

S. 4870, S. 4896 AND S. 4898

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

NOVEMBER 16, 2022

Printed for the use of the Committee on Indian Affairs



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S. 4870, S. 4896 AND S. 4898

WEDNESDAY, NOVEMBER 16, 2022

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:49 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider three bills: S. 4870, Tule River Tribe Reserved Water Rights Settlement Act of 2022, S. 4896, Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, and S. 4898, Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022.

S. 4870, introduced by Senators Padilla and Feinstein, would quantify the Tule River Tribe's Surface Water Rights, appropriate funding for the construction of water storage projects, and codify the Tribe's agreements with downstream water users.

Senator Heinrich's bills, S. 4896 and S. 4898, would ratify the agreements that the Jemez and Zia Pueblos and the Acoma and Laguna Pueblos respectively, negotiated with the State of New Mexico and various local water users regarding the Pueblos' respective water rights.

These bills would also provide funding necessary to effect the settlements. Senator Luján, of course, is a cosponsor of both bills.

Before I turn to Vice Chair Murkowski for her opening statement, I would like to extend my welcome and thanks to our witnesses today. I look forward to your testimony and our discussion.

I will recognize Vice Chair Murkowski before recognizing our colleagues to make their introductions of our panelists.

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman.

Good afternoon to those who are serving on today's panel, to the many, many who have traveled quite a distance, as I understand, to be here in Washington, D.C. for this very important hearing.

I am going to keep my comments brief, after our business meeting. I know having a full panel takes some time, and we want to hear from you.

All three of these bills would approve and authorize Federal funding to carry out the settlements of Indian water rights claims in two States, that of New Mexico and California. I understand that securing an adequate, reliable water supply for these Native communities is paramount. Negotiated water settlements continue to be the preferred method to reach consensus to accomplish that goal.

I congratulate the tribal nations here today for getting to this point in the process. I understand it has not been easy. I understand it has been very, very long. So I look forward to learning more about each of the settlement bills before us today.

I want to acknowledge that for some of our witnesses here, this may in fact be the first time they have had an opportunity to participate in a Senate hearing. You honor us with your presence. We are proud that we can be at this place to have such a positive hearing.

Thank you, Mr. Chairman.

The CHAIRMAN. It gives me great pleasure to introduce Senator Luján, a great member of this Committee and a great advocate for Indian Country and New Mexico. Senator Luján?

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Chair, and Vice Chair, for holding this important hearing. Thank you to our friend and senior Senator of New Mexico for his work and for joining us today to speak in support of Senate Bills 4898 and 4896, critical water rights legislation for the Pueblos of Acoma and Laguna, Jemez and Zia that I am proud to cosponsor.

It gives me great pleasure to welcome the Governors from the four Pueblos and their staff and council members, as well as the guests in the audience from the New Mexico Office of the State Engineer who have traveled far to work together to find agreement and bring us to where we are today.

I have also received substantial correspondence from water basin users, both tribal and non-tribal, expressing support for these two bills. I will be asking unanimous consent at the end of this, Mr. Chairman, to submit them into the record.

These pieces of legislation, which come at a critical time, ratify water rights settlements that have been decades in the making. Uncertainties facing the Jemez River and Rio San Jose Basins due to drought and climate change threaten the deeply rooted traditions that make New Mexico so unique. These increased strains on the Rio San Jose and the Rio Jemez have dramatically reduced water supply for Pueblo and non-Pueblo users.

These pieces of legislation have broad support. I appreciate everyone who has taken the time to work neighbor to neighbor, friend to friend, to find agreement. That is not easy to do, and you are all to be applauded for getting that done.

The Governors who are here, friends, leaders, mentors, they have done incredible work. In addition to the work they do as Governors, they carry out many other responsibilities and bring in expertise from the work that they have done.

I wanted to have the opportunity to recognize the four Pueblo Governors from New Mexico. On today's panel is Governor Randall Vicente, an enrolled member of the Pueblo of Acoma who is of the Eagle Clan. He grew up with his grandparents learning the arts of ranching, traditional farming, being a traditional leader. He previously served as the Second Lieutenant Governor for Acoma Pueblo in 2001, 2002, 2011 and 2012, and worked with the Pueblo Department of Natural Resources.

It is also my pleasure to introduce Governor Martin Kowemy, another friend who has an exceptional background. First elected to the Council in 2017, Mr. Chairman, he then became a staff officer in 2021 before he assumed the governorship in August. He is married and has three beautiful children. Thank you for being with us, sir.

I am also glad to see our friend Governor Raymond Loretto of Jemez Pueblo here with us. Not only is Dr. Loretto a full-time Governor, he is also a practicing veterinarian, who operates his own clinic near Jemez Pueblo. So we depend on him a lot. He has served as an active member of the tribal council since 2004, previously elected Governor in 2003 and 2015, and as First Lieutenant Governor in 2001. Also very involved as it pertains to public health and making sure that we are all better

Finally, I am proud to welcome Governor Gabriel Galvan. It is an honor to have you, sir, a friend of my father's. The stories that you share of working with my late dad, they touch me in my heart. I carry them with me everywhere I go. It means a lot.

Before taking office in 2022, he served as a BIA police officer for nearly 30 years. When he is not tending to tribal government matters, he is pursuing his long-time passion of ranching.

Governors, it is an honor to have you here, and all of our guests, and the councils. I yield back.

The CHAIRMAN. Thank you, Senator Luján.
Senator Heinrich?

**STATEMENT OF HON. MARTIN HEINRICH,
U.S. SENATOR FROM NEW MEXICO**

Senator HEINRICH. Chairman Schatz and Ranking Member Murkowski, thank you so much for holding this hearing on two bills of critical importance to New Mexico's water future.

Thank you to Assistant Secretary Newland, Governor Vicente, Governor Loretto, Governor Kowemy, Governor Galvan, for being here today to speak about these incredibly important settlements. I want to thank every New Mexican along the way who has worked so hard, not just for years, but for decades, to bring these settlements to fruition.

The bills before you today would settle the water rights of Pueblos in the Rio Jemez and Rio San Jose Basins. For more than a century, the United States has failed to protect the water rights of these four Pueblos.

As a result, members of these Pueblos have suffered from inadequate water supplies, and water is, of course, a health issue. But it is also an economic issue. It is hard to bring jobs and to bring economic development to any community that can't guarantee reliable water for business.

The failure of the United States to ensure that these Pueblos could use the water that they have always owned has reverberated throughout generations. It has a direct impact on the well-being of Pueblo members today, and it is long past time that we make this right.

This legislation would implement two settlement agreements that have been carefully negotiated between the Tribes, the State of New Mexico, neighboring water users and the Department of Interior. I want to thank all the parties for their tireless work in reaching a settlement agreement for these two basins.

This legislation would fully settle the claims of the Pueblo of Laguna and the Pueblo of Acoma in the Rio San Jose Basin as well as the claims of the Pueblo of Jemez and the Pueblo of Zia in the Rio Jemez Basin. The settlements will provide critically needed funding for water infrastructure to develop and distribute new water to Pueblo homes and businesses. They will make it possible for these Pueblos to finally use the water that they have been owed for more than a century.

Over the last 15 years, Congress, working through this Committee, has made real progress on making tribes whole for the water that has always been theirs. We have an opportunity to take yet another step forward on that important work by approving these two settlements.

Finally, I want to mention, my colleague Senator Luján and I started on the analogous House Committee many years ago. We realized in doing our first water settlements that those negotiations started a few years before the two of us were born. This represents the work of generations, four decades of hard work to get to where we are today. I want to thank him for his leadership in helping us to get where we are today.

Governors, thank you so much. Chairman, Ranking Member, thank you for having me here today.

The CHAIRMAN. Thank you very much to the incredible delegation from New Mexico.

It now gives Senator Murkowski and I great pleasure to introduce the Senator from California, our friend, Mr. Padilla.

**STATEMENT OF HON. ALEX PADILLA,
U.S. SENATOR FROM CALIFORNIA**

Senator PADILLA. Thank you, Mr. Chair and Ranking Member Murkowski, for allowing me the opportunity to join you today.

It is an honor for me to introduce Neil Peyron, Chairman of the Tule River Tribe, and to say a few words on behalf of my bill to formally recognize the Tribe's water rights.

As this Committee understands very well, to understand the injustice that our legislation seeks to correct, we first need to know a little bit about the history of the Federal Government's relationship with the Tule River Tribe in California. The Tule River Tribe is the second largest Tribe in California, with over 1,900 tribal members. The Federal Government first established the Tribe's reservation in 1856, with the specific goal of providing the Tribe with the farmland and water resources needed to be self-sufficient.

Unfortunately, Federal agencies then fraudulently stole their land, and the Tribe was forced to move to a new reservation up-

stream. This new land, the basis for the Tribe's current reservation, does not have the irrigation or water storage facilities that they were promised.

As a result, the Tule River Tribe now faces a constant battle simply to access clean water. Families are forced to haul in water by truck for their own daily hygiene or for their children to drink. On days when water access is too tough to get, some simply go without enough water.

It is unacceptable that members of the Tule River Tribe or any Tribe for that matter should face a daily struggle for water. It is a moral failure of our own making, and it is a direct result of a broken promise made by the Federal Government.

That is why Senator Feinstein and I introduced the Tule River Tribe Reserved Water Rights Settlement Act of 2022. My bill would quantify the Tribe's water rights, providing funding for a water storage project and transfer approximately 9,000 acres of Forest Service lands to the Tribe to manage the watershed's headwaters.

This is a culmination of decades of efforts by the Tule River Tribe, including Chairman Peyron, to work with the Federal Government and downstream water users to secure their water rights without resorting to litigation.

For too long, the Federal Government has failed to live up to its trust and treaty responsibilities to the Tribe, leaving them in the current water crisis. This bill will change that. I urge my colleagues to advance this bill in order to do right by the Tule River Tribe and rectify 150 years of broken promises.

I am now honored to introduce one of the leaders of that diligent effort for justice, Chairman Neil Peyron, who is here to testify on behalf of the Tribe. He has served as the Tribe's chairman for 15 years and previously served as the Tribe's vice chairman and secretary treasurer. The chairman is a true civil servant, having served on many local, State and Federal and Tribal committees, including the Bureau of Indian Affairs Policy Committee, the Intertribal Council Timber Committee, and the Central California Tribal Farm Committee.

Chairman, we are so grateful for your being here today. Thank you once again for your tireless advocacy for the Tribe.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you very much, Senator Padilla.

We will now start with our testimony, starting with someone who has yet to be introduced, the Honorable Bryan Newland, Assistant Secretary for Indian Affairs at the U.S. Department of Interior. Please proceed with your testimony and please, all testifiers, if you can confine your testimony to five minutes or fewer, that would be great. Thanks, Mr. Secretary.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Megwich. Good afternoon, thank you Chairman Schatz, and Vice Chair Murkowski and members of the Committee. My name is Bryan Newland. I serve as the Assistant Secretary for Indian Affairs here at the Department of the Interior. I want to

thank the Committee for the opportunity to share the Department's views on three Indian water rights settlement bills today.

These three bills would bring certainty, and more importantly, water security, to five tribal communities in drought-stricken regions. On the whole, the Administration supports these settlements and these bills. As noted in our written testimony, there are a few technical issues that need to be addressed on these bills.

With respect to S. 4870, the Tule River Tribe Reserved Water Rights Settlement Act, we have worked with the Tule River Tribe and the Department of Justice in proposed language that should resolve most of those issues. The Department is very close to substitute language and would be happy to share that red-line with the Committee and sponsors of the bill as soon as it is finalized.

For S. 4896, the Pueblos of Jemez and Zia Water Rights Settlement Act, we have developed language that will address some concerns about several allotments.

The Pueblos of Acoma and Laguna Water Rights Settlement Act, S. 4898, would resolve the Acoma and Laguna Pueblo water rights claims in the Rio San Jose Basin in New Mexico. This bill would settle claims by the Acoma Pueblo in the Rio del Salado and Laguna Pueblo in the Rio Puerco. It would also ratify and confirm the water rights settlement agreements among the Pueblos, the State of New Mexico and non-Indian water users, and authorize the Secretary of the Interior to sign the settlement agreement. It would also protect non-Indian water users.

This is a fund-based settlement that would authorize \$850 million to implement the agreements. In addition, each Pueblo would create a tribal water code.

The Pueblos of Jemez and Zia Water Rights Settlement Act, S. 4896, would resolve the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico. The bill would also ratify and confirm water rights settlement agreements among the Pueblos, the State of New Mexico and non-Indian users. It authorizes the Secretary of the Interior to sign the settlement agreement. It also protects non-Indian water users.

This is also a fund-based settlement that would authorize \$490 million to implement the agreement. Additionally, each Pueblo would create and enact a water rights code.

The process for each of the four Pueblos to get to this point in resolving their water rights is almost as old as I am. It has taken approximately 40 years to get to this point.

Turning to the Tule River settlement, there is a lengthy history of the United States not fulfilling its promise to protect the Tule River Tribe's homelands as we heard the Senator just say. Today, the Tribe suffers the consequences of that shortcoming due to difficult terrain and a lack of access to water on its reservation.

In recent summers, the Bureau of Indian Affairs has provided emergency water supplies to the Tribe for distribution to tribal members when the Tribe runs out of water.

The Tule River Tribe Reserved Water Rights Settlement Act, S. 4870, would resolve all of the Tribe's water rights claims in California. The bill would also ratify and confirm the Tule River Tribe Water Rights Settlement Agreement among the Tribe and most downstream users, and authorize the Secretary of the Interior to

sign the agreement. It would also direct the Attorney General to file a suit in Federal court to bind all water users in the Basin and transfer various lands into trust for the Tribe.

This is also a fund-based settlement that would authorize \$568 million to implement the agreement. Part of that funding will support construction of a much-needed reservoir that the Tribe needs to provide water security for its members.

I had the opportunity to visit the Tribe's reservation on the western slope of the Sierra Nevadas this summer. I was able to see the drought conditions and the effects those conditions have on the reservation. I also witnessed the harm to the land caused by recent wildfires.

But I was also able to see first-hand how the Tribe's land management practices are critical to protecting the ancient sequoia trees along with the watershed.

This Administration is committed to fulfilling our trust and treaty obligations to tribes. That includes ensuring that Tribes have the ability to continue their way of life in their homelands. Access to water is a vital part of ensuring that we can meet our trust obligations.

This Administration is also committed to making long-needed investments in tribal communities and ensuring that tribes are making the decisions about how those investments are used. We are prepared to work with the Committee and the sponsors to address any outstanding issues.

I look forward to answering your questions. Thank you.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee. My name is Bryan Newland. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony regarding S. 4896, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022; S. 4898, the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022; and S. 4870, the Tule River Tribe Reserved Water Rights Settlement Act of 2022. S. 4896 and S. 4898 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Acoma, Laguna, Jemez, and Zia Pueblos (Pueblos) in New Mexico, and S. 4870 would approve and provide authorizations to carry out the settlement of all water rights claims in the State of California of the Tule River Tribe.

I. Introduction

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States' trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people-including Tribal Nations. We have a clear charge from President

Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities- especially Tribal communities.

To that end, the Biden Administration's policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

II. New Mexico Water Settlements

A. Historical Context

Before discussing the proposed settlements and the Administration's position on them, it is important to provide background on the disputes that led to the settlements. Like other Pueblos in New Mexico, the four Pueblos were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Pueblos' lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of the Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

1. Jemez and Zia Pueblos

The Rio Jemez basin, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande and is home to the Pueblos of Jemez and Zia. In total, the Pueblos hold nearly 250,000 acres (approximately 89,600 acres for Jemez Pueblo and 160,000 acres for Zia Pueblo).

Historic increases in water use by non-Indians impacted, and continue to impact, the two Pueblos' ability to have access to adequate surface and groundwater supplies. Increased groundwater pumping by non-Indians, pursuant to permits issued by the State of New Mexico, make the Pueblos' access to groundwater supplies increasingly difficult.

2. Acoma and Laguna Pueblos

The Rio San Jose, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. The area is also home to the two Pueblos of Acoma and Laguna. In total, the Pueblos hold approximately 1.064 million acres (over 563,000 acres for Acoma Pueblo and over 501,000 acres for Laguna Pueblo).

While there were small communities established by Spain and Mexico on smaller tributaries of the Rio San Jose, there were no mainstem upstream users disrupting the Pueblos' water use until the United States' acquisition of the territory. The establishment by the United States of Fort Wingate near Ojo del Gallo spring in 1862, and subsequent use of the area by the Village of San Rafael, resulted in the diversion of spring flow that had previously provided a significant contribution to Rio San Jose flows that had been available to both Pueblos. Acequias on Rio San Jose tributaries began diverting water from the system in the late 19th century to the detriment of the Pueblos. Non-Indian water users' construction of a dam on Bluewater Creek, above and upstream of Acoma Pueblo, also reduced flows to the Rio San Jose, impacting both Pueblos. As the non-Indian water users attempted to irrigate more and more acreage, they turned to groundwater. This groundwater pumping siphoned off water that would have flowed as surface water in the Rio San Jose for the Pueblos' use.

Groundwater depletions in the Rio San Jose basin increased after uranium was discovered in the Grants Mineral Belt in the 1950s. The uranium was located in the same rock formations where water was stored, and that water supplied perennial springs within the basin, many of which contributed to Rio San Jose flows. These aquifers, and those located above them, were dewatered by mining companies, resulting in depleted spring flow contributions to the Rio San Jose. Uranium milling facilities also consumed large amounts of groundwater. The growth of this mining economy and the concomitant growth of non-Indian communities, such as the City of Grants, increased water use in the Rio San Jose basin to the detriment of the Pueblos.

B. Water Resources of the Pueblos

In 1983, general stream adjudication of both the Rio San Jose (to resolve the dispute over the water rights of Acoma Pueblo and Laguna Pueblo, as well as the Navajo Nation) and the Rio Jemez (to resolve the dispute over the water rights of Jemez Pueblo and Zia Pueblo, as well as Santa Ana Pueblo) were initiated in New Mexico. Negotiations regarding potential settlement of the Pueblos' water rights claims have been ongoing since 1993, when the United States established teams to negotiate comprehensive settlements of all the Navajo Nation and Pueblos' water rights in their respective basins.

The Pueblos are located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, all four Pueblos. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling.

Since 1996, Jemez and Zia Pueblos and non-Indian water users have been operating under a negotiated irrigation rotation agreement. The lack of reliable water supply continues to impact the two Pueblos' ability to sustain their agricultural practices and to move forward with water development projects to benefit the Pueblos and their members.

For Acoma and Laguna Pueblos, the long-term pumping of groundwater and unimpeded diversion of surface water by non-Indian water users has resulted in significant impacts to the water supply. Even if the Pueblos were able to successfully curtail the water use of non-Indian junior users as part of the ongoing adjudication, the Rio San Jose system would not recover to provide the historic flow levels for the two Pueblos for several decades.

C. Proposed Jemez and Zia Pueblos Settlement Legislation

Jemez and Zia Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement earlier this year, quantifying the rights of the two Pueblos and reaching agreement on other key issues, including the requirements and parameters of a possible future Augmentation Project, which the Pueblos and non-Indian water users may construct to improve infrastructure and provide groundwater to firm up the irrigation water supply for certain agricultural acreage. The United States is not a signatory to the 2022 settlement agreement, nor is Santa Ana Pueblo, which wishes to continue to litigate its claims in the adjudication.

S. 4896 would resolve all of the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; provide protections for non-Indian water users from priority calls by the Pueblos; require the Pueblos to promulgate Pueblo Water Codes and ensure that certain uses and changes in use of the Pueblos' water rights do not impair existing non-Indian water users; and authorize funds to implement the settlement agreement.

S. 4896 ratifies and confirms the Jemez and Zia Pueblos' water rights to over 9,000 acre-feet per year (AFY)—6,055 AFY for Jemez Pueblo and 3,699.4 AFY for Zia Pueblo—from various surface water and groundwater sources on each Pueblo. These amounts include 1,200 AFY of future groundwater use for economic development for each Pueblo.

S. 4896 also protects non-Indian water users, as the Jemez and Zia Pueblos have agreed to not make priority calls for their senior rights on all decreed water rights of junior non-Indian users. In addition, the Pueblos have agreed to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, S. 4896 establishes Trust Funds for both Pueblos totaling \$490 million (\$290 million for Jemez Pueblo and \$200 million for Zia Pueblo), to be indexed, that the Pueblos can use to develop water infrastructure on the two Pueblos as they determine necessary and on their own timeframe. Monies in the fund can be used by the Jemez and Zia Pueblos for: planning, permitting, designing, engineering, constructing, operating, maintaining, and repairing water production, treatment, delivery infrastructure, and the Augmentation Project; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$20 million to provide for benefits that will be realized by non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-

dian domestic well and livestock well users resulting from new or changed Pueblo water uses.

D. Proposed Acoma and Laguna Pueblos Settlement Legislation

Acoma and Laguna Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement earlier this year, setting out the water rights to be quantified for the two Pueblos and reaching agreement on other key issues, including the requirements and parameters of a possible future project to import water to Pueblo lands. The United States is not a signatory to the 2022 settlement agreement, nor is the Navajo Nation. The Nation is working with the parties to achieve settlement on its claims in the Rio San Jose basin.

S. 4898 would resolve all of the Acoma and Laguna Pueblos' water rights claims in the Rio San Jose basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; provide protections for existing non-Indian water users from priority calls by the Pueblos; require the Pueblos to promulgate Pueblo Water Codes and ensure that certain uses and changes in use of the Pueblos' water rights do not impair existing non-Indian water users; and authorize funds to implement the settlement agreement. In addition, the Pueblos are conditionally settling their claims in the Rio Salado (Acoma Pueblo) and Rio Puerco (Laguna Pueblo) basins.

S. 4898 would ratify and confirm the Pueblos' water rights to over 20,000 acre-feet per year (AFY)—7,982 AFY for Acoma Pueblo and 12,263 AFY for Laguna Pueblo—from various surface water and groundwater resources on each Pueblo. These amounts include 1,300 AFY of future groundwater use for economic development for each Pueblo.

S. 4898 would also protect non-Indian water users, as the Acoma and Laguna Pueblos have agreed to not make priority calls for their senior rights on the water rights of junior non-Indian users in existence at the time that the settlement becomes enforceable. In addition, the Pueblos have agreed to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, S. 4898 would establish Trust Funds for both Pueblos totaling \$850 million. Acoma Pueblo would receive \$311.75 million, and Laguna Pueblo would receive \$493.25 million, to be indexed, that the Pueblos can use to develop water infrastructure on the two Pueblos as they determine necessary and on their own timeframe. In addition, \$45 million is to be allocated to both Pueblos jointly to use for repairs at the existing Acomita Dam.

Of the monies that would go to each Pueblo individually, \$40 million could be spent on operation, maintenance, and repair of Pueblo water infrastructure for domestic, commercial, municipal, and industrial uses (\$14 million for Acoma Pueblo and \$26 million for Laguna Pueblo) and \$5 million could be spent on feasibility studies for water supply infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses (\$1.75 million for Acoma Pueblo and \$3.25 million for Laguna Pueblo). The remaining \$760 million (\$296 million for Acoma Pueblo and \$464 million for Laguna Pueblo) could be used by the Pueblos for: acquiring water rights or water supply; planning, permitting, designing, engineering, constructing, operating, rehabilitating, and repairing water production, treatment, or delivery infrastructure; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$36 million to provide for benefits that would be realized by non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

E. Department of the Interior Position on S. 4896 and S. 4898

The Department of the Interior is pleased to support S. 4896 and S. 4898 but has identified some targeted changes that must be made to S.4898 to protect allottees. These bills are the result of over three decades of good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties. The Department looks forward to continued discussions, including with the U.S. Department of Agriculture (USDA), regarding USDA's role in the settlement agreements with the Pueblos.

S. 4896 and S. 4898 are designed to meet each Pueblos' current and long-term needs for water by providing Trust Funds to be used by the Pueblos according to their needs and determinations. Rather than committing the Pueblos or the United States to construct specific water infrastructure projects, the bills would allow the Pueblos to make decisions regarding how, when, and where to develop water infrastructure on the Pueblos. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Pueblos can maintain their way of life.

III. The Tule River Reservation and the Tribe

A. Historical Context

The aboriginal territory of the ancestors of the Tule River Tribe, the Yokuts, encompassed most of what is now the San Joaquin Valley, an agricultural mainstay in California. The influx of non-Indians into the Tribe's ancestral lands in the 1850s, after the discovery of gold and California statehood, created tremendous conflict with the Yokuts and left them dispossessed, displaced, and without title to a homeland.

The quest to provide a permanent homeland for the Yokuts' descendants, the Tule River Tribe, was fraught with difficulties and setbacks. First, the United States attempted to rectify Tribal dispossession by negotiating the Treaty of Paint Creek, which would have created the Tule River Reservation in the San Joaquin Valley near present-day Porterville, California. However, this Treaty, along with other California treaties, was never ratified by the Senate. The United States' second attempt to secure a homeland for the Tribe was the creation in 1856 of the "Tule River Indian Farm," later referred to the "Madden Farm," out of the public domain. The subsequent patenting of the farm to an unscrupulous Indian agent deprived the Tribe of title to those lands.

In 1872, the California Superintendent of Indian Affairs was ordered to find a reservation for the Tribe. A tract of 48,000 acres of steep and rocky terrain in the foothills of the Sierra Nevada Mountains was proclaimed by the Executive Order of January 9, 1873, as the Tule River Indian Reservation. In 1874, the Indian Agent at the Tule River Agency described the Reservation as containing "no first-rate tillable land" with only "about 200 acres of such as might be termed passably good for agricultural purposes, and that not lying in one body." Except for some timber land in the mountains in the extreme east of the Reservation, the balance of the Reservation was said to be "utterly valueless . . . consisting of rough, rocky mountains." Not unsurprisingly, members of the Tribe were reluctant to leave the productive land they were farming at the Madden Farm to locate to the Reservation. When, by 1876, only six families had moved to the Reservation, the remaining Tule River Indians at the Madden Farm were forcibly removed to the Reservation. Now nearly 150 years later, the Tribe continues to search for an adequate and secure water supply for the domestic and municipal needs of its members.

B. The Reservation Today

Today, the Tribe's Reservation remains located on the western slope of the Sierra Nevada Mountains, in south-central California, 75 miles south of Fresno and 45 miles north of Bakersfield and is comprised of over 55,000 acres of tribal trust lands. The topography is generally steep, with elevations ranging from about 900 feet to 7,500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The primary sources of employment on the Reservation are the Tribe's Eagle Mountain Casino, the Tribal government, and the Tule River Indian Health Center. The Tribe is in the process of relocating the Eagle Mountain Casino, due in part to water shortages, to trust lands in the City of Porterville.

C. Water Resources of the Tule River Reservation

The Reservation is located almost entirely in the South Fork Tule River drainage basin. Because the Reservation is located in the Sierra Nevada headwaters of the river, there are no upstream diverters on the river above the Tribe. The South Fork Tule River, which is the primary water source on the Reservation, is flashy (flows are high during spring runoff and decrease during the summer and fall months) and subject to extended periods of drought. Groundwater is very limited due to both water quantity and quality issues.

The major water use on the Reservation is for domestic and municipal purposes. Less than 5 percent of the Reservation is suitable for agriculture, though some members graze livestock in various locations. In dry years, which are increasingly common (including this year), the Tribe has had to truck-in water and donate bottled water to its members for domestic and municipal purposes due to water short-

ages, with members sometimes relying on bottled water for months at a time. These shortages affect Tribal members in multiple ways, including precluding them from cooking and bathing or from going to work or attending school. In the hottest part of summer, the Tribe has to open its government buildings to provide refuge for elders that rely on water for the cooling systems in their homes. This lack of reliable water supply results in interruptions to critical services, including education programs, emergency services, elder care, and the Tribe's justice center and government functions. It has also contributed to a housing shortage that impacts the number of Tribal members who can reside on the Reservation.

D. Proposed Tule River Tribe Settlement Legislation

Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 1996, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights in California. Over the course of the negotiations, the United States conducted numerous studies examining options for water development on the Reservation. The studies point to water storage as a key component of a reliable water supply.

Relying on these studies, and other studies the Tribe conducted on its own, the Tribe and the downstream water users reached a 2007 Agreement. That Agreement sets-out water allocation between the parties and addresses how water release schedules will be determined for any future water storage project the Tribe may construct on the South Fork Tule River. The 2007 Agreement identified a possible location for water storage, and included operational rules for a reservoir at that location, but allowed the Tribe to choose a different site if the planned site proved infeasible. The parties agree that the site initially identified is not feasible. The Tribe's efforts to finalize plans for an alternative site are ongoing, and the parties have yet to agree on operational rules for a reservoir at another location of the Tribe's choosing. It is important to establish these operational rules to delineate the Tribe's water right. The 2007 Agreement was amended for technical issues in 2009. The United States is not a signatory to either the 2007 Agreement or the 2009 technical amendments.

S. 4870 would resolve all of the Tribe's water rights claims in California; ratify and confirm the Tule River Tribe water rights settlement agreement among the Tribe and most downstream water users, and authorize the Secretary of the Interior to sign the agreement; direct the Attorney General of the United States to file suit in Federal Court to bind all water users in the basin; authorize funds for water development projects to implement the settlement agreement; and transfer various lands into trust for the Tribe.

S. 4870 would ratify and confirm a Tribal water right, which includes the right to up to 5,828 acre-feet per year of water flows from the South Fork Tule River, as described in the 2007 Agreement. The 2007 Agreement provided that the Tribal water right would be administered in accordance with agreed-upon operational rules for the water storage facility that the Tribe was to build, rather than according to priority date. If the parties could not agree upon operational rules, the 2007 Agreement contemplated that the parties could submit competing proposals to the court, which would be charged with assessing which proposal better satisfied the criteria set forth in the Agreement. In addition, the Tribal water right, as described in the 2007 Agreement and ratified by S. 4870, would also include the right to divert and use certain amounts of water from springs on the Reservation and the right to use groundwater on the Reservation, subject to some restrictions. S. 4870 would also direct the United States to file suit in Federal District Court in California, for the purpose of entering a decree approving the Tribe's Federal reserved water right, consistent with the 2007 Agreement, and binding all water users in the basin.

