

# Ohkay Owingeh Rio Chama Water Rights Settlement

*State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*, Case No. 69-cv-07941-KWR/KK (D.N.M.)

## **Local Settlement Agreement**

Effective Date, July 5, 2023

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B	Administrative Flow Rate Guidelines
C	Map of Rio Chama Bosque Restoration Project Area
D	Rio Chama Drainage Basin City of Española Well Setback Settlement Provisions

**TABLE OF ACRONYMS**

AFA	Acre-feet per acre
AFY	Acre-feet per year
CFS	Cubic feet per second
CIR	Consumptive Irrigation Requirement
FDR	Farm Delivery Requirement
PDR	Project Diversion Requirement
RCAA	Rio de Chama Acéquia Association
USGS	United States Geological Survey

## **ARTICLE 1: PARTIES TO THE SETTLEMENT AGREEMENT**

The parties to this Settlement Agreement (“Settlement Parties”) are the following:

- 1.1. **Ohkay Owingeh or Pueblo**, a federally recognized and sovereign Indian nation;
- 1.2. **State of New Mexico (“State”)**, or a duly authorized representative thereof;
- 1.3. **United States of America**, in its capacity as trustee for Ohkay Owingeh;
- 1.4. **Asociación de Acéquias Norteñas de Rio Arriba (“Acéquias Norteñas”)**, representing itself and its member acéquias: Acéquia de Los Brazos, La Puente Community Ditch, Ensenada Community Ditch, Parkview Community Ditch, El Brazito & Lateral Acéquia, Acéquia del Bordo, Acéquia del Llano, Acéquia del Brazito, Acéquia de la Otra Banda, Acéquia el Pinabetal (Canjilon), Acéquia de Pinavetal (Cebolla), Cebolla Acéquia Madre, Acéquia de Tierra Amarilla, Cañones Arriba Ditch #1, Barranco Community Ditch, M-B Community Ditch, Plaza Blanca Community Ditch, Acéquia del Porvenir, Village of Chama Community Ditch and Willow Creek Community Ditch; and each of which by signing this Settlement Agreement is a Settlement Party;
- 1.5. **Rio de Chama Acéquia Association (“RCAA”)**, representing itself and its member acéquias: Acéquia de los Salazares, Acéquia de Abeyta y Trujillo, Acéquia Valentin Martinez, Acéquia de la Puente, Acéquia de Tierra Azul, Acéquia de Jose Ferran, Acéquia de Jose Pablo Gonzales, Acéquia Mariano, Acéquia de Manzanares y Montoya, Acéquia de Quintana, Acéquia del Rio de Chama, Acéquia de Jose V. Martinez, Acéquia de los Gonzales, Acéquia de los Martinez, Acéquia de los Duranes, Acéquia de Chamita, Acéquia de Chili y la Cuchilla, Acéquia de Hernandez, Acéquia Barranco, Acéquia Suazo; and each of which by signing this Settlement Agreement is a Settlement Party;
- 1.6. **La Asociación de las Acéquias del Rio Vallecitos, Tusas y Ojo Caliente**, representing itself and its member acéquias: Acéquia Mesa de la Prieta, Acéquia del Gavilan, Acéquia de los Duranes, Ojo Caliente Ditch (Acéquia de los Gallegos), Gallegos-Jaramillo Ditch, Sanchez-Lucero-Trujillo Ditch, La Ladera Ditch, La Madera Ditch, Acéquia de La Cueva, Acéquia de la Otra Banda, El Vadito Ditch, Acéquia de los Anconces, East Vallecitos Ditch, West Vallecitos Ditch, La Cienega East Ditch, La Cienega West Ditch, Acéquia de Chacon y Asociados, Acéquia de la Zorra Norte, Tio Borrego, Acéquia de la Jarita, Acéquia Varnales aka Acéquia los Barriales, Acéquia de los Chavez, Acéquia de los Canovas, Acéquia del Molino, Velasquez-Romero Ditch, Manuel Griego Ditch, Las Tablas East, Las Tablas West, West Tusas Ditch, G.R. Sewell Ditch, Marcos Chavez Ditch; and each of which by signing this Settlement Agreement is a Settlement Party;
- 1.7. **El Rito Ditch Association**, representing itself and its member acéquias: Acéquia Alires, Acéquia Viterbo Alires, Acéquia Duranes, Acéquia Monte, Acéquia Camino, Acéquia Medio, Acéquia Madre, Acéquia Estero, Acéquia Otra Vanda (a.k.a Acéquia Trujillo), Acéquia de la Plaza, Acéquia Jaral; and each of which by signing this Settlement Agreement is a Settlement Party;

1.8. **City of Española (“Española”)**, a municipal corporation of the State of New Mexico.

**ARTICLE 2: PURPOSE**

The purpose of this Settlement Agreement is to resolve the issues and controversies concerning the water rights claims of Ohkay Owingeh and the United States, in its capacity as trustee for Ohkay Owingeh, in the general stream adjudication of the Rio Chama Stream System, captioned *State of New Mexico, ex rel. State Engineer v. Aragon*, Civil No. 69-cv-07941-KWR/KK (all Ohkay Owingeh Claims) pending in the United States District Court for the District of New Mexico, without needless expenditure of funds and other litigation resources. This Settlement Agreement is consistent with the policy of the United States and the State of New Mexico favoring resolution of disputes concerning water rights through negotiation.

**ARTICLE 3: DEFINITIONS**

3.1. **“Adjudication”** means the adjudication of water rights in the general stream adjudication of the Rio Chama Stream System entitled *State of New Mexico ex rel. State Engineer v. Aragon*, Civil No. 69-cv-07941-KWR/KK, now pending in the United States District Court for the District of New Mexico.

3.2. **“Alluvial Groundwater”** means groundwater contained in water-bearing strata of Quaternary alluvium, which are geologic materials younger than the underlying Santa Fe Group sediments.

3.3. **“Alternative Administration”** means administration of water rights based on a water sharing schedule among affected water right owners, as defined in NMAC 19.25.13.7(C)(4) and Article 8.1.3.

3.4. **“Bosque”** means the riparian lands, including flood plains, streambanks, wetlands, forests, and, generally, lands strongly influenced by the presence of waters of the river and Alluvial Groundwater.

3.5. **“Consumptive Irrigation Requirement” or “CIR”** means the quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface during one calendar year. The CIR may be numerically determined by subtracting effective rainfall from the consumptive use.

3.6. **“Cooperating Diverter”** means any acéquia that is not a signatory to this Agreement, private ditches, and other surface water diverters or water users, including but not limited to municipalities and mutual domestic water associations, that cooperate in shortage sharing.

3.7. **“Decree Court”** means the United States District Court for the District of New Mexico in which the Partial Final Judgment and Decree will be entered.

3.8. **“Enforceability Date”** means the date upon which the Secretary publishes in the Federal Register the statement of findings that all conditions precedent set forth in Article 15 have been fulfilled.

**3.9. “Farm Delivery Requirement” or “FDR”** means the quantity of water, exclusive of effective rainfall, that is delivered to the farm head gate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the Consumptive Irrigation Requirement of crops grown on farm during the irrigation accounting year, or as otherwise provided by permit.

**3.10. “Footprint Right”** means a water right previously recognized that is appurtenant to land that is no longer capable of being irrigated, such as land that is covered by a permanent structure or is paved over.

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

**3.12. “Parciante”** means an individual member of an acéquia.

**3.13. “Partial Final Judgment and Decree”** means the judgment and decree entered in the Adjudication for the resolution of the water rights claims of Ohkay Owingeh and the United States as trustee for Ohkay Owingeh in the Rio Chama Stream System.

**3.14. “Project Diversion Requirement” or “PDR”** means the annual quantity of water necessary to be diverted from a source of water to satisfy the Farm Delivery Requirement and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.

**3.15. “Pueblo Fee Lands”** means those lands owned by Ohkay Owingeh that are not held in trust by the United States or are not subject to restraints on alienation under federal law.

**3.16. “Pueblo Grant”** means the lands recognized and confirmed by the federal patent issued to Ohkay Owingeh (then known as the Pueblo of San Juan) under the Act of December 22, 1858, 11 Stat. 374, chapter V.

**3.17. “Pueblo Lands”** means any real property that is:

(A) held by the United States in trust on behalf of the Pueblo within the Rio Chama Stream System, or owned by the Pueblo subject to federal restraints on alienation within the Rio Chama Stream System; or

(B) owned by the Pueblo within the Rio Chama Stream System before the Enforceability Date; or acquired by the Pueblo on or after the Enforceability Date if the real property is located:

(i) within the exterior boundaries of the Pueblo Grant; or

(ii) within the exterior boundaries of any territory set aside for the Pueblo pursuant to federal statute; federal administrative decision; federal executive order or court decree.



- 3.18. “Pueblo Water Right(s)”** means the water rights of Ohkay Owingeh as described in Article 4 and Article 7 of this Agreement and incorporated into the Partial Final Judgment and Decree.
- 3.19. “Rio Chama Stream System”** means the boundary of the Adjudication that includes all surface or groundwater on or beneath the geographic area depicted on Exhibit A to this Settlement Agreement.
- 3.20. “San Juan-Chama Project”** means the project authorized by Congress in 1962, Pub. L. No. 87-483, 76 Stat. 96, 96–102 (1962).
- 3.21. “San Juan-Chama Project Water”** means water provided by contract pursuant to the San Juan-Chama Project.
- 3.22. “Secretary”** means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.
- 3.23. “Settlement Agreement” or “Agreement”** means this Settlement Agreement, including and incorporating all exhibits hereto, and as it may be revised pursuant to the terms of this Settlement Agreement.
- 3.24. “Settlement Act”** means the legislation enacted by the United States Congress to approve the terms of this Settlement Agreement, to authorize the actions contemplated by this Settlement Agreement, to authorize the appropriations, or to appropriate the federal funds necessary to implement this Settlement Agreement.
- 3.25. “Signatory Acéquia(s)”** means an acéquia that is a signatory to the Settlement Agreement.
- 3.26. “State-Based Water Right(s)”** means water rights acquired by their owners under state law.
- 3.27. “State Engineer”** means the New Mexico State Engineer or a duly authorized representative thereof.
- 3.28. “Surplus Water”** means water that cannot be diverted by the assigned diversions or is in excess of the total needed by the assigned diversions and is available for diversions by others during shortage sharing, as set forth in Article 8.
- 3.29. “Water Master”** means an official duly appointed by, and under the general supervision of, the State Engineer, pursuant to Section 72-3-2 NMSA, who is in charge of the diversions and distribution of waters in the Rio Chama Stream System Water Master district.

## **ARTICLE 4: OHKAY OWINGEH’S WATER RIGHTS**

**4.1. Irrigation Uses Based on Past and Present Uses.** Ohkay Owingeh has a surface water right to irrigate 310.45 acres based on Ohkay Owingeh’s past and present uses.

**4.1.1. Quantity.** The following irrigation water requirements apply to Ohkay Owingeh’s irrigation water rights within the Rio Chama Stream System: a CIR of 1.68 AFA, an FDR of 3.73 AFA, and a PDR of 6.22 AFA. The ditch efficiency for calculation of PDR is 60%. The on-farm efficiency for calculation of FDR is 45%. Applying these requirements to the past and present irrigated acreages results in the following respective quantities for irrigation:

CIR = 522 AFY

FDR = 1,158 AFY

PDR = 1,929 AFY

**4.1.2. Priority Date.** The priority date of Ohkay Owingeh’s past and present irrigation water rights is time immemorial.

**4.1.3. Places of Use and Points of Diversion Exhibits.** Ohkay Owingeh, the State, and the United States shall jointly prepare exhibits identifying and mapping the past and present places of use and points of diversion for inclusion in the Partial Final Judgment and Decree. No permit shall be required for Ohkay Owingeh to vary its application of water among fields in the Rio Chama Stream System portion of the Pueblo Grant and its use of diversions among the mainstem Rio Chama surface water points of diversion identified in the exhibits to the Partial Final Judgment and Decree.

**4.2. Livestock Uses Based on Past and Present Uses.** Ohkay Owingeh has a water right to divert and consume water on Pueblo Lands within the Rio Chama Steam System portion of the Pueblo Grant for livestock watering, which includes the right to water wildlife.

**4.2.1. Source of Water.** Ohkay Owingeh’s livestock water use right may be exercised from any lawful water source on Pueblo Lands, including springs, groundwater, or surface water. The existing points of diversion, sources of water, and places of use will be described in an exhibit to the Partial Final Judgment and Decree.

**4.2.2. Livestock Ponds.** Ohkay Owingeh has a right to maintain a total storage pool of 42.95 acre-feet of water in livestock ponds on a continuous basis as surface water or groundwater is available. The existing ten (10) surface and groundwater livestock ponds have a total surface area of 10.04 acres.

**4.2.2.1. Surface and Groundwater Livestock Pond Limitations.** Ohkay Owingeh’s livestock water use right may not be leased. Any livestock pond may be reconstructed, rehabilitated, or replaced at its existing location or any other location within the Rio Chama Stream System portion of the Pueblo Grant without a permit, provided that:

- (A) the aggregate surface area of the ponds set forth in Article 4.2.2 is not exceeded;
- (B) the aggregate stock pond storage capacity set forth in Article 4.2.2 is not exceeded;
- (C) the purpose of use for the stock pond is not changed;
- (D) the new point of diversion is not on a perennial surface water source; and
- (E) no surface water ponds are replaced with a groundwater source.

**4.2.3. Livestock Well.** Ohkay Owingeh has a right to divert and consume 3 AFY from the existing livestock well, which will be described in an exhibit to the Partial Final Judgment and Decree.

**4.2.3.1. Livestock Well Limitations.** The purpose of use of the livestock well may be changed in accordance with the Pueblo Water Code. The livestock well may be reconstructed, rehabilitated, or replaced at its existing location or any other location within the Rio Chama Stream System portion of the Pueblo Grant without a permit, provided that:

- (A) the purpose of use for the livestock well is not changed; and
- (B) the new point of diversion is not on the mainstem of the Rio Chama.

**4.2.4. Priority Date.** The priority date for Ohkay Owingeh’s livestock water use right is time immemorial for existing livestock ponds and the livestock well. The priority date for any livestock pond on Pueblo Fee Lands is the construction date.

**4.3. Historic Domestic, Commercial, Municipal, and Industrial Uses.**

**4.3.1.** Ohkay Owingeh has the right to divert 6 AFY from two existing domestic wells, which will be described in an exhibit to the Partial Final Judgment and Decree. The diversion from each well shall not exceed 3 AFY. The priority date for the two existing wells is time immemorial.

**4.3.2.** Ohkay Owingeh has the right to divert 204 AFY for its existing public water system from existing wells, which will be described in an exhibit to the Partial Final Judgment and Decree. The associated diversion for existing domestic, commercial, municipal, and industrial uses is 204 AFY. The priority date for the existing domestic, commercial, municipal, and industrial uses is time immemorial.

**4.4. Groundwater Economic Development Water.** Ohkay Owingeh has a right to divert and consume an additional 771 AFY of groundwater in the Rio Chama Stream System portion of the Pueblo Grant for domestic, commercial, municipal, and industrial purposes. These water rights are subject to offset requirements set forth in Article 9.5. The priority date for Ohkay Owingeh’s groundwater economic development water right is time immemorial.

#### **4.5. Additional Irrigation Acres.**

**4.5.1. In General.** Ohkay Owingeh has the right to irrigate up to 1,562 additional acres within the Rio Chama Stream System portion of the Pueblo Grant in accordance with this Article 4.5. This right is in addition to the irrigation right identified in Article 4.1 and shall be referred to as Ohkay Owingeh's Additional Irrigation Acres. The 1,562-acre limit on this right derives from the agreed upon total number of acres in the Rio Chama Stream System portion of the Pueblo Grant that was historically or is currently irrigated and is now owned by non-Pueblo persons. Ohkay Owingeh's Additional Irrigation Acres underlie, but are distinct from, the State-Based Water Rights appurtenant to these private inholdings.

