

**Hearing
before the House Committee on Natural Resources
Subcommittee on Water and Power**

**H.R. 3342
Aamodt Litigation Settlement Act**

**Statement of Harry B. Montoya
Santa Fe County Commissioner, New Mexico**

September 9, 2009

Chairwoman Napolitano, Ranking Member McClintock, committee members, and Congressman Luján, I am Harry B. Montoya. I am in my second term on the Board of County Commissioners of Santa Fe County and I am pleased to offer this testimony on behalf of Santa Fe County. The Pojoaque stream system is located within my district and it is also where I grew up and have spent most of my life. When the Aamodt litigation was filed I was six years old. Forty-three years later, I am very gratified the parties have reached a settlement of this divisive litigation, which is the oldest running lawsuit in the federal court system. With your help, the settlement will provide a reliable water supply to the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque, as well as to other county residents in the Pojoaque basin.

I appreciate very much the opportunity to provide testimony in support of the Aamodt Litigation Settlement Act, H.R. 3342. I especially want to thank

the New Mexico congressional delegation for enabling us to achieve this settlement. After years of what appeared to be intractable and interminable litigation involving thousands of water users, Senators Bingaman and Udall and Congressmen Luján and Heinrich have provided the leadership and the guidance that will allow the fighting to end and will pave the way to a better future for the Pojoaque basin.

OVERVIEW OF SETTLEMENT

The parties reached this settlement after six years of intensive settlement talks ordered by the federal court. In 2006, along with other settling parties, the County, the four Pueblos, the City of Santa Fe and the State of New Mexico signed the Aamodt settlement agreement. The settlement will resolve long-standing water issues between the Pueblos, the State of New Mexico and numerous water rights claimants to the limited supplies of the Pojoaque basin. Now the settling parties, including the seven governmental entities, urge the United States to join us as signatories to the settlement agreement.

This legislation will authorize the Secretary of the Interior to execute the settlement agreement. And it will authorize construction of an important regional water system for the benefit of Pueblo members and other County residents.

Although Santa Fe County does not have water rights at issue in the main Aamodt case, the County agreed to become a party to the settlement and is willing to make a substantial local contribution to help implement it.

The County believes the settlement is highly desirable for two reasons. First, the centerpiece of the settlement is a regional water system that will greatly alleviate water shortages and water quality problems in the basin. Second, the settlement achieves a fair and equitable resolution of the competing claims to water in one of the most water-short areas of the west.

I would like to briefly discuss both of these settlement benefits.

REGIONAL WATER SYSTEM

A vital component of the settlement is a regional water system serving the Pojoaque basin. Because the basin is chronically short of water, the foundation of our agreement is construction and operation of a joint water utility that will divert up to 4,000 acre-feet of water per year from the Rio Grande. Of that amount, the regional water system will treat and deliver 2,500 acre-feet to the four Pueblos and up to 1,500 acre-feet to non-Pueblo customers of the County water utility.

The regional water system bestows many benefits. Most obvious is its importance in delivering a substantial amount of water to meet the future needs of the Pueblos. Less obvious, but perhaps as important to the Pueblos, the

water system provides water to non-Pueblo water users who otherwise would continue to divert basin groundwater and deplete surface flows needed for traditional irrigation and other uses. The settlement contains incentives and provisions for settling non-Pueblo parties to connect to the system and requires new users in the future to connect. Finally, the system directly benefits connecting non-Pueblo customers by providing a clean and reliable water supply.

The regional water system will be governed by a board made up of the Pueblos and the County. By cooperating basin-wide, these five governmental partners will reduce tensions over water distribution and will gain greater efficiencies in system operation and maintenance. Our agreement for regional cooperation should be a model for other communities that find themselves needing to band together to secure water beyond their individual jurisdictions.

The County believes that the regional water system is not only a good deal for the federal government and the Pueblos but is also a good deal for state and local parties. And that is why the County will invest substantial local funds in the system. Including its share of construction costs and its responsibility for operational costs, the County is contributing as much as \$60 million. When combined with financial contributions from the State and City, the non-federal contribution is projected to exceed \$100 million, or about 40% of the total

settlement costs. This is noteworthy, especially when the percentage of water allocated from the regional water system to non-Pueblo customers is proportionately less.

FAIR AND EQUITABLE RESOLUTION

The settlement will achieve a fair and equitable resolution of the difficult and entrenched water disputes that have plagued the Pojoaque basin for so many years.

For the last 150 years the Pojoaque basin has suffered from land and water conflicts, pitting neighbor against neighbor and Pueblo member versus non-Pueblo people. Two U.S. Supreme Court cases and an Act of Congress failed to settle the issues, and the Aamodt water rights adjudication has done no better. The settlement is the only hope for ending the divisions and allowing for harmony in the basin.

The settling parties reached a settlement after years of good faith and painstaking negotiations conducted in numerous court-ordered meetings open to every water rights owner in the basin. The settlement is a carefully constructed compromise – a product of serious give and take by parties desiring a better path than continual litigation. Under the settlement, existing non-Pueblo uses will be protected, far better, I believe, than the most optimistic litigation outcome.

Nonetheless, some non-Pueblo residents oppose the settlement, apparently believing they can pick and choose elements of the settlement and discard others. For example, some opponents argue the non-Pueblo portion of the water system should be eliminated, making it a “Pueblo only” system. Such a misconception of how the settlement was reached jeopardizes the entire settlement, unwittingly reflecting a preference for litigation.

I believe it would be a big mistake to size and design the system to exclude non-Pueblo residents. If we do not authorize non-Pueblo access to the system and do not build in enough capacity, we will not have another chance in the future to make this service available. I firmly believe that there will be demand in the future from non-Pueblo residents to connect to the system. It would be a very unfortunate outcome if those people were told “no, you cannot connect - this is a Pueblo-only system.” Our community needs closure of this long-standing conflict, not further division.

Under the settlement, the water system would be available to all residents within the service area, regardless of Pueblo membership. If non-Pueblo residents in an area with poor water quality want to hook up, they can. If residents with an old domestic well want to hook up, rather than investing in a new well, they can. However, no existing user will be required to hook up.

Rather than defining winners and losers, the settlement protects existing uses and allows for future growth by careful management of available water resources. At the same time, it recognizes and safeguards time immemorial and senior use priorities of Pueblos and early Spanish acequias. The settlement also creates a reliable supply to more recent domestic and commercial uses, and is flexible enough to account for changing uses in the future.

The agreement contains provisions that protect the basin from groundwater pumping in the adjoining and much more populous Santa Fe basin. Both the County and the City of Santa Fe have agreed in the proposed settlement to mechanisms to offset effects on basin surface waters from County and City groundwater withdrawals in the neighboring basin. In order to preserve groundwater supplies, the County and the City have also agreed to meet their demands from surface water sources to the maximum extent feasible in order to minimize the effects on ground and surface supplies of the Pojoaque basin.

In conclusion, I want to thank the Chairwoman, Ranking Member and the committee members for hearing this matter, and Congressman Luján for sponsoring this important bill. H.R. 3342 has been carefully crafted to address the difficult water supply needs within the Pojoaque basin. We have waited a long time to get to this point. We are hopeful, with your help, our time is now.