

**STATE OF NEW MEXICO'S RULE 71.3 REPORT-FY 2025**

**EXHIBIT B: NORTHERN NEW MEXICO/PECOS ADJUDICATION BUREAU**

June 6, 2024

Pursuant to the requirements of Rule 1-071.3 NMRA, the State of New Mexico presents its report setting out the State's proposed priorities and its analysis of resources needed by the Courts and the State in the Northern New Mexico/Pecos Adjudication Bureau for fiscal year 2025 (July 1, 2024 to June 30, 2025). This report will be filed in each of the Bureau's adjudications. The available resources are based upon full time employee ("FTE") time as of the date of this filing, including contractors, and are listed in Table 1.

During fiscal year 2022, the State's Northern New Mexico and Pecos Bureaus were reorganized to combine Northern and Pecos into one Bureau, while at the same time separating out Indian water right matters to be managed under a separate Bureau for Pueblos, Tribes, and Nations. For fiscal year 2023, the Bureau for Pueblo, Tribes, and Nations for the first time contemporaneously filed its own report on priorities and resources.<sup>1</sup> This report speaks only to the Northern New Mexico/Pecos Bureau's non-Indian adjudication matters.

In addition to those active adjudication lawsuit activities described below, significant additional attorney, paralegal, contractor, and technical resources have been or will be committed this fiscal year to implementing completed decrees in the Pecos<sup>2</sup> and in *Aamodt*<sup>3</sup>.

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<sup>1</sup> This transition results in the metrics contained in the one report for FY 22 tracking into two reports for FY 23 and FY 2024.

<sup>2</sup> The Pecos Priority Project.

<sup>3</sup> Specifically, the State is tasked with implementing Section 4 protection pursuant to the *Aamodt* Settlement Agreement and the *Aamodt* Final Judgement and Decree.

**SUMMARY OF AVAILABLE RESOURCES FOR NORTHERN NEW MEXICO/PECOS ADJUDICATION BUREAU**

	FY2022 FTEs	FY2023 FTEs	FY2024 FTEs	FY2025 FTEs
<b>Total Bureau Staff and Contractor Resources</b>	<b>19.3</b>	<b>12.0</b>	<b>12.5</b>	<b>17.5</b>
<b>State Adjudications:</b>	<b>11.6</b>	<b>8.0</b>	<b>8.5</b>	<b>12.5</b>
I. San Juan Adjudication	4.40	3.0	2.5	3.0
II. San Jose Adjudication ( <i>Kerr-McGee</i> )	.75	-	-	2.5
III. Santa Fe Adjudication ( <i>Anaya</i> )	-	-	0.5	1.0
IV. Pecos Adjudication ( <i>Lewis</i> )	6.45	5.0	5.5	6.0
<b>Federal Adjudications:</b>	<b>7.7</b>	<b>4.0</b>	<b>4.0</b>	<b>5.0</b>
V. Chama Adjudication ( <i>Aragon</i> )	3.30	2.0	1.5	1.5
VI. Zuni Adjudication ( <i>A&amp;R</i> )	1.00	0.5	-	0.5
VII. Santa Cruz/Truchas Adjudication	.35	-	0.5	1.0
VIII. Santa Clara Creek	-	-	1.0	2.0
IX. Jemez Adjudication ( <i>Abousleman</i> )	.35	-	-	-
X. Nambé, Pojoaque, Tesuque Adj. ( <i>Aamodt</i> )	.20	-	-	-
XI. Taos	2.5	1.5	1.0	-

**STATE COURT ADJUDICATIONS - PRIORITIES FOR FY 2025**

**I. SAN JUAN ADJUDICATION, *New Mexico v. U.S., Jicarilla Apache Tribe and Navajo Nation*, Case No. D-1116-CV-75-184 (11<sup>th</sup> Judicial District, San Juan County)**

**A. Accomplishments Over the Past Few Years:**

**1. Section 1: La Plata**

- a. Claims of unknown claimants in the La Plata section:** In February of 2018, the State published notice of the pendency of this adjudication lawsuit to all unknown claimants. No additional claims resulted from this.
- b. Surface water domestic and stock claims in the La Plata section:** In March 2019, the Court issued its *Order to Show Cause* regarding surface water domestic and stock claims. Eight Requests for Consultation were timely served on the State. Two proved not to be objections to the *Order to Show Cause*. Another was resolved by the Court's March 7, 2022, entry of the ten amended NMDOT orders. Five of these claims remain pending.
- c. Preparation of the appendix to the Partial Final Decree:** The appendix is the computer-generated summary of the approximately six hundred subfile consent orders entered in the course of these La Plata proceedings. The appendix to what will be the proposed Final Decree has been and continues to be proofed and updated.

