

Testimony of Gilbert Suazo, Sr.
Taos Pueblo
Before the Senate Indian Affairs Committee
Concerning S. 3381, Title II—
The Taos Pueblo Indian Water Rights Settlement Act
September 11, 2008

Mr. Chairman and Honorable Members of the Committee:

Good morning. My name is Gilbert Suazo, Sr. My Taos Pueblo Indian name translates to “Standing Wolf.” I am a Tribal Councilman and served as Governor for Taos Pueblo in 2007. For the past 20 years, Tribal Councilman and former Governor Nelson J. Cordova and I have served as co-spokesmen for the Pueblo’s water rights adjudication and settlement negotiation, and we presently serve as Water Rights Coordinator and Water Resources Specialist, respectively.

I am here with my tribal leadership, Governor Paul Martinez, War Chief Luis Romero, Tribal Council Secretary Frank Marcus, and Councilman Cordova. Also with me are our water rights attorney Susan Jordan of the Nordhaus Law Firm and Ronald Billstein of DOWL-HKM Engineering, one of our technical consultants. I would also like to recognize the other local parties to the Taos Pueblo Water Rights Settlement: the Taos Valley Acequia Association representing 55 community ditch associations (“TVAA”), the Town of Taos, El Prado Water and Sanitation District (“EPWSD”), 12 Taos-area Mutual Domestic Water Consumers’ Associations, and the State of New Mexico.

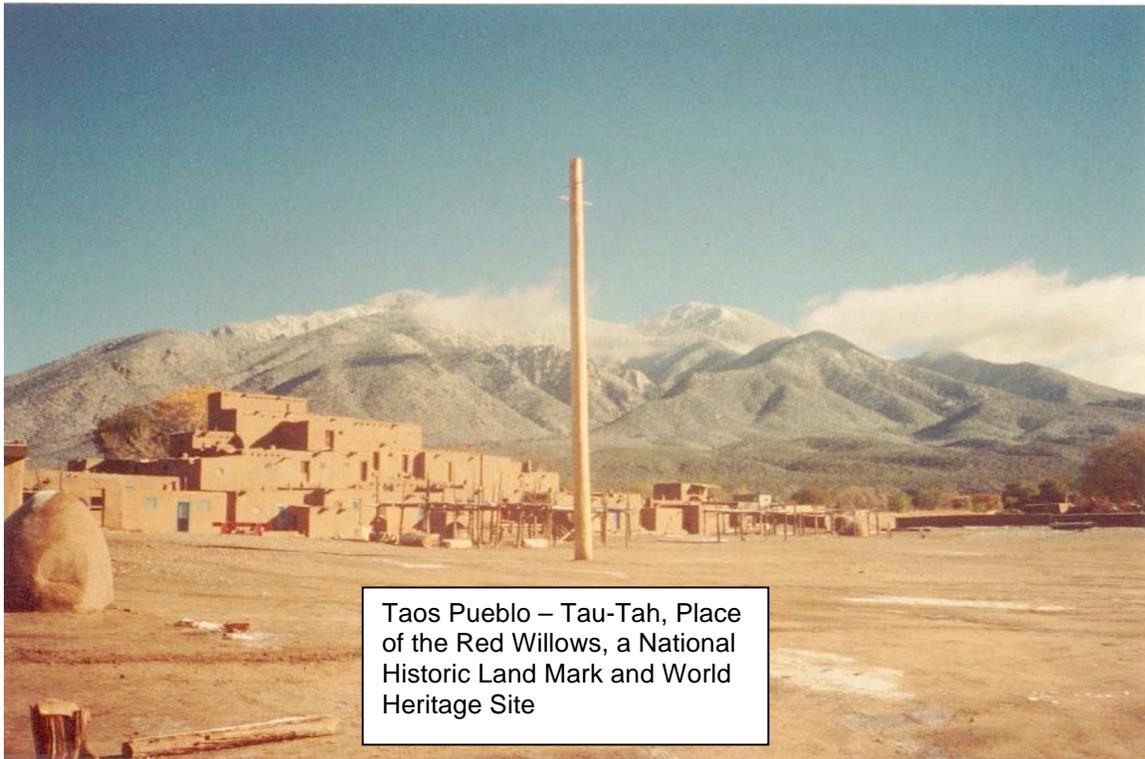
Thirty-eight years ago, I had the privilege to testify as a representative of the younger generation of Taos Pueblo in this same committee for legislation to return to Taos Pueblo what is now known as the Blue Lake Wilderness Area (Public Law 91-550). The Blue Lake settlement in 1970 was about land of cultural and traditional importance to Taos Pueblo. Today my testimony as a tribal leader and elder for Title II of S. 3381, the Taos Pueblo Indian Water Rights Settlement Act, is about water, the lifeblood for the Pueblo’s spiritual, physical and cultural sustenance. Many of our elders have passed on without seeing completion of this settlement. I dedicate this testimony to their memory.

