

Testimony of Councilman Nelson J. Cordova, Taos Pueblo
Before the Subcommittee on Water and Power
United States House of Representatives
Concerning HR 3254,
the Taos Pueblo Indian Water Rights Settlement Act
September 9, 2009

Honorable Chairwoman Napolitano, Ranking Member McClintock, and Members of the Subcommittee:

My name is Nelson J. Cordova. I am a Taos Pueblo Tribal Councilman, having served as Governor in 2001 and War Chief in 1999. Thank you for the opportunity to provide Taos Pueblo's testimony in support of HR 3254, the Taos Pueblo Indian Water Rights Settlement Act. With me today are Governor Ruben A. Romero, War Chief Bernard Lujan, Tribal Council Secretary Ernesto Luhan, War Chief Secretary Floyd Gomez, and Tribal Councilman and former Governor Gilbert Suazo, Sr. For the past 20 years, Councilman Suazo and I have served as Taos Pueblo's representatives in the Taos Valley water rights settlement negotiations.

Also with me is our water rights attorney, Susan Jordan of the Nordhaus Law Firm. Allow me to recognize Palemon Martinez, President of the Taos Valley Acequia Association (TVAA) representing the 55 community ditch associations, TVAA Board Member Benny Mondragon, TVAA attorney Fred Waltz, and D.L. Sanders, Chief Counsel for the New Mexico Office of the State Engineer. The other local parties to the settlement are the Town of Taos, El Prado Water and Sanitation District (EPWSD) and the 12 Taos-area Mutual Domestic Water Consumers' Associations.

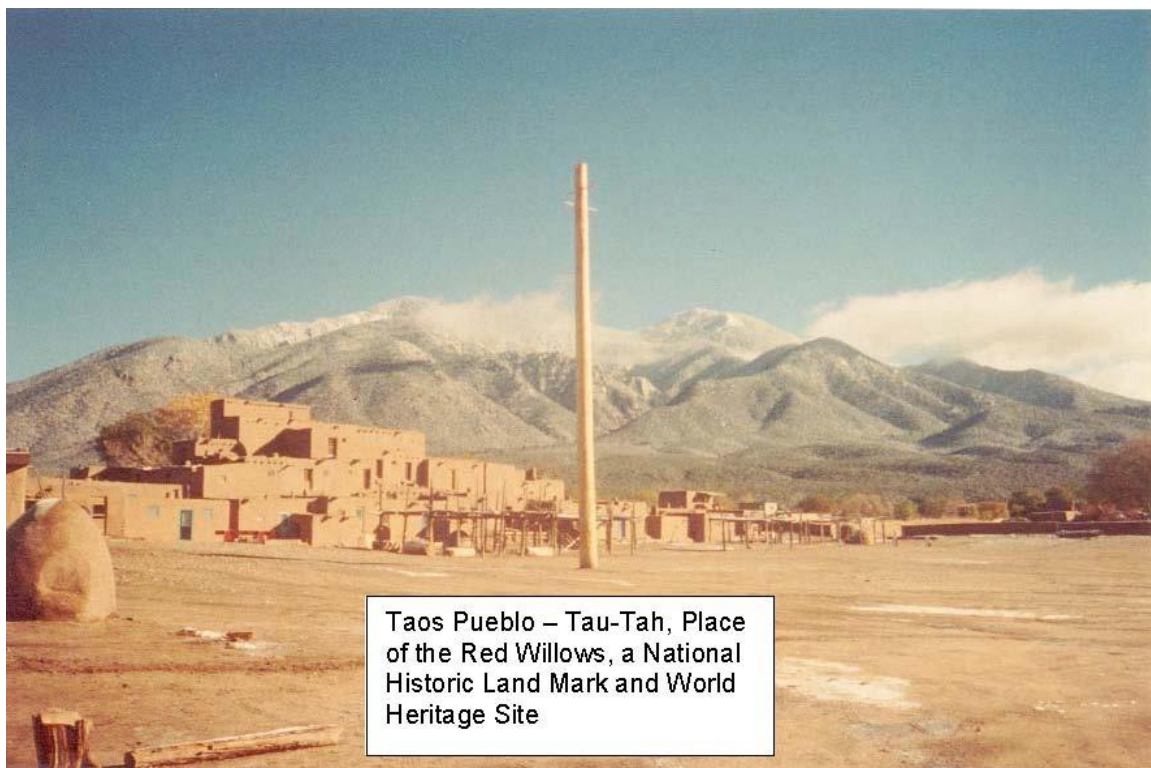
The decades we have spent litigating and negotiating our water rights have put a tremendous burden on the Pueblo's scarce financial resources. Federal funding and technical assistance have never been sufficient. To continue the process we have had to borrow money from a bank. This adjudication commenced before our grandfathers successfully completed the 64-year struggle for the return to Taos Pueblo of the lands now known as the Blue Lake Wilderness Area (Public Law 91-550). Their testimony to Congress during that struggle was about land necessary to sustain Taos Pueblo's cultural traditions. My testimony today is about water, the lifeblood of my people's spiritual, physical and cultural sustenance. The majority of our elders who were appointed to the Pueblo's Water Right Task Force have passed on without seeing completion of this settlement. I dedicate this testimony to their memory.

