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## INDIAN PUEBLO

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**Written Testimony of J. Michael Chavarria  
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**“Emergency Management in Indian Country:  
Improving FEMA’s Federal-Tribal Relationship with Indian Tribes”**

**Senate Committee on Indian Affairs  
Oversight Hearing  
February 8, 2017**

Thank you Chairman Hoeven, Vice Chairman Udall, and members of the Committee for this opportunity to provide testimony on the critically important topic of natural disasters in Indian Country. Our Pueblo thanks you for your dedicated work on behalf of Indian tribes across the nation, particularly in the southwest.

My name is J. Michael Chavarria and I am the Governor of the Santa Clara Pueblo, located in north-central New Mexico. Because of wildfires and subsequent intense flooding, the Santa Clara Pueblo has had five Presidential Disaster Declarations (or PDDs) in the last five years. Indeed, in a report issued after the fire, the U.S. Army Corps of Engineers observed, “*The Village of Santa Clara Pueblo is in imminent threat of large damaging floods with extreme life safety risk.*” My testimony shares our experience with disaster relief and its impacts, as well as the lessons we have learned in overcoming challenges related to emergency management. It concludes with our top five recommendations for improving FEMA’s relationship with Indian tribes. Thank you.

### **Background on the Las Conchas Fire and its Impact**

In the summer of 2011, the Santa Clara Pueblo was devastated by the Las Conchas Fire, which was then the largest wildfire in New Mexico history. We estimate that over 16,000 acres of our forestlands were burned, which—when combined with the lands we lost in the Oso Complex Fire of 1998 and the Cerro Grande Fire of 2000—has resulted in the destruction of 80% of our forests and a huge part of our cultural heritage. None of the four fires we have faced in the past decade have originated on our lands, yet we have suffered the repeated and severe consequences of these natural disasters.

Outside of our current reservation, the Las Conchas fire burned thousands of additional

acres of our traditional lands—including the lands of our origin, the P’opii Khanu, which are the forested headwaters of the Santa Clara Creek. The Santa Clara Creek drains the east side of the Jemez Mountains, delivering its waters to the Rio Grande near Española, NM. The Pueblo owns almost the entire watershed, and our tribal village is located on the Creek’s alluvial fan, where the Creek joins the Rio Grande.

The Las Conchas fire scorched the Creek’s upper watershed and most of the Santa Clara Canyon, leaving a 25.9 mile burn scar in its wake. A burn scar refers to land that has been charred and stripped of all vegetation by a wildfire. Because the land is devoid of vegetation, no root systems remain in place to secure the land. As a result, the land is vulnerable to flash floods and mudslides. Our Pueblo has experienced severe flash flooding since the fire.

All five of the Pueblo’s Presidential Disaster Declarations have involved infrastructure damage stemming from catastrophic flash floods. Flooding has wiped out existing water control structures within the canyon, destroyed once-pristine native cutthroat fish habitat, impacted roads, taken away culverts, and damaged the traditional cultural properties of our sanctuary.

**Impacts.** Santa Clara has had five Presidential Disaster Declarations: three by the request of the State of New Mexico and two by the Pueblo after the Stafford Act was amended. Overall, the ability to directly request Presidential Disaster Declarations has given Santa Clara Pueblo greater control over our own disaster relief efforts. Further, implementation of FEMA’s National Disaster Recovery Framework (NDRF), which facilitates inter-agency collaboration, has been helpful to Santa Clara in assuring a comprehensive and coordinated effort among the federal family.

However, despite the hard work of many dedicated agency staff members, current laws and regulations regarding disaster relief remain a product of a different time, with the effect of slowing the delivery of critically needed resources. The flood disaster relief framework remains broadly tailored to one-time floods on the Mississippi River and, thus, is focused on short-term efforts (and this not only refers to funding, but to how each contract is written and the expectations of the implementing policies). Given the realities of life in the southwestern United States and the increasing effects of climate change, disaster relief policies must be shifted to focus on long-term responses to challenges such as Santa Clara’s post-fire, periodic flooding, which will remain a hazard to our well-being for perhaps a decade as the Santa Clara Canyon slowly recovers. Although significant progress has been made, more work remains to be done to ensure effective responses to natural disasters in Indian Country.

