

Statement of
PRESIDENT CLAUDIA J. VIGIL-MUNIZ, on behalf of
The JICARILLA APACHE Nation
on H.R. 3223
THE JICARILLA APACHE RESERVATION RURAL WATER SYSTEM ACT
Submitted to
THE SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
June 5, 2002

INTRODUCTION

Chairman Calvert, Ranking Member Smith and distinguished members of the House Resources Subcommittee on Water and Power, I am pleased to submit this statement in support of H.R. 3223, the Jicarilla Apache Reservation Rural Water System Act.

I would first like to thank Chairman Calvert for scheduling this hearing and thank the members of the Committee for attending today to learn more about the Jicarilla Apache Nation and this very important project. I also want to commend our Congressman, Tom Udall for introducing the bill along with our other New Mexico representatives: Congressman Joe Skeen and Congresswoman Heather Wilson. The Jicarilla Apache Nation is honored to have the support of additional cosponsors: Congressman J.D. Hayworth, Congressman Dale Kildee, Congressman George Miller, Congressman Patrick Kennedy, Congressman Dave Camp, Congressman Bob Ney, Congressman Scott McInnis, Congressman Mike Thompson, and Congressman Robert Ehrlich. I want to especially thank another cosponsor, a long time friend of the Jicarilla Apache Nation, Congressman Don Young who for many years has provided tremendous understanding and support on this project and other matters affecting our Tribe.

This hearing is vitally important to the health and welfare of the Jicarilla Apache Nation. Our people are facing a crisis: the U.S. Department of the Interior owns and operates the public water system on our Reservation and the water system is a shambles. When the Department of the Interior's Bureau of Indian Affairs built the water system, it was built in a linear fashion so a single break in the line causes systemic failure. The Department of the Interior never adequately maintained or upgraded the water system, so it is simply inadequate to support modern residential life and is a negative barrier to our community growth and economic development. The Department of the Interior also constructed the public water system with materials which constitute health hazards, such as asbestos. As a result, our people suffer with no safe

drinking water. In community areas served by original water system equipment, we have clusters of deaths from stomach cancer. Even as we speak, tribal members are forced to drink from this unsafe system. As a tribal government, we have planned a new school for our children, and though the location for the new facility lacks water infrastructure, we were forced to break ground to meet funding requirements of the mill bond. Our complex of government services is at a standstill. Housing and economic development are on hold because you cannot start new business activity without drinking water.

H.R. 3223 would provide the necessary authorization for the Jicarilla Apache Nation to work in cooperation with our trustee, the United States Department of the Interior, acting through the Bureau of Reclamation, to replace the existing, federally-owned water delivery and wastewater systems on the Jicarilla Apache Reservation. The current infrastructure is deficient, inadequately sized, and out of compliance with federal standards thereby subjecting the people both on and off the Reservation to serious health and public safety risks. Constructing new water delivery and wastewater infrastructure will provide a safe and adequate supply of drinking water to our Reservation. Authorization of this project is consistent with the United States federal trust responsibility owed to the Jicarilla Apache Nation, the mission of the Bureau of Reclamation, and will allow us to move forward with desperately needed housing, health care, law enforcement, education and other facilities to meet our governmental responsibilities to our citizens. The passage of this bill is the top priority of the Jicarilla Apache Nation and will be the cornerstone for building a future for my Tribe. I urge the Committee to act favorably on this bill.

This statement provides a history of the Jicarilla Apache people and background on the governance of the Jicarilla Apache Nation, including a general overview of our relationship with the United States. The statement provides a discussion of the Federal Government's development of the water delivery and wastewater infrastructure on the Jicarilla Apache Reservation as well as the deterioration of these systems and the corrective measures that have been undertaken to address these problems.

This statement addresses the relevant sequence of events and discussion of issues relating to the enactment of Public Law 106-243 on July 10, 2000, which authorized the Secretary of the Interior to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Jicarilla Apache Reservation. This study, entitled "Municipal Water and Wastewater Systems Improvement, Jicarilla Apache Nation, Dulce, New Mexico, Planning Report/Environmental Assessment" was conducted by the Bureau of Reclamation in cooperation with the Jicarilla Apache Nation, and was completed in September 2001. This statement discusses this report, the Jicarilla Apache Nation's objective to implement the recommendations of the report, and the current progress of the work now being conducted by the Nation to improve these systems.