PART I: SETTLEMENT BACKGROUND AND BENEFITS

In this Part I, I will provide the context for the settlement by explaining its major terms and benefits. In Part II, starting on page 10, I will discuss how the settlement is consistent with the federal Criteria and Procedures for Indian Water Rights Settlements. I will also discuss the compromises by the Pueblo to resolve the Administration's concerns.

The Waters Involved in this Adjudication:

This legislation will authorize the Taos Pueblo Indian Water Rights Settlement negotiated among parties to the adjudication of the waters of the Taos Valley, entitled *State of New Mexico ex rel. State Engineer v. Abeyta* and *State of New Mexico ex rel State Engineer v. Arrellano*. This adjudication has been pending in the United States District Court for the District of New Mexico since 1969. The adjudication includes three tributaries of the Rio Grande in northern New Mexico, namely the Rio Pueblo, Rio Lucero and Rio Hondo, or in our Tiwa language, the *Tuatah Bah-ah-nah*, *Bah bah til Bah ah nah*, and *Too-hoo Bah ah nah*. These stream systems produce average annual flows before diversions in the range of 90,000 acre-feet per year (afy). Competition for use of this scarce resource has led to severe conflicts among the residents of the Taos Valley.



Taos Pueblo – Tau-Tah, Place of the Red Willows, a National Historic Land Mark and World Heritage Site

Taos Pueblo's Use of These Waters from Time Immemorial:

Taos Pueblo, *Tau-Tah*, the place of the Red Willows, is located in North-Central New Mexico. We have over 2,450 enrolled members. Taos Pueblo's land base is roughly 100,000 acres, including semi-arid lands bordering the Rio Grande, irrigated farmlands, and mountain lands with peaks reaching up to nearly 13,000 feet. Our Blue Lake Wilderness Area is a major part of the watershed for the streams in the adjudication. Taos Pueblo is a National Historic Landmark and was designated a World Heritage Site in recognition of our enduring living culture. Our people, *Tauh tah Dainah*, have lived in the Taos Valley since time immemorial. As the first users of the valley's water resources, we constructed irrigation systems that are still in use today.



Young Taos Pueblo
Agriculturalist

Centuries of Conflict:

When the first Spanish explorers arrived in the Taos Valley in the 1500's, they found a thriving agricultural community with an abundance of food crops. They called it the breadbasket of the region. Spanish settlers began their own agricultural tradition in the valley. As the non-Indian population grew, the demand for water increased, resulting in centuries of conflict. One of the oldest disputes over water in the valley heard in a formal legal proceeding resulted in the Mexican-era *ayuntamiento* of 1823 recognizing Taos Pueblo's time immemorial rights to waters of the Rio Lucero. The ruling did not end conflicts over the right to use the Rio Lucero, and non-Pueblo settlers obtained a decree in 1893 that ordered a new division of the stream flow. In the *Abeyta* adjudication, the Pueblo and the United States have disputed this territorial era decision. Thus, the *Abeyta* settlement will resolve a dispute under litigation in three centuries.

Nearly Two Decades of Negotiation:

These longstanding, bitter water conflicts have bred generations of distrust and affected the ability of Taos Pueblo and our neighbors to live together and prosper. A breakthrough occurred in 1989 when the Pueblo and the TVAA agreed to resolve their water disputes by negotiation. The negotiations grew to include all of the major water rights owning parties in the Taos Valley, as well as the State of New Mexico and the United States. Each of the local parties came to recognize and respect the mutual need for water resources for the survival of the valley's agricultural traditions and for our

communities' future. After 18 years of difficult negotiation, the parties reached a settlement agreement in 2006 that allocates water resources, protects existing supplies, preserves the Pueblo's cultural resources, and provides the basis for management of Taos Valley water resources in the future. The parties then went to Washington seeking legislation in unity. The Taos News, in an editorial on April 6, 2006, heralded the settlement as a "gift of understanding" by all involved in its negotiation.