**4.5.1.1.** Ohkay Owingeh may exercise these Additional Irrigation Acres only as State-Based Water Rights are extinguished according to the provisions in this Article 4.5.

**4.5.1.2.** The priority date for the Additional Irrigation Acres is time immemorial. Additional Irrigation Acres may be exercised only after permitted for use on Pueblo Land through Pueblo permitting. The priority date for Additional Irrigation Acres shall not be enforceable until such right is permitted for use on Pueblo Land through Pueblo permitting.

**4.5.1.3.** Ohkay Owingeh shall irrigate its lands under this Article 4.5 in accordance with the Pueblo's Water Code, the shortage sharing schedule in effect, applicable provisions of this Settlement Agreement, and applicable provisions of state and federal law.

**4.5.1.4.** Ohkay Owingeh agrees to submit a change of ownership form, certificate of retirement, or other appropriate documentation to the Office of the State Engineer for purposes of accounting for the acquisition and extinguishment of a State-Based Water Right.

**4.5.2. Acquisition of Private Inholding Irrigated Acreage and Appurtenant Water Rights.** Ohkay Owingeh has the right to reacquire land with appurtenant adjudicated water rights on the Hernandez, Chamita, and los Salazares acéquias located within the Pueblo Grant in order to exercise any portion of the 1,562-acres of Additional Irrigation Acres. Upon Ohkay Owingeh's reacquisition of irrigated acreage and appurtenant water rights on the acéquias in this subsection, the appurtenant State-Based Water Right shall be extinguished. Ohkay Owingeh's increased irrigation of its Additional Irrigation Acres shall not exceed the amount of the extinguished appurtenant right. Subject to Article 4.5.5.7, Ohkay Owingeh's exercise of its Additional Irrigation Acres shall comply with each acéquia's bylaws and practices, including payment of assessments and labor contributions.

**4.5.3. Other Means to Increase Use of Additional Irrigation Acres Through Pueblo Permitting.** Subject to the Pueblo permitting process, Ohkay Owingeh has the right to use up to 750 acres of its Additional Irrigation Acres for irrigation anywhere on Pueblo Lands within the Rio Chama Stream System portion of the Pueblo Grant by any mechanisms described in this Article 4.5.3. As Ohkay Owingeh uses its Additional Irrigation Acreage pursuant to any of the means set forth in this Article 4.5.3, the equivalent number shall be subtracted from the total number of Additional Irrigation Acres that Ohkay Owingeh may reacquire pursuant to 4.5.2.

**4.5.3.1. Acquisition of State-Based Water Rights.** Ohkay Owingeh may purchase from willing sellers adjudicated or permitted State-Based Water Rights within the Rio Chama Stream System to increase its exercise of its Additional Irrigation Acres. When Ohkay Owingeh seeks to retire the State-Based Water Right, it is subject to Article 4.5.5 and the following conditions:

(A) Ohkay Owingeh shall submit a certificate of retirement to the State Engineer for the retirement of the State-Based Water Right. Subject to Article 4.5.5.7, Ohkay Owingeh must receive acéquia commission approval where the water rights are located prior to submitting the certificate of retirement to the State Engineer.

(B) The Water Master shall review and approve the certificate of retirement by the following process:

(i) The Water Master shall review the certificate of retirement to determine whether it correctly states the elements of the State-Based Water Right being retired;

(ii) The Water Master will calculate the historical supply of the retired right at the move from location and its contribution to the Rio Chama mainstem to determine how much water is available for retirement and use by Ohkay Owingeh;

(iii) The Water Master will approve the certificate of retirement with a written decision stating the consumptive use, flow rate, and current administrative limitations during shortages associated with the retired State-Based Water Right;

(iv) The Water Master will publish the approval of the retirement on the State Engineer's website for 70 days and include all approvals and decisions in the annual Water Master Report;

(v) Any aggrieved person may appeal the decision of the Water Master to the State Engineer within 30 days of the expiration of the 70 day period;

(vi) If appeal is timely filed, the State Engineer shall notify interested parties, and the dispute will be heard pursuant to the provisions of NMSA 72-3-3.

(C) Upon completion of Subsections (A) and (B), Ohkay Owingeh may use the approved volume of water and flow rate under a permit issued pursuant to its Pueblo Water Code.

**4.5.3.2. Acquisition of Footprint Rights from the Acéquias.** Ohkay Owingeh may acquire Footprint Rights by purchase of those rights only from Parciantes of RCAA or Acéquias Norteñas member acéquias to increase its exercise of its Additional Irrigation Acres. A

Footprint Right under this Article shall not be required to undergo a validity determination by the State Engineer. The Settlement Parties shall cooperate in good faith to identify and acquire Footprint Rights within ten years of the Enforceability Date of the Settlement Agreement.

(A) After acquisition of a Footprint Right, Ohkay Owingeh shall file a certificate of retirement for the Footprint Right with the State Engineer, which will be processed pursuant to Article 4.5.3.1.

(B) RCAA, Acéquias Norteñas, and their Signatory Acéquia commissioners shall cooperate with Ohkay Owingeh to identify Footprint Rights available for purchase by Ohkay Owingeh.

(C) Signatory Acéquias in Section Two of the Adjudication shall have the right to participate in this Footprint Right opportunity at the election of the commissioners of an individual acéquia and when a Parciante of that acéquia agrees to sell a Footprint Right. Signatory Acéquias in Section Two that choose to participate shall provide notice to the Water Master and Ohkay Owingeh. Nothing in this Article shall be construed as creating an obligation of any acéquia or Parciante to sell a Footprint Right.

(D) When the total acreage of Footprint Rights acquired by Ohkay Owingeh and retired from an individual RCAA or Acéquia Norteñas acéquia exceeds 10% of the total acreage served by the acéquia, acéquia commission approval shall be required for subsequent Footprint Right retirement on that acéquia.

(E) Prior to exercising the Additional Irrigation Acres under this provision, Ohkay Owingeh agrees to submit an application and obtain a permit pursuant to the Pueblo Water Code for the development of Additional Irrigation Acres and for any subsequent change to the place of use, purpose of use, and point of diversion of such water rights.

**4.5.3.3. Abandoned, Forfeited, or Cancelled Water Rights Within the Pueblo Grant.** Ohkay Owingeh may increase its exercise of its Additional Irrigation Acres after State-Based Water Rights within the Pueblo Grant are abandoned, forfeited, or cancelled.

(A) Ohkay Owingeh may increase its exercise of its Additional Irrigation Acres in this Article only when:

(i) a State-Based Water Right has been formally extinguished through an administrative process or judicial proceeding pursuant to state law; or

(ii) a State-Based Water Right permit for a vested water right has been extinguished by cancelation of the permit.

(B) The Water Master shall notify Ohkay Owingeh when a State-Based Water Right has been formally extinguished and will prepare a certificate of extinguishment, pursuant to the following procedure:

- (i) The certificate of extinguishment shall state the elements of the State-Based Water Right that has been extinguished;
  - (ii) The Water Master shall determine the historical supply of the extinguished right (if not adjudicated to the Chamita, los Salazares and the Hernandez acéquias) at the move from location and its contribution to the Rio Chama mainstem, and shall include in the certificate of extinguishment the consumptive use and flow rate associated with the extinguished State-Based Water Right. The historic supply for the Chamita, los Salazares and the Hernandez acéquias is 100%;
  - (iii) The Water Master shall publish the certificate of extinguishment on the State Engineer's website for 70 days and include all the information in the annual Water Master Report;
  - (iv) Any aggrieved person may appeal the decision of the Water Master to the State Engineer within 30 days of the expiration of the 70 day period;
  - (v) If appeal is timely filed, the State Engineer shall notify interested parties, and the dispute will be heard pursuant to the provisions of NMSA 72-3-3;
- (C) Upon completion of Article 4.5.3.3(B), Ohkay Owingeh may use the approved volume of water and flow rate under a permit issued pursuant to the Pueblo Water Code.
- (D) Ohkay Owingeh agrees to initially use the same point of diversion if the abandoned, forfeited, or cancelled rights are located within the Pueblo Grant and Ohkay Owingeh has available irrigable lands served by that diversion.
- (E) The State Engineer shall have no obligation under this Agreement to initiate any proceeding to determine forfeiture, abandonment, or cancelation of any State-Based Water Right.

**4.5.3.4. Abandoned, Forfeited, or Canceled Water Rights Outside the Pueblo Grant.** Ohkay Owingeh may increase its exercise of its Additional Irrigation Acres within the Pueblo Grant after State-Based Water Rights within the Rio Chama Stream System outside the Pueblo Grant are abandoned, forfeited, or cancelled.

- (A) Ohkay Owingeh may increase its exercise of its Additional Irrigation Acres through this mechanism only when:
  - (i) a State-Based Water Right has been formally extinguished through an administrative process or judicial proceeding pursuant to state law; or
  - (ii) a State-Based Water Right permit for a vested water right has been extinguished by cancelation of the state permit; and

(B) The Water Master shall notify Ohkay Owingeh when a State-Based Water Right has been formally extinguished and will prepare a certificate of extinguishment, pursuant to the following procedure:

(i) The certificate of extinguishment shall state the elements of the State-Based Water Right that has been extinguished;

(ii) The Water Master shall determine the historical supply of the extinguished right at the move from location and its contribution to the Rio Chama mainstem, and shall include in the certificate of extinguishment the consumptive use and flow rate associated with the extinguished State-Based Water Right;

(iii) The Water Master shall publish the certificate of extinguishment on the State Engineer's website for 70 days and include all information in the annual Water Master Report;

(iv) Any aggrieved person may appeal the decision of the Water Master to the State Engineer within 30 days of the expiration of the 70 day period;

(v) If an appeal is timely filed, the State Engineer shall notify interested parties, and the dispute will be heard pursuant to the provisions of NMSA 72-3-3;

(C) Upon completion of Article 4.5.3.4(B), Ohkay Owingeh may use the approved volume of water and flow rate under a permit issued pursuant to the Pueblo Water Code.

(D) Only State-Based Water Rights with a pre-1929 priority date shall be eligible for Ohkay Owingeh to increase its exercise of its Additional Irrigation Acres under this Article 4.5.3.4.

(E) The State Engineer shall have no obligation under this Agreement to initiate any proceeding to determine forfeiture, abandonment, or cancellation of any State-Based Water Right.

#### **4.5.4. Permitting for Additional Irrigation Acres.**

**4.5.4.1.** Ohkay Owingeh shall submit an application pursuant to the Pueblo Water Code for the use of the Additional Irrigation Acres on Pueblo Land accessed through the mechanisms described in Articles 4.5.3.1 – 4.5.3.4 above.

**4.5.4.2.** The application shall identify the proposed place of use and point of diversion.

**4.5.4.3.** Except for changes related to emergency delivery of water to the Bosque Project pursuant to Article 9.3.2, Ohkay Owingeh shall not change the place of use, purpose of



use, or point of diversion for water rights under this subsection until it has applied the water to beneficial use or the expiration of one year, whichever comes first.

**4.5.5. Additional Provisions Applicable to Additional Irrigation Acres Rights.**

**4.5.5.1.** The Additional Irrigation Acres put to use pursuant to Article 4.5.3 shall not exceed 750 acres. As Ohkay Owingeh increases its irrigation of Additional Irrigation Acres pursuant to Article 4.5.3, the equivalent number shall be subtracted from the total number of acres that Ohkay Owingeh may reacquire pursuant to Article 4.5.2.

**4.5.5.2.** Ohkay Owingeh shall account in its annual report for the number of Additional Irrigation Acres irrigated under this Article 4.5. The Water Master shall account for any changes to the total acres served by a diversion and will report the accounting in the annual Water Master Report.

**4.5.5.3.** The State Engineer shall determine the number of Additional Irrigation Acres and administrative flow rate Ohkay Owingeh may exercise under Article 4.5.3 based on the CIR and other applicable characteristics, such as historical supply, of the extinguished State-Based Water Right.

**4.5.5.4.** Ohkay Owingeh's points of diversion for irrigation under this Article 4.5 shall be located and operated in a manner that does not interfere with the acéquias' physical ability to access their full, authorized diversions. Subject to Article 4.5.5.7, Pueblo permits that include use of an acéquia to serve Additional Irrigation Acres pursuant to this Article 4.5 require acéquia commission approval.

**4.5.5.5.** Ohkay Owingeh's retirement of State-Based Water Rights from Signatory Acéquias under Articles 4.5.3.1 and 4.5.3.2(D) shall be subject to approval by the acéquia commissioners.

**4.5.5.6.** Nothing herein limits the ability of Ohkay Owingeh to use its San Juan-Chama Project Water for irrigation.

**4.5.5.7.** The Chamita, Hernandez, and los Salazares acéquias agree that their commissioners will not withhold approval of Ohkay Owingeh's retirement of State-Based Water Rights served by the acéquia and acquired by Ohkay Owingeh to increase its exercise of its Additional Irrigation Acres on land where water is delivered by the same acéquia as that of the retired acreage.

**4.5.5.8.** The Parties agree that reductions to a diversion's authorized direct flow rates based on any change in served acres shall be governed by a basin management decision made pursuant to Article 8.4. Until such a decision is made, the Water Master shall determine changes to flow rates under 19.25.13.17 NMAC and the guidelines set forth in Exhibit B.

**4.5.5.9.** Ohkay Owingeh shall not abandon, or cause the forfeiture of, an acquired State-Based Water Right. Ohkay Owingeh shall not contract with the owner of a State-Based Water Right or cause the owner of a State-Based Water Right to abandon the right or cause its

forfeiture. No Pueblo owned State-Based Water Right shall be subject to loss or diminishment by abandonment or forfeiture under state or federal law.

**4.5.5.10.** During periods of full supply, Ohkay Owingeh shall be entitled to use the full allocation of water that the extinguished State-Based Water Right provided. During periods of shortage sharing, as to State-Based Water Rights extinguished pursuant to Article 4.5.3, Ohkay Owingeh agrees to comply with the constraints in the annual shortage sharing schedule that would have been applicable to the State-Based Water Right that has been extinguished. If the extinguished State-Based Water Right was exempt from shortage sharing under Article 8.1.9.2 for a particular year, Ohkay Owingeh shall not be entitled to divert surface water from the mainstem Rio Chama for those acres during the shortage sharing period for that year.

**4.5.5.11.** Ohkay Owingeh may, in its sole discretion, apply its allocated diversion on the Chamita, Hernandez, or los Salazares acéquias during shortage sharing to any combination of Pueblo irrigated acreage on that ditch, consistent with its allocations and Article 9.3.2.

**4.5.6. Reservation of Rights.** Nothing in this Article 4.5 limits Ohkay Owingeh's ability to acquire State-Based Water Rights that retain their state law priority and other characteristics. Such State-Based Water Rights remain under the jurisdiction of the State Engineer and require a state permit for use on or off Pueblo Lands. A change by Ohkay Owingeh of point of diversion or place or purpose of use of such water rights, served by an acéquia shall be subject to approval by the acéquia commission.

## **ARTICLE 5: STATE-BASED WATER RIGHTS OWNED BY OHKAY OWINGEH**

**5.1.** State-Based Water Rights subsequently acquired by Ohkay Owingeh or the United States on Ohkay Owingeh's behalf shall not be subject to forfeiture, abandonment, or alienation.

**5.2.** Ohkay Owingeh owns 6.7148 acres with appurtenant water rights identified under Office of the State Engineer Files No. SD-01753-43 and SD-01753-65 with a diversion from the Acéquia de los Salazares for irrigation purposes. Upon the Enforceability Date, these water rights will be treated as rights acquired under Article 4.5.2.

**5.3.** Except as otherwise provided in this Settlement Agreement, all State-Based Water Rights acquired by Ohkay Owingeh shall retain their state law requirements and conditions, including priority date.