**d. Errors and Omissions:** In February 2023, the Court entered two *Orders* for expedited procedures for globally correcting mistakes that are shared by multiple consent orders under Rules 60(a) and 60(b), respectively. Clerical errors that can be corrected under Rule 1-060(A) NMRA and substantive errors that can be corrected under Rule 1-060(B) NMRA have since then been the subject of global motions under this procedure approved by the Court. To date, the State has submitted for the Court's approval nine *Motions* to correct errors in approximately 300 subfiles.

2. **City of Aztec, Farmington and Bloomfield:** Settlement agreements were reached with each of the three municipalities regarding the adjudication of their water rights. Discussions to reduce their terms to the form of consent orders and to agree on procedures to submit those proposed consent orders to the Court for entry have been undertaken between the parties.

## B. FY 2025:

### 1. Section 1: La Plata

**a. Claims of unknown claimants in the La Plata section:** The State will file its motion requesting the Court enter an order granting judgment by default against all unknown claimants finding they have no surface water rights in the La Plata section.

**b. Surface water domestic and stock claims in the La Plata section:** Five remaining outstanding claims require field visits and further consultation, which the State hopes to conclude before the end of this year, wrapping up surface water domestic and stock proceedings by the end of this calendar year.

**c. Preparation of the appendix to the Partial Final Decree:** The appendix continues to be reviewed for consistency with the individual orders and maps, and for omissions and errors, both clerical and substantive.

**d. Errors and Omissions:** The State will continue to submit motions to the Court to correct clerical and substantive errors in previously entered subfile orders adjudicating water rights. Approximately another 100 subfiles will be affected, resulting in perhaps a dozen motions—most of these requiring field work or technical review by the Hydrographic Survey Bureau. The State anticipates completing this field work and filing these motions before the end of FY 2025.

**e. Commence *inter se* proceedings on surface water uses:** Following the conclusion of the above described tasks, the State will file a motion for a procedural and scheduling order for *inter se* and commence to resolve *inter se* objections through litigation or mediation. The State anticipates beginning this proceeding in late 2024 or early 2025.

2. **City of Aztec, Farmington and Bloomfield:** The State will continue discussions with the municipalities to reduce the terms of their respective settlement agreements to the form of consent orders and to agree on procedures to submit those proposed consent

orders to the Court for entry.

**II. SAN JOSE ADJUDICATION, *New Mexico v. Kerr-McGee Corp.*, Case No. CB-83-190-CV & CB-83-220-CV (consolidated) (13<sup>th</sup> Judicial District, Cibola County)**

**A. Accomplishments Over the Past Few Years: *N/A***

**B. FY 2025**: Commence technical work on non-Indian water right claims in anticipation of conducting a hydrographic survey of non-Indian water right claims.

**III. SANTA FE ADJUDICATION, *Anaya v. Public Service Co. of New Mexico*, Case No. 43, 347 (1<sup>st</sup> Judicial District, Santa Fe County)**

**A. Accomplishments Over the Past Few Years**: Preliminary technical work on additional Cerro Gordo claims.

**B. FY 2025**:

1. Complete technical work on additional Cerro Gordo claims.

2. Begin legal work on individual subfiles and send out offers to water right claimants.

**IV. PECOS ADJUDICATION, *State of N.M. & PVACD v. Lewis*, Case Nos. 20294 & 22600 (Consolidated)**

**A. Roswell Underground Water Basin (“RAB”)**

**1. Accomplishments Over the Past Few Years**:

**a. Scheduling and Procedural Order**: During the last fiscal year, the Court entered the *Scheduling and Procedural Order* jointly submitted by the State and PVACD for the adjudication of relation back claims in the RAB.

**b. Serving Order to Show Cause Packets**: The State commenced serving Order to Show Cause packets on relation back claimants.

**2. FY 2025**:

**a. Serving “Order to Show Cause Packets”**: The State will continue serving Order to Show Cause packets on relation back claimants.