HISTORY OF THE JICARILLA APACHE

For five centuries or more, the mountains and high desert of northern New Mexico have been home to the Jicarilla Apache people, one of six Athapascan groups which migrated from the North sometime between 1300 and 1500 A.D. The traditional homeland of the Jicarilla Apache people covered more than 50 million acres bound by four major rivers across what is now the central and eastern region of northern New Mexico, and adjacent portions of southern Colorado and western Oklahoma. The variety of terrain and ecosystems

provided game, agricultural lands, water, fish, wildlife and opportunities for intertribal trade. Our traditional lifestyle included a wide variety of hunting, gathering plants for food and medicine and raising corn and other crops. Jicarilla people lived in clusters of extended family groups and maintained semi-permanent living areas at preferred locations for hunting and gathering moving from site to site with the seasons. Undoubtedly, our people lived through both dry and wet years in this region known for its large-scale climatic changes, and mastered wise use and management of the land and resources in harmony with the demanding environment. Our resilience and resourcefulness proved to be the key to our survival and preservation of our culture during the subsequent tumultuous years following the arrival of European settlers and the American westward expansion.

Beginning in the late 1600's, the Jicarilla aboriginal land base shifted in location and was reduced in geographic spread as the Comanches migrated out of the Great Basin toward the Texas Gulf Coast and other Apache people were pushed out of southwest Kansas merging with the Jicarilla. Trade and French exploration of the region enabled the Comanches to obtain guns though the Apaches were blocked from obtaining guns. The lack of access to weapons required the Apaches to remain close to the foothills year round thus making them more vulnerable and further disrupting traditional patterns of subsistence. After European contact, lands and resources of the Jicarilla people were appropriated by others but we maintained our core areas.

In the 1800's, the Mexican government awarded numerous land grants to Americans and occasionally to Indians to recognize our prior rights. By 1841, the Jicarilla people were acknowledged to have the ownership and right to use of the largest land grant, consisting of 1.7 million acres east of the Taos Pueblo in northern New Mexico. Following the 1846 annexation of this territory by the United States, this land grant was purchased by an American in 1847 without our consent. Pressure for lands and resources among settlers and the Jicarilla people caused increasingly strained relations and the Jicarilla people were further dispossessed from traditional, sacred homelands.

By 1850, most of the Jicarilla Apache people were located in New Mexico practicing small scale agriculture and grazing. In 1851, a treaty was signed between the United States and the Jicarilla Apache and plans were developed to move the Jicarillas away from the non-Indian settlement in northern New Mexico. Our treaty, however, was not ratified. The Jicarillas made many attempts to establish small farms on the newly-reserved tribal territory though these efforts were continuously hampered by non-Indian settlement pressures. These settlers not only forcibly appropriated the Tribe's fertile lands, including extensive forest reserves, and water resources, but also pressured local governing officials to ignore efforts to secure a firm tribal land base for the Jicarilla Apache people.

To address these problems, a number of Executive Orders reservation were issued to establish a reservation land base for the Jicarilla Apache people. Executive Orders of President Ulysses S. Grant in 1874 and Rutherford B. Hayes in 1880 were issued establishing a reservation land base for the Jicarilla Apache people. However, primarily due to pressure from non-Indian settlers, these orders were rescinded and around 1883, and the Federal Government relocated the Jicarilla Apache people to the south to live with the MescaleroApaches. This move proved unwise because the land at Mescalero was being irrigated by the Mescaleros or non-Indian settlers, and the Jicarilla people returned home to northern New Mexico and continued efforts to secure a permanent homeland of its own.

Finally on February 11, 1887, President Grover Cleveland issued an Executive Order which established the Jicarilla Apache Reservation on part of our original homeland in north-central New Mexico bordering Colorado. In 1907, President Theodore Roosevelt issued another Executive Order establishing the southern portion of the Reservation. These Executive Order reservation orders were ratified by Congress in 1919. These laws finally ended the forced dispossession and removal that our people endured for nearly 200 years. With adequate water, timber, wildlife and agricultural lands coupled with a seemingly more supportive Federal Government trustee, our Tribe was poised to undertake sustained development of the Reservation lands and resources as our permanent home.