**Continued Threat of Catastrophic Floods.** Because of the altered hydrology and geomorphic changes to the land, the Pueblo remains in danger of a catastrophic flood, but that danger has been substantially mitigated by the construction of three large gabion structures in the canyon, as well as other water control structures and actions. The severity of the burn scar has led to a dramatic reduction in infiltration rates in the affected area. This has resulted in a four-to-eight-fold increase in runoff and sediment/debris flow along the Creek, substantially increasing the potential for widespread damage. Although it was originally thought that a full-scale dam would be necessary in the canyon, after technological review demonstrated the extraordinary difficulty of building such a structure, the next alternative was the gabion structures.

The graph below contains data from the U.S. Army Corps of Engineers on the hydrology of the Santa Clara Creek pre- and post-fire. As the graph indicates, the worst-case scenario would be a storm of such force that it is generally considered to happen once every 100 years. For the Rio Grande Confluence, such a storm would have flooded 5,640 cubic feet per second (cfs) pre-fire and now, post-fire, would flood 21,450 cfs.

**Table 1: Flow Results Summary (cubic feet per second, cfs)**  
**Source: Fire Altered Hydrology for Santa Clara Creek/ USACE Technical Assistance Report**

LOCATION	CONDITION	50% CHANCE (2-YR)	10% CHANCE (10-YR)	1% CHANCE (100-YR)
Santa Clara Creek at Dip Crossing	Pre-fire	300	1,900	5,000
	Post-fire	2,650	8,500	20,300
Santa Clara Creek at Rio Grande Confluence (Outlet)	Pre-fire	350	2,260	5,640
	Post-fire	3,100	8,900	21,450

**Lessons from the Santa Clara’s Disaster Relief Experiences**

**Experience as a Sub- and Direct Grantee.** Santa Clara Pueblo has experience as both a sub-grantee and direct grantee of Presidential Disaster Declarations. As the Committee is aware, until recently, Presidential Disaster Declarations could only be requested through the states. For tribes, securing a state request for a Presidential Disaster Declaration could be difficult. New Mexico, however, did not fit that mold and it requested two such declarations on behalf of Santa Clara Pueblo. Unfortunately, in those instances it still took up to a year for the Pueblo to receive the requested disaster relief funds from the State, hampering our ability to provide urgently needed immediate relief.

Amendments to the Stafford Act now allow tribes to directly request Presidential Disaster Declarations. The ability to become direct-grantees has given Santa Clara Pueblo greater ability to direct its own disaster relief efforts.

**National Disaster Recovery Framework (NDRF).** The NDRF has been enormously helpful in coordinating agency responses and providing a more collaborative and effective approach to disaster recovery. In November 2013, Santa Clara Pueblo became the first tribal government to request and receive federal disaster recovery assistance under the National Disaster Recovery Framework (NDRF). FEMA used the NDRF to create a comprehensive federally led strategy for the Pueblo to identify all possible actions that would build the community’s resiliency to future flooding. The NDRF provided the Pueblo with an opportunity to effectively develop recovery strategies for our respective areas. This support system enabled FEMA to extend their resources to the Pueblo and helped to define a series of important core recovery principles, namely:

- Roles and responsibilities of recovery coordinators and other stakeholders;
- A coordinating structure that facilitates communication and collaboration among all stakeholders;
- Guidance documents for pre- and post-disaster recovery planning; and
- The overall process by which communities can capitalize on opportunities to rebuild in stronger, smarter and safer ways following a disaster.

