

**SETTLEMENT AGREEMENT
BETWEEN THE CITY OF SANTA FE AND
WILDEARTH GUARDIANS**

This Settlement Agreement ("Settlement Agreement") is made and entered effective as of the date of the final signature ("Effective Date"), by and between the City of Santa Fe ("City" or "Santa Fe"), and WildEarth Guardians ("Guardians"). In this Settlement Agreement, both the City and Guardians are sometimes individually referred to as a "Party," and the City and Guardians are sometimes collectively referred to as "Parties."

RECITALS

WHEREAS, the City is pursuing a San Juan-Chama Return Flow Project, the purpose of which is to facilitate the full consumptive use of the City's San Juan-Chama Project ("SJCP") water by the construction of a pipeline that will return treated, unconsumed SJCP water from the Paseo Real Water Reclamation Facility ("PRWRF") to the Rio Grande;

WHEREAS, the City filed New Mexico Office of the State Engineer ("OSE") Application No. SP-4842-RFP ("Application No. SP-4842-RFP") on November 15, 2021, as amended on April 12, 2022, seeking a permit to receive credits for these returns to the Rio Grande that would allow the City to divert the credited amount of water at the BDD intake structure to facilitate the full consumptive use of the City's SJCP water with no depletion of native Rio Grande water;

WHEREAS, the City duly published the legal notice and filed an Affidavit of Publication for Application No. SP-4842-RFP on May 25, 2022;

WHEREAS, Guardians filed a protest to Application No. SP-4842-RFP;

WHEREAS, Application No. SP-4842-RFP was referred to the OSE Administrative Hearing Unit as Hearing No. 22-042;

WHEREAS, the City is engaging with the U.S. Bureau of Reclamation as the lead federal agency, and the U.S. Forest Service and the U.S. Bureau of Land Management as cooperating agencies, to review and evaluate the San Juan-Chama Project Return Flow Project pursuant to the National Environmental Policy Act ("NEPA");

WHEREAS, the City and Santa Fe County entered into a San Juan-Chama Return Flow Project Agreement dated October 15, 2021, that included a County led planning process for the Lower Santa Fe River ("LSFR") to develop management strategies to address river flows and legacy hydrologic impacts in the LSFR and tributaries. This was done with the understanding that no SJCP water will be available for release into the LSFR; and

WHEREAS, the Parties wish to resolve any and all Guardians' objections to the City's SJCP Return Flow Project, including Guardians' protest to Application No. SP-4842-RFP, or any potential participation in or objection by Guardians to the NEPA process;

AGREEMENT

NOW, THEREFORE, for consideration, the receipt and adequacy of which are acknowledged by each Party, and subject to the provisions hereof, the Parties agree as follows:

1. Riparian Zone Enhancements through Lower Santa Fe River Reach 1.

- a. City will implement restoration enhancements to the Lower Santa Fe River Reach 1 ("Reach 1") riparian zone in accordance with the design and intent of the original riparian work completed downstream of the Paseo Real Water Reclamation Facility (PRWRF)¹ under the USEPA's Section 319 Nonpoint Source National Monitoring Program.² See Figure 1, Exhibit No. 1. The enhancements will include:
 - i. Reestablish, where practicable, the primary river channel to enhance water quality conditions and efficiency in downstream water deliveries.
 - ii. Remove, where practicable, invasive plants and trees, and add, where practicable, native cottonwood and willow trees via plantings in the riparian zone.
 - iii. Develop, where practicable, public access via a trail allowing for nature viewing of the riparian zone.
- b. The City will develop a river monitoring program to provide information on river flows and the condition of plantings within the riparian zone.
- c. In the event the monitoring data indicate a need to conduct maintenance on the river channel and/or riparian zone, such as removal of woody debris and invasive plants, the City will develop an action plan and complete at least one maintenance treatment within a 10-year period.
- d. The City will consider developing partnerships with Santa Fe River stakeholders to support these efforts.
- e. Subject to the availability of appropriations, the City's expenditures will not exceed \$60,000 for the items set forth in Paragraph No. 1 of this Settlement Agreement.
- f. The City's obligations under Paragraph No. 1 of this Settlement Agreement will expire ten years after the Effective Date. After 10 years, the City will develop a Reach 1 Riparian Update report summarizing the monitoring data and information and make it publicly available.