**5.4.** Ohkay Owingeh may subsequently change the place of use, purpose of use, and point of diversion of its water rights under state law. Except as provided in Article 4.5, the State Engineer and the acéquias shall retain jurisdiction under state law to administer and regulate the use or transfer of Ohkay Owingeh's State-Based Water Rights.

## **ARTICLE 6: TRADITIONAL PUEBLO AGRICULTURAL AND CULTURAL WATER USE**

**6.1. Sheet Flow Runoff.** Since time immemorial, Ohkay Owingeh has used sheet flow runoff (non-channelized water flow over the ground) on Pueblo Lands for traditional agricultural or cultural practices. Due to the extreme variability and unpredictable character of the water source, the amount of water associated with these uses cannot be quantified. Ohkay Owingeh has the right to continue to capture the sheet flow used for traditional agricultural and cultural practices on Pueblo Lands. This right does not, and shall not, include the right to divert water from any channelized surface water or underground source. Ohkay Owingeh shall not claim or be entitled to a quantified or transferable water right for these traditional uses. These uses shall not be enforced by or be subject to priority administration and may continue without administration by the State of New Mexico.

**6.2. Cultural Resources Related to Water.** Ohkay Owingeh and the United States intend to discuss activities, programs and policies that will be designed to assist Ohkay Owingeh and the United States in accomplishing shared goals of Pueblo cultural resource protection and stewardship. Nothing in this Article 6 shall be construed to establish a condition precedent to the enforceability of this Agreement or impose a legal obligation on either the United States or Ohkay Owingeh to reach agreement on any cultural resource protection issue.

## **ARTICLE 7: RIO CHAMA BOSQUE RESTORATION**

**7.1. Importance to Ohkay Owingeh.** The Rio Chama Bosque tree canopy and understory historically supported a great biodiversity of plant and animal life. The Bosque is a critical Pueblo cultural resource on which Pueblo members have relied since time immemorial and that the Pueblo continues to use for cultural, traditional and subsistence purposes. The Rio Chama Bosque has been degraded over the decades as a consequence of upriver dams constructed to manage Rio Chama water flows. The degradation has resulted in the loss of plant and animal life essential to cultural practices and traditions of Ohkay Owingeh. Restoration, preservation, maintenance, and protection of the Bosque are Pueblo goals that are central to this Settlement Agreement. The measures set forth in this Settlement Agreement are intended to accomplish these goals.

**7.2. Ohkay Owingeh Rio Chama Bosque Restoration Project.** The Rio Chama Bosque Restoration Project (“Bosque Project”) consists of approximately 395 acres of Bosque located within the Pueblo Grant as set forth on the map attached as Exhibit C.

**7.3. Historical Overbanking Right.** Ohkay Owingeh has a right to divert water to the Bosque Project at times of available high natural Rio Chama supply by any surface or Alluvial Groundwater diversion, including inflatable dams.

The Parties agree that Ohkay Owingeh’s use of this right in the Bosque Project is not an increase in depletions above the United States Geological Survey (“USGS”) Otowi index gage. The Parties further agree that the amount of water used for this purpose is commensurate with the

natural runoff supply that historically benefitted the Bosque on the Pueblo Grant in the area of the Bosque Project before 1929, as required by the Rio Grande Compact.

**7.3.1. Timing of Historical Overbanking Right.**

**7.3.1.1.** Ohkay Owingeh’s exercise of the Historical Overbanking Right depends entirely on natural stream conditions in the Rio Chama. Nothing in this Settlement Agreement guarantees a level of flow for Ohkay Owingeh’s exercise of this right.

**7.3.1.2.** Ohkay Owingeh may exercise its Historical Overbanking Right two days after the daily average of the Rio Chama stream flow measured at the USGS La Puente Gage is at or above 2,500 cfs.

**7.3.1.3.** Ohkay Owingeh must cease exercising its Historical Overbanking Right no later than two days after the daily average of stream flow measured at the USGS La Puente Gage falls below 2,000 cfs.

**7.3.1.4.** The Water Master shall notify Ohkay Owingeh in writing when the daily average stream flow at La Puente Gage is at or above 2,500 cfs and when the daily average stream flow at La Puente Gage is below 2,000 cfs. Failure of the Water Master to notify Ohkay Owingeh for this purpose shall not affect Ohkay Owingeh’s ability to exercise this water right.

**7.3.1.5.** Ohkay Owingeh shall notify the State Engineer and New Mexico Interstate Stream Commission in writing of its intent to divert water under the Historical Overbanking Right.

**7.3.1.6.** Ohkay Owingeh may divert water under the Historical Overbanking Right no more than 25 days each year.

**7.3.2.** Ohkay Owingeh is not required to meter its diversions under its Historical Overbanking Right.

**7.3.3.** Ohkay Owingeh may not transfer, lease, or sell its Historical Overbanking Right.

**7.3.4.** The priority date for the Historical Overbanking Right is time immemorial.

**7.3.5.** Ohkay Owingeh may not invoke its senior priority for the Historical Overbanking Right to require alterations in:

- (A) diversions anywhere in the Rio Chama Stream System;
- (B) releases from Abiquiu Reservoir, El Vado Reservoir, or Heron Reservoir;  
or
- (C) water resource management.

**7.3.6.** The Historical Overbanking Right is not subject to loss or diminishment through abandonment or forfeiture under state or federal law.

**7.3.7.** For Bosque Project lands with diversions located upstream of the Acéquia de los Salazares, Ohkay Owingeh shall allow a minimum of 30 cfs to bypass the Bosque Project lands when exercising its Historical Overbanking Right.

**7.3.8.** Ohkay Owingeh shall exercise its Historical Overbanking Right so as not to interfere with the functioning of the Acéquia de los Salazares.

**7.3.9.** Ohkay Owingeh's Historical Overbanking Right shall be exercised in a manner calculated to minimize inundation and erosion of any lands outside the Bosque Project.

**7.4. Bosque Restoration Right.** Ohkay Owingeh has the right to divert 250 AFY to the Bosque Project, in its discretion, by any measurable means, including, but not limited to:

- (A) diversions from the Rio Chama Stream System by means of the Acéquia de Chamita, pipeline, or Alluvial Groundwater pumping;
- (B) supplemental groundwater wells or similar subsurface methods;
- (C) direction of irrigation return flows from irrigated lands; and
- (D) diversions from the Rio Grande by exchange with the Rio Chama.

**7.4.2.** Ohkay Owingeh shall measure diversions of water applied to the Bosque Project under its Bosque Restoration Right using reasonably available technology installed at a location(s) and in a manner acceptable to the Water Master. The measurements of diversions shall be made in accordance with the methods then in use by the Water Master and shall also include the period of time water was applied to the acres, the points of diversion, non-incident return flows, and other data that Ohkay Owingeh and the Water Master agree are reasonably available and useful in administration of the Bosque Project.

**7.4.3.** Ohkay Owingeh shall not change the place of use or purpose of use, nor transfer, lease, or sell its Bosque Restoration Right.

**7.4.4.** The priority date for the Bosque Restoration Right is time immemorial.

**7.4.5.** The Bosque Restoration Right is not subject to loss or diminishment from abandonment or forfeiture under state or federal law.

**7.5. Bosque Project Administration.**

**7.5.1.** Ohkay Owingeh may change the place of use or purpose of use of any of its Pueblo Water Rights adjudicated in the Partial Final Judgment and Decree to the Bosque Project without approval of the State or any other Settlement Party and without any requirement to show absence of Impairment of any other water right, pursuant to the Pueblo Water Code.

**7.5.2.** Ohkay Owingeh may utilize additional water resources for application to the Bosque Project including, but not limited to, water rights acquired by Ohkay Owingeh after entry of the Partial Final Judgment and Decree, San Juan-Chama Project Water, or other water resources to which Ohkay Owingeh has a lawful right, subject to the Pueblo Water Code and applicable state law.

**7.5.3.** Ohkay Owingeh retains the sovereign authority to determine the periods of time during which it will apply water to the Bosque Project. Ohkay Owingeh acknowledges that the period of Bosque watering will usually occur during the spring, except as may be changed due to climate change.

**7.5.4.** Ohkay Owingeh's application of water to the Bosque Project during times of shortage shall be in accordance with the terms of the shortage sharing schedule then in effect. If, during times of shortage, the Water Master determines that Surplus Water is available, Ohkay Owingeh shall have a right of first refusal to the Surplus Water for the Bosque Project.

**7.5.5.** Ohkay Owingeh shall provide notice of the diversion amounts for the preceding year in the annual report submitted to the State Engineer.

**7.5.6.** The State and the United States agree to use their best efforts to ensure that Ohkay Owingeh is invited to participate each calendar year in the discussions among federal and/or state regulatory agencies that prepare annual operating plans or other cooperative agreements to augment or administer flows on the Rio Chama and Rio Grande.

**7.5.7.** Ohkay Owingeh's exercise of the rights in Articles 7.3 and 7.4 shall be conducted in accordance with applicable state and federal law.

## **ARTICLE 8: BASIN MANAGEMENT FOR PUEBLO AND NON-PUEBLO WATER RIGHTS**

### **8.1. Shortage Sharing Agreements.**

**8.1.1. Ohkay Owingeh's Priority Forbearance of its Senior Rights.** Ohkay Owingeh shall not exercise or request priority enforcement of its senior water rights on the Rio Chama Stream System against Settlement Parties, owners of domestic wells and livestock rights existing as of the Enforceability Date, and Cooperating Diverters. Except as provided in this Article 8, Ohkay Owingeh expressly reserves the right to make a priority call against any other water user.

Nothing in this Settlement Agreement affects the right of Ohkay Owingeh, or the United States in its trustee capacity on Ohkay Owingeh's behalf, to assert and defend its senior right in response to any priority call or priority administration made against Ohkay Owingeh's water rights.

**8.1.2. Signatory Acéquiás' Priority Forbearance of their Senior Rights.** The Signatory Acéquiás shall not exercise or request priority enforcement of their respective water rights on the Rio Chama Stream System against Settlement Parties and Cooperating Diverters.

**8.1.3. Water Sharing.** Ohkay Owingeh and the Signatory Acéquias (“Sharing Parties”) accept as among themselves Alternative Administration of their respective water rights on the Rio Chama Stream System. Water rights shall be administered by a binding and enforceable water sharing schedule and terms (“water sharing schedule”) developed in consultation with the State Engineer. The purpose of the water sharing schedule is to maximize the beneficial use of the water rights and to equitably share water in times of shortage, according to the principles set forth in Article 8.1.8. Ohkay Owingeh and the Signatory Acéquias agree that their respective water rights shall not be subject to priority administration and instead shall be subject to Alternative Administration through water sharing under NMAC 19.25.13.7.C(4). The initial water sharing schedule shall be based on the shortage sharing schedule in effect in 2023 and any modifications to its terms made pursuant to Article 8.1.8. The initial water sharing schedule shall be subject to the terms of this Agreement, including the enforcement provisions of Article 8.1.6. If a new water sharing schedule is not adopted, then the prior year’s schedule shall remain in effect.

**8.1.4. State Engineer and Water Master Authority and Obligation.** The Water Master shall have the authority and duty to enforce compliance with the water sharing schedule. The State Engineer shall accept the water sharing schedule as a form of Alternative Administration under NMAC 19.25.13.7.C(4). When the Water Master determines that Surplus Water is available, the Water Master shall have the authority to equitably allocate the surplus supply to promote beneficial use of the water. The Water Master’s discretion under this Article shall be exercised consistent with the principles set forth in Article 8.1.8 and Ohkay Owingeh’s right of first refusal to Surplus Water for Bosque Project purposes recognized in Article 7.5.4. The Water Master shall have the authority and duty to adjust the water sharing schedule, upon consultation with the Sharing Parties, to account for any diversions by any Settlement Party that exceed allocations under the water sharing schedule.

**8.1.5. Cooperation of Parciantes.** Each Signatory Acéquia shall be responsible for ensuring that its member Parciantes comply with the water sharing schedule. Ohkay Owingeh shall be responsible for ensuring that its members comply with the water sharing schedule.

**8.1.6. Enforcement.** If Ohkay Owingeh or any other Sharing Party informs the Water Master that a violation of the water sharing schedule occurred, the Water Master shall, upon investigation, require compliance with and enforcement of the shortage sharing schedule. Such enforcement may include ceasing diversions for the violating party for the remainder of the rotation during which the violation occurred.

**8.1.6.1.** The Water Master shall shut off diversions to the Acéquia de Chamita if, due to a violation by a Chamita Parciante of the water sharing schedule, flows at the State Engineer Yungeh Gage drop below the cfs rate allocated to Ohkay Owingeh under the water sharing schedule after reasonable carriage losses have been subtracted. The curtailment of the Acéquia de Chamita diversions based on the flow rate at the State Engineer Yungeh Gage shall remain in effect for the remainder of the week in which the schedule violation occurred. Diversions shall not be resumed until Ohkay Owingeh’s next turn on the water sharing schedule. If Ohkay Owingeh uses an alternative point of diversion, the Acéquia de Chamita must reduce its

diversion at the direction of the Water Master to balance total diversions serving Ohkay Owingeh for the rotation.

**8.1.6.2.** Ohkay Owingeh, the Water Master, and the Signatory Acéquiás may agree to alternative enforcement measures, as appropriate.

**8.1.7. Ohkay Owingeh Bosque.** When the water sharing schedule is in effect, Ohkay Owingeh agrees, subject to the availability of congressional appropriations to implement the Settlement Agreement and enforceable storage agreements, to rely first on sources other than Acéquia de Chamita to provide water to the Bosque Project.

**8.1.8. Process and Principles for Developing Water Sharing Schedule.**

**8.1.8.1.** Prior to March 1st of each year, at the initiative of the State Engineer, the RCAA, Acéquiás Norteñas, and Ohkay Owingeh shall meet with the Water Master to develop and adopt, prior to the first Monday of April, a water sharing schedule that includes hydrologic triggers for its operation for the irrigation season.

**8.1.8.2.** The water sharing schedule shall take into account the cultural traditions of Ohkay Owingeh regarding water use on its lands.

**8.1.8.3.** The water sharing schedule shall incorporate the principle of equitable sharing of water that recognizes seniority, primarily the senior priority of Ohkay Owingeh and the acéquiás de Chamita, los Salazares, and Hernandez.

**8.1.8.4.** The water sharing schedule shall strive to make available to Signatory Acéquiás that are members of the Acéquiás Norteñas an equitable amount of water to enable each of them to deliver irrigation water to their Parciantes through July 31, or the critical time period for irrigation. For this purpose, an equitable amount of water is that which is sufficient for one cutting of hay and thereafter water for livestock purposes after irrigation diversions cease.

**8.1.8.5.** The water sharing schedule shall take into account all measurable native flow available for diversion, including but not limited to measurable tributary inflows, reservoir operations, and releases of native flow temporarily detained in federally operated reservoirs. Availability of carriage water and water stored in upstream reservoirs and released for diversion by Ohkay Owingeh and/or the Signatory Acéquiás shall be taken into account when determining the amount of water available for diversion.

**8.1.8.6.** Cooperating Diverters not protected under Article 8.1.9.2 may benefit from shortage sharing and, with the concurrence of the Water Master and the RCAA, Acéquiás Norteñas, and Ohkay Owingeh, be included in shortage sharing. Cooperating Diverters can participate in shortage sharing either by being subject to the water sharing schedule or by complying with other Sharing Party approved conservation measures at the direction of the Water Master. As long as they comply with the water sharing schedule and/or conservation measures, Cooperating Diverters shall not be subject to a priority call under NMAC 19.25.13.7.C(1)-(3) by any of the Sharing Parties. For Cooperating Diverters that supply domestic water or water for essential community services, the requirements to participate shall



not adversely impact the daily need for indoor domestic use or for those essential community services.

