

# **IMPLEMENTATION OF INDIAN WATER RIGHTS SETTLEMENTS**

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Santa Fe, New Mexico  
August 4, 2011**

# RECENT NEW MEXICO INDIAN WATER RIGHTS SETTLEMENTS

## ➤ **Navajo Settlement**

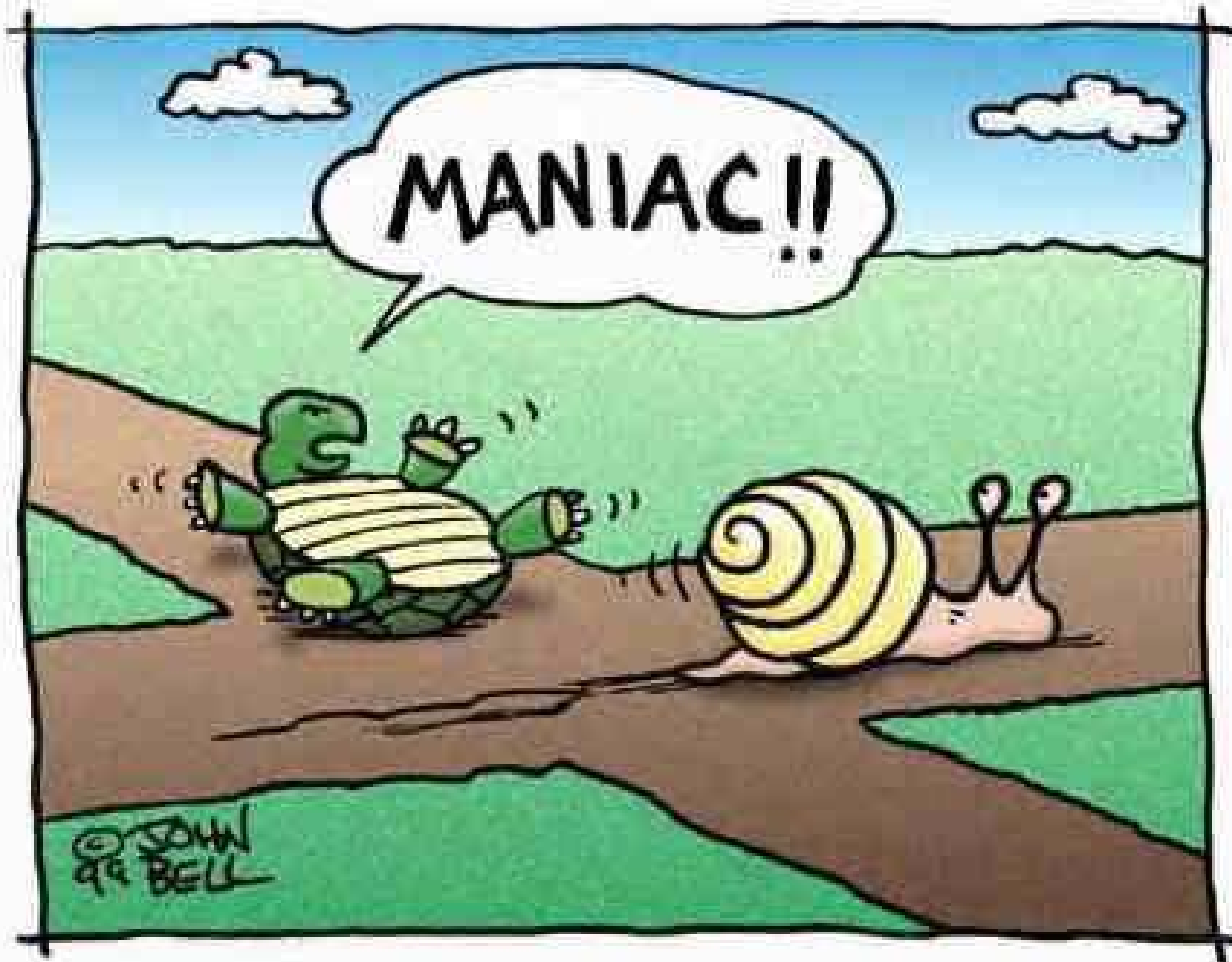
Settles claims of the Navajo Nation in the San Juan Basin, New Mexico

## ➤ **Taos Settlement**

Settles claims of the Pueblo of Taos in the Rio Pueblo de Taos and Rio Hondo stream systems

## ➤ **Aamodt Settlement**

Settles claims of the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque in the Nambé–Pojoaque–Tesuque Basin



