

Prepared Statement of the Honorable Charles J. Dorame, Chairman

Northern Pueblos Tributary Water Rights Association

And Former Governor, Pueblo of Tesuque

Before the House Subcommittee on Water and Power

Committee on Natural Resources

Legislative Hearing on the Aamodt Litigation Settlement Act

September 9, 2009

INTRODUCTION

Good morning Chairwoman Napolitano and Ranking Member McClintock. Thank you for agreeing again this year to focus this Subcommittee's attention on the *Aamodt Litigation Settlement Act* (H.R.3342), a comprehensive settlement of the Indian water rights claims of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque ("the Four Pueblos"). I also want to thank the majority and minority Subcommittee staff who continue to demonstrate unparalleled excellence and professionalism in all of our dealings.

The House version of the *Aamodt Litigation Settlement Act* was introduced on July 24, 2009, by our Congressman, the Honorable Ben Ray Lujan, and the Honorable Martin Heinrich. As you know, in May 2009 Senators Jeff Bingaman and Tom Udall introduced the Senate version of this settlement bill (S.1105). As

you also know, similar legislation was introduced and subject to legislative hearings in both the House and Senate in the 109th Congress.

I want to thank Congressman Lujan for his leadership in working with the Four Pueblos and, indeed, with all of the settlement parties to address unresolved issues and produce consensus legislation that is supported by the Four Pueblos, the State of New Mexico, Santa Fe County, the City of Sante Fe, and individual water users.

INDIAN WATER SETTLEMENTS IN GENERAL

Complex Indian water settlements do not happen in a vacuum, Madam Chairwoman, and the *Aamodt Litigation Settlement Act* is no exception. At the outset, I want to commend our Federal partners, the State of New Mexico, Santa Fe County, the City of Sante Fe, individual water users, and others for years of hard work and good faith negotiation that produced the settlement legislation that is before this Subcommittee.

My name is Charlie Dorame and I am glad to be back before you to present testimony on this important legislation. I am the former Governor of the Pueblo of Tesuque and am now the Chairman of the Northern Pueblos Tributary Water Rights Association (“NPTWRA”). The NPTWRA is an association comprised of the

Four Pueblos and dedicated to the pursuit of their comprehensive and equitable settlement of the Indian water and land claims.

At stake in this proposed settlement bill are the water rights of these four distinct Pueblos --- each with its own land base, economy, community, history, and vision of the future.

Filed in 1966 by the State of New Mexico, the Aamodt litigation is one of the longest-running Indian water rights cases in the history of the United States. To give you some perspective on how long this case has drawn out, I was 17 years old when the case was filed and in the years since then I have watched as the case has gone from year to year, seemingly without end.

Nevertheless, we are more optimistic than ever that, with the introduction of H.R.3342, the Aamodt litigation is reaching its conclusion.

THE ROLE OF WATER IN PUEBLO LIFE

Water is essential to our people for basic needs and our survival, but also for its sacred role in Pueblo culture. For example, at the Pueblo of Tesuque, we require that water from the Rio Tesuque be used during traditional ceremonies. Our ability to maintain and practice our traditional ways is dependent on a quantity of water flowing through our lands. The sensitivity and nature of our

traditions prevents me from openly discussing how we use these water resources in ceremonial settings.

About eight years ago, we were faced with a crisis when the creek went dry and we were forced to ask the upstream non-Indian users to refrain from using the water for at least a week so that we could have enough water flowing through our land during our ceremonies. Fortunately, they were kind enough to agree to our request. In some cases, we do not have the luxury of giving advance notice because the need for water may happen in an instant.

I have lived on my reservation all my life and I have seen the Rio Tesuque go dry many times either before it reaches our village or immediately after it passes through our village.

Water is also essential to our livelihood and our traditional methods of farming, which we have practiced for thousands of years. As we have done for generations, we have annual ditch cleanings performed by the men of our village so that water can be channeled from the creek to irrigate farm lands close to the village. This requires that enough water is flowing and gravity feed forces the water to our farm lands. We also have artesian wells that supplement water flow for traditional activities and farming. I have seen these wells go dry with obvious consequences for farmers and their families.

As children growing up on our lands we knew where wells were located and in those days the wells had enough water to nourish us when we went exploring. Now we have to tell our children to carry water and not venture too far from home without water to drink.