2. Paseo Real Water Reclamation Facility Operational Goals.

- a. The City will operate its water system to prioritize the use of its non-SJCP water supply sources during the months when riparian evapotranspiration (EvT) demands are highest. These "Anticipated Operations" are designed to create more available effluent for release to Reach 1 when EvT demands are highest to sustain healthy riparian

¹ Original riparian design purpose: improve water quality with target parameters being pH, sedimentation, and dissolved oxygen. Implementing best management practices, including restoring riparian vegetation, removing levees, and constructing riparian zones.

² U.S. Environmental Protection Agency. 2011. *Section 319 Nonpoint Source Success Story New Mexico, Lower Santa Fe River, New Mexico.*

conditions. These operations will be subject to all regulatory, technical, legal, and practical constraints the City considers in managing and operating its water supply sources. The operational goals intended to sustain growing seasonal flows through Reach 1 are based on the best available hydrologic information. The Anticipated Operations (Figure 2, Exhibit No. 2) will result in the following conditions:

- i. March-October– Higher rate of effluent releases from PRWRF with the goal of sustained river flows through Reach 1 during the higher EvT riparian demand season.
 - ii. November-February – Lower rate of effluent releases from PRWRF to maintain riparian vegetation in Reach 1 during the lower riparian EvT demand season.
- b. The City agrees to minimum monthly volumes below PRWRF (effluent plus any flow from upstream) as specified in Table 1, Exhibit No. 3, with the following exceptions:
 - i. The minimum monthly volumes in Table 1 represent the best estimate of flow below PRWRF necessary to maintain measurable flow through Reach 1 from March through October. If less water is necessary to meet this goal, the City may reduce releases to an amount that maintains measurable flow through Reach 1.
 - ii. Compliance with the minimum monthly flow volumes may be demonstrated by (1) data demonstrating that effluent releases plus flow from upstream equal or exceed the applicable minimum monthly volume in Table 1; or (2) data showing constant measurable flow at the monitoring station described in Paragraph 2.c below. However, in the event that sections of Reach 1 are shown to go dry despite measurable flow at the monitoring station described in the Paragraph 2.c below, the City shall not reduce effluent releases below the minimum monthly flow volumes in Table 1.
 - iii. In any given month, the City does not agree to release more to Reach 1 than flows into McClure in that month.
- c. The City will construct and maintain a monitoring station near the downstream end of Reach 1, but upstream of Cieneguilla Spring, to measure flows. Data from the monitoring station will be made publicly available and may be used to manage release rates and improve understanding of Reach 1 hydrologic conditions as shown in Figure 1. The City shall make its best efforts to expedite construction of the monitoring station, which shall be operational no later than the operational date of the SJCP Return Flow Project.
- d. To the extent practicable, the City will regulate releases from the PRWRF to dampen the fluctuation in the releases so they do not deviate by +/- 25% of the daily average.
- e. For ten years after the monitoring station is operational, the City will provide Guardians with an annual letter that summarizes the river flow monitoring data, PRWRF discharge data, and the City's operations compared to the Anticipated Operations, including the City's use of its various water sources on a monthly basis.
- f. The City's obligations under Paragraph No. 2 of this Settlement Agreement will expire twenty years after the Effective Date. At the end of this Term, the City will develop a Reach 1 Hydrology Update report summarizing the monitoring data and information and make it publicly available.