**b. Serving “Answer” Packets**: The State will commence serving packets on claimants who responded to discovery in the earlier relation back proceedings.

**c. Adjudication of Relation Back Claims**: With the service of packets and notification of relation back proceeding to claimants, the State expects to be undertaking subfile consultations and entering into consent orders for resolved relation back claims

throughout fiscal year 2025.

- d. Litigate Contested Relation Back Claims:** While the State expects to settle most relation back claims, the State will be consolidating contested relation back claims and preparing for litigation throughout fiscal year 2025.

**B. Carlsbad—Intrepid Potash:**

**1. Accomplishments Over the Past Few Years:**

- a. On April 15, 2022, Defendants Intrepid Potash, Inc. and Intrepid Potash—New Mexico, LLC (collectively “Intrepid”) filed their Notice of Appeal of, *inter alia*, the Subfile Order and Partial Final Judgment and Decree adjudicating their water rights. Briefing of the appeal was completed in February 2023.
- b. The New Mexico Court of Appeals issued its ruling on October 18, 2023.
- c. On November 20, 2023, Intrepid filed its Petition for Writ of Certiorari.
- d. On February 6, 2024, the New Mexico Supreme Court granted Intrepid’s Petition for Certiorari.
- e. On May 28, 2024, the State filed its Answer Brief.

- C. FY 2025:** Conduct oral argument on Intrepid’s appeal to the New Mexico Supreme Court.

**D. Upper Pecos—Cow Creek**

**1. Accomplishments Over the Past Few Years:**

- a. **Motion for Amended Procedural Order:** On January 9, 2023, the Court entered the State’s proposed *Second Amended Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section*.
- b. **Sending Out Packets:** The State has since joined approximately 99% of known claimants (or their successors) identified in the 2015 Hydrographic Survey by serving them with adjudication packets pursuant to the Court’s *Second Amended Procedural Order*.
- c. **Adjudication of Cow Creek Claims:** The State has been undertaking subfile consultations and entering into consent orders for resolved water right claims throughout the remainder of the last fiscal year.

**2. FY 2025:**

- a. **Sending Out Packets:** The State will continue to join and serve the remaining subfile claimants as they are identified. The State is preparing to request permission from the Court to effect service by publication on the unknown heirs of certain deceased claimants whose successors cannot be identified through available public records. The State continues to seek to perfect personal service on the remaining known claimants but, by the end of FY 2025, will also request the Court's permission to effect service by publication on known claimants for whom personal service has failed.
- b. **Omitted Claims Notice:** The State is preparing to publish notice of the opportunity for unknown water right owners to claim any water rights not depicted or described in the 2015 Hydrographic Survey. The State expects to evaluate those claims and serve adjudication packets on those claimants in FY 2025.
- c. **Adjudication of Cow Creek Claims:** With the service of packets and notification of the proceeding to claimants, the State expects to continue undertaking subfile consultations and entering into consent orders for resolved water right claims throughout the fiscal year. By the end of the calendar 2024 irrigation season, the State may begin to terminate consultation with defendants with whom negotiations have failed. The State has begun in FY2024 to file motions for default judgment against subfile defendants who have not responded to service of their adjudication packet or to the State's letters, emails and calls urging them to do so.

#### E. Gallinas River

##### F. Accomplishments Over the Past Few Years:

- a. **City of Las Vegas Remand Proceeding:** On June 23, 2022, the Court entered the *Final Order on City of Las Vegas' Equitable Remedy*.
- b. **NMDOT and Concluding the Gallinas *Inter Se*:** On July 2, 2021, with regard to closing out the Gallinas *inter se*, the State and the NMDOT entered into a Memorandum of Understanding and jointly submitted motions for the entry of five amended NMDOT orders consistent with that MOU. Subsequently, during the course of this last year, the NMDOT approached the State with sixteen more subfiles for review of possible further action. This resulted in the entry of one additional amended order. The State submitted its *Notice of Conclusion of Inter Se Proceedings* on March 7, 2023.
- c. **Updating the Addendum to the Partial Final Decree:** The State updated the addendum to the Partial Final Decree to reflect the changes resulting from *inter se*.
- d. **Entry of the Final Partial Judgment and Decree by the Court:** The Court entered its *Final Partial Judgment and Decree on Water Rights for the Gallinas River Section* on June 7, 2023.