**8.1.8.7.** When the daily average natural flow of the Rio Chama (as measured at the USGS La Puente Gage) falls below 70 cfs for the first time during the irrigation season, or below another flow rate as adjusted by the water sharing schedule, the Water Master shall direct the post-1907 diversions to reduce their diversions if located above the USGS La Puente Gage or on a tributary providing measurable inflows below the USGS La Puente Gage. The Water Master has discretion to determine the duration and magnitude of curtailment necessary to delay the triggering of the water sharing schedule based on the physical conditions of the Rio Chama Stream System, with the goal to delay the daily average flow falling below 50 cfs at the La Puente Gage by a minimum of a week if reasonably feasible.

**8.1.9. Administration of the Water Sharing Schedule.**

**8.1.9.1.** The water sharing schedule shall go into effect when the daily average flow of the Rio Chama (as measured at the USGS La Puente Gage) falls below 50 cfs for the first time during the irrigation season and shall remain in effect through October 31 of that year. The Water Master may lower the 50 cfs trigger flow based on measurable tributary inflows occurring below the USGS La Puente Gage. The Water Master shall suspend curtailment pursuant to the water sharing schedule anytime the total available supply to Ohkay Owingeh and RCAA exceeds the combined total diversion requirements of Ohkay Owingeh and RCAA. Any time after the initial trigger, when the supply is between 50 cfs and the combined total diversion requirements of Ohkay Owingeh and RCAA, the Water Master shall ease restrictions as much as possible while ensuring no unauthorized diversions of stored native water or San Juan-Chama Project releases occurring from Abiquiu Reservoir. The Water Master may require RCAA diversions to lower their diversion rates prior to the water sharing schedule going into effect if the USGS La Puente Gage is below 50 cfs, the native available flow is less than 100 cfs, and full diversions are resulting in unauthorized diversions of stored native water or San Juan-Chama Project releases.

**8.1.9.2.** Signatory Acéquiás and Cooperating Diverters whose curtailment would be futile or whose source of supply is from tributary or other source of supply that does not contribute beneficially to the flows of the Rio Chama at the time of or after triggering the water sharing schedule as determined by the Water Master, in consultation with RCAA, Acéquiás Norteñas, and Ohkay Owingeh, shall be excluded from the Water Sharing Schedule and curtailment by the Water Master.

**8.2. Settlement Model.** The Settlement Parties will cooperate in the development and finalization of a groundwater model or models for the area near and within the Rio Chama Stream System portion of the Pueblo Grant (“Settlement Model”). The Settlement Model will be capable of reasonably simulating the hydrologic effects of groundwater diversions on groundwater levels and surface water. The State Engineer and Ohkay Owingeh shall use the Settlement Model for water rights management and administration in accordance with Article 8 and Article 9 of this Settlement Agreement. The State Engineer and Ohkay Owingeh may use additional tools or models as appropriate on a case-by-case basis. Any other Settlement Party may use the Settlement Model or an alternative groundwater model or analytical tool.

**8.2.1. Development of the Settlement Model.** The Bureau of Indian Affairs, for the United States, Ohkay Owingeh, and the State Engineer, in consultation with the Settlement Parties, shall develop and complete the Settlement Model, which, to the greatest extent possible, shall be based on consensus of the Settlement Parties as represented by a Technical Committee. The Technical Committee will be composed of one technical representative from each Settlement Party that chooses to participate. The State Engineer and Ohkay Owingeh will make the final decision regarding the suitability of the Settlement Model. If the State Engineer and Ohkay Owingeh cannot agree on the final Settlement Model, either may use alternative models and tools as they deem necessary and appropriate for administration of water rights under their respective jurisdictions. To the extent agreement is not reached, the State Engineer and Ohkay Owingeh will continue to work in good faith to agree on a single Settlement Model.

**8.2.2. Changes to the Settlement Model.** Any Settlement Party may submit a proposed change or changes to the completed Settlement Model. No changes shall be made to the Settlement Model unless both the State Engineer and Ohkay Owingeh agree to the changes to be adopted. A decision to revise the Settlement Model shall be based on a finding by the State Engineer and Ohkay Owingeh that the proposed revision will enhance the utility of the Settlement Model in the administration of water rights. The State Engineer shall be responsible for making revisions, refinements, and updates to the Settlement Model.

**8.2.3. Interim Period.** Until the Settlement Model is finalized, the State Engineer and Ohkay Owingeh have the authority to use any hydrologic model or tools each deem appropriate on a case-by-case basis for administration of water rights.

**8.2.4. Circumstances of Non-Use.** Applications for which use of the Settlement Model may not be required include, but are not limited to:

- (A) applications involving change in point of diversion for which the move-from and move-to locations are close to one another, such as within the same model cell;
- (B) applications involving less than the amount of water per year that the State Engineer and Ohkay Owingeh agree do not require model analysis; and
- (C) applications involving wells that make the use of the Settlement Model inappropriate.

**8.2.5. Extension of the Historical Pumping Record.** An extension of the historical pumping record for wells and other time-variable model inputs such as stream flows will not be considered a model change under Article 8.2.2 unless other model inputs such as aquifer properties are also changed.

**8.2.6. Sharing of the Settlement Model Files.** Upon request by a Settlement Party, the State Engineer shall provide the requesting Party with the most recent Settlement Model files. If a Settlement Party wants to review or run the Settlement Model, the Party should request the latest version of the model files from the State Engineer.

**8.3. Irrigation Water Requirements.** Prior to the entry of a Partial Final Judgment and Decree on Ohkay Owingeh’s water rights, the Parties shall jointly move the Decree Court to adopt a CIR of 1.68 AFA to apply to Pueblo Water Rights and non-Pueblo water rights in Section One of the Adjudication, excluding the subsections of Rio del Oso and Rio Vallecito and any right with an existing FDR of 1.0 AFA.

**8.4. District Specific Management.** The State Engineer shall promulgate District Specific Rules for the Rio Chama Stream System and may implement district specific management tools, in consultation with Ohkay Owingeh and the other Settlement Parties, by Order, other lawful means under the State Engineer’s Active Water Resource Management authority, or other legal authority. Such management tools shall incorporate and implement the administrative provisions of this Settlement Agreement. The pendency of District Specific Rules does not alter the authority of the Water Master under 19.25.13.16 NMAC and the water sharing schedule.

**8.5. Storage Agreement.**

**8.5.1.** RCAA, Acéquias Norteñas, and Ohkay Owingeh (“Storage Parties”) agree that establishing a joint water storage reserve is necessary to supplement the available water supply on the Rio Chama and to facilitate shortage sharing among the Storage Parties. The primary purpose of the stored water is to augment irrigation supply by increasing the irrigation water available for diversion. Another purpose is to compensate for depletion of storage releases incurred when the supply of native water below Abiquiu Reservoir is insufficient to meet irrigation and Bosque Project demand, pursuant to an agreement with the owner of the released water. Water in storage shall be made available equitably to the Storage Parties, pursuant to an agreement adopted by the Storage Parties.

**8.5.2.** The Storage Parties agree to jointly pursue agreements for permanent storage capacity of up to 5,000 acre-feet in aggregate, with carryover privileges. The Storage Parties further agree to seek to acquire water to place into storage from multiple sources in the aggregate amount of 2,000 to 3,000 acre-feet per year. RCAA and Acéquias Norteñas will contribute 2,000 acre-feet per year to the storage reserve, subject to the availability of funding and San Juan-Chama Project Water. Ohkay Owingeh, subject to the condition set forth in Article 8.5.3, will contribute at least 8% per year of its annual San Juan-Chama Project allocable quantity to the storage reserve (8% equals 160 acre-feet in a year of full allocable quantity from the Project).

**8.5.3.** Ohkay Owingeh’s agreement to contribute San Juan-Chama Project Water to the storage reserve is conditioned on authorization for such water use in Ohkay Owingeh’s subsequent contract with the U.S. Bureau of Reclamation, and on provisions in such contract relieving Ohkay Owingeh of its repayment obligation on terms acceptable to Ohkay Owingeh.

**8.5.4.** The RCAA, in consultation with Ohkay Owingeh, Acéquias Norteñas, and the Water Master, will be primarily responsible for the operation of the joint storage reserve, pursuant to agreements adopted by the Storage Parties for its implementation.

**8.5.5.** All water storage under this Article 8.5 shall comply with federal and state law requirements for storage, including the Rio Grande Compact.

**8.5.6.** Nothing in this Agreement prohibits any party from maintaining existing or seeking future separate storage agreements.

**8.5.7. Use of Unused San Juan-Chama Water.**

**8.5.7.1.** In addition to the San Juan-Chama Project Water provided by Ohkay Owingeh as described in Article 8.5.2, beginning on the date of enactment of the Settlement Act, Ohkay Owingeh agrees to offer a right of first refusal every year to the Storage Parties to lease up to 10% of Ohkay Owingeh's unused San Juan-Chama Project Water not needed for beneficial use to supply water to the Pueblo, as determined in its sole discretion by Ohkay Owingeh, for the purpose of providing water in storage to facilitate shortage sharing described in Articles 8.1 and 8.5. The lease of water from Ohkay Owingeh pursuant to this Article 8.5.7.1 shall not create any right or entitlement to such water other than as described in this Article 8.5.7.1.

**8.5.7.2.** To facilitate the contribution of water by RCAA and Acéquias Norteñas to the storage reserve, Ohkay Owingeh agrees to consider leasing an additional amount of water under its San Juan-Chama Project contract to RCAA and Acéquias Norteñas if terms acceptable to Ohkay Owingeh can be agreed upon.

**8.5.7.3.** The City of Española agrees to offer, with the consent of the U.S. Bureau of Reclamation, a right of first refusal every year to the Storage Parties for leasing of up to 100% of any of Española's unused San Juan-Chama Project Water, at the per-acre-foot cost defined in Española's contract with the Bureau of Reclamation for leasing to third party entities, for the purpose of providing water in storage to facilitate shortage sharing described in Articles 8.1 and 8.5.

(A) Until the later of either the Enforceability Date or the enforceability date of the settlement of Ohkay Owingeh and Santa Clara Pueblo water rights in the *Abbott* adjudication, the portion of Española's San Juan-Chama Project Water that shall be considered unused and available for leasing to the Storage Parties will consist of 100% of any water not utilized by Española to satisfy conditions of its existing or future Office of the State Engineer permits, or placed to any other beneficial use by Española, as determined by the Española City Council during the San Juan-Chama Project annual accounting period.

(B) After the later of either the Enforceability Date or the enforceability date of the settlement of Ohkay Owingeh and Santa Clara Pueblo water rights in the *Abbott* adjudication, the portion of Española's San Juan-Chama Project Water that shall be considered unused and available for leasing to the Storage Parties will consist of 50% of any San Juan-Chama Project Water not utilized by Española to satisfy conditions of its existing or future Office of the State Engineer permits, or placed to any other beneficial use to supply water to Española or communities directly served by Española, as determined by the City Council during the San Juan-Chama Project annual accounting period.

(C) Española may annually make additional San Juan-Chama Project Water available for leasing to the Storage Parties.

(D) The Storage Parties and their member acéquias further agree that they will not protest any applications filed by the City of Española to drill and use wells within the permissible well zone consistent with Articles 8.6.1.2 and 8.6.1.3. The Acéquias Norteñas and RCAA, and their member acéquias further agree that they will not protest other applications by the City of Española for new wells as long as the resultant cumulative depletions to the Rio Chama Stream System will not exceed 1.0 cfs (2 AF/Day) as determined by the State Engineer. The Storage Parties will make good faith efforts to encourage their Parciantes to refrain from protesting such applications.

(E) The lease of water from Española pursuant to this Article 8.5.7.3 shall not create any right or entitlement to such water other than as described in this Article 8.5.7.3.

**8.5.8. Temporary Irrigation Storage.** For the purpose of improving the timing and supply during the irrigation season, the Settlement Parties, other than the State, agree not to protest, or otherwise oppose, the Signatory Acéquias' or Ohkay Owingeh's applications to the State Engineer to permit temporary storage of up to 180 days of spring run-off or other high flows for subsequent release for direct flow diversion later in the irrigation season. Such storage shall not affect Ohkay Owingeh's exercise of its Historical Overbanking Right set forth in Article 7.3.

**8.6. City of Española Rio Chama Basin Wells.** The City of Española and Ohkay Owingeh agree to groundwater well restrictions as set forth in this Article 8.6 and on the attached map, "Rio Chama Drainage Basin City of Española Well Setback Settlement Provisions," Exhibit D to this Agreement.

**8.6.1.** Ohkay Owingeh will not protest or otherwise oppose a City of Española application to drill wells within the Rio Chama Stream System outside the Pueblo Grant subject to the following conditions:

**8.6.1.1.** Española will not place any well in the Rio Chama Stream System within 3,000 feet of the Pueblo Grant as shown on Exhibit D, dated May 24, 2023;

**8.6.1.2.** Española's proposed well(s) shall be within or west of the area marked on Exhibit D as the "permissible well zone;"

**8.6.1.3.** Española may install any number of wells within the "permissible well zone" of Exhibit D so long as the combined yield of such wells does not exceed 500 AFY.

**8.6.2.** Ohkay Owingeh and Española will consult in a good faith effort to determine the location of any easement to be granted by Ohkay Owingeh to Española for water lines and associated infrastructure within the Pueblo Grant to connect Rio Chama Stream System wells to Española's water infrastructure, based upon mutually agreeable terms and conditions.

**8.6.3.** Ohkay Owingeh and Española acknowledge their joint intent to address issues of mutual concern related to potential impacts from groundwater pumping by each on the water supply of the other outside the Rio Chama Stream System.

**8.6.4.** The Settlement Parties acknowledge that Española has a right to divert and use groundwater within the Adjudication boundary from an existing supplemental well pursuant to New Mexico Office of the State Engineer Permit No. RG-3067-S-14. This permitted supplemental well is located within the Rio Chama Stream System. The Settlement Parties acknowledge that Española holds State issued permits related to RG-03067-S-14 that fall outside the Adjudication boundary.

## **ARTICLE 9: PUEBLO WATER RIGHTS ADMINISTRATION**

**9.1. Ohkay Owingeh Sovereign Authority.** Ohkay Owingeh, as a sovereign Indian nation, has inherent authority to permit and administer Pueblo Water Rights on Pueblo Lands consistent with this Settlement Agreement. The exercise of Ohkay Owingeh’s authority in the specific areas set forth here shall not be construed to otherwise limit the nature or scope of Ohkay Owingeh’s sovereign authority generally.

**9.1.1.** Ohkay Owingeh shall have the authority and responsibility to measure, distribute, administer, and regulate the use of water under its Pueblo Water Rights. Ohkay Owingeh’s responsibility and authority, beginning at its points of diversion, are subject to the provisions of the Settlement Agreement and Partial Final Judgment and Decree. Notwithstanding the above, responsibility over the points of diversion that are shared among Ohkay Owingeh and an acéquia shall be established in cooperative agreements between Ohkay Owingeh and the acéquia, consistent with the terms of this Settlement Agreement. The procedures and methods used to quantify water rights in the Settlement Agreement and Partial Final Judgment and Decree shall not limit Ohkay Owingeh’s authority to administer its water rights in its discretion.

**9.1.2.** Ohkay Owingeh’s jurisdiction and authority will be exercised through promulgation and adoption of the Pueblo Water Code, permitting, and other governmental measures customarily employed by Ohkay Owingeh to regulate its affairs.

**9.1.3.** Ohkay Owingeh, the State, and the Signatory Acéquias, shall cooperate to ensure that the implementation and enforcement of the Settlement Agreement and the Partial Final Judgment and Decree are consistent with their respective jurisdictional authorities. Neither the State, nor any agency or subdivision of the State shall have jurisdiction or authority over Pueblo Water Rights except as provided in the Settlement Agreement and Partial Final Judgment and Decree.