3. Rio Grande Water Rights Leasing Program for Instream Flows.

- a. Independent of the SJC Return Flow Project, as a stakeholder on the Rio Grande, the City is interested in supporting environmental conditions on the Rio Grande and currently supports efforts to maintain instream flows by participating in the U.S. Bureau of Reclamation's supplemental water program through water leasing and river operations utilizing its SJCP water. Another way the City will support Rio Grande instream flows is described as follows:
 - i. The City intends to lease some of its Pre-1907 Middle Rio Grande water rights to the Interstate Stream Commission ("ISC") to assist the State and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species, consistent with NMSA 1978 § 72-14-3.3(B)(2).
 - ii. The City will explore options for a 10-year lease with exit and renewal clauses with ISC utilizing the Strategic Water Reserve. The lease terms and conditions will be negotiated between the City and ISC.
 - b. The amount of City Middle Rio Grande water rights available for lease to ISC is wholly dependent upon maintaining available water rights necessary to offset the annual hydrologic impacts on the Rio Grande, Rio Pojoaque-Nambe, Rio Tesuque, and La Cienega springs that result from Buckman well field diversion under OSE Permit No. RG-20516 *et al.*
 - c. The City will pursue a minimum lease of 250 acre-feet per year ("afy") with the potential of leasing up to 500 afy.
 - d. In the unforeseen event that a lease with ISC to the Strategic Water Reserve is not available, the City will pursue other lease options to meet the intended purpose of supporting instream flows in the Middle Rio Grande.
4. The City confirms that Application No. SP-4842-RFP, and any associated permit, is limited to the return flow of unconsumed SJCP water.
- a. No effluent from the Buckman Well Field will be returned to the Rio Grande via the SJCP Return Flow Project if Application No. SP-4842-RFP is granted.
 - b. The City has no intention of seeking an OSE permit for return flow credit for Buckman Well Field sourced effluent via a pipeline in the next 20 years. However, in the event unforeseen conditions necessitate a need for return flow credits, the City will notify Guardians that it plans to file a separate OSE application that will be subject to notice and opportunity for protest.
5. If the City needs the water described in this Settlement Agreement to supply municipal demand due to unanticipated events or extraordinary drought, including either return flows or Rio Grande offsets, all or part of the City's obligations set forth herein can be reduced or terminated to the extent necessary to meet municipal water demand at the City's sole discretion upon 90 days written notice. During such 90-day window, the City shall meet and confer in good faith with Guardians to discuss the situation and the necessity for the City's proposed response.

6. Guardians will:
- a. Withdraw its protest to the Application No. SP-4842-RFP within five days of the Effective Date;
 - b. Waive any rights it may have to participate in, appeal, or object to the NEPA process for the SJCP Return Flow Project or to any final decision of the U.S. Bureau of Reclamation, the U.S. Forest Service, or the U.S. Bureau of Land Management approving the SJCP Return Flow Project, including not participating in any administrative appeal, objection, or litigation through or in collaboration with third parties; and
 - c. Not seek additional obligations from the City in the LSFR community planning process, including not seeking additional obligations through or in collaboration with third parties. Notwithstanding, Guardians does not waive its right to participate in and support the overall recommendations resulting from the LSFR community planning process, so long as such efforts do not impede the City's ability to develop and operate the SJCP Return Flow Project within the operational parameters described within this Settlement Agreement.
7. Each Party represents and warrants to and covenants with each other Party that it has the requisite power to enter into and perform each of its obligations under this Settlement Agreement.
8. This Settlement Agreement shall be binding upon and inure to the benefit of each Party and its successors and assigns.
9. This Settlement Agreement shall be governed by and construed in accordance with the law of New Mexico.
10. Any notice under this Settlement Agreement shall be in writing and shall be deemed validly given if hand-delivered, sent by U.S.P.S. or an express courier, or by email, with delivery confirmed, to the individual designated below:

If to the City of Santa Fe:

City of Santa Fe, City Attorney
200 Lincoln Avenue
Santa Fe, NM 87501
Email: mdmartinez@santafenm.gov

If to WildEarth Guardians:

Daniel Timmons
Wild Rivers Program Director
WildEarth Guardians
301 N. Guadalupe Street, Suite 201
Santa Fe, NM 87501
Email: dtimmons@wildearthguardians.org

Any Party may from time to time change the individual to whom notices should be delivered or the notification address or email.

11. No amendment, change, modification, rescission, renunciation, contradiction, discharge, release, waiver, termination of, or supplement to all or any provision of this Settlement Agreement shall be valid or effective for any purpose unless made in a written document duly executed by each Party.
12. This Settlement Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior written and oral negotiations, understandings, commitments, and agreements between the Parties relating to such subject matter.
13. If any provision of this Settlement Agreement is held by a court of competent jurisdiction to be partially or entirely unenforceable, such unenforceability shall affect only such provision, all other provisions hereof shall continue in full force and effect, and the Parties shall attempt diligently and in good faith to agree upon a modification hereof to effect, to the extent practicable, the original purpose and intent hereof.
14. Each Party shall execute and deliver supplemental agreements, instruments, and other documents and take any other appropriate actions, necessary, or desirable to make this Settlement Agreement fully effective, binding, and enforceable and/or to enable it to perform all of its obligations hereunder.
15. This Settlement Agreement may be executed in separate counterparts and in original or pdf format. Each executed counterpart shall be deemed an original and all counterparts shall be considered one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the Effective Date.

