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Testimony on the American Indian Empowerment Act of 2011, H.R. 3532
Before the
Indian and Alaska Native Affairs Subcommittee
Of the House Natural Resources Committee
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Introduction. Thank you, Chairman Young, Ranking Member Boren, and members of the Subcommittee, for this opportunity to testify on the American Indian Empowerment Act of 2011. My name is Walter Dasheno. I am the Governor of the Santa Clara Pueblo, as well as the Chairman of the Eight Northern Indian Pueblos Council.

H.R. 3532 – An Intriguing New Direction. H.R. 3532 is intriguing to Santa Clara for two major reasons. First, Santa Clara has embarked on a multi-decade, generational effort to restore our forests and our watershed after the devastating Las Conchas wildfire. This effort will entail substantial involvement by the Federal government, our partner, and yet for this restoration to go forward efficiently we cannot allow excessive or duplicative Federal laws and regulations to hinder our efforts, especially where and when Santa Clara has its own laws, regulations or customs in place that address those same issues.

The second major reason Santa Clara is interested in this legislation is because we are a Self-Governance tribe, one of only two in New Mexico. We sought Self-Governance status because we believed that we could govern our own programs and our own lands best - and this has proven true - but we have realized that Self-Governance, as currently defined, is not enough. It is focused on the administration of Federal programs and funds by Tribes, which is good, but we seek more. Last year, in a hearing before the Senate Committee on Indian Affairs, I posed the question “What comes next after Self-Governance?” The ideas in H.R. 3532 may provide the answer to that question by providing a path towards a stronger expression of Tribal sovereignty, in a way that is not only good for Tribes, but also for their surrounding non-Indian communities as they benefit from improved Tribal economies.

Although the proposed legislation is intriguing, it is still hard to perceive all of its possible ramifications, including its potential impact on the Federal government’s trust responsibility. Therefore, while we thank you for this hearing, we also suggest that you hold further hearings and consultations throughout Indian country.

Las Conchas Wildfire. Last summer, the Santa Clara Pueblo was devastated by the Las Conchas Fire, the largest wildfire in New Mexico history. Although mercifully no lives were lost and no homes were burned, we still saw our traditional and treasured homeland and spiritual sanctuary, the Santa Clara Canyon, practically destroyed. We estimate that more than 16,000 acres of our forest lands burned in this fire and, together with the lands that we lost in the Oso Complex Fire of 1998 and the Cerro Grande Fire of 2000, 80% of our forests and a huge part of our heritage has been destroyed. In addition, the fire burned thousands of acres of our traditional

lands that are outside our current reservation and that continue to hold cultural sites and resources of great importance to us. This area encompasses our lands of origin, the P'opii Khanu - the headwaters of our Santa Clara Creek, and numerous cultural and traditional sites. In addition, the loss of the forest is devastating to wildlife and wildlife habitat, recreational resources, and to the purity of our water - which we use for irrigation and many traditional purposes. (See attached illustration of fire impact on Santa Clara watershed.) Throughout this tragedy, the Santa Clara people have shown grit and determination to persevere and to begin the long road to recovery so that, while my generation may never see the canyon in its glory again, that will not be said of the next generation.

Awaiting the Next Disaster – Post-Fire Flooding. Because the Santa Clara Canyon has been stripped of its vegetation, the Pueblo is at tremendous risk of flooding. Over 50% of the Santa Clara Pueblo watershed burned during the Las Conchas fire. Because of the high severity of the burn, there has been a dramatic reduction in the infiltration rates in the burned area – the soil is now what is termed by soil scientists “hydrophobic.” This has resulted in a four-to eight-fold increased runoff and sediment/debris flow into the Santa Clara Creek, posing a severe threat to the lives and safety of the people of Santa Clara Pueblo and increasing the potential for widespread property damage. The channel through Santa Clara Pueblo no longer has the conveyance capacity necessary to safely pass large post-fire flows. Hundreds of residential structures including several public structures are at risk from flood and debris flows if no action is taken immediately. (See attached illustrations of the potential flood risk zone to Santa Clara.)