##### G. FY 2025: *not scheduled for FY 2025*

**H. Rio Hondo**

1. **Accomplishments Over the Past Few Years:** N/A
2. **FY 2025:** Litigate remaining objections to priorities.

**I. Fort Sumner Irrigation District**

1. **Accomplishments Over the Past Few Years:**
  - a. **Undertook technical work:** In preparation for concluding litigation of FSID's diversion right, the State's Water Use and Conservation Bureau completed technical work regarding the Irrigation Water Requirements for FSID. The Hydrology Bureau commenced work on an analysis of the hydrology of the irrigation district.
  - b. **Began negotiations with FSID:** Held multiple meetings with FSID, its counsel, and expert to negotiate a settlement of FSID claims. Exchanged documents produced by both side's experts and analyzed said documents.
2. **FY 2025:**
  - a. Continue negotiations with FSID to achieve a settlement in compromise of FSID's claims.
  - b. Prepare a scheduling and procedural order to either settle FSID claims or commence litigation of them.

**FEDERAL COURT ADJUDICATIONS - PRIORITIES FOR FY 2025**

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**V. CHAMA ADJUDICATION, *N.M. v. Aragon*, Case No. 69cv07941-KWR/KK (U.S.D.Ct., N.M.)****A. Accomplishments Over the Past Few Years:**

1. **Section 1: Rio del Oso:** In September and October 2022, respectively, the Court granted default judgments on three subfiles.
2. **Section 1: Mainstem:** On July 5, 2023, the Court, on motion by the State, finalized the priority dates for the three most senior acéquias on the Rio Chama—Acéquias de Chamita, Hernandez, and los Salazares.
3. **Section 3: Rio Cebolla**
  - a. Prepared addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.

**4. Section 3: Canjilon Creek:**

- a. The final objection to irrigation water requirements was withdrawn.
- b. The Court granted summary judgment for the State on the final remaining objection to priorities.
- c. Prepared addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.

**5. Section 7: Cañones Creek**

- a. Negotiated with two remaining objectors to acequia and private ditch priority dates.
- b. Negotiated with two remaining objectors to irrigation water requirements.
- c. Worked on preparation of addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.

**B. FY 2025:**

**1. Section 1: Rio del Oso:** Complete adjudication of individual subfiles, including potential litigation with the Merced del Pueblo Abiquiu.

**2. Section 3: Rio Cebolla**

- a. Move for entry of final order adjudicating irrigation water requirements and priorities.
- b. Finalize addendum summarizing surface water irrigation rights and hydrographic survey maps.
- c. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

**3. Section 3: Canjilon Creek**

- a. Finalize addendum summarizing surface water irrigation rights and hydrographic survey maps.
- c. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

**4. Section 7: Cañones Creek**

- a. Determine acéquia and private ditch priority dates. Two objections remain (in



negotiations with the objectors).

- b. Determine irrigation water requirements. Two objections remain (in negotiations with the objectors).
- c. Prepare addendum summarizing surface water irrigation rights and hydrographic survey maps.
- d. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

**VI. TAOS ADJUDICATION**, *New Mexico v. Abeyta*, Case No. CV-69-7896-MV/WPL & No. CV-7939-MV/WPL (consolidated) (U.S.D.Ct., N.M.)

- A. **Accomplishments Over the Past Few Years:** Reconcile subfile orders with WRATS and hydrographic survey maps.
- B. **FY 2025:** Conclude preparation of addendum for *inter se* of surface water rights.

**VII. ZUNI ADJUDICATION**, *U.S. v. N.M. v. A & R Productions*, Case No. 01-cv-00072-DHU-JHR (U.S.D.Ct., N.M.)

- A. **Accomplishments Over the Past Few Years:**
  1. Approximately 950 non-Indian, non-federal subfiles have been adjudicated—three subfiles remain unresolved.
  2. The State, counsel for C&E Concrete, Inc., and the United States have scheduled a mediation on June 18, 2024.
  3. The State has begun working with the Tribes, Pueblos and Nations Bureau of the Office of the State Engineer to review federal allotment claims and is finalizing offers for the Federal allottees.
- B. **FY 2025**
  1. Resolve three remaining subfile claims through June 18, 2024, mediation or trial.
  2. Consult with U.S. on scheduling *inter se* proceedings for FY 2025 and development of proposed procedural motion, proposed partial final judgment and decree, and addendum.
  3. Discuss and submit consent orders for the Federal allottees.