## **9.2. Measurement of Pueblo Diversions and Flow on Pueblo Lands.**

**9.2.1. Diversion Measurement in General.** Ohkay Owingeh shall install and maintain flow-measuring devices or gaging stations of appropriate design and using appropriate technology on all surface water diversions and all groundwater diversions within the Rio Chama Stream System on Pueblo Lands, unless exempted by Article 9.2.4. The measurement

requirement applies to any Pueblo diversions on the Rio Grande exercising a Rio Chama water right.

**9.2.2. Diversion Measurement Design, Technology, and Equipment.** The design and technology for each device or station required by this Article 9.2 shall be subject to approval by the Water Master. Each surface water flow-measuring device and gaging station required by this Article 9.2 shall be equipped with telemetry and data storage capability.

**9.2.3. Diversion Data Reading, Transmittal, and Posting.** Ohkay Owingeh shall electronically transmit surface water telemetered data to the Water Master. The State Engineer will post the real time data on the Office of the State Engineer website as soon as practicable. Ohkay Owingeh shall maintain a permanent record of the surface water and groundwater diversion data. Ohkay Owingeh shall report diversion data annually, or more frequently in its discretion, as set forth in Article 9.2.5.

**9.2.4. Exempt Diversions.** Ohkay Owingeh diversions for the following purposes of use are exempt from the metering and reporting requirements to the State in this Article 9.2:

- (A) existing individual household wells for domestic and livestock use diverting 3.00 AFY or less;
- (B) livestock wells diverting 3.00 AFY or less;
- (C) new individual household wells for domestic and livestock use diverting 1.00 AFY or less;
- (D) surface water and groundwater diversions into livestock ponds in compliance with Article 4.2.2;
- (E) traditional agricultural and cultural practices as set forth in Article 6;
- (F) water diverted pursuant to Ohkay Owingeh's Historical Overbanking Right for the Bosque Project as set forth in Article 7.3;
- (G) water diverted to Pueblo Lands from an acéquia.

**9.2.5. Annual Report of Pueblo Diversions.** Ohkay Owingeh shall compile and submit an annual report of its diversions in the Rio Chama Stream System pursuant to this Article 9.

**9.2.5.1. Content.** Each annual report shall contain, at a minimum, the following information:

- (A) a tabulation of diversions of water by the place of use, purpose of use, and point of diversion, including Bosque Restoration Right diversions;

- (B) a tabulation of required offsets and the sources used to satisfy that requirement;
- (C) a list of livestock ponds that have changed capacity or have been relocated or replaced and the new location coordinates, new capacity, and the supporting data that Ohkay Owingeh used to determine the new capacity; and
- (D) an accounting of Additional Irrigation Acres.

**9.2.5.2. Adjustments for Data Quality.** Ohkay Owingeh may correct raw data for quality purposes in the preparation of its annual report. Such adjustments shall use a methodology acceptable to the Water Master, according to generally accepted industry standards.

**9.2.5.3. Submittal.** Ohkay Owingeh shall submit its annual report for the previous calendar year to the Water Master on or before March 31st of each year.

**9.2.5.4. Posting.** The Water Master shall post Ohkay Owingeh's annual report for the previous calendar year on the Office of the State Engineer website on or before April 15th of each year.

**9.3. Pueblo Change of Place of Use, Purpose of Use, and Point of Diversion.**

**9.3.1.** Ohkay Owingeh has authority to change, singly or in any combination, the place of use, purpose of use, and point of diversion of any portion of a Pueblo Water Right within the Pueblo Grant, including but not limited to changes from surface water to groundwater points of diversion and diversion of groundwater from new points of diversion on Pueblo Lands for uses on Pueblo Lands in compliance with the Pueblo Water Code.

**9.3.2.** Notwithstanding any other provision to the contrary, in emergency circumstances, Ohkay Owingeh shall be entitled to temporarily change, singly or in any combination, the place of use, purpose of use, and point of diversion of any portion of a Pueblo Water Right in order to maintain water supply on Pueblo Lands to meet Bosque restoration goals or traditional and cultural needs. Such emergency uses shall comply with the Pueblo Water Code. Ohkay Owingeh shall provide notice of such proposed changes by any of the methods in Article 9.4.1(B). Such emergency uses shall be limited to non-acéquia points of diversion. Such uses are deemed not to Impair the water rights of any Party if such temporary use complies with applicable provisions of this Agreement.

**9.3.3.** Ohkay Owingeh will ensure that any administrative action is consistent with existing agreements in place among the Settlement Parties.

**9.3.4.** Ohkay Owingeh and the Office of the State Engineer will coordinate to ensure that the Office of the State Engineer website provides an electronic link to Ohkay Owingeh's website providing the notice required under the Pueblo Water Code.

**9.4. Pueblo Water Code.** Not later than the Enforceability Date of this Agreement, Ohkay Owingeh shall adopt a Pueblo Water Code consistent with this Agreement establishing an



administrative process by which its sovereign authority over the Pueblo Water Rights will be exercised.

**9.4.1.** The Pueblo Water Code shall contain, at a minimum, the following:

- (A) except for diversion amounts that are 3 AFY or less, provisions requiring Ohkay Owingeh to provide public notice by means reasonably calculated to inform water users and the Office of the State Engineer of the Pueblo's:
  - (i) receipt of an application for a Pueblo Water Right permit,
  - (ii) intention to deny or to issue a Pueblo Water Right permit for a use of water, or
  - (iii) intention to change the place of use, purpose of use or point of diversion of any portion of the Pueblo Water Right;
- (B) provisions specifying that, at a minimum, notice shall be provided electronically on Ohkay Owingeh's website, by newspaper, and web-based publications intended to inform those potentially affected by an application;
- (C) a process for issuance of a Pueblo Water Right permit, including the contents of a permit application, time periods for filing an application, conditions that require hydrologic analysis, and conditions for use of the Settlement Model or additional appropriate tools, as described in Article 8.2;
- (D) standards to be employed in assessing an application for a Pueblo Water Right permit to determine potential Impairment, including, but not limited to, potential groundwater drawdown, surface water depletion effects, and physical impacts on other water users;
- (E) an obligation that, upon Ohkay Owingeh's finding of Impairment caused by its water use, Ohkay Owingeh shall mitigate that Impairment if practically and reasonably feasible;
  - (i) Where mitigation is not feasible, and Ohkay Owingeh issues a permit that is likely to Impair existing livestock or domestic wells, Ohkay Owingeh shall provide notice to the Impaired party of the potential Impairment and the availability of the State mitigation fund. The State mitigation fund shall be the exclusive remedy for such Impairment.
  - (ii) For any Mutual Domestic Water Consumers Association ("MDWCA") operating within the Rio Chama Stream System portion of the Pueblo Grant, if Ohkay Owingeh makes a finding of Impairment caused by its water use, the Pueblo Water Code shall provide that Ohkay Owingeh will cooperate with the State Engineer and the affected MDWCA to find suitable means to mitigate such Impairment, including

but not limited to State funding that can be used to defray the cost of deepening the MDWCA well or installing a new well at a different location, or to facilitate the connection of the MDWCA to a different regional water provider. The Pueblo Water Code shall provide that Ohkay Owingeh's cooperative efforts with the State and the MDWCA to mitigate Impairment shall be deemed to satisfy Ohkay Owingeh's mitigation obligation under this Settlement Agreement.

(F) a provision requiring the issuance of a written decision in response to an application for a Pueblo Water Right permit, the retention of records supporting the decision, and public notice of the decision;

(G) provisions that establish the process by which water is temporarily used under emergency circumstances pursuant to Article 9.3.2; and

(H) provisions for protesting the issuance or denial of a Pueblo Water Right permit application and providing an opportunity to be heard in an administrative proceeding established by Ohkay Owingeh.

(i) Standing to protest shall be afforded to (a) any owner of a water right who asserts that the issuance of a Pueblo Water Right permit would Impair the protestant's ability to exercise their water right and (b) any acéquia that asserts that a Pueblo Water Right permit would cause detriment to an interest of the acéquia or would Impair the water rights of one or more of its members.

(ii) Upon exhaustion of Pueblo remedies as set forth in the Pueblo Water Code, a protestant may challenge the final Pueblo decision only by pursuing judicial review in the Decree Court to enforce or interpret the Settlement Agreement or the Partial Final Judgment and Decree.

#### **9.4.2. Substantive Standards Applicable to Pueblo Water Right Permits.**

**9.4.2.1. No Impairment.** A Pueblo Water Right permit shall not Impair existing surface water or groundwater rights. Ohkay Owingeh will determine Impairment by reference to state law standards. Ohkay Owingeh's finding and conclusion of no Impairment shall be based on substantial evidence, which shall be recited in the written decision. In the event of a finding of Impairment, Ohkay Owingeh retains the authority to impose permit conditions designed to mitigate Impairment.

**9.4.3. Consistency with this Settlement Agreement.** The issuance or exercise of a Pueblo Water Right permit shall be consistent with this Settlement Agreement.

**9.4.4. Amendments to the Pueblo's Water Code.** Ohkay Owingeh may amend its Water Code pursuant to Pueblo sovereign authority, and such amendments shall take into account changes in state law and policy regarding administration of water rights, provided

however, that Ohkay Owingeh shall not be obligated to conform its Pueblo Water Code to the provisions of state law and policy.

**9.5. Offsets of Surface Water Depletion Effects from Groundwater Pumping.**

**9.5.1.** Offsets shall be accomplished in accordance with Office of the State Engineer standards unless otherwise provided in this Settlement Agreement. The following terms and conditions will apply to Ohkay Owingeh’s use of surface water rights and measured return flows to offset surface water depletion effects from groundwater diversion under a Pueblo Water Right permit.

**9.5.1.1.** The following sources of Pueblo groundwater diversions shall not be included in the compilation of groundwater diversions for offset calculation purposes:

- (A) domestic, commercial, municipal, and industrial uses described in Article 4.3;
- (B) groundwater wells diverting 3 AFY or less described in Article 9.2.4;
- (C) groundwater diversion for Bosque restoration described in Article 7.4.

**9.5.1.2.** Based upon pre-1929 depletions, Ohkay Owingeh shall offset surface water depletion effects in excess of 240 acre-feet per year resulting from groundwater diversions, not including groundwater diversions set forth in Article 9.5.1.1.

**9.5.1.3.** Ohkay Owingeh’s annual surface water depletions under this Article 9.5 shall be calculated using the Settlement Model, or other method of calculation acceptable to the State Engineer in accordance with Article 8.2, and Ohkay Owingeh’s annual groundwater diversion amount from the rights described in this Agreement.

**9.5.1.4.** Ohkay Owingeh shall have legal control of sources of offsets in an amount sufficient to offset the surface water depletion consistent with this Article 9.5 at the time the depletion occurs.

**9.5.1.5.** For the purposes of this Article 9.5, Ohkay Owingeh groundwater diversions for irrigation at a place of use outside historically or adjudicated irrigated acres as set forth in the exhibit referenced in Article 4.1.3 shall be considered to be 100 percent consumptively used unless Ohkay Owingeh implements a State Engineer approved return flow plan that provides otherwise.

**9.5.2. Sources of Offsets.** For all surface water depletions resulting from Ohkay Owingeh’s groundwater diversions that require offsets, such offsets shall be made by one or more of the following means at Ohkay Owingeh’s discretion:

- (A) delivery of San Juan-Chama Project Water or other imported water under contract to Ohkay Owingeh;

- (B) return flow to the stream system by discharging treated effluent to the Rio Chama, the Rio Grande, Alluvial Groundwater, or all three, at any location on Pueblo Lands, at the City of Española wastewater treatment plant, or suitable alternate location off Pueblo Lands acceptable to the State Engineer;
- (C) transfer and the retirement of the consumptive use of Pueblo Water Rights pursuant to this Agreement;
- (D) any other method approved by the State Engineer.

**9.5.3.** All sources of offsets must be located above the Otowi Gage.

**9.5.4.** If Pueblo groundwater diversions within the Rio Chama Stream System result in surface water depletions that exceed 771 AFY, then Ohkay Owingeh shall calculate surface water depletion from Pueblo groundwater pumping for the following stream reaches:

- (A) Rio Chama, beginning at the Acéquia de los Salazares point of diversion and continuing upstream to Abiquiu Dam;
- (B) Rio Ojo Caliente, beginning at the most downstream acéquia point of diversion and continuing upstream;
- (C) Rio del Oso, beginning at the most downstream acéquia point of diversion and continuing upstream; and
- (D) El Rito, beginning at the most downstream acéquia point of diversion and continuing upstream.

**9.5.5.** If the calculated surface water depletion on a stream reach will materially affect surface water diversions during shortage sharing, Ohkay Owingeh shall offset the calculated depletion to the impacted reach using any combination of appropriate methods in Article 9.5.2, or otherwise reach a mutually agreeable solution with those affected. The balance of the calculated surface water depletion due to Pueblo groundwater diversion can be offset in accordance with the other provisions of this Article 9.5.

**9.5.5.1. Reporting of Offsets.** Offsets will be documented in the annual report required in Article 9.2.5.

**9.6. Funding for Mitigating Domestic Well and Livestock Well Impairment.** The State shall provide and administer funding as set forth in Article 12.5 to be used to mitigate Impairment to non-Pueblo domestic and livestock groundwater rights resulting from Pueblo water use required to be offset under Article 9.5. The funding may be used to provide an alternative water supply or for the cost to drill a replacement well.

**9.6.1.** Any opportunity for payment for mitigation pursuant to this Article 9.6 shall be subject to sufficient appropriations by the New Mexico State Legislature to create the mitigation

fund. The unavailability of funding under this Article 9.6 shall not affect the right of Ohkay Owingeh to use its water rights as provided in this Agreement.

**9.6.2.** The State Engineer shall promulgate rules governing the administration of the mitigation fund by the Enforceability Date.

**9.6.3.** An owner of a valid non-Pueblo domestic or livestock well may seek funding from the mitigation fund by submitting a request to the State Engineer in either of the following circumstances:

- (A) when Ohkay Owingeh issues a permit after a finding that Impairment is likely to occur and that mitigation is not feasible, as set forth in Article 9.4.1(E) or
- (B) when the Water Master notifies the owner of record that Impairment is likely to occur based on the Water Master's review of an application under the Pueblo Water Code noticed under Article 9.4.1(A) because Ohkay Owingeh and the State are not using the Settlement Model to determine Impairment.

**9.6.4.** Upon receipt of an application for funding by a water right owner of record, the State Engineer may request additional information from the owner of record, including but not limited to supporting documentation as necessary, and the type of mitigation proposed.

**9.6.5.** If the application for mitigation funds is approved, the State Engineer shall notify the owner of record of the amount of the mitigation payment and shall further direct disbursement from the mitigation fund for that purpose. The owner of record shall submit an accounting of the expenditure of the mitigation payment.

**9.6.6.** The State shall not assume any liability or responsibility to make payments if the fund is insufficient to cover those costs.

**9.7. Administration Outside Pueblo Lands.** Except as otherwise provided in the Settlement Agreement and Partial Final Judgment and Decree, use of any portion of the Pueblo Water Right off Pueblo Lands shall comply with state law. A change in point of diversion or place or purpose of use of Pueblo Water Rights pursuant to this Settlement Agreement to a location off Pueblo Land shall be made in accordance with state law pursuant to an application to the State Engineer.

## **ARTICLE 10: LEASING OF PUEBLO WATER RIGHTS**

**10.1. In General.** Subject to the Settlement Act, Ohkay Owingeh may lease its water rights adjudicated under the Settlement Agreement and Partial Final Judgment and Decree.

**10.2. Maximum Term.** The maximum term of any water use lease, including all renewals under that lease, shall not exceed 99 years in duration. Ohkay Owingeh shall not permanently alienate any rights it has under the Settlement Agreement or the Partial Final Judgment and Decree. The duration of a lease for use off Pueblo Land in accordance with this Article 10 shall

be exempt from the lease term duration limitation in NMSA 1978, section 72-6-3 (2003) upon enactment of State legislation exempting such leases from the term limitation in that section.

