

**WRITTEN TESTIMONY OF PUEBLO OF ACOMA
GOVERNOR RANDALL VICENTE
IN SUPPORT OF H.R. 1304
SETTLEMENT OF WATER RIGHTS CLAIMS OF ACOMA AND
LAGUNA PUEBLOS IN THE RIO SAN JOSÉ STREAM SYSTEM
AND SETTLEMENT OF WATER RIGHTS CLAIMS OF
JEMEZ AND ZIA PUEBLOS IN THE RIO JEMEZ STREAM SYSTEM
July 23, 2024**

Acoma Pueblo ("Acoma" or "Pueblo") strongly supports H.R. 1304, legislation to approve the settlement of the Pueblo's water rights claims. The Pueblo believes it will not only be able to survive, but also thrive, along with its neighbors, with the passage of this legislation. This legislation is the culmination of decades of work to address critical water shortages for all water users in the basin, an area that's one of the most water-short places in the State of New Mexico, if not the nation. This bill addresses the claims made by the United States on behalf of the Pueblos of Acoma and Laguna in *State ex rel. State Engineer v. Kerr-McGee, et al.*, a basin-wide adjudication of surface and ground water rights in the Rio San José Stream System.¹ In the course of negotiations with other water users, the Pueblo of Acoma also negotiated its water rights in the adjoining Rio Salado Basin to the south, and the Pueblo of Laguna negotiated its water rights in the Rio Puerco Basin to the east. It provides a level of certainty for all users in a time of growing water scarcity.

THE PUEBLO OF ACOMA



Sky City, Acoma
the ancestral village and
ceremonial heart of the
Pueblo of Acoma.

The Rio San José Stream System has been the primary source of water for the Pueblo of Acoma for centuries, well before the arrival of the first Europeans to this region. You may be aware that Acoma is one of the oldest continuously inhabited communities in the United States, if not North America. Acoma is located in the high deserts of the southwestern United States. Water has always been the limiting resource. The average yearly rainfall 7 inches. The streams, aquifers, and springs that once fed the Rio San José, the life blood of our communities and our agrarian way

¹ This adjudication involves all surface and groundwater users in the system.

of life, has been decimated over the last 150 years due to the actions and the failures of the federal government. Today Acoma faces extreme water shortages.

The Acoma People settled at places along the Rio San José. Our spiritual beliefs, songs and cultural ways reflect the landscape. We are an ancient people. We have rituals that are hundreds, if not a thousand years old, ceremonies that date back to our beginning. We came into this world with a plan. We came with all that was necessary for us to survive. We emerged into this world accompanied by our Deities along with all living things and when we emerged, we began our journey in search of a place that would become a part of who we are, a place prepared, a place that would reflect our worldview, *Haak'u*, “the place prepared.” That place is Acoma.

Our spirituality is intimately tied to the land and water. We define ourselves according to geologic formations, water sources and visible sightings.² Our faith is tied to the springs, valleys, mountains, and mesas that reflect the expanse of who we are as Acoma People and that includes the Rio San Jose. The Rio San Jose once flowed rich with wildlife. We built homes, raised families, grew crops, and lived off our river. Children in our villages played, fished, and swam in the deep flowing waters. We used the water to farm and irrigate our fields - in fact, whole farming communities grew up along Rio San Jose. Corn fields, alfalfa fields, and orchards were a common sight on both banks.



BIA 1918 Planting Report for Acomita:
"Increased acreage of wheat. Three miles of ditch built by Indians 80 acres additional in cultivation" Acres cultivated 1,625 acres: Alfalfa 122, Beans 14, Corn 720, Garden truck 40, Oats 4, Orchard 20, Wheat 705."

BIA 1926 Crop Report for Acomita: 2,000
bs of apples & peaches of very good quality"

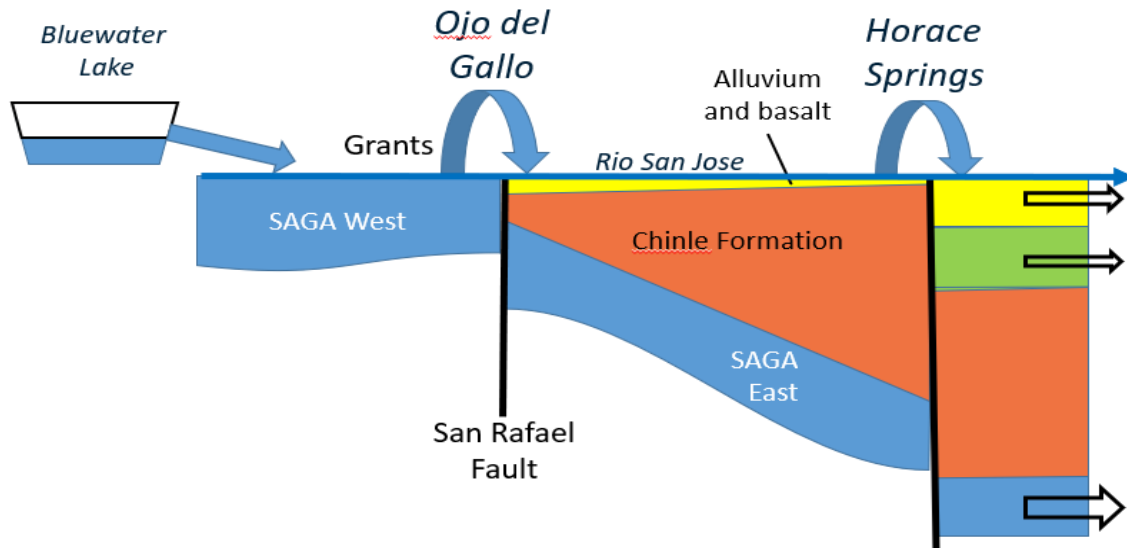
Religious leaders have long attached ceremonial significance to the river as it weaves its way across our homelands. While these ceremonial uses have been threatened over the past 150 years due to low flows in the river, Acoma is not asserting any monetary liability associated with any temporary loss for these uses which remain a vital part of Acoma culture today, and Acoma's right to continue those uses cannot be extinguished through any kind of monetary payment.