The Jicarilla Apaches began the 20th Century fighting epidemic outbreaks of Tuberculosis, trachoma, measles, and influenza. These epidemics resulted in a devastating loss of our population. Over 90% of the Jicarilla children were infected with Tuberculosis. Our people persevered and steadily continued to develop our resources and planned to use the revenue from our timber harvesting to purchase sheep and cattle for grazing. However, the United States controlled and managed our timber resources, but failed to properly manage revenue derived from the sale of our timber. By 1912, 130 million board feet of timber were sold but funds were not delivered threatening the Tribe's wealth and economic security at a critical time of our development. In 1917, Congress recognized that the Department of the Interior's mismanagement was causing the Tribe unnecessary suffering while our funds were encumbered. The Department of the Interior also failed to develop our water resources causing overgrazing and extensive damage to the Reservation resources. In 1919, livestock was finally delivered to the Reservation which diversified the Jicarilla Apache way of life from bare subsistence to a ranching economy. Yet, tribal revenue derived from resources uses and sales, primarily timber, continued to be mismanaged by the Federal Government as documented in several Senate field hearing which confirmed that the Tribe was not receiving the benefits from tribal resources development.

On August 3, 1937, our Tribe accepted the provisions of the Indian Reorganization Act (IRA), and adopted a Constitution, bylaws and corporate charter enabling quick and efficient governmental organization. The Constitution vested authority in the Tribal Council to regulate use of land in conformity with land and resources protection. The Tribe made "sustained yield" the guiding principal governing resources development. Acceptance of the IRA reinforced specific duties of the Department of the Interior to protect and enhance our land and resources.

During the middle part of the century, our livestock and resources management continued to grow. At this time, the prevailing Federal Policy of terminating the legal status of Indian tribes did not affect our Tribe as we were deemed traditional and not "eligible for termination." In the 1950's, mineral exploration started on the southern part of the Reservation, and soon development of our oil and gas began to generate revenue for the Tribe. At the same time, our livestock economy began to decline due to the lack of water development and drought conditions.

By 1960, 90% of the tribal population resided in or near the community of Dulcedemonstrating another major shift in our economy. Both the Tribe and the Federal Government, acting through the Department of the Interior's Bureau of Indian Affairs, had to reconstruct the tribal economy based on centralized governmental services, natural resources management, and commercial enterprise development. In

particular, timber and oil and gas development provided a steady and reliable source of revenue and employment opportunities. Increased major infrastructure, including schools, public health facilities, tribal offices, and housing accompanied the Tribe's increased economic development. Tribal government revenue from natural resources extraction and revenue from the settlement of the land claims settlement coupled with a good relationship with and infrastructure support from the Congress and the Department of the Interior provided a strong framework for the economic growth of the tribe.

The modern era also represented another major development as the Tribe became more active in its exercise of tribal government authority and which often required the Tribe to challenge the Department of the Interior's policy decision-making. In 1976, the Tribal Council enacted a tribal severance tax ordinance on oil and gas tax to raise additional governmental revenue. The Tribe successfully defended its authority in the landmark 1982 Supreme Court decision *Merrion v. Jicarilla Apache Tribe*, which upheld the right of the Tribe to impose these taxes to fund tribal government services. Our Tribe continued to assert its rights and move forward with protecting our water resources.

During the 1970's, the Tribe asserted its authority to protect its water resources because the Department of the Interior failed to do so when erecting major federal water projects diverting our water resources to serve communities off the Reservation. The Tribe sued the Department of the Interior and the Federal Government to defend our water resources and our efforts ultimately resulted in the congressional enactment of P.L. 102-441, the Jicarilla Apache Tribe Water Rights Settlement Act in 1992. This settlement statutorily guaranteed our Tribe perpetual water rights for commercial, municipal and domestic use as well as the ability to market or lease water to third parties for use off the Reservation.

During this period, the Tribe similarly prevailed in suing the Department of the Interior for its failure to properly value tribal oil and gas and account for royalties as required by the applicable leases, statutes and regulations. In 1989, however, the Supreme Court issued an unfavorable decision in *Cotton Petroleum v. New Mexico* allowing the state to impose severance taxes on non-Indian producers who worked with the tribal government to develop tribal trust resources on the Jicarilla Apache Reservation. We strongly disagree with the Court's rationale for this decision because it places discriminatory and unfair impediments on our economy with no requirement that the state return *any* revenue or services back to the Reservation. The resulting dual taxation burden caused by this decision continues to plague Indian economies nationwide and is a matter that we have been working to address through federal legislation. With the exception of the case, the Jicarilla Apache Nation has been extremely successful in asserting its rights and holding the Federal Government accountable for its responsibilities owed to the Tribe.

