

**H.R. 3254, TAOS PUEBLO INDIAN
WATER RIGHTS SETTLEMENT ACT
OF 2009; AND H.R. 3342, AAMODT
LITIGATION SETTLEMENT ACT OF
2009.**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

Wednesday, September 9, 2009

Serial No. 111-34

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>

or

Committee address: <http://resourcescommittee.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

52-312 PDF

WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON NATURAL RESOURCES

NICK J. RAHALL, II, West Virginia, *Chairman*
DOC HASTINGS, Washington, *Ranking Republican Member*

Dale E. Kildee, Michigan	Don Young, Alaska
Eni F.H. Faleomavaega, American Samoa	Elton Gallegly, California
Neil Abercrombie, Hawaii	John J. Duncan, Jr., Tennessee
Frank Pallone, Jr., New Jersey	Jeff Flake, Arizona
Grace F. Napolitano, California	Henry E. Brown, Jr., South Carolina
Rush D. Holt, New Jersey	Cathy McMorris Rodgers, Washington
Raúl M. Grijalva, Arizona	Louie Gohmert, Texas
Madeleine Z. Bordallo, Guam	Rob Bishop, Utah
Jim Costa, California	Bill Shuster, Pennsylvania
Dan Boren, Oklahoma	Doug Lamborn, Colorado
Gregorio Sablan, Northern Marianas	Adrian Smith, Nebraska
Martin T. Heinrich, New Mexico	Robert J. Wittman, Virginia
George Miller, California	Paul C. Broun, Georgia
Edward J. Markey, Massachusetts	John Fleming, Louisiana
Peter A. DeFazio, Oregon	Mike Coffman, Colorado
Maurice D. Hinchey, New York	Jason Chaffetz, Utah
Donna M. Christensen, Virgin Islands	Cynthia M. Lummis, Wyoming
Diana DeGette, Colorado	Tom McClintock, California
Ron Kind, Wisconsin	Bill Cassidy, Louisiana
Lois Capps, California	
Jay Inslee, Washington	
Joe Baca, California	
Stephanie Herseth Sandlin, South Dakota	
John P. Sarbanes, Maryland	
Carol Shea-Porter, New Hampshire	
Niki Tsongas, Massachusetts	
Frank Kratovil, Jr., Maryland	
Pedro R. Pierluisi, Puerto Rico	

James H. Zoia, *Chief of Staff*
Rick Healy, *Chief Counsel*
Todd Young, *Republican Chief of Staff*
Lisa Pittman, *Republican Chief Counsel*

SUBCOMMITTEE ON WATER AND POWER

GRACE F. NAPOLITANO, California, *Chairwoman*
TOM McCLINTOCK, California, *Ranking Republican Member*

George Miller, California	Cathy McMorris Rodgers, Washington,
Raúl M. Grijalva, Arizona	Adrian Smith, Nebraska
Jim Costa, California	Mike Coffman, Colorado
Peter A. DeFazio, Oregon	Doc Hastings, Washington, <i>ex officio</i>
Jay Inslee, Washington	
Joe Baca, California	
Nick J. Rahall, II, West Virginia, <i>ex officio</i>	

CONTENTS

	Page
Hearing held on Wednesday, September 9, 2009	1
Statement of Members:	
Baca, Hon. Joe, a Representative in Congress from the State of California	9
Prepared statement of	9
Heinrich, Hon. Martin, a Representative in Congress from the State of New Mexico	7
Prepared statement of	8
McClintock, Hon. Tom, a Representative in Congress from the State of California	3
Prepared statement of	5
Napolitano, Hon. Grace F., a Representative in Congress from the State of California	1
Prepared statement of	3
Statement of Witnesses:	
Connor, Hon. Michael L., Commissioner, Bureau of Reclamation, U.S. Department of the Interior, Washington, D.C.	10
Prepared statement on H.R. 3254	14
Prepared statement on H.R. 3342	18
Cordova, Hon. Nelson J., Councilman and Water Rights Coordinator, Pueblo of Taos, Taos, New Mexico	22
Prepared statement on H.R. 3254	24
Dorame, Hon. Charles J., Chairman, Northern Pueblos Tributary Water Rights Association, Albuquerque, New Mexico	32
Prepared statement on H.R. 3342	33
Luján, Hon. Ben Ray, a Representative in Congress from the State of New Mexico	5
Prepared statement of	7
Martinez, Palemon A., President, Taos Valley Acequia Association (TVAA), Taos, New Mexico	45
Prepared statement on H.R. 3254	47
Montoya, Hon. Harry B., Commissioner of District 1, Santa Fe County Commission, Santa Fe, New Mexico	48
Prepared statement on H.R. 3342	49
Supplemental statement submitted for the record	70
Sanders, DL, Chief Counsel, Office of the State Engineer, Santa Fe, New Mexico, on behalf of John R. D'Antonio, Jr., P.E., New Mexico State Engineer, Interstate Stream Commission Secretary	37
Additional materials supplied:	
D'Antonio, John R., Jr., P.E., New Mexico State Engineer, Interstate Stream Commission Secretary, Prepared statement on H.R. 3254	38
Prepared statement on H.R. 3342	42
Pojoaque Basin Water Alliance, Statement submitted for the record	75
Richardson, Hon. Bill, Governor, State of New Mexico, Letter submitted for the record	77
Rivera, Governor George, Pueblo of Pojoaque, Statement submitted for the record on H.R. 3342	71
List of documents retained in the Committee's official files	78

LEGISLATIVE HEARING ON H.R. 3254, TO APPROVE THE TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT AGREEMENT, AND FOR OTHER PURPOSES. "TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT ACT OF 2009"; AND H.R. 3342, TO AUTHORIZE THE SECRETARY OF THE INTERIOR, ACTING THROUGH THE COMMISSIONER OF RECLAMATION, TO DEVELOP WATER INFRASTRUCTURE IN THE RIO GRANDE BASIN, AND TO APPROVE THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE PUEBLOS OF NAMBE, POJOAQUE, SAN ILDEFONSO, AND TESUQUE. "AAMODT LITIGATION SETTLEMENT ACT OF 2009."

**Wednesday, September 9, 2009
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 2:03 p.m. in Room 1324, Longworth House Office Building, Hon. Grace Napolitano [Chairwoman of the Subcommittee] presiding.

Present: Representatives Napolitano, McClintock, Inslee, Baca.

Also Present: Representatives Heinrich and Luján.

STATEMENT OF HON. GRACE NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Good afternoon. The meeting of the Subcommittee on Water and Power will come to order.

The purpose of today's meeting is to hold a legislative hearing on H.R. 3254 and H.R. 3342. I ask unanimous consent that Congressman Ben Ray Luján and Congressman Heinrich be allowed to sit on the dais and participate in the Subcommittee proceedings today. Without objection, so ordered.

After my opening statement, I will recognize all of the members of the Subcommittee for any statement they may have. We will need to move expeditiously, because they are expecting votes between 2:15 and 2:30 p.m.

Any Member who desires to be heard will be heard. Additional material may be submitted for the record by the Members, by any witness, or by any interested party. The record will be kept open for 10 business days following today's hearing.

The five-minute rule with our timer, which is in front of you and in front of me, will be enforced. Green means go, yellow indicates one minute remaining, and red means stop or I will stop you.

Today's legislative agenda focuses on two water rights settlements, which affect five New Mexican Pueblos. The settlement reflects the large amount of work, time, patience, and money of the Pueblos and the state and Federal governments.

And let us be clear from the start. We are committed to completing these settlements. It is unacceptable that there have been 83 years' worth of outstanding litigation between Aamodt, which addresses the Pueblos of Nambe, Pojoaque, Tesuque, and San Ildefonso, and the Abeyta case, which addresses the water needs of Taos Pueblo.

We have the chance today, with H.R. 3254 and H.R. 3342, to settle 83 years of litigation.

To quote one of our witnesses today, Mr. Cordova—thank you, sir—in regard to the Taos settlement, but I think it also applies to Aamodt, these settlements will build a relationship for all parties in the future; one that is based on mutual trust, respect, and cooperation. Something that has been missing historically.

Welcome, Mr. Cordova and Chairman Dorame. We appreciate your continued perseverance. Welcome again, and thank you for being with us today.

We are also pleased to welcome D. L. Sanders from the New Mexico State Engineers Office, TVAA President Martinez, and Santa Fe County Commissioner Montoya to our hearing today, to provide us the state and local perspective.

While it is often perceived that water rights settlements benefit primarily the tribes, it is also important to recognize the importance water settlements have in providing water certainty to the entire region. Water in New Mexico, as in most places in the West, is a limited commodity.

The wise and careful management of water requires us to work together to develop workable solutions, and to solidify it in legislation.

We are here today to take a significant and important step in giving Pueblos and the people of New Mexico certainty on the management of this precious resource.

I personally trust there will be additional focus on water reuse and water recycling for any water discharges. That is one of the things that we in this Subcommittee have taken a great interest in, and we hope that you will consider those in the future as you move forward with your projects.

To round out our all-New Mexican panel, we welcome back Commissioner Connor. We are looking forward to reading your

testimony sooner. I just got it, so it was kind of late last night. But I am pleased that the delay allowed for a welcome change.

I also expect that the Administration recognizes the hard work the five Pueblos have done to address concerns regarding the waiver language, application of the criteria and procedures, and the total cost. In fact, since our hearing last September, Taos waiver language in H.R. 3254 has become the model waiver language for the Department. This is no doubt a testament to their hard work, and an eagerness to bring finality to these important settlements.

We thank the panel for being present to testify, and look forward to your testimony.

And I turn it over to my Ranking Member, Mr. Tom McClintock. [The prepared statement of Mrs. Napolitano follows:]

**Statement of The Honorable Grace F. Napolitano, Chairwoman,
Subcommittee on Water and Power**

Today's legislative agenda focuses on two water rights settlements which affect five New Mexico Pueblos. These settlements reflect a large amount of work, time and patience by the people of the pueblos and the state and federal governments. Let us be clear from the start, we are committed to complete these settlements. It is unacceptable that there has been 83 years worth of outstanding litigation between the Aamodt Case, which addresses the Pueblos of Nambe, Pojoaque, Tesuque San Ildefonso; and the Abeyta Case, which addresses the water needs of the Taos Pueblo. We have the chance today with H.R. 3254 and H.R. 3342 to settle 83 years of litigation.

To quote Mr. Cordova, in regard to the Taos settlement, but I think it also applies to Aamodt, these settlements will "build a relationship for all parties the future...one that is based on mutual trust, respect and cooperation, something that has been missing historically." Welcome Mr. Cordova and Chairman Dorame. We appreciate the many miles that you have come today to represent your people. Thank you for being here today.

We are also pleased to welcome DL Sanders from the New Mexico State Engineer's office, TVAA President Martinez and Santa Fe County Commissioner Montoya to our hearing today to provide us the state and local perspective. While it's often perceived that Water Rights Settlements benefit primarily the tribes, it is also important to recognize the importance water settlements have in providing water certainty to the entire region. Water in New Mexico, as in most places in the West, is a limited commodity. The wise and careful management of water requires us to work together, to develop workable solutions and then to solidify it in legislation. We are here today to take a significant and important step in giving the Pueblos and the people of New Mexico certainty on the management of this precious resource.

To round out our all New Mexican Panel, we welcome back Commissioner Connor. We were looking forward to reading your testimony sooner, but I am pleased that the delay allowed for a welcome change. I also expect that the Administration recognizes the hard work the five pueblos have done to address concerns regarding the waiver language, application of the criteria and procedures, and the total cost. In fact, since our hearing last September, Taos waiver language in H.R. 3254 has become the boiler plate language for the Department. This is no doubt a testament to their hard work and eagerness to bring finality to these important settlements.

Thank you all for traveling all the way to Washington, DC to be here with us today. I look forward to your testimonies.

**STATEMENT OF HON. TOM McCLINTOCK, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. McCLINTOCK. Thank you, Madame Chairwoman. Today we are going to hear about two bills that authorize the Secretary of the Interior to implement comprehensive settlement agreements affecting water rights claims for five Pueblos of New Mexico.

I am looking forward to the testimony on these bills. I hope that both sides can allay concerns that I have regarding several of the provisions.

On the positive side, the bills end the longest-standing litigation in the Federal Court system, and establish something that the people of this region, both on and off reservation, have lacked, and that is a certainty about future water rights and apportionments.

Also on the positive side, I agree with Mr. Martinez of the Taos Valley Acequia Association that quote: "The United States owes a Federal trust obligation to these Pueblos to protect the water rights of the Acequias and their members."

And finally, I agree with the Santa Fe County Commissioner that a comprehensive solution is advisable since quote: "There will be demand in the future from non-Pueblo residents to connect to the system, and that quote: "It would be a very unfortunate outcome if those people were told no, you cannot connect, this is a Pueblo-only system."

However, I also have some serious concerns about several details in the bills which I hope can be addressed.

My first two concerns are specific to H.R. 3342. First, I am very concerned about the prospect of giving eminent domain authority to a joint powers agency that includes sovereign entities that are not accountable to local voters—specifically, the Pueblo governments.

I have no problem with the Pueblos exercising eminent domain on their own land, and county agencies exercising eminent domain on non-reservation land. But I very seriously question allowing one agency to exercise this power outside of its jurisdiction when that agency is not directly accountable to voters.

In this respect, I agree with the Pojoaque Basin Water Alliance, that, quote, "The citizens of our county have no control or oversight over tribal representatives, development, and countless other issues. A large joint water system and district would have administrative and operational issues evolving into jurisdictional issues."

Second, I am concerned that this resolution has not worked out legitimate concerns by affected water users; that the settlement imperils their existing water rights. In this respect, I wonder if the settlement doesn't constitute an unconstitutional taking.

With respect to both bills, I would raise a third concern. It seems to me that resolving water rights is quite a separate matter from asking taxpayers to pay for a specific project from which those taxpayers derive no benefit.

I am strongly in favor of additional water development. I believe that the projects contemplated by this legislation will be a boon to the entire region.

However, I have always believed that local water projects should be financed by local revenue bonds that are redeemed by local users of the water in proportion to their use, and not subsidized by general taxpayers.

For example, a project that exclusively benefits water users in the Pojoaque Basin should not be exclusively financed by water users in Poughkeepsie or in Palomar. So I would ask for you to address these issues that are of principal concern to me as I did a first reading on these bills.

I yield back.

[The prepared statement of Mr. McClintock follows:]

**Statement of The Honorable Tom McClintock, a Representative in Congress
from the State of California**

Thank you Madam Chairwoman.

Today we will hear two bills that authorize the Secretary of the Interior to implement comprehensive settlement agreements affecting water rights claims for five Pueblos of New Mexico.

I am looking forward to testimony on these bills and hope that both sides can allay concerns that I have regarding several provisions.

On the positive side, the bills end the longest standing litigation in the federal court system and establish something that the people of this region—both on and off reservation—have lacked, and that is a certainty about future water rights and apportionments.

Also on the positive side, I agree with Mr. Martinez of the Taos Valley Acequia Association that “The United States owes not only a federal trust obligation” to these pueblos “to protect the water rights of the Acequias and their members.”

And finally, I agree with the Santa Fe County Commissioner that a comprehensive solution is advisable since “there will be demand in the future from non-Pueblo residents to connect to the system.” And that “It would be a very unfortunate outcome if those people were told “no, you cannot connect—this is a Pueblo-only system.”

However, I also have serious concerns about many details in the bills which I hope can be addressed.

My first two concerns are specific to H.R. 3342:

First, I am very concerned about the prospect of giving eminent domain authority to a joint-powers agency that includes sovereign entities that are not accountable to local voters—specifically the Pueblo governments. I have no problem with the pueblos exercising eminent domain on their own land and county agencies exercising eminent domain on non-reservation land, but I very seriously question allowing one agency to exercise this power outside of its jurisdiction when that agency is not directly accountable to the voters. In this respect, I agree with the Pojoaque Basin Water Alliance that “The Citizens of our county have no control or oversight over tribal representatives, development, and countless other issues. A large joint water system and district would have administration and operational issues evolving into jurisdictional issues.”

Second, I am concerned that this resolution has not worked out legitimate concerns by affected water users that the settlement imperils their existing water rights. In this respect, I wonder if the settlement doesn’t constitute an unconstitutional taking.

With respect to both bills, I would raise a third concern, that resolving water rights is quite a separate matter from asking taxpayers to pay for a project from which those taxpayers derive no benefit. I am strongly in favor of additional water development and believe that the project contemplated by this legislation will be a boon to the entire region. However, I have always believed that local water projects should be financed by local revenue bonds redeemed by the users of the water in proportion to their use and not subsidized by general taxpayers. For example a project that exclusively benefits water users in the Pojoaque Basin should be exclusively financed by those water users and not by taxpayers in Poughkeepsie or Palomar.

Mrs. NAPOLITANO. Thank you, Mr. McClintock. And while I agree with you, sometimes we need to take into consideration that some of these tribes have been waiting for the Federal government to act upon some of their claims, so that has to be taken into consideration.

In order as arrived, Mr. Luján, for a short speech.

**STATEMENT OF HON. BEN RAY LUJÁN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW MEXICO**

Mr. LUJÁN. Thank you very much, Madame Chair, and to all the members of the Water and Power Subcommittee, and the staff of

the Subcommittee, especially Camille, for working to set up this hearing, and for the invitation to sit in.

This is an important step in protecting the valuable water resources of northern New Mexico. Our water resources are precious in New Mexico. Without a reliable water supply, we cannot improve human health, protect our cultures and traditions, or grow economies. These settlements will protect water resources, advance the implementation of effective water management, and ensure future access to water resources for all residents located in the areas of northern New Mexico encompassed by these settlements.

I want to thank all the people from Taos and the greater Pojoaque Valley for traveling the long distance from New Mexico to Washington, D.C., for this very important hearing.

I would like to acknowledge Governor Mitchell from Tesuque Pueblo, Governor Roybal from San Ildefonso, Governor Rivera from Pojoaque, and Governor Romero from Taos, and our ward chief in Taos, for making this long trip. This is something you have all worked on for a very long time, and I am glad to have you here today to talk about the importance of these water settlements.

Earlier this year I introduced two pieces of legislation to approve two water settlements in my district. H.R. 3254, the Taos Pueblo Indian Water Rights Settlement Act of 2009, to approve the Taos Pueblo Indian water rights settlement agreement and for other purposes, and H.R. 3342, the Aamodt Litigation Settlement Act of 2009, to authorize the Secretary of the Interior, acting for the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

I would like to ask the Chairwoman if I may submit directive letters I received from the State of New Mexico, the County of Santa Fe, the Rio Pojoaque Acequia and Well Water Association, and others who have asked the Congress to take a serious look at the importance of approving these settlements, as these two pieces of legislation are vital to the prolonged existence of culture and agriculture in my district.

Mrs. NAPOLITANO. Without objection, so ordered.

[NOTE: The letters submitted for the record can be found at the end of this hearing.]

Mr. LUJÁN. Similar legislation was introduced in the 110th Congress, and was subject to legislative hearings in both the House and the Senate.

Early in the 111th Congress, both Senators Bingaman and Udall from New Mexico introduced Senate Bill 965, the Taos Pueblo Indian Rights Settlement Act, and Senate Bill 1105, the Aamodt Litigation Settlement Act, in the Senate with important revisions having improved both settlements. Their leadership surely has gotten us where we are today with these two settlements.

I recognize the importance of these water settlements from a resource management and future use perspective, and I follow the leads of the Senators from New Mexico and introduce H.R. 3254 and H.R. 3342 in the House.

With that, Madame Chair, I yield back my time.

[The prepared statement of Mr. Luján follows:]

**Statement of The Honorable Ben R. Luján, a Representative in Congress
from the State of New Mexico, on H.R. 3254 and H.R. 3342**

First I'd like to thank Chairwoman Napolitano, all of the members of the Water and Power Subcommittee and the staff of the subcommittee for working to set up this hearing. This is an important step in protecting the valuable water resources of northern New Mexico.

Our water resources are precious in New Mexico. Without a reliable water supply, we cannot improve human health, protect our cultures and traditions, or grow economies. These settlements will protect water resources, advance the implementation of effective water management, and ensure future access to water resources for all residents located in the areas of Northern New Mexico encompassed by these settlements.

I want to thank all of the people from Taos and the Greater Pojoaque Valley for traveling the long distance from New Mexico to Washington D.C. for this very important hearing.

- Gov. Romero, Taos Pueblo
- Gov. Mitchell, Tesuque Pueblo
- Gov. Roybal, San Ildefonso
- Gov. Rivera, Pojoaque Pueblo

This is something you all have worked on for a very long time and I am glad to have you here today to talk about the importance of these water settlements. Earlier this year I introduced two pieces of legislation to approve two water settlements in my district.

- H.R. 3254, The "Taos Pueblo Indian Water Rights Settlement Act of 2009;," To approve the Taos Pueblo Indian Water Rights Settlement Agreement, and for other purposes, and;
- H.R. 3342, The "Aamodt Litigation Settlement Act of 2009." To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

I would like to ask the chairwoman if I may submit to the record the numerous letters of support I received from The state of New Mexico, The County of Santa Fe, The Rio Pojoaque Acequia & Well Water Association and others who have asked that Congress take a serious look at the importance of approving these settlements as these two pieces of legislation are vital to the prolonged existence of culture and agriculture in my district.

Similar legislation was introduced in the 110th Congress and was subject to legislative hearings in both the house and the Senate. Early in the 111th Congress both Senators Bingaman and Udall introduced S.965 the Taos Pueblo Indian Water Rights Settlement Act and S.1105 the Aamodt Litigation Settlement Act in the Senate with important revisions that have improved both settlements. Their leadership surely has gotten us where we are today with these two settlements. I recognize the importance of these water settlements from a resource management and future use perspective, and I followed the lead of the Senators from New Mexico and introduced H.R. 3254 and H.R. 3342 in the House.

Mrs. NAPOLITANO. Thank you. Mr. Heinrich.

**STATEMENT OF HON. MARTIN HEINRICH, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW MEXICO**

Mr. HEINRICH. Thank you, Chairwoman Napolitano, for inviting me to sit in with the Subcommittee today. This is clearly an issue that is critical to our state's future. And as anyone from the West knows, water is the lifeblood of our communities. Whether you live in downtown Albuquerque or on a ranch or in a pueblo, every New Mexican depends on their community's right to clean, reliable water.

The bills before the Subcommittee today are the result of years of hard work; respectively, 40 and 43 years. These legal actions were filed approximately three and six years before Congressman Luján and I were born.

To ensure that communities have reliable rights to water for future generations, I want to commend the local, state, and Pueblo governments for all their dedication to finding a solution that meets each community's needs.

As this Subcommittee is all too well aware, cooperation and collaboration are far too rare when it comes to managing water resources in the West. These bills are an example of how we can manage this precious resource without pitting towns against farms, and farms against tribes.

The Taos Pueblo Indian Water Rights Settlement Act would settle a lawsuit 40 years old, and adjudicate water rights for Taos Pueblo, the State of New Mexico, and many non-Indian water users and Acequia associations.

The Aamodt litigation settlement would settle an even older water rights lawsuit; in fact, the oldest active case in the Federal Court system. This settlement will secure the rights of the four northern Pueblos of Pojoaque, Nambe, San Ildefonso, and Tesuque, and would create the regional water system to deliver water to the Pueblos and to the Santa Fe County water utility.

These agreements represent many years of negotiations that began when the parties to these lawsuits realized that litigation was too costly and too time-consuming to produce a satisfactory result. By talking neighbor to neighbor, these communities have found the solution that will work for them.

I hope that Congress will support these agreements and pass H.R. 3254 and H.R. 3342.

I yield back.

[The prepared statement of Mr. Heinrich follows:]

Statement of The Honorable Martin Heinrich, a Representative in Congress from the State of New Mexico, on H.R. 3254 and H.R. 3342

Thank you, Chairwoman Napolitano, for inviting me to sit in with the subcommittee today to discuss this issue critical to my state's future.

As anyone from a Western state knows, water is the lifeblood of our communities. Whether you live in downtown Albuquerque, on a ranch, or at a pueblo, every New Mexican depends on their community's right to clean, reliable water.

The bills before the subcommittee today are the result of years of hard work by the communities of Northern New Mexico to ensure they have reliable rights to water for future generations. I commend the local, state, and pueblo governments for their dedication to finding a solution that meets each community's needs.