The Waters Involved in this Adjudication:

The passage of this legislation will authorize a settlement of the general 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*, which was consolidated with *Abeyta*. 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 together produce average annual flows before diversions in excess of 90,000 acre-feet per year (“afy”). This is not much water when compared with streams elsewhere in the United States, so you can appreciate the stress on this resource and the conflicts that arise in the face of its limitations.

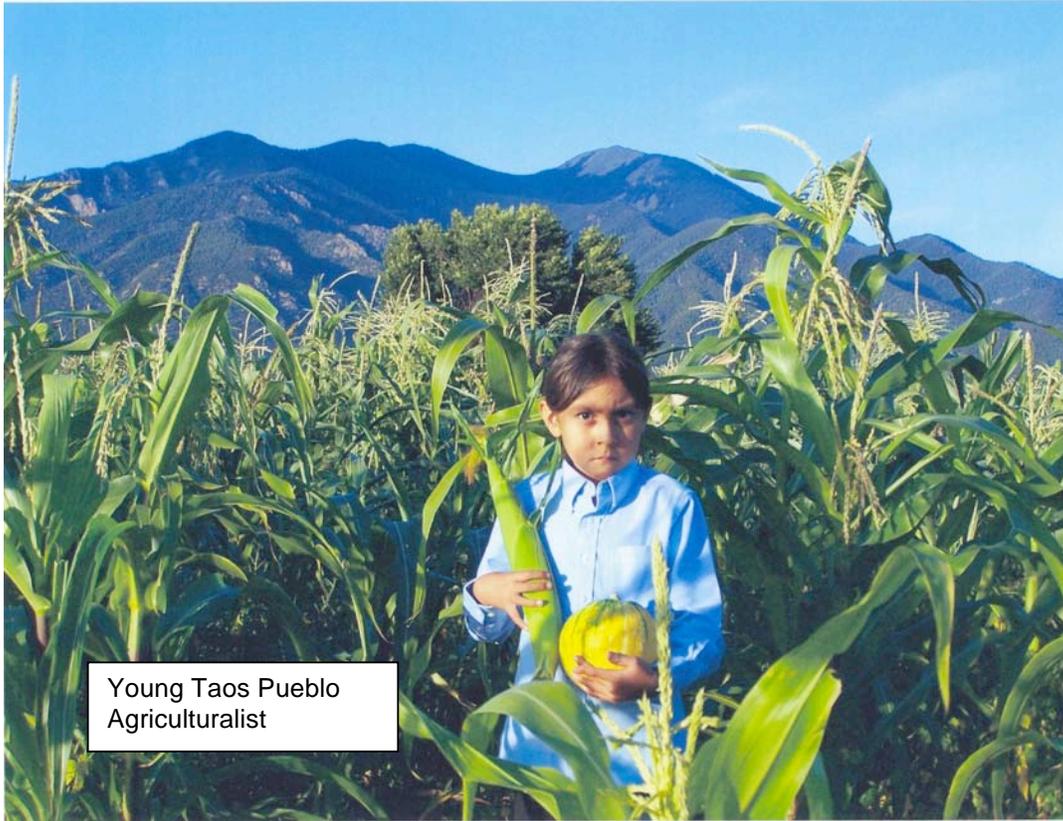
Taos Pueblo's Use of These Waters from Time Immemorial:

Taos Pueblo, *Tau-Tah*, the place of the Red Willows, is located in North-Central New Mexico. The total enrollment for Taos Pueblo is 2,458 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. The Blue Lake Wilderness Area is a major part of the watershed for the streams under adjudication that feed the Taos Valley. At the foot of the mountains are thousands of acres of Taos Pueblo farmlands that have been irrigated in pre-historic and historic times through a complex ditch irrigation system. Taos Pueblo itself is a National Historic Landmark and a World Heritage Site in recognition of its enduring living culture.



Taos Pueblo – Tau-Tah, Place of the Red Willows, a National Historic Land Mark and World Heritage Site

Prehistorically, the culture for Taos Pueblo has been, and is still, based on agriculture with the raising of corn, squash and beans, supplemented by abundant wild food crops and meat from deer, elk, buffalo and other game hunted in the mountains and Great Plains. In historic times, Taos Pueblo adapted well to growing introduced crops such as wheat, oats, barley and alfalfa for its own use and as barter for other needed items and implements. Our people, Tauh tah Dainah, have occupied the Taos Valley since time immemorial and as the first user of the Valley's water resources, constructed irrigation systems that are still in use today.



Young Taos Pueblo
Agriculturalist

Centuries of Conflict:

When the first Spanish explorers arrived in the valley in the 1500's, they found a thriving agricultural community with an abundance of food crops. They called it the bread basket of the region. The Spanish people colonized the region and began their own agricultural tradition in the Valley. As the non-Indian population grew, the demand for water increased, resulting in hundreds of years of conflict between Taos Pueblo and its non-Indian neighbors.

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 de Lucero. However, 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 Negotiations:

You can imagine how these longstanding, bitter water conflicts have bred generations of distrust and hindered the ability of the Pueblo and its neighbors to live together and prosper. Against this background of conflicts going back several hundred years, a groundbreaking moment came in 1989 when the Pueblo and the Taos Valley

Acequia Association decided to try negotiation. The negotiations grew to include each of the major water rights owning parties in the Taos Valley, the State of New Mexico, and the United States. Over time, each of the local parties came to recognize and respect our mutual need for water resources for the survival of our agricultural traditions and for the future growth of our communities.

Through 18 years of difficult negotiations, the parties were able to reach an agreement in 2006 that we could all live with. The settlement agreement allocates water resources amongst the parties, protects existing supplies, protects the Pueblo's cultural resources and provides the basis for management of the Valley's water resources in the future.

After we reached local agreement, the parties came to Washington seeking legislation in unity, to the amazement of our congressional delegation and administration officials who usually do not see this kind of cooperation between Indian tribes and non-Indians. 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 the Pueblo the right to deplete 11,927.51 afy of water. This quantity includes 7,883,44 afy for Historically Irrigated Acreage ("HIA"), 114.35 afy for stock ponds, 14.72 afy for stock wells, 300 afy for municipal, industrial and domestic use (representing 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.

A total of 2,621 afy of SJCP water will be contracted under this settlement. In addition to the contract to the Pueblo, the Town of Taos and EPWSD will receive contracts for 366 afy and 40 afy, respectively. These contracts are essential to the settlement to ensure that the Pueblo will have water to serve its 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 \$50 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 \$113 million in federal funding. The State of New Mexico will contribute additional settlement funding toward the mutual benefit projects and for certain water rights acquisitions by non-Indian parties under the settlement agreement.

By comparison with other Indian water settlements, this 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 its 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 and are tied together as a result of compromise. Removing any single component would unravel the settlement.