**MANIAC!!**

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BELL

# SETTLEMENT ACTS

## ➤ **Navajo Settlement**

Northwestern New Mexico Rural Water Projects Act, Title X, Subtitle B of the Omnibus Public Land Management Act of 2009, Public Law 111-11, March 30, 2009

## ➤ **Taos Settlement**

Claims Resolution Act of 2010, Title VI , Public Law 111-291, December 8, 2010

## ➤ **Aamodt Settlement**

Claims Resolution Act of 2010, Title V, Public Law 111-291, December 8, 2010





# OVERVIEW - Navajo Settlement

- Quantifies rights for Navajo Indian Irrigation Project; and Fruitland and Hogback Irrigation Projects
- Authorizes and provides water for Navajo–Gallup Water Supply Project
- Recognizes rights in Animas La Plata Project
- Recognizes and quantifies M & I uses
- Protects junior users through limited priority date subordination and other mechanisms
- Funding for projects, rehabilitation of works

# OVERVIEW - Aamodt Settlement

- Quantifies rights of four Pueblos within Nambé-Pojoaque-Tesuque Basin.
  - In-basin rights based on Historically Irrigated Acreage (HIA)
- Importation of water to satisfy future needs
- Construction of Regional Water System—source of supply for Pueblos and non-Indian users
- Protection of existing uses
  - Acequias and domestic well users

# OVERVIEW - Taos (Abeyta) Settlement

- Quantification of Pueblo's rights
- Relocation of non-Indian wells to protect important Pueblo resources
- Mitigation of surface water depletions caused by groundwater pumping
- Acquisition of additional supplies
- Protection of existing uses
- Water infrastructure/storage improvement project(s)

# IMPLEMENTATION

- **Conforming Settlement Agreements with Federal Legislation**
- **Partial Final Decrees**
  - Joinder and Finality
- **Additional Agreements**
- **Funding**
- **Environmental Compliance**
  - NEPA, CWA, ESA, NHPA, NAGPRA
- **Administration**
- **Project Construction**

# Funding – Cost Allocation

in \$1,000s

	Federal	State	Local (construction)
<b>Aamodt</b>	\$ 174,304.0	\$ 50,000.0	\$ 25,400.0
<b>Taos</b>	\$ 124,000.0	\$ 20,040.0	
<b>Navajo</b>	\$ 991,300.0	\$ 60,000.0	\$ 67,800.0
<b>Totals</b>	<b>\$ 1,289,604.0</b>	<b>\$ 130,040.0</b>	<b>\$ 93,200.0</b>

# Summary of Cost Allocation

in \$1,000s



TOTAL FEDERAL FUNDING	\$	1,289,604.0
TOTAL STATE & LOCAL FUNDING	\$	223,240.0
GRAND TOTAL	\$	1,512,844.0

# Federal Funding

in \$1,000s

	Federal Approps	
	Appropriations to Date	President's FY2012 Budget Rec.
<b>Aamodt</b>	\$ 81,800.0 47%	\$ 9,400.0 52%
<b>Taos</b>	\$ 66,000.0 53%	\$ 4,000.0 56%
<b>Navajo</b>	\$ 180,000.0 18%	\$ 30,800.0 21%
<b>Totals</b>	<b>\$ 327,800.0</b>	<b>\$ 44,200.0</b>