THE HYDROLOGY OF THE RIO SAN JOSÉ STREAM SYSTEM

The Rio San José Stream System in the absence of human activity is a fragile, dynamic ecosystem in an arid high desert environment. Water begins its journey to the river as winter snow on the Zuni and San Mateo mountains, the latter of which includes Mount Taylor, a cultural property of Acoma and Laguna Pueblos and the Navajo Nation. Snowmelt and summer monsoon rains feed both surface water and ground water aquifers. A network of faults related to volcanism around Mt. Taylor adds complexity to the hydrology of the basin.² The faults send groundwater to the surface forming springs such as Ojo del Gallo and Horace Springs. Today the primary aquifer to provide surface flow across Acoma is the San Andres-Glorieta Aquifer. West of Ojo del Gallo it is near the surface, just below the alluvium. At the fault, it constricts water flow and plunges 2,000 feet underground. Its significant flows produced Ojo del Gallo and fed the alluvial aquifer of the Rio San Jose. Just downstream the bedrock constricts, producing Horace Springs on the

² This has been documented in Dittert and Bibo, Topographic Features of the Pueblo of Acoma Land Claim 1952.

western boundary of the Acoma Pueblo Grant. Other aquifers higher on Mount Taylor are also fed by snowmelt and monsoon rains. These aquifers discharged into the stream system as well, creating the surface water flows in tributaries such as Rinconada Creek that then fed the Rio San José as it flowed across Acoma and Laguna Pueblos. These other aquifers no longer discharge appreciable amounts of water into the stream system.



Schematic Presentation of Hydrology of Stream System before human activity except Bluewater Lake

ACOMA WATER USE PRIOR TO U.S. SOVEREIGNTY

Prior to United States' sovereignty in the region, the Rio San José supplied enough water for the Pueblos of Acoma and Laguna to not only survive, but to thrive. There is a wealth of archaeological evidence that Acoma has been irrigating its lands for at least 1,000 years. During times of low flow, Acoma employed walk-in wells to reach alluvial groundwater that was used to for domestic needs and to hand water gardens, and also directed modest ephemeral surface flows to crops that needed it. The first written record to describe Pueblo irrigation in New Mexico describes Acoma Pueblo irrigating from the Rio San José in 1583.³ While there were small communities established by Spain or Mexico that could interfere with Pueblo uses on one of the smaller tributaries of the Rio San José, there were no mainstem upstream users prior to United States acquisition of the territory.⁴ In *State ex rel. State Engineer v. Kerr-McGee, et al.*, the Court found as follows:

Here, the undisputed evidence is that the Lagunas and Acomas had possession, occupancy, and beneficial use of land and water prior to the arrival of Europeans

³Hammond, George P. and Agapito Rey, Expedition into New Mexico Made by Antonio de Espejo, 1582 to 1583, Vol. 1 of the Quivera Society Publications, Los Angeles: 1929 at p. 87, See, also Herbert Eugene Bolton, ed. Spanish Exploration in the Southwest, 1542-1706, New York: Scribner's Sons, 1916, pp. 182- 183. Cutter, Charles, Water Use in the Rio San Jose Watershed: Acoma, Report prepared for U.S. Dept. of Justice, Oct. 1, 2003, p.4.

⁴ The Cubero Land Grant was established in the Mexican period (1833) to the north of the Pueblo of Acoma. *Report to Congress – the Treaty of Guadalupe-Hidalgo — Definition and List of Community Land Grants in New Mexico*, U.S. General Accounting Office (2001) p.9. The community ditch or acequia for Cubero Land Grant is a party to the settlement.

in the mid-16th Century. Indian title to the land was recognized and confirmed by the Spanish Crown and, similarly, the validity of Indian title was recognized by the Mexican Government. Neither Spain nor Mexico sought to divest the Acomas or Lagunas of any right, title or interest to the Pueblo lands.) *State ex rel. State Engineer v. Kerr- McGee Corporation, et al.*, Special Master's Report and Recommendations, November 5, 1992 .p. 40.