Modest Funding for Vast Claims Compromised and Further Conflict Avoided:

Why is there \$80 million in funding for Taos Pueblo, and \$33 million for mutual benefit projects? What are we going to do with that funding? Before I describe the purposes for this funding, let me say right off that the Pueblo's \$80 million figure is a compromise from the \$100 million Pueblo fund in the Draft Settlement Agreement that we signed in 2006. Importantly, the Pueblo is accepting this funding amount in exchange for waiving its right to bring certain enormous damage claims against the United States, waiving vast portions of senior water rights claims, and forbearing on the exercise of about half of its senior water rights for historically irrigated acreage.

Our potential damages claim against the United States for breach of its trust duty relating to the 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 enjoyment of its rights in the Rio Pueblo de Taos, the Rio Lucero and the Rio Hondo. This approach by the federal government has injured the Pueblo and prolonged conflict in the Taos Valley.



Likewise, the federal government has failed to take the necessary steps to manage the Pueblo's water rights and facilitate 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 the problems have long been known and documented, repairs and rehabilitation under the Bureau of Indian Affairs Northern Pueblos Agency responsibility were not being done 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.



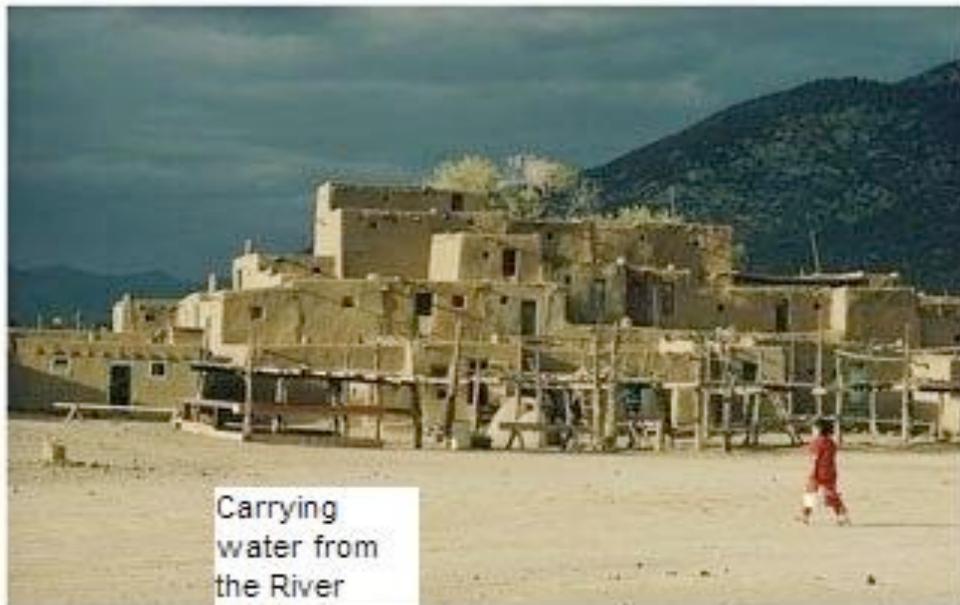
The foregoing is a small slice of the history of federal neglect and mismanagement, but illustrates how our relevant damage claims against the federal government greatly exceed the settlement funding. Likewise, Taos Pueblo's claims for aboriginal irrigation water rights in the litigation are substantially 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.

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.

Water Rights Forbearance Requires Funding to Acquire and Retire Junior Rights: Under the settlement, the non-Indian parties agreed to recognize the Pueblo's right to deplete 7,883.44 afy for its Historically Irrigated Acreage or HIA totaling 5,712.78 acres. In turn, the Pueblo agreed to initially forbear exercising its right to irrigate 3,390.33 acres of this total HIA. 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 its HIA would otherwise disrupt non-Indian irrigation. The initial forbearance is a major concession made by Taos Pueblo to make the settlement work. Funding sufficient to acquire and retire junior rights in a quantity over time that will allow full exercise of the Pueblo's senior HIA rights is a linchpin of the settlement.