In the 21st Century, the Jicarilla Apache Nation continues to assert its rights, protect its resources and hold the Department of the Interior and the United States accountable for obligations guaranteed by Federal law and for its failure to uphold these obligations. When the Department of the Interior, acting through the BIA, allowed the federally-owned water delivery and wastewater systems to deteriorate to the point of threatening the public safety and welfare of our people and nearby residents, the Jicarilla Apache Nation, in keeping with our long tradition of resilience and resourcefulness, immediately undertook action to address this problem.

PROFILE OF THE JICARILLA APACHE NATION

The Jicarilla Apache Nation is a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq. In addition land set aside by the 1887 and 1907 Executive Orders that established the Jicarilla Apache Reservation, the Jicarilla Apache Nation reacquired approximately 137,150 acres of additional land taken into trust by the United States, resulting in a total Reservation land base of 879,917 acres. The Jicarilla Apache Reservation is geographically located in the resource-rich San Juan Basin, a geologic basin containing large amounts of oil, gas, coal, uranium, and geothermal reserves.

The Jicarilla Apache Nation has approximately 4,000 members with nearly 85% of our members (3,300) living on the Reservation. The town of Dulce in the northeastern part of the Reservation serves as the headquarters and tribal government seat and is the location of most of the social and economic activity of the Reservation. Most of the residents are concentrated in Dulce.

In accordance with the Jicarilla Apache Revised Constitution, the Jicarilla Apache Legislative Council, an eight member body elected by members living on the Reservation, is the governing body of the Jicarilla Apache Nation. A President and Vice President are elected by the on-Reservation tribal membership establishing the head executive branch of government which directs all of the various tribal departments. The Constitution provides for a third branch of government, the Jicarilla Apache Tribal Court.

The Jicarilla Apache Nation is the largest employer in the region with employing about 750 people, and provides law enforcement and detention, fire protection and rescue, health care, education, natural resources development and management, elderly care, road maintenance, environmental protection, fitness and wellness services to the citizens on the Reservation. The Jicarilla Apache Nation raises governmental revenue through development and regulation of our oil and natural gas to fund over 90% of its operating budget. The Nation also formed the Jicarilla Energy Company (JECO) to develop, produce and market our oil and gas reserves. The Nation offers world class big game hunting and fishing that attracts visitors worldwide.

We have also instituted a land acquisition program to purchase and recover some of our original homelands in order to expand our agricultural resource base and create additional opportunities for tribal social and economic growth. The high elevation and mountainous terrain of the Reservation has proven to be inadequate to accommodate the Nation's increasing agricultural and ranching activities. In addition, 99% of the Nation's population is located in the town of Dulce on the extreme northeastern edge of the Reservation. These circumstances have necessitated the purchase of land east of Dulce, known as the Mundo Ranch recently reacquired and taken into trust status, to provide for additional housing and governmental services facilities.

DEVELOPMENT OF WATER INFRASTRUCTURE

The existing water and wastewater facilities that use the Tribe's water rights are held in trust by the United States Department of the Interior and operated by the Bureau of Indian Affairs (BIA) Jicarilla Agency (Agency) staff. The initial water supply system was erected in the early 1900's in the community of Dulce primarily to serve the BIA operations and facilities. The source of the community's water supply is the Navajo River located about a mile from Dulce. Water is diverted from the Navajo River and pumped up hill to the water treatment plant before being released into the community for public consumption.

Upon settlement by tribal members into the town of Dulce, the BIA provided a couple of outdoor spigots or faucets along the main water line from which member could draw water. In the early 1960's the Tribal Council requested the BIA to extend its water delivery services to tribal members with homes located along the main water line. The BIA granted this request, and for the first time, some of the tribal members began to experience the convenience and health benefits of indoor plumbing.