On the basis of the record in this proceeding, the Acomas and the Lagunas did indeed, acquire aboriginal title. An aboriginal title is superior to that of any third person[.]” *Id.* pp. 43-44.⁵

When this matter was before the New Mexico Court of Appeals, that court confirmed these findings that Acoma still retained its time immemorial water rights to all lands within the Pueblo of Acoma Grant as approved by Congress pursuant to the 1858 Act.⁶ The United States, the State of New Mexico, Acoma and the parties to the settlement agree that Acoma's aboriginal water right was sufficient water to irrigate 1,870 acres of land and recognize the Pueblo's right to uses for uses.⁷

DESTRUCTION OF THE WATER SUPPLY THE CREATION OF FORT WINGATE BY THE UNITED STATES IN 1862

Today the primary sources of water in the Rio San José are very few. Spring flow is discharged from the San Andres-Glorieta aquifer. That aquifer and the aquifers that form Mt. Taylor have been mined so that most have gone dry. Only one spring, known as Horace Springs, contributes to the Rio San José so that a dwindling trickle slowly flows across the Pueblo. Now, the flow from the spring has dropped to as low as 1.8 cubic feet per second ("cfs") or 1,304 afy and rarely reaches 3 cfs, or 2,173.34 afy. Historically the Rio San José's flows at Horace Springs were much greater - 14 cfs, or 10,142.27 afy. For the Ojo del Gallo parciantes on the acequia south of Grants, no water has flowed from Ojo del Gallo spring for decades. Also, due to climate change and long-term drought, snow melt is significantly reduced, limiting flows into Bluewater Lake and the river. Less snow melt contributes to reduced water levels in streams and aquifers.

⁵ The District Court adopted the Special Master's recommendation that the Pueblos have aboriginal water rights that were not extinguished by Spain or Mexico. *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. CB-83-190-CV and CB-83-220-CV (consolidated) (N.M. 13 Jud. Dist.) *Order and Judgment Adopting Special Master's Report and Recommendations and Denying Motions for Reconsideration* (May 18, 1993). This holding was not appealed to the New Mexico Court of Appeals. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) *cert den'd* 120 N.M. 68, 898 P.2d 120 (1995).

⁶ *Id.* In the Act of July 22, 1854, 10 Stat. 308, Congress established the Office of the Surveyor General of New Mexico, Kansas, and Nebraska. The Act directed the Surveyor General to report on lands held under Mexican law, with particular reference to Pueblo's holdings. Congress confirmed Acoma's aboriginal title to lands and waters in the Confirmation Act of 1858, Act of December 22, 1858, ch. 5, 11 Stat. 374.

⁷ 1,870 acres, consisting of 1,275 acres with points of diversion from the Rio San Jose mainstem; 265 acres with points of diversion from Rinconada Canyon, 163 acres with points of diversion from San Jose Canyon and 167 acres with points of diversion from the Acoma Grant south of main stem. These figures are a compromise. Data produced by United States. and Pueblo experts show that Acoma likely irrigated 2,500 – 2,700 acres in the Rio San José Valley. Keller-Bliesner Water Use Survey 2003, Prepared for U.S. Dept. of Justice (2,542.35 acres irrigated); Natural Resources Consulting Engineers, Inc., Summary of Past and Present Water Uses of Acoma Pueblo – *New Mexico State Engineer v. Kerr McGee*, 2005, p. 4 (2715.6 acres irrigated).

In 1862, The U.S. Army established Fort Wingate on Acoma aboriginal lands, the Fort diverted Ojo del Gallo spring flow that provided approximately one-third to one-half of the surface water supply to Acoma. After the Fort was moved west near Gallup, New Mexico, the U.S. did not return the spring flow to the Rio San José, or prevent others from using it, despite knowledge that the Pueblo relied on the flows. It was known to be one of the most productive springs in the region. Even without those flows, Horace Springs was still producing 10 cfs or 7,244.47 afy, about half the pre-U.S. flow.

ALLOWANCE OF BLUEWATER DAM
AND THE BLUEWATER-TOLTEC IRRIGATION DISTRICT
WITHOUT ENFORCEMENT OF PUEBLO SENIOR WATER RIGHTS

In the late 1890's homesteaders upstream from Acoma attempted to dam Bluewater Creek, a major tributary of the Rio San José. By the 1920s, backers of the dam created the Bluewater Dam ("Dam") and Bluewater-Toltec Irrigation District ("BTID") that cut off significant upstream flows, even though the flow would never be enough to supply all of the land within the BTID. The dam washed out but was re-built and significantly enlarged in 1927. Originally meant to service 2,000 acres of land for irrigation it grew to a proposed 10,627 acres .

Acoma and Laguna Pueblos complained to the U.S. that the enlarged Dam would interfere with their water rights and asked the U.S. to stop the construction. In response to Pueblo concerns, the U.S. brought suit in 1921 to cancel easements for the Dam site.⁸ But rather than protecting the Pueblos by vigorously litigating the case, the U.S. failed to prosecute the case; the lawsuit was dismissed in 1923 for non-prosecution.⁹ The Pueblos were assured by various U.S. officials that there would be no damage; that the Dam would have little or no effect on their water

⁸ See *United States v. Bluewater Land and Irrigation Company, et. al.* No. 805 Equity (D. Ct. N.M.).