**10.3. No Forfeiture or Abandonment.** Nonuse by a lessee of a Pueblo Water Right shall in no event result in a forfeiture, abandonment, or other loss of all or any part of those rights.

**10.4. Leasing off Pueblo Land.** Except as provided in Article 10.3, leasing any portion of the Pueblo Water Right for use off Pueblo Land shall be subject to the terms of this Settlement Agreement, state law, applicable federal law, and any applicable interstate compact to the same extent that those laws apply to the exercise of water rights held by non-federal, non-Indian entities.

### **ARTICLE 11: SETTLEMENT FUNDING FOR OHKAY OWINGEH.**

**11.1. Ohkay Owingeh Water Rights Settlement Trust Fund.** Subject to congressional appropriation, Ohkay Owingeh shall receive a Water Rights Settlement Trust Fund in exchange for the waivers and releases of its claims set forth in Article 14 of this Agreement. The trust fund shall be entirely federally funded.

**11.2. Amount of Trust Fund.** The amount of the Ohkay Owingeh Water Rights Settlement Trust Fund shall be \$818,350,000 (Eight Hundred Eighteen Million, Three Hundred Fifty Thousand Dollars). The Settlement Parties other than the United States agree to support inclusion in federal legislation approving this Settlement Agreement an inflation adjustment for authorized funding from the date of execution of this Agreement by Ohkay Owingeh through deposit into the Ohkay Owingeh Water Rights Settlement Trust fund.

**11.3. Authorized Purposes of Use of Trust Funds.** Ohkay Owingeh may use its Water Rights Settlement Trust Fund for any water-related purposes consistent with the terms of the Settlement Agreement and Partial Final Judgment and Decree, including but not limited to, payment for or reimbursement of costs incurred by Ohkay Owingeh for:

- (A) acquiring water rights or water supplies;
- (B) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;
- (C) Pueblo water rights management and administration; and
- (D) Rio Chama and Rio Grande Bosque and watershed protection, enhancement and support of Pueblo agriculture, enhancement of water-related Pueblo community welfare, and infrastructure development.

### **ARTICLE 12: NON-FEDERAL FUNDING**

**12.1. Acéquia Funding Agreement.** The State of New Mexico and the Signatory Acéquias, through the RCAA, Acéquias Norteñas, La Asociación de las Acéquias del Rio Vallecitos, Tusas

y Ojo Caliente, and the El Rito Ditch Association, shall enter into a funding agreement that includes a schedule for distribution of state funding to the Signatory Acéquias in accordance with this Article 12.1.

**12.1.1. Amounts.** The State contribution shall be \$98,500,000. The funding agreement shall allow for the distribution of \$88,075,000 within 10 years of the date of enactment of the Settlement Act and \$10,425,000 will be funded after the Enforceability Date, to be distributed consistent with the following:

**12.1.1.1.** \$11,500,000 paid to the Rio Chama Acéquia Association for acquisition of storage space in existing reservoirs and for acquisition of water or water rights for impoundment in storage in existing reservoirs for use in increasing supply during shortage sharing under Article 8.1, pursuant to an acquisition plan approved by the Rio Chama Acéquia Association.

**12.1.1.2.** \$17,500,000 for the State's share of, and improvements to, the two diversion structures serving the Acéquia de Chamita, Acéquia de los Salazares, and Acéquia de Hernandez, and for ditch improvements to those three acéquias, pursuant to an allocation plan approved by the three acéquias.

**12.1.1.3.** \$25,875,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the Acéquias Norteñas, pursuant to an allocation plan approved by the Acéquias Norteñas. \$3,881,250 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

**12.1.1.4.** \$15,250,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of El Rito Ditch Association, pursuant to an allocation plan approved by El Rito Ditch Association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

**12.1.1.5.** \$15,250,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of La Asociación de las Acéquias del Rio Vallecitos, Tusas, y Ojo Caliente, pursuant to an allocation plan approved by the association. \$2,287,500 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

**12.1.1.6.** \$13,125,000 for planning and feasibility studies for infrastructure and ditch improvements, and for construction of infrastructure and ditch improvements serving member ditches of the RCAA not receiving funding under Article 12.1.1.2, pursuant to an allocation plan approved by the RCAA. \$1,968,750 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

**12.1.2. Funding Priority and Reallocation.** State funding shall first be used to satisfy the expenditures described in Article 12.1.1.1 and next to fund the expenditures described in

Article 12.1.1.2. The amounts of funding set forth in Article 12.1.1 may be reallocated among the purposes and associations of acéquias described in this Article by written agreement of the affected associations of acéquias.

**12.1.3. Indexing.** The funding amounts described in Article 12.1.1 shall be indexed from July 1, 2024, to no more than ten years after the date of enactment of the Settlement Act, except as set forth above. The index to be used as the basis for the inflation adjustments shall be included in the funding agreement.

**12.1.4. Early Funding for Planning, Design, and Acquisition of Water.** After execution of the Local Settlement Agreement, the State shall provide the Signatory Acéquias up to \$7,000,000 of the amounts set forth in Article 12.1.1 for water and water rights acquisition, planning, permitting, designing and engineering, including associated administrative costs for technical, legal, and auditing needs, of the projects and activities described therein according to an allocation plan agreed to by the associations of acéquias named in Article 12.1.1.

**12.1.5. Additional Authorized Uses.** In addition to the purposes described in Article 12.1.1, funding may also be used for planning and feasibility studies for infrastructure and ditch improvements, river bank protections, acquisition or leasing of water rights or water supply, acquisition of land and other interests in real estate, operation, maintenance and replacement costs, administration costs, including legal, technical, and audit costs, to seek matching funds from the State of New Mexico and the United States, and any other purpose that is necessary to implement this settlement agreement or that is allowed under the funding agreement.

**12.2. Ohkay Owingeh Contribution to Acéquia Funding.** Ohkay Owingeh and the RCAA agree that the Pueblo will contribute funds to the RCAA to assist with construction of improvements to the diversion structures serving the Acéquia de Chamita, Acéquia de los Salazares, and Acéquia de Hernandez, and for ditch improvements to those three acéquias as follows:

**12.2.1.** Ohkay Owingeh shall make a monetary contribution to the acéquia improvement projects that shall be proportionate to its ownership of water rights acres on each acéquia as of the date of the project management agreement referred to in Article 12.2.5 and the total cost of improvements for each acéquia. The amount of such contributions shall be based upon the percentage of total irrigated acres on each acéquia established by the State's 1961 Hydrographic Survey, as modified by subsequent Office of the State Engineer permits and court subfile orders. This amount shall be due at the time that:

- (A) the State of New Mexico has made its contribution pursuant to Article 12.1.1.2;
- (B) the Ohkay Owingeh Water Rights Settlement Trust Fund has been established and funded by the United States pursuant to Article 11 and adequate money is available for disbursement; and
- (C) the total cost for each acéquia improvement project has been determined and agreed upon.



**12.2.2.** The amount of Ohkay Owingeh’s initial monetary contribution shall be adjusted, upward or downward, to reflect actual project costs pursuant to Article 12.2.5.

**12.2.3.** For a period of fifteen (15) years following the Enforceability Date, Ohkay Owingeh shall make additional, proportional monetary contributions based on its acquisition of additional water rights acres served by any of the three acéquias, and the total cost of improvements on that acéquia. Payment of the additional contribution by Ohkay Owingeh to the RCAA shall be made in full within 30 days of its receipt of funds withdrawn from the Water Rights Settlement Trust Fund, or earlier at the discretion of Ohkay Owingeh.

**12.2.4.** For the fifteen (15) year period following the Enforceability Date, Ohkay Owingeh’s additional contributions due upon its acquisition of additional water rights acres on any of the three acéquias shall not be discounted based upon depreciation or other determinations of wear and tear on completed improvements. Thereafter, Ohkay Owingeh shall not be obligated to make additional contributions to RCAA for the ditch improvement construction costs.

**12.2.5.** Ohkay Owingeh, the RCAA and the individual affected acéquias will adopt project management agreements for the purpose of implementation of their respective infrastructure improvement projects, including but not limited to planning, design, contracting, construction management and fiscal management. The parties agree that these projects will be administered pursuant to applicable state, federal and Pueblo law.

**12.3. City of Española Funding.** The State of New Mexico shall provide and administer funding in the amount of \$32,000,000, indexed from July 1, 2024, by not later than ten years after the date of enactment of the Settlement Act, for the development of production wells and related infrastructure costs to provide additional sources of safe drinking water for customers of the City of Española to be served by an expanded regional municipal system. \$4,800,000 of this money shall not be disbursed until after the Enforceability Date and shall be indexed until the date the funds are available for disbursement.

**12.4. State Engineer Funding.** The State shall contribute funding for two full time employee positions for the Office of the State Engineer, to include a Water Master and staff position to carry out the State’s obligations to perform Water Master and administrative duties in accordance with this Settlement Agreement.

**12.5. Mitigation Fund.** The State shall provide and administer funding in the amount of \$500,000 to be used as described in Article 9.6. When the fund balance reaches \$50,000 or below, the Parties agree to support a request to the New Mexico State Legislature to replenish the fund by at least \$500,000. The State assumes no obligation to replenish the funds once the funds are fully expended.

**12.6.** Nothing herein is intended to limit the ability of any Settlement Party or Parties to seek other sources of funding for municipal or acéquia projects; provided however, that any such additional funding shall not be subject to the provisions of this Article.

## **ARTICLE 13: GENERAL PROVISIONS**

**13.1. Financial Obligation of the United States.** Nothing in this Settlement Agreement creates an obligation on the United States to construct any infrastructure, or to pay to construct any infrastructure, nor does the United States agree to pay for any operation and maintenance of such infrastructure. As its financial contribution to this Agreement, the United States agrees to deposit appropriated funds into the Ohkay Owingeh Water Rights Settlement Trust Fund under Article 11. Such deposits are the United States' only financial obligation under this Agreement. The United States does not agree to pay and shall not be liable to pay any monies to any Parties, or to any other entities, for any purpose related to this Agreement, other than to deposit funds into the Ohkay Owingeh Water Rights Settlement Trust Fund.

**13.2. Water Rights in Partial Final Judgment and Decree Held in Trust.** All Pueblo Water Rights shall be held in trust by the United States on behalf of Ohkay Owingeh and shall not be subject to forfeiture, abandonment, or permanent alienation.

**13.3. Water Uses.** Regardless of the means used for quantifying Pueblo Water Rights, Ohkay Owingeh may devote such rights to any lawful use, subject to this Settlement Agreement and the Partial Final Judgment and Decree.

**13.4. Limited Waiver by Ohkay Owingeh of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Upon and after the Enforceability Date, if any Settlement Party brings an action relating only and directly to the interpretation or enforcement of the Settlement Agreement, Partial Final Judgment and Decree, or Settlement Act, and names Ohkay Owingeh as a party, Ohkay Owingeh agrees to waive any claim to sovereign immunity from the action, but only for the limited and sole purpose of such interpretation or enforcement. Nothing in this Agreement or the Settlement Act shall be construed to waive the sovereign immunity of Ohkay Owingeh against claims for money damages.

**13.5. Recognition of McCarran Amendment as Limited Waiver by the United States of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Except as provided in Subsections a–c of Sec. 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. § 666) (“McCarran Amendment”), as amended, nothing in this Agreement waives the immunity of the United States.

**13.6. Limited Waiver by the State of Sovereign Immunity to Enforce the Terms of the Settlement Agreement.** Upon the Enforceability Date, the State agrees to waive its sovereign immunity to any action relating only and directly to the interpretation or enforcement of this Settlement Agreement, Partial Final Judgment and Decree, or the Settlement Act. However, no waiver of sovereign immunity shall be made for any action against the State that seeks money damages.

**13.7. Partial Final Judgment and Decree.**

**13.7.1. Procedure.**

**13.7.1.1.** Following enactment of the Settlement Act and any amendments that Act requires to this Agreement, the Settlement Parties shall file a joint motion requesting that the Decree Court enter an order approving procedures for providing notice of the proposed Partial Final Judgment and Decree and this Settlement Agreement, and an opportunity to object and be heard, to all known and unknown claimants of water rights within the Rio Chama Stream System whether or not they have been joined as parties to the Adjudication.

**13.7.1.2.** After the Decree Court approves the procedure and the Settlement Agreement has been executed by the Settlement Parties and the Secretary, the Settlement Parties shall file a joint motion for entry of Partial Final Judgment and Decree and approval of the Settlement Agreement. The joint motion shall request that the Decree Court hear and decide all objections to the Partial Final Judgment and Decree and the Settlement Agreement but defer entry of the Partial Final Judgment and Decree until the Settlement Parties notify the Decree Court that the conditions precedent specified in Articles 15.2(A) through 15.2(F) have been satisfied.

**13.7.2. Contents.** The Settlement Parties shall prepare a proposed form of Partial Final Judgment and Decree to be submitted to the Decree Court for entry as an exhibit to the motion. The contents of the proposed form of Partial Final Judgment and Decree shall incorporate the following provisions, as well as any other provisions agreed to by the Parties:

- (A) all elements of Ohkay Owingeh’s water rights described in Article 4 and Article 7;
- (B) a statement that the Decree Court retains jurisdiction to interpret and enforce the Settlement Agreement and Partial Final Judgment and Decree and resolve disputes pertaining thereto; and
- (C) a statement that, subject to the provisions of the Partial Final Judgment and Decree and the Settlement Agreement, the State Engineer has authority under state law to administer water rights and to supervise the apportionment, diversion, and use of the water of the Rio Chama Stream System according to:
  - (i) the orders and decrees of the Decree Court,
  - (ii) the licenses and permits issued by the State Engineer,
  - (iii) State Engineer rules and regulations, and
  - (iv) District Specific Rules adopted by the State Engineer for the basin under authority of Active Water Resource Management.

**13.8. Enforceability Date.** The Settlement Parties shall be bound by all provisions of this Settlement Agreement, and this Settlement Agreement shall become enforceable and the waivers and releases executed pursuant to Article 14 of this Agreement and the limited waivers of sovereign immunity set forth in this Article 13 of this Agreement shall become effective, as of

the date that the Secretary publishes the statement of findings that all conditions precedent set forth in Article 15 have been fulfilled.

**13.8.1.** In the interest of making certain bargained for benefits of this Settlement Agreement available as soon as practicable, Ohkay Owingeh, the State, the City, RCAA, Acéquias Norteñas, La Asociación de las Acéquias del Rio Vallecitos, Tusas y Ojo Caliente, and the El Rito Ditch Association agree to make good faith efforts, beginning on July 5, 2023, to negotiate and enter into an interim implementation agreement.

**13.9. Effect of Settlement Agreement.** Nothing in the Settlement Agreement:

**13.9.1.** affects the ability of the United States to take actions in its capacity as trustee for any other Indian Pueblo, Tribe, or allottee;

**13.9.2.** waives or compromises any claim of a member of the Pueblo in an individual capacity that does not derive from a right of the Pueblo;

**13.9.3.** confers jurisdiction on any state court to 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 to conduct judicial review of federal agency action;

**13.9.4.** shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water rights or lands in any judicial or administrative forum or proceeding.

**13.9.5.** confers jurisdiction on any state court to interpret or apply Ohkay Owingeh law regarding water rights, health, safety, or the environment; to determine the duties of Ohkay Owingeh or other parties pursuant to such law; or to conduct judicial review of the governmental actions of Ohkay Owingeh.

**13.10. Evidentiary Effect of Negotiations.** The Settlement Parties have developed this Settlement Agreement through good faith negotiation for the purpose of resolving legal disputes, including pending litigation. No conduct, statements, offers, proposals, or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding without the consent of Ohkay Owingeh, the State, the United States, the City of Española, the RCAA, the Acéquias Norteñas, El Rito Ditch Association, and La Asociación de las Acéquias del Rio Vallecitos, Tusas y Ojo Caliente.

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

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

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

**13.14. No Inducements.** Each Settlement Party acknowledges and represents that in executing this Settlement Agreement it has not relied on any inducements, promises, or representations made by the other Parties that are not reflected in this Settlement Agreement.