As this subcommittee is all too well aware, cooperation and collaboration are far too rare when it comes to managing water resources in the West. These bills are an example of how we can manage this precious resource without pitting towns against farms, and farms against tribes.

The Taos Pueblo Indian Water Rights Settlement Act would settle a lawsuit nearly 40 years old and adjudicate water rights for Taos Pueblo, the State of New Mexico, and many non-Indian water users and acequia associations.

The Aamodt Litigation Settlement Act would settle an even older water rights lawsuit—in fact, this is the oldest active case in the federal court system. This settlement will secure the rights of the Four Northern Pueblos—Pojoaque, Nambe, San Ildefonso, and Tesuque—and would create a Regional Water System to deliver water to the pueblos and to the Santa Fe County Water Utility.

These agreements represent many years of negotiations that began when the parties to these lawsuits realized that litigation was too costly and too time consuming to produce a satisfactory result.

By talking neighbor to neighbor, these communities have found a solution that will work for them.

I hope Congress will support these agreements and pass H.R. 3254 and H.R. 3342.

Thank you.

Mrs. NAPOLITANO. Thank you. Mr. Inslee, do you have any statement, sir?

Mr. INSLEE. No, thank you.

Mrs. NAPOLITANO. Thank you. Mr. Baca.

**STATEMENT OF HON. JOE BACA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BACA. Yes, Madame Chair. First of all, thank you, Madame Chair, for hosting this meeting, along with Ranking Member Tom McClintock. It is an important hearing.

I especially want to thank my friend, Rep. Ben Luján, who represents that area in bringing this piece of legislation. And I commend his dad, because his dad has also been a strong leader as the Speaker of the House, and the Assembly that believes that water is important for a lot of us in the state. And the son has taken on the same gavel and the same torch. Thank you for taking that torch.

I believe that every individual should have access to water, and that we should all recognize that water is the fundamental necessity for all communities, it doesn't matter whether in the reservation or off the reservation. But we all should have access to it.

I agree that we should come to some kind of an agreement and support H.R. 3254. I commend them all coming together and working together on this long journey for everyone.

Today, this bill will address the longstanding water claims in New Mexico, and will finally bring together government entities and interested entities.

As a native of New Mexico, I am the third individual—you heard from two other individuals—who actually represents the area. I was born in Belen, New Mexico. So you have a third guardian angel that also speaks on behalf of New Mexico, and a voice in that area. And we finally have a native New Mexican other than myself. I used to claim I was the only one in Congress representing the State of New Mexico. Ben Luján is also native from that area.

But again, I look forward to hearing the testimony, and look to support H.R. 3254 and H.R. 3342, that are important to a lot of us in settling this litigation.

Thank you, Madame Chair.

[The prepared statement of Mr. Baca follows:]

**Statement of The Honorable Joe Baca, a Representative in Congress
from the State of California**

Thank you, Chairwoman Grace Napolitano and Ranking Member Tom McClintock for holding this important hearing, and thank you Rep. Luján for working on these important pieces of water legislation.

I firmly believe that every individual should have access to water; and that we should all recognize that water is a fundamental necessity for all communities.

I am sensitive to other communities' water needs because my District in the Inland Empire, California is going through its own set of problems with our water—drought and contamination.

The bills presented today will address long standing water claims in New Mexico, and will finally bring together governing entities and interest.

As a native New Mexican from Belen, I am very proud to be here today and try to enhance access to water for these New Mexican communities

I look forward to hearing the testimony of our witnesses.

Thank you.

Mrs. NAPOLITANO. Thank you, Mr. Baca. We are trying to hurry because we are going to have some votes, and then after that we have that procedure in the Rotunda. And we certainly have witnesses.

So we thank you for your statements, and we will hear from the witnesses. We have only one panel, and you will be introduced before you testify. After your testimony we will have questions.

Your prepared statements will be entered into the record, and all witnesses are asked to kindly, please summarize the high points of the testimony, and limit your remarks to the five minutes allocated. Again, the timer before you will be used.

That applies to all questioning. Members have five minutes for questions. If there are additional, we may have a second round, time permitting.

Our first panel, we have Mr. Mike Connor—welcome again, Commissioner—Bureau of Reclamation, Washington, D.C. You are on, sir.

STATEMENT OF MIKE CONNOR, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. CONNOR. Thank you, Madame Chairwoman, Ranking Member McClintock, and members of the Subcommittee. I am Mike Connor, Commissioner of the Bureau of Reclamation. I am pleased to be here to discuss the two Indian water rights settlements bills before the Subcommittee today.

I am also honored to be here with my fellow New Mexicans on this panel.

I have submitted written remarks for the record, and I will summarize that within the five-minute time period.

I would like to recognize that for over 25 years, the Federal government, together with Indian tribes, states, and local parties, have acknowledged that negotiated Indian water rights settlements are preferable to the protracted litigation.

The Aamodt and Taos settlements continue this approach and reflect a desire by the people of the State of New Mexico, both Indian and non-Indian alike, to control their own future by settling their differences through negotiation, rather than litigation.

My testimony today is mindful of this history, and the good work that has been put into both settlement bills before the Subcommittee.

This Administration's general policy of support for negotiations is premised on four principles: that the United States participate in water settlements consistent with its responsibilities as trustee to Indians.

Two, that Indian tribes receive equivalent benefits for rights which they, as the United States's trustee, relinquished as part of a settlement.

Three, that Indian tribes should realize the value from confirmed water rights resulting from a settlement.

And four, that settlements contain appropriate cost-sharing proportionate to the benefits received by all parties benefitting from the settlements.

In both bills before the Subcommittee today, substantial work and modifications have been made by the parties and the New Mexico Congressional Delegation to improve the settlements. As a result, the bills reflect a positive and significant step toward addressing the principles just articulated.

My statement today is intended to recognize these improvements, and establish a clear path toward some additional changes that will make these settlements ones which the Administration can fully support.

I will now address the specifics of each bill.

H.R. 3254, the Taos Bill. H.R. 3254 would settle Taos Pueblo's water rights claims in the Rio Pueblo de Taos and the Rio Hondo systems in northern New Mexico. There is a long history of litigation concerning the Pueblo's water rights claims that goes back to the late 1800s. Today the case is the latest round, initiated in 1969 as the General Stream Adjudication.

Recognizing that litigation and uncertainty over water rights would likely continue into the foreseeable future, the Pueblo, the United States, State of New Mexico, Taos Valley Acequia Association, the Town of Taos, El Prado Water and Sanitation District, and 12 mutual domestic water associations entered into negotiations in the 1990s.

As with most negotiations, progress was incremental. Ultimately, the parties' efforts resulted in a settlement agreement that was signed by the non-Federal parties in May 2006.

Both my written and my oral presentation summarizes the number of the positive aspects of the settlements. I am going to skip over that for the sake of time, and identify those remaining concerns that I just identified in general.

H.R. 3254 authorizes a Federal contribution of—

Mrs. NAPOLITANO. Excuse me, Mr. Connor. Please go ahead, we will allow you the extra time. We need to hear that.

Mr. CONNOR. OK. Overall, the Taos settlement is a reasonable and positive resolution of historic water disputes, and is a settlement that contains many provisions that the Administration supports.

The waivers contained in H.R. 3254, as you noted, Madame Chairman, are significant improvements over the prior version of this bill. In fact, these negotiated waivers have become a model for other settlements.

In addition, the settlement will provide for the protection and restoration of the Pueblo's Buffalo Pasture, a culturally sensitive and sacred wetland currently impacted by groundwater development.

Finally, perhaps the most significant attribute of the negotiated settlement is that it solidifies and makes permanent many water-sharing arrangements that the Pueblo and its non-Indian neighbors have struggled for years to establish.

Notwithstanding the positive provisions of H.R. 3254, the Administration has some concerns about two items in particular that are related to the Federal contribution to the settlement.

The bill authorizes a Federal contribution of \$121 million to be paid over seven years. An additional \$33 million is authorized to fund 75 percent of the construction costs of various projects that

have been identified as mutually beneficial to the Pueblo and local non-Indian parties.

The Administration believes that the cost share as it presently stands is not proportional to the settlement benefits received by the state and local non-Indian parties. We believe that increasing the cost share for the mutual benefit projects is appropriate and consistent with the funding parameters of other Federal water resource programs, particularly in light of the benefit that exists by ending the litigation and securing a waiver of future water rights claims.

The second concern goes to the amount of the funding that would be provided to the Pueblos before the settlement is final. H.R. 3254 allows \$25 million of early funding. In previous settlements, such funding was far more limited, less than \$4 million.

Although the Department understands the need for immediate access to funds, especially to halt deterioration of the condition of the Buffalo Pasture, we remain concerned about the precedent this would set for other Indian water rights settlements.

We recommend the bill be amended to reduce the amount of early money that is authorized. We also recommend strengthening the provision which allows the United States to recoup and receive credit for any early funds made available, should the settlement fail to be implemented.

Finally, with respect to non-financial issues, the Administration is concerned about the manner in which the bill addresses enforcement matters. Currently there is a provision to waive the sovereign immunity of the United States to enforce the settlement. This provision is both unnecessary, and should be eliminated.

On a related note, the bill leaves unresolved the question of what court retains jurisdiction over an action brought to enforce the settlement agreement. This ambiguity may result in needless litigation, and the Administration believes that the decree court must have continuing and exclusive jurisdiction to interpret and enforce its own decree.

I should end by noting that my written testimony also raises concerns about the timeframe for entering the San Juan-Chama project contracts and the Secretary's role in approving San Juan's subcontract entered into by the Pueblo. It appears that the parties have now agreed to language that would resolve both of these issues. That language should be finalized and incorporated into the bill.

The other bill before the Subcommittee today, H.R. 3342, the Aamodt Litigation Settlement Act, would authorize the settlement of the water rights of four other New Mexico Pueblos: Tesuque, Nambe, Pojoaque, and San Ildefonso, all in the Rio Pojoaque Basin, which is immediately north of Santa Fe. This settlement would end a contentious water dispute, as well as a Federal Court proceeding that has been noted here is over 40 years old.

In 1998 the *Judge in New Mexico v. Aamodt* directed the parties to negotiate, which intensified an effort that was initially begun in 1992. Concluding the settlement has been difficult, in no small part because the basin is chronically water-short. In order to allow junior state-based water right holders to continue to use water while facilitating the Pueblos the right to use and develop their senior

water rights, the parties agreed to a settlement centered on a regional water system that will use an established quantity of imported water to serve the needs of the Pueblos and other water users in the basin.

In May 2006, the Pueblos, the State of New Mexico, and other non-Federal parties executed a settlement agreement which requires the construction of the regional water system, defines the extent and priority of agricultural water rights, and establishes parameters for the use of groundwater in the basin.

H.R. 3342 would approve and implement the settlement agreement by authorizing the design and construction of that regional water system, as well as other benefits identified in my written testimony.

Overall, the total cost of the settlement is estimated to be \$290 million, with a Federal contribution of \$174 million, and a state and local contribution of about \$117 million. This represents a 40 percent non-Federal cost share, which is a significant improvement over many past settlements.

The Administration considers the willingness of the settling parties to provide such a significant cost share to be a good indication that they are invested in, and deeply supportive of, this settlement. A settlement to which many interests are contributing deserves more support than a settlement which comes at solely Federal expense.

Nevertheless, the Administration is concerned about certain aspects of the cost of this settlement. As a threshold matter, there has been an ongoing concern that the cost share agreement among the parties remains unsigned, creating uncertainty about the viability of the system overall, and the costs expected to be borne by the United States.

We understand that this is an issue that is likely to be resolved soon. If so, this fact should be reflected in the legislation.

Second, the Administration is concerned about the validity of the cost estimate that the settlement parties are relying on for the regional water system. The parties rely on an engineering report dated June 2007, which has not been verified by the level of study that Reclamation would recommend in order to ensure its reliability.

To better understand the risks associated with cost that could potentially exceed the cost estimate, Reclamation is now carrying out a design, engineering, and construction review of an engineering, of the engineering report, and we expect to finish it by the end of this calendar year.

The Administration also believes that the parties should agree that the non-Federal parties will share proportionately in any increases in the cost of the project above and beyond the cost estimate.

In addition to the cost-related matters, other provisions need to be resolved as identified in the written testimony. The waiver provisions include a provision section 204.[a][9] that could be interpreted as waiving important environmental protection. The Administration cannot accept waivers which have the potential to erode important environmental safeguards put in place to protect the health, safety, and well-being of the citizens and the environment.

Fortunately, it is my understanding that the parties are working with, having worked with both the Interior and Department of Justice staff, have agreed to remove this provision.

In addition, the settlement contains a provision that allows the Pueblos to begin the process of nullifying the entire settlement if the regional water system is not substantially complete by mid-2021. The Administration believes the legislation should be clarified in this area to establish a clear definition and process related to that definition of substantial completeness.

Once again, it appears the parties have reached an agreement to include language to address this issue. This would represent a significant progress in this serious issue.

Notwithstanding that progress, because there is still a possibility that the settlement could fail, the Administration, similar to the Taos bill, recommends strengthening a provision which allows the United States to recoup and receive credits for any earlier funds made available for the project.

In summation, I want to again acknowledge that these settlements are products of a great deal of effort by many parties; and except for the issues raised, are generally consistent with the principles for Federal participation in Indian water rights settlements.

This Administration wants to avoid continued and unproductive litigation which, even when finally concluded, will leave parties injured by and hostile to its results. We believe settlement can be accomplished in a manner that protects the rights of the Indian communities, and also ensures that the costs of settlements are borne proportionately.

The Administration is committed to work with Congress and all parties concerned in developing settlements that the Administration can fully and wholeheartedly support.

We would also welcome working with Congress to identify and implement clear criteria for going forward with future settlements.

Madame Chairwoman, this concludes my statement. I stand ready to answer questions at the appropriate time.

[The prepared statements of Mr. Connor follow:]

**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,
U.S. Department of the Interior, on H.R. 3254**

Madam Chairwoman and members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on H.R. 3254, the Taos Pueblo Indian Water Rights Settlement Act. This Administration supports the resolution of Indian water rights claims through negotiated settlement. Our general policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. We recognize that substantial work and refinements have been made to this settlement by the parties and the New Mexico delegation. As a result, the parties have taken positive and significant steps toward meeting the Federal goals just articulated. The settlement legislation has been greatly improved, contributing to long-term harmony and cooperation among the parties. We would like to continue to work with the parties and the sponsors to address certain concerns, including those discussed in this statement (such as appropriate non-Federal cost share), that could make this a settlement that the Administration could wholeheartedly support.

Negotiated Indian Water Rights Settlements

Settlements improve water management by providing certainty not just as to the quantification of a tribe's water rights but also as to the rights of all water users. That certainty provides opportunities for economic development for Indians and non-Indians alike. Whereas unquantified Indian water rights are often a source of tension and conflict between tribes and their neighbors, the best settlements replace this tension with mutual interdependence and trust. In addition, Indian water rights settlements are consistent with the Federal trust responsibility to Native Americans and with a policy of promoting Indian self-determination and economic self-sufficiency. For these reasons and more, for over 20 years, federally recognized Indian tribes, states, local parties, and the Federal government have acknowledged that, when possible, negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims.

In analyzing settlements, the Administration must consider the immediate and long-term water needs of the Indian tribes, the merits of all legal claims, the value of water, federal trust responsibilities, economic efficiency measures, and the overall promotion of good public policy. An additional critical component of our analysis is cost-sharing.

Historic Water Conflicts in the Taos Valley

Before discussing the proposed settlement and the Administration's concerns with it, it is important to provide background on the disputes that led to the settlement. Taos Pueblo is located in north-central New Mexico, approximately 70 miles north of Santa Fe. It is the northernmost of 19 New Mexico Pueblos and its village is recognized as being one of the longest continuously occupied locations in the United States. The Pueblo consists of approximately 95,341 acres of land and includes the headwaters of the Rio Pueblo de Taos and the Rio Lucero. The Taos Pueblo has irrigated lands for agriculture since prehistoric times. Before the Pueblo's 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 Pueblo 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. In the Treaty, the United States agreed to protect rights recognized by prior sovereigns including Pueblo rights. In 1858, Congress specifically confirmed many Pueblo land titles, including that of Taos Pueblo.

Subsequently, patents were issued to the Pueblos of New Mexico which, in effect, quitclaimed any interest the United States had in the Pueblos' land. The Pueblos were then considered to own their lands in fee simple, unlike most other Indian tribes. Despite this unusual title arrangement, the United States attempted to exercise jurisdiction over the Pueblos for their benefit, seeking to protect Pueblo lands and resources by extending the restrictions on alienation of Indian lands in the Indian Trade and Intercourse Acts to Pueblo lands. Unfortunately, initial efforts by the United States to protect Pueblo lands and waters were to no avail. New Mexico's territorial courts did not accept the application of the Trade and Intercourse Act to Pueblo lands. In *United States v. Joseph*, 94 U.S. 614 (1876), the Supreme Court expressly held that the Pueblos were not Indian tribes within the meaning of the 1834 and 1851 Non-intercourse Acts. This meant that non-Indians were able to buy Pueblo lands without regard to federal Indian law and as a result, there was significant loss of Pueblo lands to non-Indians.

After almost forty years of loss of land and water rights, the Supreme Court reversed its decision in *Joseph* and decided that the Pueblos were, in fact, covered by laws extending federal guardianship and protection. *United States v. Sandoval*, 231 U.S. 28, 48 (1913). The Supreme Court's reversal of opinion threw the status of title to lands occupied by 12,000 non-Indians in New Mexico into serious doubt, along with the water rights exercised on those lands. Responding to the outcry concerning title, Congress sought to remedy the uncertainty by passing the Pueblo Lands Act of 1924, 43 Stat. 636, to "settle the complicated questions of title and to secure for the Indians all of the lands which they are equitably entitled."

Under the 1924 Act, if the non-Indians could persuade a special lands board that they had used and occupied Pueblo land for a period of time, the non-Indians were awarded title, and the Pueblo was supposed to be compensated for the value. In practice, this resulted in the non-Indians successfully claiming some of the most valuable, irrigable Pueblo farmland. Taos Pueblo lost 2,401.16 acres to claims by non-Indians under the 1924 Act. The Pueblo also lost title to 926 acres in the Town of Taos. The compensation awarded by the lands board to the Pueblos was lower than actual appraised values, and woefully inadequate. Congress followed up by enacting the 1933 Pueblo Lands Act, which provided additional compensation to the Pueblo

and also expressly preserved the Pueblo prior water rights, but the compensation still did not adequately remedy the losses to the Pueblo.

In passing the 1924 and 1933 Acts, Congress recognized the necessity of resolving the uncertainty of title to land and water and also restoring the severely eroded economic footing of the Pueblos caused in large part by the loss of land and interference with water rights. Cash awards made to the Pueblos under the Acts were expressly intended to compensate the Pueblos for their losses and to help fund the replacement of their lost economic base through the purchase of lands, construction of irrigation projects, and by financing various other permanent improvements for the benefit of Pueblo lands. Sadly, the Acts did not fully accomplish their purposes. While land titles may have been more or less resolved, title to water rights clearly was not and uncertainty over title to water has continued to plague the Taos Valley.

In a final attempt to resolve title to water in the Taos Valley, in 1969 the general stream adjudication of the Rio Pueblo de Taos and Rio Hondo stream systems and the interrelated groundwater and tributaries was filed. The United States filed a statement of claims in the case on behalf of the Taos Pueblo on August 1, 1989, which it revised in 1997. The revised claim was for essentially the entire flow and interrelated groundwater of the Rio Pueblo de Taos and the Rio Lucero with an aboriginal priority date. If the United States is successful in the litigation, the impact on non-Indian water users in the Taos Valley will be nothing short of devastating. They would be able to use water only if the Pueblo forbears exercising its rights.

As with many general stream adjudications in New Mexico, the Taos adjudication has moved very slowly. Motions for partial summary judgment were filed in 1991 on a number of key issues concerning the legal character of the Pueblo's water rights and were fully briefed in 1995. To date, however, the Court has taken no action on the motions. Recognizing that the litigation and attendant uncertainty over water rights would continue decade after decade, the Pueblo, the United States, the State of New Mexico, the Taos Valley Acequia Association (representing 55 community ditch associations), the Town of Taos, the El Prado Water and Sanitation District, and 12 mutual domestic water consumers associations entered into negotiations.

Negotiations were not productive until a technical understanding of the hydrology of Taos Valley, including preparation of surface and groundwater models, was completed in the late 1990s. Negotiations intensified in 2003 when a mediator was retained and an aggressive settlement meeting schedule was established. The United States participated actively in the negotiations, formed a constructive working relationship with the parties and was able to resolve most issues of concern to the Government. The willingness of the Pueblo, in particular, to agree to reasonable and necessary compromises has been impressive, and the leadership of the Pueblo negotiation team is to be commended for dedication and steadfastness over many years of very difficult negotiations. The dedicated efforts of all the parties resulted in a Settlement Agreement that was signed in May of 2006 by all of the major non-federal parties.

Under the terms of the negotiated settlement, the Pueblo has a recognized right to a total of 11,927.71 acre-feet per year (AFY) of depletion, of which 7,249.05 AFY of depletion would be available for immediate use. The Pueblo has agreed to forebear from using 4,678.66 AFY in order to allow non-Indian water uses to continue without impairment. The negotiated settlement contemplates that the Pueblo would, over time, reacquire the forborne water rights through purchase from willing sellers with surface water rights. There is no guarantee that the Pueblo will be able to reacquire the forborne water rights, however. The quantity of water secured under the settlement is a tremendous compromise on the quantity of water claimed by the United States and the Pueblo. If the claims asserted in litigation by the United States and the Pueblo were successful, the court could award the Pueblo rights to approximately 78,000 AFY of diversion and 35,000 AFY of depletion of water in the basin. This is very valuable water. The cost of water rights in northern New Mexico is extraordinarily high and has been estimated to be as much as \$10,500 to \$12,000 per acre-foot of consumptive use per year.

H.R. 3254 also contains a waiver of potential breach of trust and water related claims that the Pueblo may have against the United States. The Pueblo has identified a number of potential claims related to failure to protect, manage and develop water for which it believes the United States would be liable. It should be noted that almost all potential claims that the Pueblo could bring against the United States would face a number of jurisdictional hurdles, including statute of limitations and *res judicata* defenses. An award of damages against the United States is by no means a certainty, but defending against such cases can cost a great deal of time and resources in addition to having serious public policy repercussions. The waiver provided in H.R. 3254 will avoid prolonged and bitter litigation over these claims.

Provisions that the Administration Supports

Overall, the negotiated settlement represents a positive step towards the resolution of historic water disputes in an area that has limited water resources and is struggling to support the population it has attracted. It is a settlement that contains many provisions that the Administration can support.

Concern about the inadequacy of the waivers contained in a predecessor bill, Title II of H.R. 6768, was previously a significant barrier to United States' support for the settlement. After hearings on that bill in the 110th Congress, the Taos settlement parties promptly and diligently worked with the Departments of Interior and Justice to address waiver concerns. The waivers contained in H.R. 3254 are the result of many months of hard work and compromise and are supported by the Administration.

A central and noteworthy feature of the settlement is funding for the protection and restoration of the Pueblo's Buffalo Pasture, a culturally sensitive and sacred wetland that is being impacted by non-Indian groundwater production. Under the settlement, the non-Indian municipal water suppliers have agreed to limit their use of existing wells in the vicinity of the Buffalo Pasture in exchange for new wells located further away from the Buffalo Pasture. These agreements will allow the Pueblo to continue to utilize this valued wetland in the manner considered essential to Pueblo cultural and religious values.

Perhaps the most significant positive attribute of the negotiated settlement is that it solidifies and makes permanent many water sharing arrangements that the Pueblo and its non-Indian neighbors have struggled for years to establish, including the Pueblo's agreement to share its surface water with its non-Indian neighbors, consistent with local customs, until its water rights are reacquired from the non-Indian irrigators on a willing buyer-willing seller basis.

Provisions the Administration Seeks to Negotiate Further

Despite the positive provisions enumerated above, we believe a closer look can and should be given to the costs of the settlement and the share and timing of those costs to be borne by the United States.