⁹ Kelly, Lawrence C., "*History of the Pueblo Lands Board, 1922- 1933, With Special Emphasis on Water Rights in the Northern Pueblos,*" 4-6 ("In 1920 Hanna prepared and filed ejectment suits against the non-Indian claimants on five Pueblos, and took one of them, *United States v. Pedro Garcia*, as a test case before the federal district judge, Colin Neblett. Neblett heard the testimony and arguments but had not rendered a decision when the case was withdrawn at the request of U.S. Attorney General Harry Dougherty and Secretary of the Interior Albert B. Fall in the fall of 1921.")

supply.¹⁰ The enlarged Dam at Bluewater was allowed to go forward by the U.S..¹¹

When BTID farmers could not get water from the Dam to irrigate up to 5,488 acres, they turned to groundwater after the introduction of the submersible pump in the 1950s, receiving authorization from the N.M. State Engineer to drill wells. Those wells tapped the San Andres-Glorieta aquifer. This siphoned off water that would have flowed as surface water in the Rio San José across the Pueblo. Over time, Rio San José flow at Horace Springs decreased to 5 - 6 cfs.

The United States, while aware that the Dam was interfering with Pueblo water use, did nothing despite repeated Pueblo objections. Attorneys for the Pueblo appointed by the U.S. initially believed Dam proponents who disclaimed any effect on Pueblo water or tried to placate the Pueblo with the notion that federal legislation, what eventually became the Pueblo Lands Act of 1924, would resolve the problem. In the 1930s, the Bureau of Indian Affairs ("BIA") suggested that the U.S. purchase lands in BTID to free up water for the Pueblos. This was rejected by BIA leadership. After the U.S. requested a release of stored water from the Dam for the Pueblos in the 1940s, it took no action to actually enforce the Pueblos' right to water when BTID declined the request, although BTID was on notice that the U.S. would not look favorably on a denial of water to the Pueblos. The U.S. may have been upset with BTID, but it did nothing.

The Bluewater-Toltec Irrigation District after 1927 Dam and Expansion

The U.S. did nothing to stop drilling of supplemental wells that tapped the San Andres-Glorieta Aquifer, the source of the lion's share of surface water through the Pueblo. Acoma strongly objected to this groundwater pumping and that was duly noted by William Brophy, Special Attorney for the Pueblos. On March 30, 1949, Governor Julian Chino of Acoma wrote to the BIA stating that the Pueblo was worried about the water situation in the Rio San José: "It is getting low; not enough to irrigate farms because on Bluewater area wells are being drilled. What can be done to help us?". In May of 1949, the Superintendent of the BIA United Pueblos Agency wrote to Brophy about Acoma's concerns.

Some time ago I sent a memorandum to Mr. Boldt about the concern of the Acoma Pueblo about the underground water in the vicinity of Acoma. ...I have discussed this problem of trying to control the drilling of wells, etc. in the

¹⁰ See Nov. 5 1923 Letter from Commissioner Chas. H. Burke to Mr. Harmon P. Marble, Supt. Southern Pueblos Agency, ("Correspondence has been had with Col. Twitchell...regarding reconstruction of a dam above Bluewater...With the view of placing these interests on notice that the United States will look with disfavor upon any action taken by them interfering with the water rights of the Indians of the Pueblos of Acoma and Laguna, and that, if necessary, adjustment will be made through the courts, you are directed to notify these people to this effect. There is a possibility that the reconstruction of this dam will not encroach upon the water rights of these Pueblos but such action is deemed advisable so as to prevent in future any assertion on the part of these interests, in the event infringement actually takes place, that the United States permitted the reconstruction of the dam without in any way voicing its disapproval."); see also Oct. 24, 1923 Letter from R.E. Twitchell, Special Assistance to the Attorney General, US Department of Justice to Hon Chas. H. Burke, Commissioner of Indian Affairs ("..[r]elative to the rebuilding of a dam above Blue Water... Mr. W.M. Reed, chief engineer of the reclamation service, together with Mr. Robinson, supervising engineer, were in my office and we discussed briefly the question of whether there would be any encroachment upon the water rights of Acoma and Laguna owing to the construction of this project. I was much gratified to hear from Mr. Reed that in his judgment it was more than likely that the construction of the project would result in increasing the supply of water for these Indians rather than diminishing it..."); see also Oct. 2, 1923 letter from Special Assistant to the Attorney General (Twitchell) to Mr. H.F. Robinson, Supervising Engineer quoting a letter from Captain Reid in which he states, "I do not think there is the slightest possibility that this irrigation project will affect the Indians' using the stream below at all. If any effect results from this, I think it will be a beneficial one...[.]" Captain Reid was a strong advocate for the project.

¹¹ See *Pueblo de Acoma v. United States*, 18 Ind. Cl. Comm. 154, 175 (1967).

Bluewater area with several people, but somehow I can't get anything definite as to what I should do to try to control it.¹²

The U.S. response was to express concern but do nothing to defend the Pueblo's right to water. Handwringing and commiseration do not water crops needed for survival.

Even when Congress enacted the Pueblo Lands Act in 1924 to enable the replacement of Pueblo land and water due to the past failure of the U.S. to protect Pueblo rights, no action was taken to replace what Acoma had lost through these trespasses to its water rights.¹³ Yet reports of the Pueblo Lands Board pursuant to the 1924 Act alerted the U.S. Attorney General to the trespasses occurring on Pueblos' water rights, and the need for action to protect against such trespasses. For example, one of the Board's reports on the Pueblo of San Ildefonso stated:

Fifth – That it is the duty of the United States as guardian of these Pueblo Indians, to assert and define these principles and to take such action, legal or otherwise, as will prevent the use of the waters of these streams by other than Indians to any greater extent than is consistent with such principles so announced....