S. 4870 would establish a Trust Fund of \$568 million, to be indexed, for the Tribe to develop water infrastructure on its Reservation, as it determines necessary and on its own timeframe. Monies in the fund can be used by the Tribe to construct water development projects (\$550 million) and operate, maintain, and rehabilitate water development projects (\$18 million).

S. 4870 also would transfer approximately 825.66 acres of Bureau of Land Management land, 1,837.46 acres of fee land owned by the Tribe, and approximately 9,037 acres of Forest Service land to the United States, to be held in trust for the Tribe. As articulated in Section 6 of Joint Secretarial Order 3403, the Biden Administration strongly supports returning ancestral lands to Tribes and looks forward to continuing to work with the Committee and bill sponsors on the overall land transfer proposal.

E. Department of the Interior Position on S. 4870

The Department supports the components of S. 4870 over which it has jurisdiction, and the Administration has identified some targeted changes that must be made to address certain legal issues and ensure effective implementation of the water rights settlement that it is intended to ratify. We have worked closely with the Tule River Tribe to develop amendments that address many of these concerns and we look forward to providing technical assistance to the Committee to develop an amended bill. The Department defers to USDA regarding the transfer of National Forest System lands proposed in S. 4870 including any implications that may result should a transfer be enacted.

This bill is the result of over two decades of dedicated, good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties.

S. 4870 is designed to meet the Tribe's current and long-term needs for water by providing a Trust Fund to be used by the Tribe according to its needs and determinations. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, S. 4870 would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with tribal sovereignty and self-determination, and with our trust responsibilities, and will help ensure that the Tribe can maintain its way of life on its Reservation.

The Administration has worked with the Tribe on revisions to certain provisions of the bill to avoid potential impediments to implementation. There are certain provisions of the 2007 Agreement that are no longer operative, and negotiated amendments are needed before the Agreement can be presented to the court for approval.

As explained above, the parties agree that the proposed water storage facility will not be built at the site identified in the 2007 Agreement and that new operational rules tailored to the new site must be adopted and incorporated in the Agreement. The current version of the bill could require the Attorney General to file suit seeking entry of the 2007 Agreement and approval of the Tribal Water Right before the parties have the opportunity to agree on the necessary amendments. This could impermissibly require the United States to file suit before there is actually a justiciable claim.

These issues can be addressed with revisions to Sections 4 (which addresses ratification) and 12 (which addresses judicial enforceability). We recommend that the bill address the need for new operational rules, rather than ratifying the inoperable provisions of the 2007 Agreement. We also recommend revising the bill to ensure that the parties seek approval of the Agreement only after the matter is ready for judicial resolution.

We also want to note that the 2007 Agreement's lack of a priority date for the Tribal water right could impair effective implementation of the Agreement and the bill. We believe that a simple amendment to the bill would address this issue, while also preserving the expectation of all interested parties.

We believe that these issues can be resolved in a way that preserves the expectations of all interested parties—including the Tribe. Toward that end, we have worked in collaboration with the Tribe on amended bill language that the Administration would support as a substitute for the introduced version.

IV. Conclusion

The Department appreciates the dedication of all parties, including the Pueblos, the State of New Mexico, and the non-Indian water users, the Tule River Tribe and the downstream water users to these prolonged negotiations and the willingness of all the parties to reach consensus on contentious issues. We support the Administration's policy regarding restoring sovereignty over critical ancestral lands under the control of the Federal Government, and look forward to work with Congress regarding these bills.

The CHAIRMAN. Thank you very much.

Chairman Peyron, please proceed with your testimony. Welcome.

STATEMENT OF HON. NEIL PEYRON, CHAIRMAN, TULE RIVER TRIBE

Mr. PEYRON. Greetings, Chairman Schatz and Vice Chair Murkowski, and honorable members of the Committee.

My name is Neil Peyron, Chairman of the Tule River Indian Tribe of the Tule River Indian Reservation in California. I am here to deliver the Tule River Tribe's support for S. 4870. I would like to thank Senators Padilla and Feinstein for introducing and moving S. 4870 forward, and also Congressman Kevin McCarthy's office for their continued assistance in the House.

This bill offers a unique opportunity for all sides of the political spectrum to achieve success towards meeting the United States trust responsibility to the Tule River Tribe by safeguarding access to clean drinking water. The Tule River Tribe needs water solutions now.

We live in a steep canyon where the river supplies up to 80 percent of our water. But like many western streams, it can run low or even go dry for months at a time. In 2014, we began seeing zero flow in the river for months at a time. Without water, we often have no choice but to pause day to day life and government operations to seek out, haul and deliver water throughout the reservation for months at a time.

Currently, the tribe can experience water shortages even if the river has some water running in it. Every year, the reservation has run out of water for household use.

When there are outages, people cannot cook, they cannot bathe, they cannot use modern plumbing. Tribal members must rely on bottled water for basic needs. They may miss work or they may miss school. Residents are asked to limit water use or they will get cited and sent to tribal court if they do not comply.

Nevertheless, we have adapted. We truck water in. In the past, members had to use water tanks for basic needs such as bathing. In the hottest parts of the summer, we open government buildings to provide refuge for elders who rely on their evaporative coolers which need water to operate efficiently.

We also have been forced to use bottled water for months at a time and drill deeper wells. But we have survived. We have experienced interruptions in critical services like our medical facility, educational programs, emergency services, elderly care, our justice center and government functions, and to our economy in general.

Given the severe drought, we have experienced major fires in the last decade. If we use our water system to suppress fire, it completely depletes our supply of water, meaning we are back into the cycle described above. You can refer to pages 11 and 12 of my written testimony for photographs.

Access to water also impacts our waiting list of 500 members who cannot achieve full membership without establishing residency on the reservation. They are currently precluded from doing so because we cannot provide them water. Due to the ever-increasing water scarcity in the central valley from lack of snow pack and rain, we vulnerable to wildfire and drought. This settlement will allow us to create the much-needed storage to sustain our existence in our ancestral homelands.

The Tribe has been working on this for 51 years to secure our water. We have spent millions of dollars and countless hours to get to this point. The legislation provides the best solution for the Tule River Tribe's water crisis.

The settlement is fund-based, it allows us to build storage, improve water quality and delivery and ensures a tribal right of 5,821 acre-feet of water for on-reservation use. It ratifies a 2007 settlement agreement with state-based downstream water users, guaranteeing them year-round deliveries. As a result, it has broad local support.

The legislation returns 9,000 acres of the Tule River headwater from the Forest Service into trust to be protected by the Tule River Tribe. It requires a mandatory Federal contribution of \$568 million of which \$20 million will be used to do preliminary work needed to establish the site for the reservoir. California has already contributed \$2 million toward immediate water access in 2021.

In conclusion, the Tule River Tribe is in a water crisis. The crisis was compounded by broken treaties, forced removal from our original reservation and the depth of our land and failure to uphold the 1922 agreement. The time is right for our Federal partners to join us in providing the resources necessary to ensure a sustainable future for the Tule River Tribe by supporting S. 4870.

We respectfully request the Senate Committee on Indian Affairs to swiftly mark up and pass S. 4870 for consideration by the House, so we can look to fulfill passage by the end of this Congress.

I thank the Committee for the opportunity to fully express Tule River's support of this bill. I will stand for any questions. Thank you.

[The prepared statement of Mr. Peyron follows:]

PREPARED STATEMENT OF HON. NEIL PEYRON, CHAIRMAN, TULE RIVER TRIBE

I. Introduction

Greetings Chairman Schatz, Vice Chairwoman Murkowski, and members of the Committee. My name is Neil Peyron and it is an honor to appear before you today. I am a member of the Tule River Indian Tribe ("Tule River") located in central California, and I serve as the Chairman of the Tule River Tribal Council. I come before you today to share Tule River's greetings, well wishes, and strong support for S.4870, the Tule River Tribe Reserved Water Rights Settlement Act of 2022.

This bill is fifty-one years in the making. It honors treaty rights as recognized by Presidential Executive Orders and other commitments made to Tule River by the United States, and it ensures we have a sustainable and livable homeland. It represents a historic coming together of tribal, state, and federal interests to form agreement around the important, and long-overlooked issue of access to water for the Tule River people.

I would like to thank Senator Padilla and Senator Feinstein for their support of Tule River in our efforts to introduce and move this important legislation. I would also like to thank Congressman McCarthy, who has worked with us to settle our federal reserved water rights. We have worked hard to meet the requirements of the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims. We believe passing this bill into law offers a unique opportunity for all sides of the political spectrum to achieve success towards meeting the United States' trust responsibility to the Tule River Tribe by safeguarding our access to clean drinking water.

This settlement, achieved without the need for costly litigation, will finalize an agreement by the major water users on the South Fork of the Tule River, meet the obligations of the United States to protect and develop a permanent homeland for Tule River, and provide certainty to the water users in Central California that utilize the Tule River basin. It will also provide Tule River with the wet water it needs for its community after a decade of extreme drought brought on by climate change. This bill reconciles over 100 years of the effects of forced removals on the Tule River people, even at gunpoint, and the unratified 1851 Treaty of Paint Creek relied upon

by our people.¹ The history of Tule River, and our forced removal onto the reservation, tracks the troubled history of the United States and its relations with native people. But the history in California is one of the darker pages for the United States.² This legislation offers a unique opportunity to correct some of these past wrongs.

II. History of the Tule River Reservation and the Struggle of Tule River to Secure a Sustainable Homeland

A. *The Unratified Treaty of Paint Creek*

The Tule River Reservation is part of our ancestral homeland. We are Yokuts Indians and have occupied the San Joaquin Valley in California for thousands of years. Following the discovery of gold in the late 1840s, there was massive immigration into California from the eastern United States. In the first two years of the gold rush, it is estimated that 100,000 native people were killed.³

To legally obtain the lands that the Tribal Nations held, the United States negotiated 18 treaties with native people in California. One such treaty was the Treaty of Paint Creek that was signed on June 3, 1851. In that Treaty our ancestors reserved large tracts of land for our people. With California statehood and the desire for gold, however, there was enormous pressure on Congress to reject the 18 treaties negotiated with the Tribal Nations in California. Congress yielded to this pressure and in 1852 rejected the 18 treaties, including the Treaty of Paint Creek. The treaties were subsequently placed under an order of secrecy and hidden in the Senate's records for over 50 years.⁴ Our ancestors were never informed the treaties we negotiated with the federal government were not ratified.

Below is a map of the lands our ancestors reserved for our people in the Treaty of Paint Creek, which includes much of the agricultural hub of the central valley in California. (See also Exhibit A, which provides a timeline of significant events for the water rights of the Tule River Tribe.)

Figure 1: Map depicting area of traditional cultural affiliation for the Tule River Tribe of Yokut Indians as well as the lands ceded and retained in the Paint Creek Treaty of 1851.*

B. *Establishment of the Original Reservation through Fraud*

After failing to ratify the treaties, Congress established the Superintendency of Indian Affairs in California in 1853 to relocate Indians to reservations. In 1856, the California Superintendency established our reservation pursuant to the 1853 authority, on approximately 2,440 acres of prime San Joaquin Valley farmland in Tulare County. The southwest corner of the land was transected by the mainstem of the Tule River. It included part of what is today the eastern portion of the City of Porterville. Despite being significantly smaller than what was reserved in the treaty, the location of this original Reservation was selected by the federal government to provide Tule River with the arable land and water resources needed to establish a self-sufficient homeland for our people.

Upon being promised this land as our homeland—ostensibly forever—we built homes and began to actively cultivate crops. Despite our relative prosperity in those years, two of the federal Indian agents assigned to reservations in the area decided to capitalize on the distance and ignorance of the officials in Washington, D.C. Thomas Madden, a federal Indian agent assigned to the neighboring Tejon Indian Reservation, applied for, and was issued a fraudulent public land school warrant for 1,280 acres of the Tule River Reservation from the State of California.⁵ Four years

¹ Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 54, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link: <https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do>.

² See Castillo, Edward D. (*Cahuilla-Luiseno*), State of California Native American Heritage Commission, California Indian History, "Short Overview of California Indian History," <https://nahc.ca.gov/resources/california-indian-history/> (last accessed Sept. 28, 2022).

³ *Id.*

⁴ See Miller, Larisa K., "The Secret Treaties with California's Indians," Archives, Hoover Institution at Stanford University, (2013), <https://www.archives.gov/files/publications/prologue/2013/fall-winter/treaties.pdf> (last accessed Sept. 28, 2022).

* The Figures, images, and attachments to this prepared statement have been reviewed and retained in the Committee files.

⁵ Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 41–55, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link: <https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=>

later, and under a similar illegal arrangement, a land warrant for 1,160 acres of Tule River Reservation was issued to Mr. John Benson, another Indian Agent. These two state land warrants encompassed all our Reservation lands.

The federal government was fully aware that these lands were expressly reserved to us, but it made no effort to challenge the Madden and Benson land warrants—despite an investigation in 1858 confirming the fraudulent nature of the agents' land claims. Because the lands had been set aside for the Tribe, the State of California had no legal basis upon which to issue the warrants. The land transfers were also a violation of the federal Trade and Intercourse Act, which expressly prohibited Indian agents from having “any interest or concern in any trade with the Indians,” Indian *United States v. Hutto*, 256 U.S. 524, 525 (1921), and prohibited the sale of Indian lands except by treaty. 25 U.S.C. § 177. Instead of setting aside the issuance of these warrants, the federal government actually paid rent to Agents Madden and Benson for at least a dozen years to enable our ancestors to continue farming what was our land.⁶

Gradually, over the years, hostility increased in general between the Indian farmers and the settlers in the area. In response to the tension, and rather than enforcing our rights to what was our Reservation land, in January 1873, President Grant issued an Executive Order creating a new reservation for the Tule River Tribe. It was comprised of mostly mountainous, rocky lands located about fifteen miles to the east of our original Reservation. The Tule River Indians and the Indian agent at the time, Agent J.B. Vosburgh, protested the forced removal as the new lands would be difficult to cultivate. Figure 2: Map depicting the Tyler/Benson and Madden Farms in relation to current Tule River Reservation.

Agent Vosburgh, stated in his annual report to the Commissioner of Indian Affairs:

There was very little to be seen at the new agency to commend it for the purposes to which it was set apart. . . . By far the most valuable part of the reserve is upon the mountains in the extreme eastern portion, where there are extensive forests of pine available for the production of lumber, which would find a ready market among the settlers on the plains below.⁷

He further requested that the government inquire into the legality of the Madden and Benson land warrants and, if necessary, requested the federal government purchase the property from them for the benefit and use of the Indians.

No such action was taken by the federal government, and our people were forcibly removed from their homes and cultivated fields. The removal was very hard on our people. One tribal member alive then, Mary Santiago, who was born about 1859 and participated in the removal, recalled hiding in a cave as she and her brother “watched soldiers run over women and children killing some, cutting down their jerky lines, burning their tule huts that they lived in. Mostly killing men and young boys.”⁸ The new Reservation, while it contained 48,000 acres, was determined by the federal agents, based on the knowledge and technology of the time, to be insufficient to provide for us. An Indian agent reported, year-by-year our number had decreased by death and removal, until at this point there were only 143 Indians, embraced in 39 different families, residing on the reservation.⁹

Our situation was so dire that, in response, President Grant, in October 1873—just nine months after the initial Executive Order—signed another Executive Order

[NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do](https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do)

⁶J. B. Vosburgh to CIA, September 4, 1875, Annual Report of the Commissioner of Indian Affairs (ARCIA), 1875, HED 1, 44th Congress, 1st Session, serial 1680, p. 730–731.

⁷J. B. Vosburgh to CIA, September 9, 1874, ARCIA, 1874, House Executive Document HED 1, 43rd Congress, 2nd Session, serial 1639, p. 623. Note: The acreage figure that Agent Vosburgh reflects the acreage in the January 9 executive order and not the acreage for the October 3, executive order that enlarged the reservation.

⁸Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 54, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link: <https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do>

⁹H.R. 123, H.R. 2498 and H.R. 2534, Legislative Hearing before the Subcommittee on Water and Power of the Committee on Natural Resources, U.S. House of Representatives, 110th Congress, 1st Session (Sept. 25, 2007), Serial No. 110–45, Testimony of Kenneth McDarment on behalf of the Tule River Tribe of California In Support of H.R. 4685, the Tule River Indian Reservation Land Trust, Health, and Economic Development Act; citing *Reports of Agents in California*, Tule River Agency, The Commissioner on Indian Affairs, United States Indian Agent C.G. Belknap (August 11, 1883) 18–20.

almost doubling the Reservation's size to 91,837 acres.¹⁰ In August 1878, President Hays issued yet another Executive Order unlawfully reducing the reservation back to the January 1873 size of 48,000 acres.

Figure 3: 1873 and 1878 Reservation Boundaries created by Executive Order.

C. The 1922 Agreement

The only known adjudication of water rights on the South Fork of the Tule River is *Poplar Irrigation Co. v. A.A. Howard*, No. 7004, Book 14, page 195, Superior Court of Tulare County, State of California, Dept. No. 2 (1916). In the proceedings, the U.S. created uncertainty when it failed to consider, evaluate, or defend any potential pre- 1873 claims of the Tule River Tribe to the South Fork of the Tule River. Without involvement or consent from the Tule River Tribe, the court found that the South Tule Independent Ditch Company (STIDC) had the most senior rights, dating from 1854. The Court never made the Tule River Tribe a party to the case despite their clear water right interests.

In 1922 the United States perpetuated this error and, in violation of their trust duties to the Tribe, the Secretary of the Interior, acting on behalf of the Tule River Tribe, entered an agreement with STIDC to ensure certain water deliveries reached STIDC's diversion without the Tribe's consent (Exhibit B). The Agreement apportioned the flow of the South Fork of the Tule River under low flow conditions that guaranteed water to STIDC, even when doing so would not benefit the Tribe.

Further, in the 1922 Agreement the United States promised to develop Tule River's reservation with the utilization of a permanent water right. The United States, however, has not fulfilled its obligation to fully develop the reservation or the water resources necessary to make the reservation a permanent homeland. We continue to live under the terms of the 1922 Agreement today. We have honored the obligations made by the United States while receiving little to none of the benefits promised.

For over a century, we have lived on the Reservation established in 1873, a mountainous land where, because of the failure of the United States to provide adequate water storage and irrigation facilities, we have been unable to fully achieve the agricultural homeland promised to us in the Paint Creek Treaty and partially performed in our original 1856 Reservation. The Tule River people are a proud people, and I tell this story not to complain or to blame anyone for these past injustices. They do, however, show that it is appropriate for the United States to now begin the reconciliation and healing process through enactment of S. 4870. This legislation will enable the Tule River Tribe to bring water to our lands in sufficient quantities to make our reservation a viable homeland now and forever.

III. Overview of Reservation and Need for Water

A. The Reservation and Water Resources

The current Tule River Indian Reservation is located along the border of the Central Valley of California just outside the town of Porterville in the rugged Sierra Nevada mountains. The Reservation's eastern boundary abuts the Forest Service's Giant Sequoia National Monument. Just downstream is the Army Corps of Engineer's Lake Success, a dammed water body used for flood control and downstream irrigation, which is fed by the Tule River.

The topography of the Reservation is generally steep, with elevations ranging from about 900 to 7500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork of the Tule River on the western side of the Reservation. The South Fork of the Tule River runs through the Reservation, which then flows into the Tule River at Success Reservoir, about ten miles west of the Reservation. There are no significant uses of water upstream of the Reservation.

Figure 4: Map of Tule River Reservation and surrounding landmarks (See also Exhibit C).

The South Fork provides the Tribe with about 80 percent of its water. It flows through the Reservation and is subject to the Tule River Tribe's federal reserved Indian water rights. However, our Tribe is unable to use most of the river flow. To make use of the water in a meaningful way, it must be captured and stored, as the river runs low or even goes dry several months of the year. The hydrology of the South Fork is like most western rivers in that the flows are generally much higher in the spring months than the rest of the year. The hydrology of the South Fork is also marked by periods of drought during which the entire flow of the river is significantly reduced for long periods of time, sometimes spanning several years.

¹⁰*Id.*

These two general characteristics are depicted on the two graphs attached to this testimony. (Exhibit D).

The measured average annual flow of the South Fork Tule River at the western boundary of the Reservation is 25,080 acre-feet per year. However, its flow is dependent on snowmelt and runoff. In 2014 there was zero flow in the South Fork for the first time in living memory, which lasted for 85 days. In 2015 the river was dry again for 97 days, and in 2021 it was dry for 93 days. The Tribe experiences water shortage even if the river has water running in it and every year the Reservation runs out of water for household use.

The water resources available to Tule River consist of the flow from the South Fork Tule River and its tributaries on the Reservation, as well as very limited groundwater resources. The existing supplies from the river and wells do not serve the current needs of the community on the Reservation. There are growing concerns about the long-term reliability of these sources, both in terms of quantity and quality.

B. The Impacts of the Lack of Water on Tule River

Tule River, like so many native nations, is plagued by unemployment and mortality. As recently as March of 2022, the estimated poverty rate on the Reservation was still 56 percent higher than Tulare County as a whole.¹¹ Our median household income is \$39,750, and we have a 16.1 percent unemployment rate.¹² That said, we are proud that 79.9 percent of our people graduate from high school, though very few, only 1.4 percent, go on to achieve their bachelor's degree or higher.¹³ To this day, Reservation residents generally continue to suffer from a relatively low standard of living due in large part to the absence of an adequate and reliable potable water supply and system.

Every year, our tribal members have gone without access to water for basic needs. When there are outages people cannot cook, or bathe, and Tribal Members must rely on bottled water for basic needs. They may miss work and/or school. Residents are asked to limit water use and not use water for landscaping. Nevertheless, we've adapted. We truck water in, drill deeper wells, and in the past members have been forced to use water tanks for basic needs such as bathing, and drinking donated bottled water for months at a time. In the hottest parts of the summer, we open government buildings to provide refuge for elders who rely on water for their swamp coolers. But we've survived.

To do so we experience interruptions in critical services like education programs, including the Towanits Elementary School, emergency services, elderly care, justice center and government functions, as well as the economy in general. Given the severe drought, we have had major fires in the last decade. (See Exhibit E). Last fall the Windy Fire of 2021, burned 97,528 acres of the neighboring Sequoia National Forest and 19,325 acres of our Reservation. When we utilize our water system to suppress fire, it completely depletes our supply of water, meaning we are back into the cycle described above.

Image 1: Tribal Members bathing from water tanks.

Image 2: Dry South Fork of the Tule River.

Images 3 & 4: Wildfire smoke and flames on Tule River Reservation.

Lack of access to water also means we cannot fully serve all our tribal membership that wish to reside on their homelands on the Reservation. We have a waiting list of over 500 candidates and land ready for development for their housing needs. All we lack is water.

We are extremely vulnerable to the ever-increasing water scarcity of the Central Valley. The Sierra Nevada snowpack is expected to decline by as much as 90 percent by the end of the century if heat trapping emissions continue to rise at today's levels.¹⁴ S. 4870 offers both a drought mitigation plan and a climate impact reality

¹¹ California Department of Social Services, Executive Summary, All County Letter No. 22-28 (April 8, 2022) (available at: [2021 50 Percent Unemployment Exemption ACL \(ca.gov\)](https://www.cdss.ca.gov/Programs/OPPS/OPPSA/Informational/Pages/2021-50-Percent-Unemployment-Exemption-ACL-(ca.gov))); see also Bacon, David. "Tulare County During the Pandemic—The Hard Price of Poverty," Capital & Main (August 3, 2020) (available at: [Tulare County During the Pandemic—The Hard Price of Poverty \(capitalandmain.com\)](https://www.capitalandmain.com/)).

¹² United States Census Bureau, My Tribal Area, Tule River Reservation and Off-Reservation Trust Land, 2016-2020 American Community Survey 5-Year Estimates (available at: <https://www.census.gov/tribal/?aiainh=4300>).

¹³ *Id.*

¹⁴ National Oceanic and Atmospheric Administration (NOAA), National Environmental Satellite Data and Information Service, "Sierra Nevada Snowpack on the Decline" (March 2, 2020), *Sierra Nevada Snowpack on the Decline NESDIS (noaa.gov)*.

check. This settlement will allow us to create the much-needed storage to sustain our existence in our ancestral homelands.

IV. Overview of Legislation

We spent over twenty years studying how to best harness the water of the South Fork Tule River to meet our Tribe's needs. From a water needs assessment to a water allocation model, from a groundwater investigation to a water quality impact study for stored water, from creating a physical model of our Reservation to hydrologic studies and biological evaluations of a reservoir project, from dam cost comparisons to analysis of water supply alternatives, from an engineering geologic inspection of potential dam sites to a value planning study, and from an appraisal level dam project technical evaluation report to a hydrology and yield analysis, we have worked hard to objectively and thoroughly understand our water needs, potential solution options, and the costs involved. (Exhibit F). With help from the Bureau of Reclamation, we concluded that a reservoir that can store up to 5,000 acre-feet is the most realistic and cost-effective option to us, which will net the greatest benefit through the least amount of harm.

A site just downstream of the confluence of the South Fork of the Tule River with one of its tributaries, Lower Bear Creek, was identified as the most likely and optimal location. This site is geologically robust, with granite rock, steep unvegetated slopes, and a narrow canyon cross-section. The site will also allow for access and construction staging areas.¹⁵ In addition to the reservoir and raw water transmission mainline, the project will also improve and update existing delivery and water treatment systems.¹⁶ Storing the water of the South Fork will also make it possible for us to consistently deliver water downstream to state-based water users. We spent fourteen years negotiating with the downstream water users, STIDC and the Tule River Association (TRA). As a result of our work together, in 2007 we came to a settlement agreement ("2007 Agreement") with STIDC and TRA, which is reflected in the terms of S. 4870. The 2007 Agreement offer flexible and realistic terms and provide built-in mechanisms to ensure fairness. The settlement reached with TRA and STIDC in 2007 was achieved without costly litigation that could otherwise lock up the invaluable water in the Tule River basin for decades.

The 2007 Agreement and accompanying S. 4870 legislation respects existing downstream water rights as agreed to by all the parties, and thus benefits everyone. The Tule River water storage project will capture early season runoff and make it available year-round, creating consistency for not only our Reservation water users, but also the state-based water users downstream. The operation rules for the future Tule River water storage project will mandate minimum releases for the benefit of downstream users. In addition, the Tribe will limit our use of river flow during what is typically the drier portion of the year to account for downstream uses. The Tribe will rely primarily on reservoir storage, which is filled during the high-flow season. In addition, storing water in the future reservoir can also allow it to be used to enhance downstream flows during dry periods. The Tribe will also share water shortages with the downstream users during dry years. Finally, the settlement includes provisions for record keeping, inspections, and cooperative technical decisionmaking, which will be to everyone's benefit by increasing accuracy and thereby the wise use of water.

Based on a Bureau of Reclamation technical evaluation report, the Tribe has estimated the reservoir would likely cost \$568 million for a roller-compacted concrete dam, road improvements, raw water transmission line, water treatment plant expansion, expanded distribution system, and operation, maintenance, and replacement costs.¹⁷ As this is a fund-based settlement, with a one-time payment, the Tribe is taking on considerable risk due to the rapidly increasing material and construction costs we have recently witnessed. Improvements to the downstream Schaffer Dam at Lake Success Reservoir, which entail widening the dam's spillway and improving flow control, are expected to total \$135.5 million alone.¹⁸

Given the risk, the Tribe seeks the funding on a mandatory basis, with part of the funding (\$20 million) available immediately to allow technical studies and investigations still needed to determine exactly where to build the reservoir. While Indian water right settlements have sometimes been subject to discretionary spending, according to the Congressional Research Service, "Congress also has authorized

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

¹⁷ Bureau of Reclamation, "Tule River Indian Water Rights Settlement—Technical Evaluation Report" 53–61 (September 2016).

¹⁸ 18 Gutierrez, Danielle, "Second Phase of Schaffer Dam has Begun" The Sun Gazette (August 22, 2022) <https://thesungazette.com/article/news/2022/08/27/secondphase-of-schafer-dam-project-has-begun/>.

mandatory funding for Indian water rights settlements.”¹⁹ Seeking a mandatory amount now will proactively prevent a backlog of U.S. moneys owed later. And it will reduce the cost, expense, and time for all involved in repeatedly seeking an appropriation from Congress in the future. What’s more it will allow the Tule River to begin the long-overdue work of securing a water source for its people immediately. With the passage of S. 4870 our water crisis will end in 2022.

Our bill also includes a transfer of land into trust of approximately 825 acres from the Bureau of Land Management, approximately 1,837 acres of tribally owned fee land, and approximately 9,000 acres from the Giant Sequoia National Monument for Tule River. The Giant Sequoia lands are at the headwaters of the South Fork of the Tule River and their management is critical to the success of the proposed reservoir. Just last fall the Windy Fire burned 34 percent of our 55,356-acre Reservation. Runoff from the burn area could create a siltation overload in the reservoir and highlights the need for reforestation efforts and ongoing management, which the Tribe is poised to provide with over a thousand years of experience in observing and understanding the ecosystem and developing sustainable management techniques. We are currently engaged in negotiations with the USDA and Sequoia National Forest to establish better and more formal co-stewardship provisions that will complement the land transfer. (Include MOU as an Exhibit?). What’s more, the reservoir will provide more immediate access to an emergency water supply in the face of wildfire to the benefit of all landowners and managers in the area.

The land transfer will redress the failure of the United States to honor promises of a forever homeland for the Tule River Tribe. It will more accurately account for the land lost to the Tribe because of the past fraudulent land warrants and because of the U.S. decision to relocate the Tribe to our current location. And it will reunite us to an area sacred to our people. With the transfer of the land back to the Tule River’s direct use and management, the Tribe will also be able to protect its main source of water more fully—the South Fork of the Tule River.

V. Conclusion

The Tule River Tribe is in a water crisis. The crisis was, in part, created by broken promises and previous failures of the United States to act. Had action been taken even as far back in the 1870s to address this situation, we would not be here today. Let us delay no longer. The time is as ripe as it will ever be for our federal partners to join us in providing the resources necessary to ensure a sustainable future for the Tule River Tribe by supporting S. 4870.