As the needs of the community expanded over the years, the Dulce water system also grew from a small BIA-contained system to one that provides water delivery and wastewater services to the entire town of Dulce. However, with no overall comprehensive planning for capacity, public health and safety considerations, the water system developed on an ad hoc basis whereby water line extensions branched out from the original main line to serve tribal buildings, individual commercial development, housing subdivisions, additional BIA facilities, and other public facilities. Because the Dulce water system developed in a linear fashion with only one source of water to the point of delivery, a single water main break results in water delivery failure to a significant number of people. The linear nature of the system also creates stagnant zones which causes water to become stale thereby creating a serious health threat to the community.

During the late 1980s and the 1990s the BIA-operated water treatment plant had several drinking water quality citations as the existing plant was under sized and outdated unable to meet new drinking water standards. Public health officials suspected that the water supply could be contributing to a marked rise in stomach and intestinal related diseases in the community.

The unlined sewage treatment lagoons were constructed with BIA and Indian Health Service funding. This outdated wastewater disposal system is not only obsolete but is also overcapacity, spilling poorly treated effluent into AmargoCreek that is tributary to the San Juan River. This system is on the verge of failure, and is currently operating without the proper National Pollutant Discharge Elimination System permit, which expired in 1995. This system cannot qualify for a permit renewal under present circumstances, and under Federal law, exposes the BIA to fines of up to \$25,000 per day. The sewage lagoons are operating at 100% over capacity during the summer and at 500% over capacity in the winter as a result of lower evaporation rates. This overcapacity as well as seepage from the unlined lagoons has resulted in wastewater spilling into the Amargo Creek, which feeds back into the Navajo River, and eventually into the Colorado River. The community also suffers from unbearable odors from the sewage lagoons. Given the density of

the local housing, the current system not only threatens the Dulce community but also poses significant public health, welfare and safety threats to communities off the Reservation.

The inadequacy of the existing facilities has also given rise to an additional public health and safety concern. The demand for and proliferation of additional housing has occurred without access to community water and wastewater facilities, and have resulted in increased private wells and septic tanks. More than 200 septic systems have been identified and are not functioning properly because the marine shale-derived soils in the area have limited absorptive characteristics and are unsuitable for drain field application. There are documented cases of standing septic waste in open areas and near children playing in the streets.

All of these documented deficiencies and public health dangers demand that the only solution is to completely replace and rehabilitate both the water delivery and wastewater collection and treatment systems. Yet, for more than twenty years, these systems have been steadily deteriorating due to inadequate federal funding for regular maintenance and improvements. However, the Jicarilla BIA Agency has continued to exercise federal responsibility and control over these systems by allocating funds from its budget to cover salaries for the operators, electrical power and chemicals to operate the treatment plant. In addition, the Agency has submitted budget information for a number of years documenting the shortfall in funding to operate and maintain the existing systems.

Despite these efforts, the Federal Government has consistently under funded the operations, maintenance and replacement program for the systems and has reluctantly continued to manage the town's drinking water and wastewater systems. This has led to significant degradation of existing systems and replacement in conformance with new standards is virtually non-existent.

In 1996, the BIA inquired whether the Jicarilla Apache Nation would assume ownership and operation of the systems. To evaluate the feasibility of this request, the Nation commissioned studies in 1997 with PNM, the largest public utility in the state of New Mexico, to assess the condition of the water and wastewater facilities in Dulce. A field investigation and engineering analyses were performed by PNM Water Services and the findings indicated serious degradation of existing water and wastewater pipelines and related facilities. It also indicated that there was a substantial capacity problem for this size of community with little opportunity for expansion given the condition and capacity of existing systems. The most serious findings were the poor condition and capacities of the existing water treatment plant and sewage treatment system, a series of evaporative lagoons. The study illustrated that both systems were operating at or above design capacity and were not meeting federal standards for public health and stream discharge standards. Discharge of poorly treated effluent into a tributary of the Navajo River in the San Juan basin was occurring routinely under an expired National Pollutant Discharge Elimination System (NPDES) permit. The findings indicated that for the systems to be brought up to current operating standards and meet federal water quality standards it would cost in excess of \$25 million. This investment would not, however, provide for long-term community expansion.

These dire conditions escalated in October of 1998, when the drinking water diversion system on the Navajo River failed leaving the community without water for 6 days. This required emergency funding from the Tribe to repair the diversion illustrating the vulnerability of the Tribe's diversion and pumping plant system.

The Nation, unable to get necessary funding from BIA or other federal programs, was compelled to expend \$5 million on an emergency basis to replace the water treatment plant and associated facilities in 1999.