Address Federal Neglect of Pueblo Irrigation Infrastructure: As I have explained, our centuries-old irrigation infrastructure and the Twentieth Century federal improvements are in grave disrepair. As a result, only 2,322.45 acres are currently irrigated, and much more farm lands are laying idle because there is no way to get water to them without extensive repair and rehabilitation to our infrastructure. BIA has not done any repairs of significance in decades. Settlement funding will allow the Pueblo to rehabilitate and replace the dilapidated system and construct improvements. This will enable the Pueblo to recover from the long history of federal neglect of Pueblo irrigation systems and to revitalize its agricultural heritage.

Address Lack of Running Water and Wastewater System Access: Many of our people do not have the convenience of running water in their homes and 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 and irrigation ditches and from 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. A recent fire in the watershed contaminated the surface water supply and our people who rely on that water supply had to haul water from an alternative source. Settlement funding will help us to improve and expand our community water and wastewater system to better serve our people.



Carrying
water from
the River

Watershed Protection, Support of Agriculture and Water-Related Pueblo Community Welfare and Economic Development. While our need for irrigation infrastructure repair is critical, support of agriculture requires more than ditch rehabilitation. The Pueblo needs to enhance its 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. As I have noted, a large portion of water involved in the settlement originates within the watersheds on Taos Pueblo land, and establishing a Pueblo watershed protection program will protect this resource.



Blue Lake
Headwaters of the
Tau-Tah Ba ah Na
Rio Pueblo

Protection of the Pueblo's Sacred Buffalo Pasture from Groundwater Pumping: The Buffalo Pasture is a culturally important wetland for the Pueblo that supports herbs, plants, clays, wildlife and waterfowl that are of essential ceremonial use to the Pueblo. This wetland is also a reliable source of irrigation water for both the Pueblo and non-Indians, and it is the start of a unique greenbelt that extends through the Valley. In the past 50 to 60 years, significant deterioration of the wetland has occurred. The Pueblo and neighboring municipal and sanitation district water providers whose wells are close to the Buffalo Pasture fought to the point of gridlock over the impacts of the groundwater pumping on the Buffalo Pasture. All of the settlement parties agreed early in the negotiations that the protection and preservation of this unique resource was crucial. The Buffalo Pasture Recharge Project to be constructed under the settlement will be designed to restore water levels to this sacred wetland.

