with the Pueblos, that the Regional Water System is not substantially complete, 1 or more of the Pueblos, or the United States acting on behalf of a Pueblo, shall have the right to notify the Decree Court of the determination.

(B) Effect.— The Final Decree shall have no force or effect on a finding by the Decree Court that a Pueblo, or the United States acting on behalf of a Pueblo, has submitted proper notification under subparagraph (A).

(f) Voiding of Waivers.— If the Final Decree is void under subsection (e)(5)—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases executed pursuant to section 624 shall no longer be effective;

(3) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this title, together with any interest earned on those funds, any water rights or contracts to use water, and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this title shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress; and

(4) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (3), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized by this title that were expended or withdrawn, together with any interest accrued on those funds, against any claims against the United States—

(A) relating to water rights in the Pojoaque Basin asserted by any Pueblo that benefitted from the use of expended or withdrawn Federal funds; or

(B) in any future settlement of the Aamodt Case.

(g) Extension.—

(1) CONDITIONS PRECEDENT; EXPIRATION DATE.— *The dates*

The dates in subsections (a)(1) and (b) may be extended if the parties to the Cost-Sharing and System Integration Agreement agree that an extension is reasonably necessary.

(2) DETERMINATION OF SUBSTANTIAL COMPLETION.— *The dates in subsection (e) may be extended if the Pueblos, the United States (acting through the Secretary), the State, the City, and the County agree that an extension is reasonably necessary.*

Summary

(1) 2 amendments.

(2) 0 automated notifications.

About this report

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