Water Rights Secured by this Settlement:

The settlement authorized by this legislation will secure to Taos Pueblo the right to deplete 11,927.51 afy of water. This quantity includes 7,883.44 afy for 5,712.78 acres of Historically Irrigated Acreage, 114.35 afy for stock ponds, 14.72 afy for stock wells, 300 afy for municipal, industrial and domestic use (current diversions), 1,300 afy of additional groundwater, 100 afy in Rio Grande depletion credit, and 2,215 afy of San Juan-Chama Project (SJCP) water under a contract. In addition to the SJCP contract to the Pueblo, the Town of Taos and EPWSD will receive contracts for 366 afy and 40 afy, respectively, bringing the total SJCP water to be contracted to 2,621 afy. These contracts are essential to ensure that the Pueblo will have water to serve our present and future needs and to allow for more sustainable and less disruptive growth in the Taos Valley.

Funding Necessary for this Settlement:

The bill includes authorization of \$58 million in appropriations to the Taos Pueblo Water Development Fund, \$30 million in appropriations to the Taos Pueblo Infrastructure and Watershed Fund through the Secretary of Interior, and \$33 million in appropriations for projects that will mutually benefit the Pueblo and non-Indian parties, for a total of \$121 million in federal funding. The State of New Mexico will contribute \$20.2 million in additional settlement funding toward the Mutual-Benefit Projects and for specific water rights acquisitions by non-Indian parties to bring them into permit compliance.

It was extremely difficult for Taos Pueblo to put a monetary value on the claims we are conceding. So instead of evaluating the funding purely in terms of compensation that would never be enough, we focused on the amount of funding that will enable us, with careful management, to correct years of neglect of our water-related infrastructure by the United States and to implement each of the other settlement mechanisms designed to protect our water rights while enabling our neighbors to enjoy theirs.

(1) Avoid further conflict through modest funding for vast Pueblo claims compromised: Importantly, the Pueblo is accepting the \$88 million in funding in exchange for (1) waiving our right to bring certain enormous damage claims against the United States, (2) waiving vast portions of senior water rights claims and related damage claims against other parties, and (3) forbearing on the exercise of about half of our senior water rights for historically irrigated acreage recognized in the settlement. By comparison with other Indian water settlements, the total funding is modest. There are no huge, expensive projects in this settlement. Rather, there are small projects designed to mitigate the impacts of competing water uses; funding for Pueblo infrastructure

improvements; funding for a mechanism to accommodate junior irrigation uses and decrease the Pueblo's forbearance of our senior irrigation rights over time; and funding for the Pueblo's settlement administration responsibilities. All of these elements are necessary to make this unique, cooperation-based settlement work. They are tied together as a result of compromise. Removing any single component would unravel the settlement.

(2) Redress federal failure to protect Taos Pueblo water rights and federal neglect of Pueblo irrigation infrastructure:

Our potential damages claim against the United States for breach of its trust duty to protect Taos Pueblo's senior water rights involved in this adjudication greatly exceeds the funding amount called for in the settlement. From the beginning of the American period, the United States failed to pursue legal action to protect the Pueblo's lands and our enjoyment of our water rights. This federal inaction injured the Pueblo and prolonged conflict in the Taos Valley.



Likewise, the federal government has failed to take the necessary steps as our trustee to manage the Pueblo's water rights and facilitate our water use. The federal government did, finally, expend some funds to construct new head gates and to rehabilitate certain ditch works at the Pueblo. However, that limited assistance came late in the period of American sovereignty and guardianship, in the midst of the pre-World War II economic depression, and the funding remained insufficient. Worse yet, the non-traditional construction materials and practices introduced by the federal government made it difficult for the Pueblo to maintain and repair the infrastructure with traditional

techniques. In 2000, a joint investigation report by the Bureau of Indian Affairs and the Bureau of Reclamation identified a serious need for the rehabilitation and repair of Pueblo irrigation infrastructure, based heavily on investigation of infrastructure on Taos Pueblo.