WILDEARTH GUARDIANS

By 
John Horning, Executive Director

Date: 3.27.23

CITY OF SANTA FE:


Alan Webber, Mayor

Date: 7/24/2023

Attest:



Kristine Bustos Mihlecic, City Clerk XIV

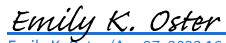
City Attorney's Office:



Marcos Martinez (Apr 27, 2023 09:50 MDT)

Senior Assistant City Attorney

Approved for Finances:



Emily K. Oster (Apr 27, 2023 16:49 MDT)

Emily Oster, Finance Director

Figure 1.

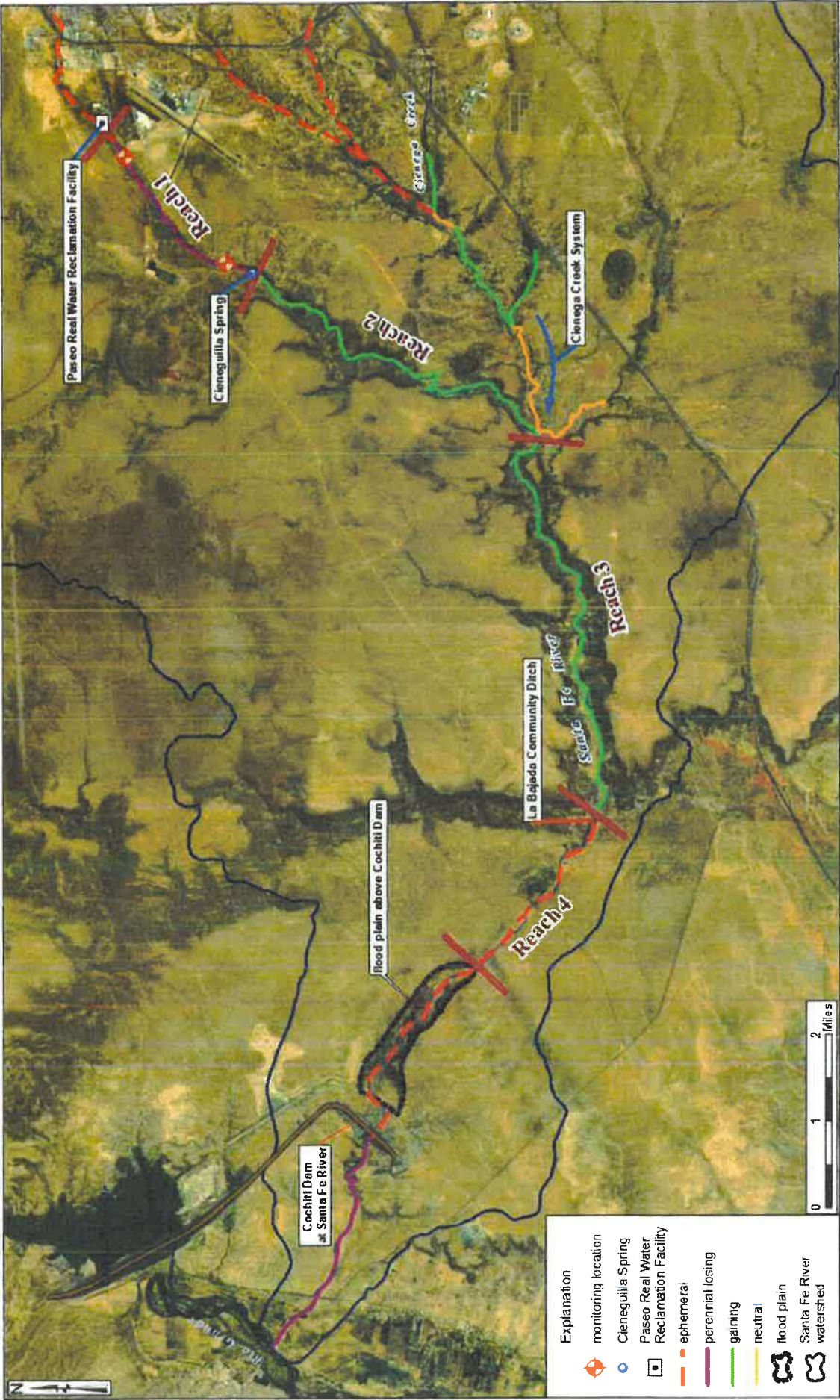


EXHIBIT NO. 2

Figure 2: Minimum Volumes and Reference Volume Below PRWRF, 2013-2021 with Project and Anticipated Operations