**Transitioning Best Practices to Support the NDRF.** After the Las Conchas fire, Santa Clara Pueblo recognized the potential for flood impacts on downstream resources and our tribal village. Tribal representatives contacted the southwest Tri-Regional Burn Area Emergency Response (BAER) coordinator and the National Interagency Fire Center (NIFC) to request assistance with emergency post-fire stabilization planning. BAER team members worked with the Pueblo to prescribe and implement treatments in an effort to protect life and property from future flooding.

Subject matter experts have been instrumental in coordinating federal resources to assist the Pueblo in our recovery efforts. During conversations with the Pueblo as part of the NDRF process, an approach was agreed upon to leverage other federal agency staff engaged in the workgroup and incorporate them into the recovery planning process through FEMA's Mission Assignment process. This approach had the two-fold benefit of establishing inter-agency and federal-tribal relationships and effectively integrating disciplines for a common purpose.

The Las Conchas Fire Rehabilitation Workgroup subsequently transitioned to the Las Conchas Team. It was in this support system where Santa Clara Pueblo began to utilize resources from partnering agencies, such as the Recovery Support Strategy (RSS), and investing in building the Pueblo's internal response capacity.

**Recovery Support Strategy (RSS).** The Recovery Support Strategy is a dynamic, interactive document that provides federal and tribal partners with a detailed vision to help guide the recovery support. The RSS uses Recovery Support Functions to coordinate key areas of national assistance during the NRDF process. Each Recovery Support Function is managed by a Coordinating Agency, which serves to coordinate a range of federal agency resources. The RSS is continually revised as engagement with tribal officials progresses, and as the recovery objectives and priorities of the Santa Clara Pueblo are further refined.

The RSS identifies objectives and support actions; member agencies needed to implement the actions and Recovery Support Functions; and the necessary resources to achieve the recovery objectives so that the Santa Clara Pueblo will be more resilient in the face of future disasters. Given the focused nature of impacts within the canyon and riparian channel, it was decided that a full complement of the Recovery Support Functions would not be required in support of Santa Clara Pueblo, but should instead focus on: (a) community planning and capacity building; (b) watershed stabilization; and (c) natural and cultural resource protection. We have made significant progress in addressing these areas through a targeted, phased-action approach. In terms of the general RSS, our recovery themes focused on the following:

- (i) Focus initially on short-term actions to protect the Village and its people from imminent threats of flooding.

- (ii) Continue to leverage federal and state interagency partnerships and technical support.
- (iii) Regularly assess the natural restoration of the Santa Clara Canyon to strategically plan its long-term recovery in a way that balances the natural recovery processes with man-made designs.
- (iv) Assess all recommended projects for both feasibility and realism to ensure projects are compatible with the Pueblo's long-term management capacity.
- (v) Assure all NDRF partner actions are respectful of Santa Clara's culture and sovereignty.

Through the support of the NDRF and RSS, Santa Clara Pueblo was able to establish a foundation that allows the Pueblo to mold the Framework to fit the Pueblo's unique needs and created a strategic approach to recovery. The RSS has allowed us to prioritize recovery efforts and to help identify agencies to assist us through support from their respective agencies. This has broadened our span of financial resources as well as strengthened collaboration among our federal, state and non-governmental partners.

**Tribal Declarations Pilot Guidance.** FEMA has consulted with tribal governments to discuss the implementation of direct tribal declarations. Through conference calls, participation in in-person meetings, and written submissions, FEMA heard from tribal leaders, tribal, state and local emergency managers, and other interested participants about how to process declaration requests from tribal governments. Participants also provided recommendations on how FEMA should evaluate requests and make recommendations to the President about whether to grant declarations for impacted tribes. FEMA considered all of this input in the development of this draft guidance.

Participants provided examples of unique circumstances that affect tribal governments, such as extreme remoteness, high unemployment, and the tribal governments' various decision-making structures. Some raised concerns that tribal governments have limited fiscal and staffing capacities even in non-disaster times, which may affect their ability to administer disaster assistance and cover non-federal cost shares. In addition, participants expressed concern about how FEMA would define the incident area and tribal lands for declaration purposes. FEMA also received many comments on the evaluation criteria for Individual and Public Assistance requests and cost share adjustment requests. Finally, tribal officials requested additional consultation and technical assistance to better understand the requirements and implications of direct declarations.