We respectfully request that the Senate Committee on Indian Affairs swiftly mark up and pass S. 4870 for consideration by the House. I thank the Committee for the opportunity to fully express Tule River’s support of this bill.

Senator MURKOWSKI. [Presiding.] Thank you, Chairman Peyron. We next turn to Governor Loretto. Welcome.

STATEMENT OF HON. RAYMOND LORETTO, DVM, GOVERNOR, PUEBLO OF JEMEZ

Mr. LORETTO. [Greeting in native tongue.] Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and distinguished Committee members. Thank you for this opportunity to testify in support of Senate Bill 4896, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022. I am Raymond Loretto, the Governor of the Pueblo of Jemez.

The Pueblo extends special greetings, our respects and our gratitude to our distinguished Senators and champions from New Mexico, Senator Martin Heinrich and Committee Member Ben Ray Luján. We also want to recognize the significant contributions of the State, the non-Pueblo parties, and the Federal team in making this settlement a reality.

We are a federally recognized tribe located 45 miles northwest of Albuquerque. Our 3,800 tribal members primarily reside on the

¹⁹Congressional Research Service, “Indian Water Rights Settlements” (Updated January 18, 2022) <https://crsreports.congress.gov/product/pdf/R/R44148>. The report discusses each type of source of mandatory funding in greater detail.

Pueblo. We have maintained our traditional ways of life, supported by strong cultural practices, deep spiritual values and our Towa language, a language only we speak.

For centuries Jemez has been an agricultural community. Our people are subsistence farmers producing traditional crops as well as crops needed to feed our livestock. Our farmers rely on water from the Jemez River, which flows south through the Pueblo.

The Jemez River also recharges the alluvial aquifer from which the Pueblo draws its drinking water. Indeed, the River supplies water for a wide variety of Jemez uses, including domestic, municipal, economic development, livestock, wildlife, and fisheries. The waters of the Jemez River Basin also support plant and animal species native to our area, and the Pueblo has relied on these culturally significant resources since time immemorial.

In 1983, the United States brought litigation to protect the Pueblo water rights in the Jemez River Basin in a case known as *U.S. v. Abousleman*. Implementation of our settlement agreement is crucial to the Pueblo's long-term well-being. It recognizes our rights based on time immemorial priorities, and serves to protect our access to water to sustain our agricultural practices and livestock needs, to provide water for current domestic, commercial, municipal and industrial use.

The key to our settlement is funding for the development of wells for both Jemez and Zia to provide groundwater to reduce reliance on surface water from the Jemez River. Development of these wells will help avoid conflicts between the Pueblos and non-Indian water users over access to increasingly scarce surface water, and will protect and strengthen relationships among the community of water users in the Jemez River Basin.

The settlement also provides for Federal funds so that my Pueblo can improve our irrigation infrastructure, improve our water and wastewater infrastructure, better protect the watershed, and promote water-related Pueblo community welfare and economic development projects.

For Jemez, the settlement projects will bring income to the Pueblo members, bring revenues into the tribal government from construction projects, will provide state-wide economic benefits for other businesses that will be involved in the Pueblo's projects. These opportunities will decrease the Jemez Pueblo's 40 percent unemployment rate and bring needed revenues into Pueblo households.

But we are so proud to underscore that the settlement agreement also serves the needs of our neighbors as well. The settlement will benefit upstream water projects, help augment surface water supplies to guard against the effects of climate change, and provide a reliable supply of much needed irrigation water for the surrounding communities.

For nearly 40 years, the Jemez Pueblo has engaged in good faith negotiations. We have invested an incredible amount of time and resources in this effort. We are not a wealthy tribe; we do not have casinos or vast energy resources. Instead, water is the key to our long-term health and stability and cultural preservation.

Nothing has made this clearer than the recent COVID 19 pandemic. Access to clean water was an essential component of pre-

venting the spread of the disease, and our Pueblo continues to incur significant costs associated with the construction of new water lines to ensure access to clean water.

We need your help to ensure that we will be able to actually benefit from our water rights to secure the future for our Pueblo members, accommodate the future growth of our population, and realize the full economic potential of our tribal homelands. This settlement is crucial to our ability to preserve ancient agricultural and other practices critical to our cultural survival.

We ask that this Committee do everything in its power to move Senate Bill 4896 swiftly towards passage.

I stand for any questions.

[The prepared statement of Mr. Loretto follows:]

PREPARED STATEMENT OF HON. RAYMOND LORETTO, DVM, GOVERNOR, PUEBLO OF
JEMEZ

My name is Raymond Loretto. I have the honor of serving as Governor of the Pueblo of Jemez. On behalf of our Pueblo, I thank you Chairman Schatz, Vice Chairman Murkowski, and distinguished Members of the Senate Committee on Indian Affairs for this opportunity to provide the Pueblo of Jemez's testimony urging swift passage of legislation to implement our historic water rights settlement. The Pueblo extends a special greeting and our respects to our Senator from New Mexico, the Honorable Ben Ray Luján. The Pueblo also wants to thank Honorable Senator Martin Heinrich for introducing this legislation in the Senate, and to Representatives Teresa Leger Fernandez and Melanie Stansbury for introducing companion legislation in the House.

Introduction

Since time immemorial, we, the Jemez people (traditionally pronounced as "Hemish") have maintained our traditional and distinct way of life supported by strong cultural values, deep religious respect and our Towa language, a language only we speak. The unique Towa language is spoken by 91 percent of our members.

We are a federally recognized Indian tribe and one of the twenty Pueblos in present-day New Mexico and Texas. Our Reservation is located 45 miles northwest of Albuquerque in central New Mexico with a land base totaling more than 89,000 acres. Our Reservation is composed of three large parcels, the original Jemez Pueblo grant, Ojo del Espiritu Santo grant, and the Canada de Cochiti grant. These lands are agricultural, grazing and forest lands. Jemez Pueblo is the gateway to the popular Jemez Mountains, a designated National Recreation Area and gateway to the Pueblo's ancestral lands in the Valles Caldera National Preserve now under the management of the National Park Service. Both federal areas are carved from lands that are within our traditional ancestral territory.

Brief History of the Pueblo of Jemez

Jemez Pueblo has a unique history different from the rest of the Pueblos in New Mexico. Jemez Pueblo is one of two Towa speaking Pueblos. At the time of the Spanish Entrada in New Mexico there were two Towa Pueblos, both recognized by the Spanish government—Jemez Pueblo and Pecos Pueblo. Pecos Pueblo was located northeast of Santa Fe, New Mexico just downstream from the headwaters of the Pecos River, and between two major Spanish settlements—Santa Fe and Las Vegas—placing it on various trade routes of Indian and non-Indian groups from the Plains into the Rio Grande Valley. The two Pueblos were agricultural communities located in separate river basins, living and farming on lands used by them since time immemorial. While the Jemez Pueblo survives to the present day, the people of Pecos Pueblo were forced to leave their lands due to many factors, including trespasses to their lands and waters as well as a significant drop in population. By 1838 there were only seventeen surviving Pecos members and these people moved to Jemez to join their Towa brethren for protection and survival. The historic record is clear that the move to Jemez was not an abandonment of the Pecos Pueblo by its people. By 1929 the Pecos descendants were estimated to be up to 250 people. In 1933, Jemez and Pecos requested of Congress that they be merged into just the

Pueblo of Jemez which was achieved in 1936 by congressional act.¹ Today, several Jemez Pueblo members descend from those seventeen survivors, and the traditions and religious practices brought over by the Pecos survivors are practiced and carried on in Jemez Pueblo.

Tribal Government

Jemez Pueblo is governed by the Jemez Tribal Council, the Governor and two Lieutenant Governors. The Governor represents the Pueblo of Jemez as an official Head of State and is the Chief Executive Officer of the Pueblo. The Governor, Lieutenant Governor and Second Lieutenant Governor are appointed at the start of each year by religious leaders and entrusted sole authority to oversee and carry out all secular duties and responsibilities of the tribal government. Our government also contains many active government services agencies such as our Tribal Administration, Natural Resources Department, Planning and Transportation, Tribal Courts, Police Department, Education Department, Public Works, Realty and Jemez Health and Human Services.

Jemez Pueblo became a Self-Governance tribe in 2013 under the Indian Self-Determination and Education Assistance Act which enabled tribes to contract with the United States for administration of certain federal programs. See 25 U.S.C. §§ 5301–5423.

Pueblo Members

The number of enrolled tribal members as of September 30, 2022 is 3,844. Most of our Pueblo members reside in the Pueblo Village traditionally known as “Walatowa” (a Towa word meaning “this is the place”). In addition to our tribal members, non-tribal members living on the pueblo who are residing on the pueblo by marriage, adoption or through family relations. Some of our tribal members live off the reservation in the neighboring non-Indian communities of San Ysidro, Ponderosa, Cañon and in the City of Rio Rancho. Others live in Albuquerque and Santa Fe. Since time immemorial the Jemez people have maintained their traditional way of life, a life supported by strong agricultural values and deep cultural respect. For many centuries Jemez has been an agricultural community and will continue to be as these practices are passed on to our children. The farmers are subsistence farmers producing traditional crops such as chili, corn, squash melons and other vegetables but are also livestock owners expanding their irrigation practices to growing alfalfa, oats and grass for livestock feed.

The Jemez River Basin

The main water feature for the Pueblo of Jemez is the Jemez River whose headwaters are in the Valles Caldera National Preserve. The main tributary streams in the Valles Caldera National Preserve are San Antonio Creek and the East Fork Jemez River that join to form the Jemez River mainstem. The Jemez River flows south through the Cañon de San Diego, between the Jemez Mountains and the Nacimiento Mountains to Jemez Springs, and continues south through the canyon to its confluence with the *Rio Guadalupe*, near Cañones and Cañon. From there the Jemez River runs through the Pueblo Village providing water for the farmers and recharges the alluvial aquifer from which the pueblo draws its drinking water. Vallecito Creek, an ephemeral stream, joins the Jemez River above and near Jemez Pueblo. At the south boundary of the Jemez Pueblo grant, the Jemez River continues into the non-pueblo community of San Ysidro and couple of miles to the south of San Ysidro, the Jemez River enters the Zia Indian Reservation and is joined by the Rio Salado, about four miles upstream from Zia Pueblo. The Jemez River continues southeast and enters the Santa Ana Pueblo reservation passing by Santa Ana to its confluence with the Rio Grande just north of the town of Bernalillo.

Today, the Jemez River (and hydrologically connected groundwater) does not only supply water for irrigation on the Pueblo; it supplies water for a wide variety of tribal uses including, but not limited to domestic, municipal, economic development, livestock, wildlife, fisheries, and other natural resources in the River Basin. The waters of the Jemez River Basin also support a complex ecology that Jemez has used in the past and continues to use today for many sacred and culturally significant resources that exist because of the river and the groundwater.

Brief History of Settlement Negotiations

The United States originally filed the *Abousleman* litigation in 1983 to protect the water rights of the Pueblos of Jemez, Zia and Santa Ana; parties in the litigation included the State of New Mexico and non-Indian parties the Jemez River Basin

¹The Act of 19 June 1936, 49 Stat. 1528.

Water Users Coalition and the San Ysidro Community Ditch Association. In 1993 the Department of Interior appointed a Federal Negotiation Team to assist the Pueblos in their pursuit of a negotiated settlement. In 1994 the Jemez Pueblo Tribal Council adopted a resolution confirming its desire to engage in settlement negotiations in the *Abousleman* case. Settlement negotiations in the case began more seriously in March 1996, when Mr. Brian James, attorney for the New Mexico State Engineer's office invited the United States and the three Pueblos to the negotiation table.

Negotiations were catalyzed in 1996 when the Pueblos filed a "Priority Call" on the non-Indian water users within the basin. Negotiations continued for several years with the parties agreeing on Settlement Principles which became the framework for the negotiations. With the assistance of a Mediator, the parties continued negotiating the terms of the settlement agreement and developed their settlement costs proposal. Unfortunately, in March 2012 the negotiations fell apart when the State of New Mexico withdrew its support for the settlement and walked away from the negotiation table.

After this breakdown of negotiations that lasted over a four-year span, the Pueblo of Jemez took the initiative to bring the parties back to the negotiation table by hosting several group and individual meetings with the parties. As a result of the Pueblo's efforts, negotiations resumed in 2016 with the same parties plus the City of Rio Rancho, except that the Pueblo of Santa Ana, declined to participate in the negotiations. The Pueblo of Santa Ana prefers to litigate its claims in the Jemez River basin in federal court.

Since 2016, with the assistance and involvement of the Federal Negotiation Team, the settling parties negotiated a tentative settlement agreement² including settlement cost proposals for projects to be funded from the settlement. The settlement cost projection for Jemez Pueblo is \$290,000,000 and for Zia Pueblo is \$200,000,000 for a combined settlement cost of \$490,000,000 for the Pueblos. The non-Pueblo portion of the settlement cost is projected at \$19,559,000, which will be borne by the State of New Mexico. Below is an overview of the settlement agreement and components for which we are seeking congressional approval.

Overview of Settlement Agreement

The Settlement Agreement recognizes and describes four categories of Pueblo water rights with a time immemorial priority: (1) irrigation water rights based on the Pueblos' Historically Irrigated Acres (HIA); (2) current Domestic, Commercial, Municipal, and Industrial (DCMI) uses; (3) water for Livestock Uses; and (4) Economic Development Water.

The focal point of the Settlement Agreement is the construction of augmentation projects on Jemez and Zia lands. Each Pueblo will benefit from construction of a well field that will augment surface supply with groundwater. The well fields will provide groundwater for irrigation and other uses by the two Pueblos and members of the San Ysidro Community Ditch Association during periods of insufficient surface flow in the Jemez River. By making groundwater available, the settlement will prevent conflicts between the Pueblos and San Ysidro Community Ditch Association over surface water use. Federal funding for the Pueblos and state funding for the San Ysidro Community Ditch is critical to implementing this augmentation agreement. Further, by providing a critical buffer against climate change's effects on surface supplies, the augmentation and other proposed settlement projects will help preserve ancient cultural and agricultural practices and strengthen the relationship between Pueblo and non-Pueblo communities in the Jemez River Basin.

Settlement Components

The Pueblo of Jemez' settlement components are the following:

- (1) Jemez Village Water Supply and Wastewater Feasibility Investigation
- (2) Water and Wastewater facilities
- (3) Firmed Up Acreage (FUA) Irrigation Project
- (4) Pueblo Water Department
- (5) Multi-Use Water Development
- (6) Stockwater Facilities
- (7) Cañon Area Land Acquisition
- (8) River Improvement Projects
- (9) Pipeline to San Ysidro Parcel

²The settlement is tentative because the United States cannot approve the settlement until it is authorized by Congress.

1. Jemez Village Water Supply and Wastewater Feasibility Investigation

Over the past two decades, the Pueblo has taken active steps to improve the dependability and quality of its water supply. Nevertheless, several water supply problems still persist on the Pueblo including lack of water pressure, water quality concerns, insufficient storage capacity, and outdated infrastructure. The Pueblo must also identify and evaluate source(s) of supply for future water demands as the Pueblo's population and economy continue to grow. It is particularly important now to address water supply and treatment issues that affect the health of Pueblo residents in light of the ongoing COVID-19 outbreak and severe damage it has caused to Native American communities in the Southwest.

Due to the lack of adequate domestic water systems and sewer infrastructure in areas suitable for housing development, coupled with inadequate domestic water supply systems within the Village, tribal members are forced to seek housing off the reservation. The existing system was built in the 1960's. Not only is there a lack of infrastructure for new development, but within the Village, based on a survey done several years ago, there are approximately 550 families living in substandard housing, 370 families living in overcrowded homes and 420 homes needing rehabilitation of some form. It was these housing conditions on the pueblo that created a real challenge in protecting the members from and preventing the spread of Covid 19 during the pandemic.

The Settlement funding will help resolve the Pueblo's serious problems by providing adequate domestic water drinking systems and sewer systems.

2. Water and Wastewater Facilities

The Pueblo currently has two separate water systems that produce approximately 186 acrefeet per year for the Pueblo's various domestic, municipal, and commercial uses. In the near future, it is expected that the Pueblo will grow, both in population and level of economic development. Future demands were divided into three distinct areas: (1) Jemez Village, extending from the mouth of Vallecito Creek down to the southern Reservation boundary; (2) Red Rocks, located near the northern Reservation boundary and described under a separate economic development plan; and (3) Vallecito Housing, a proposed housing development located east of the Jemez Village along Vallecito Creek. Separate water supply systems were planned for each of these three areas. Costs for the water supply systems were developed as part of a 2012 Bureau of Reclamation study and were expressed in 2012 dollars.

The Pueblo's wastewater treatment needs are currently served by four non-discharging evaporation lagoons located along the Jemez River near the Village. The Pueblo has had a desire to move away from lagoons and towards more conventional forms of treatment and discharge. Wastewater system improvements include costs for the replacement and expansion of the wastewater collection or sanitary sewer system on the Pueblo. Three separate sanitary sewer systems were designed for the three water demand areas: (1) Jemez Village, (2) Red Rocks area, and (3) Vallecito Housing area. Sanitary sewer system cost estimates include costs for lift stations, manholes, and collection mains conveying wastewater from the segmented demand areas on the Pueblo to the wastewater treatment facility. Costs for the wastewater treatment and collection systems were developed as part of a 2011 settlement proposal and were expressed in 2010 dollars.

3. Firmed Up Acreage (FUA) Irrigation Project

The FUA Project is an irrigation system design developed for the Pueblo and provided for in the 2008 Settlement Principles that seeks to make improvements to existing irrigation infrastructure on the Pueblo and to expand the capabilities and improve the reliability of the system. A component of the FUA Project is the addition of water resource augmentation to provide a firm supply to a fixed amount of acreage through the construction of new wells and the improvement of water delivery infrastructure to provide additional water supply through improved irrigation efficiency. The FUA project consists of the following: (1) conveyance system improvements, (2) on-farm improvements, (3) augmentation wells, and (4) remote flow monitoring and control systems to provide improved system management.

The overall goal of conveyance system improvements is to increase the efficiency with which the Pueblo's canals and laterals deliver water to the farm fields. The 60 plus year old concrete ditches and their two diversion dams on the Jemez River have exceeded their functional capacity making it difficult to effectively deliver water to Pueblo fields. Projects identified for the conveyance system include improvements intended to remove or reduce debris in the system, to protect existing infrastructure from degradation, and to reduce water loss due to seepage, as well as increases in system capacity to allow for carriage of Zia and San Ysidro water demands under low flow periods through the West Main Canal. The federal funding

from the Settlement will provide the necessary funds to completely re-engineer the diversion dams and revamp the entire irrigation distribution system.

Crucially, the majority of the work proposed in the improvement of the irrigation distribution system is work that can be done with the Pueblo's work force. Approximately 30 percent of the Pueblo's work force is skilled in construction, transportation, extraction and material moving occupations and maintenance occupations. These opportunities will help decrease the Pueblo's 40 percent unemployment rate and bring in needed revenues into the family households to improve the quality of life for our Pueblo members.

4. Pueblo Water Resources Department

Establishment of a Pueblo Water Resources Department is a crucial piece to a successful water rights settlement. A Pueblo Water Resources Department will administer water rights and oversee the management and protection of Pueblo water resources and water rights. Funds are sought under the water rights settlement to maintain a Pueblo Water Resources Department through a trust fund and to complete specific capital projects and studies that will assist in properly administering and managing water rights including development of a Tribal Water Code.

5. Multi-Use Water Development

The Settlement will provide the Pueblo with an additional quantity of water based on the historically irrigated acreage (HIA) water right claim separate from the FUA project water rights. These rights are based on irrigation, but will likely not be used for agriculture and so are known as "Multi-Use Water" in the settlement. In addition, the Settlement will provide an additional amount of water known as "Remaining Water" to the Pueblo. A quantification of these two additional water rights is provided in the settlement. Together, these two additional rights represent the domestic, commercial, municipal and industrial (DCMI) water rights of the Pueblo. A portion of these water rights will be used to meet the future domestic water supply demands of the Pueblo.

6. Stockwater Facilities

The Pueblo intends to establish new, and rehabilitate existing, stock watering facilities on the Reservation. The proposed settlement includes three categories (ponds, springs and wells) of water rights for livestock and wildlife. Costs for development are included in the Settlement for all three categories of livestock water rights. An inventory of stockwater facilities was performed by the Pueblo and the results indicate that there are 22 springs, 48 ponds, and 18 wells on the Reservation that service livestock. Costs for a single spring, pond, and well are shown in the settlement agreement.

7. Cañon Area Land Acquisition

The Pueblo has had periodic conflicts with upstream water users near Cañon who share use of the Jemez Pueblo West Side and East Side canals (historic Pueblo ditches). The Pueblo desires to purchase the lands and associated water rights for these lands to alleviate any future conflicts over access, ingress and egress issues. Funds are proposed as part of the water rights settlement to acquire lands and water rights adjacent to the Pueblo ditches and around the Jemez River.

For the purpose of estimating costs, it was assumed that the Pueblo would acquire all lands that are currently designated as agriculture lands. Land acquisition costs were based on a February 2011 appraisal study for the San Ysidro Ditch easement completed by Deborah Lewis at the BIA Regional Office and indexed to 2021 values using the Bureau of Reclamation land value index for New Mexico. Information provided in the appraisal report indicated a range of land values. Developed (leveled, cleared, planted) farmland is estimated to have a value of \$24,760 per acre based on information included in the appraisal study.

Water rights acquisition costs were based on a November 2007 article by F. Lee Brown for the New Mexico Water Resources Research Institute. In this article, Brown provides a price range of \$20,000 to \$35,000 per acre-foot for the purchase of water rights in the Middle Rio Grande Basin (upper basin use area). A separate 2006 article by Thomas C. Brown assesses water markets in the western United States and establishes an annual rate of increase of about 1.28 percent based on the median price of water (for all uses) between 1990 and 2003. Applying this rate to the 2007 water rights prices per acre-foot results in a value of \$35,837 per acre-foot in 2021.

To ensure that the Pueblo will be able to avoid conflicts that may develop with any other landholders in the vicinity of the Pueblo's projects, the Pueblo will require funding for the purchase of an additional 300 acres of land plus appurtenant water

rights at a consumptive irrigation requirement (CIR) of 2.0 afy/ac. This acquisition cost totals to approximately \$28,930,200.

8. River Improvement Projects

The Jemez River is an important natural and cultural resource for the Pueblo, and the Pueblo is committed to maintaining the ecological health and function of the River into the future. Funds are sought by the Pueblo to complete stream restoration projects on the Reservation.

Activities would include stabilization of the Jemez River channel; removal of tamarisk, Russian olive, and other invasive tree/shrub species; re-vegetation of the riparian corridor with native species; and performing geomorphology and ecological resource studies associated with the river. It is estimated that there are 8.5 river miles to be addressed with the funds, stretching from the West Main/East Side diversion dam in Canon to the Highway 4 bridge just north of San Ysidro. The total cost of stream restoration projects is estimated at \$10,710,000.

9. Pipeline to San Ysidro Parcel

The Jemez Pueblo plans to commercially develop approximately 95 acres of land south of San Ysidro that are owned by the Pueblo in fee and formerly known as the lands of Frederick Fiber. The land is made up of four parcels bounded by Highway 550 on the west and on the east by Zia Pueblo Reservation land. In order to supply the area with water (95 afy), a pipeline was designed to deliver water from multi-use wells planned for construction east of the Pueblo Village. The pipeline is gravity flow and travels a distance of approximately 32,620 feet (6.2 miles) including connection to the multi-use wellfield and generally following Highway 4 and 550.

The total settlement cost includes the total capital cost of the project as well as funding for 50 years of operational costs, which is estimated at \$4,498,000 using the 10-year nominal discount rate of 0.8 percent from OMB Circular A-94-C (2021) as recommended by the Department of Agriculture's Natural Resources Conservation Service.

Settlement Benefits

The Settlement brings long overdue investments in infrastructure to our Pueblo. The Settlement Agreement will provide federal funds to the Pueblo for costs associated with irrigation infrastructure improvements, water and wastewater infrastructure improvements, watershed protection, water-related Pueblo community welfare and economic development, and costs relating to implementation of the Agreement.

The economic development opportunities will be enhanced by the development of domestic water and sewer systems in the Pueblo's commercial area. The Pueblo's Visitor Center and convenience store are located north of the Pueblo in the beautiful Red Rock area, which is prime for development but seriously limited due to lack of funding to bring a reliable water source to this development area. The settlement funding will help us provide the water source. Not only will the settlement projects bring income to the Pueblo members but it will also bring in gross receipts tax revenues into the tribal government from the construction projects, and it will have a state-wide economic benefit for other businesses, construction companies and professionals that can provide technical services for the Pueblo's projects.

More importantly, the settlement establishes the rights of the Pueblo to use water for its own people and purposes, and provides for quantification of Pueblo water rights, reliability of supply, and economic development for the Pueblo both now and into the future. It protects surface and ground water in the Jemez River Basin for future generations while allowing all parties to fully exercise their water rights and while addressing impacts on aquifer and surface flows of future water development both in the basin and affecting the basin.

Conclusion

The Pueblo of Jemez has engaged in good faith negotiations for nearly forty years to reach this settlement of its water rights in the Jemez River Basin. We have invested many, many hours of time and resources in these efforts. We are not a wealthy Tribal government nor wealthy people; we do not have a casino or vast energy resources. We know that water is the key to our long term health and stability. We have worked in good faith to have our water rights confirmed, and we need your help to ensure that we will be able to use our water to secure the future for our tribal members, to accommodate future growth of our population, and to realize the full economic potential of our Reservation. We ask that this Committee do everything in its power to move swiftly towards passage of S. 4896, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, so that we may achieve these goals.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have.

Senator MURKOWSKI. Thank you, Governor.
We now turn to Governor Galvan. Welcome.

**STATEMENT OF HON. GABRIEL GALVAN, GOVERNOR, PUEBLO
OF ZIA**

Mr. GALVAN. Good afternoon, Chairman Schatz, Ranking Member Murkowski, and members of the Committee. I am Gabriel Galvan, Governor of Zia Pueblo. On behalf of the Pueblo, I want to extend my sincere thanks to you and the Committee for scheduling this hearing.

The pending settlement of the Pueblo's water rights in the Jemez River basin has been four decades in the making, and its ratification by Congress is of enormous importance to my community and its future. It will usher in what I sincerely believe will be a new chapter for our Pueblo, allowing us to protect our community and environment, plan and grow in a sustainable manner, and to effectively deal with the impacts of climate change on our limited water resources.

Zia's history is a saga of tragedy and resilience. The Pueblo is located approximately 30 miles northwest of Albuquerque. Our village has been in its present location since the 1300s, adjacent to the Jemez River, the only significant stream on our Pueblo. We survived the Spanish occupation, but just barely. And the era of United States sovereignty did little to improve our lot, until recently.

By the end of the 19th century our population had dwindled from several thousand to less than 100, prompting an anthropologist studying us at the time, to predict the extinction of our Tribe within a few decades. But we not only persevered in the face of great odds, we came back.

Today Zia has a population of over 800, a reservation comprised of approximately 160,000 acres, and a strong, unique, and vibrant culture. We are the proud creators of New Mexico's state symbol, known as the Zia Sun Symbol.

Our Pueblo has a tradition of strongly encouraging self-sufficiency. Most of us hunt, gather, cultivate crops, and raise cattle, just as our ancestors have for centuries. We also utilize our lands and resources to generate much-needed income for our Tribe. We are not a gaming tribe, and our primary source of tribal income are royalty payments from a gypsum mine and a right-of-way fee.

Currently, the only private employer on our reservation is a processing plant that produces organic soil supplements and which employs 17 tribal members. But their facility cannot expand as its owner plans, because the current water supply is non-potable. We need a modern water supply system to attract more private businesses.

Though our land base is substantial, our agricultural lands are limited to about 1,100 acres. These lands are located in the lower region of the Jemez River basin, downstream from non-Indian communities and Jemez Pueblo. Consequently, Zia has suffered from recurring surface water shortages and has suffered shortages more frequently than upstream users. This has discouraged many of our farmers from planting.

In contrast to our limited and variable surface water supply, Zia has substantial groundwater, particularly in the southeastern portion of our reservation. Development of our groundwater resources is critical to our goal of growing and diversifying our economy and providing for a reliable irrigation water system.

The settlement would comprehensively settle all of Zia's water rights claims in the Jemez River basin, both surface and groundwater. It would also provide the Pueblo with \$200 million for various water related projects, including wells, irrigation system improvements, improvements to our domestic water system, wastewater system improvements, Jemez River restoration work, establishing a pueblo water rights department, and making stock water improvements.

Passage of Senate Bill 4896 is critical to the Pueblo's efforts to achieve a secure future for the Pueblo of Zia, to accommodate the future growth of our population, and to realize the full economic potential of our reservation. The Pueblo is not aware of any opposition to the settlement, and it is strongly supported by non-Indian water users in the basin and the city of Rio Rancho and Sandoval County and the State of New Mexico, as well as Zia and Jemez Pueblos.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have and respectfully urge members of the Committee to support Senate passage of this critical legislation.

[The prepared statement of Mr. Galvan follows:]

PREPARED STATEMENT OF HON. GABRIEL GALVAN, GOVERNOR, PUEBLO OF ZIA

Good afternoon Chairman Schatz, Ranking Member Murkowski, and members of the Committee. I am Gabriel Galvan, Governor of Zia Pueblo. On behalf of the Pueblo, I want to extend my sincere thanks to you and the Committee for scheduling this hearing. The pending settlement of the Pueblo's water rights in the Jemez River basin has been four decades in the making, and its ratification by Congress is of enormous importance to my community and its future. It will usher in what I sincerely believe will be a new chapter for our Pueblo, allowing us to protect our community and environment, plan and grow in a sustainable manner, and to effectively deal with the impacts of climate change.