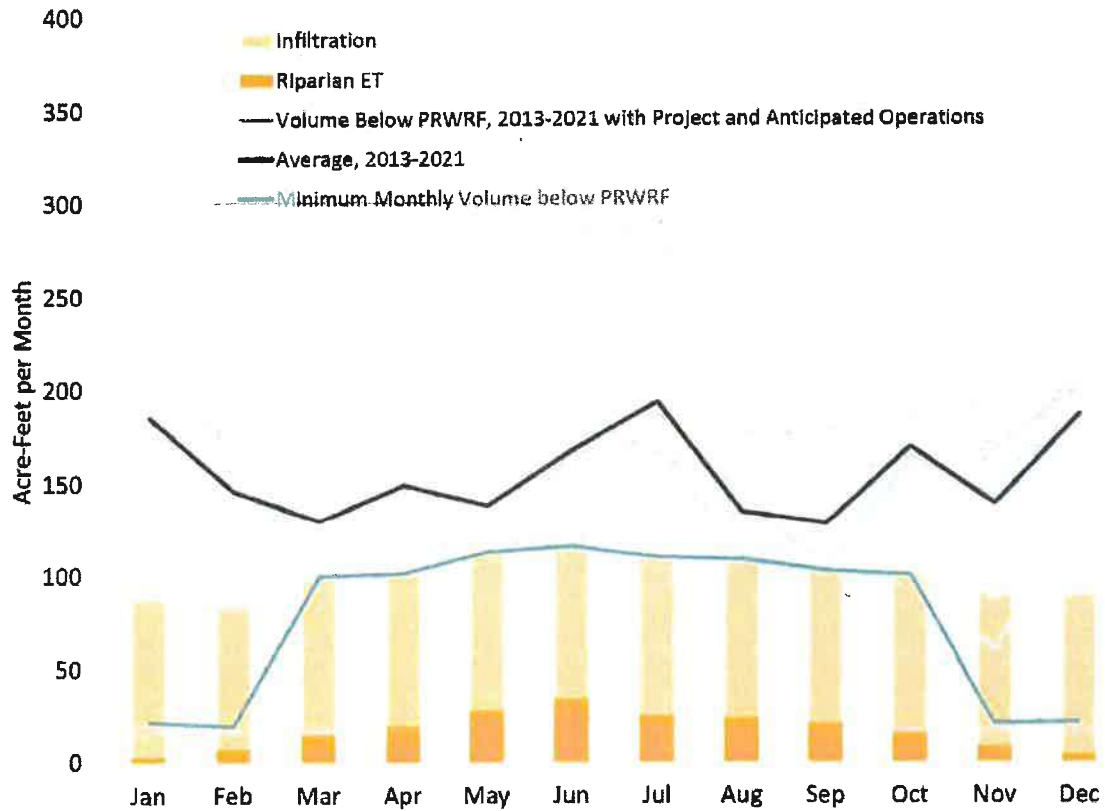


EXHIBIT NO. 3

Table 1: Minimum Volume; and Reference Volume Below PRWRF (2013-2021) with Project and Anticipated Operations

Minimum Volume (af/mo) below PRWRF												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	annual
21	19	100	102	113	116	110	109	103	101	21	21	934

Reference: Volume (af/mo) below PRWRF 2013-2021 with Project and Anticipated Operations													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	annual
2013	204	173	155	102	113	168	221	116	177	187	192	218	2,026
2014	161	138	140	102	113	126	187	145	103	143	152	182	1,692
2015	211	166	123	173	201	261	300	110	103	185	170	168	2,170
2016	183	159	100	146	118	121	150	204	153	164	143	218	1,858
2017	222	166	115	177	156	151	110	109	103	160	87	144	1,699
2018	138	90	100	102	113	116	146	134	108	163	168	207	1,585
2019	240	190	197	254	205	285	282	177	175	276	167	202	2,651
2020	162	124	137	189	113	166	174	109	124	145	111	206	1,761
2021	144	107	100	102	113	116	168	109	103	101	60	134	1,355
Average	185	146	130	149	138	168	193	135	128	169	139	187	1,866
												Min Annual	1,355
												Max Annual	2,651












WEG settlement agreement- MAW signed (002)

Final Audit Report

2023-04-27

Created:	2023-04-27
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAiFgE8CSJ4pbD-XoFZtKmHO1edILo4Eyv

"WEG settlement agreement- MAW signed (002)" History

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✔ Agreement completed.

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