H.R. 3254 authorizes a Federal contribution of \$121,000,000, to be paid over 7 years. Of this total, \$88,000,000 is authorized to be deposited into two trust accounts for the Pueblo's use. We are concerned about the large Federal contribution in the trust fund and believe there should be further discussion with the parties about the activities included in this part of the settlement.

An additional \$33,000,000 is authorized to fund 75% of the construction cost of various projects that have been identified as mutually beneficial to the Pueblo and local non-Indian parties. The State and local share of the settlement is a 25% cost-share for construction of the mutual benefit projects (\$11,000,000). The Settlement Agreement provides that the State will contribute additional funds for the acquisition of water rights for the non-Indians and payment of operation, maintenance and replacement costs associated with the mutual benefits projects. The Administration believes that this cost-share is disproportionate to the settlement benefits received by the State and local non-Indian parties. We believe that increasing the State and local cost-share for the mutual benefit projects is both necessary and appropriate, and consistent with the funding parameters of other Federal water resources programs.

An unusual and problematic provision of H.R. 3254 would allow the Pueblo to receive and expend \$25 million for the purposes of protecting and restoring the Buffalo Pasture, constructing water infrastructure, and acquiring water rights before the settlement is final and fully enforceable. The Department believes providing early settlement benefits is not good public policy and has consistently advocated that the settlement benefits that are provided in Indian water rights settlements should be made available to all parties only when the settlement is final and enforceable so that no entity can benefit if the settlement fails. Limited departure from this practice may sometimes be appropriate, but there should always be statutory provisions ensuring that the United States is able to recoup unexpended funds or receive credits or off-sets for the water and funding provided by the United States if the settlement fails and litigation resumes. The amount of funding that would be provided to Taos before the settlement is final is also of concern. In previous settlements allowing early benefits, the funding was far more limited "less than \$4 million. Although the Department understands the Pueblo's need for immediate access to funds, especially to halt deterioration of the condition of Buffalo Pasture, we remain concerned about the precedent that this would set for the many other pending Indian water settlements that are working their way toward Congress. We recommend that the bill be amended to reduce the amount of early money that is authorized.

H.R. 3254 also sets a deadline for the Department to enter into the contracts that will be impossible for the Department to meet taking into consideration the environmental compliance and other work that must be accomplished before the contracts can be executed. If the contracts are to be awarded before the settlement is final, we recommend that the deadline for entering into the contracts be extended to 9 months after the date of enactment of this legislation.

We also recommend that the settlement legislation be amended to require Secretarial approval for all water leases and subcontracts. As currently written, section 7(e)(2) exempts leases or subcontracts of less than 7 years duration from the approval requirement. Secretarial approval is required for all existing San Juan Chama subcontracts and we believe there is no reason to depart from that practice here. With respect to leasing other types of water, the requirement of Secretarial approval has been the standard practice in Indian water rights settlements.

Moreover, the United States recommends that Section 12(a)—which waives the sovereign immunity of the United States for “interpretation and enforcement of the Settlement Agreement” in “any court of competent jurisdiction”—be eliminated. This waiver is unnecessary, as demonstrated by the absence of such a waiver in H.R. 3342, the Aamodt Litigation Settlement Act. Further, this provision will engender additional litigation—and likely in competing state and federal forums—rather than resolving the underlying adjudication.

Finally, the United States is concerned that H.R. 3254 as introduced fails to provide finality on the issue of how the settlement is to be enforced. The bill leaves unresolved the question of which court retains jurisdiction over an action brought to enforce the Settlement Agreement. This ambiguity may result in needless litigation. The Department of Justice and the Department believe that the decree court must have continuing and exclusive jurisdiction to interpret and enforce its own decree.

Conclusion

The Taos settlement is the product of a great deal of effort by many parties and reflects a desire by the people of the State of New Mexico, Indian and non-Indian, to settle their differences through negotiation rather than litigation. Settlement of the underlying litigation and related claims in this case would fulfill a long-standing federal goal of restoring to the Taos Pueblo the water rights and water resources necessary for its economic and cultural future, while at the same time accomplishing this goal without causing harm to local farmers, communities and other non-Indian water-users within the Taos basin. Overall, it provides some innovative mechanisms for managing water in Taos Valley to satisfy the Pueblo’s current and future water needs, while minimizing disruption to the non-Indian water users.

The Administration wants to avoid continued and unproductive litigation which, even when finally concluded, may leave parties injured by and hostile to its results, ensuring continued friction in the basin to the detriment of both the Pueblo and its non-Indian neighbors. We believe that this settlement contains some important compromises and has the potential to produce positive results for all the parties concerned. While we have some remaining concerns with the bill, the Administration is committed to working with Congress and all parties concerned towards a settlement that the Administration can fully support. In addition, we would like to work with Congress to identify and implement clear criteria for going forward with any future settlements on issues including cost-sharing and eligible costs.

Madam Chairwoman, this concludes my statement. I would be pleased to answer any questions the Subcommittee may have.

Statement of Michael L. Connor, Commissioner, Bureau of Reclamation, U.S. Department of the Interior, on H.R. 3342

Madam Chairwoman and members of the Subcommittee, I am Mike Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior’s views on H.R. 3342, the Aamodt Litigation Settlement Act, which would provide approval for, and authorizations to carry out, a settlement of the water rights of four pueblos in New Mexico—the Pueblos of Tesuque, Nambe, Pojoaque, and San Ildefonso. This Administration supports the resolution of Indian water rights claims through negotiated settlement. Our general policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and

that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement.

This settlement would resolve a contentious water dispute in northern New Mexico, as well as a federal court proceeding that has been ongoing for over 40 years. We recognize that substantial work and refinements have been made to this settlement by the parties and the New Mexico delegation. As a result, the parties have taken positive and significant steps toward meeting the Federal goals just articulated, contributing to long-term harmony and cooperation among the parties. We would like to continue to work with the parties and the sponsors to address certain concerns, including those discussed in this statement (such as appropriate non-Federal cost share) that could make this a settlement that the Administration could wholeheartedly support.

Negotiated Indian Water Rights Settlements

Settlements improve water management by providing certainty not just as to the quantification of a tribe's water rights but also as to the rights of all water users. That certainty provides opportunities for economic development for Indian and non-Indians alike. Whereas unquantified Indian water rights are often a source of tension and conflict between tribes and their neighbors, the best settlements replace this tension with mutual interdependence and trust. In addition, Indian water rights settlements are consistent with the Federal trust responsibility to Native Americans and with a policy of promoting Indian self-determination and economic self-sufficiency. For these reasons and more, for over 20 years, federally recognized Indian tribes, states, local parties, and the Federal government have acknowledged that, when possible, negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims.

In analyzing settlements, the Administration must consider the immediate and long-term water needs of the Indian tribes, the merits of all legal claims, the value of water, federal trust responsibilities, economic efficiency measures, and the overall promotion of good public policy. An additional critical component of our analysis is cost sharing.

Historic Water Conflicts in Rio Pojoaque Basin

Before discussing the proposed settlement and the Administration's concerns with it, it is important to provide background on the disputes that led to the settlement. The Rio Pojoaque basin, immediately north of Santa Fe, New Mexico, is home to the four Pueblos of Tesuque, Nambe, Pojoaque and San Ildefonso. In total the Pueblos hold approximately 51,000 acres of land in the basin. Like other pueblos in New Mexico, the four Pueblos were agricultural people living in established villages when the Spanish explorers first entered the area. 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. In the Treaty, the United States agreed to protect rights recognized by prior sovereigns including Pueblo rights. In 1858, Congress specifically confirmed many Pueblo grant land titles, including those of the Pueblos of Tesuque, Nambe, Pojoaque and San Ildefonso.

Subsequently, patents were issued to the Pueblos of New Mexico which, in effect, quitclaimed any interest the United States had in the Pueblos' grant lands. The Pueblos were then considered to own their lands in fee simple, unlike most other Indian tribes. Despite this unusual title arrangement, the United States asserted jurisdiction over the Pueblos for their benefit, seeking to protect Pueblo lands and resources by extending the restrictions on alienation of Indian lands in the Indian Trade and Intercourse Acts to Pueblo lands. Unfortunately, initial efforts by the United States to protect Pueblo lands and waters were ineffective. New Mexico's territorial courts did not accept the application of the Trade and Intercourse Act to Pueblo lands. In *United States v. Joseph*, 94 U.S. 614 (1876), the Supreme Court expressly held that the Pueblos were not Indian tribes within the meaning of the 1834 and 1851 Non-intercourse Acts. This meant that non-Indians were able to buy Pueblo lands without regard to federal Indian law and as a result, there was significant loss of Pueblo lands to non-Indians.

After almost forty years of loss of land and water rights, the Supreme Court reversed its decision in *Joseph* and decided that the Pueblos were, in fact, covered by laws extending federal guardianship and protection. *United States v. Sandoval*, 231 U.S. 28, 48 (1913). The Supreme Court's reversal of opinion threw the status of title to lands occupied by 12,000 non-Indians in New Mexico, along with the water rights exercised on those lands, into serious doubt. Responding to the outcry concerning

title, Congress sought to remedy the uncertainty by passing the Pueblo Lands Act of 1924, 43 Stat. 636, to “settle the complicated questions of title and to secure for the Indians all of the lands which they are equitably entitled.”

Under the 1924 Act, if the non-Indians could persuade a special lands board that they had used and occupied Pueblo land for a period of time, the non-Indians were awarded title, and the Pueblo was supposed to be compensated for the value. In practice, this resulted in the non-Indians successfully claiming some of the most valuable, irrigable Pueblo farmland. The Pueblos of Tesuque, Nambe, Pojoaque and San Ildefonso collectively lost more than 4000 acres to claims by non-Indians under the 1924 Act. The compensation awarded by the lands board to the Pueblos was lower than actual appraised values, and woefully inadequate. Congress followed up by enacting the 1933 Pueblo Lands Act, which provided additional compensation to the Pueblos and also expressly preserved the Pueblos’ prior water rights, but the compensation still did not adequately remedy the losses to the Pueblo.

In passing the 1924 and 1933 Acts, Congress recognized the necessity of resolving the uncertainty of title to land and water and also restoring the severely eroded economic footing of the Pueblos caused in large part by the loss of land and interference with water rights. Cash awards made to the Pueblos under the Acts were expressly intended to compensate the Pueblos for their losses and to help fund the replacement of their lost economic base through the purchase of lands, construction of irrigation projects, and by financing various other permanent improvements for the benefit of Pueblo lands. Sadly, the Acts did not fully accomplish their purposes. While land titles may have been more or less resolved, title to water rights clearly was not and uncertainty over title to water has continued to plague all the residents of the basin.

In a final attempt to resolve title to these Pueblos’ water, a general stream adjudication was initiated in 1966. That case, now in its 43rd year, is *New Mexico v Aamodt* and is one of the longest running cases in the federal court system. Forty-three years of litigation has yielded surprisingly little in the way of results. The parties initially skirmished over whether state or federal law applied and what role, if any, Spanish colonial and Mexican law would play. A 1976 decision by the Tenth Circuit Court of Appeals held that the Pueblos’ water rights were not subject to New Mexico’s prior appropriation law. Subsequently, the United States District Court, nineteen years into the case, ruled the federal reserved water rights or Winters doctrine does not apply to the unique circumstances of the Pueblos’ grant lands. The Tenth Circuit court denied interlocutory appeal and litigation proceeded on a Historically Irrigated Acreage (HIA) quantification standard for the grant lands, but a Winters right quantification standard for other lands reserved for the Pueblos. Judge Mechem directed the parties to negotiate in 1998, and in 2000 the litigation was stayed. The parties, who had engaged in sporadic settlement talks since 1992, then intensified their efforts to settle the litigation.

The settlement negotiations were difficult for many reasons, including that the basin is chronically water short. The average annual surface water yield of the watershed is approximately 12,000 acre-feet per year, but claimed irrigated acreage calls for the diversion of 16,200 acre-feet per year. Deficits have been addressed by using groundwater with the result that groundwater resources are now threatened. The negotiation goal of the parties was to control groundwater extraction in order to prevent impacts on surface water flows from excessive groundwater development. In order to allow junior state-based water right holders to continue to use water while still allowing the Pueblos the right to use and further develop their senior water rights, the non-federal parties agreed to a settlement centered on a regional water system that will utilize water imported from the San Juan basin to serve needs of the Pueblos and other water users in the Rio Pojoaque basin. In May 2006, the Pueblos, the State of New Mexico, and other non-federal settlement parties executed a Settlement Agreement which requires the construction of the regional water system to deliver treated water to Pueblos and non-Pueblo water users. It also requires the United States to provide, via the regional water system to be constructed, 2,500 acre/feet per year of imported water for Pueblo use.

Concerns Related to Cost

H.R. 3342 approves this Settlement Agreement, authorizes the planning, design, and construction of the regional water system and authorizes the appropriation of \$106.4 million for that system. In addition, the bill provides the Pueblos with a \$37,500,000 trust fund to subsidize the operations, maintenance, and replacement costs of the system, and \$15,000,000 to rehabilitate and maintain water-related infrastructure other than the regional system facilities. The bill also requires the United States to acquire water for Pueblo use in the regional water system by specific purchases and by allocating available Bureau of Reclamation San Juan-Chama

Project water to the Pueblos. The total cost of the settlement is estimated to be at least \$286.2 million, with a federal contribution of \$174.3 million, to be paid over 13 years, and State and local contributions of about \$116.9 million (subject to finalization and execution of the cost share agreement).

This represents a 40% non-federal cost share which is a significant improvement over many past settlements and is moving in the right direction. The Administration considers the willingness of the settling parties to provide a significant cost share for this project to be a good indication that they are invested in and deeply supportive of this settlement. It is evident that serious consideration has been given by the settlement proponents to the design and intended function of the facilities to be constructed under this settlement. A settlement to which many interests are contributing deserves more favorable treatment by federal government than a settlement that comes at solely federal expense.

Nevertheless, the Administration is concerned about the costs of this settlement for several reasons. First, the absence of a signed cost share agreement among the parties for the construction of the regional water system creates uncertainty about the viability of the system as planned and the costs to be borne by the United States.

Second, the Administration is concerned about the validity of the cost estimates that the settlement parties are relying on for the regional water system. The parties rely on an engineering report dated June 2007 that has not been verified by the level of study that the Bureau of Reclamation would recommend in order to assure reliability. Much of the cost information contained in the engineering report was arrived at three years ago, none of the costs have been indexed to 2007, and the total project cost estimates cannot be relied upon. Any additional costs (both for the Pueblo related and non-Pueblo related components of the regional water system) may become the responsibility of the United States under H.R. 3342. To better understand the risks associated with costs that could potentially greatly exceed the current cost estimate, Reclamation has identified and is allocating the resources necessary to complete a design, engineering, and construction review of the engineering report by the end of this calendar year. On the basis of this review, Reclamation will be able to provide the bill proponents with a better sense of whether or not the project is likely to be able to be completed using the funds authorized in this bill. The Administration believes that the parties should agree in the cost share agreement that the non-federal parties will share proportionately any increases in cost estimates that result from Reclamation's analysis.

Third, multiple site-specific cost issues remain that cannot be resolved until final project design is completed, not the least of which is access limitations at the diversion point for the system on the Rio Grande. The costs associated with NEPA and EIS compliance, acquiring unspecified easements (including possible condemnation expenses), and agency implementation costs have not been studied and are not included in current cost estimates to develop the proposed regional water system. These uncertainties will likely serve to drive the overall settlement's costs and the corresponding Federal commitment higher than anticipated. These costs should be reflected in the authorization levels provided for in this bill.

Other Federal Concerns

In addition to costs, there are other provisions and issues that need to be addressed and resolved.

The waiver provisions of this bill were significantly improved as a result of negotiations over the last year between the Pueblos, non-federal parties, and the United States. Nonetheless, there is one ongoing concern. The waiver provisions of H.R. 3342 include a provision that could be interpreted as waiving important environmental protections that would otherwise be available to the Pueblos, the citizens of New Mexico, and the United States. This provision, section 204(a)(9) of the bill, is confusing and unnecessary, and could lead to injury to the environment. The Administration cannot accept waivers which have the potential to erode important environmental safeguards put in place to permit the United States to take actions to protect the health, safety, and well being of its citizens and the environment. Fortunately, I am pleased to report that the parties have worked with the Departments of Interior and Justice on this issue and it is my understanding that they have reached agreement on removal of this provision.

In addition, the settlement poses an arrangement under which the United States will expend significant funds to plan, design and construct a regional water system. While the Pueblos would be waiving their water rights and related damages claims in exchange for the system, under H.R. 3342 the Pueblos retain the right to withdraw these waivers and trigger nullification of the entire settlement agreement, if the system is not substantially complete by 2021. To minimize the risk of building

a system only to have waivers withdrawn and the settlement fail, the Administration believes the legislation should include: (1) a definition of substantial completion, (2) a mechanism for determining when it has occurred, and (3) a clearly specified process to challenge that determination.

The Administration has long worked with local parties on these issues and has strongly advocated for a process under which substantial completion is determined by the Secretary of the Interior and, subsequently, subject to review under the Administrative Procedures Act. Our concern stems from the fact that, as introduced, the legislation provides neither certainty of process nor any clear substantive standards for how a determination that substantial completion has not been achieved would be made, or how a court would be expected to handle any subsequent review and litigation over the settlement voiding provisions contained in H.R. 3342 if these provisions are triggered. Under the provisions of H.R. 3342 as introduced, the only certainty is that any litigation ensuing from a claim to void the settlement would be protracted, expensive, and have few bounds. The United States believes that one lesson to be learned from the forty-three years of Aamodt litigation is not to set up a legal regime that has the potential to lead to expensive, long-lived, and futile litigation. The Administration believes that the bill must adopt such a substantial completion provision.

Finally, while language in section 203(f) provides generally in the event the settlement is voided that the United States is entitled to return of any unexpended federal funds and property, the Administration suggests that Congress add additional language to clarify that the United States is entitled to recoup or obtain credit for its contributions to settlement in the case that the settlement fails.

Conclusion

The Aamodt settlement is the product of a great deal of effort by many parties and reflects a desire by the people of the State of New Mexico, Indian and non-Indian, to settle their differences through negotiation rather than litigation. Settlement of the underlying litigation and related claims in this case would fulfill a long-standing federal goal of restoring to the Pueblos the water rights and water resources necessary for their economic and cultural future. This settlement would accomplish this goal by stabilizing chronic groundwater deficits in the basin without causing harm to local water users. Overall, the proposed settlement would provide some innovative mechanisms for managing water in Pojoaque River basin to satisfy the Pueblos' current and future water needs while minimizing disruption to the non-Indian water users.

The Administration wants to avoid continued and unproductive litigation which, even when finally concluded, may leave parties injured by and hostile to its results. Neither the Pueblos nor their non-Indian neighbors benefit from continued friction in the Rio Pojoaque basin. We believe settlement can be accomplished in a manner that protects the rights of the Pueblos and also ensures that the appropriate costs of the settlement are borne proportionately. While we have some remaining concerns with the bill, the Administration is committed to working with Congress and all parties concerned in developing a settlement that the Administration can fully support. In addition, we would like to work with Congress to identify and implement clear criteria for going forward with future settlements on issues including cost-sharing and eligible costs.

Madam Chairwoman, this concludes my statement. I would be pleased to answer any questions the Subcommittee may have.

Mrs. NAPOLITANO. Thank you, Commissioner. And we will start off with Mr. Nelson Cordova, Councilman and Water Rights Coordinator, Pueblo Taos, Taos, New Mexico, on H.R. 3254.

I am not quite sure, but I think we have a vote just starting, so we will have enough time for at least one witness.

Please.

STATEMENT OF NELSON J. CORDOVA, COUNCILMAN AND WATER RIGHTS COORDINATOR, PUEBLO OF TAOS, TAOS, NEW MEXICO

Mr. CORDOVA. Chairman Napolitano, Ranking Member McClinck, and members of the Subcommittee, Congressman Luján and

Congressman Heinrich, and my fellow panelists, my name is Nelson J. Cordova. I am a Taos Pueblo Tribal Council member.

For the past 20 years, Councilman Gilbert Suazo, Sr., and I have served as Taos Pueblo's representatives in the Taos Valley water rights settlement negotiations.

Here with me is our tribal leadership, Governor Rubin Romero, War Chief Bernard Luján, War Chief Secretary Floyd Gomez, Tribal Council Secretary Ernesto Luhan, and Councilman Suazo. Also with me is our attorney, Susan Jordan, with the Nordhaus Law Firm.

We have lost many of the elders who started the settlement process with us in 1989, and I dedicate this testimony in their memory.

It has been six years since we signed principles of agreement among the Taos Valley settlement parties. At that time we reported to our Tribal Council that we were almost there. Then it took another two years of negotiations to complete the draft settlement agreement among the local parties. Again we reported to the council that we were almost there.

Another two years of Federal negotiations were required to get our legislation introduced last July. We again told council we are almost there.

Our bill was favorably reported out of the Senate Indian Affairs Committee last year, and last September I testified before this Subcommittee.

After years of engagement with our Federal negotiation team and many compromises to meet Federal requirements for Indian water rights settlement, we were disappointed to hear the prior Administration testify they could not support our bill because they were concerned about finality and cost.

We stayed here in D.C. after that hearing, and we successfully negotiated our waivers of claims with the Administration to resolve their finality concern. We then jointly submitted revised waiver provisions to our Congressional delegation in time for possible inclusion in the 2008 Omnibus Public Lands Bill, and again we were almost there. But the bill could not be passed, as Congress's attention shifted exclusively to the national economic crisis.

Our bill as introduced this year contains the compromised waiver provisions, and the Administration has continued to hold our language as the model for Indian water rights settlements.

The previous Administration said our settlement costs were too high. But they only considered the direct litigation costs to the United States of adjudicating the Pueblo's water rights. They did not consider the avoided liability for breach of trust claims, nor the avoided indirect costs of continued litigation that must be weighed under the Federal criteria and procedures for Indian water rights settlements.

Our total Federal funding is modest. There are no huge expensive projects. Rather, there are small projects designed to mitigate the impacts of competing water uses.

From our experience, the Administration grossly undervalues the benefits of Indian water rights settlements. The Administration's concern about making a portion of our funding available upon appropriation is misplaced. This early money is essential to ensure

the successful implementation of the settlement to meet the Federal criteria of finality.

There is precedent for early money. And if the settlement were to fail, the United States may offset these funds against its liability for breach of trust for failure to protect our water rights.

We have engaged the current Administration since February. We have submitted finer minor changes to the bill to address their concerns about providing the Secretary sufficient time to approve the three San Juan-Chama project contracts in allowing Secretarial approval for short-term San Juan-Chama project subcontracts.

Our tribal council is concerned. Why, after we have done everything that has been asked of us, our settlement still waits for Federal support and approval.

This process has been a tremendous burden on the Pueblo's scarce financial resources. Federal funding has never been sufficient, leaving us no choice but to borrow money from a bank to carry on the settlement process. If it were up to us and Deputy Secretary Hayes, who worked on our settlement in the Clinton Administration, and Commissioner Connor, who was our Federal Team Chair, I think we would be done.

When we read the Administration's testimony this morning, we immediately requested a meeting with them while we are here in D.C. to get this done. They are not available. But I have asked Pam Williams to meet with us, and we will meet with her, as we have many times.

We remain concerned, however, whether OMB will persist in under-valuing the benefits of Indian water rights settlements. Our settlement is an opportunity for this Administration to show it can support a modest cost-effective settlement.

Thank you, Madame Chairman.

[The prepared statement of Mr. Cordova follows:]

Statement of Councilman Nelson J. Cordova, Taos Pueblo, on H.R. 3254

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

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

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

The decades we have spent litigating and negotiating our water rights have put a tremendous burden on the Pueblo's scarce financial resources. Federal funding and technical assistance have never been sufficient. To continue the process we have had to borrow money from a bank. This adjudication commenced before our grandfathers successfully completed the 64-year struggle for the return to Taos Pueblo of the lands now known as the Blue Lake Wilderness Area (Public Law 91-550). Their testimony to Congress during that struggle was about land necessary to sustain Taos Pueblo's cultural traditions. My testimony today is about water, the lifeblood

of my people's spiritual, physical and cultural sustenance. The majority of our elders who were appointed to the Pueblo's Water Right Task Force have passed on without seeing completion of this settlement. I dedicate this testimony to their memory.