Although these problems have long been documented, the repairs and rehabilitation—which are the responsibility of the Bureau of Indian Affairs Northern Pueblos Agency—were not accomplished due to funding cutbacks. Funding in small



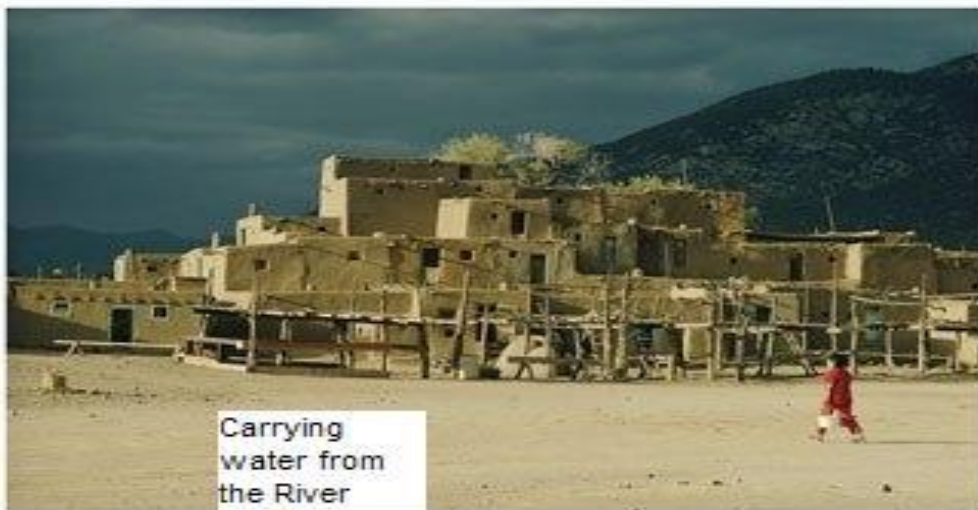
amounts has been secured from the Bureau of Reclamation in recent years for drought relief projects, such as a well for stock water, and head gate fabrication. However, these funds have been grossly insufficient.

The foregoing is a small slice of the history of federal neglect and mismanagement, and the inequitable federal treatment of Taos Pueblo, but it is illustrative of our relevant damage claims against the federal government that greatly exceed the settlement funding. Likewise, Taos Pueblo's claims for aboriginal irrigation water rights in the litigation are substantially greater than the water quantities we will receive in settlement. We also agree to forbear exercising substantial amounts of our senior historically irrigated acreage rights, and I will discuss that more in a moment.

(3) Address irrigation system disrepair: Currently, 2,322.45 acres of Pueblo lands in the Taos Valley are irrigated with infrastructure in deplorable condition. Much more farmland cannot be irrigated because there is no way to convey water to these fields without extensive repair and rehabilitation to our infrastructure, and many fields need laser leveling for efficient distribution of water. BIA has not done any repairs of significance in decades. Settlement funding will allow the Pueblo to rehabilitate and

replace diversion structures and ditch linings and construct improvements. This will enable the Pueblo to recover from the long history of federal neglect of our irrigation systems and to revitalize our agricultural heritage for self-sustainability.

(4) *Remedy lack of running water and wastewater system access:* Many of our people lack running water in their homes or a connection to a wastewater system because the existing system does not extend to their homes. Some of our people still get their water for domestic use directly from the streams, irrigation ditches, and springs. This may sound quaint and appealing, but in freezing winter weather it creates a hardship that should not be acceptable in this day and age. Settlement funding will help us to improve and expand our community water and wastewater system to better serve our people in existing homes and in a backlog of homes pending construction.



(5) *Protect the watershed and support agriculture and water-related Pueblo community welfare and economic development:* A large portion of water that serves Taos Pueblo and non-Indian parties is produced within the watersheds on Pueblo land. Establishing a Pueblo watershed program will protect this precious resource. A recent fire in the watershed caused flood damage and contaminated the surface water supply. Our people who rely on it had to haul water from an alternative source. This contamination remains a continuing threat following every snowmelt and rainfall runoff.

While our need for irrigation infrastructure repair is critical, support of agriculture requires more than ditch rehabilitation. We need to improve our ability to support the efforts of farmers and engage in tribal agriculture efforts to maintain our traditional way of life. At the same time, water infrastructure to support economic development will enable the Pueblo to become more self-sufficient.