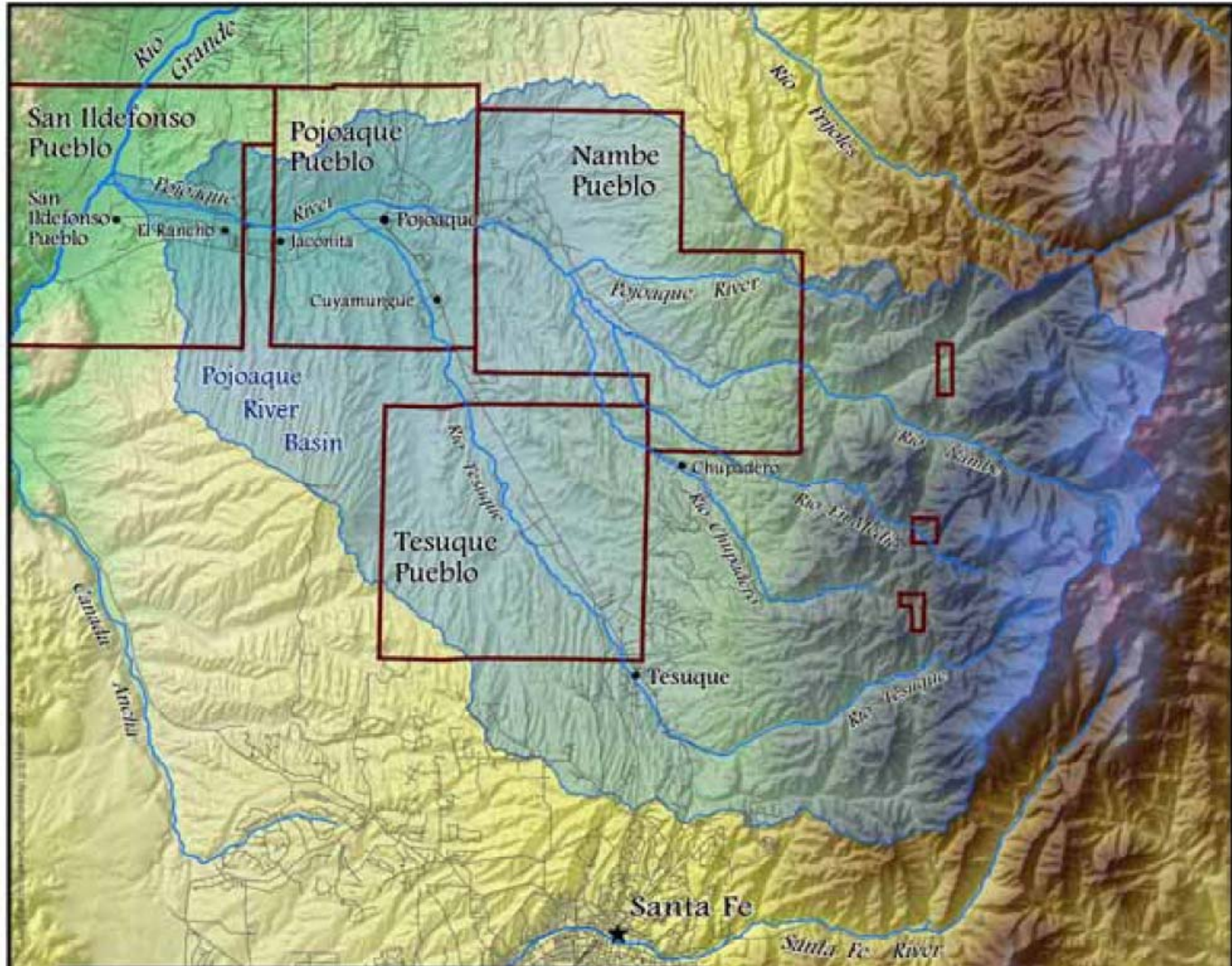
# Implementation - continued

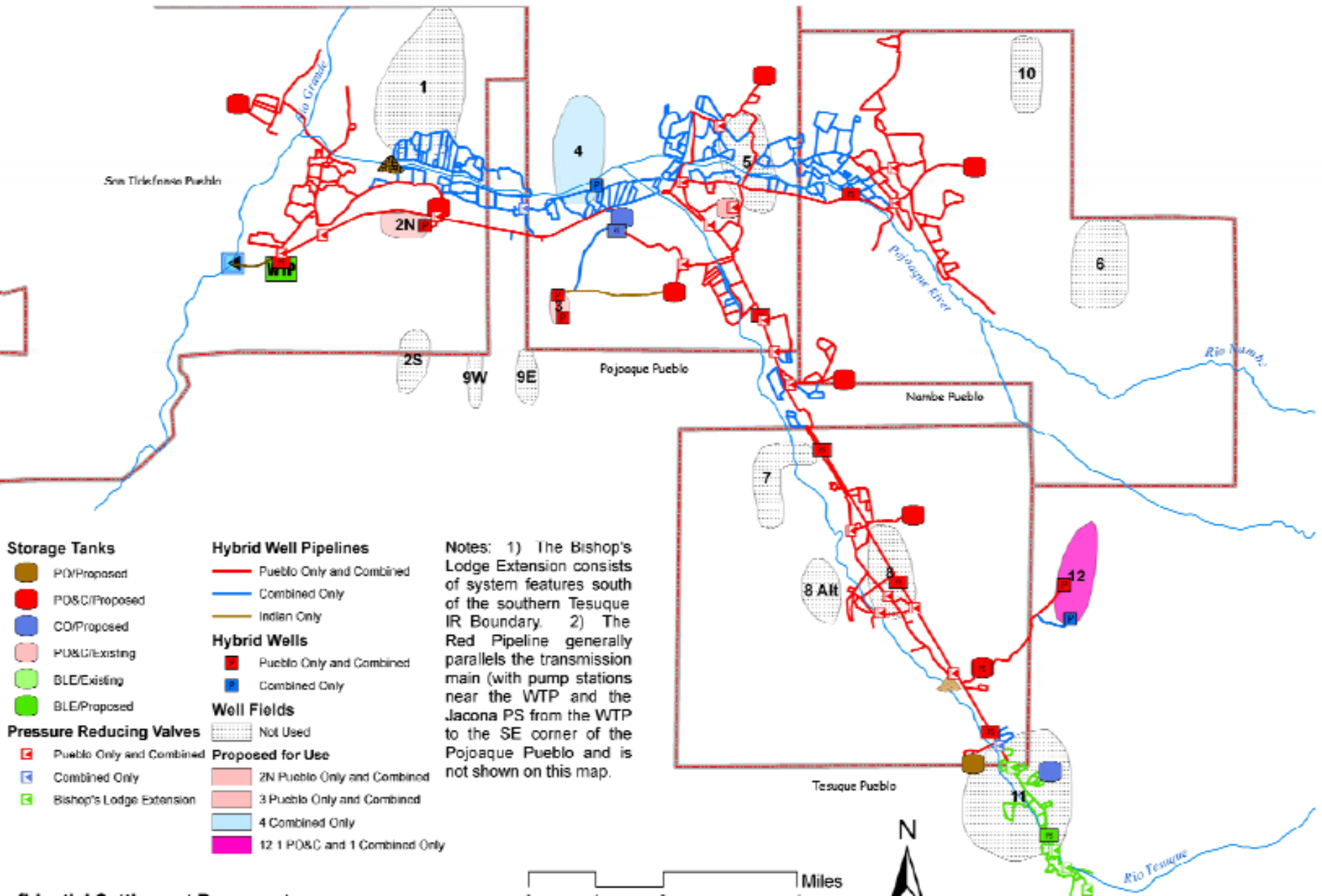
## ▶ **Environmental Approvals**

- Settlement Projects

## ▶ **Administration**

- Decree Enforcement
- Priority Administration
- Change of Use





# Rio Grande silvery minnow



# Aamodt Settlement

## Environmental Approvals

- ▶ Settlement will require future environmental approvals
  - ▶ NEPA
  - ▶ ESA
- ▶ 2003 Biological Opinion for the Middle Rio Grande
- ▶ New diversions require consultation on effects on baseline



# Aamodt Settlement

## Environmental Approvals

- ▶ Example: Santa Fe diversion (BDD)
  - ▶ Final EIS / ROD / Biological Opinion
  - ▶ Curtailment Plan: 325 to 200 cfs
- ▶ Aamodt Settlement Project
  - ▶ 30% San Juan-Chama Project
  - ▶ 70% Native Rio Grande



# Navajo Depletion Guarantee

- ▶ Offset of new Project uses with other Navajo Nation depletions, such as forbearance of uses by NIIP and/or Hogback and Fruitland Projects, if total depletions in the basin exceed baseline of 752,127 AFY
- ▶ Shows tension between senior right and environmental baseline (i.e. existing uses)

# Water Right Administration

## ▶ Big Issues:

- What court has enforcement jurisdiction?
- Who is the water master?
- Administration of change of use

## ▶ McCarran Amendment (43 USC 666(a)): waives immunity from suit:

- (1) adjudication of water rights