[W]e believe that the matter of the Indians' water priorities should be brought to an issue by the Government as soon as possible. What might be done, it would seem is to determine definitely how much water the Indians need to properly irrigate the lands they now have under irrigation, or would cultivate if they had the water for it, then see to it that the ditches serving these lands are in proper condition; then serve notice on all non-Indian users above any of these Indian lands that they are entitled to no water, except such surplus as there may be after the Indians' needs are sufficiently provided for. This would probably necessitate Government ditch riders with power to see to it that the Government's orders are enforced. If such orders were resisted, the matter could then be tested out by adequate court action and that might reasonably be expected to result in definite arrangements whereby all the water (or so much of it as might be required) should be allowed to flow to Indian lands for defined periods.¹⁴

Despite this clear 1929 directive, the U.S. did not act to restore Acoma's water rights until 1982 when the U.S. belatedly filed an action against the BTID for trespass to the water rights of Acoma and Laguna Pueblos, see *United States v. Bluewater-Toltec Irrigation Dist.*, 530 F.Supp. 1434 (D.N.M. 1984) ("*Bluewater-Toltec*"). The U.S. sought declaratory relief for both the priority and quantity of Acoma's and Laguna Pueblos' water rights, as well as damages and a permanent injunction against BTID and its members.¹⁵ After several procedural disputes, the federal court case was dismissed so the Pueblos' water rights would be quantified in the state

¹² General Superintendent to William A. Brophy, Special Atty for the Pueblo Indians and Eric T. Hagberg, November 29, 1949.

¹³ The Pueblo Lands Act of 1924 (Act of June 7, 1924, 43 Stat. 636, Ch. 331) created the Pueblo Lands Board which was tasked with reporting on land and water use on Pueblo lands by non-Indians. The Board believed that absent loss of land, the right to water was not lost and need not be replaced, just enforced.. See, Report No. 2 for Pueblo of San Ildefonso. In 1931, congressional hearings were held on the operations of the Pueblo Lands Board. *Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, United States Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932. No compensation was awarded for trespass to water rights absent loss of land. Acoma did not lose any land, so no compensation was awarded for its loss of the use of water due to upstream. See Act of May 31, 1933, 48 Stat. 108.

¹⁴ *Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, United States Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932, 10977-78.

¹⁵ The complaint explicitly stated that it did "not seek a general stream adjudication to determine the full extent of the Pueblos' rights to the use of the Rio San Jose, its tributaries and the underlying groundwater basin." *United States v. Bluewater- Toltec Irr. Dist.*, 580 F.Supp. 1434 at 1427-38 (D.N.M. 1984); *aff'd* 806 F.2d 986 (10th Cir. 1986).

court adjudication.¹⁶ The Court was careful to dismiss without prejudice so trespass claims asserted against the BTID and other non-Indian water users could be determined after the Tribal water rights were quantified.¹⁷ This ruling preserved the damages claims based on trespass to Pueblo water rights. Therefore, the trespass claims that were made in the federal court action will only be resolved through this legislation. If the settlement agreement is not authorized through this legislation, these claims remain to be resolved.

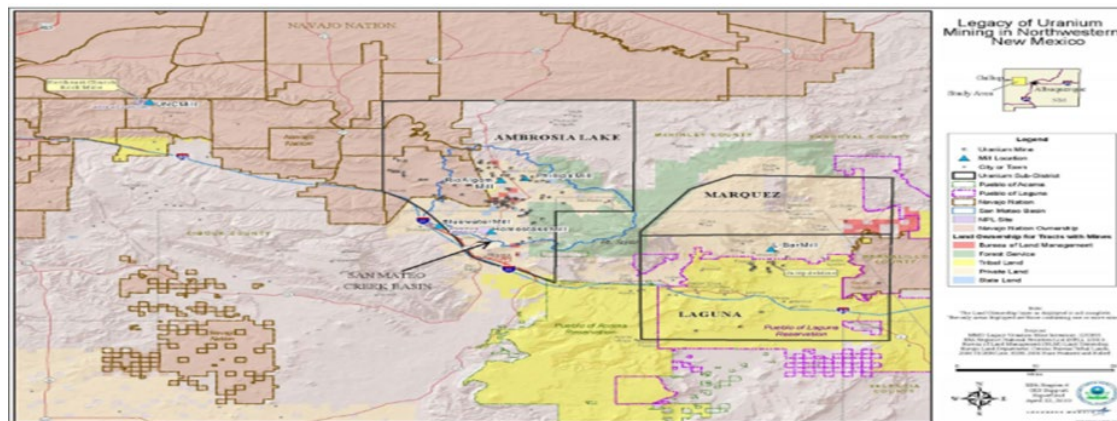
Today, 40 years after filing the trespass action, and more than 90 years after the construction of the Dam, the U.S. has not acted to limit the use of surface or groundwater by BTID or other users so as to provide the Pueblos with an adequate water supply.¹⁸



Ojo del Gallo, 1950s, after depleted due to upstream pumping of San Andres Glorieta Aquifer beginning in 1940s. This spring went dry by 1960.