(6) Acquire and retire junior water rights to decrease the Pueblo's forbearance:

Under the settlement, the non-Indian parties agreed to recognize Taos Pueblo's right to deplete 7,883.44 afy for our Historically Irrigated Acreage totaling 5,712.78 acres. In turn, the Pueblo agreed to initially forbear exercising our right to irrigate 3,390.33 acres of this amount as of the 2006 Draft Settlement Agreement signing date. This forbearance will decrease over time as junior irrigation rights are acquired on a willing seller basis and retired by the Pueblo, or are abandoned or forfeited under state law, or (with certain exceptions) are transferred to a non-irrigation use or out of the Taos Valley and curtailed through the exercise and enforcement of the Pueblo's aboriginal priority date. This mechanism is necessary because the Pueblo's full exercise of our Historically Irrigated Acreage would otherwise seriously disrupt non-Indian irrigation. It is a major concession by Taos Pueblo to make the settlement work. A linchpin of the settlement is funding sufficient to acquire and retire a threshold quantity of junior rights prior to the Enforcement Date (see page 9) and an additional quantity over time to allow full exercise of the Pueblo's senior Historically Irrigated Acreage rights.

(7) Provide water management and administration and support negotiation and implementation of the settlement: This settlement is necessarily complex and places substantial policy and administrative responsibilities on Taos Pueblo. The Pueblo will need to manage and administer our water rights to carry out the provisions of the settlement in a manner that utilizes traditional and contemporary professional water management practices. We will need to administer the purchases and retirement of junior water rights and the leasing of Pueblo water rights. Years of inadequate federal funding necessitate that a portion of the settlement fund cover the Pueblo's negotiation, authorization and implementation costs.



Photo Courtesy of Rick Romancito, Taos News

(8) Protect the Pueblo's sacred natural wetland from groundwater pumping:

The Pueblo's culturally important natural wetland known as the Buffalo Pasture supports herbs, plants, clays, wildlife and waterfowl essential to our ceremonies. This unique wetland provides irrigation water for the Pueblo and non-Indians, and it is the start of a greenbelt extending through the valley. As municipal pumping around the wetland increased over the last 60 years, it significantly diminished in size. The settlement will restore and maintain this natural wetland through groundwater recharge (the Buffalo Pasture Recharge Project) and movement of municipal wells away from the wetland.

(9) Fund implementation early to ensure success: The Pueblo accepted the forbearance obligation only with a mechanism to allow us to start at a reasonable baseline amount of historically irrigated acreage in use. The recently irrigated amount of 2,322.45 acres is less than half of our 5,712.78-acre right due to the federal failure to protect our water rights from non-Indian encroachment and federal neglect of irrigation infrastructure (see pages 5 to 7). To reach the agreed upon target of 3,000 acres prior to the settlement Enforcement Date, we need to acquire and retire water rights from 700 acres of non-Indian land. For this reason, the bill provides for the Pueblo to receive \$15 million of the Taos Pueblo Water Development Fund upon appropriation, in part for the acquisition and retirement of this threshold amount.

Another portion of this early money will allow us to begin *design* work on the most desperately needed infrastructure projects, including drinking water infrastructure and irrigation improvements to enable irrigation of the additional 700 acres (see pages 5-7). The additional \$10 million of the Pueblo Water Infrastructure and Watershed Enhancement Fund to be made available early is needed to allow the Pueblo to *construct* the most urgently needed water infrastructure improvements and conduct watershed restoration to address continuing threats to the surface water supply (see pages 6-7).

A major strength of our settlement is its reliance on innovative water management to make conflicting demands compatible. Wells will be monitored for compliance with pumping limits, various streams and diversions will be gauged, detailed surface water sharing agreements between the Pueblo and numerous acequia associations will be administered, the Pueblo will administer our water transfers through specified procedures and standards and must develop and implement a more detailed Pueblo Water Code. In order for these measures to be in place upon the Enforcement Date so that the settlement can succeed, we need to immediately develop our water management and administration regulations and procedures and hire the necessary staff. The early acquisition and retirement of water rights will likewise require significant administrative resources prior to the Enforcement Date to accomplish the hundreds of transactions with individual farmers necessitated by the typically small farm size in the Taos Valley. Similarly, we will incur significant negotiation and implementation costs in meeting the conditions precedent to the enforceability of the settlement, including the process to obtain the Partial Final Decree and the amendment of the Draft Settlement Agreement to conform to the legislation. The bill allows us to use the \$15 million for these purposes to ensure the settlement is implemented and meets the criteria of finality.

This early money will also fund the Buffalo Pasture Recharge Project because it needs to be operational early in the settlement implementation to restore this endangered natural and cultural resource and to protect it from municipal pumping (see page 9). A portion of the Water Development Fund is available early for this purpose.

