



**Statement by the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso
in support of H.R. 3292 to amend the Aamodt Litigation Settlement Act
House Natural Resources Committee-Subcommittee on Water Oceans and Wildlife
June 26, 2019 – 2:00 p.m. – Longworth**

The Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso (collectively “the Pueblos”), through their respective Governors, submit this joint statement in support of H.R. 3292 to amend the 2010 Aamodt Litigation Settlement Act (Public Law 111-291; 124 Stat. 3134) (“Settlement Act”).

Amendment of the 2010 Aamodt Litigation Settlement Act is necessary to allow implementation of the Aamodt Settlement and fulfillment of the United States’ obligations under the Settlement Act.

Amendments to the Settlement Act are necessary to allow implementation of the Aamodt water rights settlement as required by the 2010 Settlement Act. It is only through implementation that the Pueblos may settle their claims and receive the reliable, safe water supply approved by Congress in the Settlement Act; and that Santa Fe County may secure and provide a safe drinking water supply for current and future water needs for non-Pueblo residents in the water-short Pojoaque Basin. Implementation of the Settlement Act is essential to avoid reopening the costly and protracted litigation that persisted for over forty years before settlement was finally achieved in 2006.

In 2010, the Settlement Act approved the agreement that settled the water rights claims of the Pueblos, resolved decades of litigation, and provided for a Regional Water System (the Pojoaque Basin Regional Water System) to supply safe and reliable drinking water to Pueblo and non-Pueblo residents of the Pojoaque Basin. Congress tasked the Bureau of Reclamation with the design and construction of the Regional Water System to provide the Pueblos’ water to them, as well as convey safe drinking water to non-Pueblo residents in the Basin, reduce reliance on declining groundwater, and protect and replenish streams and springs.

The Aamodt Settlement is a critically important resolution of the Pueblos’ water rights claims and the means to address inadequate water supply for all water users in the Pojoaque Basin. The Regional Water System, authorized by the Settlement Act, is the foundation of the Settlement and must be constructed to allow for resolution of the Pueblos’ claims and to provide a safe, reliable drinking water supply to all residents of the Pojoaque Basin. Without construction of the Regional Water System as contemplated and approved by Congress in the 2010 Settlement Act, the Aamodt Settlement will fail. The amendments to the Act in H.R. 3292 will allow the Aamodt Settlement

to be implemented as contemplated by the 2010 Settlement Act, fulfill the obligations of the federal government to the Pueblos and provide the benefits upon which the Aamodt Settlement is based.

Federal funding as currently authorized by the 2010 Act is insufficient to implement the Aamodt Settlement.

The Settlement Act authorized federal appropriations for construction of the Regional Water System but capped the authorized funding at \$106.4 million (indexed to approximately \$139.8 million (2018)). Reclamation's current design and cost estimates show that: (1) limits on federal funding in the Settlement Act were based on cost estimates in a 2008 engineering report that do not meet Reclamation standards for feasibility and design; and (2) there is a shortfall of federal funds needed to build the Regional Water System to "substantial completion" (as required by the Act) despite changes agreed to by Reclamation, the Pueblos and the County to reduce costs. The Settlement Act anticipated there would be a need for additional funding and specifically included a provision, Section 611(g), which provides a mechanism for the United States, the Pueblos, Santa Fe County and the State of New Mexico to negotiate allocation and cost-sharing of any funding shortfall.

The United States, the Pueblos, and Santa Fe County have agreed on a cost-saving Consensus Design for the Regional Water System.

Since notification by Alan Mikkelsen, Chair of the Secretary's Working Group on Indian Water Settlements, of the funding shortfall for the Regional Water System in July of 2018, the Pueblos, the United States and Santa Fe County have worked together to arrive at a negotiated Consensus Design for the Regional Water System. The Consensus Design reduced the estimated shortfall from \$213 million to \$193 million. This was accomplished through a myriad of cost saving measures including deferment of the construction of some infrastructure necessary only in 20-30 years to effectuate full diversion of the 4,000 acre-feet per annum contemplated by the Settlement Act and necessary based only on long term future demand projections. The system as contemplated by the Consensus Design will be constructed to allow for the Regional Water Authority (comprised of the Pueblos and Santa Fe County) to add additional infrastructure as determined necessary to satisfy both Pueblo and non-Pueblo demand. The Consensus Design served as the basis to negotiate the agreement required in Section 611(g) of the 2010 Settlement Act. That agreement is now complete.

The United States, Pueblos, County and State of New Mexico have proposed a federal, non-federal cost-share which provides for a 33% non-federal cost share for the funding shortfall.

Once a Consensus Design was reached, the parties negotiated a federal/non-federal cost share to address the funding shortfall pursuant to Section 611(g) of the Settlement Act. The result of that effort is a proposed cost share of 67% federal and 33% non-federal; with an additional federal amount of \$137 million; an additional County amount of \$28 million and an additional State commitment of up to \$30 million. Significantly, the 2010 Settlement Act provides that the State of New Mexico would not be obligated to provide any additional funding in the event of a cost overrun, yet the State has agreed to contribute significant additional funding toward the project. The non-federal cost share is substantial and meaningful. Based on those commitments, the total non-federal cost share has increased to \$138.4 million (indexed to 2018). Additionally, the State

and County will provide an additional \$18 million towards Settlement costs for funding non-Pueblo connections to the Regional Water System. H.R. 3292 proposes to increase the federal funding authorization by an additional \$150 million. The Pueblos believe this is appropriate to ensure the full federal cost for the Project is authorized.

H.R. 3292 is essential to amend the Aamodt Settlement Act to allow final settlement of the Pueblos' water rights claims, avoid return to costly, divisive litigation and construct the Regional Water System with significant local and state contribution.

The Aamodt Settlement Act addressed and is consistent with the United States' and congressional parameters for Indian water rights settlements—specifically, the Act approved a settlement that comprehensively and with finality settled the water rights claims of four sovereign Nations. With the settlement, further litigation regarding the Pueblos' significant and complex water claims was avoided and any liability of the United States to the four Pueblos was addressed. The Aamodt Settlement represents a regional and cooperative approach to resolving significant water shortages for both the Pueblos and their non-Pueblo neighbors. In bringing additional water to this water short basin, the Settlement as approved in the 2010 Settlement Act enables the Pueblos to provide for the water needs and economic viability of their respective communities—their permanent homelands—into the future. In resolving the Pueblo claims, both Santa Fe County and the State of New Mexico made significant monetary and non-monetary contributions to the settlement. Through the successful negotiations to address the funding shortfall for the critical Regional Water System, the non-federal cost share for this important settlement and project remains significant at 33%.

The amendments to the Act in H.R. 3292 will ensure the United States is able to fulfill its obligations as set forth in the 2010 Settlement Act in a manner consistent with federal and congressional parameters for resolving Indian water rights claims.

Respectfully submitted, June 25, 2019

Governor Phillip Perez, Pueblo of Nambé
Governor Joseph Talachy, Pueblo of Pojoaque
Governor Perry Martinez, Pueblo de San Ildefonso
Governor Milton Herrera, Pueblo of Tesuque