The magnitude of the infrastructure issues couple with the BIA's inability to comprehensively address the scope of the problems associated with their systems left the tribal leadership with no alternative but to take the lead to resolve these issues. With the PNM information in hand, the Nation approached a number of agencies, in addition to the BIA, such as the Indian Health Service, EPA and USDA to see if any programmatic funding existed to assist the Nation with this serious set of problems. Given that these systems are titled with the BIA, most federal programs had limited resources to deal with these problems. To deal with this magnitude of funding needs, the Nation was advised to seek specific legislation to have appropriations designated for a specific agency to manage in cooperation with the Nation.

The Nation then approached the Bureau of Reclamation to see if their agency would be willing to work on this issue. The Nation was advised to seek authorization for a Feasibility Study so a report to Congress concerning the problem could be prepared to assist in developing authorizing legislation for this project. The Nation worked closely with the New Mexico Congressional delegation to develop legislation that would authorize the Bureau of Reclamation to prepare the Feasibility Report to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Jicarilla Apache Reservation. P.L. 106-243 was signed into law on July 10, 2000 and directed the Secretary of the Interior to work in cooperation with the Jicarilla Apache Nation in conducting this study. The statute also authorized \$200,000 for the completion of the study and required the Secretary to report back to Congress on the status of the work within one year from the time funding was appropriated.

FEASIBILITY STUDY AND REPORT AUTHORIZED BY PUBLIC LAW 106-243

In September 2001, the Bureau of Reclamation, in cooperation with the Jicarilla Apache Nation completed the feasibility study and report authorized by P.L. 106-243, entitled "Municipal Water and Wastewater Systems Improvement, Jicarilla Apache Nation, Dulce, New Mexico, Planning Report/Environmental Assessment." The findings of this report were similar to the PNM report regarding the condition and capacity of existing systems but suggested that none of the older existing pipelines be salvaged due to age and size. This resulted in a \$35 million estimate to adequately replace existing deteriorated facilities and to build a new conventional wastewater treatment plant to treat water to federal discharge standards, eliminate the serious odor problem permeating the community, and have a new water supply source for stream enhancement, construction and irrigation purposes that was previously being evaporated.

The report goes on to say that to adequately solve both immediate environmental and public health concerns and meet long-term growth and economic development needs of the Jicarilla Apache Nation, an additional \$10 million will be needed resulting in a recommendation to Congress to authorize construction of water and wastewater facilities at a cost of \$45 million.

THE NATION'S CONTRIBUTIONS TO THE SYSTEMS

After discovering the federal programs and funding sources were limited to solve even the immediate capacity problems and public health concerns, the Nation was compelled to fund several projects beginning in 1998.

Projects:	Tribal Funding:
Studies and Engineering	\$ 450,000
Water Treatment Plant	2,730,000
Water Storage and Distribution	2,240,000
Mundo Development Infrastructure (completed by 2003)	2,250,000
Wastewater design and initial construction	6,000,000
Total Tribal Investment	\$ 14,670,000

On a percentage basis, this investment would amount to more than 20% of total project costs if what the nation has already funded is added to the federal portion being requested. The Nation recently committed an addition \$6 million to begin construction on the new wastewater treatment plant because the current situation is so extreme and required immediate action. The total project cost is broken listed below:

Replace existing water system facilities	\$ 18,500,000
Replace existing waste water system facilities	\$ 18,640,000
Total to replace existing water and wastewater systems	\$ 35,140,000
Provide wastewater facilities to areas that currently have serve but no wastewater service	\$ 2,800,000
Total to replace existing water and wastewater facilities for all existing development	\$ 35,140,000
Water system facilities to the mundo ranch	\$ 3,550,000
Wastewater system facilities to the mundo ranch	\$ 3,550,000

Total for water and wastewater facilities for mundo ranch	\$ 7,100,000
Total proposed project cost	\$ 45,040,000

In addition, the Nation is making the commitment to assume title to the facilities and to operate these facilities in perpetuity once constructed to federal standards. This is a significant federal benefit as it alleviates the federal liability in the operation of a substandard system and shifts the costs of operations, maintenance and replacement of these facilities to the Nation. It is estimated by the O,M & R portion of the report, that it will cost approximately \$750,000 per year to adequately operate and maintain these facilities. The federal investment would be protected under tribal management as BIA funding for this purpose has been significantly cut over the years resulting in the current conditions that exist today. The present value of this cost over a 50-year project life at a 6% financing rate is \$ 12 million.