A mere 1 inch rain event over 8 hours, or what hydrologist refer to as an average monsoon season storm, on August 21, 2012 led to intense flooding and the emergency evacuation of Santa Clara and US Army Corps of Engineer personnel. This rain event resulted in a Presidential Disaster Declaration. As the Department of the Interior, Interagency Burned Area Emergency Response (“BAER”) Team noted in a July 17 report, the intense flames from the fire burned trees and vegetation off the steep slopes of the canyon and heated the soils causing severe damage to the natural resources of the area and placing the downstream tribal members of the Santa Clara Pueblo at risk to extreme flooding. The post-fire watershed effects were rife for massive landslides and debris flows which occurred on August 21, 2011. The August 21, 2012 event produced massive debris (including boulders) and severe mud flows to the canyon bottom. The Canyon reservoirs were overwhelmed (over topped) by this average rainfall event following the fire and are now full of sediment, and now pose a potential flood risk if not dealt with immediately. Flood protection emergency measures put in place after the Las Conchas fire were inches away from being compromised. It is important to note that this storm was an isolated thunderstorm over a small portion of the Santa Clara watershed (one drainage) and not over the entire watershed (what hydrologist refers to as a general storm). If the rain event of August 21, 2011 had occurred over the entire post fire Santa Clara Pueblo watershed, the Santa Clara Pueblo would have been devastated.

The Complex Process of Preparing for the Floods and Restoring the Canyon. Santa Clara has been working with numerous Federal agencies, such as the Bureau of Indian Affairs, Army Corps of Engineers, U.S. Forest Service, Federal Emergency Management Agency, Natural Resources Conservation Service and others in the complex effort to put in place flood mitigation measures and a forest restoration program. We have been very grateful for the support of these agencies, although continued funding is needed to achieve success.

However, we are only at the beginning of the flood mitigation and forest recovery effort. The fire has raised numerous, interrelated, short and long-term concerns for Santa Clara and other surrounding communities, almost all of which intersect with Federal laws and regulations. First, during the summer monsoon season, we will face every afternoon the threat of a thunderstorm that will send torrents of water and debris down the Santa Clara Canyon and Creek, creating a huge risk of dam failure and catastrophic flooding for our homes, public buildings and irrigation system. Second, we must address the environmental impacts of this fire. This includes the physical health impacts from the huge quantities of smoke, as well as the devastating emotional impact to our community of such a great loss. It also includes water quality impacts as tons of ash, debris and other materials flow into the Santa Clara Creek affecting fisheries, wildlife consumption, agriculture and cultural uses, and safety issues within our Santa Clara Canyon due to the destabilized landscape resulting in falling boulders and dead and down trees. This runoff flows into the Rio Grande, affecting water quality for communities like Santa Fe that are downstream or that use the Rio Grande. Third, we are still assessing how to recover from the loss of an unprecedented amount of cultural resources and sites, from damage to sacred places, to the loss of animal and plant species that have been integral to Santa Clara cultural and spiritual practices for generations. Fourth, Santa Clara has suffered extended financial impact, including not only the direct efforts to address the fire, but also from the closure of Puye Cliff Dwellings, the reduction in arts and crafts sales, and the decline in tourists and visitors to our hotel. Fifth, we still need fire suppression resources to protect the remaining 20% of our forests. Finally, we must address the long term restoration of the forests. This is a project that we anticipate will take several decades, but one to which we have already set our minds.

Federal resources play a huge role in helping us address this complex scenario; but duplicative Federal laws and regulations have the potential to significantly hamper this effort. For example, the Santa Clara Forestry Department was ready to begin timber cutting and recovery on several sections of burned forest and needed BIA help with National Environmental Protection Act forms. Santa Clara's plans and work were delayed because these NEPA clearances were delayed, even though the NEPA work had already been completed and the needed clearances were really only of a "box-checking type" that BIA trust resources staff could often complete in one visit. Instead of quick approval, based on advice from Interior solicitors, the BIA staff indicated that they could not do the clearances because the project was receiving its funding from the U.S. Forest Service and the State of New Mexico. The irony here is that this is our land and our sacred resources, and has been for a thousand years. We know how to take care of these sites, and we have internal laws and customs that address the care of these sites. If our environmental values were preeminent, this kind of bureaucratic delay would be eliminated.