PART I: SETTLEMENT BACKGROUND AND BENEFITS

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

The Waters Involved in this Adjudication:

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

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

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

Centuries of Conflict:

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

Nearly Two Decades of Negotiation:

These longstanding, bitter water conflicts have bred generations of distrust and affected the ability of Taos Pueblo and our neighbors to live together and prosper. A breakthrough occurred in 1989 when the Pueblo and the TVAA agreed to resolve their water disputes by negotiation. The negotiations grew to include all of the major water rights owning parties in the Taos Valley, as well as the State of New Mexico and the United States. Each of the local parties came to recognize and respect the mutual need for water resources for the survival of the valley's agricultural traditions and for our communities' future. After 18 years of difficult negotiation, the parties reached a settlement agreement in 2006 that allocates water resources, protects existing supplies, preserves the Pueblo's cultural resources, and provides the basis for management of Taos Valley water resources in the future. The parties then went to Washington seeking legislation in unity. The Taos News, in an editorial on April 6, 2006, heralded the settlement as a "gift of understanding" by all involved in its negotiation.

Water Rights Secured by this Settlement:

The settlement authorized by this legislation will secure to Taos Pueblo the right to deplete 11,927.51 afy of water. This quantity includes 7,883.44 afy for 5,712.78

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

Funding Necessary for this Settlement:

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

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

(1) Avoid further conflict through modest funding for vast Pueblo claims compromised: Importantly, the Pueblo is accepting the \$88 million in funding in exchange for (1) waiving our right to bring certain enormous damage claims against the United States, (2) waiving vast portions of senior water rights claims and related damage claims against other parties, and (3) forbearing on the exercise of about half of our senior water rights for historically irrigated acreage recognized in the settlement. By comparison with other Indian water settlements, the total funding is modest. There are no huge, expensive projects in this settlement. Rather, there are small projects designed to mitigate the impacts of competing water uses; funding for Pueblo infrastructure improvements; funding for a mechanism to accommodate junior irrigation uses and decrease the Pueblo's forbearance of our senior irrigation rights over time; and funding for the Pueblo's settlement administration responsibilities. All of these elements are necessary to make this unique, cooperation-based settlement work. They are tied together as a result of compromise. Removing any single component would unravel the settlement.

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

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

Likewise, the federal government has failed to take the necessary steps as our trustee to manage the Pueblo's water rights and facilitate our water use. The federal government did, finally, expend some funds to construct new head gates and to rehabilitate certain ditch works at the Pueblo. However, that limited assistance came late in the period of American sovereignty and guardianship, in the midst of the pre-World War II economic depression, and the funding remained insufficient. Worse yet, the non-traditional construction materials and practices introduced by the federal government made it difficult for the Pueblo to maintain and repair the infrastructure with traditional techniques. In 2000, a joint investigation report by the Bureau of Indian Affairs and the Bureau of Reclamation identified a serious need for the rehabilitation and repair of Pueblo irrigation infrastructure, based heavily on investigation of infrastructure on Taos Pueblo.

Although these problems have long been documented, the repairs and rehabilitation—which are the responsibility of the Bureau of Indian Affairs Northern Pueblos Agency—were not accomplished due to funding cutbacks. Funding in small amounts has been secured from the Bureau of Reclamation in recent years for drought relief projects, such as a well for stock water, and head gate fabrication. However, these funds have been grossly insufficient.

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

(3) *Address irrigation system disrepair*: Currently, 2,322.45 acres of Pueblo lands in the Taos Valley are irrigated with infrastructure in deplorable condition. Much more farmland cannot be irrigated because there is no way to convey water to these fields without extensive repair and rehabilitation to our infrastructure, and many fields need laser leveling for efficient distribution of water. BIA has not done any repairs of significance in decades. Settlement funding will allow the Pueblo to rehabilitate and replace diversion structures and ditch linings and construct improvements. This will enable the Pueblo to recover from the long history of federal neglect of our irrigation systems and to revitalize our agricultural heritage for self-sustainability.

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

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

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

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

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

(8) *Protect the Pueblo's sacred natural wetland from groundwater pumping*: The Pueblo's culturally important natural wetland known as the Buffalo Pasture supports herbs, plants, clays, wildlife and waterfowl essential to our ceremonies. This

unique wetland provides irrigation water for the Pueblo and non-Indians, and it is the start of a greenbelt extending through the valley. As municipal pumping around the wetland increased over the last 60 years, it significantly diminished in size. The settlement will restore and maintain this natural wetland through groundwater recharge (the Buffalo Pasture Recharge Project) and movement of municipal wells away from the wetland.

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

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

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

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

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

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

Criteria and Procedures for Indian Water Rights Settlements:

The Taos Pueblo settlement meets the United States policy for settlement of Indian water rights cases as embodied in the Criteria and Procedures for Indian Water Rights Settlements published by the Department of the Interior (DOI) on

March 12, 1990 (55 Fed. Reg. 9223). The prior Administration failed to apply these criteria correctly.

This Settlement Meets the Criteria and Procedures:

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

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

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

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

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

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

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

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

(2) *The federal contribution is justified:* The prior Administration reached the conclusion that the total settlement costs were too high by omitting or miscalculating several of the avoided costs to the federal government that the Criteria and Procedures require the Administration to weigh against settlement costs. Although the prior Administration cited the requirement to consider "calculable legal exposure," it is apparent that they considered only the direct litigation costs to the United

States of adjudicating the Pueblo's water rights in Abeyta. They did not consider the avoided liability for breach of trust for the claims against the United States to be waived by the Pueblo nor the avoided indirect costs of continued litigation.

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

(3) *The settlement will promote economic efficiency:* In addition, the prior Administration misconstrued the criterion requiring that "settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency." See 55 Fed. Reg. 9223 (emphasis added). It cited only the words "economic efficiency," missing the fact this criterion goes to the benefits to the tribe from settlement funding that promotes on-reservation economic efficiency and makes the tribe more self-sufficient. The projects funded by the Abeyta settlement will largely be designed, managed and constructed by the Pueblo and will provide improved water infrastructure to support the Pueblo's agricultural, community and economic development, thereby promoting and enhancing the Pueblo's self-sufficiency and on-reservation economic efficiency.

(4) *Early money is justified and has precedent:*

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

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

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

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

negotiated have been touted by DOI and the Justice Department as the “model” for Indian water rights settlements ever since.

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

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

Engagement with the Current Administration:

Early this year, we were heartened to hear Secretary of the Interior Ken Salazar attest to the Obama Administration’s commitment to supporting Indian water rights settlements in his confirmation hearing before the Senate Committee on Indian Affairs. We flew to Washington to meet with the new Administration in February, and we traveled again in July to meet with Deputy Secretary David Hayes and Bureau of Reclamation Commissioner Mike Connor. We worked productively with Mr. Hayes during his tenure with the Clinton Administration in securing the funding for the hydrologic tests and modeling that laid the foundation for the settlement. Mr. Connor was similarly instrumental to the success of the settlement negotiations in his service as the Federal Negotiations Team Chair and to the advancement of our settlement legislation in the 110th Congress. We are therefore confident in the DOI leadership’s personal understanding of the benefits of this settlement. We remain concerned, however, whether the Office of Management and Budget (OMB) under the current Administration will persist in the prior OMB’s undervaluation of the benefits of Indian water rights settlements by misapplying the Criteria and Procedures. We place our hope in the new Administration and this Congress to recognize our settlement as a model approach deserving prompt enactment and funding.

Peace in the Valley:

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

I thank Chairwoman Napolitano, Ranking Member McClintock, members of the Subcommittee on Water and Power, our local Congressman Ben Ray Lujan, our New Mexico member of this Subcommittee Congressman Martin Heinrich, and other members of the New Mexico Congressional delegation for their support, and for the honor and privilege to provide this testimony. I also give thanks for the spiritual guidance I have received, and the support and advice of our tribal delegation present here today and those at home who await action by the Subcommittee and

the Committee on Natural Resources. We ask that you be spiritually guided to make the right decisions on this bill and others that affect the lives and future of our people and our neighbors.

Mrs. NAPOLITANO. Thank you. We do have a vote. Do you want to go for another one?

Would you be able to keep within five minutes? We may be able to do another presentation. That would be Hon. Charlie Dorame.

Mr. DORAME. Yes, Chairwoman Napolitano.

Mrs. NAPOLITANO. OK. If you will proceed, then.

**STATEMENT OF HON. CHARLES J. DORAME, CHAIRMAN OF
NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS
ASSOCIATION, ALBUQUERQUE, NEW MEXICO**

Mr. DORAME. Good afternoon, members of the Committee. There are a couple people I would like to acknowledge in the audience right now. The Honorable Judge Michael Nelson, who has been on the negotiating team in New Mexico, and also The Honorable Frank Demolli from Pueblo Pojoaque.

Having said that, I would like to go ahead and read a portion of my testimony. Again, my name is Charlie Dorame. I am a former Governor from the Pueblo Tesuque. I am the Chairman of the Northern Pueblo Tributary Water Rights Association, and I was here last year to testify on behalf of my tribes and the other three tribes in the area.

Good afternoon, Chairwoman Napolitano and Ranking Member McClintock. Thank you for agreeing again this year to focus this Subcommittee's attention on the Aamodt Litigation Settlement Act, H.R. 3342, a comprehensive settlement of the Indian water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

I also want to thank the Majority and Minority Subcommittee staff, who continue to demonstrate excellence and professionalism in all of our dealings.

The House version of the Aamodt Litigation Settlement Act was introduced on July 24, 2009, by our Congressmen, The Honorable Ben Ray Luján and The Honorable Martin Heinrich. As you know, on May 2009, Senators Jeff Bingaman and Tom Udall introduced the Senate version of the Settlement Bill 1105.

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

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

Thank you for allowing me to read a portion of my testimony.

I did provide you some pictures of the Pueblo Tesuque that are in your packet.

Mrs. NAPOLITANO. Without objection, they will be entered into the record.

Mr. DORAME. Thank you.

[NOTE: The pictures submitted for the record have been retained in the Committee's official files.]

Mr. DORAME. To the left of me, last year we came with this particular picture that showed the water. Well, actually that picture there is known as the Rio Tesuque, the River of Tesuque.

We also have another picture that I took on Friday afternoon that shows the same place. Again, you are looking at the River of Tesuque, Rio Tesuque. And this runs from Bishop Lodge all the way down into the Rio Grande.

The next picture you will see will be a field of corn that does not get any water because of the dryness in the area, and trying to get that much-needed water to that area. What she is holding up right now is a picture of my grandfather's property, who, for your information, was here in 1966 testifying on the same issue. That is his field that was left to the family. And it is three-plus acres of land there that cannot be farmed completely because of the lack of water. So the family chose to plant just a small portion of that area.

The other photo that you have shows the one small cornfield without the use of water. The second picture that shows corn that is approximately six feet in height, shows the upper river, where there is water. And again, just referring back to the family plot there.

The last picture shows what used to be farmland, and right now all we have are weeds. And there is a cement-lined ditch in that area, but there is not enough water to plant this area. So we are very limited in what we can and can't use the water for.

In the picture that I took Friday, we need—in the same area, the tribe uses the water to cleanse themselves before our traditional ceremony, and after. So in this case, we will probably have to go back up to the upstream users, and to try to get them, get permission from them to allow water to come through the area so that we can continue to do so.

My time is up, and I would like to thank you and the Committee for allowing me to give you five minutes of my presentation. Thank you.

[The prepared statement of Mr. Dorame follows:]

Statement of The Honorable Charles J. Dorame, Chairman, Northern Pueblos Tributary Water Rights Association, and Former Governor, Pueblo of Tesuque

INTRODUCTION

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

The House version of the Aamodt Litigation Settlement Act was introduced on July 24, 2009, by our Congressman, The Honorable Ben Ray Luján, and The Honorable Martin Heinrich. As you know, in May 2009 Senators Jeff Bingaman and Tom Udall introduced the Senate version of this settlement bill (S.1105). As you also know, similar legislation was introduced and subject to legislative hearings in both the House and Senate in the 109th Congress.

I want to thank Congressman Luján for his leadership in working with the Four Pueblos and, indeed, with all of the settlement parties to address unresolved issues

and produce consensus legislation that is supported by the Four Pueblos, the State of New Mexico, Santa Fe County, the City of Sante Fe, and individual water users.

INDIAN WATER SETTLEMENTS IN GENERAL

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

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

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

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

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

THE ROLE OF WATER IN PUEBLO LIFE

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

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

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

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

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

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

BACKGROUND ON THE PROPOSED SETTLEMENT AND ITS TERMS

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

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

Upon enactment, H.R. 3342 will:

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

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

REGIONAL WATER SYSTEM IS THE CENTERPIECE OF THE AAMODT SETTLEMENT

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

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

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

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

SETTLEMENT AGREEMENT TERMS AND PROJECT COSTS

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

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

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

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

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

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

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

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

The RWS will allow for (1) an additional water supply for the Pueblos from outside the water-short basin, and (2) for the non-Pueblo water users to be served by

a renewable surface supply in lieu of individual wells whose proliferation has impaired, and would continue to impair, the exercise of Pueblo water rights. The RWS will also promote cooperative conservation between all parties.

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

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

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

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

After the New Mexico congressional delegation asked for more detailed cost estimates, the BoR provided additional funding through the 638 contract to the NPTWRA which resulted in the Final Engineering Report dated September 2008 prepared by HKM Engineering, Inc. ("HKM Engineering"). The costs in that report are best estimates as of October 2006, and naturally, the settlement legislation calls for those costs to be indexed by providing that annual adjustments to the construction costs for the regional water system be made "to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices." The BoR maintains such indices.

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

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

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

U.S. CONCERNS OVER LIABILITY ARE RESOLVED

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

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

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

CONCLUSION

Madam Chairwoman, the United States' historic failure to protect the Pueblos' lands and water rights adequately for more than 150 years has led directly to today's conflict over scarce water resources. Once enacted, H.R. 3342 will conserve the shared resource responsibly, bring tangible water to Pueblo and non-Pueblo citizens alike, and will ensure a level of certainty for decades in the Pojoaque Basin.

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

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

Mrs. NAPOLITANO. Thank you very much, Chief. And right now, if you don't mind, we will recess so we can go vote. We have less than four minutes to get to the Capitol to vote.

We will recess and reconvene as soon as we finish our votes.

[Recess.]

Mrs. NAPOLITANO. This hearing is reconvened. We will begin where we left off. We will begin with Mr. DL Sanders, the Chief General Counsel, Office of the State Engineer in Santa Fe, New Mexico, on both H.R. 3254 and H.R. 3342.

Welcome, and you are on, sir.

**STATEMENT OF DL SANDERS, CHIEF COUNSEL, OFFICE OF
THE STATE ENGINEER, SANTA FE, NEW MEXICO**

Mr. SANDERS. Good afternoon, Madame Chairman. Thank you for inviting me. Rep. Luján, thank you for extending the invitation.

I am DL Sanders, Chief Counsel, New Mexico State Engineer. In that capacity I also serve as Director of Litigation and Adjudication concerning all water right matters for the State of New Mexico. I have done that for 20 years.

The state's written testimony has been submitted by the State Engineer D'Antonio for the State of New Mexico. It strongly supports both of these settlements, as does Gov. Richardson, Governor of the State of New Mexico.

I offer a summary of our testimony to support both the Taos and Aamodt Settlement Acts of 2009.

The goal and purpose of these two acts, of these two settlements, is to provide sufficient water to support permanent homelands for these Pueblos, and to not do so at the expense of other existing water rights. Both of these settlements have achieved this. And they have achieved this by changing points of diversion, diversion practices, and by developing additional and alternative water supplies. Those do cost money, and they are necessary in the environment of the arid Southwest.

They provide an equitable outcome for all interested parties by promoting long-term regional harmony, cooperation among the interested parties, preservation of the existing uses of water, and respect for the sovereignty of the Pueblos, the state, and the United States.

New Mexico is committed to its Indian water right settlements. In fact, we have an Indian water rights settlement fund to pay for the non-Indian portions of these funds, of these settlements.

We have appropriated \$10 million to the fund. And I would like to thank Speaker Luján and Governor Richardson for following through on that funding, in order to demonstrate our commitment to seeing these settlements through.

Again, these comments relate to both settlements, because to me they achieve the very same purposes.

Both of these settlements will moot out the legal challenges that still confront the parties after 40 years of litigation, because of the following factual situation.

The litigation involves water rights that I think are safe to say both Pueblo and non-Pueblo, that are the oldest recognized in the United States. The priority dates for the Pueblos are what we call time immemorial, and the priority dates for the Acequias that are involved are from the late 1600s and early 1700s.

The Pueblo water rights are virtually unique to New Mexico. The nature of these rights, therefore, involve many issues that are questions of first impression.

Significant among them is their right to use groundwater. These settlements avoid the necessity of having to address that issue by our compromises.

New Mexico is a high-elevation desert, and has very limited reliable, renewable, available water supplies. The finally adjudicated water rights in each of these adjudications are certain to exceed the seasonal yield of these highly variable stream systems.

Without these settlements, priority calls will be the rule, but only after additional years of litigation, which has been the practice and the history in the State of New Mexico. These continued years of uncertainty and litigation is avoided through these settlements, and a priority call will be the exception rather than the rule.

In closing, the parties reached these settlements without meaningful input from the United States. The main reason we believe these settlements meet the criteria and procedures for Indian water right settlements is due to the efforts of Mike Connor to help us understand what this Congress would find acceptable.

We feel that although the Administration might not yet be fully satisfied with these settlements, we firmly believe that these settlements, like the laws in Congress, represent our best and exhaustive effort to reach compromises that the parties, Congress, the Administration all could be proud of.

I want to thank you for your time, especially my Congressman, Rep. Luján. And I express great thanks to his family for having supported us through the last 20 years of litigation, and through these settlements. And I want to again thank the members of this Committee for bringing us both to the Committee, and having the hearing today.

And with that, I will stand for any questions. Thank you.

[The prepared statements of John R. D'Antonio, Jr., follow:]

**Statement of John R. D'Antonio, Jr., P.E., New Mexico State Engineer,
Interstate Stream Commission Secretary, on H.R. 3254**

Chairwoman Napolitano and Members of the Committee:

Thank you for the opportunity to present the views of my office on H.R. 3254, the "Taos Pueblo Indian Water Rights Settlement Act," which would implement the settlement of Taos Pueblo's water rights claims presented in the Abeyta lawsuit. I share with Governor Richardson the conclusion that passage of this bill would produce a fair and long-overdue resolution of the water rights claims of this New Mexico Pueblo and it is highly deserving of Congressional support. I wish here to set forth for you some of the main reasons for that conclusion and then describe some of the substantial changes the Settlement Parties have agreed to make to their settlement, and this implementing legislation, in order to address concerns expressed by the Department of Justice and Department of the Interior. I hope that these comments will provide the Committee with a fuller understanding of the substance and significance of this settlement and why it merits your support.

Why the State of New Mexico Strongly Supports this Legislation

First, all New Mexicans, not just these litigants, have suffered the costs of the protracted litigation over the water rights claims of these four Pueblos. The Abeyta

suit was filed over 43 years ago, and it has taken many years of ultimately successful negotiation to reach a settlement agreement. Litigation and negotiation costs, direct and indirect, particularly for the State and the United States, have been substantial. The communities have borne the heavy costs of continued strife and conflict over water between the Pueblo & non-Pueblos, senior and junior users, in the highly polarizing environment of litigation. The region has incurred the economic costs of lost opportunities for economic development, the inability to grow businesses or communities when the supply of the most fundamental resource—waters—is uncertain. The settlement reached by the parties, as implemented by H.R. 3254, will directly address all of these issues, by ending the unending stream of litigation costs and instead investing in this settlement, which will finally achieve judicial determinations of Pueblo water rights and lay foundations for Pueblo economic development and self-sufficiency.

Second, the proposed settlement is fair. It recognizes large first-priority water rights in the Pueblos commensurate with the acreage historically irrigated by them: depletions of more than 8,000 acre-feet annually for Taos Pueblo. But this settlement also contains its own unique locally-suited mechanisms whereby centuries-old non-Indian uses will be allowed to continue as well as the Pueblo uses. In addition, water for Pueblo economic development will be imported or purchased—about 2,300 acre-feet per year—with the last remaining uncontracted water from New Mexico's San Juan Chama Project (SJCP), developed by the United States, going to its Indian beneficiaries. Finally, infrastructure locally appropriate to this settlement, with substantial state and local cost share, will be provided to meet specific Pueblo health, safety and economic development needs.

The Settlement Parties' Actions to Address the United States' Expressed Concerns

H.R. 3254 is identical, in many of its substantive settlement terms, to legislation introduced in the second session of the 110th Congress, H.R. 6768 in the House and its companion bill in the Senate, S. 3381. H.R. 6768 and S. 3381 combined both the Taos Pueblo Indian Water Rights Settlement and the Aamodt Litigation Settlement in two Titles in each bill and they were the subject of hearings before this Committee and the Senate Indian Affairs Committee—on September 25, 2008 before this Committee and on September 11, 2008 before the Senate Indian Affairs Committee.

The legislation before you, H.R. 3254, does differ from the previous legislation in some ways, primarily as a result of extensive discussions between the Settlement Parties and representatives of the Departments of Interior and Justice in order to accommodate those Departments' requests for changes to better clarify the obligations of the United States and to better protect its financial, trusteeship and sovereign interests. I would like to show you, with just a few examples, the extent to which the state and the other Settlement Parties have done that.

On September 11, 2008, before the Senate Indian Affairs Committee, Mr. Michael Bogert, then Chairman of the Working Group on Indian Water Rights Settlements, provided the Bush Administration's views on S.3381 from the Department of the Interior, and by letter of September 26, 2008 to this Committee and the Senate Indian Affairs Committee, Mr. Keith B. Nelson, Principal Deputy Assistant Attorney General, provided the same on behalf of the Department of Justice.

Mr. Bogert and Mr. Nelson repeatedly emphasized that the waivers contained in S. 3381 and H.R. 6768 did not adequately protect the United States from future liability, "including breach of trust claims." In Aamodt, Mr. Nelson noted that there was "no clear waiver of claims relating to damages to land and other resources caused by past loss of water and off-reservation water rights." He recommended that, in light of the previous waiver-related litigation problems the United States had experienced, the parties in their legislative drafting "should bring to bear here the lessons learned."

I responded at that time that the Settlement Parties had sought the active participation of the United States on this and other questions literally for years before these settlements were finalized, but had received no substantive participation or guidance, and that, in fairness, the time for consideration of the proposed United States' proposals regarding waivers was during settlement negotiations, not years after the settlement agreement was finalized. Nevertheless, the Settlement Parties recognize the substantial interest of the United States in these provisions, and we have all made great efforts to accommodate them. Specifically, the revised waiver provisions in both H.R. 3254 and H.R. 3342, the "Aamodt Litigation Settlement Act," presently also pending before this Committee, now very largely track the Department of Justice's "model waivers," which we understand is exactly implementing Mr. Nelson's belief that the legislation "should bring to bear here the lessons learned." That is not to say the waiver provisions are identical in the two bills,

because the specifics of each settlement are to some extent reflected there. However, both bills' waiver provisions certainly contain the "clear waiver of claims relating to damages to land and other resources caused by past loss of water and off-reservation water rights" that the Department of Justice's letter said was prominently missing in H.R. 6768. It is my belief that the Settlement Parties have gone to extraordinary lengths, substantially modifying the terms of their agreement, to accommodate the United States' demands regarding these waiver provisions, but I am also confident that the result we have recently arrived at will fully achieve the expressed goals of clarifying and limiting the obligations of the United States, protecting it from future liability, and making clear that its interests and powers are properly recognized and preserved.