(10) Jointly support Mutual-Benefit Projects: The settlement parties devised a series of small Mutual -Benefit Projects tailored to resolve complicated disputes over specific water use issues. A Mitigation Well System will pump groundwater from deep aquifers to offset surface water depletion effects resulting from the parties' future groundwater development, thereby alleviating competition among the parties for the acquisition of acequia water rights. The Arroyo Seco Arriba storage project will enable an acequia community to store non-irrigation season flows for retrieval when needed as part of the resolution of the centuries-old Pueblo-Acequia dispute over allocation of the Rio Lucero. Funding of the Acequia Madre del Prado stream gage will facilitate implementation and enforcement of surface water sharing provisions. The settlement limits the Town's and EPWSD's pumping from its existing well field and prohibits use of those wells closest to the Buffalo Pasture by providing replacement wells located farther away and deeper to protect the Pueblo's sacred cultural resources in this natural wetland.

PART II: FEDERAL CRITERIA MET AND COMPROMISES MADE TO ADDRESS THE ADMINISTRATION'S CONCERNS

Criteria and Procedures for Indian Water Rights Settlements:

The Taos Pueblo settlement meets the United States policy for settlement of Indian water rights cases as embodied in the Criteria and Procedures for Indian Water Rights Settlements published by the Department of the Interior (DOI) on March 12, 1990 (55 Fed. Reg. 9223). The prior Administration failed to apply these criteria correctly.

This Settlement Meets the Criteria and Procedures:

These criteria are often stated in terms of the four policy goals set out below. Under each, I summarize how this settlement meets the goal.

(1) Avoid the direct and indirect costs of continued litigation: This settlement resolves claims of Taos Pueblo, and the United States in its trustee capacity, as set forth more specifically in the waivers and releases of claims. As a result, the direct costs of continued litigation will be avoided. Indirect costs to the United States, the Pueblo, and other parties associated with conflicts over surface water use and groundwater withdrawals will also be avoided through the settlement's interconnected mechanisms for enabling the major water owning parties in the Taos Valley to move forward with water diversions in a manner that respects one another's water uses and other precious resources, such as the Pueblo's sacred wetland known as the Buffalo Pasture that has similar cultural significance to the Blue Lake mentioned earlier.

(2) Resolve potential damage claims the tribes may bring against the United States for failure to protect trust resources, or against private parties for interference with the use of those resources: This settlement resolves claims of Taos Pueblo against the United States and other *Abeyta* parties as set forth more specifically in the waivers and releases of claims. The settlement also minimizes the potential for future water conflicts between the Pueblo and our neighbors. The parties carefully tailored the set of modest Mutual-Benefit Projects and other necessary settlement components, such as the Pueblo's forbearance combined with acquisition of junior rights, to accomplish this purpose cost effectively. The State's contributions to these mutual benefit projects are proportionate to the benefits received by the local parties.

(3) Act consistently with the federal trust responsibility to tribes: The settlement addresses the trust responsibility not only by protecting the Pueblo's exercise of our water rights, but also by providing funding for the Pueblo to accomplish water-related infrastructure improvements necessitated by years of federal neglect. Consistent with the trust duty, the Pueblo can use the funding to implement our responsibilities under the settlement, including the management and administration of our water resources program. These items are not being funded through the normal federal budget process. The settlement structure, by providing the mechanisms for the Pueblo to develop and manage our water in harmony with our neighbors, ensures that the federal funding will meet the federal criteria to promote economic efficiency on reservations and tribal self-sufficiency.

(4) Avoid the costs associated with senior Indian water rights displacing non-Indian water users: At the core of the settlement is Taos Pueblo's forbearance on the exercise of approximately half of our senior water rights for historically irrigated acreage and the mechanism for the Pueblo to increase our exercise of these rights over time. This creative approach avoids disrupting non-Indian irrigators, and does so on a willing seller basis that respects current uses. Thus, the settlement meets the federal criteria to be conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the states and tribes in their respective jurisdictions.

The Prior Administration's Application of the Criteria was Flawed:

In contending that the settlement does not meet the federal Criteria and Procedures, the prior Administration asserted in testimony that (1) the State cost share is disproportionate to State and local benefits, (2) a federal contribution of the order of magnitude provided in HR 3254 is not appropriate because “calculable legal exposure plus costs related to Federal trust or programmatic responsibilities do not justify” the federal contribution amount, (3) the projects authorized would not “promote economic efficiency,” and (4) early money would be inappropriate. These arguments reflect a failure to apply the criteria correctly.

(1) *The state cost share is appropriate:* The prior Administration apparently treated the Mutual-Benefit Projects as a 100% local non-Pueblo benefit, when in fact those projects were designed to mutually benefit both the Pueblo and other local parties. It bears emphasis that the *Abeyta* Mutual-Benefit Projects are very modest in scale and cost.