Going beyond Self-Governance: As a Leader in Forestry, Santa Clara is ready to put in place comprehensive laws and regulations regarding its forested lands. Santa Clara has a large forestry department, numbering some 40 personnel. This department is widely regarded as outstanding. Santa Clara fire crews and equipment were assigned and on the front lines fighting this fire. We have a dedicated commitment to the maintenance and restoration of healthy forests on, around and adjacent to the Pueblo. In the management of our own resources, we have worked to ensure against the threat of forest fire. And yet, in the last decade we have faced four forest fires that have threatened our forests – the Oso, Cerro Grande, South Fork and Las

Conchas fires – and none of them originated on our lands. Although fate plays its part, we have suffered horrible consequences largely due to the failure of others to properly guard in some fashion against causing a fire.

For the last several years, Santa Clara has been actively working with the U.S. Forest Service, the BIA and others in an effort to establish a forest management plan and program that would have prevented this catastrophe. This effort has involved numerous meetings in New Mexico and several trips to Washington. In particular, Santa Clara was working on establishing a partnership under the Tribal Forest Protection Act with the Forest Service to begin a long-term project to address the health of the Forest Service lands around the Pueblo. We were also seeking to assure that if the Valles Caldera, which is adjacent to the reservation, was transferred to the National Park Service, that any agreements we had reached would be honored in the transfer and new agreements could be put in place with the new administrators.

We know that these efforts would have eventually succeeded given enough time, but the Federal government could not move fast enough. We saw in this fire that where the Santa Clara had completed work on fuel breaks the fires was stopped. In an area where the Santa Clara Pueblo has had 80% of its forested land base burn since the Cerro Grande fire, every sliver of green timber makes a difference to stabilizing soil. Nonetheless, in the ten years since the Cerro Grande fire, Santa Clara has planted nearly 1.5 million trees, most of which were burned in the Las Conchas fire, destroying the Pueblo's great labor of restoration of the past decade. Despite our full awareness of the threat, and our efforts to enter into partnerships and seek funding to address the threat, we ran out of time. Nevertheless, we still hope these partnerships will enable Santa Clara to play a significant role in the restoration and rehabilitation of the Forest Service lands around our current reservation. We also look to put together a forest management law that will protect our forests and which we think should influence the management of the forests around us, which have posed such a threat to our lands.

Seeking a Federal Disaster Declaration. Because only a state governor can set the process into motion for a Federal disaster declaration, we would ask this Committee to address why tribal governments, who have a direct government-to-government relationship with the United States, must go through state governors to request Federal disaster relief. Such relief clearly falls within the Federal trust obligation and we would therefore urge that the Congress pass legislation that allows a tribe to directly request this relief when it is needed. In the context of H.R. 3532, if we establish our own disaster relief law that allows us to go to request such a declaration from the President, would that preempt Federal law?