Mr. Bogert also argued that with respect to the Taos Pueblo settlement, the non-Pueblos would disproportionately benefit from the planned Mutual Benefit Projects, for which construction cost are to be paid 75% by the United States and 25% by the state. Actually, the Bush Administration fundamentally misapprehended the nature of the Mutual Benefit Projects. In the case of the replacement wells project, for example, the United States appears to believe that the primary beneficiaries of the replacement wells to be provided for the Town of Taos and the El Prado Water and Sanitation District are the Town and District, but in fact the true beneficiary is Taos Pueblo, whose Buffalo Pasture wetlands will be protected by moving this municipal pumping miles away. The United States may also think that the Town and District are getting the primary benefits because it imagines that a judicially recognized water right for the Pueblo would automatically force shutdown of these municipal suppliers to protect these wetlands. More likely is that years, and perhaps decades of litigation are being avoided by moving these wells. As noted, the State has agreed to pay 25% of the costs of this project designed to benefit the Pueblo's Buffalo Pasture. The United States also seems to miss the fact that another significant project, the mitigation well system, is for all groundwater users, including the Pueblo. The mitigation well system provides a technological solution whereby all groundwater developers, one of which is the Pueblo, can make stream offsets, required by the Settlement Agreement, on the Rio Grande. This system will allow the Pueblo to make real and flexible use of its water rights.

Another Bush Administration claim was that the Taos Pueblo settlement lacks finality regarding decree enforcement. The short answer to this objection is that the settlement and legislation explicitly preserve the status quo in this respect and that the settlement relies on a highly detailed set of provisions, supported by an agreed hydrological model, to reduce water administration disputes to an absolute minimum. Those provisions cover in detail such subjects as Pueblo water court procedures, Pueblo water rights transfers, Pueblo depletion offset procedures, and loss of forbearance by non-Pueblo rights so that Pueblo rights can be exercised in their place. This is the practical Taos settlement approach to administration, designed to work even if the all the parties cannot reach agreement on the arcane subject of judicial post-decree enforcement. The United States appeared to be demanding that all others must accept its position regarding this fundamentally important and contentious issue of water rights administration, and that no settlement should go forward that does not do so. The State disagrees with that premise and that conclusion, which actually shows the wisdom of approach of the present bill which explicitly does not adopt any position or modify the status quo in any way. A meritorious Indian water rights settlement should not be rejected simply because the parties could not agree with the United States' position on a difficult aspect of post-decree water rights administration. Each settlement is inevitably unique: the Taos settlement parties, including the state, have judged that the benefits of their settlement far outweigh the costs and compromises that all have undertaken. The Taos settlement does, as noted above, contain perhaps the most important practical element for administration—an agreed basin hydrological model—which is likely to make a far larger contribution to solving real-life disputes than pursuing an agreement delineating which court or courts might have jurisdiction to hear what sorts of claims between disputants who are parties to the Taos settlement agreement. With that agreed model, we judge that the Taos settlement approach is likely, through its use as provided in the settlement agreement, to substantially reduce the risk of litigation over administration of basin water rights.

The Bush Administration also recommended that Congress more precisely clarify the United States' responsibility regarding delivery of the SJCP water contemplated for use in the two settlements, noting that the concern arose from the fact that this water supply is to be held in trust by the United States. The Settlement Parties agreed that this matter should be clarified and have directly addressed this issue by providing, in Sect. 103(d) of H.R. 3342 (and in Sec. 9(b)(3) of H.R. 3254) that these water supplies shall be subject to the San Juan-Chama Project Act (Public

Law 87-483, 764 Stat. 97), and that “no preference shall be provided to the Pueblo(s)...with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.” We believe that this provision definitively answers any question of possible Indian preference and provides the certainty that the United States was seeking.

CONCLUSION

In conclusion, the parties understand that this settlement commits the United States and the State of New Mexico to significant financial obligations. The Bush Administration claimed that it cost “too much,” with arguments based on Interior’s Criteria and Procedures (“C&Ps”). While recognizing that more factors than the calculated legal exposure to the United States are to be considered under the C&Ps, the testimony from the Bush Administration’s failed to acknowledge that it had repeatedly refused to consider the value of or assign any value to fulfilling the prominent C&Ps “goal of long-term harmony and cooperation among all parties.” That is a significant omission, because exactly that “long-term harmony and cooperation among all parties” is what these settlement parties have gone to extraordinary lengths to achieve, and it is from all perspectives—personal, local, and regional—one of the biggest goals and benefits of this settlement. As I noted, this settlement creates complex and tightly interwoven water use, sharing and administration agreements among the parties. These parties have truly committed themselves to a water future based on harmony and cooperation and any fair evaluation of the cost of this settlement should not neglect this factor.

At this point, we have successfully accommodated the vast majority of the United States’ demands and those results are reflected in the language of the bill before you. Believing that we have in good faith fairly addressed all the non-monetary concerns raised by the United States insofar as possible given the structure of the settlement and that it fulfills the C&Ps “goal of long-term harmony and cooperation among all parties,” I therefore strongly support and recommend passage of H.R. 3254 in its present form, without delay.

Closing Comment

In the vein of the “lessons learned” argument favored by the Bush Administration to defend its efforts renegotiate the terms of certain settlements before Congress, I offer, with all due respect, a lesson that I have learned.

The state of New Mexico has learned that negotiations to settle the water rights claims of an Indian Tribe or Pueblo are limited to the participation of the United States through the Department of Justice with respect to any term implicating its sovereignty or responsibility to protect the interests of the United States or Pueblo.

During the years of negotiations there was frustratingly little participation or guidance from the Bush Administration with respect to the interests of the United States, despite oft-repeated requests. The parties, therefore, were left to reach agreement without the participation of the United States.

Because the United States did not identify the terms to which it objected with any specificity to the parties until they presented New Mexico’s congressional delegation with the final settlements and asked that legislation be introduced, it has been very difficult for the parties to entertain United States’ demands for legislative changes that revise the fundamental bargain of the settlement and fairly should have been raised years ago.

Even as the Bush Administration was testifying its objections to the Aamodt and Taos settlements in the fall of 2008, it emphasized the desire of the United States to work with the parties and Congress to develop settlements the Bush Administration could support.

While Department of Interior representation at negotiation meetings and communication with the parties somewhat improved at the end of the Bush Administration, that improvement did not occur until the Aamodt and Taos Pueblo settlements agreements were fully negotiated and signed by all the parties, including all the governmental parties except the United States.

In just these few short months of the Obama Administration there seems to be a genuine effort on the part of the United States to heighten the level of its participation over that of the previous administration. It is my early impression that the United States’ being an active negotiating party and elucidating its positions, even if they cannot be accepted by another party, promotes informed decision-making, allows the parties to develop trust in the United States, and in the end requires all parties to recognize and consider the interests of the United States. This is merely my observation and having served as State Engineer for the Administration of Bill Richardson, a Democrat, and as Secretary of the Environment Department for the

Administration of Gary Johnson, a Republican, I understand that reasonable people can adopt reasoned policies 180 degrees apart.

That said, there are six general stream adjudications pending in the Federal District Court for New Mexico and two more in state courts, involving the water rights claims of eight Pueblos and the Navajo Nation. Excluding the Aamodt and Taos Pueblo settlements, for which implementing legislation is pending before this Committee, and the Navajo Nation settlement, for which implementing legislation was recently passed by Congress, there are still pending five adjudications with Pueblo claims to first-priority water rights exceeding 100,000 acre-feet of depletion per year. Further, there is at present no adjudication action pending in the Middle Rio Grande, which will involve the claims of six more Pueblos. Litigation of Pueblo claims has proven to be resource- and cost-intensive for all parties, with a very high level of professional and technical expertise required. It is likely that the parties will agree to pursue settlement negotiations for those claims for which they agree that there is sufficient historical basis to support a claim. Therefore, I encourage the Obama Administration to maintain, if not increase, its current level of participation in negotiations, rather than sit and watch the parties reach a settlement and only then voice its positions and objections as was the United States' practice under the Bush Administration.

Again, thank you for this opportunity to present my views and please enact this Act authorizing the Taos Pueblo water rights settlement with all due speed.

**Statement of John R. D'Antonio, Jr., P.E., New Mexico State Engineer,
Interstate Stream Commission Secretary, on H.R. 3342**

Chairwoman Napolitano and Members of the Committee:

Thank you for the opportunity to present the views of my office on H.R. 3342, the "Aamodt Litigation Settlement Act." I share with Governor Richardson the conclusion that passage of this bill would produce a fair and long-overdue resolution of the water rights claims of four New Mexico Pueblos and it is highly deserving of Congressional support. I wish here to set forth for you some of the main reasons for that conclusion and then describe some of the substantial changes the Settlement Parties have agreed to make to their settlement, and this implementing legislation, in order to address concerns expressed by the Department of Justice and Department of the Interior. I hope that these comments will provide the Committee with a fuller understanding of the substance and significance of this settlement and why it merits your support.

Why the State of New Mexico Strongly Supports this Legislation

First, all New Mexicans, not just these litigants, have suffered the costs of the protracted litigation over the water rights claims of these four Pueblos. The Aamodt suit was filed over 43 years ago, with active litigation for the first thirty-three years, followed six years of ultimately successful negotiation to reach a settlement agreement. Litigation costs, direct and indirect, particularly for the State and the United States, have been enormous. The communities have borne the heavy costs of continued strife and conflict over water between Pueblos & non-Pueblos, senior and junior users, in the highly polarizing environment of litigation. The region has incurred the economic costs of lost opportunities for economic development, the inability to grow businesses or communities when the supply of the most fundamental resource—waters—is uncertain. The settlement reached by the parties, as implemented by H.R. 3342, will directly address all of these issues, by ending the unending stream of litigation costs and instead investing in this settlement, which will finally achieve judicial determinations of Pueblo water rights and lay foundations for Pueblo economic development and self-sufficiency.

Second, the proposed settlement is fair. It recognizes large first-priority water rights in the Pueblos commensurate with the acreage historically irrigated by them: depletions of more than 3,600 acre-feet annually for the Aamodt Pueblos. But this settlement also contains its own unique locally-suited mechanisms whereby centuries-old non-Indian uses will be allowed to continue as well as the Pueblo uses. In addition, water for Pueblo economic development will be imported or purchased—about 2,300 acre-feet per year—with the last remaining uncontracted water from New Mexico's San Juan Chama Project (SJCP), developed by the United States, going to its Indian beneficiaries. Finally, infrastructure locally appropriate to this settlement, with substantial state and local cost share, will be provided to meet specific Pueblo health, safety and economic development needs.

The Settlement Parties' Actions to Address the United States' Expressed Concerns

H.R. 3342 is identical, in many of its substantive settlement terms, to legislation introduced in the second session of the 110th Congress, H.R. 6768 in the House and its companion bill in the Senate, S. 3381. H.R. 6768 and S. 3381 combined both the Taos Pueblo Indian Water Rights Settlement and the Aamodt Litigation Settlement in two Titles in each bill and they were the subject of hearings before this Committee and the Senate Indian Affairs Committee—on September 25, 2008 before this Committee and on September 11, 2008 before the Senate Indian Affairs Committee.

The legislation before you, H.R. 3342, does differ from the previous legislation in some ways, primarily as a result of extensive discussions between the Settlement Parties and representatives of the Departments of Interior and Justice in order to accommodate those Departments' requests for changes to better clarify the obligations of the United States and to better protect its financial, trusteeship and sovereign interests. I would like to show you, with just a few examples, the extent to which the state and the other Settlement Parties have done that.

On September 11, 2008, before the Senate Indian Affairs Committee, Mr. Michael Bogert, then Chairman of the Working Group on Indian Water Rights Settlements, provided the Bush Administration's views on S.3381 from the Department of the Interior, and by letter of September 26, 2008 to this Committee and the Senate Indian Affairs Committee, Mr. Keith B. Nelson, Principal Deputy Assistant Attorney General, provided the same on behalf of the Department of Justice.

Mr. Bogert and Mr. Nelson repeatedly emphasized that the waivers contained in S. 3381 and H.R. 6768 did not adequately protect the United States from future liability, "including breach of trust claims." In Aamodt, Mr. Nelson noted that there was "no clear waiver of claims relating to damages to land and other resources caused by past loss of water and off-reservation water rights." He recommended that, in light of the previous waiver-related litigation problems the United States had experienced, the parties in their legislative drafting "should bring to bear here the lessons learned."

I responded at that time that the Settlement Parties had sought the active participation of the United States on this and other questions literally for years before these settlements were finalized, but had received no substantive participation or guidance, and that, in fairness, the time for consideration of the proposed United States' proposals regarding waivers was during settlement negotiations, not years after the settlement agreement was finalized. Nevertheless, the Settlement Parties recognize the substantial interest of the United States in these provisions, and we have all made great efforts to accommodate them. Specifically, the revised waiver provisions in both H.R. 3342 and H.R. 3254, the "Taos Pueblo Indian Water Rights Settlement Act," presently also pending before this Committee, now very largely track the Department of Justice's "model waivers," which we understand is exactly implementing Mr. Nelson's belief that the legislation "should bring to bear here the lessons learned." That is not to say the waiver provisions are identical in the two bills, because the specifics of each settlement are to some extent reflected there. However, both bills' waiver provisions certainly contain the "clear waiver of claims relating to damages to land and other resources caused by past loss of water and off-reservation water rights" that the Department of Justice's letter said was prominently missing in H.R. 6768. It is my belief that the Settlement Parties have gone to extraordinary lengths, substantially modifying the terms of their agreement, to accommodate the United States' demands regarding these waiver provisions, but I am also confident that the result we have recently arrived at will fully achieve the expressed goals of clarifying and limiting the obligations of the United States, protecting it from future liability, and making clear that its interests and powers are properly recognized and preserved.

In addition to objecting to the terms of the waivers in H.R. 6768, both Interior and Justice Department representatives expressed concern over language in the Aamodt title of the bill which they believed would require the United States to "acquire" a specified quantity of water rights for the Pueblos irrespective of cost or difficulty and to "obtain" a New Mexico State Engineer permit to move the water rights to the Rio Grande point of diversion for the Regional Water System. The Settlement Parties have responded to that concern by agreeing that the obligations of the United States shall be limited to acquiring the identified water rights and no more, that the cost will be as specified and no more, and that the Secretary need only "seek" to obtain the necessary permits.

The Bush Administration also recommended that Congress more precisely clarify the United States' responsibility regarding delivery of the SJCP water contemplated for use in the two settlements, noting that the concern arose from the fact that this water supply is to be held in trust by the United States. The Settlement Parties

agreed that this matter should be clarified and have directly addressed this issue by providing, in Sect. 103(d) of H.R. 3342 (and in Sec. 9(b)(3) of H.R. 3254) that these water supplies shall be subject to the San Juan-Chama Project Act (Public Law 87-483, 764 Stat. 97), and that “no preference shall be provided to the Pueblo(s)...with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.” We believe that this provision definitively answers any question of possible Indian preference and provides the certainty that the United States was seeking.

Remaining Issues

As of today, the settlement parties have agreed to every one of the United States’ requested changes to H.R. 3354 except one—a modification of Sects. 203(e) and (f) to substitute a written Secretarial determination of “substantial completion” of the Regional Water System, with limited review under the Administrative Procedures Act, for the Decree Court process contemplated by the Settlement Agreement and current legislative draft. The state is willing to continue discussions with the United States on this issue, but points out that it, and the other settlement parties, are still waiting to see some indication of support from the United States for this settlement. Compromise is a two-way street.

CONCLUSION

In conclusion, the parties understand that this settlement commits the United States and the State of New Mexico to significant financial obligations. The Bush Administration claimed that it cost “too much,” with arguments based on Interior’s Criteria and Procedures (“C&Ps”). While recognizing that more factors than the calculated legal exposure to the United States are to be considered under the C&Ps, the testimony from the Bush Administration’s failed to acknowledge that it had repeatedly refused to consider the value of or assign any value to fulfilling the prominent C&Ps “goal of long-term harmony and cooperation among all parties.” That is a significant omission, because exactly that “long-term harmony and cooperation among all parties” is what these settlement parties have gone to extraordinary lengths to achieve, and it is from all perspectives—personal, local, and regional—one of the biggest goals and benefits of this settlement. This settlement creates complex and tightly interwoven water use, sharing and administration agreements among the parties. These parties have truly committed themselves to a water future based on harmony and cooperation and any fair evaluation of the cost of this settlement should not neglect this factor.

At this point, we have successfully accommodated the vast majority of the United States’ demands and those results are reflected in the language of the bill before you, as well as the very recent agreements to modify that language to accommodate, even at this late time, absolutely as many as possible of the United States’ requests. Believing that we have in good faith fairly addressed all the non-monetary concerns raised by the United States insofar as possible given the structure of the settlement and that it fulfills the C&Ps “goal of long-term harmony and cooperation among all parties,” I therefore strongly support and recommend passage of H.R. 3342 in its present form, without delay.

Closing Comment

In the vein of the “lessons learned” argument favored by the Bush Administration to defend its efforts renegotiate the terms of certain settlements before Congress, I offer, with all due respect, a lesson that I have learned.

The state of New Mexico has learned that negotiations to settle the water rights claims of an Indian Tribe or Pueblo are limited to the participation of the United States through the Department of Justice with respect to any term implicating its sovereignty or responsibility to protect the interests of the United States or Pueblo.

During the years of negotiations there was frustratingly little participation or guidance from the Bush Administration with respect to the interests of the United States, despite oft-repeated requests. The parties, therefore, were left to reach agreement without the participation of the United States.

Upon the successful negotiation of their settlement agreement, the parties drafted legislation that would implement the terms of that agreement. However, because the United States did not identify the legislative provisions to which it objected with any specificity to the parties until after they presented New Mexico’s congressional delegation with the final settlements and asked that legislation be introduced, it has been very difficult for the parties to entertain United States’ demands for legislative changes that revise the fundamental bargain of the settlement and fairly should have been raised years ago.

Even as the Bush Administration was testifying its objections to the Aamodt and Taos settlements in the fall of 2008, it emphasized the desire of the United States

to work with the parties and Congress to develop settlements the Bush Administration could support.

While Department of Interior representation at negotiation meetings and communication with the parties somewhat improved at the end of the Bush Administration, that improvement did not occur until the Aamodt and Taos Pueblo settlements agreements were fully negotiated and signed by all the parties, including all the governmental parties except the United States.

In just these few short months of the Obama Administration there seems to be a genuine effort on the part of the United States to heighten the level of its participation over that of the previous administration. It is my early impression that the United States' being an active negotiating party and elucidating its positions, even if they cannot be accepted by another party, promotes informed decision-making, allows the parties to develop trust in the United States, and in the end requires all parties to recognize and consider the interests of the United States. This is merely my observation and having served as State Engineer for the Administration of Bill Richardson, a Democrat, and as Secretary of the Environment Department for the Administration of Gary Johnson, a Republican, I understand that reasonable people can adopt reasoned policies 180 degrees apart.

That said, there are six general stream adjudications pending in the Federal District Court for New Mexico and two more in state court, involving the water rights claims of eight Pueblos and the Navajo Nation. Excluding the Aamodt and Taos Pueblo settlements, for which implementing legislation is pending before this Committee, and the Navajo Nation settlement, for which implementing legislation was recently passed by Congress, there are still pending five adjudications with Pueblo claims to first-priority water rights exceeding 100,000 acre-feet of depletion per year. Further, there is at present no adjudication action pending in the Middle Rio Grande, which will involve the claims of six more Pueblos. Litigation of Pueblo claims has proven to be resource- and cost-intensive for all parties, with a very high level of professional and technical expertise required. It is likely that the parties will agree to pursue settlement negotiations for those claims for which they agree that there is sufficient historical basis to support a claim. Therefore, I encourage the Obama Administration to maintain, if not increase, its current level of participation in negotiations, rather than sit and watch the parties reach a settlement and only then voice its positions and objections as was the United States' practice under the Bush Administration.

Again, thank you for this opportunity to present my views and please enact this Act authorizing the Aamodt settlement with all due speed.

Mrs. NAPOLITANO. Thank you for your testimony. I much appreciate it.

And we will now turn to Mr. Palemon Martinez, President of the Taos Valley Acequia Association, TVAA, Taos, New Mexico.

**STATEMENT OF PALEMON A. MARTINEZ, PRESIDENT OF THE
TAOS VALLEY ACEQUIA ASSOCIATION, TAOS, NEW MEXICO**

Mr. MARTINEZ. Chairwoman Napolitano, members of the Committee, Congressman Luján, we appreciate this opportunity.

I speak to you on behalf of the Taos Valley Acequia Association and its 55-member Acequias. We urge your favorable action on H.R. 3254, the Taos Pueblo Indian Water Rights Settlement Act.

We also have Bennie Mondragon, Vice Chairman of TVAA, and our legal counsel, Fred Walsh, with me.

The TVAA and Acequias are parties to the settlement agreement of Taos Pueblo. Acequias are also known as community ditch associations. They have existed in the Taos Valley North Central New Mexico since the area was settled by Spanish settlers over 400 years ago.

Acequias have diverted the surface of springwater from seven tributaries to the Rio Grande, which are the Rio Hondo, Rio Lucero, Rio Arroyo Seco, Rio Pueblo, Rio Fernando, Rio Chiquito, and Rio Grande del Rancho. These acequias continue to provide

water for domestic uses by the watering and the irrigation over 12,000 acres.

Today our acequias have over 7,000 individual members, many of them who irrigate small fields to raise a few head of livestock and gardens in order to feed their families.

In the Taos Valley, the acequias are truly the lifeblood of the community. Our traditional rural lifestyle and culture are sustained by the acequias. Many of the acequias flow through Taos Pueblo land.

Non-Indian Acequia members and Taos Pueblo members interact on a daily basis. They are our neighbors who have been sharing the resources of the Taos Valley for centuries.

Of course, during the long history there have been disputes over water, especially during drought and periodic water shortages.

This settlement addresses not only the water rights of Taos Pueblo but the resolution of competing claims of the acequia water rights, which were established and are the laws and customs of Spain and Mexico and are protected by the United States under the 1848 Treaty of Guadalupe Hidalgo.

The United States owes not only a Federal trust obligation to Taos Pueblo but an obligation under the treaty and established constitutional and international legal principles to protect the water rights of the Acequia and their members.

The Taos Indian Water Settlement Act, H.R. 3254, is an opportunity to finally resolve all water sharing disputes between the Acequias and Taos Pueblo. Because the water is so vital to the survival and prosperity of all parties in the Taos Valley, we have been involved in negotiations since October 1989. This settlement Act represents a compromise and a guarantee of future allocations that costly litigation could never achieve.

Most importantly, the settlement secures future centuries of mutual accesses and sharing of water for the Acequias and Taos Pueblo. The settlement, of course, defines and secures the nature and extent of Taos Pueblo's water rights. It also secures the rights of Acequia members, and protects them from challenges to their water rights by other parties.

The settlement provides for the continuous specific water sharing customs and traditions, rather than the imposition of priority administration of water. It will last for the sustenance of the traditional and rural lifestyle of Acequia members.

The settlement balances the needs of all parties in the Taos Valley, now and in the future. This includes municipal water providers and thousands of domestic well owners. The financial applications of the United States are not only to Taos Pueblo, which certainly has substantial claims against the United States. This settlement will also resolve the Acequias' longstanding claims against the United States with the construction of the Arroyo Acequia Arriba storage project and the Acequia Madre del Prado stream gauge.

The benefits of the settlement Act far outweigh any financial analysis. You cannot put a price tag on the social benefits of peace and harmony between neighbors. Longstanding disputes over water will finally be put to rest. This settlement will avoid contentious litigation that could only cost future mistrust and conflict throughout the Taos area.

The TVAA urges Congress to take this rare opportunity to support a local solution to past, present, and future water allocation challenges. We urge passage of the Taos Pueblo Indian Water Rights Settlement Act, H.R. 3254.

The TVAA thanks Chair Napolitano and members of the House Subcommittee on Water and Power for the time and consideration of this vitally important matter of water for our future. We also thank New Mexico Congressman Ben Ray Luján and other members of the New Mexico Congressional delegation for their unwavering support of our settlement.

Respectfully submitted by Palemon Martinez, President of the Taos Valley Acequia Association, and we stand for any questions that you may have. Thank you.

[The prepared statement of Mr. Martinez follows:]

**Statement of Palemon A. Martinez, President,
Taos Valley Acequia Association, Taos, New Mexico, on H.R. 3254**

Dear Chairwoman Napolitano and Ranking Member McClintock:

I speak to you on behalf of the Taos Valley Acequia Association (TVAA) and its 55 member Acequias. We urge your favorable action on H.R. 3254, the Taos Pueblo Indian Water Rights Settlement Act.