**VIII. SANTA CRUZ/TRUCHAS ADJUDICATION**, *New Mexico v. Abbott*, Case No. 68-7488 KWR/JHR (Santa Cruz) and Case No. 70-8650 KWR/JHR (Truchas) (N.M. D.Ct., N.M.)

- A. **Accomplishments Over the Past Few Years:**

1. Commenced work on litigating duty of water and priority dates.
2. Undertake historical research regarding Santa Cruz priority dates.
3. Moved for final determination of Truchas priorities and engaged in motion practice with opposing counsel over Truchas priorities.

**B. FY 2025:**

1. Conclude litigation of Truchas priorities.
2. Move for scheduling and procedural order and order to show cause regarding Santa Cruz priorities. Serve order to show cause and commence litigation of Santa Cruz priorities.

**IX. SANTA CLARA CREEK**

**A. Accomplishments Over the Past Few Years:** Commence technical studies in anticipation of a hydrographic survey of all water rights in the Santa Clara Creek tributary of the Rio Grande.

**B. FY 2025**

1. Complete hydrographic survey of all water rights in the Santa Clara Creek tributary of the Rio Grande.
2. File Complaint for the statutory stream system adjudication of the Santa Clara Creek stream system.
3. Commence sending offers to water right claimants in Santa Clara Creek.

**X. JEMEZ ADJUDICATION, U.S. v. Abousleman**, Case No. 6:83-cv-01041-MV-JHR (U.S.D.Ct., N.M.)

**C. Accomplishments Over the Past Few Years:** completed 2000 PFJD

**D. FY 2025** – *not scheduled for fiscal year 2025*

**XI. NAMBÉ-POJOAQUE-TESUQUE ADJUDICATION, New Mexico v. Aamodt**, Case No. 66-cv6639- MV/WPL (U.S.D.Ct, N.M.)—FJD entered 2017 and case closed.

**A. Accomplishments Over the Past Few Years:** – completed 2017 FJD

**B. FY 2025** – *not scheduled for fiscal year 2025*

**STATE OF NEW MEXICO'S RULE 71.3 REPORT**

**Table 1: Northern New Mexico/Pecos Adjudication Bureau Priority Sections & Resources  
For Fiscal Year 2025**

<b>PRIORITY ADJUDICATION SECTION</b>	<b>Staff Atty</b>	<b>Contract Atty</b>	<b>Staff Para-legal</b>	<b>Survey Staff</b>	<b>Technical Contractor</b>	<b>Data/IT Staff</b>	<b>Section Totals</b>
<b>STATE COURT ADJUDICATIONS</b>							
<b>San Juan</b>							
<i>Section 1 (La Plata)</i>	1.0			2.0			3.0
<b>San Juan Subtotals</b>	<b>1.0</b>			<b>2.0</b>			<b>3.0</b>
<b>Santa Fe—Cerro Gordo</b>	0.5			0.5			<b>1.0</b>
<b>Pecos</b>							
<i>Roswell Underground Basin—Relation Back</i>	0.5	1.5	0.5				2.5
<i>Upper Pecos—Cow Creek</i>	1.0		0.5	1.0			2.5
<i>Rio Hondo</i>			0.5				0.5
<i>Fort Sumner Irrigation District</i>	0.5						0.5
<b>Pecos Subtotals</b>	<b>2.0</b>	<b>1.5</b>	<b>1.5</b>	<b>1.0</b>			<b>6.0</b>
<b>Rio San Jose</b>	0.5				2.0		2.5
<b>FEDERAL COURT ADJUDICATIONS</b>							
<b>Chama (Aragon)—Non-Indian</b>	0.5		0.5	0.5			1.5
<b>Santa Cruz/Truchas—Non-Indian</b>	0.5		0.5				1.0
<b>Santa Clara Creek—Non-Indian</b>	0.5			1.5			2.0
<b>Taos (Abeyta)--Non-Indian</b>							0.5
<b>Zuni (A&amp;R Productions)—Non-Indian</b>	0.5						0.5
<b>CATEGORY TOTALS – ALL SECTIONS</b>	<b>6.0</b>	<b>1.5</b>	<b>2.5</b>	<b>5.5</b>	<b>2.0</b>		<b>17.5</b>