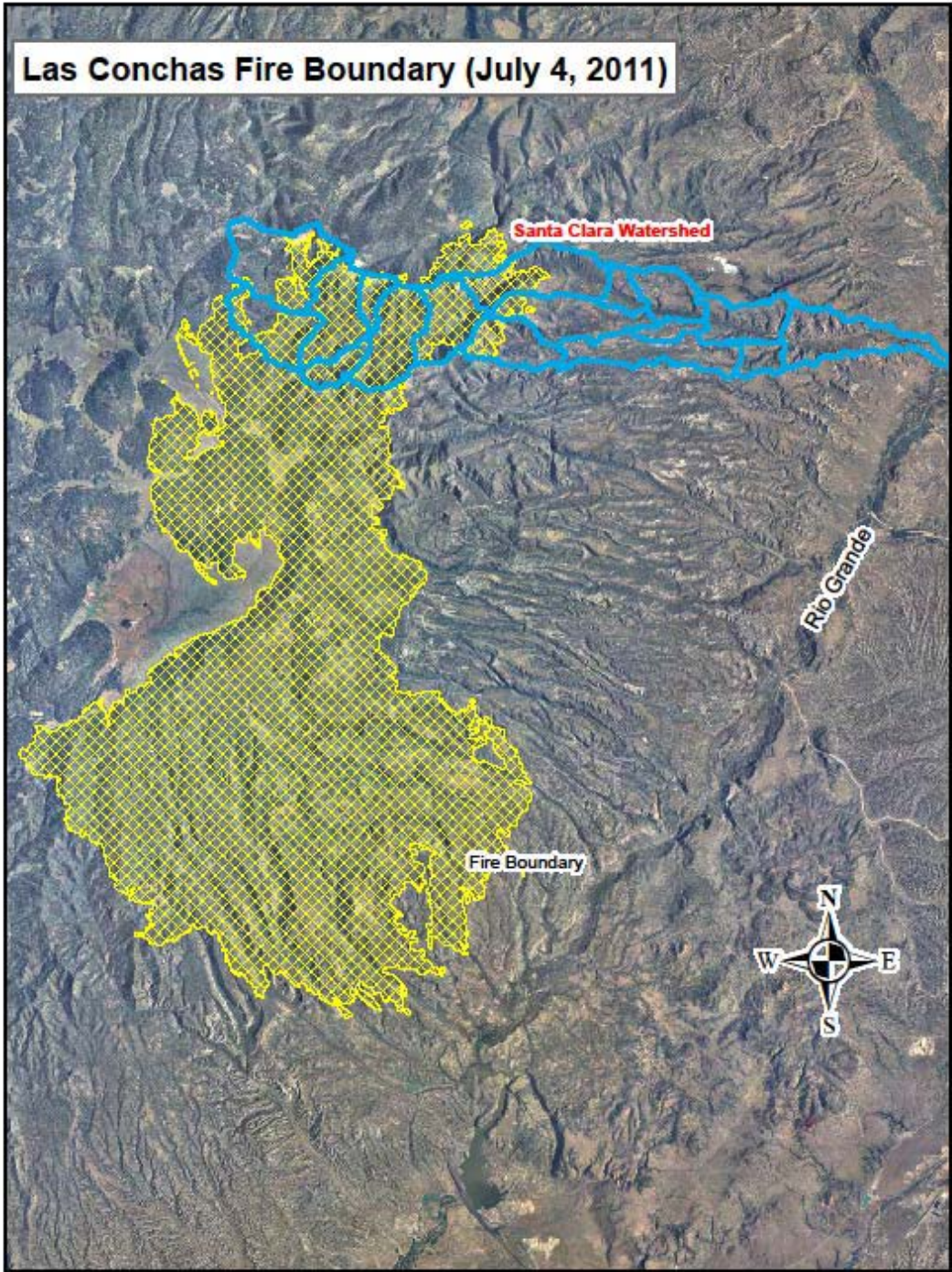
Some Key Questions. As I have testified, Santa Clara finds H.R. 3532 to be very intriguing. However, important questions remain to be answered, such as:

- Since most Pueblo Land is already in restricted fee status, stemming from Spanish land grants, how would that affect the application of H.R. 3532?
- How would the legislation impact the Trust responsibility, which we do not want to see diminished?
- Will Tribes be able to choose to opt-in or even opt-out of this new legal regime?