Background on Zia Pueblo

Zia's history is a saga of tragedy and resilience. The Pueblo is located approximately 30 miles northwest of Albuquerque. Our village has been in its present location since the 1300s, adjacent to the Jemez River, the only significant stream on our Pueblo.¹ We survived the Spanish occupation, but just barely. And the succession of United States sovereignty did little to improve our lot, until recently. By the end of the 19th century our population had dwindled from several thousand to less than 100, prompting Matilda Cox Stevenson, an anthropologist studying us at the time, to predict the extinction of our tribe within a few decades. We suffered terribly from disease, poverty and neglect.² But we not only persevered in the face of great odds, we came back. Today Zia has a population of over 800, a reservation comprised of approximately 160,000 acres, and a strong, unique, and vibrant culture. We are the proud creators of New Mexico's state symbol—known as the Zia Sun Symbol.

¹The Rio Salado flows into the Jemez River within the Pueblo, but as its name suggests, when it flows, water is highly saline.

²Fortunately, we did not lose any of our grant lands, basically because as one historian commented "[t]he lands of the Sia were so poor however that when the Pueblo Lands Board undertook a study of land problems in 1927 it 'found no non-Indian encroachment' upon Sia lands." ("The Pueblo of Sia, New Mexico," *Smithsonian Institution Bureau of American Ethnology Bulletin*, Leslie A. Smith (1962).

Our Pueblo has a tradition of strongly encouraging self-sufficiency, including engaging in all manner of subsistence activities. Most of us hunt, gather, cultivate crops, and raise cattle, just as our ancestors have for centuries. These activities, given our desert environment, require a substantial land area and conservation-focused management of our resources. The Pueblo has taken steps to ensure that all of our tribal members have an equal opportunity to utilize these resources, and that no one exploits them. For example, we have a grazing ordinance that divides our range lands into units based on their carrying capacity. These range units are shared by several families who are each permitted to graze up to 20 head of cattle. This limitation means that while no one can make a living off of ranching alone, all have an opportunity to raise livestock for subsistence and additional income. Ranching also reinforces the close connection that our members have to the land, and encourages our families to work together closely and cooperatively in managing our rangelands and livestock.

Apart from subsistence purposes, we also utilize our lands and resources to generate much needed income for our tribe. We are not a gaming tribe and our primary source of tribal income is royalty payments from a gypsum mine. We also generate modest amounts from cell tower leases and right of ways for pipelines and electric transmission lines. We have a business lease for a processing plant that produces organic soil supplements, and which employs 17 tribal members. And our reservation, which is only 45 minutes from downtown Albuquerque, has a ruggedly beautiful western landscape, and has become increasingly desirable as a filming location, generating sporadic income and short-term employment opportunities for tribal members. While these commercial uses provide our tribal government with limited, but much needed, financial resources, we strive to take a balanced approach to development, and protect our lands for grazing, cultural activities, hunting, recreation, and similar purposes.

Background on the *Abousleman* Litigation

The adjudication of the Jemez River basin, in the case known as *United States v. Abousleman*, dates back to June 27, 1983. The proceedings initially focused on the determination of historical water use by the Pueblos of Jemez, Zia and Santa Ana and the water use and rights of the non-Indian parties. The water rights of the non-Indian parties have been fully adjudicated subject to a determination of the rights of the three Pueblos. The parties were then preparing to litigate issues related to the nature and extent of the Pueblos' water rights, and how they are to be quantified, when they decided to seek a stay of the litigation and began a mediation process. That process ultimately failed to produce a settlement and the litigation resumed in 2012.

Following a ruling by the District Court that the Pueblos' aboriginal rights to water were terminated by virtue of Spanish sovereignty over present-day New Mexico, the Pueblos and the federal government appealed to the Tenth Circuit Court of Appeals, which reversed the District Court. While the appeal was pending, the parties, except for Santa Ana Pueblo, resumed settlement discussions, and these discussions continued until this past summer when all of the non-federal parties, except Santa Ana Pueblo, signed the Settlement Agreement that S. 4896 would ratify. Santa Ana has chosen to continue to litigate its claims, a route that Zia may reluctantly have to return to if the settlement is not approved by Congress.

The settlement is strongly supported by the non-Indian water users in the basin (including acequia communities and the City of Rio Rancho), Sandoval County (which the basin is within), and the State of New Mexico, as well as Zia and Jemez Pueblos.

The Pueblo's Critical need for a Reliable Water Supply and the Water-Related Projects that the Settlement Will Provide Funding For

Though Zia's land base is substantial, we have only a relatively small amount of agricultural lands—approximately 1,100 acres. And these lands are located in the lower region of the Jemez River basin, downstream from non-Indian communities and Jemez Pueblo. Consequently, Zia has suffered from recurring surface water shortages, and has suffered shortages more frequently than upstream users. While a water rotation agreement that was worked out with upstream non-Indian communities and Jemez Pueblo in 1996 has helped to mitigate water shortages, during periods of drought Zia farmers can experience weeks and longer of little or no water. Not surprisingly, recurring water shortages have caused a significant decline in the total area farmed at Zia. Because of our limited and sporadic surface water supply on the Jemez River, our relatively small area of easily irrigable lands, and our desert climate, agriculture at Zia has never been conducted on a commercial scale.

And except for a tribal orchard that is currently being developed, we have no plans for commercial agriculture.

In contrast to our limited and variable surface water supply, Zia has substantial groundwater resources, particularly in the southeastern portion of our reservation. Thus, two of the key components of the settlement are the development of irrigation wells to augment the surface water supplies, and improvements to our irrigation infrastructure so that water diversion and delivery is more efficient. These projects are essential to our goal of restoring our tradition of subsistence agriculture. Development of our groundwater resources is also key to our goal of growing and diversifying our economy in a prudent and sustainable manner.

Key Elements of the Settlement

The settlement would comprehensively settle all of Zia's federally reserved water rights claims in the Jemez River basin, both surface and ground water. It would recognize the following water rights for our Pueblo:

1. a right to divert 3,819 acre feet per year and to consumptively use 1,910 acre feet per year, which right may be satisfied from surface or ground water;
2. a right to divert and use 112.5 acre feet per year of groundwater for domestic, commercial, municipal and industrial purposes;
3. a right to divert and use 477 acre feet per year for stock water purposes; and
4. a right to divert and consumptively use 1,200 acre feet per year of water for economic development purposes.

All of the Pueblo's water rights will have a time immemorial priority and, subject to the approval of the Secretary of the Interior, category 1 and 4 water rights may be leased by the Pueblo for a term of up to 99 years.

Finally, Zia will have the right to divert available surface water flows to fill and maintain water levels in Zia Lake for irrigation and recreational purposes.

In addition to the above-water rights, the settlement will provide the Pueblo with \$200 million for various water-related projects necessary for the efficient and effective use of this resource, including:

1. An irrigation water supply augmentation project involving the construction and operation of wells in the immediate vicinity of Zia Lake for use during periods of low surface flows and the rehabilitation of Zia Lake.
2. Irrigation system improvements, including renovation of Zia diversion dam, installation of a drip system, and a pipe system to replace open ditches.
3. Improvements to Zia's domestic water system, including new production wells, water treatment (arsenic), and extension of water lines to new residential and commercial development projects.
4. Wastewater System Improvements, such as replacing aging sewer lagoons with a modern wastewater treatment facility and extending wastewater collection lines to new residential and commercial project areas.
5. Necessary Jemez River Restoration projects to stabilize the river channel (which is currently experiencing significant erosion because of the Army Corps of Engineers abandonment of the Jemez Canyon reservoir project) and remove invasive species.
6. Establishing and operating a Pueblo water rights department.
7. Making Stockwater Improvements, such as constructing new/additional stock wells and ponds for better rangeland utilization.

Conclusion

Passage of S. 4896 to ratify the settlement of our Jemez Basin water rights is critical to the Pueblo's efforts to achieve a secure future for the Zia people, to accommodate the future growth of our population, and to realize the full economic potential of our Reservation. Zia has come a long way from the threat of extinction 125 years ago, but still faces significant challenges in creating a homeland for future generations and dealing with the climatic uncertainties facing the basin. Providing for a secure and sustainable water supply will help us to become economically self-sufficient, and will allow us to restore our proud tradition of subsistence agriculture and preserve our lands for generations to come.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and respectfully urge members of the Committee to support Senate passage of this critical legislation.*

Senator MURKOWSKI. Thank you, Governor.
Next, Governor Vicente, welcome to the Committee.

**STATEMENT OF HON. RANDALL VICENTE, GOVERNOR,
PUEBLO OF ACOMA**

Mr. VICENTE. [Greeting in Native tongue.] Madam Chair, Vice Chair Murkowski, Chairman Schatz, and members of the Committee, thank you for this time with us today.

My name is Randall Vicente, Governor for the Pueblo of Acoma. I am here with other tribal leaders from New Mexico. Together we stand united with the Pueblo Laguna, the Acequias, the Community Ditches of the Rio San Jose Basin and the State of New Mexico in full support of S. 4898.

With its passage, Congress will give my pueblo an adequate water supply for the first time in 100 years. The legislation pending before you is extremely important to my people. We are in dire need of adequate water. The streams, aquifers, and streams that once fed the Rio San Jose, the life blood of our communities, and supported our agriculture lifestyle, has been severely impacted and in some cases, devastated.

We strongly believe that the actions and the failures of the Federal Government over the past century and a half have contributed greatly to the extreme water shortage that currently exists in Acoma.

My people settled in places along the Rio San Jose long before the arrival of Europeans. We built our homes, raised our families, grew our crops, lived off the river. Our spiritual beliefs, songs and cultural ways reflected the landscape. Know that we are an ancient people. We have rituals that are hundreds, if not thousands of years old, and ceremonies that date back to our beginning.

To that time, we believe we emerged from the center place, a place we call Shipapu. We came into the world with a plan. We came with all that was necessary for us to survive. We emerged into this world accompanied by our deities, along with all of the things when we emerged.

We began our journey in a place that will become a part of who we are, a place prepared, a place that will reflect our world view, a place we call Haak'u. Know that our spirituality is intimately tied to the land. We define ourselves according to geologic formations and visible sightings. Our faith is tied to the springs, valleys, and mesas that reflect the expanse of who we are as Acoma people. That includes the Rio San Jose.

At this point in our history, our river has been subjected to a legacy of contamination and dewatering upstream from our communities. Contamination is a result of decades of uranium mining and milling in an industry created and supported by the Federal Government. We are suffering from years of contaminants seeping into

*The attachment to this prepared statement has been reviewed and retained in the Committee files.

our groundwater. Our springs are running dry, and the aquifers need recharging.

Climate change and severe drought conditions have reduced the snowmelt and contributed to declines in the water levels. Aquifers are no longer recharged. Access to a fresh water supply at this time is paramount. Only Congress can make this happen.

Know that the Rio San Jose once flowed rich with wildlife. Children in our villages played and swam in the deep, flowing river. Men in our villages used it to water farm and irrigate their fields. In fact, whole farming communities grew up along the Rio San Jose. Corn fields, alfalfa fields, and orchards were a common sight on both banks. Religious leaders attached ceremonial significance to our river as it wove its way across our traditional homelands.

Today the water flow is dramatically reduced. The watershed has been severely impacted by those upstream. Acre feet that are now entitled to what was unprotected by the Federal Government for over a century, now we look at a river and remember what was, not the shallow, barely flowing stream of today, depleted of water. Only Congress can right those wrongs.

Acoma has been engaged in the battle over the water and water rights for more than 40 years. We finally reached a settlement with all the local parties, including the State of New Mexico, other tribes, neighboring towns, and the Acéquiás.

The legislation is the result of delicate negotiations. It will establish Acoma's legal right to water along with a reliable water supply and protect water users in the region. Acoma faces a future where water supplies are far from certain. However, this legislation will allow water planning over the long term and ensure a sustainable water future for my people.

We urge your support for S. 4898. Thank you, Chairman, Madam Vice Chair. [Phrase in Native tongue.]

[The prepared statement of Mr. Vicente follows:]

PREPARED STATEMENT OF HON. RANDALL VICENTE, GOVERNOR, PUEBLO OF ACOMA

The Pueblo of Acoma ("Acoma" or "Pueblo") strongly supports S. 4898 because, if enacted, Acoma and its neighbors will have the resources to determine the region's water future and create an adequate wet water supply for the Pueblo for the first time in a hundred years. This legislation is the culmination of a decades long process to address critical water shortages for all water users in the basin, an area that's one of the most water-short places in the State of New Mexico. The Pueblo believes it will not only be able to survive, but also thrive, along with its neighbors, with the passage of this legislation. This settlement addresses the claims made by the United States on behalf of the Pueblos of Acoma and Laguna in *State ex rel. State Engineer v. Kerr-McGee, et al.*, a basin-wide adjudication of surface and ground water rights in the Rio San José Stream System.¹ In the course of negotiations with other water users, the Pueblo of Acoma also negotiated its water rights in the adjoining Rio Salado Basin to the south, and the Pueblo of Laguna negotiated its water rights in the Rio Puerco Basin to the east. It provides a level of certainty for all users in a time of growing water scarcity.

The Pueblo of Acoma *

Sky City, Acoma is the ancestral village and ceremonial heart of the Pueblo of Acoma.

¹The Rio San José adjudication involves all surface and groundwater users in the system, Parties are presently negotiating Navajo Nation claims at this time.

*The images attached to this prepared statement have been reviewed and retained in the Committee files.

The Rio San José Stream System has provided the primary source of water for the Pueblo of Acoma for centuries and well before the arrival of the first Europeans to this region. You may be aware that Acoma is one of the oldest continuously inhabited communities in the United States, if not North America. Acoma is located in the high deserts of the southwestern United States. In our area, water has always been the limiting resource. The average rainfall per year is 7 inches. We are in dire need of adequate water. The streams, aquifers, and springs that once fed the Rio San José, the life blood of our communities and support for our agrarian lifestyle, has been decimated over the last one hundred and sixty years due to the actions and the failures of the federal government. Today Acoma faces extreme water shortages.

The Acoma People settled at places along the Rio San José, long before the arrival of Europeans and some other tribal people. Our spiritual beliefs, songs and cultural ways reflected the landscape. Know that we are an ancient people. We have rituals that are hundreds, if not a thousand years old, ceremonies that date back to our beginning—to that time when we believe we emerged from that center place, a place we call Shipapu. We came into this world with a plan. We came with all that was necessary for us to survive. We emerged into this world accompanied by our Deities along with all living things and when we emerged, we began our journey in search of a place that would become a part of who we are, a place prepared, a place that would reflect our worldview, Haak'u, "the place prepared." That place is Acoma.

Our spirituality is intimately tied to the land. We define ourselves according to geologic formations and visible sightings.² Our faith is tied to the springs, valleys, mountains, and mesas that reflect the expanse of who we are as Acoma People and that includes the Rio San Jose. Know that the Rio San Jose once flowed rich with wildlife. We built our homes, raised our families, grew our crops, and lived off our river. Children in our villages played, fished, and swam in the deep flowing, waters. Men in our villages used the water to farm and irrigate their fields—in fact, whole farming communities grew up along Rio San Jose. Corn fields, alfalfa fields, and orchards were a common sight on both banks.

BIA 1918 Planting Report for Acomita: "Increased acreage of wheat. Three miles of ditch built by Indians 80 acres additional in cultivation" Acres cultivated 1,625 acres: Alfalfa 122, Beans 14, Corn 720, Garden truck 40, Oats 4, Orchard 20, Wheat 705."

BIA 1926 Crop Report for Acomita: 2,000 bs of apples & peaches of very good quality.

Religious leaders attached ceremonial significance to the river as it wove its way across our traditional homelands. While these ceremonial uses have been threatened over the past one hundred and fifty years due to low flows in the river, Acoma is not asserting any monetary liability associated with any temporary loss, for these uses which remain a vital part of Acoma culture today, and Acoma's right to continue those uses cannot be extinguished through any kind of monetary payment.

The Hydrology Of The Rio San José Stream System

The Rio San José Stream System in the absence of human activity is a fragile, dynamic ecosystem in an arid high desert environment. Today it is by far one of the most water-short river basins in New Mexico. Water begins its journey to the river as winter snow on the Zuni and San Mateo mountains, the latter of which includes Mount Taylor, a registered cultural property of Acoma and Laguna Pueblos. Snowmelt and summer monsoon rains feed both surface water and ground water aquifers. A network of faults related to volcanism around Mt. Taylor adds complexity to the regional hydrology of the basin.² The faults send groundwater to the surface forming springs such as Ojo del Gallo and Horace Springs. The primary aquifer to provide surface flow is the San Andres-Glorieta Aquifer. West of Ojo del Gallo, it is near the surface, below the alluvium. At the fault, it plunges 2,000 feet underground. At the fault, significant flows produced Ojo del Gallo and fed the alluvial aquifer of the Rio San Jose, and at a constriction in the bedrock, produced Horace Springs on the western boundary of the Pueblo of Acoma Grant. Other aquifers higher on Mount Taylor are also fed by snowmelt and monsoon rains. These aquifers discharged into the stream system as well, creating the surface water flows in tributaries such as Rinconada Creek that fed into the Rio San José as it flowed across Acoma and Laguna Pueblos.

²This has been documented in Dittert and Bibo, Topographic Features of the Pueblo of Acoma Land Claim 1952.

Acoma Water Use Prior to U.S. Sovereignty

Prior to United States' sovereignty over the region, the Rio San José supplied enough water for the Pueblos of Acoma and Laguna to not only survive, but to thrive. There is a wealth of archaeological evidence that Acoma has been irrigating its lands for at least 1,000 years. During times of low flow, Acoma employed walk-in wells to reach groundwater that was used to for domestic needs and to hand water gardens, and also directed modest ephemeral surface flows to crops that needed it. The first written record to describe Pueblo irrigation in the area now known as New Mexico describes Acoma Pueblo irrigating from the Rio San José in 1583.³ While there were small communities established by Spain and Mexico that could interfere with Pueblo uses on one of the smaller tributaries of the Rio San José, there were no mainstem upstream users prior to United States acquisition of the territory.⁴ In *State ex rel. State Engineer v. Kerr-McGee, et al.*, the Court found as follows:

Here, the undisputed evidence is that the Lagunas and Acomas had possession, occupancy, and beneficial use of land and water prior to the arrival of Europeans in the mid-16th Century. Indian title to the land was recognized and confirmed by the Spanish Crown and, similarly, the validity of Indian title was recognized by the Mexican Government. Neither Spain nor Mexico sought to divest the Acomas or Lagunas of any right, title or interest to the Pueblo lands.). *State ex rel. State Engineer v. Kerr-McGee Corporation, et al.*, Special Master's Report and Recommendations, November 5, 1992 .p. 40.

On the basis of the record in this proceeding, the Acomas and the Lagunas did indeed, acquire[d] aboriginal title. An aboriginal title is superior to that of any third person[.]” *Id.* pp. 43–44.⁵

When this matter was before the New Mexico Court of Appeals, that court confirmed these findings that Acoma still retained its time immemorial water rights to all lands within the Pueblo of Acoma Grant as approved by Congress pursuant to the 1858 Act.⁶ The United States, the State of New Mexico, Acoma and the parties to the settlement agree that Acoma's aboriginal water right was sufficient water to irrigate 1,870 acres of land with delivery of 5,610 acre-feet per year (“afy”), domestic rights of 693 afy and recognized the Pueblo's right to uses for uses.⁷

Destruction of the Water Supply

The Creation of Fort Wingate, 1862

Today the primary sources of water in the Rio San José are very few. Spring flow discharged from the San Andres-Glorieta aquifer. That aquifer and the aquifers that form Mt. Taylor have been mined so that most have gone dry. Only one spring, known as Horace Springs, contributes to the Rio San José so that a dwindling

³Hammond, George P. and Agapito Rey, Expedition into New Mexico Made by Antonio de Espejo, 1582 to 1583, Vol. 1 of the Quivera Society Publications, Los Angeles: 1929 at p. 87, See, also Herbert Eugene Bolton, ed. Spanish Exploration in the Southwest, 1542–1706, New York: Scribner's Sons, 1916, pp. 182- 183. Cutter, Charles, Water Use in the Rio San Jose Watershed: Acoma, Report prepared for U.S. Dept. of Justice, Oct. 1, 2003, p.4.

⁴The Cubero Land Grant was established in the Mexican period (1833) to the north of the Pueblo of Acoma. *Report to Congress—the Treaty of Guadalupe-Hidalgo—Definition and List of Community Land Grants in New Mexico*, U.S. General Accounting Office (2001) p.9. The community ditch or acequia for Cubero Land Grant is a party to the settlement.

⁵The District Court adopted the Special Master's recommendation that the Pueblos have aboriginal water rights that were not extinguished by Spain or Mexico. *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. CB–83–190–CV and CB–83–220–CV (consolidated) (N.M. 13 Jud. Dist.) *Order and Judgment Adopting Special Master's Report and Recommendations and Denying Motions for Reconsideration* (May 18, 1993). This holding was not appealed to the New Mexico Court of Appeals. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) *cert den'd* 120 N.M. 68, 898 P.2d 120 (1995).

⁶*Id.* In the Act of July 22, 1854, 10 Stat. 308, Congress established the Office of the Surveyor General of New Mexico, Kansas, and Nebraska. The Act directed the Surveyor General to report on lands held under Mexican law, with particular reference to Pueblos' holdings. Congress confirmed Acoma's aboriginal title to lands and waters in the Confirmation Act of 1858, Act of December 22, 1858, ch. 5, 11 Stat. 374.

⁷1,870 acres, consisting of 1,275 acres with points of diversion from the Rio San Jose mainstem; 265 acres with points of diversion from Rinconada Canyon, 163 acres with points of diversion from San Jose Canyon and 167 acres with points of diversion from the Acoma Grant south of main stem. These figures are a compromise. Data produced by United States. and Pueblo experts show that Acoma likely irrigated 2,500–2,700 acres in the Rio San José Valley. Keller-Bliesner Water Use Survey 2003, Prepared for U.S. Dept. of Justice (2,542.35 acres irrigated); Natural Resources Consulting Engineers, Inc., Summary of Past and Present Water Uses of Acoma Pueblo—*New Mexico State Engineer v. Kerr McGee*, 2005, p. 4 (2715.6 acres irrigated).

trickly slowly flows across the Pueblo. Now, some 80 years later, the flow from the spring has dropped dramatically to as low as 1.8 cubic feet per second (“cfs”) or 1,304 afy and rarely reaches 3 cfs, or 2,173.34 afy. Historically the Rio San José’s flows at Horace Springs were much, much greater, at least 14 cfs, or 10,142.27 afy. For the Ojo del Gallo parciales on the acequia south of Grants, no water has flowed from Ojo del Gallo spring for decades. Also, because of climate change and long-term drought, snow melt from the Zuni and San Mateo Mountains is now significantly reduced limiting flows into Bluewater Lake.

The drop in snow melt has also contributed to reduced water levels in streams and aquifers.

Beginning in 1862, with the establishment of Fort Wingate by the United States Army on Acoma aboriginal lands, the United States was responsible for the diversion of Ojo del Gallo spring flow that provided approximately one-third to one-half of the surface water supply to the Pueblo of Acoma, with the knowledge that Acoma used this water. After the Fort was moved west to its present location near Gallup, New Mexico, the United States did not act to return the spring flow to the Rio San José, or prevent others from using it, despite knowledge that the Pueblo relied on the flows. It was known to be one of the most productive springs in the region. Even without those flows, Horace Springs was producing 10 cfs or 7,244.47 afy, about half the pre-U.S. flow.

Allowance of Bluewater Dam and the Bluewater-Toltec Irrigation District Without Enforcement of Pueblo Senior Water Rights

In the late 1890’s homesteaders upstream from Acoma attempted to dam Bluewater Creek, the major tributary of the Rio San José. By the 1920s, the backers of the dam created the Bluewater Dam (“Dam”) and Bluewater-Toltec Irrigation District (BTID) that cut off significant upstream flows, even though the flow would never be enough to supply all of the land within the BTID. Originally meant to service 2,000 acres of land for irrigation it grew to much greater acreage with the building of the significantly larger Bluewater Dam in 1927.

When the farmers in the BTID could not get water from the Dam to irrigate up to 5,488 acres, they turned to groundwater after the introduction of the submersible pump in the 1950s, receiving authorization from the New Mexico State Engineer to drill supplemental wells. Those wells tapped the San Andres-Glorieta aquifer. This groundwater use siphoned off water that would have flowed as surface water in the Rio San José across the Pueblo due to the hydrology of the basin. Over time, the flow of the Rio San José at Horace Springs decreased to between 5 and 6 cfs.

The United States, while aware that the Dam was interfering with Pueblo water use, ultimately did nothing despite repeated Pueblo objections. Attorneys for the Pueblo appointed by the United States initially preferred to believe the backers of the Dam who disclaimed any effect on Pueblo water or tried to placate the Pueblo with the notion that federal legislation, what eventually became the Pueblo Lands Act of 1924, would resolve the problem. In the 1930s, the Bureau of Indian Affairs (BIA) suggested that the United States actually purchase lands in BTID to free up water for the Pueblos. This was rejected by the Washington D.C. leadership of the BIA. After the United States finally requested a release of stored water from the Dam for the Pueblos in the 1940s, it took no action to actually enforce the Pueblos’ right to water when the BTID declined the request, although BTID was on notice that the United States would not look favorably on a denial of water to the Pueblos. The United States may have been upset with BTID, but it did nothing.

The United States did nothing to stop the drilling of supplemental wells that tapped the San Andres-Glorieta Aquifer which provides the lion’s share of surface water through the Pueblo. Acoma strongly objected to this groundwater pumping as a means of supplementing inadequate surface flows for BTID farmers, and that was duly noted by William Brophy, Special Attorney for the Pueblos. On March 30, 1949, Governor Julian Chino of Acoma wrote to the BIA stating that the Pueblo was worried about the water situation in the Rio San José: “It is getting low; not enough to irrigate farms because on Bluewater area wells are being drilled. What can be done to help us?”. In May of 1949, the Superintendent of the BIA United Pueblos Agency wrote to Brophy about Acoma’s concerns.

Some time ago I sent a memorandum to Mr. Boldt about the concern of the Acoma Pueblo about the underground water in the vicinity of Acoma. I have discussed this problem of trying to control the drilling of wells, etc. in the

Bluewater area with several people, but somehow I can't get anything definite as to what I should do to try to control it.⁸

The United States' response was to express concern but do nothing to defend the Pueblo's right to water. Handwringing and commiseration does not water crops needed for survival.

Even when Congress enacted the Pueblo Lands Act in 1924 to enable the replacement of Pueblo land and water due to the past failure of the United States to protect Pueblo rights, no action was taken to replace what Acoma had lost through these trespasses to its water rights.⁹ Yet reports of the Pueblo Lands Board pursuant to the 1924 Act alerted the Attorney General of the United States to the trespasses occurring on Pueblos' water rights, and the need for action to protect against such trespasses. For example, one of the Board's reports on the Pueblo of San Ildefonso stated:

Fifth—That it is the duty of the United States as guardian of these Pueblo Indians, to assert and define these principles and to take such action, legal or otherwise, as will prevent the use of the waters of these streams by other than Indians to any greater extent than is consistent with such principles so announced. . .

[W]e believe that the matter of the Indians' water priorities should be brought to an issue by the Government as soon as possible. What might be done, it would seem is to determine definitely how much water the Indians need to properly irrigate the lands they now have under irrigation, or would cultivate if they had the water for it, then see to it that the ditches serving these lands are in proper condition; then serve notice on all non-Indian users above any of these Indian lands that they are entitled to no water, except such surplus as there may be after the Indians' needs are sufficiently provided for. This would probably necessitate Government ditch riders with power to see to it that the Government's orders are enforced. If such orders were resisted, the matter could then be tested out by adequate court action and that might reasonably be expected to result in definite arrangements whereby all the water (or so much of it as might be required) should be allowed to flow to Indian lands for defined periods.¹⁰

Despite this clear directive in 1929, the United States did not take action to restore Acoma's water rights until 1982 when the United States belatedly filed an action against the BTID for trespass to the water rights of Acoma and Laguna Pueblos. The history of the litigation is discussed in *United States v. Bluewater-Toltec Irrigation Dist.*, 530 F.Supp. 1434 (D.N.M. 1984) ("Bluewater-Toltec"). The United States sought declaratory relief for both the priority and quantity of Acoma's and Laguna Pueblos' water rights, as well as damages and a permanent injunction on a trespass theory against the Irrigation District and its members.¹¹ After several procedural disputes, the federal court case was dismissed so the Pueblos' water rights would be quantified in the state court adjudication.¹² However, the Court

⁸General Superintendent to William A. Brophy, Special Atty for the Pueblo Indians and Erite T. Hagberg, November 29, 1949.

⁹The Pueblo Lands Act of 1924 (Act of June 7, 1924, 43 Stat. 636, Ch. 331) created the Pueblo Lands Board which was tasked with reporting on land and water use on Pueblo lands by non-Indians. The Board believed that absent loss of land, the right to water was not lost and need not be replaced, just enforced. See, Report No. 2 for Pueblo of San Ildefonso. In 1931, congressional hearings were held on the operations of the Pueblo Lands Board. *Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, United States Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932. No compensation was awarded for trespass to water rights absent loss of land. Acoma did not lose any land, so no compensation was awarded for its loss of the use of water due to upstream. See Act of May 31, 1933, 48 Stat. 108.

¹⁰*Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, United States Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932, 10977-78.

¹¹The complaint explicitly stated that it did "not seek a general stream adjudication to determine the full extent of the Pueblos' rights to the use of the Rio San Jose, its tributaries and the underlying groundwater basin." *United States v. Bluewater-Toltec Irr. Dist.*, 580 F.Supp. 1434 at 1427-38 (D.N.M. 1984); *aff'd* 806 F.2d 986 (10th Cir. 1986).

¹²The court holds that the state court actions are sufficiently comprehensive to withstand the United States' motion to dismiss based on a failure to name all claimants and Indian sovereign immunity. There is a want of federal jurisdiction, however, over the removed action. But even if removal jurisdiction could be sustained on a federal question theory, the removal of these state court actions would be defective because all defendants did not join in the removal petitions. After a review of this water litigation, the court concludes that the federal action should

was careful to dismiss without prejudice so trespass claims asserted against the BTID and other non-Indian water users could be determined after the Tribal water rights were quantified.¹³ This ruling preserved the damages claims based on trespass to Pueblo water rights. Therefore, the trespass claims that were made in the federal court action will only be resolved through this legislation. If the settlement agreement is not authorized through this legislation, these claims remain to be resolved.