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

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

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

**13.18. Counterparts.** This Settlement Agreement may be signed in counterparts by one or more of the Settlement Parties, and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all the Settlement Parties. An electronic copy of this Settlement Agreement and any signatures thereon will be considered for all purposes as originals.

**13.19. Binding on Parties, Successors, and Assigns.** This Settlement Agreement shall be binding on and inure to the benefit of the Settlement Parties and their respective successors and assigns.

#### **ARTICLE 14: WAIVERS AND RELEASES OF CLAIMS**

**14.1. Waiver of Objections to Partial Final Judgment and Decree.** The Settlement Parties waive any right to object and shall in good faith, seek to deter objections by others to the entry of the Partial Final Judgment and Decree that quantifies Ohkay Owingeh's Pueblo Water Rights under this Agreement.

**14.2. Waiver of *Inter Se* Challenges.** The Settlement Parties agree to recognize one another's water rights, as those rights are described in this Settlement Agreement or in any subfile order entered in the Adjudication. The Settlement Parties agree to waive their rights to file and shall abstain from filing, during any *inter se* phase or otherwise in the Adjudication, any

objection to the water rights of any other Settlement Party, Pueblo Water Rights, the water rights of an Acéquia, or the water rights of an individual Parciante of an Acéquia, as those rights are described in subfile orders, consent orders, other court order or decree entered by the Adjudication Court or the Settlement Agreement. This provision does not apply to water right claims, or objections, made by the United States acting in any capacity other than as trustee for the benefit of Ohkay Owingeh or to any interest of the State of New Mexico except its interests on the relation of the State Engineer.

**14.3. Waiver of *Inter Se* Challenges to Domestic and Livestock Wells.** The Settlement Parties, except for the State of New Mexico, further agree to waive their rights to and shall abstain from filing *inter se* challenges to: (a) any domestic or livestock well right existing as of the Enforceability Date and which is permitted under NMSA 1978, §72-12-1 or its predecessor statutes; and (b) any pre-basin groundwater right in the Adjudication boundary if claimed or used for domestic uses, livestock watering, or non-commercial irrigation of up to 1 acre.

**14.4. Waivers and Releases of Claims by Ohkay Owingeh and the United States as Trustee for Ohkay Owingeh.** Subject to the reservation of rights and retention of claims under Article 14.6, as consideration for recognition of Pueblo Water Rights and other benefits described in this Agreement and the Settlement Act, Ohkay Owingeh and the United States, acting as trustee for Ohkay Owingeh, shall execute a waiver and release of all claims before the Enforceability Date for:

- (A) water rights within the Rio Chama Stream System that Ohkay Owingeh, or the United States acting as trustee for Ohkay Owingeh, asserted or could have asserted in any proceeding, including the Adjudication, on or before the Enforceability Date, except to the extent that such a right is recognized in this Agreement or the Settlement Act;
- (B) 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 Chama Stream System that accrued at any time up to and including the Enforceability Date.

**14.5. Waivers and Releases of Claims by Ohkay Owingeh Against the United States.** Subject to the reservation of rights and retention of claims under Article 14.6, Ohkay Owingeh shall execute a waiver and release of all claims against the United States (including any agency or employee of the United States) for water rights within the Rio Chama Stream System first arising before the Enforceability Date relating to:

- (A) water rights within the Rio Chama Stream System that the United States, acting as trustee for Ohkay Owingeh, asserted or could have asserted in any proceeding, including the Adjudication, except to the extent that such rights are recognized as part of Pueblo Water Rights in this Agreement or the Settlement Act;

- (B) foregone benefits from non-Pueblo use of water, on and off Pueblo Land (including water from all sources and for all uses) within the Rio Chama Stream System;
- (C) damage, loss, or injury to water, water rights, land, or natural resources due to loss of water or water rights (including 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 claims relating to a failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the Rio Chama Stream System;
- (D) failure to establish or provide a municipal, rural, or industrial water delivery system on Pueblo Land within the Rio Chama Stream System;
- (E) damage, loss, or injury to water, water rights, land, or natural resources due to construction, operation, and management of irrigation projects on Pueblo Land and other federal land and facilities (including damages, losses, or injuries to fish habitat, wildlife, and wildlife habitat) within the Rio Chama Stream System;
- (F) failure to provide for operation, maintenance, or deferred maintenance for any irrigation system or irrigation project within the Rio Chama Stream System;
- (G) failure to provide a dam safety improvement to a dam on Pueblo Land within the Rio Chama Stream System;
- (H) damage, loss, or injury to the Bosque area of the Rio Chama due to the construction, operation, and maintenance of Abiquiu Dam and its associated infrastructure and resulting Rio Chama flow management;
- (I) the litigation of claims relating to any water right of Ohkay Owingeh within the Rio Chama Stream System; and
- (J) the taking of Ohkay Owingeh's Bosque property within the Pueblo Grant on the Rio Chama Stream System and the Rio Grande mainstem as asserted in *Ohkay Owingeh v. United States*, No. 22-1607L (Court of Federal Claims);
- (K) failure of the United States to acknowledge and protect any of Ohkay Owingeh's aboriginal rights to water in the Rio Chama Stream System;
- (L) the United States' failure to develop the irrigation water resources in the Rio Chama Stream System on the Pueblo's Grant, including but not limited to, failure to construct and deliver water through the Highline Canal, failure to make improvements to the Acéquia de Chamita, and failure to repurchase arable lands unlawfully obtained by non-Indians;

(M) the United States' failure to prevent or remedy non-Indians' trespass on or seizure of arable Pueblo lands in the Rio Chama Stream System on the Pueblo Grant; and

(N) the negotiation, execution, or adoption of this Agreement (including exhibits or appendices) and the Settlement Act.

**14.6. Reservation of Rights and Retention of Claims.** Notwithstanding the waivers and releases in this Article 14, Ohkay Owingeh and the United States, acting in any capacity, shall retain:

**14.6.1.** all claims relating to:

**14.6.1.1.** the enforcement of, or claims accruing after the Enforceability Date relating to water rights recognized under this Agreement, any final court decree, or the Settlement Act, and;

**14.6.1.2.** activities affecting the quality of water and the environment, including claims under

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including claims for damages to natural resources;

(B) the Safe Drinking Water Act (42 U.S.C. § 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (commonly referred to as the "Clean Water Act"); and

(D) any regulations implementing those Acts described in subsections (A) through (C);

**14.6.1.3.** the right to use and protect water rights acquired after the date of enactment of the Settlement Act;

**14.6.1.4.** damage, loss, or injury to land or natural resources that are not due to loss of water or water rights, including hunting, fishing, gathering or cultural rights;

**14.6.1.5.** all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to the Settlement Agreement or the Settlement Act; and

**14.6.1.6.** loss of water or water rights in locations outside of the Rio Chama Stream System.

**14.7. Waivers by Settlement Parties Other than the United States and Ohkay Owingeh.** In return for the commitments of the United States and Ohkay Owingeh as set forth in the



Settlement Agreement, the Settlement Act or the Partial Final Judgment and Decree, the Settlement Parties other than the United States and Ohkay Owingeh hereby waive and release:

**14.7.1.** all claims for rights to water in the Rio Chama Stream System that these Settlement Parties asserted or could have asserted in the Adjudication, except to the extent such rights are recognized in the Settlement Agreement, the Settlement Act, the Partial Final Judgment and Decree or a subfile order of the Adjudication; and

**14.7.2.** all claims for damages, losses, or injuries against Ohkay Owingeh to water rights or claims of interference with, diversion or taking of water, including but not limited to claims for injury to land resulting from such damages, losses, injuries, interference with, diversion or taking, in the Rio Chama Stream System that accrued at any time up to and including the Enforceability Date.

### **ARTICLE 15: CONDITIONS PRECEDENT TO ENFORCEABILITY**

**15.1. Publication in the Federal Register.** Upon the fulfillment of the conditions precedent described in Article 15.2 below, the Secretary shall publish a notice in the Federal Register containing a finding that the conditions have been fulfilled.

**15.2. Conditions Precedent.** The conditions precedent referred to in Article 15.1 are the following:

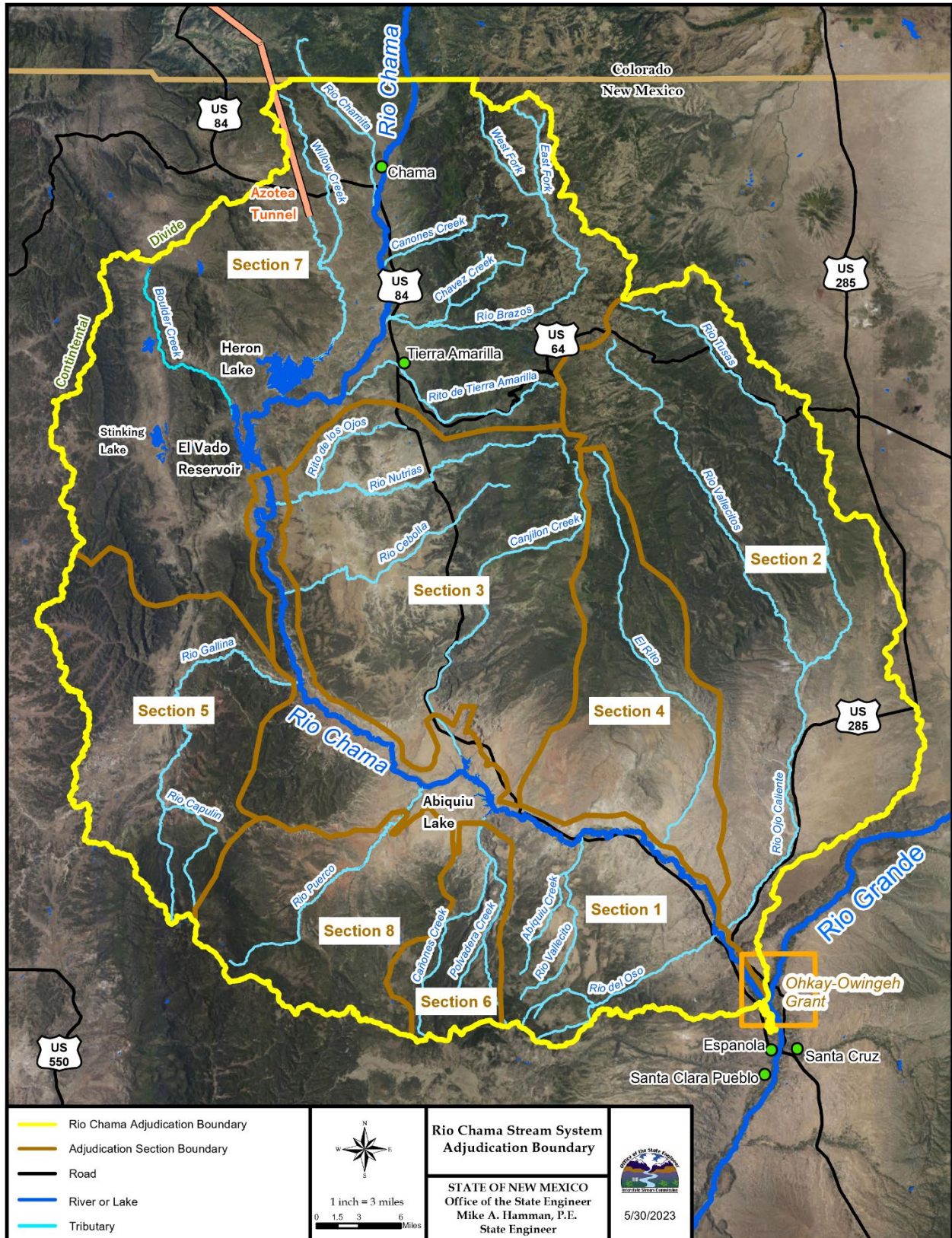
- (A) Congress has enacted legislation approving the Settlement Agreement, authorizing the United States to execute the Agreement and authorized the actions necessary to implement the Agreement;
- (B) to the extent that the Settlement Agreement conflicts with the Settlement Act, the Settlement Agreement has been amended to conform to the Settlement Act;
- (C) the Settlement Agreement, so revised, including waivers and releases of claims set forth in Article 14 has been executed by the Parties, including the United States;
- (D) all of the amounts authorized to be appropriated in Article 11 have been appropriated and deposited in the designated accounts;
- (E) the State of New Mexico has provided the funding set forth under Articles 12.1.1, 12.3, and 12.5 into appropriate funding accounts or entered into funding agreements with the intended beneficiaries for funding;
- (F) the State of New Mexico has enacted legislation providing that Pueblo Water Rights 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-Based Water Rights acquired by Ohkay Owingeh or by the United States on behalf of Ohkay Owingeh may be leased for said term;

(G) the Decree Court has approved the Settlement Agreement and has entered a final or interlocutory Partial Final Judgment and Decree with respect to the water rights of Ohkay Owingeh that is substantially in the form described in Article 13.7.2, as amended, to ensure consistency with the Settlement Act, from which no further appeal may be taken.

**15.3. Right to Withdraw.** Ohkay Owingeh shall have the right to withdraw as a party to this Settlement Agreement, in its sole discretion, if: (a) the Settlement Act approving this Agreement does not direct a mandatory transfer into the Ohkay Owingeh Water Rights Settlement Trust Fund an amount satisfactory to the Pueblo; and (b) Congress fails to appropriate a satisfactory amount into the Ohkay Owingeh Water Rights Settlement Trust Fund within three (3) years of enactment.

**15.3.1.** Within three (3) years of enactment of the Settlement Act, Ohkay Owingeh may exercise its right to withdraw from this Settlement Agreement by sending to the Governor of the State of New Mexico and to the Secretary of the Interior by certified mail a resolution of the Ohkay Owingeh Tribal Council stating the Pueblo's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Ohkay Owingeh's withdrawal, this Settlement Agreement shall become null and void without further action by any Settlement Party.

## EXHIBIT A



## **EXHIBIT B**

### **Rio Chama Basin AWRM Water Master Guidelines for Determining and Changing Administrative Flow Rates**

**May 19, 2023**

#### **I. General Administrative Flow Rates for the Rio Chama Basin**

1. These guidelines assume reductions to acres but the same principles concerning the timing and effect of adjustments will be applied if served acres increase.
2. Diversionary administrative flow rates will be reduced by taking the current administrative flow rate and dividing by the adjudicated acres and then making a reduction based on the CFS per acre rate determined using that equation per diversion.
3. The Water Master will determine administrative flow rates and the flow rates per acre as needed for any diversions that have not had an administrative flow rate already approved by the Court. Diversions not actively participating in the Rio Chama shortage sharing will not be assigned administrative flow rates unless other administrative issues call for their creation.
  - 3.1 The Water Master will consult with the acéquia or other cooperating divertor and with the associations of acéquias when determining new administrative flow rates.
  - 3.2 Objections to a Water Master determined flow rate or flow rate per acres can be made under 19.25.13.23 NMAC.
4. The Water Master may increase existing (2023) administrative flow rates or flow rates created under I.2 for reasons beyond a change in served acres at the request of the diversion. Changes to the 2023 flow rate or those approved under I.2 must be approved by the Water Master and all sharing parties from the settlement. If a change is approved, the Water Master will use the new flow rate for all future flow rate adjustments and will re-account for previous adjustments made using the previous administrative flow rate. Objections to the Water Master's denial of such a request can be made under 19.25.13.23 NMAC.
5. The Water Master will use Table 1 to determine when to change an administrative flow rate.
6. The Water Master may deviate from these guidelines at any time for waste of water, conservation of water, or to prevent impairment to downstream users.
7. These guidelines can be superseded by any means under Article 7.4 of the Settlement, including the adoption of district specific regulations.
8. For diversions that are not actively participating in the Rio Chama shortage sharing but require administrative flow rates for local agreements or for other reasons, the Water Master may apply the sections below if applicable and may create unique trigger flows based on USGS La Puente or another more appropriate gauging station.