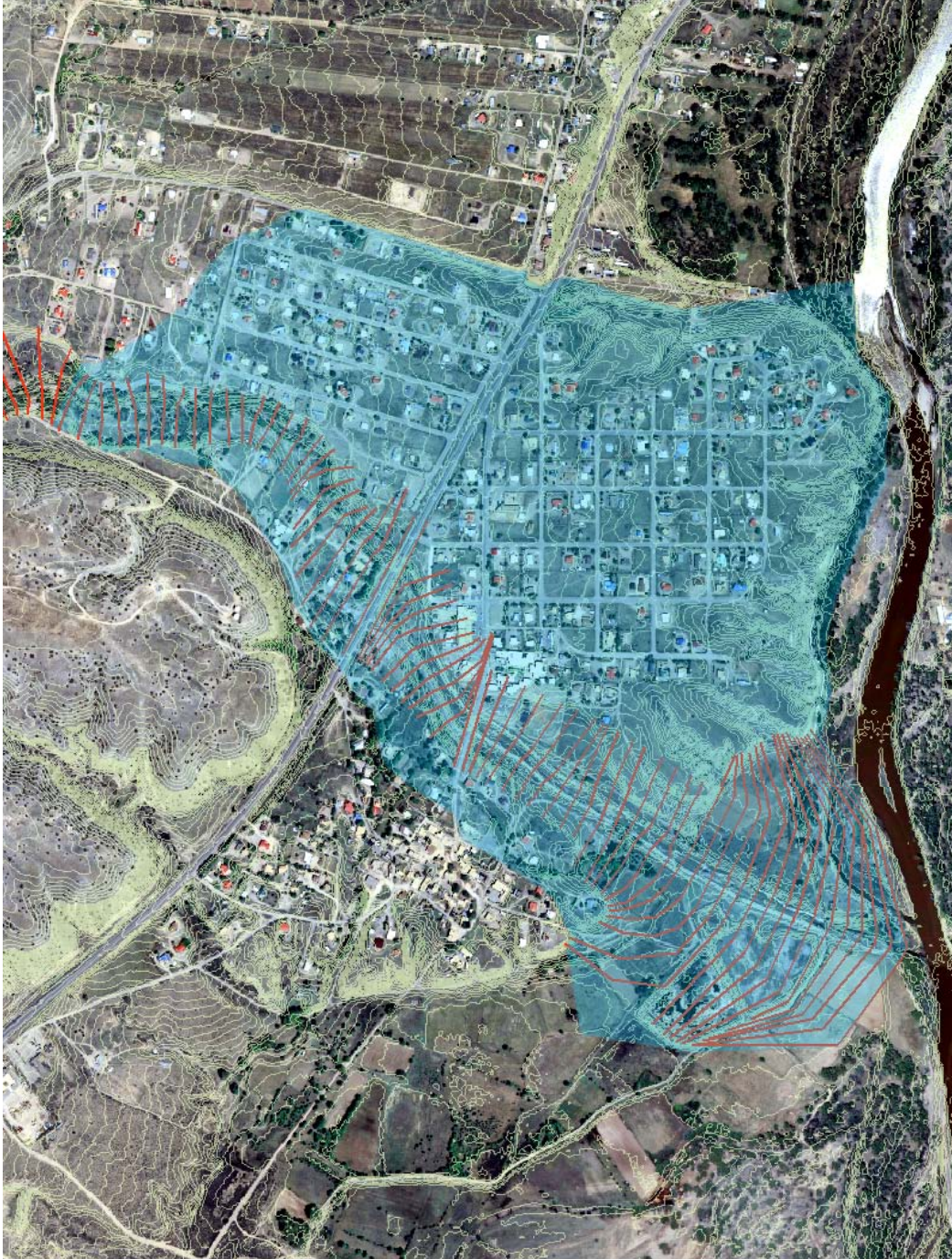
- How would the tribal preemption status be invoked? Would there be some sort of certification process?

Conclusion. Never again in our lifetime will we see our traditional and treasured homeland and spiritual sanctuary, the Santa Clara Canyon, as we have known it. It will take generations for our community and lands to recover from the devastation of this fire. But this is our only homeland; it is the place we have been entrusted with since time immemorial. While we intend to devote the resources we can to the healing of our land and the protection of our community we do not have the resources to do it alone. We turn in this hour of need to our Federal trustee and ask for your sustained assistance in addressing this calamity and assuring the remediation of our sacred homeland and for the development and implementation of laws like H.R. 3532 to eliminate bureaucratic and duplicative requirements which only delay restoration and recovery.

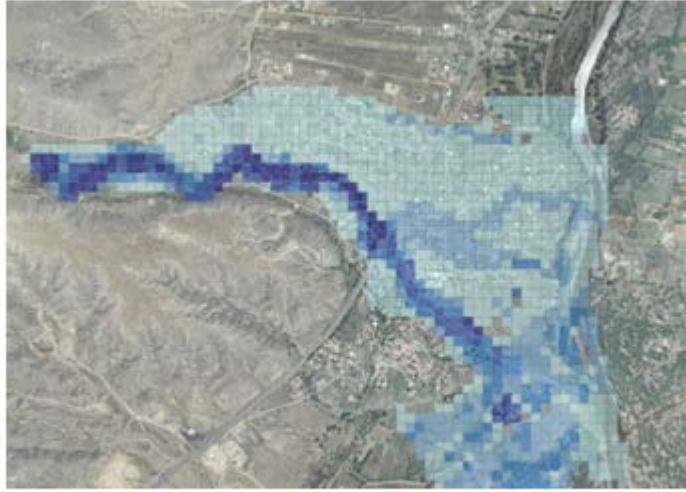
Las Conchas Fire Boundary (July 4, 2011)



Potential Flood Plain through the Santa Clara Pueblo



Technical Assistance Report



10 yr Event FLO-2D Grids