The TVAA and Acequias are parties to the settlement agreement with Taos Pueblo. Acequias are also known as community ditch associations. They have existed in the Taos Valley of north-central New Mexico since the area was settled by Spanish settlers over 400 years ago. Acequias have diverted surface and spring water from seven tributaries of the Rio Grande, which are the Rio Hondo, Rio Lucero, Rio Arroyo Seco, Rio Pueblo, Rio Fernando, Rio Chiquito, and Rio Grande del Rancho. These Acequias continue to provide water for domestic uses, livestock watering, and the irrigation of over 12,000 acres. Today our acequias have over 7,600 individual members, many of whom irrigate small fields, to raise a few head of livestock, and gardens, in order to feed their families. In the Taos Valley the Acequias are truly the lifeblood of the community. Our traditional rural lifestyle and culture are sustained by the acequias.

Many of the acequias flow through Taos Pueblo land. Non-Indian Acequia members and Taos Pueblo members interact on a daily basis. They are neighbors who have been sharing the water resources of the Taos Valley for centuries. Of course during that long history, there have been disputes over the water, especially during droughts and periodic water shortages.

This settlement addresses not only the water rights of Taos Pueblo but the resolution of competing claims of the Acequias' water rights which were established under the laws and customs of Spain and Mexico and are protected by the United States under the 1848 Treaty of Guadalupe Hidalgo. The United States owes not only a federal trust obligation to Taos Pueblo, but an obligation under the Treaty and established constitutional and international legal principles to protect the water rights of the Acequias and their members.

The Taos Pueblo Indian Water Rights Settlement Act, H.R. 3254, is an opportunity to finally resolve all water sharing disputes between the Acequias and Taos Pueblo. Because water is so vital to the survival and prosperity of all parties in the Taos Valley, we have been involved in negotiations since 1989. This Settlement Act represents a compromise and a guarantee of future allocations that costly litigation could never achieve.

Most importantly the settlement secures future centuries of mutual existence and sharing of water for the Acequias and Taos Pueblo. The settlement of course defines and secures the nature and extent of Taos Pueblo's water rights. It also secures the rights of Acequia members and protects them from challenges to their water rights by other parties. The settlement provides for the continuance of specific water sharing customs and traditions rather than the imposition of priority administration of water. It allows for the sustenance of the traditional and rural lifestyle and culture of Acequia members. The settlement balances the needs of all parties in the Taos Valley, now and in the future. This includes municipal water providers and thousands of domestic well owners.

The financial obligations of the United States are not only to Taos Pueblo, which certainly has substantial claims against the United States. This settlement will also resolve Acequias' longstanding claims against the United States with the construc-

tion of the Arroyo Seco Arriba storage project and Acequia Madre del Prado stream gage.

The benefits of the Settlement Act far outweigh any financial analysis. You cannot put a price on the social benefits of peace and harmony between neighbors. Long-simmering disputes over water will finally be put to rest. This settlement will avoid contentious litigation that could only cause future mistrust and conflict throughout the Taos area.

The TVAA urges Congress to take this rare opportunity to support a local solution to past, present, and future water allocation challenges. We urge passage of the Taos Pueblo Indian Water Rights Settlement Act, H.R. 3254. The TVAA thanks Chair Napolitano and members of the House Subcommittee on Water and Power, for your time and consideration of this vitally important matter of water for our future. We also thank New Mexico Congressman Ben Ray Luján and other members of the New Mexico Congressional Delegation for their unwavering support of our settlement.

Mr. McCLINTOCK [presiding]. Thank you, and right on time, too. Thank you for that.

The next witness is Harry B. Montoya, who is Commissioner of District 1, Santa Fe County Commission, Santa Fe, New Mexico. Commissioner Montoya.

STATEMENT OF HARRY B. MONTOYA, COMMISSIONER OF DISTRICT 1, SANTA FE COUNTY COMMISSION, SANTA FE, NEW MEXICO

Mr. MONTOYA. Buenos tardes, good afternoon, Madame Chair Napolitano, Ranking Member McClintock, Congressman Ben Ray Luján. I want to thank you for the opportunity to provide some testimony on behalf of Santa Fe County this afternoon.

I am in my second term as Santa Fe County Commissioner. I live where this is taking place, and need to know that when, unlike Congressman Luján, I was six years old when this litigation started.

So I would like to provide the testimony in support of H.R. 3342, and especially want to thank the New Mexico Congressional delegation, Sen. Bingaman, Sen. Udall, and Congressman Udall and Heinrich, who have provided the leadership and guidance that will allow the fighting to end, and will pave the way to a better future for our community.

The county believes that the settlement is highly desirable, and has committed to make a substantial local contribution to help implement it.

I would like to briefly outline two of the major benefits of the settlement.

First, the centerpiece of the settlement is a regional water system that will greatly alleviate water shortages and water quality problems in the basin. The system would benefit basin residents, Indian and non-Indian alike, and would provide a clean and reliable water supply, and reduce the demand on limited local water resources.

The settlement has a substantial stake in local cost share. Santa Fe County will be contributing up to \$60 million toward construction and operation of the water system. Combined with financial contributions from the State of New Mexico and the City of Santa Fe, the non-Federal contribution is projected to exceed \$100 million; or, as was stated earlier by Commissioner Connor, about 40 percent of the total settlement cost.

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

The second benefit of the settlement I want to underscore is that it achieves a fair and equitable resolution of the difficult water disputes that have plagued the Pojoaque Valley for many years. The settling parties reached the settlement after years of good faith and painstaking negotiations conducted in numerous court-ordered meetings, open to every water rights owner in the Basin.

Under the settlement, existing non-Pueblo uses will be protected far better, I believe, than the most optimistic litigation outcome.

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

I believe it would be a big mistake to exclude non-Pueblo residents. And I firmly believe that there will be a demand from non-Pueblo residents to connect to the system. Our community needs closure of this longstanding conflict, not further division.

Rather than defining winners and losers, the settlement protects existing uses, and allows for future growth by careful management of available water resources. The settlement safeguards time immemorial and senior uses of Pueblos and early Spanish Acequias, and at the same time creates a reliable supply to more recent domestic and commercial uses.

It should be noted that Santa Fe County has been very proactive in terms of the work that we have done with community members. We have had community meetings, town halls. The process of involving individuals in this whole information education of the settlement has been exhaustive, and we continue to do that work, and will continue to do it until we are able to finally get the complete settlement of which we are asking today that the Federal government become a partner of the local tribal governments and the state government.

And in conclusion, I want to thank you, Madame Chairwoman, Ranking Member, and Congressman Luján for sponsoring this important bill. With your help, I am hopeful that we can fully restore some of the peace in our valley, and provide water for our constituents for years to come.

And I would stand for any questions.

[The prepared statement of Mr. Montoya follows:]

**Statement of Harry B. Montoya, Santa Fe County Commissioner,
New Mexico, on H.R. 3342**

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

ment will provide a reliable water supply to the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque, as well as to other county residents in the Pojoaque basin.

I appreciate very much the opportunity to provide testimony in support of the Aamodt Litigation Settlement Act, H.R. 3342. I especially want to thank the New Mexico congressional delegation for enabling us to achieve this settlement. After years of what appeared to be intractable and interminable litigation involving thousands of water users, Senators Bingaman and Udall and Congressmen Lujan and Heinrich have provided the leadership and the guidance that will allow the fighting to end and will pave the way to a better future for the Pojoaque basin.

OVERVIEW OF SETTLEMENT

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

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

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

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

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

REGIONAL WATER SYSTEM

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

The regional water system bestows many benefits. Most obvious is its importance in delivering a substantial amount of water to meet the future needs of the Pueblos. Less obvious, but perhaps as important to the Pueblos, the water system provides water to non-Pueblo water users who otherwise would continue to divert basin groundwater and deplete surface flows needed for traditional irrigation and other uses. The settlement contains incentives and provisions for settling non-Pueblo parties to connect to the system and requires new users in the future to connect. Finally, the system directly benefits connecting non-Pueblo customers by providing a clean and reliable water supply.

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

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

FAIR AND EQUITABLE RESOLUTION

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

For the last 150 years the Pojoaque basin has suffered from land and water conflicts, pitting neighbor against neighbor and Pueblo member versus non-Pueblo

people. Two U.S. Supreme Court cases and an Act of Congress failed to settle the issues, and the Aamodt water rights adjudication has done no better. The settlement is the only hope for ending the divisions and allowing for harmony in the basin.

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

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

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

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

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

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

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

Mrs. NAPOLITANO [presiding]. Thank you for that testimony, Mr. Montoya. And now we will begin the questioning.

And I would like to start off with Commissioner Connor. I have read through most of the testimony, including both bills. I agree on a lot of the instances, and I am glad that you have had such a long-standing working relationship in this. In fact, I think you were the one who started the ball rolling on the bills themselves.

And I know that the budget is tight. I know that everybody else is looking for the ability to do a lot with the little budget that you have.

But the last Administration testified against almost every settlement, against every bill that we had that was beneficial to develop more water, to assist in Indian water rights claims, applying a general rule that does not support applying the rule that would not

support the position, and did not distinguish the varying levels of the readiness of each proposed settlement. And you have turned that around. So I am very grateful. I am very happy to see that you are now considering, even though you are saying there are things that still need to be done, you are acknowledging that the different projects, readiness of each settlement, and you are asking for more.

Would that be the end of those requests? Or will you think you will find more to ask of the settling parties in the future, so that they can prepare for that?

I am just searching in my mind because from the last Administration to this is quite a change. We want to ensure that we are considering those areas that we know we have to look at.

Mr. CONNOR. Thank you, Madame Chairwoman. When we testify on these settlement bills, we are trying to go exhaustively through the provisions of the bills to identify all the issues that we see and to chart a path—specifically given the bills as introduced—and see how to get to settlements that we would support.

In particular, in these two bills, these bills are in pretty good shape with respect to the issues identified, as articulated in the written testimony. We are applying the principles that identify the four principles, and trying to use those as the framework for establishing the parameters on which we will support or not support settlements, or raise issues with the settlements.

And these settlements come to us in a range of different conditions, I guess. And specifically with respect to these two settlement bills, because you mentioned limited resources, et cetera, one of the issues that we raised related to cost has to do with the regional water system in the settlement. We want to ensure that, as rigorously as possible, we can get as accurate a cost estimate—given the information that we have. That is one of the suggestions here, so that we all understand the risk of cost overruns, and can appropriately allocate that risk.

With respect to another issue of cost—the cost shared by non-Federal parties—that is an area that we are also looking closely at. The principles that we have established set out the basis that we should have appropriate cost sharing for proportionate benefits to non-Indian parties. And we have tried to establish some parameters here in this settlement testimony as looking at existing water resource programs within the Federal government as a guide as to what is an appropriate cost share.

So with that, I guess I am not sure I am answering specifically the question you suggest, but we are trying to get down to a level of specificity so that we can identify issues, people have a clear understanding of what it would take to get Federal support. We are trying to lay that as a foundation for other settlements that follow in the wake of these two settlement bills, so that there is clarity and understanding of where we are coming from.

Mrs. NAPOLITANO. Well, apparently you have already reached some consensus on some of the issues that you had brought up before. Am I correct?

Mr. CONNOR. That is correct. We understand that there have been some language changes already negotiating and agreed to by the parties.

Mrs. NAPOLITANO. And the concerns that remain still vary with the Administration? The remaining ones?

Mr. CONNOR. Yes, they are. We would like to have discussions with the parties about cost share, particularly in the Taos situation. And we would definitely like to do our cost estimate analysis as set forth in the Aamodt testimony.

Mrs. NAPOLITANO. Then the question to Mr. Cordova. You agreed to some of the changes mentioned in the Commissioner's testimony. I am sure you would like to continue to work with them to resolve these concerns? And how soon do you think this could take place?

Mr. CORDOVA. Madame Chair, as I stated in our testimony, we are ready to engage the Administration at any time. We are ready to stay and get the job done.

As I said, this adjudication has been going on too long, and we want to get it done this year. So I am hoping that the Administration will take up and meet with us, so we can go over the issues.

Mrs. NAPOLITANO. OK.

Mr. DORAME. Madame Chairwoman, I also pledge our support and cooperation that is ahead of us. We have worked with Mr. Connor before. We have a good working relationship with him, and we will continue to do so.

Mrs. NAPOLITANO. Great. Mr. Sanders, there is the question about the Federal share versus the non-Indian and, or non-Pueblo or the state share. Is there willingness of any of those parties to increase their share?

Mr. SANDERS. Madame Chairman, with respect to the Taos settlement, we believe that our cost share is adequate. We believe that we are not given adequate credit for, we are paying 100 percent of the OMNR for the mitigation well system. We are paying 100 percent of the OMNR for the storage project wells. We are paying 100 percent of water right acquisition for roughly \$4 million. So we believe we are not getting adequate notice by our contributions for the non-Pueblo portions. We feel like our contribution approaches somewhere approximately 42 percent of the overall cost of the settlement.

So, we are not likely to, and I would guess that given the current situation in the State of New Mexico, not likely to increase our funding.

Mrs. NAPOLITANO. Is there any thought of the possibility, if this were to be a necessity, to go to bonding?

Mr. SANDERS. Madame Chair, in fact, the State Legislature is currently setting aside money by using its existing bonding capacity from our severance tax revenues. That would be the source of funding.

So we have set aside a capacity. And the plan is to roll that over year after year, or every five years, to ensure that we develop an adequate supply of severance tax bonding capacity provided by the state's share of funding.

We have thought this through. We have worked hard with our State Legislature and our Governor to come up with the funding mechanism. And while I would like to sit here and say sure, we would like to raise that, I would say it is highly unlikely.

Mrs. NAPOLITANO. The cost estimate that I have viewed in some of the testimony were 2007 estimates. Everything has gone up.

Is there the ability for somebody to take an even split in addressing those increases?

Mr. SANDERS. Madame Chair, we are referring probably more likely to the Aamodt settlement in that case.

Mrs. NAPOLITANO. Right.

Mr. SANDERS. And I think the way the current revision of the settlement is to operate. And I will defer to Commissioner Montoya, should I misspeak.

But my understanding is what we have done on the sizing is that we will pay our cost of the pipeline, depending upon the size. And rather than have a debate about how to share additional cost, we have agreed to design the pipeline for the size that we are going to pay for in the future, and pay for that cost.

So I think that might be kind of an adequate representation of how we intend to take care of the increased cost. That was 2007, so with this change, I think we will be accommodating this in an indirect way.

Mrs. NAPOLITANO. And you assured that with Commissioner Connor. He knows, the Administration knows this. Yes? No?

Mr. SANDERS. I would like to think that he does, but he now knows it.

Mrs. NAPOLITANO. Commissioner Montoya.

Mr. MONTOYA. Yes. DL is correct, Madame Chair, in terms of looking at—we are going to build the system so the people will be allowed to hook up in the future.

So it is not going to be a matter of we are going to have smaller pipes in the ground now, and then need to go back and put from 6- to 12-inch. We are going to size it to the size that it needs to be, that will allow for maximum capacity immediately. And people will hook up as they so desire.

Mrs. NAPOLITANO. I read that in the testimony, so I am very pleased that that is there. And one of the reasons I am asking is so it goes on the record, too.

Mr. MONTOYA. Yes.

Mrs. NAPOLITANO. And to all of you, to any of you, what are the likely consequences to your water users if these settlements are not authorized by Congress?

Mr. MONTOYA. Madame Chair, members of the Committee, I would say that for the Aamodt settlement, if this goes to litigation, which is a circumstance which would be detrimental to all water users in the Pojoaque Basin, we would likely not get the water rights that are being allocated currently under the settlement. It would be far less in terms of what non-Pueblo users would get, and also in terms of what the Pueblos are currently going to be allocated.

Being in the non-Pueblo portion of the population would be subject to water calls there, because of the junior water rights use. So the potential of them losing their water rights completely exists much more significantly if we do not have this settlement and if it goes to litigation.

Mrs. NAPOLITANO. Mr. Martinez, any comment?

Mr. MARTINEZ. Madame Chair, we and the Pueblo initiated the negotiation, trying to get away from the litigation. I think litigation would lead to protracted experiences like other parties have been

going through. There would be animosity between parties. I think the potential loss of the San Juantamo water is tentatively allocated for Taos based on the settlements, and a good plan that we have devised probably would disappear. Yet the valley still needs a good plan for everybody to survive. Thank you.

Mr. SANDERS. Madame Chair, if I might. I would like to point out that that is an excellent question that goes right to the heart of the settlements, is that what the effect would be on local users. And it gives me an opportunity to reiterate what maybe I didn't make as clear as I should have, is that the water rights in each of these settlements, once adjudicated, will likely be greater than the annual, the seasonal available water supply.

What that means is while there might be an annual supply of water, there is not an adequate amount of storage, or there is no storage to have water sufficient for the entire irrigation season.

So, during those periods of the summer after the spring runoff has occurred, and you move into the months of late May and June, and through most of July, you will have an inadequate supply to meet existing irrigation demand.

Irrigation demand of the Pueblos would be entitled to call, make a priority call for water sufficient to meet their needs. And I think in two of the three tributaries that we are talking about, that would be sufficient to curtail all other uses. And that would include some domestic use.

This is the sole source of supply of water for some of these homes, for many of the homes there. And it seems an improbable and illogical conclusion to have that kind of situation as evolved.

Again, please remember that these are water rights that were established long before they were part of the United States, including the Acequias. These rights and the water, the allocation of the water, was largely fully appropriated by the time we became part of the United States.

So, this is a situation that we have been dealing with on an ad hoc basis. And I would like to just add one other point.

We have had two opportunities where the United States has come in to seek priority administration. I believe in 1998 they filed, and Pam Williams is here today. She can refresh my memory on that. But in 1998 we had two priority calls, one on the Rio Jemez, and I think one on [Rios] Nambe, Pojoaque, and Tesuque. And as we were gearing up for that, and maybe it was a blessing, it rained, so we didn't have a priority call.

Again in 2000, though, we had a serious drought. In the beginning the six middle Rio Grande Pueblos were seeking to have a priority call.

The problem with making a call in these areas was unquantified rights, because there will be a significant amount of litigation that would be developing litigation on parallel tracks. One trying to qualify the rights, while at the same time trying to shut down the end quantified rights, which is an untenable situation for any court in any state that they put themselves into.

So without these settlements I offer to you, you will only increase the opportunity for litigation and disharmony in the State of New Mexico.

Thank you.

Mr. CORDOVA. Madame Chair, I would like to add to what DL said. I think what is going to result is going to be mass confusion.

While we are waiting for litigation to determine what the tribes' rights are versus what Palemon and his folks are entitled to, who knows how long it is going to take. And we are going to be stuck in the same situation that we have been for the last hundreds of years, not knowing what is really ours and what is really theirs. And we are going to be fighting over scarce water resources.

I don't think that we want to get on the road to litigation, because we are not going to resolve anything through that. So I hate to even think about what is going to happen without a settlement.

Mr. DORAME. Madame Chairwoman, you mentioned earlier the importance of the settlement, and the trust and respect and cooperation that it takes to come to this point.

I believe that if this settlement is not approved by Congress, you will diminish those three. But I will say this; that I will continue to come as long as it takes.

Mr. CONNOR. Madame Chairwoman, I would like to give a perspective. I guess it is a perspective that is mine, not in my current role as Commissioner of Reclamation.

I can tell you with respect to these settlements, having been, as I think Mr. Cordova references in his testimony, I was once the Federal negotiating team chair for the Taos water settlement matter. And I think that was in the mid-nineties and late nineties.

We would convene these meetings very formally, and very stiffly, I might add, because they were very tense discussions we were having between the Federal team, the Pueblo, the Town of Taos, the Acequia Association.

I guess the best evidence of how these settlements can bring communities together is they were much more pleasant experiences when I was working on these matters in the U.S. Senate, when these parties all came together to advocate for a common purpose, which was to implement these settlements. That is referenced in our testimony now, and that is an important element to this Administration, is bringing that kind of harmony and ending the litigation.

I have seen it firsthand. It is one of our goals. It is fundamental to these settlements, and it is the best way to resolve these issues.

Mrs. NAPOLITANO. Thank you, gentlemen. Mr. McClintock.

Mr. MCCLINTOCK. Yes. Commissioner Connor, just to be clear, this bill in its current form, are you for it or against it?

Mr. CONNOR. This bill, these bills in its current form have a lot of positive aspects that the Administration does support.

Mr. MCCLINTOCK. That is not what I asked. Are you for it or against it?

Mr. CONNOR. We, the Administration, I can only state what is in my testimony. The Administration would like to see certain provisions in these bills amended.

Mr. MCCLINTOCK. All right. So if it was before you in its current form, you would be against it?

Mr. CONNOR. Well, that goes to the ultimate question of what would it do if it came across the President's desk. That is a discussion that I can't have with you here today.

We are pretty clear on the provisions that we would like to see amended.

Mr. MCCLINTOCK. We cannot cast votes conditionally. The President can't veto bills or sign bills conditionally. You either do or you don't.

So are you for it or against it?

Mr. CONNOR. That is a decision that the President would make.

Mr. MCCLINTOCK. You mentioned the rather unusual arrangement where the water infrastructure would be constructed, and water rights would be acquired before the settlement is final and fully enforceable. That sounds to me a little bit like the cart before the horse. Is there any precedent for this?

Mr. CONNOR. There is precedent. One that comes immediately to mind is the Rocky Boy Settlement that I think was enacted back in 1998. There was some early money that was made available. I think there are a couple of other provisions where there have been early benefits.

And in those contexts, as in here I think the provision could be strengthened, is that the United States would be able to recoup or have an offset against any future claims if the money is indeed provided, but the settlement fails to be fully implemented and the waivers don't vest.

Mr. MCCLINTOCK. I think the current jargon is a clawback provision.

I raise three concerns. I heard one of them addressed, which was many of the Pojoaque Basin property owners are concerned that this settlement will abridge their existing water rights by drawing down water. I think I heard an answer from Mr. Sanders to that, which is that if it goes to litigation, it is quite conceivable that it would require an even greater diversion away from the Pojoaque property owners.

Am I correct in that interpretation?

Mr. SANDERS. Mr. Chairman, Congressman, I think the answer is yes. Without the settlement, you will have the Pueblos that are downstream senior users during periods, like I mentioned the drier months, particularly May, June, and July, they will have the senior right to call for water. And that call would be sufficient to eliminate the more junior rights, which are the domestic groundwater rights, that people need for their, you know, for their domestic needs, you know, for the health and welfare of their homes.

Mr. MCCLINTOCK. Has this been brought up in the local discussions? Again, one thing that causes me concern is the fact that not everybody in the area is on board. There seems to be a fairly significant organized opposition to this among local property owners.

Mr. SANDERS. Madame Chairwoman and Congressman, yes, it is hard to articulate exactly who is exactly opposed to it. You don't really get an opportunity to understand. I have not had the opportunity to understand how the questions and how the opposition is characterized.

Mr. MCCLINTOCK. I have a paper here from the Pojoaque Basin Water Alliance in Santa Fe.

Mr. SANDERS. Right. Madame Chair, Congressman, I am familiar with that. And I live there, and I am familiar with the folks.

The question is how they have asked people if they oppose the settlement. I would oppose it in the way they characterize the issue to me, and I negotiated a large part of the settlement.

They are simply wrong, and they are, they misconstrue many areas of the settlement.

Mr. McCLINTOCK. Well, they say they have 1,500 signatures on a petition opposing the RWS; 99 percent of respondents in an 800 call survey indicated they would not connect to the system. That sounds pretty significant to me.

Mr. SANDERS. Madame Chair, Congressman, again, I agree with you. It is how the question, how they posed the question, not seeing the way the question was posed.

The question, the way I understood them to articulate their position and presented it is that not knowing and not having participated in the negotiations and being familiar with these bills, with this bill, I would oppose the bill also. I would not hook up.

But I know that the fundamental basis for their opposition to the bill, and the way they present that opposition to the community, is flawed.

So, you know, you can't force people to understand something.

Mr. McCLINTOCK. That may or may not be. But I am sure if they were here, they would say that your presentation is flawed, they don't agree with that. The whole idea of a settlement is to bring everybody together and find some common ground.

It doesn't sound like that has come to fruition. As long as there is this kind of local opposition, this is not, does not seem to be an amicable arrangement among friends; it seems to be terms imposed upon a conquered enemy, to quote Burke.