- (2) administration of water rights

## ▶ Problem of conflict between hydrologic and political boundaries



# Administration - **Aamodt**

- ▶ Federal Court Jurisdiction
- ▶ State has dual responsibility (secs. 5.2 / 5.6)
  - State Engineer : Non-Pueblo uses (State Law)
  - Water Master: Pueblo uses (Court authority)
- ▶ Change of Use (on or off Pueblo land)
  - Protects against harm to existing uses
  - Pueblo Administration
  - Water Master determines effect
  - Impairment Fund

# Administration - Navajo

- ▶ Jurisdiction: State Court (sec. 14)
- ▶ Water Master: State Engineer (sec. 14)
- ▶ Change of Use (sec. 17)
  - Navajo Nation water code applies within reservation
  - State law applies to change of point of diversion or change of use off-reservation

# Administration - Taos

- ▶ Jurisdiction: Court of Competent Jurisdiction (sec. 13.13)
- ▶ Priority Administration: no agreement on water master
- ▶ Change of use:
  - On Pueblo lands (sec 11.1):
    - ❖ Pueblo water code
    - ❖ Appeal to Court of competent jurisdiction

# Three Settlement Approaches

	Jurisdiction	Priority Admin	Change of Use
<b>Aamodt</b>	Fed. Ct	State / Water Master	No Pueblo code
<b>Navajo</b>	State Ct.	State Engineer	Tribal Code
<b>Taos</b>	Ct. of Comp. juris	No agreement	Pueblo Code