As you can well imagine, the lands of the Four Pueblos lose much of their cultural vitality as well as their economic benefit without enough water to make them viable.

BACKGROUND ON THE PROPOSED SETTLEMENT AND ITS TERMS

In the Pojoaque River Basin (“the Basin”), a tributary of the Rio Grande in northern New Mexico, conflicts over scarce water have resulted in protracted Federal litigation which is approaching its 44th year. The Aamodt case was filed by the State of New Mexico against all water right claimants in the Basin to determine the nature and extent of their water rights. In January 2006, a comprehensive Settlement Agreement (“Settlement Agreement”) was reached between the following parties:

- The Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque; and
- The State of New Mexico, Santa Fe County, and the City of Santa Fe.

Upon enactment, H.R.3342 will:

- (1) Secure water to meet the current and future needs of the four Pueblos;

- (2) Protect the long-standing water uses and resources that make the Basin unique;
- (3) Preserve the centuries-old non-Pueblo irrigation in the Basin; and
- (4) Provide water for current and future uses by all of the Basin's residents.

REGIONAL WATER SYSTEM IS THE CENTERPIECE OF THE AAMODT SETTLEMENT

The centerpiece of the Settlement Agreement is a proposed Regional Water System ("RWS") to supply Pueblo and non-Pueblo citizens in the Basin.

The RWS will have the capacity to deliver up to 2,500 acre feet per year of water from the Rio Grande to the Four Pueblos.

The RWS will also have the capacity to deliver 1,500 acre feet per year to the Santa Fe County Water Utility to serve future water users in the Basin, as well as to present domestic well owners who connect to the system. The source of the water has been identified with the assistance of the State of New Mexico, the County, the U.S. Department of the Interior, and the settling parties.

The RWS's provision of water to non-Pueblo water users is important to the Pueblos because it will reduce stress on the groundwater resources of the Basin. Without the construction of the RWS and related systems, the litigation cannot be settled and water resources will continue to dwindle for all of the Basin users.

SETTLEMENT AGREEMENT TERMS AND PROJECT COSTS

Unlike other settlements, the Settlement Agreement that would be ratified by H.R.3342 fits squarely within the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims*, 55 F.R. 9223 (Mar. 12, 1990, “Criteria and Procedures”) used since 1990 by the United States to gauge the respective benefits and costs of any proposed settlement.

While no proposed settlement is perfect in terms of meeting every aspect of the Criteria and Procedures, the Settlement Agreement before you is as close to a neat fit as is likely to come before the Congress.

The settlement of the water rights claims of the Four Pueblos as reflected in H.R.3342 satisfies the primary requirements and intent of the Criteria and Procedures as a necessary and worthy Federal investment. It will halt escalating Federal costs that result from inadequate, economically inefficient and outdated water infrastructure in the Basin. The settlement also will address long-term water planning and water administration needs in a desert environment where continued, uncontrolled groundwater mining by the non-Pueblo population would run counter to Federal interests.

Resolving these problems, as proposed in H.R.3342, while finally and fully quantifying the water rights of the Four Pueblos in this tributary of the Rio Grande and resolving one of the oldest pending Federal court cases in the country, is a sound and defensible use of Federal resources. H.R.3342 will promote economic efficiency and tribal self-sufficiency going forward by establishing the RWS to supply much-needed water into a water-short basin. The RWS will honor the individual governmental authority of the five participating entities, the Four Pueblos and Santa Fe County, while providing for a unified and economically efficient approach to water supply.

In addition, the Settlement Agreement satisfies the material conditions of the Criteria and Procedures because:

1. It will resolve the Pueblo claims with finality after 43 years, and will prevent another 40 years of litigation;
2. It ensures efficient conservation of scarce water resources;
3. It promotes long-term cooperation between the Pueblo and non-Pueblo governments and communities;
4. The total cost of the settlement to all parties does not exceed the value of the existing claims;
5. The non-Federal cost share --- at 42% --- is significant; and

6. It promotes economic efficiency and tribal self-sufficiency.

The Settlement Agreement resolves all outstanding water rights claims and achieves finality with regard to the claims of the Four Pueblos in the Basin. It also provides certainty in terms of water supply to the Four Pueblos and non-Pueblo communities.