Mr. CONNOR. Can I address that question, Rep. McClintock?

The petition that I have seen, and I don't know if there are new petitions, stated support for the settlement, opposition to non-Pueblo participation in the regional water system.

Accordingly, given that position, the bill was amended from the way it was last year to allow for the county to have some flexibility in sizing the county portion of the system, to make up for the fact that there may be a sizable amount of folks who may not want to sign up to join the regional water system. But also to let the dialogue continue where it is appropriate we should be, at the county, state, and local level.

So, that was an improvement made specifically to address the position set out in that petition.

Mr. McCLINTOCK. Right. But given the fact that we are advancing funds, and we are assigning rights before the settlement is in place, and knowing that there is significant opposition, makes me a little hesitant.

Mr. CONNOR. Well, their only money provision and the concerns that the Administration have are with the Taos settlement, not with the Aamodt settlement.

Mr. McCLINTOCK. All right. The other two issues that I raised I didn't hear addressed. One of them is the use of eminent domain by agencies that are not directly elected by the citizens over which eminent domain is being imposed, and the question of financing.

Why is it that Poughkeepsie is being called upon to pay for Pojoaque's water project?

Mr. SANDERS. Madame Chair, Congressman, let us see, let me answer the first question, the second question first, I guess, because I remember that one.

With respect to these settlements, the state is bearing the same share that it bears, is bearing the cost of the non-Indian portion for its non-Indian benefits.

We have tried to stay consistent, particularly in the Taos settlement. We have stayed consistent with the Rural Water Act—

Mr. MCCLINTOCK. Let me interrupt. That applies to the non-reservation of property owners in the Pojoaque Basin. I am talking about Poughkeepsie, New York, or Palomar, California. Why should these communities end up paying for what amounts to a local system in the Pojoaque Basin in New Mexico?

Again, in the past, water projects were financed by revenue bonds that were redeemed by the users of the water in proportion to the use. You buy more water, you pay more for that water. That redeems the bonds. That assures that the people who are exclusively benefitting by the project are exclusively financing that project.

What is wrong with that? And why are we asking the people from Palomar, California and Poughkeepsie, New York to pay for a substantial part of these projects?

Mr. CONNOR. Well, I think overall I would say, in general, I think the history has been the opposite. I think the history has been that there has been a Federal program, given whether it be the reclamation program or other water resources programs, where there has been substantial Federal investment in water supply projects for what was perceived to be an overall national benefit.

In this particular matter, I would say it is enhanced by the fact that there is a Federal trust responsibility that exists for Indian tribes.

Mr. MCCLINTOCK. Well, the Federal trust responsibility is to assign water rights to the reservation; it is not to pay for the project for the reservation.

Mr. CONNOR. Is there a Federal obligation? I don't know that that is a question that has ever been fully answered. Is it within the realm of the Federal trust responsibility to provide?

Mr. MCCLINTOCK. There is to assign rights, I don't think there is any question about that. But as far as ingoing and building the project, I am not sure that obligation exists.

Mr. CONNOR. That obligation exists, I don't know the answer to that legal question. I do know that there is a history well over a century old about building infrastructure on Indian reservations. Historically that has been irrigation facilities. In the present tense, it is more related to MNI projects.

Mr. MCCLINTOCK. OK. And then the final question is on the eminent domain. Can anybody help me out there?

Mr. CONNOR. There is no new eminent domain authority in this bill for the Bureau of Reclamation or the Secretary of the Interior.

Mr. MCCLINTOCK. No, but a joint power agency is being established that includes the county and the Pueblo governments, am I correct?

Mr. CONNOR. There is a regional water authority that is contemplated. If it is formed, it will be formed under state law, and any authority to condemn land will be under state law.

Mr. MCCLINTOCK. But the decisions are going to be made in part by sovereign entities, over which the voters don't have any control. And that works both ways. I am not sure that the county should have eminent domain authority over Pueblo land, or the Pueblo governments have eminent domain authority over county land. Land in the county, I should say.

Mr. CONNOR. The Pueblos are obligated, as are the county, to provide any rights-of-way needed for the project that they, that they will provide at no cost. That is part and parcel of the settlement itself as to whether there are other lands that might have to be condemned. If not, I think the goal would be to negotiate and secure right-of-way if the right-of-way has to be achieved through other means.

Once again, I think for the primary project, the trunkline of the regional water system, that will be the responsibility of the Federal government under existing authorities, no new authorities. If there are any additional lines for distribution, et cetera, once again this regional water authority will be formed under state law, and the State of New Mexico will define the parameters of any such authority.

Mr. MCCLINTOCK. Madame Chairwoman, would it be possible to get in the record whatever statement that local opposition might want to submit to the Committee, since we haven't heard from any of them today?

Mrs. NAPOLITANO. Yes. In fact, it is being introduced. There is a Senate Bill 1105 and H.R. 3342, for the record. Without objection, so ordered.

Mr. MCCLINTOCK. Thank you.

Mrs. NAPOLITANO. Mr. Luján.

Mr. LUJÁN. Thank you very much, Madame Chair and Ranking Member McClintock.

Commissioner Montoya, could you touch upon the last series of questions there? What the county has done to address many of the questions that were put forth by the group that was referenced in the letter to opposition? And how you worked with the state engineer, to be able to shed some light on some of the comments or questions that were being put out?

Mr. MONTOKA. Sure. Madame Chair, Congressman Luján, the county has worked, as I mentioned as part of my testimony, really in conjunction and hand-in-hand with this group that has been opposed to this settlement from day one.

Let me say that from 2004 to 2006, the settlements changed significantly, to where people were not going to have to cap their wells. It is going to be an option now. There have to be different options, one of which will be to cap their well eventually if they so desire.

The settlement agreement which everybody came to agree back in, I believe it was May of 2006, that allowed for the three different options for those people to choose essentially which ones they wanted.

They were part of the negotiation process during that whole time. They were represented, in fact, by an attorney who is in the audience here this afternoon, who no longer represents them for, you might want to ask him why he is not representing them anymore.

But you know, certainly we have worked as hard as we could in terms of addressing the needs. Bottom line is that this group, no matter what we do, no matter how we do it, will be opposed to it. And that is a reality. That is a reality. Whenever you have these kinds of settlements, you are never going to please everybody.

And this is a group, and they may have, the Congressman noted, 1,500 signatures. I have yet to get a phone call from any of my constituents saying this is a bad deal, other than from this group. And again, this group probably is about four or five that I hear from constantly.

And other than that, as I mentioned, you know, I have yet to hear from someone other than these group members who are opposed to this settlement.

Mr. LUJÁN. Commissioner Montoya, with that being said, how much of your district represents the area where the settlement would take place?

Mr. MONTOYA. It is about a third of my complete district. The size of the geographic area is about one third of my whole geographic area of northern Santa Fe County.

Mr. LUJÁN. Thank you, Commissioner. Mr. Sanders, if I could ask you a question, as well.

I know that you touched upon this in your testimony. But could you brief upon some of the current core decisions in New Mexico that have rendered an opinion on questions of existing water rights, and how people would be impacted absent the settlement and the benefits associated therein, in a post-settlement environment?

Mr. SANDERS. Madame Chair, Representative, I believe the situation is this. That without the settlement, the people who do oppose this—and you know, it is their right to oppose it, and also they don't have to sign up and participate on it.

But the fact that there is a large majority of the population, the state, the county, the city, the Acequias, and the largest number of well owners in the area who agreed to this settlement, they will, to this settlement, protect these. And they are domestic well owners who are most junior in the valley, who, without the settlement, would be shut off in the event of a priority call.

So as I said, we have worked tirelessly to try to explain this point. And as I said, there, you probably can convince me about some things. Once I have some things in my mind nobody can change my mind about. I think this is one of those instances.

So, I firmly believe, and I have advised about two Governors and two Attorneys General, that these are the right things to do. Two of my bosses have worked tirelessly to get this done.

Mr. LUJÁN. Thank you very much, Mr. Sanders. And if I could ask you to submit something into the record, just something that would simply describe the complexity and the dynamics of the state laws respective to junior and senior water rights, the function of

a priority call that makes a settlement necessary for the protection of water resources and for water right holders in this area.

And Mr. Ortiz, if you could just briefly touch upon the rights of the Pojoaques, the members of the Acequias, and the Acequia water right holders to be protected in the Abeyta case. Mr. Martinez.

Mr. MARTINEZ. I am sorry, would you repeat the question?

Mr. LUJÁN. Absolutely, Mr. Martinez. If you could just briefly touch upon how will the rights of the Pojoaques, the members of the Acequia, and the Acequia water right holders be assured and protected in the settlement? Very briefly.

Mr. MARTINEZ. Congressman Luján, the document which is an 88-page document is extremely complicated, but it has different sections.

As far as the sections are concerned that are covered under Article 8, we feel that they are all protected, all individual water rights will be protected. Customary agreements are protected. Even the other rural users within the Acequia systems, the mutual domestic for example, is a provision for footprint transfers and so forth.

So we feel that they are all protected. We have run this by all parties within the Taos area, and we haven't had any opposition to that.

Mr. LUJÁN. Thank you very much, Mr. Martinez.

And Madame Chair, thank you again for allowing me to ask some questions today. I hope that we can get some assurance, maybe from the Bureau, that they would be willing to meet with some of the parties to be able to resolve some of the issues that it sounds like we are closer to than not today.

Mrs. NAPOLITANO. I am allowing you additional time.

Mr. LUJÁN. Thank you very much, Madame Chair.

In that regard, Mr. Conyers, Commissioner Connor—you can see that Chairman Conyers is on my mind, with all the discussion around pending legislation before the House.

With the concerns that you addressed specifically from the Bureau, if those concerns are addressed, the Administration would be in a position of stronger support of the whole of the legislation?

Mr. CONNOR. That is correct. I think that is well established in the testimony, that in general, that these bills as currently written are in general accord with the principles laid out.

But the issues identified, if those are resolved, would lead to full Administration support.

Mr. LUJÁN. And along those lines, Commissioner, is it clear, or would you agree with the statement that the Administration understands the importance of the settlements between New Mexico and the tribes as it relates to the limitations of water resources in both cases?

Mr. CONNOR. Absolutely.

Mr. LUJÁN. Madame Chair, with that, I yield back the balance of my time, and will stay around for a second round of questions, if that does happen.

Mrs. NAPOLITANO. Certainly. Mr. Heinrich.

Mr. HEINRICH. Thank you, Chairwoman. I think I am going to address this to either Chairman Dorame or Commissioner Connor.

I want to get back to this issue of what the Federal responsibility is here, and why the participation.

What exactly is the Federal trust responsibility to the tribes regarding water? And is Federal participation in this settlement part of that trust responsibility? And I would let either or both of you answer the question.

Mr. CONNOR. That is one of the most complicated questions that I think I could be asked on this panel, the nature of the Federal responsibility of native water.

I think fundamentally, as trustee for the tribes' interest, it starts with the fact that the United States files and represents claims on behalf of tribes in these general stream adjudications, as having a legal interest in those property rights.

And how it goes beyond that to facilitate the use of those, that water, whether it is the adjudicator rights or through a settlement, I think is a gray area that is not fully defined.

I stated earlier, in response to the Ranking Member, that I am not sure of the obligation, the legal standards that exist. That is a complicated line of Supreme Court cases, is when the Federal government is liable for breaching an obligation.

But clearly I think the trust responsibility, there is the obligation, and then there is the authorization of what the Federal government can do as part of its trust responsibility. And then there I would contend that the provision of water, the representation of the right, then the facilitation of the use of that right is well within the accepted parameters of what the trust responsibility can entail, pursuant to how any particular Administration wants to implement that.

Mr. DORAME. Rep. Heinrich, Chairwoman Napolitano, I am not an attorney, and I could turn my back and probably get two attorneys to respond. I don't think that is what you want to hear.

My people have always been under the contention that the Federal government, as a trustee, has responsibility over everything that goes on on the reservations. It would be an opportune time for this Committee and this Congress to show exactly what trust responsibility means by approving this settlement agreement that we set forth.

It has been long overdue. It has been ensued for 43 years. But the actual responsibility probably comes from the 1924 Pueblo Land and Water Act, where it spells out that the Federal government would be held responsible for what happens on our reservations. And you know, that is why I said earlier about whatever it takes. If I am not here, my grandkids will probably be here.

So I think it is, you know, it is time that this settlement is done with, so that we can continue with our lives.

Mr. HEINRICH. Thank you, Chairman, and thank you, Commissioner.

Mr. Sanders, I have a quick question for you, and it also relates to some of the line of questioning from Mr. McClintock.

I have a little bit of experience with regional water authorities because I used to chair the Albuquerque Bernalillo County Water Authority. And some of the debates over time when that was being created statutorily, over the fact that it seemed that basically that entity had to be able to create some of the infrastructure to serve

that actually had eminent domain throughout the state, even though it represented a small portion of the state.

How does the state view the regional water authority that would be created under this settlement? And is there any difference in standing between this regional water authority and others that, like the Albuquerque Bernalillo County Water Utility Authority, throughout the state?

Mr. SANDERS. Madame Chair, Congressman, I think it is an excellent question.

First of all, it is going to require state legislation. And I was there testifying on the Albuquerque Bernalillo Water Authority as highly controversial. I think it is safe to say today that there is virtually no opposition to it any longer. And I would say just by nature being an apprehensive individual, I am surprised at the degree of success that it has had.

Having said that, this authority within the domain would only occur once created for extensions, for purposes of serving county users. That would be an authority that I would think would probably—again, that is going to be up to the Legislature.

Our recommendation would be to ensure that the county has the ability to, you know, to control eminent domain. I think that would satisfy the Congressman's kind of concern he has with eminent domain. Very unpopular. In fact, they have removed eminent domain from the authority of municipalities in the last session.

So we are very cautious in the State of New Mexico. We are highly sensitive to that issue. I know I can say that and it might change, but certainly the sentiment today in New Mexico is to be extremely limited in our exercise and grants of authority of eminent domain.

Mr. HEINRICH. I would echo your comments, both in terms of the appropriate use of eminent domain, and as someone who was highly opposed to the creation of the water utility authority, and who ended up chairing it. And to speak as someone who today believes it is a very effective approach toward dealing with our water issues on a more regional basis.

So thank you very much, Mr. Sanders. I am going to yield back the balance of my time, Chairwoman Napolitano, and thank you once again for holding this hearing.

Mrs. NAPOLITANO. Mr. McClintock.

Mr. MCCLINTOCK. Well, I have no further questions, Madame Chairwoman. I just ask if, by unanimous consent, since the opposition couldn't be here today, if we could submit written questions to them so they could respond to some of the testimony, to the opposition that is unable to be here today.

Mrs. NAPOLITANO. Certainly, if you get them in within the next 10 business days, as required.

Mr. MCCLINTOCK. Right.

Mrs. NAPOLITANO. OK.

Mr. MCCLINTOCK. Thank you.

Mrs. NAPOLITANO. Mr. Luján.

Mr. LUJÁN. Thank you again, Madame Chair. Just a few quick questions.

Mr. Sanders, could you explain the difference between a junior and a senior water right holder?

Mr. SANDERS. Madame Chair, Congressman Luján, in New Mexico, like all western states, we adopted the Prior Appropriation Doctrine of water right, water administration.

That means, in the axiom in the West for all of us who grew up here, that first in time is first in right. That means, in this instance, the Pueblos who were here first, and have retained their ancestral homelands, have the earliest time and priority. And they have the right to first exercise of that right.

Interesting enough, I have had conversations with probably some of your ancestors about when do they get to become Native Americans who qualify as not being indigenous people after 400 years, because the priority dates go back so far. That is the same issue they have with the subsequent movement of the settlement of New Mexico, with the expansion of the United States. You know, their rights then became, the water supply got further limited by new uses by new settlement. So it has been a problem that has gone on for a long time.

The seniors, though, have the right to curtail the juniors. So it would be the newest settlers, the newest people to the community, the people who most likely rely on domestic wells for their home water supply that would be curtailed. That is very significant, and it is a very almost disturbing kind of outcome of the draconian nature of the Prior Appropriation Doctrine.

Mr. LUJÁN. And Mr. Sanders, along those lines, absent a settlement, could you describe what would happen to senior and junior water right holders if there was a call? And what the settlement is trying to do to protect all individuals in the Valley there?

Mr. SANDERS. Madame Chair, Congressman, this, the settlement—and we are talking about both settlements really, but significantly in the Aamodt settlement—is that there is, again, through the drought periods of the summer, there is just an inadequate supply of water.

In order to supply that, in order to facilitate the irrigation by the senior water right holders, the Pueblos, they would be entitled to call against everyone junior, including the 1690 priority dates for some of the Acequias. That is a pretty early cut.

That means all domestic use would likely be curtailed. Folks would have no, they would be unable to reside in their homes without going out and hauling water to their homes. The very situation we have tried to avoid, or create a solution to, for the Navajo nation. We would just be recreating the very problems we tried to solve with the Navajo nation, we are recreating them here in the Nambe, Pojoaque, and Tesuque Valley.

Mr. LUJÁN. So if the settlement was adopted, would it protect non-Indian water users in the Valley?

Mr. SANDERS. Madame Chair, Congressman, yes, it would. And it also will equally protect—well, not equally protect, but provide enhanced protection, far more protection than they have today, for any individual who does not sign on the settlement, and does not want to be a part of the rural water authority pipeline.

Mr. LUJÁN. Are there any communities within the Valley, Pojoaque Valley, Nambe Valley, Nambe is part of the Pojoaque Valley, the Tesuque Valley, are there any communities within the re-

gion that would not be affected or impacted by this settlement? That reside outside of where the water flows.

Mr. SANDERS. Madame Chair, Congressman, I believe the answer to that is no. What it does do, though, is the pipeline, when constructed, there will be areas it will not serve within the valley. And those folks who do sign on to the settlement and support the settlement, they will be protected as if they, they won't be required, there is no way they will ever be required to hook up the pipeline. And they will be treated as a settling party, and they will be entirely protected from prior administration, to my understanding.

Mr. LUJÁN. Madame Chair, thank you very much. I yield back my time.

Mrs. NAPOLITANO. But these new junior water future customers, they would have to pay some money to be able to join, right?

Mr. SANDERS. Madame Chair, if they were not settling parties, the answer is yes.

Mrs. NAPOLITANO. Thank you. Mr. Heinrich? No more.

Well, thank you for the testimony. I have had great interest in reading and listening, and having you answer some of the questions.

It is really appalling that in this day and age, that there is such a water shortage in the Native American lands and that this government has not complied with the commitment made to the Native Americans.

And I would like to ask Mr. Connor if, in any of these areas, is USGS looking at any aquifer storage? I realize that there is not much water to store. But when there are rains or possibility of including water recycling projects to be able to utilize that water and put it into aquifers, if possible. Is there anything being connected to that?

Mr. CONNOR. With respect to pending settlements, I am not aware of specifically anywhere where USGS is helping with evaluations of groundwater management.

I think in general, parties have relied on USGS reports in certain areas to help define. And both of these settlements I think really took shape once the full understanding of the water resources in the respective basins came about. That allowed parties the foundation to negotiate the settlement.

So I think there has been some general reliance. I know in other water issues, USGS is helping to help, to define groundwater situations that might help resolve those issues. But there was another part to your question I was going to answer.

Mrs. NAPOLITANO. Well, that was water recycling.

Mr. CONNOR. Water recycling. Not in these particular settlements. But I do know that a fundamental part of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement that was enacted in 2000 was a water recycling project that the City of St. George, Utah was putting in place, that was part of the overall resolution of water rights with the Shivwits Paiute tribe.

So, it has historically been part of a settlement to help resolve issues in a particular basin.

Mrs. NAPOLITANO. And does the panel have any input on that?

Mr. DORAME. Madame Chair, with permission from the Governor of Pojoaque, I would like to answer that by saying that they are

pursuing wastewater management systems in the area so that they can reuse the water for economic purposes and farming. The Pueblo Tesuque also is looking toward that same venture with our non-Indian communities in the area like the Village of Tesuque, Rio en Medio, Chipodero. And we hope to begin those kinds of conversations with them.

And I might add that some of these people that we are trying to help are in opposition to our settlement. But that doesn't deter us from the fact that we want to have clean water for everyone.

Mrs. NAPOLITANO. Excellent. Any help we can give in that regard, we would be happy to, the staff, myself.

Yes, Commissioner.

Mr. CONNOR. I was just going to add actually one or a couple of mutual benefits projects in the Taos settlement is an aquifer storage and recharge project. So that is part and parcel of the Taos settlement.

Mrs. NAPOLITANO. I am glad to hear that. There is that fourth treatment now rendering the water even pure enough to be able to inject into the aquifers, so it would be reused for consumption as pure water.

I don't have any other questions. Any other statements? Yes, Mr. McClintock.

Mr. MCCLINTOCK. One more question, just to walk through the arrangement in the financing here.

The settlement gives the tribe rights to a certain portion of the water, correct? That they essentially own those rights.

The taxpayers of the United States kick in a sizable portion of the delivery system for that water, correct?

If the Pueblo doesn't need all of the water that they have rights to, they can sell the surplus, correct? As conveyed through this taxpayer-financed water system. Do I understand that correctly?

If the Pueblo has surplus water, what does the Pueblo do with that? It is up to your discretion, right?

Mr. DORAME. That is correct.

Mr. MCCLINTOCK. OK. So they can sell that, am I correct?

Mr. DORAME. Well, if a tribe chooses to do so.

Mr. MCCLINTOCK. Right.

Mr. DORAME. I am just confused about the question.

Mr. MCCLINTOCK. So I guess—well, the question is, you are selling it. You are taking money in for it, but the taxpayer, who has financed the project, isn't getting it.

Mr. DORAME. OK. In New Mexico, Indians pay taxes.

Mr. MCCLINTOCK. Right. So you pay tax from the profit.

Mr. DORAME. We are part of that.

Mr. MCCLINTOCK. But I mean, you are taking—so the concern I am getting at is, is the tribe taking a significant profit by selling surplus water that the taxpayers have basically financed.

Mr. DORAME. Yes, that is right. But we don't, we are not planning on selling the water. We are planning on holding those water rights for future use, for our children's children.

Mr. MCCLINTOCK. No, no, I am not suggesting selling the rights. But you have the right to the water. You don't need to use all that water in a single year. You sell the surplus.

Mr. DORAME. I will let DL answer that.

Mr. SANDERS. Mr. Chairman, the way it would work is that I don't believe they will be diverting water, treating it, and then be selling it just because of the location of where the pipeline would be. Fundamentally, it is just not feasible to do that.

The unused portion of water rights that they do own, though, would be made, might be made available on short-term leases, under New Mexico law, for purposes of facilitating other uses in the state. That is consistent with the prior provision doctrine.

We don't just let water float on the rivers, we make beneficial use of it. So any water that they are entitled to that they are not using would not be treated and then sold, but it would be leased to other, other Pueblos, other citizens, cities.

Mr. MCCLINTOCK. And those other Pueblos, citizens, and cities would then be paying the Pueblo for that lease.

Mr. DORAME. Mr. Chairman, I mean Madame Chair, Congressman, if I understand correctly, yes, I would charge them for it.

Mr. MCCLINTOCK. And again, that gets back to my concern that the taxpayers shouldn't be paying for it. The system should be financed by the users of the water in proportion to the use.

Mr. Connor's response is essentially well, we have always done this. We have always done it this way.

Mr. CONNOR. Well, it is a little bit more than we have always done it. With respect to the concern, I mean I sense a concern about whether we are constructing systems to deliver water which the Pueblos might use, decide to sell that water and not use it in those systems. That is not the case with the regional water system.

I think there are marketing provisions in Aamodt not related to the 2,500 acre-feet of water that would be used for the regional water system.

In the Taos settlement there is an opportunity to market water that is recognized in the settlement, pursuant to state law. There is also an opportunity to subcontract some of the San Juanamo project water that is going to be made available to the Pueblo, and that is one of the recognized benefits in the settlement.

In the Taos situation there is not a large infrastructure project that is contemplated as part of that settlement to make use of that water. So it is recognized that here is an asset that has been reserved for well over 30 years that we are making available as part of this settlement, but not to construct facilities that may ultimately not be used.

The funding that is available in the Taos settlement is for a series of smaller projects, like rehabilitation, wastewater facilities, et cetera. And those are the type of projects contemplated.