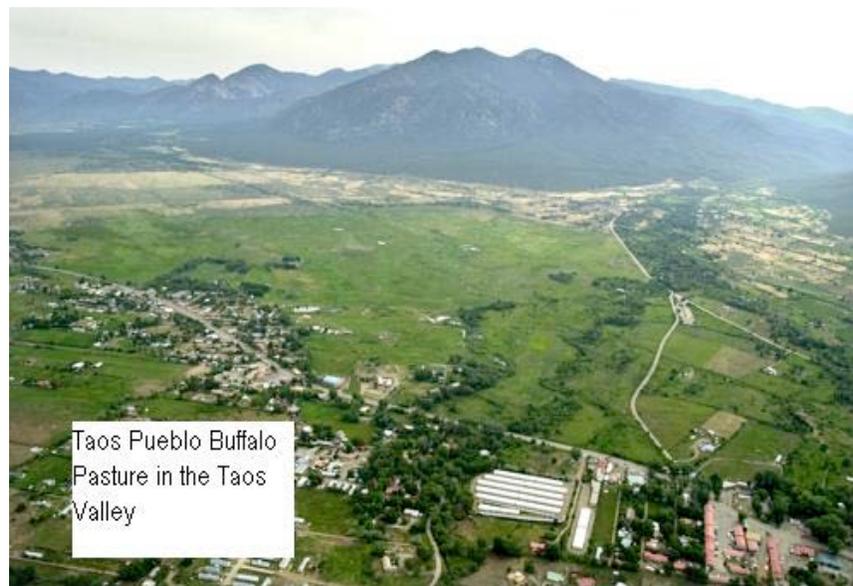


Photo Courtesy of Rick Romancito, Taos News

Water Management, Administration and Costs related to the Negotiation, Authorization and Implementation of the Settlement: This settlement is necessarily complex and places substantial policy and administrative responsibilities on Taos Pueblo. The Pueblo will be required to manage and administer its water rights to carry out the provisions of the settlement. An important task will be to upgrade and expand the Pueblo's Water Code to ensure consistent implementation and monitoring of the settlement provisions as required. Professional management of water resources, in a manner that incorporates traditional and contemporary water management practices, will be necessary. The settlement authorizes the Pueblo to lease its water, and we will need to establish a system to administer water leases. Financial assistance from the federal government for the Pueblo's participation in the negotiation process has never been sufficient, and the Pueblo has therefore incurred expenses far beyond its financial resources. The settlement will provide funding for these purposes.

Funding Available on Appropriation: The bill provides for the Pueblo to receive \$15 million of the Taos Pueblo Water Development Fund upon appropriation for the acquisition and retirement of junior water rights in an amount sufficient to enable the

Pueblo to irrigate an additional 700 acres of our historically-irrigated acreage as of the settlement enforcement date, to begin the Buffalo Pasture Recharge Project, to begin design work on other eligible infrastructure projects, to put in place our water management and administration system for implementation of the settlement, or to pay costs related to the negotiation, authorization and implementation of the settlement. In addition, \$10 million of the Pueblo Water Infrastructure and Watershed Enhancement Fund will be made available early through the Secretary for specific eligible settlement projects. This early funding will allow the Pueblo to begin important watershed protection work and to commence the most urgently needed water infrastructure projects.

Mutual Benefit Projects: The settlement parties devised a series of small mutual benefits projects that are 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, and funding of the Acequia Madre del Prado stream gage will facilitate implementation and enforcement of surface water sharing provisions. The Town of Taos' present water supply wellfield is largely located in the immediate vicinity of the Pueblo's sacred Buffalo Pasture. As part of the settlement, the Town will discontinue use of those wells in closest proximity to the Buffalo Pasture, limit use from the wellfield overall, and develop water for its growing needs from a new well field located farther away from the Pueblo and its resources. EPWSD has also agreed to limit or cease production from its wells located in closest proximity to the Pueblo's sacred Buffalo Pasture and to locate its new production wells farther away from the Pueblo and its resources. These wells funded under the settlement are designed to replace production capacity lost or restricted by the limits that the settlement imposes on existing wells.

Criteria and Procedures for Indian Water Rights Settlements:

It should be abundantly clear from my testimony so far that the Taos Pueblo Water Rights 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 on March 12, 1990 (55 Fed. Reg. 9223). These criteria often stated in terms of the four policy goals set out below. Under each, I briefly recap how this settlement meets the goal.

(1) Avoid the direct and indirect costs of continued litigation: This settlement resolves the 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 of this nearly forty-year old adjudication will be avoided. Importantly, 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 Buffalo Pasture.

(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 the claims of Taos Pueblo against the United States as set forth more specifically in the waivers and releases of claims. The settlement also minimizes the potential for future conflicts between the Pueblo and our neighbors over their groundwater withdrawals and surface water diversions. 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 its rights, but also by providing funding for the Pueblo to accomplish water-related infrastructure improvements necessitated by years of federal neglect and by providing funding to enable the Pueblo to implement its responsibilities under the settlement, including the management and administration of its water resources program. These items are not being funded through the normal federal budget process. The settlement structure, by providing the mechanisms for the tribe to develop and manage its water itself and in harmony with its 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 its senior water rights for historically irrigated acreage and the mechanism for the Pueblo to increase its exercise of these rights over time. This creative approach avoids displacing non-Indian irrigators, and does so in a manner that respects local traditions. 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.

Peace in the Valley:

As you can see, the 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 its 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 Committee 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 in the Taos Valley by the parties and future generations to come.



I thank Chairman Dorgan, members of the Senate Indian Affairs Committee, and our New Mexico Senators Pete Domenici and Jeff Bingaman, 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 leadership present here today and those at home who await this Committee's action. 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.

Respectfully submitted,

Gilbert Suazo, Sr.
Tribal Councilman and Governor in 2007
Taos Pueblo