Today, forty years since the filing of the trespass action, and more than 90 years after the construction of the Dam, the United States has not acted to limit the use of surface or groundwater by the BTID or other users so as to provide the Pueblos with an adequate water supply.¹⁴

Ojo del Gallo, 1950s, after depleted due to upstream pumping of San Andres Glorieta Aquifer beginning in 1940s. This spring went dry by 1960.

From 1952 Dittert and Bibo “Topographic Features of the Acoma Land Claim (submitted to Indian Claims Commission in *Pueblo de Acoma v. United States*, Docket 266).

The Uranium Boom—1950 to 2019

The search for uranium has been the only United States government—induced, government maintained, government-controlled mining boom in this nation’s experience. For the ore pouring from the mines of the western deserts and mesas there is but one important purchaser—the Atomic Energy Commission; but one prime destination—the weapons arsenal of the United States; and but one price—that established by the government.¹⁵

When the United States lit up the New Mexico desert with the detonation of the first atomic bomb, it set off an arms race now referred to as the “Cold War.” At the start of the Cold War, the United States’ government created and fueled demand for enriched uranium to supply the nuclear weapons program. The effect on the Stream System was profound.

Groundwater depletions expanded beyond reason in the Atomic Age after uranium was discovered in the Grants Mineral Belt upstream from Acoma. Uranium mining and milling began within the Rio San José Basin, at the instigation of, and with the complete backing of the United States government, the only purchaser of the processed uranium.¹⁶ The uranium was located in the same rock formations where water was stored—aquifers—and that water supplied perennial springs within the Basin, many of which contributed to Rio San José flows.¹⁷ These aquifers, and those located above them, were dewatered by the mining companies to create mineshafts and to facilitate removal of the uranium, thereby depleting spring flow contributions to tributary flows to the Rio San José. The mining companies were not even required by the United States or the State of New Mexico to put the water that was removed from the aquifers into the Rio San José stream system. Instead, the water was discharged into an adjoining river basin. In 1980 the New Mexico State Engineer estimated that some 40,000 to 50,000 acre feet of water yearly were being discharged into the adjoining river basin during the due to dewatering activities. At that time it was also estimated that by 1987, an aquifer with an estimated annual

be deferred in favor of a general adjudication of the Rio San Jose in state court.” 580 F.Supp at 1437.

¹³“That general adjudication will have a profound effect on the nature and extent of any claims made by the United States. A general adjudication involving some 1600 claimants will take years to complete. It serves no good purpose for this unfocused federal trespass action to linger while the general adjudication proceeds. Once the general adjudication is completed, or it there should be “a significant change in circumstances,” the United States may resort to federal court.” 580 F.Supp at 1447.

¹⁴Acoma’s 1951 petition for compensation for land and water before the Indian Claims Commission (*Pueblo de Acoma v. United States of America*, Docket 266, 18 Ind. Cl. Comm. 154 (1967)) did not resolve the question of United States liability with respect to Acoma’s depleted water supply due to the Bluewater dam. See, Order Amending Findings of Fact and Opinion, 19 Ind. Cl. Comm., 152, May 2, 1968. The settlement of that litigation did not affect Acoma claims to water to irrigate its grant lands. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) cert den’d 120 N.M. 68, 898 P.2d 120 (1995).

¹⁵Lang, Herbert, “Uranium Mining and the AEC: The Birth Pangs of a New Industry,” *Business History Review*, Vol. 36, No. 3 (Autumn 1962), p. 325.

¹⁶Alvarez, Robert, “Uranium and the Acoma Pueblo,” February 17, 2020, Appendix “Purchases of Uranium by the Atomic Energy Commission.”

¹⁷“In San Juan, McKinley and Valencia [Cibola] counties, the host rock for much of the uranium ore is the Westwater Canyon Member of the Morrison Formation. The Westwater Canyon Member is also a principal aquifer in the area. Gottlieb, Gail, “New Mexico’s Mine Dewatering Act: The Search for Rehoboth”, 20 Nat. Resources J. 653, 1980 (October 10, 1979). Note that Cibola County was created out of Valencia County in 1981.

recharge of 5,000 afy could have been losing up to 100,000 afy.¹⁸ Water, along with uranium was being mined at an exorbitant rate.

The mined uranium ore had to be made into usable uranium—yellow cake. This was done at mills located on lands overlying the alluvial aquifer in the Stream System. Four uranium mills for creating yellowcake were upstream from Acoma: Bluewater Disposal, now known as the ARCO site northwest of Grants, Rio Algom (formerly Kerr-McGee and Quivira) and Phillips-United Nuclear Corporation in the Ambrosia Lake area and one operated by Homestake-Barrick a short distance north of Grants. Milling facilities also consumed large amounts of groundwater.¹⁹

With the booming growth of this mining economy, the upstream village of Grants, which had a population of 1,347 in 1940²⁰ exploded to over 10,000 people in the 1960s.²¹ It relied on the increasingly stressed groundwater to supply the exponential growth of this community without any protest by the United States on behalf of the Pueblos. The population of Grants peaked at 11,439 in the 1980's.²² Following the collapse of the uranium mining industry when the United States removed its price supports, the population began to fall and in 2018 was less than 9,000 people.²³

Another off-shoot of the uranium boom was the location of the Plains-Escalante Generation Station (PEGS) electricity generation facility in the headwater area of the Rio San Jose. Originally conceived to power the uranium boom and associated population growth, the electric company purchased water rights from the farmers in the BTID and those on the Ojo del Gallo Ditch who had supplemental groundwater wells to supply most of its water requirements. This dewatered the irrigation district through acquisition and transfer of multiple agricultural water rights. These rights that were historically used only during the growing season, with significant return flows downstream became a use that consumed 100 percent of the water transferred.²⁴ Plains Electric and its successor, Tri-State Generation and Transmission Association, Inc. ("Tri-State"), claim to have used up to 4,272.13 afy.²⁵ Tri-State's water use decreased after the decline of the uranium industry in the basin. From 2014 to 2018, Tri-State reported consumptively using no more than a total of 5,539.34 acre-feet of water, all mined from the declining San Andres-Glorieta Aquifer.²⁶

Again, the United States did not limit this large industrial use so that prior Pueblo uses could be maintained. Indeed, the approach of the United States after an initial challenge was to reserve these issues for the adjudication of the Basin—the litigation that is settled for the Pueblo with this legislation—rather than pursue an appeal.²⁷ Tri-State has closed the coal-fired PEGS in 2019, and a potential sale or lease to another energy company for hydrogen production has been proposed. The new company will likely assert the right to mine large amounts of water from the Rio San Jose alluvial aquifer and the San Andres-Glorieta Aquifer.²⁸

The uranium boom did not just increase depletion of the Rio San José Stream System. Uranium mining and milling operations generated liquid wastes, or effluent. Effluent included process waters from unlined on-site ore operations, and uranium milling operations. Effluent discharged prior to the establishment of state and

¹⁸*Id.*, citing S.E. Reynolds, Statement of Mine Dewatering presented to the Interim Legislative Committee on Energy and Environment of the New Mexico Legislature (Nov.29, 1979) at 1.

¹⁹The Bluewater Milling site claims use of 4,000 afy of water, Rio Algom claims use of 9,000 afy and the Homestake Mill site claims use of 1,300 afy. Homestake acquired the water rights from irrigators in the BTID and transferred the place of use to the mill site. *See, generally*, Records of the N.M. Office of the State Engineer.

²⁰R.H. Sears, "Appraisal Report of the Acoma Pueblo Land, State of New Mexico As of 1901-1936", Prepared for the United States Department of Justice (1970) at pp. 81-82

²¹T3ASee <https://population.us/nm/grants/> (citing US Census data).

²²*Id.*

²³*Id.*

²⁴The steam generated by the plant was used by a paper mill. It is not at all clear that in approving the transfer of these irrigation-based water rights to an industrial use, the State Engineer actually considered that agricultural rights are uses for only the growing season and do not consume all water diverted while these industrial uses are totally consumptive and are used throughout the year.

²⁵N.M. Office of the State Engineer, *Final Inspection Report of Beneficial Use of Underground Waters*, File No. B-7 (1-19-2000); File No. B87-B-S-2,4,5,6 (1-9-94), File No. 13-5-F, B-44, B-45-X (1-10-89); File Nos. B-17, B-18,-19 and B-20 (3-4-86).

²⁶Smyth, Joe, *Coal and Water Conflicts in the American West*, Energy and Policy Institute, July 15, 2020. <https://www.energyandpolicy.org/coal-water/>.

²⁷Monson, Peter C. U.S. Department of Justice, letter dated April 29, 1986 to Arturo Ortega and Harold A. Ranquist, counsel for Pueblo of Acoma.

²⁸*See* <https://nmpoliticalreport.com/2021/04/20/the-retired-escalante-power-plant-may-be-converted-into-a-hydrogen-plant/>.

federal regulations underwent little or no treatment prior to discharge. Runoff from contaminated soils and previous untreated discharges continue to threaten regional bedrock drinking water aquifers and shallow alluvial aquifers connected to San Mateo Creek and the Rio San Jose. Extensive mine dewatering during mine operations also created a regionally extensive cone of depression into which oxygenated groundwater continues to flow. Oxygenated groundwater can dissolve and mobilize unmined uranium and other hazardous constituents within the aquifers.

Decades of uranium milling activity in the region caused widespread groundwater contamination in alluvial and other shallow aquifers.²⁹ According to the U.S. Environmental Protection Agency (EPA) in its Grants Mining District, New Mexico 2015–2020 Five-Year Plan to Assess and Address Health and Environmental Impacts of Uranium Mining and Milling, few of the legacy mines have undergone reclamation.³⁰ The mills either impounded their effluents, or tailings, in unlined evaporation ponds, injected both treated and untreated effluent into local groundwater aquifers, or released effluent into San Mateo Creek. Tailing seepage has contaminated the Rio San Jose alluvial system and the bedrock San Andres-Glorieta aquifer with molybdenum, selenium, and uranium.

Cleanup of contamination has used and continues to use extensive water resources. For example, Homestake-Barrick Mining Company (HMC), licensed by the Atomic Energy Commission, and now licensed by the U.S. Nuclear Regulatory Commission (No. SUA-1471), operated two uranium mills from approximately 1958–1990. During operations, approximately 22 million tons of ore were milled at the site, using a conventional alkaline leach process.³¹ This milling activity caused widespread groundwater use and contamination of the alluvial and nearby aquifers. The mill site was declared a Superfund Site by the EPA and has been in reclamation since 1990, following the demolition of the mill. At present the contamination plumes from the Atlantic Richfield Company mill tailing site and that at the Homestake site are converging.³²

Cleanup of the Homestake site has used extensive water resources and has not been wholly successful.³³ “The contaminant plume has receded back almost three-quarters of a mile into the site boundaries of HMC by injecting fresh water down gradient of the site. Nearly 4.5 billion gallons of contaminated water have been removed and 540 million gallons of treated water have injected into the aquifer.”³⁴ Acoma submitted multiple protests to HMC’s applications to drill supplemental wells in the Bluewater Underground Water Basin, on the grounds that there is insufficient unappropriated water available to satisfy Homestake’s request, yet the applications were approved.³⁵ The United States did nothing.

²⁹The discovery of large subsurface uranium deposits within the Jurassic Westwater Canyon Member of the Morrison Formation at Ambrosia Lake resulted in the establishment of two-thirds of the active uranium mines in New Mexico within the Ambrosia Lake Mining Sub-District by 1980. See U.S. Environmental Protection Agency, *Administrative Settlement Agreement and Order on Consent for the San Mateo Creek Basin Legacy Mines Sites, Dec. 3, 2019*. Ambrosia Lake is in the northwestern portion of the Rio San Jose Basin and the adjoining San Juan Basin.

³⁰As noted on the website, approximately 50 percent of the abandoned mines have not yet been located. The New Mexico Mines and Minerals Department website contains a map which vividly depicts the extent of uranium mining in the Rio San José Stream System upstream from the Pueblo of Acoma (available at <https://www.arcgis.com/apps/dashboards/91f296cb3ea24f689329eb5075ec3bb7>).

³¹EPA Third Five-Year Review Report, Homestake Mining Company Superfund Site, (EPA ID: NMD007860935) Cibola County, New Mexico.

³²U.S. DOE Legacy Management Report: *Evaluating the Influence of High-Production Pumping Wells on Impacted Groundwater at the Bluewater, NM Disposal Site* (August 2020).

³³See generally, Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429.

³⁴5/9/2019, Homestake Mining Co., Superfund Site Profile, Superfund Site Information

³⁵Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429. (“Groundwater cannot be treated exactly like surface water because once appropriations exceed the natural recharge in an aquifer, it is being mined. It cannot be treated as a reoccurring resource. Based on the drop in flow from Ojo Del Gallo at San Rafael, which is historically related to depletion of the San Andres-Glorieta aquifer, this aquifer is already being mined to meet present uses, threatening senior water users. Supplementing Homestake’s use will result in a greater possibility that water will be insufficient to meet the needs of the holders of senior water rights.”)

In 2012, the New Mexico Office of the State Engineer approved HMC's application to temporarily divert 4,500 afy and drill 839 supplemental wells.³⁶ This "temporary" permitted use is in addition to applying the 1,200 afy water right claimed by Homestake for reclamation activities. Despite Acoma's protests, the Office of the New Mexico State Engineer has approved the installation of at least 600 wells as of 2016 for the reclamation project, further draining the region's water supply.³⁷ The United States has not protested these actions. According to EPA reports, 5,855,488,029 gallons of water, or 48,658.72 acre-feet of water were pumped from the alluvial aquifer from 1978–2014 at this one site. The amount pumped from the San Andres-Glorieta aquifer in the same period is likely to be more as the remediation effort pumped water from the San Andres-Glorieta Aquifer and then injected it into the alluvial aquifer. This is likely to continue for the future as the pumping regime is needed to prevent the contamination plume from migrating south to the Rio San José. According to reports, water levels in three wells in the San Andres-Glorieta aquifer under Acoma, east of the San Rafael Fault where the aquifer is 2,000 feet below the surface, have declined by 46 feet³⁸ since 1998.³⁹ The alluvium underlying the primary tributary to the Rio San José from the western side of Mount Taylor, San Mateo Creek, is so contaminated that the New Mexico Environment Department warns users against using the water. On July 16, 2019, the San Mateo Creek Basin was added to the Superfund Site Emphasis List by the EPA, thereby being targeted for "immediate, intense action."⁴⁰

Today, it is acknowledged that the groundwater within the Rio San Jose Basin has been and continues to be mined without replacement. Withdrawals far exceed recharge. It is no longer a renewable supply that can be sustained into the future, and absent restriction of all non-Pueblo uses, will never be replaced. Surface flow at the western boundary of the Pueblo of Acoma Grant, fed by springs and groundwater, have decreased from average annual flow measured at the federal gauge of over 10 cfs in 1940 to more recent levels in the range of 2 to 3 cfs. and the flow continues to decrease. Experts agree that even if the United States now enjoined most of the upstream users, the water supply is so depleted that it would take decades for sufficient water to reach the Pueblos to meet minimal needs.

This Legislation and the Settlement Would Give Acoma an Opportunity for a Very Different Water Future

This proposed settlement, unlike a prohibition on all upstream users, will make alternative water supplies available to the Pueblo, forgoing enforcement of the Pueblo's senior priority in time of shortage. Acoma will be required to give up the full senior priority that normally attaches to time immemorial rights in times of shortage. This is a significant loss to Acoma, but the ability to get wet water is a trade-off that Acoma is willing to make. Damages attributable to the United States' actions and failures to act on behalf of Acoma alone equal almost \$500 million.⁴¹ The greatest part of these damages goes to the cost of locating and bringing a wet water supply to the Pueblo that does not affect all the other water users in the Stream System. The promise of the 1924 Pueblo Lands Act to replace water lost water will be met. S.4898 would provide funding for feasibility studies to determine if water in the only presently unused aquifer in the Stream System, the Westwater Canyon Member of the Morrison formation, can be sufficiently treated and transported to the Pueblo to provide a water supply equal only to what it consumptively used for irrigation in the past, the 1,870 acres. Even if this is not ultimately feasible, the same level of funding is required to locate, treat and maximize whatever sources can be found in the Stream System. It also provides funding for improvements to

³⁶ See Feb. 6, 2012 letter from NM Office of the State Engineer. A temporary diversion request of 4,500 was approved in Feb. 2008.

³⁷ U.S. Environmental Protection Agency, Fourth Five-Year Review Report for Homestake Mining Company Superfund Site, September 2016.

³⁸ Kathy Helms, "Official: Dilution Helps Reduce Uranium Mill Contamination", Gallup Independent, May 5–6, 2018.

³⁹ Homestake is now proposing to the National Remedy Review Board that the remediation effort be halted as complete remediation is characterized as unfeasible. See, National Remedy Review Board on EPA's Proposed Plan for Homestake Mining Company Superfund Site, CERCLA # NMD007860935. The Pueblo of Acoma opposes any determination that remediation should be excused.

⁴⁰ <https://www.epa.gov/newsreleases/epa-administrator-andrew-wheeler-updates-superfund-emphasis-list-adds-san-mateo-creek>

⁴¹ The trespass damages and replacement costs were determined by Industrial Economics Incorporated, Economic Damages to the Pueblo of Acoma Resulting from U.S. Actions and Failure to Prosecute Water Rights, November 2020, The report has been shared with Congressional Staff and the United States. The replacement costs were updated as of April 25, 2022 based upon settlement agreement terms.

the water delivery systems of all users, Milan and Grants, and the Acequias at State expense, so that the present diminished water supply can be conserved and used more efficiently for all.

With this fund-based settlement, the Pueblos of Acoma and Laguna are taking the risk and responsibility for their water future in light of the federal government's past failures. Even so, it cannot be said that this will make the Pueblo "whole" as to the damages suffered. Note that Acoma is not claiming any future losses due to its inability under the agreement to fully use its full measure of senior priority water rights as set forth in the settlement. At present, this amount cannot be fully determined so as to be quantified for purposes of settlement. However, in the absence of settlement, the United States and the Pueblos would have to continue to litigate to quantify all of the Pueblo's water rights and enforce the Pueblo's full senior priority in times of shortage in the Rio San Jose Basin and in the Rio Salado Basin. While no adjudication has been initiated in the Rio Salado Basin, the settlement addresses the claims that the United States would be bound to litigate and enforce in that Basin as well. The costs of that enforcement effort would be extensive. Almost 100 years ago, the United States Attorney General was told that it was necessary to take this action to protect the Pueblos' ability to use their water. The United States failed to act for a very, very long time, and now the cost of protecting and enforcing the Pueblo of Acoma's time immemorial water right is much greater.

Approval of the Settlement brings something of much greater value to the Rio San Jose Stream System. It is the product of an intensive collaborative effort among all governments and Stream System users. It contains procedures for consultation and to allow for full participation in water management decisions by all parties that must rely on this very scarce water supply. This is a water future that Acoma desperately needs and supports whole-heartedly.

Senator MURKOWSKI. Thank you, Governor.

The CHAIRMAN. [Presiding.] Thank you very much for your testimony. The Honorable Martin Kowemy, Governor of the Pueblo of Laguna. Thank you.

**STATEMENT OF HON. MARTIN KOWEMY, JR., GOVERNOR,
PUEBLO OF LAGUNA**

Mr. KOWEMY. [Greeting in Native tongue.] Good afternoon, Chairman Schatz and Vice Chair Murkowski and members of the Committee. My name is Martin Kowemy, Jr., and I am the Governor of the Pueblo of Laguna. The traditional name of the Laguna people is Kawaika, meaning lake people.

I am here today to discuss S. 4898, the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022. The lack of water in the Rio San Jose Basin is over 150 years in the making. Today our basin is one of the driest in the State of New Mexico, if not the Country. Without Congressional action, things could only get worse.

The Pueblo of Laguna's economy has historically relied heavily on subsistence style farming and trade. We use water from the River San Jose to produce food to feed our families and to sell or trade for other necessary items.

Our ancestors, in addition to being farmers, were master dam builders and water engineers. We designed and built vast systems of irrigation ditches and massive reservoirs before our first contact with the Spanish. We irrigated our lands using these systems until the United States began replacing them with concrete structures in the early 20th century.

However, the Federal Government neglected to maintain or rebuild the system they imposed on us, and we could not maintain using our traditional methods and materials. The Laguna Reservoir built by our ancestors stood the test of centuries.

Yet, you visit our pueblo today, you will not see that reservoir next to the village of Laguna, the principal village of the six villages in our community. Nor will you see the new Laguna Reservoir built by the U.S. to replace it, because it is filled in with sediment. The dam breached decades ago. It was never replaced by our trustee.

During this time, junior upstream users increasingly accessed the water source that fed our river. Upstream divergence in the mainstream Rio San Jose began in the late 19th century. In the 20th century, junior users began tapping the groundwater in ever-increasing amounts. The flow of the Rio San Jose has dropped over 90 percent from pre-developed levels at the point where it reaches the pueblo.

Without enough water from the Rio San Jose to grow enough crops, pueblo members were forced to purchase food instead of growing it. Despite these devastating losses, we did not stop maintaining and irrigating from our traditional ditches. We did not stop our traditional ceremonies. We still use the meager amount of water remaining to grow what we can and follow our traditional practices, even though it is not nearly enough to provide for our people.

This water rights settlement will recognize the Pueblos' senior water rights and protect what little flow is left in the Rio San Jose. S. 4898 is a product of over 40 years of litigation and eight years of negotiation. Despite our request, the U.S. did not file a lawsuit against major junior groundwater users on our behalf in Federal District Court until 1982. Some of those users immediately filed a State lawsuit to start the general stream adjudication and defer resolution of the Federal claims. The adjudication has crawled along since then.

In early 2014, the Pueblos and the U.S. and the State of New Mexico and other major stakeholders decided to look for a negotiated resolution for the Rio San Jose Basin. Our negotiations resulted in the settlement agreement that forms the basis of the legislation before you.

The Pueblo appreciates the State and our neighbors in the valley for setting aside differences in their interest of a more water-secure future for everyone in the valley. The Pueblo needs this water rights settlement, but we believe that shutting down our neighbors would not solve the problem. Our approach to this is to find an alternative source of water supply for the Pueblos.

In keeping our tradition as water engineers, we are not asking the Federal Government to build a project for us. In our fund-based settlement, we take on the management and responsibility of water infrastructure planning, permitting, development, operations, and maintenance. We, along with the Bureau of Reclamation, studied the potential water resource of water infrastructure costs in detail. Our study shows that finding, developing, and conveying replacement water to our Pueblo is not cheap.

But in exchange for meaningful funding to secure and develop water, the Pueblos agree to make no priority calls against non-Indian users under existing water rights, and not impair other users on development and use of groundwater by the Pueblos on Pueblo

lands. We believe this is the best resolution for our Pueblo and the communities in Rio San Jose.

Passage of S. 4898 is necessary to secure the future of the Pueblo of Laguna. We believe that this settlement provides the best opportunity for Pueblo to determine its future, because it empowers us to secure and develop appropriate water sources for our community.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.

[The prepared statement of Mr. Kowemy follows:]

PREPARED STATEMENT OF HON. MARTIN KOWEMY, JR., GOVERNOR, PUEBLO OF LAGUNA

Good afternoon Chairman Schatz, Vice-Chairwoman Murkowski and members of the Committee. My name is Martin Kowemy, Jr. and I am the Governor of the Pueblo of Laguna. The traditional name of the Laguna people is *Kawaika*, meaning lake people.

I'm here today to discuss S. 4898, the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022. I'm going to tell you about the history of our Pueblo and changes in our basin necessitating this settlement. I'll then highlight the major elements of the settlement legislation and the benefits it will provide to the Pueblo.

Before I start, I'd like to note that the lack of water in the Rio San Jose Basin is over 150 years in the making. As it stands, our basin is one of the driest in the State of New Mexico, if not the country, and without Congressional action things will only get worse.

1. The Pueblo's Long History of Agriculture on the Land Base We Have Occupied Since Time Immemorial

The Pueblo of Laguna's economy has historically relied heavily on agriculture, particularly subsistence style farming and trade.¹ We used the water available to us to produce food to feed our families and to sell or trade for items we could not produce ourselves.

We have always been farmers² and water engineers. We know from our oral traditions, and from recent geo-archaeological investigations, that our ancestors, in addition to being farmers, were master dam builders and water engineers.³ They designed and built vast systems of irrigation ditches and massive reservoirs before the first Spanish contact with Pueblo people.*

In fact, early Spanish explorers recognized our extensive water distribution and retention systems and made note of them. The first mentions of Pueblo irrigation systems in New Mexico were made in 1581 and 1582 by the chroniclers of the Chamuscado-Rodriguez and Espejo expeditions, respectively. Diego Pérez de Luxán's report of the Espejo expedition describes "many irrigated planted fields of corn, with their ditches and dams . . ." in the area between "a large lake [*una laguna grande*]" on the Rio San Jose and a place about four leagues (approximately thirteen miles) upstream.⁴

This laguna would have been the large reservoir behind a dam on the Rio San Jose built by our ancestors next to Old Laguna. The ditches in fields within this 13-mile area would have been on lands still held today by Laguna and Acoma.⁵

¹Robert L. Rands, 1974, Laguna Land Utilization: an Ethnohistorical Report, pp. 211–407 in David Agee Horr, ed., *Pueblo Indians IV*, New York: Garland Publishing, pp. 328–329.

*The images attached to this prepared statement have been reviewed and retained in the Committee files.

²The sweet corn grown today at our Pueblo is believed to be an aboriginal cultigen. George F. Carter, 1948, Sweet Corn Among the Indians, *Geographical Review* 38(2):218.

³See Gary Huckleberry, T. J. Ferguson, Tammy Rittenour, Christopher Banet, and Shannon Mahan, 2016, Identification and Dating of Indigenous Water Storage Reservoirs along the Rio San José at Laguna Pueblo, Western New Mexico, USA. *Journal of Arid Environments* 127:171–186; see also Julian Scott, 1893, Pueblos of Laguna, Acoma, and Zuni, in *Moqui Pueblo Indians of Arizona and Pueblo Indians of New Mexico: Extra Census Bulletin* by Thomas Donaldson. Government Printing Office, Washington, D.C., pp. 123–124.

⁴See Richard Flint, 2015, Laguna Pueblo History Revisited, *New Mexico Historical Review* 90(1):7–30 at 20–21; Richard Flint, *Translation and Analysis of Spanish Documentary Sources: Supplemental Report*, Expert Report, *Kerr-McGee*, 5–8 (Jun. 22, 2012).

⁵See Flint 2015 at 21.

The Laguna people continued to rebuild and maintain our dams and ditches ourselves throughout the Spanish and Mexican periods and into the American period.⁶ In 1846, Jacob Robinson, a member of the Doniphan expedition, described our reservoir at Old Laguna as follows:

Here is one of the most singular marks of civilization ever seen among the Indians. Across a ravine is built a dam of rock 150 feet long, and 50 feet high; this stops the water that comes down from the mountains in the rainy season, and forms a lake six or eight miles in circuit, where otherwise here would be a dry plain. In the dry season they let out the water as they need it upon their lands, and thus raise good crops, and support two thousand inhabitants with large flocks, where but for this contrivance would have been nothing but the wild and arid desert.⁷

We continued to irrigate our lands using our traditional systems into the early 20th century. Then in the early 1900's, the U.S. Indian Irrigation Service began replacing our centuries-old irrigation systems with concrete structures but neglected to maintain or rebuild the concrete structures they imposed on us. We could not maintain these replacement structures using our traditional methods and materials.⁸

The Laguna reservoir built and maintained by our ancestors stood the test of centuries. Yet if you visit our Pueblo today, you will not see a reservoir next to the Village of Laguna, the principal village of the six traditional villages that comprise our vibrant community. The New Laguna Reservoir built by the U.S. in replacement of our reservoirs on the Rio San Jose sedimented in and its dam was breached decades ago.⁹ It still has not been replaced by our trustee.

2. The History of Major Upstream Water Development by Junior Users

While the Pueblo increasingly suffered from the cumulative effect of the U.S. neglect of replacement irrigation structures, junior upstream users increasingly accessed our water without challenge from the United States until it was too late to prevent the devastating impacts to our water supply and our people.

Up until the late 19th Century, the Pueblos of Acoma and Laguna (collectively "Pueblos") irrigated thousands of acres of agricultural fields along the Rio San Jose.

Upstream diversions on the mainstem Rio San Jose began in the late 19th Century, depriving both the Pueblo of Laguna and Acoma of surface water. These diversions included Fort Wingate in the 1860s, a railroad construction camp in the 1880s that became the City of Grants, and the Bluewater Toltec Irrigation District which built the original Bluewater Dam on the headwaters of the Rio San Jose in 1894.

In the 20th century, municipalities in the valley grew and other groups came to the Rio San Jose Valley. Various junior users began to exploit groundwater and by the mid-20th Century were making major groundwater withdrawals:

- the City of Grants drilled its first municipal well in 1929;
- Grants and other municipal users' increased substantially starting in the mid-20th Century;
- Bluewater-Toltec Irrigation District started tapping groundwater in the 1940s, and through extensive groundwater irrigation Grants became known as the Carrot Capital of the United States;
- in the 1950s, uranium mining started up on Mt. Taylor, and uranium mills opened in the Rio San Jose Valley and started pumping yet more groundwater; and
- a regional coal-fired power plant started pumping groundwater in the 1980s.¹⁰

Over a century of unimpeded diversions by junior users resulted in irreversible damage to the water supply. The Pueblos have suffered the permanent loss of most of the flow from Rio San Jose that has sustained our people since time immemorial.

Major junior users pumped so much groundwater that the water stopped spilling from the springs at Ojo del Gallo and reduced the flow from Horace Springs—both Ojo del Gallo and Horace Springs are major sources of water for the Rio San Jose

⁶ See Flint 2015 at 23–24.