**EXHIBIT B CONTINUED**

**II. USGS La Puente Above 100 CFS**

1. Under 19.25.13.17 (E) NMAC, the Water Master may, during times of high flow and when there is no legal constraint imposed on the physical administration of the available water supply, relax limits on the amount of water that may be diverted in order that the delivery system might operate more efficiently.
  - 1.1 The Water Master agrees that at times when the native available supply exceeds 100 CFS diversions may divert more than their administrative flow rate.
  - 1.2 For acéquias or diversions that have been subjected to reductions pursuant to Table 1, the Water Master agrees to suspend the new administrative flow rate from Table 1 and instead use the current (2023) administrative flow rates as the standard when native available supply exceeds 100 CFS.
  - 1.3 The Water Master will continue to use the new administrative flow rates from Table 1 if 1) the Water Master finds no direct returns, 2) the Water Master finds waste of water, 3) the Water Master finds unpermitted acres under irrigation from the diversion, or 4) total transferred acres exceed 30% of the adjudicated acres to the diversion.

**III. USGS La Puente between 50 – 100 CFS**

1. The new administrative flow rates from Table 1 will be the maximum allowed diversion.
2. If SJC releases or agreements and/or a carriage agreement are in use at these times, the administrative flow rates may be relaxed in line with those agreements.
3. The Water Master may lower diversions under Article 7.1.9.1 of the Settlement in this flow range but the basis for such adjustments shall not be because of served acres but due to detriment to releases of stored native water or SJC water.

**IV. USGS La Puente Below 50 CFS**

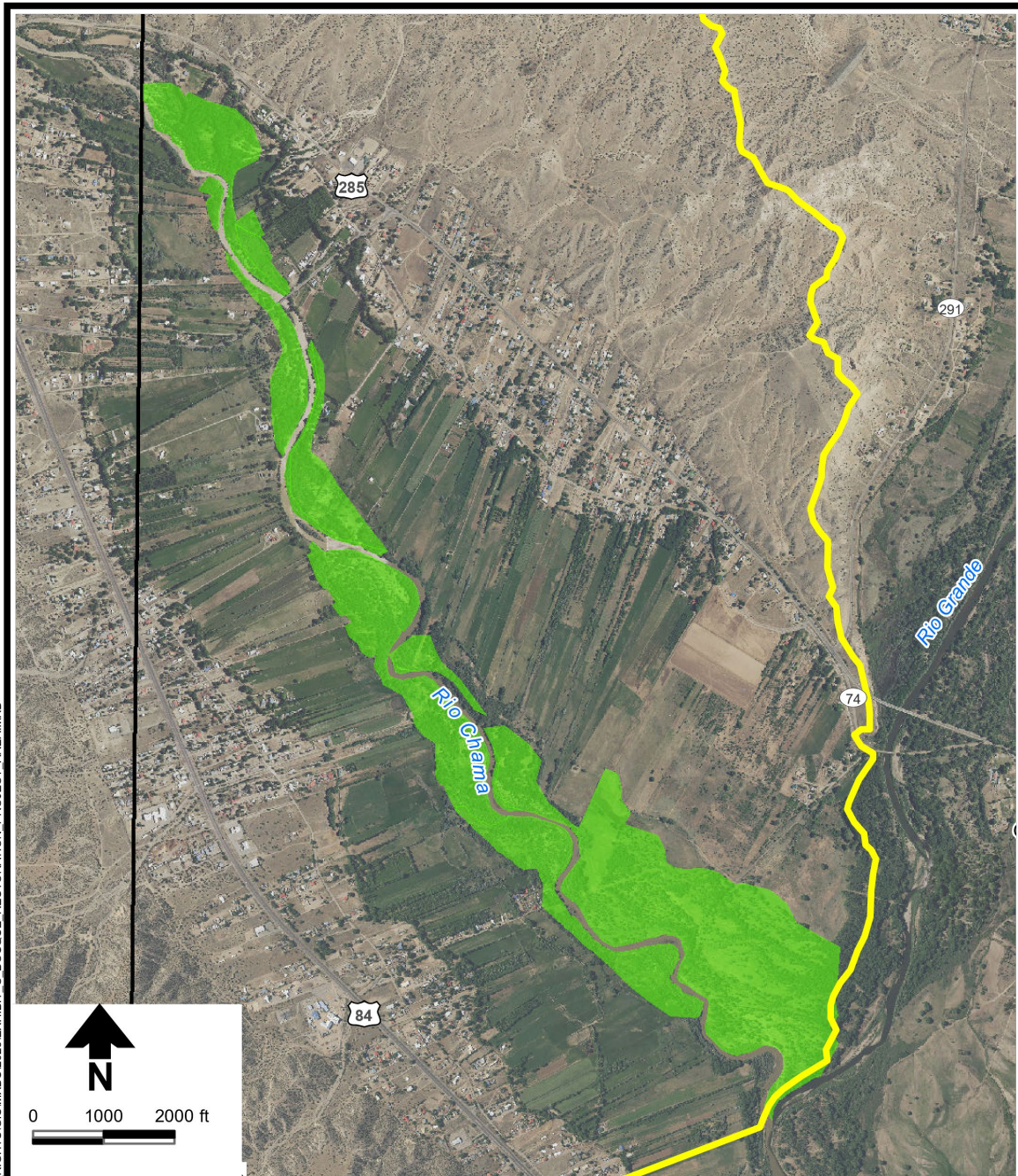
1. The total diversions in the lower Chama are limited to the available supply.
2. The Water Master will approve any sharing agreement that continues to use the 1972 administrative flow rates to determine diversion allotments during shortage sharing.
3. Alternatively, the Water Master will approve any sharing agreement using the reduced administrative flow rates based on changes to served acres.
4. The Water Master will consider other administrative flow rate alternatives created by the sharing parties for use during shortage.
5. If SJC agreements and/or a carriage agreement is in use at these times, the administrative flow rates may be relaxed in line with those agreements.

**EXHIBIT B CONTINUED**

**Table 1:** Water Master’s Guide to Making Official Administrative Flow Rate Reductions. The percent transferred is the cumulative transferred or otherwise lost acres, not per event. Transferred in this Table is inclusive of other means of reduction in served acres such as abandonment.




Percent Transferred or Otherwise Lost Acreage	Adjustment
<10%	0%
10-19%	10%
20-29%	20%
30-34%	30%
35-39%	35%
40-44%	40%
45-50%	45%
>50%	Adjustment for each 0.25 acre transferred or otherwise lost

**EXHIBIT C**



Source: Aerial photography, USDA, NAIP, 2020.

**Explanation**

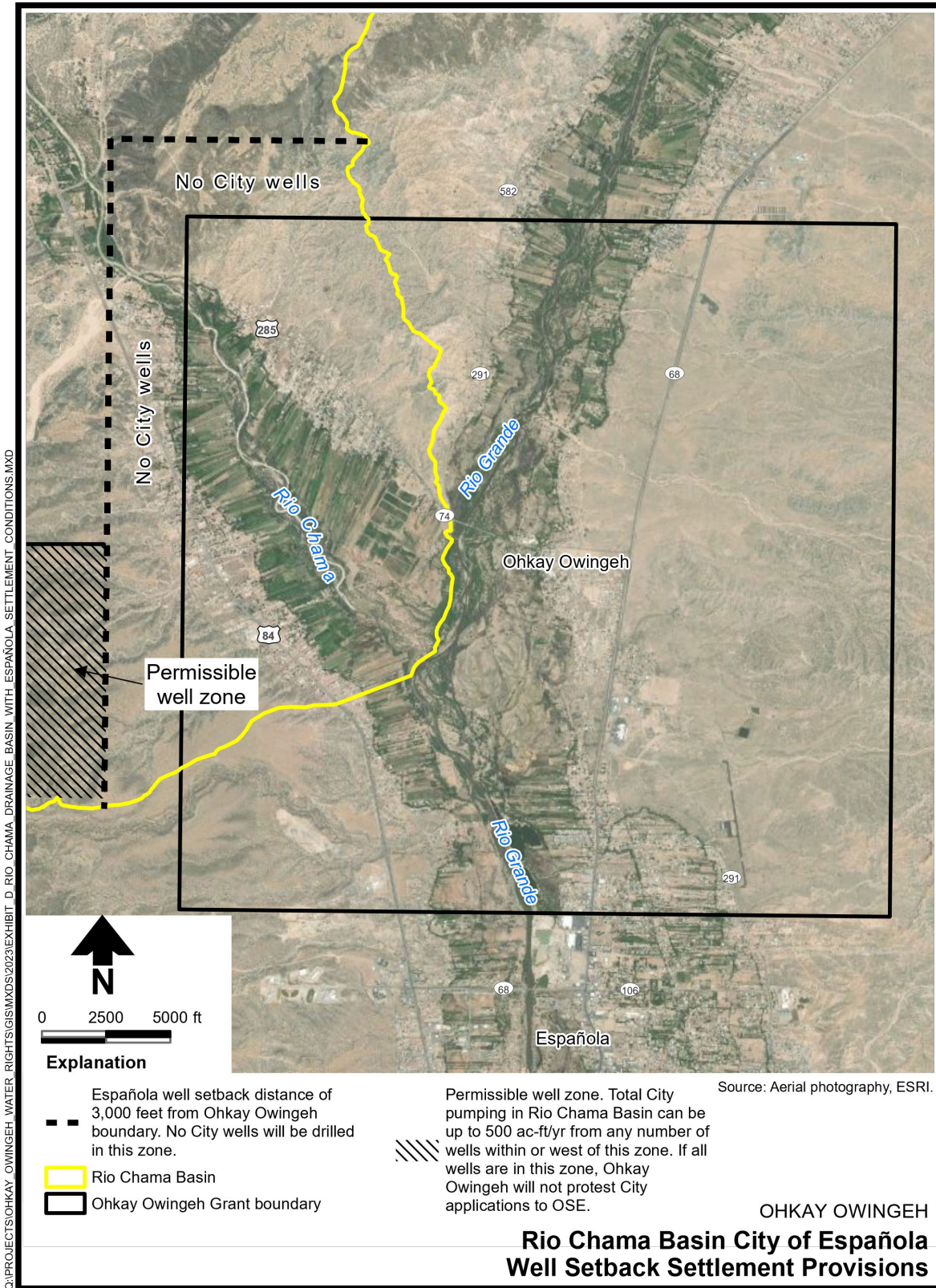
-  Bosque project area (~395 acres)
-  Ohkay Owingeh Grant boundary
-  Rio Chama Basin

OHKAY OWINGEH  
**Rio Chama Bosque  
Restoration Project Area**

Q:\PROJECTS\OHKAY\_OWINGEH\_WATER\_RIGHTS\GIS\MXDS\2023\EXHIBIT\_C\_BOSQUE\_RESTORATION\_PROJECT\_AREA.MXD



## EXHIBIT D





*State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*,  
Case No. 69-cv-07941-KWR/KK (D.N.M.)

**OHKAY OWINGEH WATER RIGHTS SETTLEMENT AGREEMENT**  
**SIGNATURE PAGE**

**For Ohkay Owingeh:**



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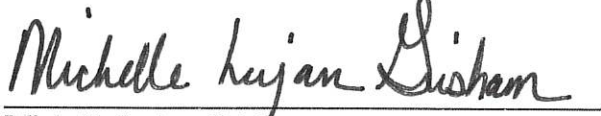
Larry Phillips Jr.  
Ohkay Owingeh Governor  
Ohkay Owingeh Tribal Council

7-24-2023  
Date

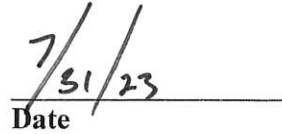
*State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*,  
Case No. 69-cv-07941-KWR/KK (D.N.M.)

**OHKAY OWINGEH WATER RIGHTS SETTLEMENT AGREEMENT**  
**SIGNATURE PAGE**

**For the State of New Mexico:**

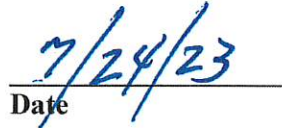


**Michelle Lujan Grisham**  
Governor

  
Date



**Mike Hamman, P.E.**  
State Engineer

  
Date

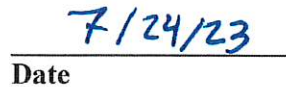
\_\_\_\_\_  
**Raúl Torrez**  
Attorney General

\_\_\_\_\_  
Date

Approved as to form:



**Nathaniel Chakeres**  
**Kelly Brooks Smith**  
**Nicole Greenspan**  
**Patricia Estrella**  
**Nicholas McDonald**  
**Special Assistant Attorneys General**  
**Office of the State Engineer**

  
Date

*State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*,  
Case No. 69-cv-07941-KWR/KK (D.N.M.)

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Case No. 69-cv-07941-KWR/KK (D.N.M.)

**OHKAY OWINGEH WATER RIGHTS SETTLEMENT AGREEMENT**  
**SIGNATURE PAGE**

**For the State of New Mexico:**

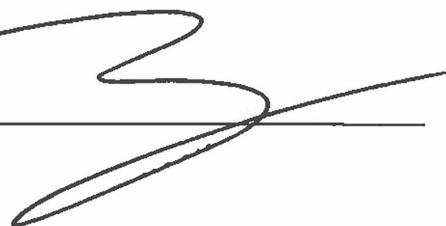
\_\_\_\_\_  
**Michelle Lujan Grisham**  
**Governor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Mike Hamman, P.E.**  
**State Engineer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Raúl Torrez**  
**Attorney General**



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**7/31/23**  
**Date**

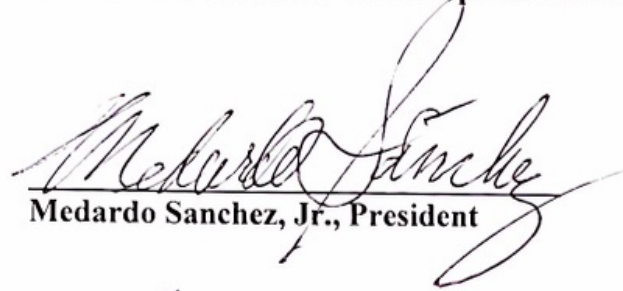
**Approved as to form:**

\_\_\_\_\_  
**Nathaniel Chakeres**  
**Kelly Brooks Smith**  
**Nicole Greenspan**  
**Patricia Estrella**  
**Nicholas McDonald**  
**Special Assistant Attorneys General**  
**Office of the State Engineer**

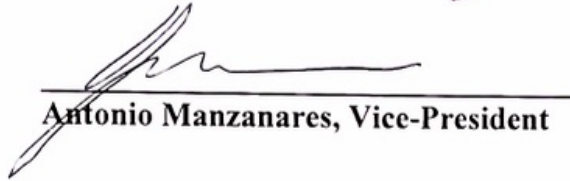
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**Date**

*State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*,  
Case No. 69-cv-07941-KWR/KK (D.N.M.)

**For the Asociación de Acéquias Norteñas de Rio Arriba:**

  
\_\_\_\_\_  
Medardo Sanchez, Jr., President

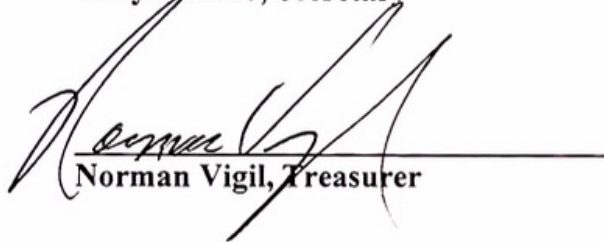
6-26/2023  
Date

  
\_\_\_\_\_  
Antonio Manzanares, Vice-President

6/26/23  
Date

  
\_\_\_\_\_  
Tony Casado, Secretary

6/26/23  
Date

  
\_\_\_\_\_  
Norman Vigil, Treasurer

6-26-2023  
Date