This guidance will be a tool that outlines FEMA's commitment to collaborate with tribes on disaster recovery and prevention efforts. It allows FEMA to actively engage in developing ways to better support tribes by providing critical training and technical services. FEMA Region VI has been a great partner in helping support Santa Clara Pueblo through the process of obtaining and effectively managing our Tribal Declaration.

**Overcoming Challenges.** The direct grantee process, however, is not without its challenges. It is a new process, and Santa Clara Pueblo has been the first tribe to utilize it in FEMA Region VI. For both the Pueblo and the Region, there is a lot of learning that has to take place. We have been going through that learning process with FEMA and in many ways we feel like we are pathfinders for other tribes, should they be so unfortunate as to face the difficulties we have learned to overcome. The support from FEMA Region VI allowed Santa Clara Pueblo to have access to immediate resources to manage two separate disaster situations for which we sought direct Tribal

## Declarations.

As a sub-grantee, receiving funds through the State, the Pueblo must meet a cost-share match of 12.5% while the State has the burden of administering the grant on our behalf. The cost-share match of a direct grantee is 25%, although this can be lowered to 10% once a per capita threshold is met. Santa Clara Pueblo recognizes the barriers the cost-match may pose to tribes and understands how tribes may be reluctant to seek a Tribal Disaster Declaration as a result.

As a small tribe ourselves, our five Presidential Disaster Declarations (PDDs) have been a significant financial burden. The matching funds requirement has drained the Pueblo's financial resources. Due to these tremendous financial responsibilities, the Pueblo has requested that FEMA combine the five PDDs into one so that the Pueblo is in a better position to meet the financial cost share responsibilities. This would also enable the Pueblo to reach the 90/10 cost-share level using the per capita figures. Right now, we are only able to meet that threshold on one PDD while the others are variously administered at 12.5% and 25% cost-share levels. Such variations in financial responsibilities are challenges we must be aware of so as a tribal government to properly allocate funds and move forward with our obligations.

Furthermore, there are variations in administrative cost responsibilities for tribes under a PDD. As a direct grantee the Pueblo is responsible for associated administrative costs, although we do receive 3.37% in administrative funding from FEMA. As a sub grantee, however, funding for management costs is often determined by the State and there is not a guarantee that the tribe will receive any financial support for those costs. This places a significant burden on tribes because they often lack the financial resources to support additional staff and emergency services. Tribes may also face challenges in meeting the \$1 million FEMA threshold. This threshold should be revised to coincide with tribes' financial resources and capacities, and tribal consortiums should be able to apply for relief in order to meet this threshold.

Additionally, we have seen smaller projects receive quick funding responses from FEMA, while larger projects remain mired in time-consuming quality assurance and quality control processes. While clearly important, these processes greatly lengthen the review time during a period when time is of essence in preventing or mitigating a natural disaster. For Santa Clara Pueblo, as we enter the New Mexico monsoon season, we spend every day scanning the skies and read the weather reports, fearing the worst and praying for the best. Receiving funds to support recovery efforts prior to the seasonal impacts of monsoons is imperative in breaking the cycle of continued damage. As our PDD experiences demonstrate, in emergencies project implementation is crucial to protecting lives, securing communities, and preventing repeated damage to key infrastructure.

Finally, the administrative responsibility that comes along with being a direct grantee has challenged the Pueblo. We certainly have proven that we have the administrative capability to administer these programs, but we had to learn through trial and error. As the changes to the Stafford Act allowing tribes to request direct declarations are promulgated, FEMA may best be served by implementing a training program that better communicates the regulatory requirements associated with being a direct grantee. This would better enable tribes to make informed decisions regarding FEMA assistance and would also allow FEMA to familiarize itself with the diverse

capabilities of tribal governments.