The Settlement Agreement establishes a process whereby Pueblo and non-Pueblo water rights will be administered post-settlement in a way that is conducive to long-term, regional harmony and cooperation.

The RWS will allow for (1) an additional water supply for the Pueblos from outside the water-short basin, and (2) for the non-Pueblo water users to be served by a renewable surface supply *in lieu* of individual wells whose proliferation has impaired, and would continue to impair, the exercise of Pueblo water rights. The RWS will also promote cooperative conservation between all parties.

The total project cost of the settlement is \$286.2 million, which would be used to construct both the Pueblo and County combined water system and the county connections, to finance the Pueblo Water Acquisition Fund and the Pueblo Conservation Fund, and to create the Pueblo O.M.&R. Fund.

The Federal investment in the Settlement Agreement is \$169.3 million, which will end continued Federal involvement in this litigation, ensure finality, provide certainty with regard to all claims, and promote tribal economic development and self-sufficiency.

The State of New Mexico, Santa Fe County and the City of Santa Fe are prepared to contribute \$117 million to the proposed settlement --- which represents a non-Federal cost share of 42%, a significant commitment by the settlement parties other than the U.S.

In last year's hearing, the United States challenged the validity of the cost estimates contained in the settlement legislation. In 2002, the Bureau of Reclamation ("BoR") provided funding to the NPTWRA through a Pub.L. 93-638 contract in order to have significant amounts of engineering work done in connection with the settlement study regarding the RWS for this settlement that the BoR published in 2004.

After the New Mexico congressional delegation asked for more detailed cost estimates, the BoR provided additional funding through the 638 contract to the NPTWRA which resulted in the Final Engineering Report dated September 2008 prepared by HKM Engineering, Inc. ("HKM Engineering"). The costs in that report are best estimates as of October 2006, and naturally, the settlement

legislation calls for those costs to be indexed by providing that annual adjustments to the construction costs for the regional water system be made “to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices.” The BoR maintains such indices.

HKM Engineering has substantial experience in planning, designing, cost estimating, and constructing regional water systems planned or under construction at Federal expense in several states. While the HKM Engineering cost summary for the RWS includes line items for “unlisted items (variable), contract add-ons at 17.5%, contingency at 20%, and non-contract costs at 29.5%-31%,” these contingencies are reasonable at this stage of planning. We are not at the final design stage yet and, as the U.S. knows, this legislation needs to become law in order for that final design to occur.

The Aamodt settlement parties, and especially the Four Pueblos in the NPTWRA, think we have done the best we can at this point by having a reputable engineering firm give its best estimate for constructing the RWS, including significant contingencies in the budget.

The reality is that the cost for the Aamodt settlement contained in H.R.3342 can only be expected to increase in the future.

U.S. CONCERNS OVER LIABILITY ARE RESOLVED

Since the time this Subcommittee held its hearing in September 2008, the Four Pueblos and the Departments of Interior and Justice have worked to resolve concerns regarding waiver of legal claims and liability contained in H.R.3342.

The Four Pueblos and these Federal departments have been engaged in substantive discussions on these issues for many years and I am happy to report to the Subcommittee that we have negotiated our differences and agreed to revised waiver and liability language as part of the settlement legislation.

H.R.3342 provides for comprehensive waivers and releases with regards to claims against the Federal government as to any future liability relating to water rights claims by the Four Pueblos in the Basin. The waivers and releases contained in the settlement legislation stem from waivers negotiated in the context of court-ordered mediations over the course of six years.

CONCLUSION

Madam Chairwoman, the United States' historic failure to protect the Pueblos' lands and water rights adequately for more than 150 years has led directly to today's conflict over scarce water resources. Once enacted, H.R.3342 will conserve the shared resource responsibly, bring tangible water to Pueblo and

non-Pueblo citizens alike, and will ensure a level of certainty for decades in the Pojoaque Basin.

Most important to the Four Pueblos, enactment of this settlement legislation will fulfill the United States trust responsibility and ensure that our children, and their children, can continue our traditions for generations to come.

Chairwoman Napolitano and Ranking Member McClintock, this concludes my testimony and I am happy to answer any questions you might have at this time.