⁷ Jacob S. Robinson, *Journal of the Santa Fe Expedition* (Narrative Press, 2001), at 23.

⁸ See T. J. Ferguson, *Traditional Farming at the Pueblo of Laguna*, Expert Report, *Kerr-McGee*, at 14 (Jan. 24, 2007).

⁹ See Huckleberry *et al.* 2016 at 176.

¹⁰ See Frenzel, P. F., *Simulation of Ground-Water Flow in the San Andres-Glorieta Aquifer in the Acoma Embayment and Eastern Zuni Uplift, West-Central New Mexico*, USGS Water Resources Investigation Report 91–4099 (1992).

historically. The stream flow has been dramatically reduced from an estimated 16,400 AFY, equivalent to 22.6 cubic feet per second¹¹ prior to upstream development to a mere 2.4 cubic feet per second in 2020 at the upstream boundary of the reach flowing through the Pueblos.¹²

This loss of water has had a profound effect on the Pueblo community and its culture. Depleted stream flows substantially reduced the Pueblo's ability to irrigate its agricultural fields on the mainstem Rio San Jose and forced members of the Pueblo to purchase food instead of growing it and selling or trading it for other needed items.¹³ We have important ceremonies that require a flowing river, but at times now the Rio San Jose is dry and this is heartbreaking. Equally devastating is the effect of lost flow on our riparian zone that has nurtured native plants and medicines we harvest for our ceremonies. Intermittent stream flow, and shortages and loss of traditional-use plants on our lands, affects how we conduct our traditional ceremonies.

While we have borne the brunt of the impacts of water development by junior users, located as we are at the bottom of the stream system, we did not stop maintaining our ditches and calling the water down from the mountains and from Bluewater Creek. We did not stop irrigating from our traditional ditches, and we did not stop our traditional ceremonies. We used, and continue to use, the little water that remains to grow our crops and follow our traditional practices.

Hydrologic studies by the U.S. and the Pueblos indicate that even if all current junior water users stopped using water in the Rio San Jose basin, the system has been so depleted that the system would not recover to provide historical flow levels in the Rio San Jose in the Pueblos' reach for decades, if ever.

Yet we will continue to use what remains of the river's flow, even though it is not nearly enough to maintain our way of life. We need water for drinking and cooking, for everyday use, for ceremonial and cultural uses, as well as for the economic development needed to provide for our people.

We need your approval for this water rights settlement to recognize the senior water rights of the two Pueblos, and to protect what little flow is left in the Rio San Jose.

3. The Water Settlement Negotiations

S. 4898 and the water settlement it ratifies is the product of over 40 years of litigation and eight years of negotiation.

The Pueblos, as the most senior water users in the stream system, implored the U.S. to protect our water supplies from these upstream users early in the U.S. superintendency following the Treaty of Guadalupe Hidalgo in 1848. It was over a century before the U.S. took action. Finally, in 1982, the U.S. filed a suit on behalf of the Pueblos of Laguna and Acoma against major junior groundwater users in federal district court claiming damages for trespass and seeking injunctive relief.¹⁴ To protect themselves from the trespass suit, some of those users immediately filed lawsuits in state court to start a general stream adjudication of the Rio San Jose.¹⁵

In this way, the junior users started the water rights adjudication known as *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, and the trespass case was "deferred" by the federal court in favor of the general stream adjudication. As a consequence, relief to the Pueblos was delayed another 40 years while the adjudication slowly ground forward.

In the spring of 2014, instead of continuing on a litigation path that chooses winners and losers in our stream system, we, along with the United States, the State of New Mexico, the Pueblo of Acoma and other major stakeholders, decided to look for a different, negotiated resolution for the Rio San Jose Basin.

¹¹ Wolf, Christopher, *Hydrogeology and Geochemistry of Horace Springs, Pueblo of Acoma, New Mexico*. New Mexico Geological Society Guidebook, 67th Field Conference, Geology of the Belen Area, 397–403 (2016).

¹² Between October 1990 and October 2004, the average flow had dropped to 4.21 cfs, and was only about 3.5 cfs in 2004. Based on the 15-minute measurements at the USGS gage the decline has continued, and in water year 2020 the average flow was only 2.42 cfs. See USGS 08343500 Rio San José at Acoma Pueblo, NM, <https://waterdata.usgs.gov/monitoring-location/08343500/#parameterCode=00065&period=P7D>.

¹³ See Ferguson 2007 at 145–149; see also Paul V. Hodges, *Report on Irrigation and Water Supply of the Pueblos of New Mexico in the Rio Grande Basin*, National Archives RG 75, E657 (1938) at 362; John J. Ward, *Rebuttal Opinion: Analysis of the Undepleted Flows in the Rio San Jose and Tributaries, Acoma and Laguna Pueblos*, Expert Report prepared for the United States, *Kerr-McGee*, at 18–23 (Nov. 29, 2010).

¹⁴ *United States v. Bluewater-Toltec Irrigation*. District, No. 82-cv-1466 (D.N.M.).

¹⁵ See *United States v. Bluewater-Toltec Irrig. Dist.*, 580 F. Supp. 1434 (D.N.M. 1984).

Negotiations continued for eight years, resulting in a Settlement Agreement among various local parties that forms the basis of the settlement legislation before you. The parties who have signed the Agreement are:

- Pueblo of Acoma
- Pueblo of Laguna
- Association of Community Ditches of the Rio San Jose
- State of New Mexico
- City of Grants
- City of Milan
- Bluewater Toltec Irrigation District
- La Acequia Madre del Ojo del Gallo
- Moquino Water Users Association II
- Murray Acres Irrigation Association
- San Mateo Irrigation Association
- Seboyeta Community Irrigation Association
- Cubero Acequia Association
- Cebolletita Acequia Association
- Community Ditch of San Jose de la Cienega

The Navajo Nation has been active in the negotiations since 2018. As stated in the Settlement Agreement, the parties intend to reach a settlement with the Navajo Nation that will be an addendum to our Agreement, and the Nation will become a party and signatory to the Agreement upon written consent of the Nation and the parties.¹⁶

4. Key Provisions of the Settlement Agreement and Legislation

We need a water rights settlement to recognize and protect the senior water rights of the two Pueblos, and to protect what little flow is left in Rio San Jose. But we understand that shutting down our neighbors will not solve the problem. After more than a century of our trustee failing us, it is too late for that solution.

Instead of seeking to curtail other water users, the Settlement approach is to find alternative sources of supply for the Pueblos.

We studied alternative water sources and water infrastructure costs together with the Bureau of Reclamation in a detailed, year-long Value Planning Study process. As that study showed, finding, developing, and conveying to our Pueblo homelands replacement water in the Rio San Jose Basin today is not cheap.

In keeping with our tradition as water engineers, we are not asking the federal government to build a project for us. In our “fund-based” settlement we take on the management and responsibility of water infrastructure planning, permitting, development, operation and maintenance-instead of the federal government.

Our settlement trust fund established in the legislation is not attached to a particular water supply project because the Pueblo wishes to further assess the alternatives and exercise our self-determination in selecting sources of water to develop for our Pueblo lands and people.

In exchange for meaningful funding to secure and develop water, the Pueblos agree to:

- make no priority calls against non-Indian uses under existing water rights; and
- not impair other users in development and use of groundwater by the Pueblos on Pueblo lands.

The main elements of this comprehensive settlement of Pueblo water rights include the following:

- This Act fairly and finally settles the claims of the Pueblo of Laguna, and the United States acting as the trustee for the Pueblo of Laguna, in the general stream adjudication of the Rio San José Stream System entitled, “*State of New Mexico, ex rel. State Engineer v. Kerr-McGee, et al.*,” pending in the Thirteenth Judicial District Court for the State of New Mexico.
- The Act also recognizes water rights of the Pueblo of Laguna, and the United States acting as the trustee for the Pueblo of Laguna, in the Rio Puerco Basin and limits future claims for the Pueblo’s water rights in that basin.
- The legislation establishes a separate trust fund for each Pueblo. The following amounts are authorized for the Pueblo of Laguna:
 - \$464 million in the Laguna Water Rights Settlement Account, to be used for water infrastructure development, acquiring water supplies, Pueblo Water

¹⁶See Joint Status Report, *Kerr-McGee*, filed Oct. 28, 2022.

Rights management and administration, watershed protection and enhancement, support of agriculture, water-related Pueblo community welfare and economic development, and settlement implementation costs, and \$15 million of this amount is to be made available upon appropriation for installing ground-water wells on Pueblo lands to meet immediate domestic, commercial municipal, and industrial needs;

—\$26 million in the Water Infrastructure Operations and Maintenance Account; and

—\$3.25 million in the Feasibility Studies Account, to be made available upon appropriation, to facilitate our selection of alternative water sources.

- A further \$50 million is authorized by the legislation for the Acomita Reservoir Works Trust Fund, a joint trust fund for the two Pueblos, to be made available upon appropriation for the purpose of rehabilitating this BIA-constructed reservoir and appurtenances that was built to provide water storage for both Acoma and Laguna but has been in disrepair for many years.
- Under the Settlement, each Pueblo's water rights will be administered on Pueblo lands under a Pueblo Water Code similarly to water rights administration by the New Mexico State Engineer on non-Indian lands.
- The Pueblo permit processes will include substantive and procedural protections for protestants, including the opportunity to appeal Pueblo water permitting decisions to the state court.
- The Acéquias will receive funding from the State for water infrastructure improvements and other purposes, and the City of Grants and the Village of Milan will receive funding from the State to improve their water and wastewater infrastructure. The hydrologic benefits of these improvements will, in turn, mitigate impacts of Pueblo water development.

In considering these costs of our settlement, it is essential to remember that we lost the abundant, low cost, renewable surface water in our homeland on the United States' watch, through no fault of our own.

5. Conclusion

Passage of S. 4898 is absolutely necessary to secure the future of the Pueblo of the Laguna. We believe this fund-based settlement is the best opportunity for the Pueblo to determine its future by securing and developing ourselves appropriate water sources for our community.

This settlement will provide us with the means to procure the water needed for everyday uses and enable our people to survive and thrive on our homeland. Without a secure water supply, our ability to continue to live and work on our own land, as we have for centuries, is at risk.

Thank you for the opportunity to testify today. I'm happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you to all of the testifiers. I will now turn to Vice Chair Murkowski for her questions.

Senator MURKOWSKI. Thank you, Mr. Chairman. Those who have been wondering where members are coming and going, we are in the midst of a vote. So I am going to be excusing myself after this. The Chairman has already done that.

To you first, Secretary Newland. And before I ask my question, I want to appreciate those of you who have given testimony in walking us through, educating us on what it means. We certainly heard from your comments, Chairman Peyron, the significance of what it means, these shortages, to the people in your tribe. We heard very clearly the significance of where we are.

Secretary Newland, you heard me in my opening comments, my concern about this mega-drought, the impacts that it is having on the Colorado River system as a whole. Earlier this summer, the Bureau of Reclamation Commissioner, Camille Touton, testified before the Energy Committee that due to this mega-drought, the river system is literally on the brink of collapse, again, affecting

not just those who depend on the Colorado River but everyone in the west.

Can you share with the Committee what actions the Department is taking to protect water users' existing water supplies, particularly those held by our tribal nations that many are represented here?

Mr. NEWLAND. Thank you, Vice Chair. On the whole, or with respect to the Colorado River?

Senator MURKOWSKI. I am not expecting you to solve the Colorado or the mega-drought. If you could do that, we would take you from this seat and put you to work on it right away.

[Laughter.]

Senator MURKOWSKI. But clearly, you have users that are very, very stressed right now. Is the Department taking specific actions to address that?

Mr. NEWLAND. We work across all of our bureaus on the Colorado River in particular to make sure that we are being inclusive of everyone who is affected. I know that my colleagues at the Department, including the Commissioner, are working with tribal leaders in the basin to make sure that we are meeting our trust obligations to the tribes and that we are consulting with them on steps that the Department would take.

But overall, when it comes to water in the west, as I indicated in our testimony, we take our trust obligation very seriously to make sure that tribes have the ability to maintain their way of life on their homelands. That requires the ability to have access to water. The bills that we are testifying on today are reflective of that commitment and our position on them.

Senator MURKOWSKI. So let me ask then, because these are settlements that have been in the making for decades, we have heard. Does what we are living through right now with this mega-drought affect any of these water settlements that we are considering today? In other words, it may have made agreements based on a direction that just isn't realistic today.

Mr. NEWLAND. Thank you, Vice Chair, for that question. That is something that our teams negotiating these settlements are always trying to bear in mind, is that these are workable settlements, because we want certainty going forward.

As I indicated, these are good bills and good settlements based on the data that we have been able to collect over the last four decades, at least with respect to New Mexico, and the last three decades with respect to the Tule River bill. We think the tribes have, as I understand, have agreed to use the fund-based approach to these settlements and all of the risk that comes with that to make sure that they have access to resources now.

Senator MURKOWSKI. One more question for you. This relates to the funding. As you know, I am appropriators, we both are appropriators up here. Oftentimes, the toughest thing is identifying the financial resources, the long-term investments by the Federal Government to make these settlements actually work and result in what you are all hoping for, which is the delivery of wet water. Historically, the most common source of funding for Congressionally approved water settlements is discretionary spending. Congress has authorized mandatory appropriations in concert with dis-

cretionary funding authorizations in some cases, including for individual Indian water settlements.

The settlement legislation in front of us today includes mandatory appropriations. Can you speak to this about whether or not the Department supports mandatory spending for each of these measures, and if so, any offsets that the Department may have identified to address this?

Mr. NEWLAND. Thank you, Madam Vice Chair. The benefit of having these kinds of disputes settled is to bring certainty, not only to the Tribes but everyone in the affected basins. One of the things that helps bring certainty is knowing that there will be certainty of funding and mandatory funding is one way to do that. We also know that Congress was the leading authority on appropriations, and we respect that.

But we support these bills, subject to some of the things I highlighted in our written testimony. With respect to offsets, I don't have an answer for you today, Madam Vice Chair. I would be happy to follow up.

Senator MURKOWSKI. Great. I would appreciate that. Again, my thanks to all who have provided testimony and truly, for your decades of work on very, very important issues. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chair.

Secretary Newland, S. 4870 includes a transfer into trust of lands needed to ensure the integrity of the water resource and other cultural resources for the tribe. Does Congress have the authority to direct land transfers? How common are transfers like this in tribal water settlements?

Mr. NEWLAND. Thank you, Mr. Chairman. Congress does the authority to direct Federal lands to be transferred to the Secretary in trust for the benefit of tribes. There is precedent for that in other water settlement bills. For example, the Salish and Kootenai water settlement in Montana included a transfer of the National Bison Range in trust to the Tribe. I think that is a good example of the comprehensive solutions that we can achieve through settlements.

The CHAIRMAN. Can you tell me about your experience, in your experience, what are the benefits of returning lands like these to tribal management through trust transfers, co-management or other regimes?

Mr. NEWLAND. Thank you, Mr. Chairman. The Tule River Tribe is a great example of some of the benefits here. When I visited this summer, the Chairman took me up into the highlands on the reservation to see where they had been impacted by a recent wildfire. They have ancient sequoia trees on the reservation, and you could see there had been a fire. But because of the Tribe's land management practices, the sequoia trees themselves were left standing. It was impressive to see.

Then as we continued on our trip and traversed the reservation boundary, we saw where the Tribe wasn't managing lands, and the trees, the sequoia trees and the rest of the forest were burned. I think that speaks to what happens when tribes are managing lands according to their traditional knowledge, their understanding of their own homelands, and the benefits that brings.

That is what we are trying to do through the joint secretarial order that Secretary Haaland has signed onto on co-stewardship which also speaks to returning Federal lands to tribal management and ownership in certain instances.

The CHAIRMAN. What is the status of the implementation of that secretarial order? Because it is two Secretaries sort of establishing a policy, it is new. So where are we with implementation there?

Mr. NEWLAND. At the Department of the Interior, I can say that we have guidance now from bureau directors at other land management agencies, including the Park Service, Fish and Wildlife Service, that provide clear direction to folks in the field on how to set these agreements up. The Department of the Interior has reached a number of these types of agreements. Also, Mr. Chairman, earlier this summer I visited the Grand Portage Reservation in Minnesota where we have had a co-management agreement between the Park Service and the Tribe for several decades with a self-governance compact to bring funding with it. It has been very successful.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Chairman Peyron, can you talk to me about your community's reliance on bottled water and what that really means for hygiene, sanitation, and the ability for people to work and go to school? Tell me about the human impact, please.

Mr. PEYRON. Yes, Mr. Chairman. Thank you. I can speak to that.

Children can't go to school at all. There is no water, so they can't have clean clothes. Not only does it affect them with the ability not to have water to drink or to cook with, it also affects their mental and emotional health when they are going to school and they are made fun of because they couldn't bathe, or they had to wear dirty clothes. Their parents can't go to work to make money to pay the bills to put food on the table, to keep the air conditioner going in the summer months and keep the heat going in the winter.

At times, just recently, about a month ago, we had to shut down our medical facility because it lost water to the facility. So people who had medical appointments, people who have life-sustaining treatments that they need to get to can't do that. They have to drive 20 miles to the nearest hospital in the city of Porterville.

It also impacts other services that the Tribe provides. If the water goes out, a lot of the reservation relies on evaporative cooling, so we have to open up our cooling centers, shut down governmental buildings so that our elders and our people who really need that assistance can go there so they can cool when it's 110 outside.

Not only that, when we got hit with the COVID pandemic, it limited the availability of space in those buildings. Again, people were forced to just tough it out. Unfortunately, my people have become acclimated to this. So if you call and you ask, we are going to say, everything is fine, because that is what we do. We take care of ourselves, we adapt, and we continue to persevere regardless of our situation.

For some of us on our reservation, this is our third home. We started on the Sebastian Reservation near Fort Tejon, south of Bakersfield. Then we were moved to the Madden Farm, then that land was taken and we were moved again to the current reservation. The superintendent that we had said, hey, there is not enough land, there is not enough water. So they doubled the size of the res-

ervation that same year, 1873, to 92,000 acres. Then it was shrunk down again for some reason. Some people did not want to move off that land. They petitioned Congress and it was changed again.

So we have been living decades, hundreds of years, dealing with this. Now it is affecting us to the point with the drought and climate change that if we can't get a reservoir to catch the water when it is raining in the wet season, there is no water there in the summer. Up to 80 percent of my people's drinking water comes from the South Fork Tule River that we lost because the superintendent, without consulting the Tribe in 1922, signed an agreement with the downstream users quantifying their rights to the South Fork Tule River.

Unfortunately, ours was never quantified. We had to come up with an agreement in 2007 that was signed quantifying 5,828 acre feet. We are still trying to get the funding again. That agreement said that the United State would provide development for water structures on the reservation delivery systems. We are still waiting.

We are operating off a 1960s irrigation line that was put in by Indian Health Services for a total of 60 homes. There are currently 362 homes and 14 commercial buildings surviving off that same system. That is where that \$2 million from the State of California came in to assist us with updating that.

So it affects us across a wide spectrum. You can't go to work, you can't go to school, which causes other problems because now you are getting letters from, in California it is called the SARC board, because your kids aren't going to school. Apparently not having drinking water at home and being able to flush the toilets and take a shower is not an excusable reason.

Those are the things that we deal with in our area. Again, we adapted.

So those are the problems we have. If there is a fire, and we have to fight that fire, we depressurize our system, and again, we are without water. We are at the end of the Southern California Edison grid, so our power is brown anyway. Because our terrain, as the Secretary can attest to, is pretty steep, we go from 900 feet to 7,600 feet rather quickly. So a lot of homes require pumping of water. You can't gravity feed uphill.

So when the power goes out, guess what? You don't have any water. That is the situation we live with every day. It used to be from the months of May to September. Now it is beginning in April and sometimes it will end about now. I think we got our first rain right before we came here this week.

Those are the things that it is impacting.

The CHAIRMAN. Thank you very much. Senator Luján?

Senator LUJÁN. Thank you, Mr. Chairman.

Assistant Secretary Newland, you mentioned that targeted changes are need to S. 4898 to protect allottees. Yes or no, are you committed to working with Senator Heinrich, myself, and the Committee on this issue?

Mr. NEWLAND. Yes, Senator.

Senator LUJÁN. Governors Kowemy and Vicente, this legislation makes water available as climate change continues to strain the water supply in the southwest. Key to this is providing funding to

find an alternative water source in the basin that doesn't limit junior water users.

Governor Kowemy, yes or no, does this settlement address the water shortage issues now and in the future that the Pueblo face, given the potential impacts of climate change down the road?

Mr. KOWEMY. Yes.

Senator LUJÁN. Governor Vicente?

Mr. VICENTE. Yes.

Senator LUJÁN. This question is for three of our witnesses, and I would ask for a simple yes or no answer. The Navajo Nation is currently engaged in its own process to approve its portion of the settlements, and the Pueblos are working hard to help get a resolution. Yes or no, will you commit to continue working with the Nation on its claims in the Rio San Jose Basin to get the settlement completed quickly? Assistant Secretary Newland?

Mr. NEWLAND. Yes.

Senator LUJÁN. Governor Kowemy?

Mr. KOWEMY. Yes.

Senator LUJÁN. Governor Vicente?

Mr. VICENTE. Yes.

Senator LUJÁN. Governors Loretto and Galvan, the focal point of S. 4896 is augmentation projects on Jemez and Zia lands that benefits all users. How will these projects strengthen relationships between the Pueblo and non-Pueblo communities in the basin? Governor Loretto.

Governor LORETTO. Yes, the relationships among the Pueblos and its non-Indian neighbors already is strong. We have established a good working relationship and our relationship with hopefully the process going through will even bring us closer together, to work together.

Senator LUJÁN. That is good to hear.

Governor?

Mr. GALVAN. Yes, pretty much the same, given that Zia has and stands on a good working relationship with the communities upstream.

Senator LUJÁN. I appreciate that. That is to be applauded.

I certainly appreciate the work that has been done on each of these two pieces of legislation and bringing communities together, and having conversations and making adjustments, even though this was decades in the making. But the conversation in the last decade have made immense progress. I also again want to thank the State for being here to show their support in making this happen and make this a reality.

Mr. Chairman, I would ask unanimous consent to submit letters of support for both S. 4898 and S. 4896.

The CHAIRMAN. Without objection.

Senator LUJÁN. I yield back, thank you.

The CHAIRMAN. Thank you very much. If there are no further questions for our witnesses, witnesses may also submit follow-up written questions for the record. The hearing record will be open for two weeks. I want to thank all the witnesses. I know how much of a hassle and a strain it is to fly across the Country to be here. We really do appreciate it, and all the staff and all the tribal members who are here for your testimony and participation today.

This hearing is adjourned. Thank you.
[Whereupon, at 3:57 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. ERIK GARCIA, MAYOR, CITY OF GRANTS

Chairman Schatz and Committee members, I am Erik Garcia, Mayor of the City of Grants, New Mexico. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the City of Grants (“City”) in support of the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022, Senate Bill 4898 (the “Settlement Act”).

The Settlement Act would resolve the water rights claims of the Pueblos of Acoma and Laguna, which have been litigated for at least four decades. The City strongly urges passage of the Settlement Act, which quantifies and settles the water rights of the Pueblos and provides benefits for the non-Indian community. In a unanimous vote on May 6, the Grants City Council approved the Local Settlement Agreement (“Local Settlement”). In addition to ending decades of litigation, the Local Settlement would provide funding for infrastructure to provide wet water to the Pueblos and significant benefits to the City, the Village of Milan and the nine Acequias in the area. The City would benefit from the economic development fostered by the funding for the Pueblos, and the City would conserve water and upgrade its own water infrastructure with the \$12.5 million included in the Local Settlement to be provided from the State of New Mexico. The funding also would pay for the Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San Jose that will provide additional wet water to the system.

The City Council did not make this decision lightly-it has invested significant time and resources over the past several years to build trust with the other parties and work together to solve problems in the Rio San Jose Stream System. The City has participated in extensive mediation sessions over at least the past five years, working through a painstaking process to draft the Local Settlement and the Settlement Act.

The Local Settlement and the Settlement Act together protect the water rights of the City and others by allowing continued use of water rights without the threat of priority calls by the Pueblos. The Pueblos hold time immemorial priority dates and could create chaos if they chose to enforce their priorities. Further, the Local Settlement protects non-Pueblo water users for the future because the Pueblos agreed to prohibit impairment in any water rights permits they issue. The City and Pueblos also promise to take steps that will keep communications open and facilitate cooperation on water infrastructure in the future.

Two other features of the Settlement Act are critical to Grants and other non-Indian parties: (1) the limited waiver of sovereign immunity by the United States and the Pueblos of Laguna and Acoma and (2) jurisdiction in the State of New Mexico District Court for the 13th Judicial District for settlement-related issues. These provisions ensure state-court based interpretation and enforcement of the Local Settlement and the court decree for the Pueblos’ water rights, as well as state court jurisdiction to hear appeals of decisions on Pueblo-issued water rights permits. This state court-based review gives the City and other non-Indian parties assurances that they will be heard in a fair forum if they have disputes with the Local Settlement, the decree, or Pueblo-issued permits. These guarantees were key in the City’s decision to sign the Local Settlement and must be carried through in the Settlement Act.

Thank you again, Chairman Schatz and Committee members, for the opportunity to provide the City of Grants’ views on this critical piece of legislation.

PREPARED STATEMENT OF MICHAEL A. HAMMAN, P.E., NEW MEXICO STATE ENGINEER

Mr. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, I am Michael A. Hamman, P.E., New Mexico State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, ap-

propriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022, S.4898.

This legislation offers a historic opportunity to authorize funding for the Pueblos of Acoma and Laguna to secure and develop water sufficient to support their permanent homeland, while also protecting the scarce water supplies and existing water uses in the Rio San Jose Stream System in western New Mexico. It will also resolve the water rights claims of the Pueblos by authorizing, ratifying and confirming a comprehensive settlement agreement among the State, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San Jose, along with its nine area Acequias and community ditches. The settlement represents the culmination of 40 years of litigation and subsequent negotiations among the signatories, Navajo Nation, and the United States as trustee for the Pueblos and Nation, and would not have been possible without their support and active participation in the negotiations. In addition, we are hoping to finalize a supplemental settlement that will resolve the claims of the Navajo Nation within the Rio San Jose stream system as well, which will bring additional certainty and finality for all parties.

The Rio San Jose stream system is located in western New Mexico and is one of the most water-scarce stream systems in the State. For centuries, the Pueblos of Acoma and Laguna irrigated thousands of acres along the Rio San Jose and its tributaries. This supply has been dramatically reduced as a result of upstream uses of surface water and groundwater by non-Pueblo users over the past century. One of these uses, uranium mining, has led to widespread contamination of groundwater in the area.

Most Acequias and other traditional non-Pueblo water uses in this region date back to the 1800s and rely on diminished surface water supply. Acequias have suffered from the same drop in surface supplies as the Pueblos. Current Acequia irrigation is only a fraction of what it was historically due to lack of water supply.

Today, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, various Acequias, Navajo Nation chapters and industrial users continue to rely on water from the Rio San Jose stream system, including surface water from the Rio San Jose, and groundwater from the Bluewater and Rio Grande Basins. Climate change has compounded the lack of water, and, like other western states, New Mexico is experiencing extended periods of drought, furthering the strain on surface water supply.

The proposed settlement will quantify the water rights of Acoma and Laguna Pueblos. It will also provide funding for the development of alternative water sources for the Pueblos. It will also provide state funding for needed infrastructure improvements for non-Pueblo settling parties. Authorizing the settlement will avoid the uncertainty and expense of protracted litigation regarding the Pueblos' senior water rights claims. This settlement will resolve 40 years of litigation regarding the Pueblos' water rights. If the rights of the Pueblos were litigated to their conclusion, the only way to increase the flows of the Rio San Jose for the benefit of the Pueblos would be to shut off all other users in the stream system. Instead of seeking to curtail other water users, the settlement contemplates the need to find alternative sources of supply for the Pueblos.

Recognizing the need for cooperation among the water users in the stream system and the limited water resources available, the settlement agreement is structured to allow the Pueblos to develop alternative sources of water based on availability, hydrologic assessment, and community need. Additionally, authorizing a fund-based settlement provides the Pueblos flexibility to determine the scope and design of future projects and infrastructure.

The Acequias, the City of Grants and the Village of Milan will receive funding from the State to improve water and wastewater infrastructure, which will contribute to the efficiency and conservation in the overall stream system. This approach also prioritizes Pueblo sovereignty and self-determination by ensuring that the Pueblos are able to make decisions based on the current and future interests of their communities, while also considering water use in the neighboring non-Pueblo communities.

Benefits of the Settlement

The settlement benefits the Pueblos and non-Pueblo water users by fully resolving the water rights claims of the Pueblos while recognizing the unique hydrologic characteristics of the Rio San Jose Stream System, and the historic, social, cultural, and geographic characteristics of each Pueblo, the Navajo Nation, and non-Pueblo water

users. The settlement also recognizes the right of each Pueblo to use water for its own people and purposes and provides for quantification of Pueblo water rights, reliability of supply, and economic development for the Pueblos, both now and into the future.

As part of the Settlement Act, the Pueblos have agreed to give up their right to request a priority call on junior non-Pueblo water rights holders, providing security to all water rights holders while also protecting Pueblo and non-Pueblo water rights in the Rio San Jose stream system from impairment. The Pueblos have also agreed not to impair other users in development and use of groundwater for Pueblo projects, and to limit new depletions on the Rio Grande.

The State believes that the funding authorized by the Settlement Act will contribute to Pueblo water security and provide significant economic benefits and employment opportunities to Pueblo members and residents of the other communities in the stream system. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from elsewhere in the State.

Finally, the Settlement Agreement creates a mechanism for cooperation and coordination among the Pueblos and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system.

Mr. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, the State of New Mexico asks you to support S. 4898. This legislation will authorize a settlement agreement that is the culmination of many years of good faith negotiation among the communities of the Rio San Jose stream system. If approved, the settlement agreement will create certainty regarding water rights of the Pueblos and security for all water users in the basin. Additionally, the infrastructure projects for which the parties seek funding under the Settlement Act are intended to ensure a sustainable water supply that it is critical to the continued habitability and enjoyment of the land for generations to come.