As the first tribe in Region 6 to receive direct funding, we know that we are involved in a learning process with our federal partners. Training and capacity building is needed on both sides of the federal–tribal partnership. Tribes need additional training and technical assistance to administer funds successfully and our federal partners could benefit from allowing tribes to conduct training for tribal liaisons to help them become more familiar with working with tribal governments. Together we can work together to build our mutual capacities and identify areas in which disaster relief policy can be adapted to address the unique emergency service needs of Indian Country. In light of these considerations, we therefore recommend the following.

### **Recommendations**

- 1. Emergency Response Fund.** Our experiences with disaster relief highlight the need for tribes to receive assistance as soon as possible following a natural disaster. Empowering tribes to directly request a Presidential Disaster Declaration can be helpful, but standing alone it does not fully address the need for quick funding. For this reason, we recommend the creation of a BIA Emergency Response Fund. The idea behind this fund would be for the BIA to have readily at hand significant funding that can be deployed as necessary to address short- and long-term disaster recovery and disaster mitigation needs.
- 2. Support for the FEMA Tribal Guidance Document.** FEMA developed the Tribal Declarations Pilot Guidance after several rounds of consultation with tribal governments over the course of more than three years. The document reflects the diverse voices of tribal leaders and emergency management officials, among others, and is responsive to their concerns. We support the FEMA Tribal Guidance Document as a tool to be used alongside the NRDF and RSS.
- 3. Maintenance of the Stafford Act Amendments.** The Stafford Act amendments allow tribal governments the **choice** to either request an emergency/major disaster declaration independently of a state **or** to seek disaster assistance through a state declaration. The amended Stafford Act better reflects the sovereignty of tribal governments and acknowledges FEMA’s government-to-government relationship with tribal governments. It also promotes tribal self-determination by allowing tribal governments to determine for themselves how they want to seek Stafford Act assistance either independently of a state or through a state declaration. We therefore recommend that these amendments be maintained in the event that the Stafford Act is amended in the future.
- 4. Appropriate necessary funds for implementation of Forest treatments as identified under the Tribal Forest Protection Act (TFPA).** The TFPA authorizes the secretaries of Agriculture and Interior to give special consideration to tribally-proposed Stewardship Contracting or other projects on Forest Service or BLM land bordering or adjacent to Indian trust land to protect trust resources from fire, disease, and other threats. These stewardship agreements are an important tool for fighting the ever-growing threat of wildfires in the West. Empowering tribal governments as caretakers to protect tribal lands by managing adjacent federal lands is a smart policy. Santa Clara urges the Committee to support the expansion of this program going forward.

**5. Additional funding for fire prevention treatments on and off tribal reservations.** Santa Clara recommends the consideration of alternative fire prevention land management techniques that would allow tribal grantees to render timely responses to emergencies and reduce the threat of catastrophic fires encroaching upon our trust resources. Huge amounts of funds are used annually for fire suppression treatments while those same funds could be used to implement a variety of effective and relatively low-cost fire *prevention* techniques, such as hazardous fuels reduction and fuel breaks. We therefore recommend additional funding for fire prevention activities to protect tribal and federal lands.

**Conclusion.** I would like to conclude my remarks by thanking the many individuals that we work with at the Federal Emergency Management Agency, the Army Corps of Engineers, the Bureau of Indian Affairs, the Bureau of Reclamation, the U.S. Department of Agriculture, and others, for the long hours that they have committed to addressing what continues to be an existential threat to the Santa Clara Pueblo. Despite working with laws and regulations that can be cumbersome or designed for very different emergency situations, they continue to show commitment and determination, for which I and my people are truly grateful. There is work to be done and there are significant improvements to be made, but at Santa Clara we have hope that after suffering a terrible loss we can secure the safety of our community in the short-term, as well as its cultural and spiritual integrity and prosperity in the long-term.

Thank you for the opportunity to testify on behalf of this important issue. The Pueblo of Santa Clara looks forward to working with you on addressing these complex needs going forward.