

**TESTIMONY
OF THE
PUEBLO OF ZIA GOVERNOR
GABRIEL GALVAN
IN SUPPORT OF S. 4896
BEFORE THE
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

NOVEMBER 16, 2022**

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

Background on Zia Pueblo

Zia's history is a saga of tragedy and resilience. The Pueblo is located approximately 30 miles northwest of Albuquerque. Our village has been in its present location since the 1300s, adjacent to the Jemez River, the only significant stream on our Pueblo.¹ We survived the Spanish occupation, but just barely. And the succession of

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

United States sovereignty did little to improve our lot, until recently. By the end of the 19th century our population had dwindled from several thousand to less than 100, prompting Matilda Cox Stevenson, an anthropologist studying us at the time, to predict the extinction of our tribe within a few decades. We suffered terribly from disease, poverty and neglect.² But we not only persevered in the face of great odds, we came back. Today Zia has a population of over 800, a reservation comprised of approximately 160,000 acres, and a strong, unique, and vibrant culture. We are the proud creators of New Mexico's state symbol — known as the Zia Sun Symbol.

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

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

our members have to the land, and encourages our families to work together closely and cooperatively in managing our rangelands and livestock.

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

Background on the *Abousleman* Litigation

The adjudication of the Jemez River basin, in the case known as *United States v. Abousleman*, dates back to June 27, 1983. The proceedings initially focused on the determination of historical water use by the Pueblos of Jemez, Zia and Santa Ana and the water use and rights of the non-Indian parties. The water rights of the non-Indian parties have been fully adjudicated subject to a determination of the rights of the three Pueblos. The parties were then preparing to litigate issues related to the nature and extent of the

Pueblos' water rights, and how they are to be quantified, when they decided to seek a stay of the litigation and began a mediation process. That process ultimately failed to produce a settlement and the litigation resumed in 2012.

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

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

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

Though Zia's land base is substantial, we have only a relatively small amount of agricultural lands — approximately 1,100 acres. And these lands are located in the lower region of the Jemez River basin, downstream from non-Indian communities and

Jemez Pueblo. Consequently, Zia has suffered from recurring surface water shortages, and has suffered shortages more frequently than upstream users. While a water rotation agreement that was worked out with upstream non-Indian communities and Jemez Pueblo in 1996 has helped to mitigate water shortages, during periods of drought Zia farmers can experience weeks and longer of little or no water. Not surprisingly, recurring water shortages have caused a significant decline in the total area farmed at Zia. Because of our limited and sporadic surface water supply on the Jemez River, our relatively small area of easily irrigable lands, and our desert climate, agriculture at Zia has never been conducted on a commercial scale. And except for a tribal orchard that is currently being developed, we have no plans for commercial agriculture.

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

Key Elements of the Settlement

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

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

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

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

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

use of this resource, including:

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

Conclusion

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

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