I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, S. 4896.

The Pueblo of Jemez, Pueblo of Zia, the State of New Mexico, the Jemez River Basin Water Users Coalition and the City of Rio Rancho have reached an agreement after nearly forty years of litigation and intensive settlement negotiations. The United States as trustee for the Pueblos of Jemez and Zia actively participated in the negotiations and we could not have arrived at an agreement without their support. It is no small matter that the local parties reached this settlement, and together we urge your support for the Act which would authorize, ratify and confirm the historic settlement agreement.

New Mexico is a semi-arid to arid state. Like other western states, New Mexico is experiencing extended periods of drought and declining surface water supply due to climate change. These conditions threaten many of the deeply rooted cultural traditions that make New Mexico unique. This is certainly the case in the Jemez River Basin where the Pueblos and non-Pueblo acequias rely on the river for traditional irrigation practices that have existed since long before New Mexico statehood.

The Jemez River Basin is located in north central New Mexico, and the Jemez River is a tributary to the Rio Grande. The water users in this basin include the villages of San Ysidro and Jemez Springs, unincorporated areas surrounding them consisting of well-established acequias, and the Pueblos of Zia, Jemez and Santa Ana. Members of these communities have lived and worked side by side for many generations and during this time, water supply has dwindled while the demand has only increased. This stress finally came to a head and in 1983, a general stream system adjudication to determine all water rights in the Jemez River stream system was filed. Despite years of ongoing litigation, the people of the Jemez River Basin continued to live and work together. An example of their cooperative approach to managing scarce water resources is that in 1996, the U.S., the Pueblos of Jemez and Zia and several non-Pueblo ditch associations entered into an agreement whereby during times of low flow of the Jemez River, a rotation schedule would be initiated in order to meet the irrigation requirements of the Pueblos and the associations and the religious and ceremonial requirements of the Pueblos. In 1997, the court ordered, at the parties' request, that the Office of the State Engineer act as water master to help with administration of the rotation schedule. I think all the parties would agree that the rotation schedule has been successful with few disputes. These same communities who have lived and worked side by side and jointly manage a reduced water supply are now here asking for your support for the Settlement Act.

The Settlement Act is key to resolving long-standing water issues in the Jemez River Basin, as it addresses the quantification of the Pueblos' water rights, protects water users in the Basin from impairment of their water rights, and will help ensure a sustainable water supply into the future.

Importantly, this legislation will authorize federal funding for the Pueblos' share of costs associated with an irrigation water "Augmentation Project" and other Pueblo irrigation infrastructure improvements, Pueblo drinking water and wastewater infrastructure improvements, watershed protection, water-related Pueblo community welfare and economic development, and other costs related to implementation of the settlement agreement. The State of New Mexico has agreed to fund the San Ysidro Community Ditch Association's capital and operating expenses relating to the Augmentation Project, and much needed ditch improvements for the Coalition's member acequias. The State will also fund a Jemez River Basin water master if appointed by the New Mexico State Engineer.

In sum, we believe this legislation has been carefully crafted to address water supply needs of the Pueblos and the neighboring non-Pueblo communities in the Jemez River Basin.

Water Augmentation Project

Because surface water availability in the Jemez River is highly variable, two separate groundwater well fields are contemplated to augment the surface water supply from the Jemez River to the Pueblos and the San Ysidro Community Ditch. One well field will be situated on the Pueblo of Jemez in and near the Jemez River alluvium. The second well field will be situated on the Pueblo of Zia southwest of the Jemez River, near Zia Lake. The augmentation wells will provide groundwater for irrigation use by the two Pueblos and members of the San Ysidro Community Ditch Association during periods of insufficient surface flow in the Jemez River. The two Pueblos and the San Ysidro Ditch Association will each be responsible for carrying out their respective Project obligations.

Benefits of the Settlement

The Settlement Act benefits both Pueblo and non-Pueblo water users by fully resolving the water rights claims of the two Pueblos that have been pending for nearly forty (40) years in the adjudication case, and by resolving issues and disputes related to water use in a manner that recognizes the unique historic, social, cultural, and geographic characteristics of both Pueblo and non-Pueblo water users, and the unique hydrologic characteristics of the Jemez River Basin.

As part of the Settlement Act, the Pueblos have agreed to give up their right to request a priority call on junior non-Pueblo water rights holders, providing security to all water rights holders while also protecting Pueblo and non-Pueblo water rights in the Jemez River Basin from impairment. The settlement also provides for the establishment of a water master district as a means for administering the basin for the benefit of all water users. Water master administration respects the sovereignty and the rights of each Pueblo as well as the traditional practices and political subdivision status of the acequias that deliver irrigation water to the non-Pueblo communities in the basin.

The Settlement Act contemplates federal funding to the Pueblos and state funding to the San Ysidro Community Ditch to use groundwater to augment their surface water supplies. As addressed above, this mutual benefit project provides for alternative administration between the two Pueblos and non-Pueblo water users and is intended to supplement surface water supply during periods of low flow. This groundwater augmentation project will benefit all users, including ten (10) upstream acequias who, once the project is operational, will no longer be subject to curtailment from Pueblo priority calls. By providing a critical buffer against climate change's effects on surface water supplies, the augmentation project other settlement-funded improvements will help preserve ancient cultural and agricultural practices, strengthen the relationship between Pueblo and non-Pueblo communities, and provide a reliable supply of irrigation water in a chronically water-short basin.

The State believes that the water infrastructure projects authorized and funded by the Settlement Act will provide significant economic benefits and employment opportunities to Pueblo members and residents of the other communities in the basin. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from elsewhere in the state.

Mr. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, the State of New Mexico asks you to support S. 4896. This legislation will authorize a settlement agreement that is the culmination of many years of good faith negotiation between the communities of the Jemez River Basin. If approved, the settlement

agreement will create certainty regarding water rights of the Pueblos and security for all of the water users in the basin. Additionally, the infrastructure projects for which the parties seek funding under the Settlement Act are intended to ensure a sustainable water supply that it is critical to the continued habitability and enjoyment of the land for generations to come.

PREPARED STATEMENT OF HON. FELIX O. GONZALES, MAYOR, VILLAGE OF MILAN

Mr. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, I am Felix O. Gonzales, Mayor of the Village of Milan, New Mexico. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the Village of Milan in support of the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022, Senate Bill 4898.

The Pueblos of Acoma and Laguna, the State of New Mexico, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San Jose and its nine member-acequias and community ditches, have reached a Settlement Agreement resolving the water rights claims of the two Pueblos within the Rio San Jose Basin which have been the subject of intense litigation and negotiation since the 1980s. Milan and the other settlement parties are justifiably proud of their accomplishment and urge your support for the Settlement Act which would authorize, ratify and confirm the Settlement Agreement.

Passage of this legislation authorizing the Settlement Agreement is vitally important to the Village of Milan for several reasons. First, under the Settlement Agreement the Pueblos have agreed, as a condition to settlement of their water rights claims, to give up their right to request a priority call against junior non-Pueblo water users. This concession by the Pueblos protects Milan because the Pueblos have senior, time immemorial water rights, and enforcing their priority could restrict Milan's ability to provide water to residents and businesses within its municipal service area. The Settlement Agreement also establishes administrative and judicial procedures for Milan to protect its municipal water supply from impairment caused by the Pueblos' future development of their water rights. Finally, the Settlement Agreement provides for up to \$11 million in State funding to the Village for much needed water infrastructure repairs and improvements including the repair and rehabilitation of municipal wells and water storage tanks, replacement of water distribution lines, and the Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San Jose. These and other features of the Settlement Agreement will help ensure a secure municipal water supply and reliable water infrastructure which are essential to Milan's ability to provide for the welfare of its residents now and into the future.

Mr. Chairman and Committee members, the Village of Milan asks you to support S. 4898. This legislation is critically important to Milan and the other communities in the Rio San Jose Basin. The Settlement Agreement is the result of decades of negotiation between these communities and other stakeholders. If approved, the Settlement Agreement will create certainty regarding the Pueblos' water rights which will in turn provide security for Milan and the other non-Pueblo water users in the basin. Additionally, the infrastructure projects set out in the Settlement Agreement, including the projects for which the Pueblos seek federal funding under the Settlement Act, are intended to ensure a sustainable water supply for both Pueblo and non-Pueblo communities in the basin. Thank you for your consideration.

PREPARED STATEMENT OF GILBERT MONTOYA, PRESIDENT, SAN YSIDRO COMMUNITY DITCH ASSOCIATION

Chairman Schatz, Vice Chair Murkowski, and members of the Committee, I am Gilbert Montoya, President of the San Ysidro Community Ditch Association. I am pleased to submit this testimony in support of The Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, S. 4896. The San Ysidro Community Ditch is the largest member of the Jemez River Basin Coalition of Acequias. We respectfully seek your support for S. 4896, which will approve settlement of water rights claims of the Pueblos of Jemez and Zia and fund and provide critical benefits to all water users of the Rio Jemez stream system.

At our meeting on May 11, 2022, our membership resoundingly approved the Settlement Agreement. Our Commission signed the Settlement Agreement, and we firmly believe S. 4896 will prove to be the most important piece of legislation affecting the water resources and traditional practices in our part of New Mexico. With your help in enacting this legislation, we will have the historic opportunity to assure a sufficient water supply in the Jemez Valley for many generations to come.

Our acéquia has provided water for irrigation since 1786, when Spanish settlers began farming in the Rio Jemez Valley. We are one of the most senior water users in the valley. Yet, because of inadequate and declining flows of the Rio Jemez, neither we nor the two Pueblos receive sufficient supply. Like the other Jemez acéquias, we especially lack good supply during the summer, when irrigation water is most needed, because of an interim rotation agreement that has been in effect since 1996. It has become very difficult to grow crops within San Ysidro because of lack of supply.

Under the settlement, our situation will markedly improve. A key feature of the settlement is the Augmentation Project that will serve San Ysidro and the two Pueblos. By constructing a water augmentation system, consisting of supplemental irrigation wells and ditch works, the three project partners will have enough water for a full supply in most years, and a much-enhanced supply even in dry years. San Ysidro will work hand in hand with the Pueblos to manage the system and make sure it remains operable over time and functions effectively to provide water to all three partners. The other acéquias will also benefit because they will no longer be curtailed to get water downstream. This is a huge benefit for all concerned.

The legislation will authorize federal funds to the Pueblos for costs associated with the Project and other water and wastewater infrastructure improvements. The State of New Mexico will fund San Ysidro's cost share of the Project and will fund ditch improvements for the other acéquia members of the Coalition. Mr. Chairman, Madam Vice Chair and committee members, on behalf of the Association, I thank you for your attention to this important matter and ask you to approve this vital legislation.

PREPARED STATEMENT OF HON. JUANITA REVAK, PRESIDENT, JEMEZ RIVER BASIN
COALITION OF ACÉQUIAS

Chairman Schatz, Vice Chair Murkowski, and members of the Committee, I am Juanita Revak, President of the Jemez River Basin Coalition of Acéquias, and I am pleased to submit this testimony in support of The Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, S. 4896.

On May 11, 2022, the Coalition Board approved and signed the Settlement Agreement that is the basis of this legislation. We fully support the settlement and the legislation needed to implement it. We greatly welcome the Committee's consideration of this very important legislation.

The Rio Jemez provides the vital supply of surface water for the Pueblos of Jemez and Zia and for eleven Acéquias, or traditional community ditch associations, that are members of the Coalition. Although the Pueblos have time immemorial water rights and the Acéquias have priority dates in the 1700s and 1800s, there is often shortage of surface supply. Under a 1996 rotation agreement, the Acéquias can only divert one day a week when flows drop in the late spring, continuing through the summer and into the fall most years. This means through most of the growing season our members are severely restricted, only being able to divert water on Mondays. Climate change has made this situation worse by reducing supply overall and causing rotation to go into effect sooner and last longer.

The settlement will solve this problem. The Pueblos will receive funding from Congress and the Acéquias will receive funding from the State of New Mexico to improve irrigation infrastructure to increase water supply. The heart of the settlement is the Augmentation Project, which will include supplemental groundwater wells to be operated cooperatively to make up for shortage when surface flows dwindle. One of our members, the San Ysidro Community Ditch Association, will be a direct beneficiary of the project. Because the Pueblos will draw on groundwater when additional water for irrigation is needed, all our other Acéquia members upstream will be relieved of the current rotation and may divert available surface supply. The result of this infrastructure approach is that the Pueblos and all the Acéquias will have much more reliable supply and will no longer vie with one another for the scarce surface flows. In fact, a cornerstone of the Augmentation Project is cooperative management among the parties.

The settlement recognizes additional water rights for the Pueblos but contains safeguards to protect other water users from curtailment or impairment. In particular, the Pueblos agree not to make priority calls against other water users, including domestic well owners. Also, the settlement will resolve issues concerning administration of water rights in a cooperative and transparent manner that will help avoid disputes in the future. Furthermore, the settlement contains provisions protecting traditional acéquia practices and property rights.

The Jemez Acéquias have good relations with our Pueblo neighbors, and we surely welcome the end of four decades of litigation that has plagued our valley since the stream system adjudication, *United States v. Abousleman et al.*, was filed in 1983. Over the last 40 years, the parties have been embroiled in litigation and lengthy settlement discussions to resolve conflicts over the limited surface waters of the Jemez Valley. Resolving the Pueblos' water rights claims through litigation or curtailing junior water users based on the Pueblos' senior priority would not solve the problem of increasing scarcity within the Jemez River Basin. The Settlement Agreement is the solution. It will provide funding for "wet water" projects to address this problem. It will foster harmony and cooperation among all water users.

This is a well-crafted, inclusive and comprehensive settlement. Residents of the Jemez Valley are greatly encouraged and very supportive of this settlement. Mr. Chairman, Madam Vice Chair and committee members, the Coalition of Acéquias respectfully urges you to approve this legislation and send it to the full Senate for action. With this testimony, I am attaching an informational document that we prepared earlier this year outlining our interests in, and significance of, this settlement.

Attachment

JEMEZ ACÉQUIAS—SETTLEMENT OVERVIEW

Introduction.

The Coalition of eleven historic acéquias on the Rio Jemez supports the settlement because it will protect their historic agricultural practices and will enhance good relations with the Pueblo of Jemez and the Pueblo of Zia. Currently in times of low flows, the acéquias receive water only one day per week. Under the settlement, supply will be greatly increased for both Pueblo and acéquia irrigation.

Low flows on Rio Jemez. In the summer and into the fall, flows on the Rio Jemez often drop to very low levels. Under the settlement, the Pueblos and the San Ysidro Acéquia will share facilities to increase efficiency and will receive a greatly needed supplemental supply from the new Groundwater Augmentation Project. Upstream Acéquias will no longer be restricted to one day of irrigation per week.

History

The Rio Jemez acéquias began use of water in the late 1700s, after the Spanish Crown authorized Spanish settlements along the Rio Jemez Valley by establishment of the San Ysidro Grant in 1786 and the Cañon de San Diego Grant in 1798. Following the Treaty of Guadalupe Hidalgo's recognition of prior existing rights in 1848, Congress confirmed the San Ysidro Grant by Act of June 21, 1860 and its 11,476 acres were patented in 1936; and Congress confirmed the Cañon de San Diego Grant in 1860 and its 116,286 acres were patented in 1881. In 2000, the federal district court entered a final judgment and decree recognizing the acéquias water rights on those grant lands.

Governance

Each acéquia is a separate governmental entity, governed by a three-member elected Commission and managed by an appointed Mayordomo. Each acéquia carries on the historic practice of maintaining the shared diversion and community ditch to supply water to its members or "parciantes" for the traditional irrigation of land within the old Spanish land grants. Under New Mexico law, acéquias are political subdivisions of the State by statute.

Cooperation: Low Flow Operations. Coalition former President Gilbert Sandoval discusses the importance of working together to reduce shortages. At this location, the new Orchard Farm Junction Box will be constructed. It will deliver the augmented supply to the San Ysidro Community Ditch, including to Zia Pueblo's Orchard Farm.

Membership and Formation of Coalition

The Jemez River Basin Water Users' Coalition was first formed by its member acéquias as an association in the 1980s. In 2006 it was incorporated in order "to protect and defend the water rights of acéquias and their individual members" in the Rio Jemez River Basin. The Coalition consists of all of the community ditches irrigating within the Rio Jemez stream system, a total of 11 acéquias, as follows:

Molino Ditch
East Lateral Ditch

West Lateral Ditch
 Jemez Springs Acequia
 West-side Ditch
 West Ditch
 South Upper Ditch
 Canyon Community Ditch
 Lower Canyon Ditch
 Ponderosa Ditch
 San Ysidro Community Ditch
 Association

PREPARED STATEMENT OF LARRY CARVER, PRESIDENT OF THE ASSOCIATION OF
 COMMUNITY DITCHES OF THE RIO SAN JOSÉ

Chairman Brian Schatz and Committee members, I am Larry Carver, president of the Association of Community Ditches of the Rio San José ("Association"), representing the nine acequias and community ditches in Cibola County, New Mexico. I appreciate the opportunity to submit this statement, on behalf of the Association, in support of the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022, Senate Bill 4898.

After an intensive period of settlement negotiations extending over approximately eight years, the Pueblos of Acoma and Laguna, the State of New Mexico, the City of Grants, the Village of Milan, and the Association and its member acequias and community ditches have reached a Settlement Agreement resolving the water rights claims of the two Pueblos in the Rio San José Stream System. These claims have been the subject of intense litigation among the settlement parties since the 1980s.

Each of our member acequias and community ditches is organized or recognized under the laws of the State of New Mexico as political subdivisions of the State. These members are respectively Seboyeta Community Irrigation Association, La Acequia Madre del Ojo del Gallo, Moquino Water Users Association II, Murray Acres Irrigation Association, San Mateo Irrigation Association, Cubero Acequia Association, Cebolletita Acequia Association, Community Ditch of San José de la Cienega, and Bluewater Toltec Irrigation District. These nine Acequias comprise all the non-Indian irrigation in the Rio San José Basin and also represent the second most senior water rights in the Basin. Some of these member Acequias have been irrigating for over two hundred years. Only the Pueblos have some priorities which are more senior to those of the Acequias and their members. The Association and its member Acequias ask the Committee to support the Settlement Act, which would authorize, ratify and confirm the Settlement Agreement which has resulted from all our hard work.

The Association supports passage of S. 4898 authorizing the Settlement Agreement because it contains provisions designed to protect the ability of the Acequia members to continue to irrigate their lands and preserve their customs for many decades to come. First, the Pueblos have agreed, as a condition to settlement of their water rights claims, to give up their right to make a priority call against junior non-Pueblo water users. A Pueblo priority call against Acequia irrigation uses would lead to lengthy and costly litigation and inevitable rancor among Pueblo and non-Pueblo neighbors, without contributing at all to improving water supplies or water distribution system efficiency for any water users. The Acequias would rather devote their time, energy and resources to addressing the water shortage situation. Second, the Settlement Agreement will also protect the Acequias' water supplies and historic uses from potential impacts from any future Pueblo water projects and changes in their water uses. The Pueblos will also implement administrative procedures applicable to their water rights that will enable the Acequias to protect their water sources and uses from impairment caused by the Pueblos' future development of their water rights. Pueblo administrative actions will be reviewable by appeal to the New Mexico District Court for the 13th Judicial District which will retain jurisdiction to interpret and enforce the Settlement Agreement and to review Pueblo administrative decisions, for which limited purposes the Pueblos have agreed to waive their sovereign immunity. Finally, the Settlement Agreement provides for \$12 million in State funding to the Acequias for water supply and infrastructure improvements, costs related to evaluation of Pueblo projects and other water related uses. The Acequias have suffered from the same reduction in water supplies as the Pueblos and the non-Pueblo irrigation is now drastically reduced from what it was historically. Without improvements in the Acequias' water supplies and without the ability to protect their water sources from developments by the Pueblos and other water users, the future for the Acequias is bleak. The \$12 million in State funding

and the administrative and judicial protections in the Settlement Agreement and S. 4898, along with other features of the Settlement Agreement, will help improved water supplies for the Acequias and their members.

Mr. Chairman and Committee members, the Association of Community Ditches of the Rio San José and its member acequias and community ditches ask you to support S. 4898. We believe this Settlement Agreement is the best way of resolving the multi-decade long litigation over the water rights claims of the Pueblos in the Rio San José Basin. It will allow the stakeholders to move beyond the litigation which has bogged them down up to now and begin to develop efficiencies in their water supplies and water uses that will be necessary to survive climate change and future drought.

The Acequias appreciate the opportunity to submit these comments and I thank you for considering my Statement.

CITY OF RIO RANCHO
October 25, 2022

Dear Senator Luján:

On behalf of the City of Rio Rancho, I am asking for your support of S. 4896—the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022 (“Settlement Act”). The City of Rio Rancho is a party to the Settlement Agreement which forms the basis for the federal legislation embodied in S. 4896. As a participant in the many years of settlement negotiations leading to the Settlement Agreement and a party to the Agreement, the City fully supports the settlement and the legislation necessary to effectuate this important Agreement. The Governing Body approved the Settlement Agreement on June 9, 2022. I attach the City Resolution related to that approval.

As you know, the Settlement Act has been referred to the Senate Indian Affairs Committee. The City requests your assistance and support in enacting this important legislation. The City holds significant rights to water in the Rio Grande Basin and the Jemez River Basin for purposes of providing the essential water supply for all the municipal needs of the City’s residents, commercial and industrial users. At present the City serves approximately 35,000 individual accounts which represents over 95,000 individual users. In addition to residential households, the City serves approximately 1,100 commercial and industrial users which include Intel, UNM Sandoval Regional Medical Center, Presbyterian Rust Medical Center, and Hewlett-Packard.

The City’s rights are to groundwater with attendant required rights to surface supply for the purpose of “offsetting” the City’s effects on surface supply related to its groundwater pumping. The City’s groundwater use necessary to supply its municipal needs has effects in the Jemez River Basin which it fully offsets. But supplies in the Jemez Basin are very limited and the development of future supply, administration of existing rights, and the unquantified water claims of the City’s Pueblo neighbors Jemez and Zia and potential effects on the City, has been an issue of longstanding interest and concern to the City. The City has recognized for some time that, where possible, addressing rights to water is best accomplished through collaborative agreement and problem solving. The City has found that recognizing mutual rights to a shared water resource and finding common ground in agreement to address existing and future uses is the preferred most effective tool to solve the complex issues relating to the allocation and administration of our scarce water resources.

After many years of litigation and then negotiation, the critical water interests in the Jemez River Basin (the Pueblos of Jemez and Zia, the Jemez River Basin Coalition of Acequias, the City of Rio Rancho, the State of New Mexico, and the United States) have been able to craft a successful agreement that addresses quantification of the claims of the Pueblos, protects existing water uses, addresses future water development needs and provides certainty for water use in and to the Jemez River Basin into the future. Significantly for the City, the Settlement Agreement provides for protections of the City’s water rights and use; provides the City the ability to lease Pueblo water rights to address potential additional needs of the City in the future; and provides important certainty regarding the development and effects of existing and future water use with regard to both City and Pueblo water rights.

The Settlement Agreement and Settlement Act represent the culmination of a significant comprehensive and collaborative effort to address the complex issues relating to use of the limited, shared water resources of the Jemez River Basin. The City of Rio Rancho requests your support for the Settlement Act necessary to implement

the Settlement Agreement. Please do not hesitate to contact me should you or your staff have any questions regarding the City's support for and interests in the Settlement Act.

Sincerely,

GREGGORY D. HULL, MAYOR OF RIO RANCHO

CITY OF RIO RANCHO
October 17, 2022

Dear Senator Luján:

I am the Governor for the Pueblo of Jemez and I write this letter in support of S. 4896, a bill to approve the settlement of water rights claims of the Pueblos of Jemez and Zia in the State of New Mexico, introduced on September 20, 2022 and referred to the Senate Committee of Indian Affairs. The successful conclusion of many years of settlement negotiations to finally resolve 39 years of litigation in *United States v. Abousleman, et al.* is a historic milestone for New Mexico, for our Pueblo and for waters generally in the Jemez River Basin. The Settlement Agreement provides significant benefits to my Pueblo and non-Pueblo water users, and it recognizes the unique historic, social and cultural practices of both Pueblo and non-Pueblo water users and the unique hydrologic characteristics of the Jemez Basin. Importantly, it establishes the rights of my Pueblo to use our water for our own purposes and provides for quantification of water rights, reliability of supply, and protection of surface and groundwater in the basin for future generations while allowing all parties to fully exercise their water rights. It also provides economic development for my Pueblo now and into the future.

My Pueblo representatives and the Parties to this settlement have engaged in many years of negotiations, and the Settlement Agreement is the product of their numerous hours of collaborative hard work and effort. Our legal counsel, Tribal Water Team and technical expert have kept my Tribal Council informed over many years and my Tribal Council was pleased and relieved when settlement was reached, as these issues have gone much too long unresolved. A Tribal Council Resolution was unanimously passed by my Tribal Council approving the Settlement Agreement.

As you know, it is only through the passage of federal implementing legislation that the significant benefits of this historic water settlement can become a reality. For this reason, the Pueblo of Jemez asks for your support and assistance in ensuring that S. 4896 receives a hearing and is reported out of the Senate Indian Affairs Committee, and your additional support and assistance to secure full passage of this legislation in the 117th Congress. Your support and leadership would be very meaningful to our people, and we believe is in the best interest of the State of New Mexico. Should you need any additional information, please let us know. Thank you for your assistance and we look forward to working with you and your staff in this very crucial piece of legislation.

Respectfully,

RAYMOND LORETTO, DVM, GOVERNOR

SAN YSIDRO COMMUNITY DITCH ASSOCIATION
October 20, 2022

Dear Senator Luján:

I am pleased to submit this letter on behalf of the San Ysidro Community Ditch Association. We are the largest member of the Jemez River Basin Coalition of Acéquias. Our Association respectfully seeks your support for S. 4896, which will approve settlement of water rights claims of the Pueblos of Jemez and Zia and fund and provide critical benefits to all water users of the Rio Jemez stream system.

At our meeting on May 11, 2022, our membership resoundingly approved the Settlement Agreement. Our Commission signed the Settlement Agreement, and we firmly believe S. 4896 will prove to be the most important piece of legislation protecting the water resources and traditional practices in our part of New Mexico. With your help in enacting this legislation, we will have the historical opportunity to assure a sufficient water supply in the Jemez Valley for many generations to come.

The adjudication court has decreed that our acequia has been irrigating 500 acres since 1786. We are one of the most senior water users in the valley. Yet because of inadequate and declining flows of the Rio Jemez, neither we nor the two Pueblos receive sufficient supply. Like the other Jemez acéquias, we especially lack good

supply during the summer, when irrigation water is most needed, because of the current 1996 rotation agreement. It has become very difficult to grow crops within San Ysidro because of lack of supply.

Under the settlement, our situation will markedly improve. A key feature of the settlement is the Augmentation Project that will serve San Ysidro and the two Pueblos. By constructing a water augmentation system, consisting of supplemental irrigation wells and ditch works, the three beneficiaries will have enough water for a full supply in most year, and a much-enhanced supply even in dry years. San Ysidro will work hand in hand with the Pueblos to manage the system and make sure it remains operable over time and functions effectively to provide water to all three beneficiaries. The other acequias will also benefit because they will no longer be curtailed to get water downstream. This is a huge benefit for all concerned.

The legislation will authorize federal funds to the Pueblos for costs associated with the Project and other water and wastewater infrastructure improvements. The State will fund San Ysidro's cost share of the Project and will fund ditch improvements for the other acequia members of the Coalition.

Please let us know if we may provide any additional information. Along with the Coalition, we will be submitting testimony to the Senate Indian Affairs Committee.

Truly Yours,

GILBERT MONTOYA, COMMISSION PRESIDENT

STATE OF NEW MEXICO OFFICE OF THE STATE ENGINEER

October 28, 2022

Dear Senator Luján:

The State of New Mexico appreciates the opportunity to convey the State's full support of Senate Bill 4896, Pueblos of Jemez and Zia Water Rights Settlement Act of 2022. This Bill seeks to authorize, ratify and confirm the settlement agreement among the State, the Pueblos of Jemez and Zia, the United States as trustee, the City of Rio Rancho, the Jemez River Basin Water Users Coalition, of which the San Ysidro Community Ditch Association is one of the eleven member coalition of acequias.

The settlement agreement will resolve the water rights claims of the Pueblos of Jemez and Zia and provides funding for much needed water supply infrastructure to the Pueblos and non-Pueblo water users in the Jemez River Basin. These claims arise from the trespass suit filed by the United States on behalf of the Pueblos in 1983 and proceeded in the United States District Court, District of New Mexico as a general stream adjudication of the water rights of all users in the Jemez River Basin (*United States of America, et al. v. Abousleman, et al.*, Civil No. 83-cv-01041 (KR)). The water rights of non-Pueblo claimants have been adjudicated, and the Pueblos have the only claims remaining in the Basin.

The settlement represents the culmination of 40 years of litigation and subsequent negotiations and offers a historic opportunity to resolve long-standing concerns over the use of scarce water supplies in the Jemez Valley. The settling parties represent a majority of water users in the basin. Further, all major stakeholders within the stream system have either participated, or have been afforded the opportunity to participate, in both the initial litigation and subsequent settlement negotiations.

Over the last 20 or more years, there have been public meetings, site visits and other forms of outreach. The State is confident that water users within the stream system are well aware of the ongoing efforts to resolve and quantify the water claims of the Pueblos, while also protecting nonIndian water uses.

The settlement prevents conflict over surface water by providing federal funding to the Pueblos and state funding to the San Ysidro Community Ditch to use groundwater to augment their surface water supplies. This mutual benefit project provides for alternative administration between the two Pueblos and non-Pueblo water users and is intended to supplement surface water supply during periods of low flow. This ground water augmentation will benefit all users, including 10 upstream acequias who will no longer be subject to curtailment from Pueblo priority calls. By providing a critical buffer against predicted climate change impacts on surface supplies, the augmentation of surface water and other proposed settlement projects will help preserve ancient cultural and agricultural practices and strengthen the relationship between Pueblo and non-Pueblo communities in the Jemez River Basin.