(2) *The federal contribution is justified:* The prior Administration reached the conclusion that the total settlement costs were too high by omitting or miscalculating several of the avoided costs to the federal government that the Criteria and Procedures require the Administration to weigh against settlement costs. Although the prior Administration cited the requirement to consider “calculable legal exposure,” it is apparent that they considered only the direct litigation costs to the United States of adjudicating the Pueblo’s water rights in *Abeyta*. They did not consider the avoided *liability* for breach of trust for the claims against the United States to be waived by the Pueblo nor the avoided *indirect* costs of continued litigation.

Although the prior Administration cited the requirement to weigh programmatic responsibilities, they apparently overlooked the fact that appropriations for programmatic responsibilities associated with Pueblo water rights and water infrastructure have been woefully inadequate to meet the United States’ responsibility. Consequently, those past appropriation levels are not commensurate with the actual federal programmatic responsibilities, and thus are not a proper basis for comparison to the federal contribution. In short, the prior Administration undervalued the benefits of Indian water rights settlements by focusing only on one of the four factors—the direct costs to the United States of not continuing to litigate the water rights claims— and ignoring the other three factors under longstanding United States policy for Indian Water Rights Settlements. For these reasons, the prior Administration’s withholding of support on the basis of cost was not valid. Furthermore, the \$88 million in funding for the Pueblo is a substantial compromise from the \$100 million Pueblo fund in the Draft Settlement Agreement that we signed in 2006.

(3) *The settlement will promote economic efficiency:* In addition, the prior Administration misconstrued the criterion requiring that “settlements should be structured to promote economic efficiency *on reservations and tribal self-sufficiency.*” See 55 Fed. Reg. 9223 (emphasis added). It cited only the words “economic efficiency,” missing the

fact this criterion goes to the benefits *to the tribe* from settlement funding that promotes on-reservation economic efficiency and makes the tribe more self-sufficient. The projects funded by the *Abeyta* settlement will largely be designed, managed and constructed by the Pueblo and will provide improved water infrastructure to support the Pueblo's agricultural, community and economic development, thereby promoting and enhancing the Pueblo's self-sufficiency and on-reservation economic efficiency.

(4) Early money is justified and has precedent:

The prior Administration's testimony questioned the appropriateness of making funding available for initial water rights acquisition, for instance, to facilitate the settlement before all of the conditions precedent for the enforcement of the settlement have been met. This concern arose from the mistaken belief that making funding available upon appropriation is unprecedented. In fact, there *are* precedents for early funding. For example, the 2003 Zuni Indian Tribe water rights settlement legislation made funds available for acquisition of water rights and other activities carried out by the Zuni Tribe to facilitate the enforceability of its settlement agreement, including the acquisition of at least 2,350 acre-feet per year of water rights before the deadline for the settlement to become enforceable. *See* Zuni Indian Tribe Water Rights Settlement Act of 2003, Pub. L. No. 108-34, §§ 4(b)(1) and 6(f)(1), 117 Stat. 782, 786, 789 (2003). Similarly, the Chippewa Cree Tribe of the Rocky Boy's Reservation water rights settlement legislation made funds available upon appropriation for certain administration responsibilities assumed by the Tribe. *See* Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999, Pub. L. No. 106-163, §105(a), (d)(3), 113 Stat. 1778, 1786, 1788 (1999).

As explained in more detail on pages 9-10, this early funding will allow the Pueblo to acquire and retire an increment of water rights to partially decrease our forbearance, support Pueblo water administration and settlement negotiation costs, and enable us to commence the most urgently needed restoration and small water infrastructure improvements necessitated by federal neglect. In fact, the prior Administration's testimony acknowledged Taos Pueblo's *need for immediate access to funds*. In the unlikely event that the settlement does not become enforceable, the legislation provides the United States the right to set off any of these early funds expended or withdrawn against claims asserted by the Pueblo against the United States relating to water rights in the Taos Valley.

Compromises by Taos Pueblo to Resolve the Administration's Concerns:

The prior Administration did not take an "opposed" position or "object" to the passage of the *Abeyta* legislation. Rather, it testified that it merely "could not support the legislation at this time" and commended the Pueblo and other local parties on their efforts to address the Administration's issues. The prior Administration's main concern was the total cost of the settlement to the federal government, which as explained above, results from their misapplication of the Criteria and Procedures. Their nonmonetary concerns consisted only of two: (1) the waivers and releases of claims and (2) court jurisdiction.

