



THE PUEBLO OF JEMEZ

**TESTIMONY OF
THE HONORABLE RAYMOND LORETTO, DVM, GOVERNOR
ON
THE PUEBLOS OF JEMEZ AND ZIA WATER RIGHTS
SETTLEMENT ACT OF 2022 (S. 4896)**

SENATE COMMITTEE ON INDIAN AFFAIRS

November 16, 2022

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

Introduction

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

We are a federally recognized Indian tribe and one of the twenty Pueblos in present-day New Mexico and Texas. Our Reservation is located 45 miles northwest of Albuquerque in central

New Mexico with a land base totaling more than 89,000 acres. Our Reservation is composed of three large parcels, the original Jemez Pueblo grant, Ojo del Espiritu Santo grant, and the Canada de Cochiti grant. These lands are agricultural, grazing and forest lands.

Jemez Pueblo is the gateway to the popular Jemez Mountains, a designated National Recreation Area and gateway to the Pueblo's ancestral lands in the Valles Caldera National Preserve now under the management of the National Park Service. Both federal areas are carved from lands that are within our traditional ancestral territory.

Brief History of the Pueblo of Jemez

Jemez Pueblo has a unique history different from the rest of the Pueblos in New Mexico. Jemez Pueblo is one of two Towa speaking Pueblos. At the time of the Spanish Entrada in New Mexico there were two Towa Pueblos, both recognized by the Spanish government – Jemez Pueblo and Pecos Pueblo. Pecos Pueblo was located northeast of Santa Fe, New Mexico just downstream from the headwaters of the Pecos River, and between two major Spanish settlements – Santa Fe and Las Vegas – placing it on various trade routes of Indian and non-Indian groups from the Plains into the Rio Grande Valley. The two Pueblos were agricultural communities located in separate river basins, living and farming on lands used by them since time immemorial. While the Jemez Pueblo survives to the present day, the people of Pecos Pueblo were forced to leave their lands due to many factors, including trespasses to their lands and waters as well as a significant drop in population. By 1838 there were only seventeen surviving Pecos members and these people moved to Jemez to join their Towa brethren for protection and survival. The historic record is clear that the move to Jemez was not an abandonment of the Pecos Pueblo by its people. By 1929 the Pecos descendants were estimated to be up to 250 people. In 1933, Jemez and Pecos requested of Congress that they be merged into just the Pueblo of Jemez which was achieved in 1936 by congressional act.¹ Today, several Jemez Pueblo members descend from those seventeen survivors, and the traditions and religious practices brought over by the Pecos survivors are practiced and carried on in Jemez Pueblo.

Tribal Government

Jemez Pueblo is governed by the Jemez Tribal Council, the Governor and two Lieutenant Governors. The Governor represents the Pueblo of Jemez as an official Head of State and is the Chief Executive Officer of the Pueblo. The Governor, Lieutenant Governor and Second Lieutenant Governor are appointed at the start of each year by religious leaders and entrusted sole authority to oversee and carry out all secular duties and responsibilities of the tribal government.

Our government also contains many active government services agencies such as our Tribal Administration, Natural Resources Department, Planning and Transportation, Tribal Courts, Police Department, Education Department, Public Works, Realty and Jemez Health and Human Services.

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

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

Pueblo Members

The number of enrolled tribal members as of September 30, 2022 is 3,844. Most of our Pueblo members reside in the Pueblo Village traditionally known as “Walatowa” (a Towa word meaning “this is the place”). In addition to our tribal members, non-tribal members living on the pueblo who are residing on the pueblo by marriage, adoption or through family relations. Some of our tribal members live off the reservation in the neighboring non-Indian communities of San Ysidro, Ponderosa, Cañon and in the City of Rio Rancho. Others live in Albuquerque and Santa Fe.

Since time immemorial the Jemez people have maintained their traditional way of life, a life supported by strong agricultural values and deep cultural respect. For many centuries Jemez has been an agricultural community and will continue to be as these practices are passed on to our children. The farmers are subsistence farmers producing traditional crops such as chili, corn, squash melons and other vegetables but are also livestock owners expanding their irrigation practices to growing alfalfa, oats and grass for livestock feed.

The Jemez River Basin

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

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

Brief History of Settlement Negotiations

The United States originally filed the *Abousleman* litigation in 1983 to protect the water rights of the Pueblos of Jemez, Zia and Santa Ana; parties in the litigation included the State of New Mexico and non-Indian parties the Jemez River Basin Water Users Coalition and the San Ysidro Community Ditch Association. In 1993 the Department of Interior appointed a Federal Negotiation Team to assist the Pueblos in their pursuit of a negotiated settlement. In 1994 the Jemez Pueblo Tribal Council adopted a resolution confirming its desire to engage in settlement negotiations in the *Abousleman* case. Settlement negotiations in the case began more seriously in March 1996, when Mr. Brian James, attorney for the New Mexico State Engineer's office invited the United States and the three Pueblos to the negotiation table.

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

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

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

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

Overview of Settlement Agreement

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

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

Settlement Components

The Pueblo of Jemez' settlement components are the following:

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

1. Jemez Village Water Supply and Wastewater Feasibility Investigation

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

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

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

2. Water and Wastewater Facilities

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

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

3. Firmed Up Acreage (FUA) Irrigation Project

The FUA Project is an irrigation system design developed for the Pueblo and provided for in the 2008 Settlement Principles that seeks to make improvements to existing irrigation infrastructure on the Pueblo and to expand the capabilities and improve the reliability of the system. A

component of the FUA Project is the addition of water resource augmentation to provide a firm supply to a fixed amount of acreage through the construction of new wells and the improvement of water delivery infrastructure to provide additional water supply through improved irrigation efficiency. The FUA project consists of the following: (1) conveyance system improvements, (2) on-farm improvements, (3) augmentation wells, and (4) remote flow monitoring and control systems to provide improved system management.

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

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

4. Pueblo Water Resources Department

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

5. Multi-Use Water Development

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

commercial, municipal and industrial (DCMI) water rights of the Pueblo. A portion of these water rights will be used to meet the future domestic water supply demands of the Pueblo.

6. Stockwater Facilities

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

7. Cañon Area Land Acquisition

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

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

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

To ensure that the Pueblo will be able to avoid conflicts that may develop with any other landholders in the vicinity of the Pueblo's projects, the Pueblo will require funding for the purchase of an additional 300 acres of land plus appurtenant water rights at a consumptive irrigation requirement (CIR) of 2.0 afy/ac. This acquisition cost totals to approximately \$28,930,200.

8. River Improvement Projects

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

9. Pipeline to San Ysidro Parcel

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

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

Settlement Benefits

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

The economic development opportunities will be enhanced by the development of domestic water and sewer systems in the Pueblo's commercial area. The Pueblo's Visitor Center and convenience store are located north of the Pueblo in the beautiful Red Rock area, which is prime for development but seriously limited due to lack of funding to bring a reliable water source to this development area. The settlement funding will help us provide the water source.

Not only will the settlement projects bring income to the Pueblo members but it will also bring in gross receipts tax revenues into the tribal government from the construction projects, and it

will have a state-wide economic benefit for other businesses, construction companies and professionals that can provide technical services for the Pueblo's projects.

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

Conclusion

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

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