

Prepared Statement of the Honorable Charles J. Dorame, Chairman

Northern Pueblos Tributary Water Rights Association

And Former Governor, Pueblo of Tesuque

Before the House Subcommittee on Water and Power

Committee on Natural Resources

Legislative Hearing on the Aamodt Litigation Settlement Act (H.R.6768)

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INTRODUCTION

Good morning Chairwoman Napolitano and Ranking Member McMorris-Rodgers and thank you for holding today's hearing on H.R.6768. I am here to present testimony on Title I, the *Aamodt Litigation Settlement Act*.

I want to thank our Congressman, Tom Udall, for his leadership in working with the Four Pueblos and all the settlement parties and of course for introducing H.R.6768.

I would be remiss if I failed to thank Mr. Udall's staff for getting the bill introduced and Committee staff for organizing today's hearing.

Complex Indian water settlements do not happen in a vacuum, Madam Chairwoman, and ours is no exception. I commend our settlement

partners: the State of New Mexico, the City of Santa Fe, the County of Santa Fe, and others for the years of hard work and good faith negotiation that ultimately lead to this settlement and the accompanying legislation.

My name is Charlie Dorame. 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 comprised of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque. At stake in this settlement are the water rights of these four distinct Pueblos, each with its own land base, economy, community, and vision of the future.

Filed in 1966 by the State of New Mexico, the Aamodt case is one of the longest-running Indian water rights cases in the history of the United States. I was 17 years old when the case was filed and in the years since then I have watched as the case has gone on and on, seemingly without end.

Water is essential to our People for basic needs and our survival, but also for its sacred role in Pueblo culture. For example, at Tesuque Pueblo, 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 seven years ago, we were faced with a crisis when the creek went dry. 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 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.

BACKGROUND ON THE 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 resources have resulted in four decades of litigation. 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 was reached between the following parties:

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

Once enacted, H.R.6768 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 FOUNDATION OF SETTLEMENT

The foundation of the Settlement Agreement is the proposed Regional Water System (RWS) for the Basin. The RWS will have the capacity to deliver 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 scarce water resources will continue to dwindle for all of the Basin users.

SETTLEMENT AGREEMENT TERMS AND PROJECT COSTS

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 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 or what Department of Interior Counselor Michael Bogert has in the past referred to as “Peace in the Valley”.

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

The total project cost of the settlement is \$309 million, which would be used to construct the Pueblo and County combined water system and the county connections, to create 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 \$170 million, which will forestall continued Federal involvement in water rights 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 in excess of \$130 million to the proposed settlement.

As the Committee knows, the Administration evaluates this and all Indian land and water settlements based on the “Criteria and Procedures” that were first issued in 1990. While no proposed settlement is perfect in terms of meeting every aspect of the Criteria and Procedures, the Aamodt Settlement Agreement is as close to a neat fit as is likely to come before the Congress.

The settlement satisfies the material conditions of the Criteria and Procedures because:

1. It will resolve the Pueblo claims with finality after 42 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 38% --- is significant; and

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

The Department of the Interior has raised a concern with the waiver provisions contained in S.3381, the Senate counterpart to H.R.6768. This Subcommittee should know that this is not a new matter and that we have engaged the Department in substantive discussions on it for many years. In fact, the Department of Justice and the Department of the Interior suggested the waiver language that was included in the 2006 Settlement Agreement. About six months ago, the Department approached the parties with completely new language, the scope of which far exceeds the nature and geographic scope of the claims the four Pueblos are settling. While we have concerns about the Department's new proposed waiver provisions, the Subcommittee can be assured that we remain engaged with representatives of the Department on this issue.

Another matter that has only recently been raised by the Department relates to the ability of the four Pueblos to implement the provisions of H.R.6768 once enacted into law. For the first time ever, in August 2008, a Department official announced to the settlement parties that Departmental funding of the settlement would be eliminated in its entirety as soon as the settlement legislation becomes law.

In fact, enactment of settlement legislation heralds a new phase in this matter, requiring various scientific, engineering, and legal implementation activities. Continued federal funding for implementation activities is therefore critical to the overall success of the settlement. If the Department is intent on eliminating funding for implementation activities, the settlement legislation should be amended to include these costs as an element of the settlement.

Madam Chairwoman, the United States' historic failure to protect the Pueblos' lands and water rights adequately for more than 150 years lead directly to today's conflict over scarce water resources. Once enacted, H.R.6768 will conserve the shared resource responsibly and bring the all-important "Peace in the Valley" -- to all the parties.

Most important to the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque, this legislation will fulfill the United States trust responsibility and ensure that our children, and their children, can continue our traditions for generations to come.

CONCLUSION

Madam Chairwoman and Ranking Member McMorris-Rodgers, this concludes my statement and I would be happy to answer any questions you might have at this time.