We successfully negotiated a resolution of those Administration concerns; indeed, the waivers and releases of claims provisions we negotiated have been touted by DOI and the Justice Department as the “model” for Indian water rights settlements ever since.

(1) Finality and adequate protection of the United States from future liability:

The prior Administration proposed revisions to our waiver language following the hearing on the bill before the Senate Committee on Indian Affairs, and just days prior to the hearing before the House Subcommittee on Water and Power in the 110th Congress. Taos Pueblo and other settlement parties immediately convened with DOI to discuss this language and the Pueblo remained in Washington, D.C. following the House hearing in September 2008 to continue the negotiations. The *Abeyta* parties reached agreement with the Administration on replacement waiver provisions and submitted these to the Congressional delegation on November 7, 2008, meeting the target date for possible inclusion in the 2008 Omnibus Public Lands bill. As Congress’ focus in the lame duck session shifted exclusively to the national financial and economic crisis, it was not possible to pass the legislation as part of an omnibus package in the 110th Congress. HR 3254 contains this agreed upon waivers language.

(2) Court jurisdiction: The other nonmonetary concern identified in the prior Administration’s testimony was whether unnecessary litigation over the jurisdiction of a court other than the decree court might occur. Their concern was that Section 12(a) of the bill provides for a limited waiver of sovereign immunity in the event that any party to the Settlement Agreement brings an action in “any court of competent jurisdiction” for interpretation or enforcement of the Settlement Agreement or the Act. This concern is unfounded given that similar language appears in recent Indian water rights settlement legislation. *See, e.g.*, Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement, Pub. L. 111-11, § 10809(e)(3), 123 Stat. 991, 1413 (2009) (“United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement”); Snake River Water Rights Act of 2004, Title X, Pub. L. No. 108-447, § 11(f), 118 Stat. 2809, 3441 (2004) (“United States consents to jurisdiction in a proper forum”). The prior Administration ultimately agreed to the submittal last November to our Congressional delegation of revised legislation language retaining Section 12(a).

Engagement with the Current Administration:

Early this year, we were heartened to hear Secretary of the Interior Ken Salazar attest to the Obama Administration’s commitment to supporting Indian water rights settlements in his confirmation hearing before the Senate Committee on Indian Affairs. We flew to Washington to meet with the new Administration in February, and we traveled again in July to meet with Deputy Secretary David Hayes and Bureau of Reclamation Commissioner Mike Connor. We worked productively with Mr. Hayes during his tenure with the Clinton Administration in securing the funding for the hydrologic tests and modeling that laid the foundation for the settlement. Mr. Connor was similarly instrumental to the success of the settlement negotiations in his service as the Federal Negotiations Team Chair and to the advancement of our settlement legislation

in the 110th Congress. We are therefore confident in the DOI leadership's personal understanding of the benefits of this settlement. We remain concerned, however, whether the Office of Management and Budget (OMB) under the current Administration will persist in the prior OMB's undervaluation of the benefits of Indian water rights settlements by misapplying the Criteria and Procedures. We place our hope in the new Administration and this Congress to recognize our settlement as a model approach deserving prompt enactment and funding.

Peace in the Valley:

Taos Pueblo and the other parties took great care in crafting innovative solutions to bring "peace in the valley" with this settlement. In view of the long years of hard work and expense by Taos Pueblo and our neighbors to negotiate this settlement, and in recognition of its benefits to the residents of Taos Pueblo, the Taos Valley, the State of New Mexico and the United States Government, I strongly urge the Subcommittee to take favorable action on the Taos Pueblo Indian Water Rights Settlement Act. Passage of this legislation and appropriation of the necessary funds will pay off manyfold in cooperative use of water resources by the parties and future generations.



Signing of Draft
Settlement
Agreement May 2006

I thank Chairwoman Napolitano, Ranking Member McClintock, members of the Subcommittee on Water and Power, our local Congressman Ben Ray Lujan, our New Mexico member of this Subcommittee Congressman Martin Heinrich, and other members of the New Mexico Congressional delegation for their support, and for the honor and privilege to provide this testimony. I also give thanks for the spiritual guidance I have received, and the support and advice of our tribal delegation present here today and those at home who await action by the Subcommittee and the Committee on Natural Resources. We ask that you be spiritually guided to make the right decisions on this bill and others that affect the lives and future of our people and our neighbors.

Respectfully submitted,

/s/

Nelson J. Cordova

Tribal Councilman, Taos Pueblo