From 1952 Dittert and Bibo "Topographic Features of the Acoma Land Claim (submitted to Indian Claims Commission in Pueblo de Acoma v. United States, Docket 266).

THE URANIUM BOOM – 1950 to 2019



¹⁶ “The court holds that the state court actions are sufficiently comprehensive to withstand the United States’ motion to dismiss based on a failure to name all claimants and Indian sovereign immunity. There is a want of federal jurisdiction, however, over the removed action. But even if removal jurisdiction could be sustained on a federal question theory, the removal of these state court actions would be defective because all defendants did not join in the removal petitions. After a review of this water litigation, the court concludes that the federal action should be deferred in favor of a general adjudication of the Rio San Jose in state court.” 580 F.Supp at 1437.

¹⁷ “That general adjudication will have a profound effect on the nature and extent of any claims made by the United States. A general adjudication involving some 1600 claimants will take years to complete. It serves no good purpose for this unfocused federal trespass action to linger while the general adjudication proceeds. Once the general adjudication is completed, or it there should be “a significant change in circumstances,” the United States may resort to federal court.” 580 F.Supp at 1447.

¹⁸ Acoma’s 1951 petition for compensation for land and water before the Indian Claims Commission (*Pueblo de Acoma v. United States of America*, Docket 266, 18 Ind. Cl. Comm. 154 (1967)) did not resolve the question of United States liability with respect to Acoma’s depleted water supply due to the Bluewater dam. See, Order Amending Findings of Fact and Opinion, 19 Ind. Cl. Comm., 152, May 2, 1968. The settlement of that litigation did not affect Acoma claims to water to irrigate its grant lands. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) *cert den’d* 120 N.M. 68, 898 P.2d 120 (1995).

The search for uranium has been the only United States government – induced, government maintained, government- controlled mining boom in this nation's experience ... For the ore pouring from the mines of the western deserts and mesas there is but one important purchaser- the Atomic Energy Commission; but one prime destination – the weapons arsenal of the United States; and but one price – that established by the government.¹⁹

When the detonation of the first atomic bomb lit up the New Mexico desert, it set off an arms race now referred to as the "Cold War." At the start of the Cold War, the U.S. created and fueled demand for enriched uranium to supply a nuclear weapons program. One of the richest uranium bearing rock in the U.S. is the Grants Mineral belt, located in the Rio San Jose Stream System.. The effect on the Stream System was profound.

Groundwater depletions expanded beyond reason in the Atomic Age. Uranium mining and milling began at the instigation of, and with the complete backing of the U.S., the only purchaser of the processed uranium.²⁰ The uranium was located in the same rock formations where water was stored – aquifers – and that water supplied perennial springs within the Basin, many of which contributed to Rio San José flows.²¹ These aquifers, and those located above them, were dewatered by the mining companies to create mineshafts and to facilitate removal of the uranium, thereby depleting spring flow contributions to the Rio San José. The mining companies were not even required by the U.S. to put the water that was removed from the aquifers into the Rio San José. The water was discharged to an adjoining river basin. In 1980 the N.M. State Engineer estimated that some 40,000 to 50,000 acre feet of water a year were being discharged into the adjoining river basin due to dewatering.²² Water, along with uranium was being mined at an exorbitant rate.

The mined ore had to be made into usable uranium – yellow cake. This was done at mills located on lands overlying the alluvial aquifer in the Stream System. Uranium mills were upstream from Acoma: Bluewater Disposal, now known as the ARCO site northwest of Grants, Rio Algom (formerly Kerr-McGee and Quivira) and Phillips-United Nuclear Corporation in the Ambrosia Lake area and one operated by Homestake-Barrick a short distance north of Grants. Milling facilities also used large amounts of groundwater.²³

With the growth of this federally created and subsidized mining economy, the upstream village of Grants, with a 1940 population of 1,347²⁴ exploded to over 10,000 people in the 1960s.²⁵

¹⁹ Lang, Herbert, "Uranium Mining and the AEC: The Birth Pands of a New Industry," Business History Review, Vol. 36, No. 3 (Autumn 1962), p. 325.

²⁰ Alvarez, Robert, "Uranium and the Acoma Pueblo," February 17, 2020, Appendix "Purchases of Uranium by the Atomic Energy Commission.

²¹ "In San Juan, McKinley and Valencia [Cibola] counties, the host rock for much of the uranium ore is the Westwater Canyon Member of the Morrison Formation. The Westwater Canyon Member is also a principal aquifer in the area. Gottlieb, Gail, "New Mexico's Mine Dewatering Act: The Search for Rehoboth", 20 Nat. Resources J. 653, 1980 (October 10, 1979). Note that Cibola County was created out of Valencia County in 1981.

²² Id., citing S.E. Reynolds, Statement of Mine Dewatering presented to the Interim Legislative Committee on Energy and Environment of the New Mexico Legislature (Nov.29, 1979) at 1.

²³ The Bluewater Milling site claims use of 4,000 afy of water, , Rio Algom claims use of 9,000 afy and the Homestake Mill site claims use of 1,300 afy. Homestake acquired the water rights from irrigators in the BTID and transferred the place of use to the mill site. See, generally, Records of the N.M. Office of the State Engineer.