Mrs. NAPOLITANO. Mr. Luján.

Mr. LUJÁN. Madame Chair, I guess I am a little confused. Former Governor Dorame, Mr. Martinez, or Commissioner Montoya, would the water be used for people to drink?

Mr. DORAME. Are you talking about treated water, Congressman? Or water that would replenish the aquifers in the water system? Would people drink that water? If it is clean, yes, I would think so.

Mr. LUJÁN. If there is a water system that people hook up into that goes to their homes, that don't have access to water, they might use that to drink, to make their food, yes. To grow their

crops in traditional cultural ways that they have done for centuries, for families. Would some of the water rights of the Acequia be able to use that for that purpose?

Mr. MARTINEZ. Madame Chair, Congressman Luján, I think in the case of the ASR project, it is injected, taken out for irrigation. It does impact the groundwater, which may be used by some other mutual domestic water systems perhaps. That if they do, it would be no different than what they do today; take it out and treat it, and purify it, and use it again.

Mr. LUJÁN. But the Acequias would allow people to grow crops for their families, as well?

Mr. MARTINEZ. Congressman, with the ASR project, that is the intent, is to recover water that maybe got transferred by the U.S. in the 1930s. But we will find a way to compensate for that, and this ASR project will do that.

Mr. LUJÁN. Madame Chair, the reason I ask that question, I just want to be very clear here. What we are talking about with some of these people are, what happens if there is a drought, where there is a water call? They won't be able to drink, much less bathe, cook their food, provide for their families. Communities could disappear. Ways of living in a beautiful part of the country could be devastated.

I just don't want us to forget, Madame Chair, that we are talking about people here and families. In some instances, land that was taken by the Federal government. And that is why I believe that sovereignty is something that is recognized as a trust by the Federal government. And I just don't want us to lose sight of that. Because there are still parts of New Mexico where they don't have running water, parts of the Navajo nation.

I know that this isn't part of that, part of the state. But we are talking about people here. And I think that is why when, you know, we look across this great country of ours, and to see how we can support one another to get water where water is needed, in times of drought we go in to even help livestock to get them water or feed, so that they don't lose their assets.

We are talking about people here, as well, Madame Chair. And I just really don't want to lose sight of that. People like Commissioner Montoya are people that I go to church with on Sunday, people that I see at the grocery store, at my nephews' and nieces' Little League games, people that I grew up with, that I respect very much. And I just don't want to lose sight of that.

Thank you very much, Madame Chair.

Mrs. NAPOLITANO. Thank you, Mr. Luján. Your comments have been very remindful of the piece of legislation that came before us on the Navajo Nation. I introduced into the record a drawing by some of the children who were asked where the water came from, and they drew a water truck. That was introduced into the record.

So yes, in this day and age it is appalling that we still have those situations. And we need to work, the Federal government, our agencies that are now really diving into the issue, be cognizant of what has been ignored for generations, and do the best that we can for you.

So with that, we thank you for your testimony. And thank you for hanging in there with us, Commissioner; I appreciate that. That

concludes the Subcommittee's legislative hearing on H.R. 3254 and H.R. 3342.

Thank you again for appearing, for traveling, for bearing with us this long hearing. And I prefer sometimes, when we don't have that many people, to ask questions to ensure that everybody gets an opportunity to really get down and ask appropriate questions that bring a lot more information to light.

Your testimonies and expertise have really been very enlightening and helpful. Under Committee Rule 4[h], additional material for the record should be submitted within 10 business days after today's hearing. The cooperation of all the witnesses in replying promptly to any questions submitted to you in writing will be most greatly appreciated.

So with that, this hearing is now adjourned.

[Whereupon, at 4:37 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A supplemental statement submitted for the record by Harry B. Montoya, Santa Fe County Commissioner, New Mexico, follows:]

**Supplemental Statement submitted for the record by Harry B. Montoya,
Santa Fe County Commissioner, New Mexico, on H.R. 3342**

Chairwoman Napolitano and Ranking Member McClintock, I appreciated the opportunity to appear before you at the hearing of H.R. 3342 held on September 9, 2009. I respectfully submit the following supplemental testimony addressing some of the aspects of the non-Pueblo portion of the Regional Water System that will be operated by Santa Fe County pursuant to the Aamodt Settlement Agreement. I also want to describe additional outreach efforts the County will be undertaking in the community to help complete settlement of this difficult dispute.

I strongly agree with the view of Ranking Member McClintock articulated at the hearing that the water system should not be an "Indian-only" system. Water service should be made available on a non-discriminatory basis to any County resident within the system's service area. I am confounded by the position of some non-Pueblo parties that would deprive other residents of the right to willingly connect. Under the settlement, residents who do not want to connect to the system may keep their domestic wells. Why shouldn't the wishes of other residents who do want to connect also be respected and accommodated?

The position of the Pojoaque Basin Water Alliance is that no one will hook up, and therefore the County portion of the system should not be built. That position is not credible for a number of reasons. First, under the settlement new users in the valley will be required to hook-up. Although the County has designated the Pojoaque Basin as a "low-growth" area, the number of new users will add up over time.

More significantly, I am convinced many existing water users will decide to connect. The settlement agreement contains financial incentives to make connection to the system desirable. For example, existing water users choosing to connect will not pay hook-up fees and will not be charged for water rights acquisitions. The County is acutely aware that the monthly cost of service must be affordable and will structure utility finances to keep customer rates down. Importantly, the system will offer a clean, reliable supply. Water sampling in the valley has shown a number of areas of poor or declining water quality. Over time and as existing wells begin to need replacement, I am certain that many residents will be glad the system is available to them.

Criticism by the PBWA of the cost of the County portion of the system also misses the mark. All of the costs to design, engineer and construct the County system, including distribution lines, are included in the September 2008 Engineering Report and are reflected in the Cost-Sharing and System Integration Agreement. For example, Table 5-5 of the Report shows more than \$30 million in state and local pipeline costs to pay for distribution lines and for increasing the size of transmission lines to provide up to 1,500 acre-feet of capacity for the County water utility.

It is important to note that 1,500 acre-feet is the maximum capacity of the County system and that subsection 101(d)(2) of the bill provides a mechanism to modify sys-

tem size and capacity if the parties to the Cost-Sharing Agreement determine that a smaller capacity is appropriate to meet customer demand. Obviously any decision to modify system size and capacity must be made before the system is engineered and constructed. With assistance of a reputable engineering firm the County is in the process of analyzing customer demand scenarios. Because both the State and County will be investing millions of dollars in the County system, it is critical that the system be sized optimally to meet customer demand and the purposes of settlement.

The last area I want to discuss is the vexing problem of achieving a settlement that has widespread community support. As I have testified, the settlement is a carefully constructed compromise—a product of serious give and take by parties desiring a better path than continual litigation. Under the settlement, existing non-Pueblo uses will be protected, far better than the most optimistic litigation outcome. At the hearing DL Sanders, the Chief Counsel for the New Mexico State Engineer, succinctly laid out the jeopardy facing junior non-Pueblo water users in the absence of settlement. He described the serious risk during summer months of curtailment of non-Pueblo ground and surface water users. Written submissions by the two largest non-Pueblo surface water user groups also acknowledged that risk and emphasized the great benefit of settlement in protecting non-Pueblo water users. Nonetheless, any water users opposing the settlement will have the right to raise their objections with the federal court.

I recognize that some of my non-Pueblo constituents continue to be dissatisfied with the settlement. Consequently, the County will be conducting a series of community outreach and settlement focus meetings in the coming months. The purpose of the meetings will be to hear public concerns and to provide information about the settlement. Although a number of community members oppose the settlement, no one has provided a viable alternative. For example, as I have discussed, the proposal by the PBWA to eliminate part of the water system is not constructive. Oftentimes it is easier to be a critic than it is to come up with real solutions. This is especially so in the context of settling the Aamodt case, where many decades of grievances have tortured our path.

The settlement process has taken a long time and has encountered many obstacles, but the settling parties have continued to work hard, after years of good faith and painstaking negotiations, to arrive at something that will work. The settlement will achieve a fair and equitable resolution of the difficult and entrenched water disputes that have festered in our valley for so many years.

In conclusion, I want to thank the Chairwoman and Ranking Member for your thoughtful questions and remarks at the hearing and for considering this supplemental statement. On behalf of Santa Fe County, I urge the Committee on Natural Resources to mark-up H.R. 3342 and to send this important legislation to the floor of the U.S. House of Representatives.

[A statement submitted for the record by Governor George Rivera, Pueblo of Pojoaque, follows:]

**Statement submitted for the record by Governor George Rivera,
Pueblo of Pojoaque on H.R. 3342**

This statement addresses the concern raised by Ranking Member Tom McClintock at the Legislative Hearing held by the Subcommittee on September 9, 2009, namely, why should United States citizens outside of the Pojoaque Basin pay for “a local water settlement” such as the proposed Aamodt settlement? The question deserves a response.

The hearing concerned the Aamodt Litigation Settlement Act (H.R. 3342), a comprehensive settlement of the Indian Water Rights Claims of the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque (“the four Pueblos”). The proposed legislation would settle an issue that has plagued Congress since the ratification of the Treaty of Guadalupe Hidalgo in 1848. The proposed settlement would resolve the New Mexico v. Aamodt case, filed in 1966 and now the longest-standing Indian water litigation in the Federal court system.

During the September 9, 2009 hearing, in a burst of alliterative fancy, the distinguished gentleman from California, Congressman Tom McClintock, persuasively asked why the people of Poughkeepsie and Pomona should pay for the water of the Pueblo of Pojoaque. The simple answer is that Congress should keep promises made through treaties and legislation. Congress ratified the Treaty of Peace, Friendship, Limits and Settlement, commonly referred to as the Treaty of Guadalupe Hidalgo, 1848. Congress, through successive and consistent acts after the Treaty of Guada-

lupe Hidalgo, has promised to recognize and protect the property rights of the Pueblos. In 1924, Congress admitted that it had failed to protect the property rights of the Pueblos. The Pueblo Lands Act of 1924 and the Pueblo Lands Act Amendments of 1933 were designed to correct the problem.

Despite these efforts, Congress has not lived up to its promise and the Pueblos suffer from lack of a clean, stable source of water. The Four Pueblos, through consistent requests, have repeatedly petitioned Congress to do what it has promised to do. The House committees have heard these petitions for almost a century. H.R. 3342 goes a long way in meeting the obligations assumed by Congress and the American people. As for the people of Poughkeepsie and New York, they shed their blood in the Mexican War. Their sacrifice resulted in the land of the Pueblos being brought from the dominion of Mexico to the dominion of the United States.

A review of the Congressional history surrounding the Pueblos of New Mexico should suffice to reawaken the institutional memory. By 1846, the Pueblos were established on their ancestral homelands for approximately a thousand years. In 1846, the Pueblos were under the dominion of the Mexican government. At the same time, Mexico refused to recognize the annexation of Texas, formerly part of Mexico, by the United States. After hostilities broke out in April 1846, President James K. Polk sent a special message to Congress. In May 1846, the House and Senate, by very large majorities (174 to 14, and 40 to 2), voted 50,000 men and \$10,000,000 to prosecute the war against Mexico. All of the United States joined in the war. Like most American businessmen, the shipbuilders of Poughkeepsie profited. The shipping industry turned from building and servicing whaling ships to building a schooner. The schooner *M. Vassar* was built in 1846 and immediately chartered by the government and sent to Vera Cruz with stores for the army. New York answered the call to arms and provided two regiments of volunteers for service in California and Mexico. U.S. soldiers occupied Santa Fe, New Mexico and established control over the territory, including the Pueblos. The country called the nation to war—the citizens responded.

Ultimately, the war was successfully prosecuted and the Treaty of Guadalupe Hidalgo was signed. As the price to pay for the blood shed by the American soldiers, and for \$15,000,000 paid by the United States to Mexico, the Mexican government ceded the lands of New Mexico (which included Arizona) and California and recognized the Rio Grande as the southern and western boundary of Texas. In Article VIII of the Treaty, the United States obligated itself to recognize and protect the property rights of the Pueblos. The Treaty was ratified by the Senate by a vote of 38 to 14 on March 10, 1848.

Almost immediately upon ratification, the American government failed to protect the Pueblos' property rights. The territorial and federal courts declared that the Pueblo Indians were not to be protected by laws designed to protect wandering savage Indians. Encroachment upon the Pueblo lands was rampant. In New Mexico, lands without water were worthless. The Pueblos, located next to the invaluable Rio Grande, were subject to mass settlement by squatters and encroachment. The Pueblos were finally recognized as Indians deserving of federal protection by the United States Supreme Court in the case of *U.S. v. Sandoval*, 231 U.S. 28 (1913).

After the Sandoval decision, titles to lands within the Pueblos were in chaos. The federal government had failed to protect the lands since 1848 and now no one knew who had clear title to those lands. The Pueblos, with the of the irrigable lands possessed by outsiders, were in dire straits. Congress decided to step in.

The extent of the Pueblos' problem is reflected in Exhibit A, a Santa Fe New Mexican December 5, 1922 reprint of an article appearing in *The New Republic*, "The Death of the Pueblos, Tesuques Starving." Misappropriation of water was identified as the major cause of the Pueblos' rapid deterioration.

By 1923, the word reached Congress that because of the scarcity of water, the Four Pueblos involved in the current legislation were starving and that their thousand-year-old Pueblo culture was in danger of extinction.

Dear Mr. King:

Early last fall the Government was asked to provide rations for the Pueblos of Tesuque and San Ildefonso. Last week we heard that the stock of San Ildefonso was dying."

We learned that there was no more feed in the pueblos, that three horses had starved to death, that the cattle were in very, very poor condition...

The situation at Tesuque yis worse. They have a little hay left, but only because the council decided to feed the work teams and let the others starve. They have lost three horses and do not know how many cattle...

It is, however, the human situation at Tesuque that has become acute. The Government rations are delivered to the Indians at Espanola. It is a 48-mile round trip from Tesuque over heavy sandy roads, and the undersized, weakened Indian horses cannot haul over 500 pounds at a trip. In the cold weather we are now having it is a terrible drive for the men, as they are undernourished and poorly clad. But the most pathetic and terrible thing is to feel that their morale is breaking. The lieutenant governor asserted proudly, "Yes, we're short of grub, but we're not begging." And they are not begging... "Yes; we like to have a garden and our own vegetables. Yes; our women can dry them. But what's the use. We don't have no water. We plant them, but in June they all dry up and our work and seed is all wasted. There isn't any use unless we get the water. Our patent says we have a right to the water for four days a week, but last summer we didn't have it at all, not even for one day. There isn't any use doing anything unless we can get the water."

February 5, 1923 Letter from Margaret McKittrick, New Mexico Association of Indian Affairs, quoted in Hearings before Committee on Indian Affairs, House of Representatives, 67th Congress, 232-33 (1923).

Coast-to-coast, the American people found the Pueblo Indians to be "exploited, pauperized and humiliated." As Theodore Roosevelt stated, "The Pueblos are one of America's most priceless possessions. Let us cherish them tenderly and proudly!" Exhibit B, Santa Fe New Mexican, February 17, 1923.

Citing the moral duty to rectify the Congressional neglect that led to the encroachment of the Pueblos' land and water, Congress passed the Pueblo Lands Act of 1924. The Pueblo Lands Act of 1924 provided that the Pueblos were to receive compensation for their damages as a result of the United States' failure to seasonably protect Pueblo lands and water. Money damages, though, was not the ultimate goal. Section 19 of the Pueblo Lands Act of 1924 states:

That all sums of money which may hereafter be appropriated by the Congress of the United States for the purpose of paying in whole or in part any liability found or decreed under this Act from the United States to any pueblo or to any of the Indians of any pueblo, shall be paid over to the Bureau of Indian Affairs, which Bureau, under the direction of the Secretary of the Interior, *shall use such moneys at such times and in such amounts as may seem wise and proper for the purpose of the purchase of lands and water rights to replace those which have been lost to said pueblo or to said Indians, or for purchase or construction of reservoirs, irrigation works, or the making of other permanent improvements upon, or for the benefit of lands held by said pueblo or said Indians.*

43 Stat. 636, 642 (emphasis added).

Despite the lofty goals of the Pueblo Lands Act of 1924, the goal of replacing the lands and water rights has never been realized.

The supply of water in the Rio Grande and Colorado River is limited. Since 1924, the federal government, who has recognized its duty to protect the Pueblos' land and water has looked the other way. When Colorado, New Mexico and Texas agreed in the Rio Grande Compact to allocate the waters of the Rio Grande to their respective states it appeared that the water supply for the Indian tribes might be limited by that Compact. The federal government saw the danger and made no demand that Indian rights be protected.

The Pueblos have never waived their right to seek to enforce the United States' duty to secure and protect replacement land and water rights. Recognizing their Congressional predecessors' failed attempts to protect the Pueblos' water rights, the inability of 42 years (at the time) of litigation to rectify the water problem, and the necessity of Congressional action, the New Mexico delegation has continually supported the efforts of the local governments to find a sensible, fair solution to guarantee a clean, continual, guaranteed source of water for all the Pueblos and their non-Indian neighbors.

During the 110th Congress, while acutely cognizant of the long and fractious history of Pueblo water rights in New Mexico and the responsibilities of the federal government, New Mexico Senators Peter Domenici and Jeff Bingaman introduced S.3381, a bill similar to H.R. 3342.

Senator Peter Domenici's September 11, 2008 testimony before the Senate Indian Affairs Committee deserves to be heard again, and again, by any Member of Congress considering such legislation. The statement reflects the frustration over the lack of action on the Pueblos' water settlements and the advice of one of the most knowledgeable and long-standing Members of Congress.

Sen. Domenici: Well let me say and let me say this especially to our Chairman... I say this to you and our Chairman. Mr. Chairman, I believe these settlements ought to be approved by our committee, and I'm going to ask that we do it in spite of the opposition of the Administration... I don't believe we're going to be able to negotiate anything for a lesser amount of money...

I do believe the position of the federal government that they will not comment positively about the settlement costs is wrong, in this case, and it's not going to be getting any better.

More cases are coming and were not going to, nobody up here is going to sit up here and sit around and take OMB's evaluations of these things when they know less about what's going on than most of us. I can tell you, you can't say it, but I can, I've had to go to the President on items of significance for this country when OMB didn't care what the situation was and it didn't take the President five minutes to decide they were wrong...

But I tell you they're making some bad mistakes of judgment in their recommendations and this is one of them.

I thank you, Mr. Chairman.

[A statement submitted for the record by the Pojoaque Basin Water Alliance follows:]

Re: HR 3342

POJOAQUE BASIN WATER ALLIANCE

243 Camino Rincon
Santa Fe, New Mexico, 87506

**Testimony of Opposition to the
Joint Regional Water System Proposed in the
Proposed Settlement Document in the **R. Lee Aamodt, et al Case,**
Filed in U.S. District Court For the State Of New Mexico.**

I. Opening Statement

*Thank you for allowing us the opportunity to present our objections to the Joint Regional Water System. The Pojoaque Basin is in a traditional agricultural community, in a high desert valley of Santa Fe County, New Mexico. The PBWA was **formed in 2004 to protect our wells and water rights.** Aamodt case started out as an adjudication of water rights among four Pueblos (tribes) in the Basin and the non-tribal citizens of the community. In recent years the governing entities of Santa Fe County and the City of Santa Fe have entered into the case and together with the 4 pueblos (tribes) have proposed a Joint Regional Water System, virtually forming a large joint water district, under federal jurisdiction.*

*We represent about **450 well owners.** We have well over 1500 signatures on a petition in opposition to the proposed Regional Water System in the Aamodt Settlement. The people of Pojoaque Valley, population of approximately 7000 w/3000 well owners, are opposed to the RWS for the following reasons.*

II. Objections to the Joint Regional Water System

- Cost to the taxpayer

*The county's share of the system is approximately **100 million dollars.** The county's **OMR will be \$500,000 per year** whether or not the system is ever needed or used. Most of the use of the system will be pueblo future use. The pueblos will be contributing via the federal government a small amount of the total cost, but receive a lion's share of the benefits.*

- Residents of Pojoaque Valley do not support the system and will not connect.

*The only organization to poll the valley residents to determine what they wanted was the PBWA. We conducted a **phone poll** of approximately **800 residents.** We also collected over **1500 signatures on a petition** opposing the RWS. **In both polls 99% indicated they would not connect** to the system. This petition has been submitted to our congressional delegation. There has been no significant public outreach, education, or polling by the county or the state.*

obtain water rights will be from the local Acequias surface water rights which are protected under International Treaty.

- Quality of life and economic impact on a rural community
The valley has a rural and agricultural quality of life, sustained by the acequias for hundreds of years. The RWS will bring a rapid increase development only to Pueblo land. It will not create any more water; it is not a panacea for the area. It will require more and more water to support additional growth. We live in a high mesa desert area with limited water resources.
- Estimated water usage of Pojoaque Casino, Golf Resorts, other development far exceeds the amount of water they will obtain from the settlement.

III. PBWA alternative solution- Build/fund a pueblo-only waterline.

*The settlement contains the **basis for water rights adjudication: 3660 afy of priority pueblo water rights and an additional 2500 afy of imported water delivered to the pueblos. We believe the pueblos should get all their water as stated in the settlement; however, it should be delivered to the pueblos through a pueblo-only waterline.***

We do not believe that a RWS is integral to the resolution of Aamodt or the adjudication of water rights. It is not proper to "piggy back" a RWS on a federal funded system intended solely for pueblo use.

IV. Summary

The PBWA and residents of the Pojoaque valley respectfully request that you do not fund for a joint Regional Water System.

Thank you for your time and increased awareness to our objections.

Contact:

Richard Rochester, President PBWA
243 Camino Del Rincon
Santa Fe, NM 87506
(505) 455-3603

Vicente Roybal
PO Box 1331
Santa Fe, NM 87504
(505) 455-7848

[A letter submitted for the record by The Honorable Bill Richardson, Governor, State of New Mexico, follows:]



State of New Mexico
Office of the Governor

Bill Richardson
Governor

September 2, 2009

The Honorable Grace F. Napolitano
Chairwoman
U.S. House Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, DC 20515-0001

The Honorable Cathy McMorris
Ranking Member
U.S. House Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, DC 20515

Via Fax: 202-226-6953

Dear Chairwoman Napolitano and Ranking Member McMorris:

I write to call your attention to and urge your support of H.R. 3342, the "Ammodt Litigation Settlement Act," pending before your subcommittee.

This bill is designed to implement a settlement of a 40-plus-year-old federal lawsuit and comes at the conclusion of six years of negotiations among the parties. It settles the water rights of four New Mexico Pueblo Indian communities: Nambé, Pojoaque, Tesuque and San Ildefonso. It removes a cloud from the water rights of acequias that date back before U.S. sovereignty in New Mexico and confirms the rights to water of thousands of more recent domestic well owners in the valley.

The final form of H.R. 3342 is the result of long and detailed discussions and the careful balancing of competing interests in the valley. It will ensure the viability of these Pueblo communities, which were in place using the scarce water of this valley before the first Europeans came to North America.

The State of New Mexico, both by way of my office and by way of support expressed by the State Legislature, is in full support of this bill. I urge its favorable review by your subcommittee and its prompt passage by Congress.

Page 2
September 2, 2009

Thank you for your attention and consideration to this matter of such great importance to New Mexico.

Sincerely,



Bill Richardson
Governor of New Mexico

BR/fl

The documents listed below have been retained in the Committee's official files:

- D'Antonio, John R., Jr., P.E., New Mexico State Engineer, Interstate Stream Commission Secretary, Letter to Congressmen Luján, Heinrich, and Teague submitted for the record
- "A Memorial Requesting Continued Funding for Native American Water Rights Settlements" submitted for the record
- Montoya, Hon. Harry B., Commissioner of District 1, Santa Fe County Commission, Santa Fe, New Mexico, Letter to Hon. Ben Ray Luján submitted for the record
- Rio de Tesuque Acequia Association, Letter to Senators Bingaman and Udall, and Congressmen Luján, Teague, and Heinrich submitted for the record
- Pojoaque Valley Irrigation District, Letter to Luján, Teague, and Heinrich submitted for the record
- Rivera, Governor George, Pueblo of Pojoaque, Letter to Congressman Ben Ray Luján submitted for the record

○