Federal funding in the amount of \$490 million is contemplated for water and wastewater infrastructure improvements, watershed protection, water-related Pueblo community welfare and economic development, and costs relating to implementation of the settlement. The State will fund the San Ysidro Community Ditch Asso-

ciation's capital and operating expenses relating to the augmentation project in the amount of \$3.4 million, and approximately \$16 million for Jemez River Basin Water Users Coalition acequia ditch improvements. Finally, if the State Engineer finds it necessary to appoint a Water Master to manage water rights in the Jemez Basin, the State will fully fund this position and other necessary staff to fulfill the State's commitment to settlement implementation.

The Pueblos have agreed to give up their right to request a priority call on junior non-Pueblo water rights holders, which provides security to all water rights holders. The settlement also provides for the establishment of a water master district to monitor and protect water resources in the Jemez River Basin for future generations while allowing all parties to fully exercise their water rights.

Sincerely,

MIKE A. HAMMAN, P.E., NEW MEXICO STATE ENGINEER

PUEBLO OF ZIA
October 18, 2022

Dear Senator Luján:

For close to 40 years now water users in the Jemez Basin have been working towards a comprehensive determination of their respective water rights. While for approximately the first 30 years the focus was on litigation, with a substantial focus on the adjudication of non-Indian rights, over the last ten plus years the parties have focused on negotiating a settlement of the Pueblos' water rights. This summer the parties finally reached a comprehensive settlement of the water rights of Zia and Jemez Pueblos, including provisions on the administration of their rights and the rights of the non-Indian parties. In addition to the two Pueblos, parties to the settlement agreement include the State of New Mexico (the Governor, Attorney General and State Engineer are all signatories), Coalitions of basin acequias, and the City of Rio Rancho. To our knowledge, no one in the basin opposes the settlement.

For Zia's part, our Tribal Council has unanimously approved this settlement and the ratifying legislation, and passage of the ratifying legislation is now Zia's number one priority. I enclose a copy of the Tribal Council resolution for your reference.

We respectfully urge you to support, and ideally co-sponsor, S. 4896.

Sincerely,

GABRIEL GALVAN, GOVERNOR

PUEBLO OF ACOMA
October 24, 2022

Dear Senator Luján:

I write to you today to express the Pueblo of Acoma's strong support for S. 4898, the settlement of water rights claims of the Pueblos of Acoma and Laguna in the Rio San José Basin. This stream system has provided the only source of water for the Pueblo of Acoma for centuries and well before the arrival of the first Europeans to this region. You may be aware that Acoma is the oldest continuously inhabited community in the United States, if not North America. This legislation is the culmination of a decades long process to address critical water shortages for all water users in the basin, an area that's one of the most water-short places in the State of New Mexico. The Pueblo believes it will not only be able to survive, but also thrive along with its neighbors with the passage of this legislation.

The present state of the Rio San José Stream System is one of extreme scarcity, much of it caused by the actions of the federal government, contested uses over the decades, and the result of climate change. The Pueblo's oral and written history indicates that the stream system met all of the Pueblo's water needs and created a sustainable ecosystem until the arrival of the United States in the region and the establishment of Fort Wingate in the 1860's. The military post was located upstream from the Pueblo and as the years progressed the Pueblo's water supply steadily decreased. In the 1920s an irrigation district was formed, again upstream, with far greater acreage than available water to irrigate. That led to groundwater mining as farmers drilled supplemental wells to irrigate their lands. Beginning in the 1950s, the discovery of uranium in the basin resulted in a major federal effort to create and fund a uranium mining industry. Mine dewatering and uranium processing depleted remaining aquifers and over time resulted in significant contamination of the dwindling water supply. This was exacerbated in the 1980s when operators of an electrical generating station transferred irrigation water rights used only during the agricultural season to a full time, totally consumptive industrial use.

Now, the Pueblo suffers water shortages daily for a wide variety of uses—domestic, commercial, municipal, agricultural, livestock and cultural uses.

The primary sources of surface water in the Rio San José are now very few. Spring flow discharged from the San Andres Glorieta aquifer and other aquifers that form Mt. Taylor have been mined so that most have gone dry. Only one spring, known as Horace Springs, produces a dwindling trickle that slowly flows across the Pueblo. Horace Springs is on the western boundary of the Acoma Pueblo Grant. In 1940 the decreased flow was 10 cubic feet per second, about two-thirds the pre-U.S. flow. Now, some 80 years later, the flow from the spring has dropped dramatically to as low as 1.8 cubic feet per second and rarely reaches 3 cubic feet per second. For the Ojo del Gallo parciales and acequias south of the town of Grants, no water has flowed from Ojo del Gallo spring for decades. Also, because of climate change and long-term drought, snow melt from the Zuni and San Mateo Mountains is now significantly reduced. The drop in snow melt has also contributed to reduced water levels in streams and aquifers.

In 1983 the United States initiated a lawsuit against non-Indian users in the basin to quantify the water rights of the Pueblos and seek damages for trespass to those water rights over the years. That led to the filing of a stream-wide adjudication, *State ex rel. State Engineer v. Kerr-McGee, et al.*, that same year. After several years of litigation with no end in sight, but with water levels continuing to decline, the Pueblo of Acoma initiated negotiations with the State of New Mexico in 2013 and extended the negotiations to all parties to the adjudication. Over the years the Pueblos met with parciales of the acequias that rely on the river system, the municipalities in the basin, and industrial users whose rights are derived from the Bluewater-Toltec Irrigation District. Attorneys for the Pueblos of Acoma and Laguna, the nine acequias including the irrigation district, and the two municipalities, with participation by the United States, have been negotiating in earnest since 2016 when the Court adjudication was stayed, which allowed for negotiations to proceed.

This settlement is a major and collaborative achievement. The parties involved were determined to produce a regime for water use that would meet the needs of all users in ways that could not have been accomplished solely through adjudication. Early on, the negotiating parties determined that water use for domestic and livestock wells and ponds would not be affected by the settlement but would be quantified within the adjudication as it progressed under New Mexico law. Rather than continued litigation to limit junior users to meet the Pueblos' senior priority water rights, all of which would take significant time and financial resources, the parties have accepted limits on their water use. The limits are in line with water that can be reliably provided to meet the needs of the Pueblos through replacement water supplies that come from the last remaining aquifer in the basin, which is not presently the water source for any user. The proposed water to Acoma will come from a replacement water supply that is limited to an agreed quantity based only on past and present irrigation. The Pueblo is foregoing other potential rights under federal law in exchange for a system that will actually provide wet water to the Pueblo, not just paper rights.

With this legislation, Acoma and its neighbors will have the necessary legal right to water and tools to insure a reliable wet water supply for present and future generations as the Pueblo and the immediate region face a future where water supply is far from certain. What the legislation will do is provide a level of certainty that allows for water planning over the long term to meet community and regional needs.

Acoma urges you to support this region-wide collaborative effort to ensure a sustainable water future.

Sincerely,

RANDALL VICENTE, GOVERNOR

BLUEWATER TOLTEC IRRIGATION DISTRICT
November 10, 2022

Dear Senator Luján:

We are writing on behalf of the Bluewater Toltec Irrigation District, a community ditch association in the Rio San Jose Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. This settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San Jose Basin in New Mexico, including this Association, and the other eight Acequias and Community Ditches located in the Rio San Jose Basin. We believe the Settlement Agreement contains many provisions beneficial to our Acequias and

ditch associations and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from the Pueblos' water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in their water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The Pueblos will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Association approved the Settlement Agreement on August 24, 2022 by vote of our board members meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We are providing you a copy of our Resolution approving the Settlement Agreement with this letter. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

REX ROBINSON, PRESIDENT

CITY OF GRANTS
November 8, 2022

Dear Senator Luján:

The City of Grants ("City") strongly supports S. 4898 (the "Bill") that quantifies and settles the water rights of the Pueblos of Acoma and Laguna and urges you to support the Bill. In a unanimous vote on May 6, the City Council approved the Local Settlement Agreement ("Settlement"). The Settlement would end four decades of litigation and provide funding for infrastructure to provide wet water to the Pueblos and significant benefits to the City, the Village of Milan and the nine Acequias in the area. In addition to the economic development fostered by the funding, the City would conserve water and upgrade its own water infrastructure with the \$12.5 million included in the Settlement to be provided from the State of New Mexico. The funding would pay for the Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San Jose that will provide additional wet water to the system.

The City Council did not make this decision lightly-it has invested significant time and resources over the past several years to build trust with the other parties and work together to solve problems in the Rio San Jose Stream System. The City has participated in extensive mediation sessions over at least the past five years, working through a painstaking process to draft the Bill and the Settlement, which has been signed by all the parties.

The Settlement and the Bill together protect the water rights of the City and others by allowing continued use of water rights without the threat of priority calls by the Pueblos. The Pueblos hold time immemorial priority dates and could create chaos if they chose to enforce their priorities. Further, the Settlement protects non-Pueblo water users for the future because the Pueblos agreed to prohibit impairment in any water rights permits they issue. The City and Pueblos also promise to take steps that will keep communications open and facilitate cooperate on water infrastructure in the future.

We urge you, therefore, to support S. 4898 for the benefit of Grants, everyone in the Rio San Jose Basin, and New Mexico. We stand ready to answer any questions you have on this important Settlement and the Bill.

Very truly yours,

ERIK GARCIA, MAYOR; DONALD JARAMILLO, CITY MANAGER

COMMUNITY DITCH OF SAN JOSÉ DE LA CIENEGA
November 3, 2022

Dear Senator Luján:

We are writing on behalf of the Community Ditch of San José de la Cienega to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of

the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San José Basin. We believe the Settlement Agreement contains many provisions beneficial to our Acequias and to this community as a whole. It brings this litigation over the extent of the Pueblos' water rights, which has gone on for 40 years, to a close while containing many protections for our own irrigation rights from Pueblo water uses. The Pueblos cannot make priority calls against our water rights and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Plus, we will receive State funding for development of water projects to improve and conserve our water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on July 19, 2022 by vote of the members meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

HARDING POLK, CHAIRMAN

COMMUNITY DITCHES OF RIO SAN JOSE REGIONAL ASSOCIATION
November 3, 2022

Dear Senator Luján:

We are writing on behalf of the The Community Ditches of Rio San Jose Regional Association, this organization represents all nine Acequia and Irrigation Districts in the basin. We are requesting your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including all nine Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete understanding of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequias and to this community as a whole. It brings this litigation over the extent of the Pueblos' water rights, which has gone on for 40 years, to a close while containing many protections for our own irrigation rights from Pueblo water uses. The Pueblos cannot make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Plus, we will receive State funding for development of water projects to improve and conserve our water supplies.

Because of the many benefits it provides, The Regional Association strongly approved of the settlement and encouraged all Association Commissioners to work with their Parciantes/memberships through meetings, emails, and personal phone calls to fully explain and address any questions and/or concerns they may have had. The Acequia groups approved the Settlement Agreement on various dates, by vote of the members meeting in quorum after public notice given in accordance with their Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

LEON/BEVERLY TAFOYA, COMMUNITY LIAISON

CUBERO ACEQUIA ASSOCIATION
November 7, 2022

Dear Senator Luján:

We are writing on behalf of the Cubero Acequia Association, an acequia in the Rio San José Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in

New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete understanding of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from Pueblo water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on Saturday August 13, 2022 by vote of our parciales meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

PETER SALAZAR, CHAIR

LA ACEQUIA MADRE DEL OJO DEL GALLO
November 7, 2022

Dear Senator Luján:

We are writing on behalf of the La Acequia Madre del Ojo del Gallo, an acequia in the Rio San José Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete understanding of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from Pueblo water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on Saturday August 25, 2022 by vote of our parciales meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

RANDALL CHAVEZ, PRESIDENT

PUEBLO OF LAGUNA
October 19, 2022

Dear Senator Luján:

I write to you on behalf of the Pueblo of Laguna to wholeheartedly support S. 4898, a bill to approve the settlement of water rights claims of the Pueblos of Acoma and Laguna in the Rio San José Stream System in the State of New Mexico, and for other purposes.

S. 4898 will resolve water supply problems more than a century in the making. It will support efforts to retain traditional agriculture, which the Pueblo of Laguna relied upon since time immemorial.

Our Pueblo ancestors were farmers, dam builders and water engineers. They designed and built vast systems of irrigation ditches and massive reservoirs before the first Spanish contact with Pueblo people.

The Laguna people maintained and rebuilt our dams and ditches for centuries, continuing throughout the Spanish and Mexican periods and into the American period. Then, over a century ago, the United States Indian Irrigation Service began replacing our irrigation systems with concrete structures but neglected to maintain or rebuild the concrete structures they imposed on us.

We could not maintain these replacement structures using our traditional methods and materials. This federal neglect resulted in a degraded irrigation system that is no longer sufficient to provide water when it is available.

During this same time, junior upstream users began taking the water until the Rio San José barely maintained a flow. Then they began pumping the groundwater, depleting the groundwater to the point that, even if all current junior water users ceased using water in the Rio San José basin, the system would not recover to provide historical flow levels in the Rio San José in the Pueblos reach for many decades, if ever.

S. 4898 will provide mechanisms for the cooperative management, administration and protection of this sacred resource and funding for alternative water supplies for the Pueblos to ensure the health, safety and economic future for the people of Laguna and Acoma Pueblos. It will also provide water security to surrounding communities for decades to come.

As a fund-based settlement, the bill provides each Pueblo with the ability to determine the best method for providing water to its people, allowing the Pueblos to fully realize their sovereign right to self-determination.

This settlement agreement, and the historic legislation that implements it, would not have been possible without the hard work and compromise of major stakeholders in the Rio San José basin, all of whom support both the settlement and this legislation. If you have any question about our position on S. 4898, please contact us.

Sincerely,

MARTIN KOWEMY, JR., GOVERNOR

MURRAY ACRES IRRIGATION ASSOCIATION
November 7, 2022

Dear Senator Luján:

We are writing on behalf of the Murray Acres Irrigation Association, a community ditch association in the Rio San José Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Association, and the other eight Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete understanding of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from Pueblo water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Second, the State adjudication

Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on July 5, 2022 by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

LARRY CARVER, PRESIDENT

SAN MATEO ACEQUIA ASSOCIATION

October 21, 2022

Dear Senator Luján:

We are writing on behalf of the San Mateo Irrigation Association, an acequia in the Rio San José Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Acequia, and the other eight Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete understanding of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from Pueblo water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on July 19, 2022 by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

RICHARD URENDA, PRESIDENT

SEBOYETA COMMUNITY IRRIGATION ASSOCIATION

November 3, 2022

Dear Senator Luján:

We are writing on behalf of the Seboyeta Community Irrigation Association, an acequia in the Rio San José Basin, to ask your support for Senate Bill S. 4898 introduced on September 20, 2022. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Acequia, and the other eight Acequias and Community Ditches located in the Rio San José Basin. The association has worked tirelessly with all these groups to organize meetings to insure complete under-

standing of the settlement itself. Our legal team has attended and explained all the pros and cons to the settlement. We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from Pueblo water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement on August 23, 2022 by vote of our our board meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We fully support Senate Bill S. 4898 and urge you to do so. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Thank you for your representation of our interests and your efforts on our behalf.

Sincerely,

JOSEPH F. ARITE, CHAIR

VILLAGE OF MILAN
October 25, 2022

Dear Senator Lujan:

The Village of Milan, New Mexico, respectfully requests your support for Senate Bill 4898, *the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022*. This Bill would authorize and ratify the Settlement Agreement among the State of New Mexico, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José, and the Association's nine member-acequias and community ditches. The Bill also would authorize the United States to sign the Settlement Agreement.

The Settlement Agreement resolves the water rights claims of the Pueblos of Acoma and Laguna which have been the subject of litigation and negotiation between the settlement parties since the 1980s. The Board of Trustees of the Village of Milan unanimously approved the Settlement Agreement on May 11, 2022, because it protects and benefits the Village in several important ways. First, under the Settlement Agreement the Pueblos have agreed to give up their right to request a priority call against Milan and other junior non-Pueblo water rights holders. Second, the Settlement Agreement provides administrative and judicial procedures for protecting the Village's municipal water supply from impairment caused by the Pueblos' future development of their water rights. Third, the Settlement Agreement provides for up to \$11 million in State funding to the Village for much-needed water infrastructure repairs and improvements including the repair and rehabilitation of municipal wells, water storage tanks, replacement of water distribution lines, and the Joint Grants-Milan Project for Water Re-Use, Water Conservation and Augmentation of the Rio San José.

A secure municipal water supply and reliable water infrastructure are vital to Milan's ability to provide for the welfare of its residents now and into the future. We therefore appreciate your Efforts in helping to enact this critically important piece of legislation. Please do not hesitate to contact us if we can provide any additional information.

Respectfully,

FELIX GONZALES, MAYOR
LINDA COOKE, VILLAGE MANAGER

TRIBAL COUNCIL RESOLUTION No. 2022-17—RESOLUTION APPROVING
WATER RIGHTS SETTLEMENT AGREEMENT FOR THE PUEBLO OF JEMEZ
IN THE JEMEZ RIVER STREAM ADJUDICATION

At a duly called meeting of the Tribal Council of the Pueblo of Jemez, the following resolution was passed:

WHEREAS, the Pueblo of Jemez, since 1983, has been involved in *United States v. Abousleman*, CV No. 83-1041, SC, a water adjudication in the United States District Court for the District of New Mexico for the Jemez River Basin; and

WHEREAS, the Jemez Pueblo Tribal Council passed a joint resolution in the late 1990s with the Pueblos of Zia and Santa Ana expressing a desire to seek an alternative resolution to the *Abousleman* case by participating in water settlement negotiations; and

WHEREAS, the Pueblo of Jemez, by Resolution No. 94-28, hired Natural Resources Consulting Engineers, Inc., as a consultant to provide and develop on behalf of the Pueblo, a water negotiation plan and strategy that will secure adequate water rights to meet Jemez Pueblo's present and future agricultural and non-agricultural water needs; and

WHEREAS, pursuant to Resolution No. 95-43, the Tribal Council established the Jemez Pueblo Tribal Water Negotiation Team to assist the consultant and legal counsel on developing a water negotiation strategy and were authorized to engage in settlement negotiations and to advocate the Pueblo's best interests in the settlement negotiations in *United States v. Abousleman*; and

WHEREAS, the Pueblo of Jemez has been engaged in settlement negotiations for many years on the Rio Jemez with the Pueblo of Zia, the State of New Mexico, Jemez River Basin Water Users Coalition, San Ysidro Community Ditch Association; City of Rio Rancho and the United States of America (as Trustee for the Pueblos of Jemez and Zia); and

WHEREAS, the aforementioned parties in the Abousleman water rights case have negotiated, over numerous meetings and discussions, the attached Settlement Agreement which contain terms and provisions to resolve the Pueblo's water rights claims on the Rio Jemez; and

WHEREAS, the Agreement recognizes the water rights of the Pueblo of Jemez based on historic uses, as well as rights to future uses of water within the Jemez River Basin and provides for alternative administration between the Pueblos and nonpueblo water users centered around groundwater augmentation intended to supplement surface water; and

WHEREAS, the Settlement Agreement benefits the Pueblo of Jemez by fully resolving the water rights claims of the Pueblo that have been pending for 39 years in Federal Court quantifying the Pueblo's water rights to historically irrigated acreage, domestic, commercial, municipal and industrial uses, livestock uses and economic development water for its own people now and into the future; and

WHEREAS, the Settlement of the Pueblo's water rights will provide the federal funding from Congress to develop its water rights now and into the future providing for employment opportunities and other economic benefits to Pueblo members from construction, operation and maintenance of numerous settlement projects and improvements.

NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby approves the water rights Settlement Agreement entitled "Pueblos of Jemez and Zia Water Rights Settlement Agreement" negotiated by Pueblo of Jemez, Pueblo of Zia, the State of New Mexico, Jemez River Basin Water Users Coalition, San Ysidro Community Ditch Association; City of Rio Rancho and the United States of America (as Trustee for the Pueblos of Jemez and Zia) the parties in *United States v. Abousleman* and authorize the Governor to sign the —Settlement Agreement on behalf of the Pueblo of Jemez.

BE IT FURTHERMORE RESOLVED that the Governors, the Jemez Tribal Water Negotiation team, legal counsel and our technical experts, Natural Resources Consulting Engineers, Inc., are authorized to engage in lobbying efforts with our New Mexico Congressional delegates, members of Congress and Committees in Congress to have the settlement legislation introduced and passed in Congress.

RESOLUTION NO. 22-11—APPROVING AND AUTHORIZING PUEBLOS OF JEMEZ AND ZIA WATER RIGHTS SETTLEMENT LOCAL SETTLEMENT AGREEMENT

At a duly called meeting of the Pueblo of Zia Tribal Council, the following resolution was adopted:

WHEREAS, the Pueblo of Zia (the "Pueblo") is a federally recognized tribe that acts through its governing body, the Tribal Council, which is charged with decision-

making in all matters relative to tribal natural resources and the general welfare of the tribe and its tribal members;

WHEREAS, Pueblo of Zia and the Pueblo of Jemez, the United States of America as trustee for the Pueblo of Jemez and the Pueblo of Zia, the State of New Mexico, the Jemez River Basin Water Users Coalition, of which the San Ysidro Community Ditch Association is one of 11 member acequias of the Coalition, and the City of Rio Rancho (collectively the "Parties") have been actively involved in negotiations to resolve issues concerning the rights to the use of the waters of the Jemez River Basin, in the pending case *United States of America, on its own behalf, and on behalf of the Pueblos of Jemez, Santa Ana, and Zia; and State of New Mexico, ex rel. State Engineer, Plaintiffs; and Pueblos of Jemez, Santa Ana, and Zia, Plaintiffs-in-Intervention v. Tom Abousleman, et al.*, Defendants, Civil No. 83-cv-01041 (KR);

WHEREAS, the Parties have reached a settlement agreement quantifying the Pueblo's water rights in the Jemez River basin and resolving other issues, the specific terms and conditions are set forth in the Local Settlement Agreement attached hereto;

WHEREAS, the Tribal Council has carefully considered the attached Local Settlement Agreement, has consulted with legal counsel on it, and believes that it is in the best interests of the Pueblo to approve it.

NOW, THEREFORE, BE IT RESOLVED, that the Local Settlement Agreement is hereby approved, and the Governor is authorized to sign the Agreement on behalf of the Pueblo.

BE IT FURTHER RESOLVED, that the Governor is authorized and directed to take such further actions as are necessary and appropriate to carry out the purposes and intent of this Resolution.

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined) Resolution No. 22-02

WHEREAS, Bluewater-Toltec Irrigation District ("District") is an organized community ditch and pursuant to §73-2-28, NMSA 1978, is a political subdivision of the State of New Mexico; and

WHEREAS, the District is a party in the pending stream adjudication of the Rio San José stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1 333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and the hydrologist for the District and for the other area acequias and community ditches have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San José Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating parties have now negotiated a Local Settlement Agreement for consideration by the District; and

WHEREAS, these settlement documents are still being finalized and may require grammatical and minor language corrections and clarifications; and

WHEREAS, notice of a special meeting of the Board of Directors ("Board") of the District to consider this agreement was properly published and mailed as required by Article III, Section 4 of the District's bylaws; and

WHEREAS, the members of the Board then met in a special meeting with a quorum present to review and consider this proposed settlement agreement; and

WHEREAS, the Board has been presented with an analysis of the Local Settlement Agreement by its counsel and has had the opportunity to address any concerns or questions to counsel; and

WHEREAS, the Local Settlement Agreement includes many provisions which are of benefit to BTID and its members; and

WHEREAS, the Board has the authority to and should decide whether BTID should approve and execute the Local Settlement Agreement; and

WHEREAS, the Board of Directors, with a quorum of Directors present, reviewed and considered the proposed Local Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by a majority vote of its board members present that the Board hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for the District is authorized to propose and to accept and approve what counsel considers to be any minor modifications to these settlement documents.

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined)

WHEREAS, Cubero Acequia Association (“Association”) is an organized acequia and pursuant to § 73-2-28, NMSA 1978, is a political subdivision of the State of New Mexico; and

WHEREAS, the Association is a party in the pending stream adjudication of the Rio San Jose stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and the hydrologist for the Association and for the other area acequias and community ditches have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San Jose Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating parties have now negotiated a Local Settlement Agreement for consideration by the Association; and

WHEREAS, these settlement documents are still being finalized and may require grammatical and minor language corrections and clarifications; and

WHEREAS, notice of a special meeting of the members of the Association to consider this agreement was properly posted as required by the Association’s bylaws; and

WHEREAS, the members of the Association then met in a special meeting with a quorum present to review and consider this proposed settlement agreement.

NOW, THEREFORE, BE IT RESOLVED by a majority vote of its members present that the Association hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for the Association are authorized to propose and to accept and approve what they consider to be any minor modifications to these settlement documents.

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined)

WHEREAS, Murray Acres Irrigation Association (“Murray Acres”) is a community ditch association and pursuant to § 73-2-28, NMSA 1978 is a political subdivision of the State of New Mexico; and

WHEREAS, Murray Acres is a party in the pending stream adjudication of the Rio San José stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and hydrologist for Murray Acres and for the other acequias and community ditches of the Rio San José have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San José Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating settling parties have negotiated a Local Settlement Agreement for consideration by Murray Acres; and

WHEREAS, the President called a special meeting of the members of Murray Acres to review and consider whether Murray Acres should execute the Local Settlement Agreement; and

WHEREAS, notice of the special meeting was provided by hand delivery of the notice and agenda to the members of Murray Acres and by posting at U.S. Post Office 105 Airport Road, Milan, New Mexico; and

WHEREAS, the Local Settlement Agreement is still being revised by the settling parties as to nonsubstantive grammatical and language corrections; and

WHEREAS, the members of Murray Acres have reviewed and considered the proposed Local Settlement Agreement;

NOW, THEREFORE, BE IT RESOLVED that Murray Acres hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for Murray Acres is authorized to accept and approve what they consider to be any non-substantive modifications to the Local Settlement Agreement. Resolution Approving Settlement Agreement—Murray Acres Irrigation Association

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined)

WHEREAS, San Mateo Irrigation Association (“San Mateo”) is a community ditch association and pursuant to § 73-2-28, NMSA 1978 is a political subdivision of the State of New Mexico; and

WHEREAS, San Mateo is a party in the pending stream adjudication of the Rio San José stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and hydrologist for San Mateo and for the other acequias and community ditches of the Rio San José have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San José Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating settling parties have negotiated a Local Settlement Agreement for consideration by San Mateo; and

WHEREAS, the Local Settlement Agreement is still being revised by the settling parties as to non-substantive grammatical and language corrections; and

WHEREAS, the Commissioners called a special meeting of the members of San Mateo to review and consider whether San Mateo should execute the Local Settlement Agreement; and

WHEREAS, notice of the special meeting was provided in accordance with the Bylaws Article 3, Sections 6 and 7 by posting the notice and agenda at the Fire Station House in San Mateo, New Mexico on July 15, 2022; and

WHEREAS, more than 40 percent of the members current in payment of their dues attended the special meeting; therefore, there was a quorum for a vote by the members as required by the Bylaws, Article 3, Section 5; and

WHEREAS, the members of San Mateo with a quorum present reviewed and considered the proposed Local Settlement Agreement;

NOW, THEREFORE, BE IT RESOLVED by majority vote of the members taken in accordance with the Bylaws, Article 3, Section 5, that San Mateo hereby approves the Local Settlement Agreement,

BE IT FURTHER RESOLVED that counsel for San Mateo are authorized to accept and approve what they consider to be any non-substantive modifications to the Local Settlement Agreement.

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined)

WHEREAS, Bluewater-Toltec Irrigation District (“District”) is an organized community ditch and pursuant to § 73-2-28, NMSA 1978, is a political subdivision of the State of New Mexico; and

WHEREAS, the District is a party in the pending stream adjudication of the Rio San José stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and the hydrologist for the District and for the other area acequias and community ditches have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San José Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating parties have now negotiated a Local Settlement Agreement for consideration by the District; and

WHEREAS, these settlement documents are still being finalized and may require grammatical and minor language corrections and clarifications; and

WHEREAS, notice of a special meeting of the Board of Directors (“Board”) of the District to consider this agreement was properly published and mailed as required by Article III, Section 4 of the District’s bylaws; and

WHEREAS, the members of the Board then met in a special meeting with a quorum present to review and consider this proposed settlement agreement; and

WHEREAS, the Board has been presented with an analysis of the Local Settlement Agreement by its counsel and has had the opportunity to address any concerns or questions to counsel; and

WHEREAS, the Local Settlement Agreement includes many provisions which are of benefit to BTID and its members; and

WHEREAS, the Board has the authority to and should decide whether BTID should approve and execute the Local Settlement Agreement; and

WHEREAS, the Board of Directors, with a quorum of Directors present, reviewed and considered the proposed Local Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by a majority vote of its board members present that the Board hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for the District is authorized to propose and to accept and approve what counsel considers to be any minor modifications to these settlement documents.

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined)

WHEREAS, Seboyeta Community Irrigation Association (“Association”) is an organized acequia and pursuant to § 73-2-28 NMSA 1978 is a political subdivision of the State of New Mexico; and

WHEREAS, the Association is a party in the pending stream adjudication of the Rio San José stream system styled as *State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et al.* Cibola Cause No. D-1333-CV-198300 190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and the hydrologist for the Association and for the other area acequias and community ditches have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San José Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating parties have now negotiated a Local Settlement Agreement for consideration by the Association; and

WHEREAS, these settlement documents are still being finalized and may require grammatical and minor language corrections and clarifications; and

WHEREAS, notice of a special meeting of the members of the Association to consider this agreement was properly posted as required by the Association’s bylaws; and

WHEREAS, the members of the Association then met in a special meeting with a quorum present to review and consider this proposed settlement agreement.

NOW, THEREFORE, BE IT RESOLVED by a majority vote of its members present that the Association hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for the Association are authorized to propose and to accept and approve what they consider to be any minor modifications to these settlement documents.