²⁴ R.H. Sears, "Appraisal Report of the Acoma Pueblo Land, State of New Mexico As of 1901-1936", Prepared for the United States Department of Justice (1970) at pp. 81-82

²⁵ See <https://population.us/nm/grants/> (citing US Census data).

It relied on the increasingly stressed groundwater without any protest by the U.S. The population of Grants peaked at 11,439 in the 1980's.²⁶ Following the collapse of the uranium industry when the U.S. removed its price supports, the population began to fall and in 2018 was less than 9,000 people.²⁷

Another off-shoot of the uranium boom was the location of the Plains-Escalante Generation Station ("PEGS") in the headwater area of the Rio San Jose. Originally conceived to power the uranium boom and associated population growth, the electric company purchased water rights from the farmers in the BTID and those on the Ojo del Gallo Ditch who had supplemental groundwater wells to supply most of its water requirements. This dewatered the irrigation district through acquisition and transfer of multiple agricultural water rights. These rights that were historically used only during the growing season, with significant return flows downstream became a use that consumed 100% of the water transferred.²⁸ Plains Electric and its successor, Tri-State Generation and Transmission Association, Inc. ("Tri-State"), claim to have used up to 4,272.13 afy.²⁹

Again, the U.S. did not limit this large industrial use to protect Pueblo uses. Indeed, the approach of the U.S. after an initial challenge was to reserve these issues for the adjudication of the Basin – the litigation that is settled with this legislation – rather than pursue an appeal of permits issued by the N.M. State Engineer.³⁰ Tri-State closed PEGS in 2019, and a potential sale or lease to another energy company for hydrogen production has been proposed. The new company will likely assert the right to mine large amounts of water from the Rio San Jose alluvial aquifer and the San Andres-Glorieta Aquifer.³¹

The uranium boom did not just increase depletion of the Rio San José Stream System. Uranium mining and milling operations generated liquid wastes, or effluent. Decades of uranium milling activity contaminated groundwater in alluvial and other shallow aquifers.³² According to the U.S. Environmental Protection Agency ("EPA") few of the legacy mines have undergone reclamation.³³ The mills either impounded their effluents, or tailings, in unlined evaporation ponds, injected both treated and untreated effluent into local groundwater aquifers, or released effluent into San Mateo Creek. Tailing seepage has contaminated the Rio San Jose alluvial system and the bedrock San Andres-Glorieta aquifer with molybdenum, selenium, and uranium.

²⁶ Id.

²⁷ Id.

²⁸ The steam generated by the plant was used by a paper mill. It is not at all clear that in approving the transfer of these irrigation-based water rights to an industrial use, the State Engineer actually considered that agricultural rights are uses for only the growing season and do not consume all water diverted while these industrial uses are totally consumptive and are used throughout the year.

²⁹ N.M. Office of the State Engineer, *Final Inspection Report of Beneficial Use of Underground Waters*, File No. B- 7 (1-19-2000); File No. B-87-B-S-2,4,5,6 (1-9-94), File No. 13-5-F, B-44, B-45-X (1-10-89); File Nos. B-17, B-18, -19 and B-20 (3-4-86).

³⁰ Monson, Peter C. U.S. Department of Justice, letter dated April 29, 1986 to Arturo Ortega and Harold A. Ranquist, counsel for Pueblo of Acoma.

³¹ See <https://nmpoliticalreport.com/2021/04/20/the-retired-escalante-power-plant-may-be-converted-into-a-hydrogen-plant/>.

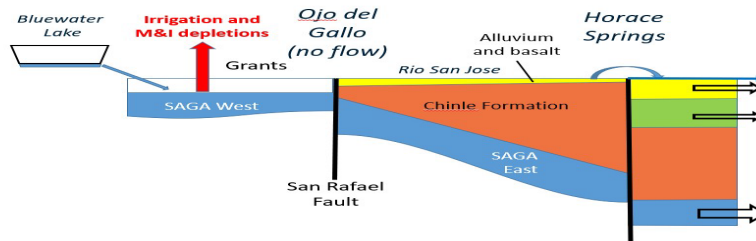
³² The discovery of large subsurface uranium deposits within the Jurassic Westwater Canyon Member of the Morrison Formation at Ambrosia Lake resulted in the establishment of two-thirds of the active uranium mines in New Mexico within the Ambrosia Lake Mining Sub-District by 1980. See U.S. Environmental Protection Agency, *Administrative Settlement Agreement and Order on Consent for the San Mateo Creek Basin Legacy Mines Sites, Dec. 3, 2019*. Ambrosia Lake is in the northwestern portion of the Rio San Jose Basin and the adjoining San Juan Basin.

³³ As noted on the website, approximately 50% of the abandoned mines have not yet been located. The New Mexico Mines and Minerals Department website contains a map which vividly depicts the extent of uranium mining in the Rio San José Stream System upstream from the Pueblo of Acoma (available at <https://www.arcgis.com/apps/dashboards/91f296cb3ea24f689329eb5075ec3bb7>).