By authorizing this project, Congress will provide for the United States to meet its trust responsibility to the Nation by providing adequate water and wastewater infrastructure to protect and advance the health, safety and welfare of the Jicarilla people. The Nation has fulfilled all that was asked of us to demonstrate the extensive need our people have for adequate infrastructure that a majority of Americans currently enjoy. The Nation, in cooperation with Reclamation and with the assistance of Congress, has demonstrated the poor condition that these facilities are in and have exposed the risk facing the Bureau of Indian Affairs as it continues to operate these facilities in their current condition. The Nation has also demonstrated its resolve in improving conditions for our people by investing nearly \$14 million in infrastructure of its own financial resources even though we believe strongly that the United States has failed in providing these services as part of its trust responsibility to the Nation.

CONGRESSIONAL LEGISLATION

This discussion provides a section-by-section analysis of H.R. 3223.

Section 1. Short Title - Jicarilla Apache Reservation Rural Water System Act.

Section 2. Purposes of the Act -

§ to ensure a safe and adequate rural, municipal, and water supply and wastewater system on the Jicarilla Apache Reservation;

§ to authorize BOR to plan, design, and construct the water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation;

§ to require, at the election of the Jicarilla Apache Nation, that BOR contract with the Nation under the Indian Self-Determination Act for the planning, design, and construction of the project; and

§ to establish a process for the Nation to eventually assume ownership and responsibility for the system

upon the completion of the project.

Section 3. Definitions. Self-explanatory.

Section 4. Jicarilla Apache Reservation Rural Water System.

(a) & (b) - authorizes construction and scope of the project to rehabilitate and replace the water delivery and wastewater collection systems on the Jicarilla Apache Reservation.

(c) - construction cost of the project will be borne by the Federal Government, and the existing amount of operation and maintenance funding currently incurred by the Federal Government shall continue to be available to the Nation through contracting under the Indian Self-Determination Act.

(d) - the Nation is given recognition of the fact that it has expended \$7.3 million on the federal systems and that this amount shall be deemed to have satisfied any project beneficiary share that the authorizing committees may require.

(e) - after the project is completed and the water system is rehabilitated, the Nation will assume responsibility and liability under the relevant plans.

Section 5. General Authority - authorizes the Secretary to enter into agreements and to promulgate regulations relevant to the project.

Section 6. Project Requirements -

(a) - Secretary has to prepare a project plan within 60 days of enactment of the statute;

(b) - Secretary shall designate a project manager;

(c) - Secretary and Tribe shall commit to a transition plan regarding operation and maintenance of the system during and after construction;

(d) - Secretary shall have oversight responsibility and shall incorporate "value engineering analysis" - an engineering term of art;

(f) - Service area shall be within the boundaries of the Reservation;

(g) - Nation shall develop an operation, maintenance and replacement plan;

(h) - Project shall be subject the Indian Self-Determination Act;

(i) - Secretary shall issue an annual report on the progress of the project; and

(j) - Title shall be held in trust by the United States and will be transferred only by another act of Congress.

Section 7. Authorization of Appropriations -

(a) - \$45 million, subject to necessary price and cost adjustments, is authorized to be expended on the project;

(b) - Funds may only be appropriated after an appraisal and feasibility study have been completed, and an operation, maintenance replacement has been completed by the Nation.

(c) - NEPA requirements must be satisfied.

(d) - Amounts authorized and appropriated to be expended may not be subject to agency financing reductions.

Section 8. Prohibition on use of funds for irrigation purposes.

Section 9. Water Rights - the Nation has sufficient water rights in the basin for this project and the project will have no adverse Endangered Species Act related issues.

CONCLUSION

In sum, the Jicarilla Apache Nation is suffering premature deaths, community members are subject to continuing health hazards, and community development is blocked by the Department of the Interior's failure to maintain and modernize the public water system that it established and undertook to operate on the Reservation. Interior has asked the Jicarilla Apache Nation to take over the operation of the public water system, and as a tribal government we are willing to take over the operation of a safe and sound public water system. But before we will take over the operation, Interior must fix the health hazard that it has created.