Cleanup of contamination uses extensive water resources. Homestake-Barrick Mining Company (HMC), licensed by the Atomic Energy Commission, and now licensed by the U.S. Nuclear Regulatory Commission (No. SUA-1471), operated two uranium mills from approximately 1958-1990. Approximately 22 million tons of ore were milled at the site.³⁴ This milling activity led to groundwater use and contamination of the alluvial and nearby aquifers. The mill site was declared a Superfund Site by the EPA and has been in reclamation since 1990, following the demolition of the mill. Now, 30 years later, the contamination plumes from the Atlantic Richfield Company mill tailing site and that at the HMC site are converging.³⁵ Cleanup of the HMC site has not been wholly successful.³⁶ Nearly 4.5 billion gallons of contaminated water have been removed and 540 million gallons of treated water have injected into the aquifer.³⁷ Acoma submitted multiple protests to HMC's applications to drill supplemental wells, on the grounds that there is insufficient unappropriated water available to satisfy Homestake's request, yet the applications were approved.³⁸ According to EPA reports, 5,855,488,029 gallons of water, or 48,658.72 acre-feet of water were pumped from the alluvial aquifer from 1978-2014 at this one site. According to reports, water levels in three wells in the San Andres-Glorieta east of the San Rafael Fault where the aquifer is 2,000 feet below the surface, have declined by 46 feet since 1998.^{39, 40}

Today, the groundwater in the Rio San Jose Basin has been and continues to be mined without replacement. Withdrawals far exceed recharge. It is no longer a renewable supply that can be sustained into the future, and absent restriction of all non-Pueblo uses, will never be replaced. Experts agree that even if the U.S. enjoined upstream users, the water supply is so depleted that it would take decades for sufficient water to reach the Pueblos to meet minimal needs.

Over Appropriation & Depletion: Decreased Flows



³⁴ EPA Third Five-Year Review Report, Homestake Mining Company Superfund Site, (EPA ID: NMD007860935) Cibola County, New Mexico.

³⁵ U.S. DOE Legacy Management Report: *Evaluating the Influence of High-Production Pumping Wells on Impacted Groundwater at the Bluewater, NM Disposal Site* (August 2020).

³⁶ See generally, Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429.

³⁷ 5/9/2019, Homestake Mining Co., Superfund Site Profile, Superfund Site Information

³⁸ Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429. ("Groundwater cannot be treated exactly like surface water because once appropriations exceed the natural recharge in an aquifer, it is being mined. It cannot be treated as a reoccurring resource. Based on the drop in flow from Ojo Del Gallo at San Rafael, which is historically related to depletion of the San Andres-Glorieta aquifer, this aquifer is already being mined to meet present uses, threatening senior water users. Supplementing Homestake's use will result in a greater possibility that water will be insufficient to meet the needs of the holders of senior water rights.")

³⁹ Kathy Helms, "Official: Dilution Helps Reduce Uranium Mill Contamination", Gallup Independent, May 5-6, 2018.

⁴⁰ Homestake is now proposing to the National Remedy Review Board that the remediation effort be halted as complete remediation is characterized as unfeasible. See, National Remedy Review Board on EPA's Proposed Plan for Homestake Mining Company Superfund Site, CERCLA # NMD007860935. The Pueblo of Acoma opposes any determination that remediation should be excused.

THIS LEGISLATION GIVES ACOMA A VERY DIFFERENT WATER FUTURE

H.R. 1304 will provide alternative water supplies available to the Pueblo, forgoing enforcement of the Pueblo's senior priority in time of shortage. Acoma will be required to give up the full senior priority that normally attaches to time immemorial rights in times of shortage. This is a loss to Acoma, but the ability to get wet water is a trade-off that Acoma is willing to make. Damages attributable to the U.S.' acts and failures to act on behalf of Acoma alone equal almost \$500 million.⁴¹ The greatest part of these damages goes to the cost of locating and bringing a wet water supply to the Pueblo that does not affect all the other water users in the Stream System. The promise of the 1924 Pueblo Lands Act to replace water lost water will be met. H.R. 1304 provides funding for feasibility studies to determine if water in the only presently unused aquifer in the Stream System can be sufficiently treated and transported to the Pueblo to provide a water supply equal only to what it consumptively used for irrigation in the past, the 1,870 historically irrigated acres. Even if this is not feasible, the same level of funding is required to locate, treat and maximize whatever sources can be found in the Stream System. It also provides funding for improvements to the water delivery systems of all users, Milan and Grants, and the Acequias at State expense, so that the present diminished water supply can be conserved and used more efficiently for all.

WITHOUT THIS LEGISLATION, THERE WILL BE ECONOMIC AND SOCIAL COSTS FOR THE UNITED STATES AND ALL WATER USERS IN THE STREAM SYSTEM

In the absence of settlement, the U.S. and the Pueblos will continue in court to quantify all of the Pueblo's water rights and enforce the Pueblo's full senior priority in times of shortage in the Rio San Jose Basin and in the Rio Salado. While that is going forward, the available water supply is being depleted beyond that necessary to sustain the Pueblo, much less other users in the Basin. As water supply is depleted, the costs, both social and economic, of enforcing the Pueblos' senior priority water rights increase significantly. 100 years ago, the U.S. Attorney General was told that it was necessary to take action to protect the Pueblos' ability to use their water. The U.S. failed to act for a very long time, and now the cost of protecting and enforcing Acoma's ancient water right is much greater. H.R. 1304 brings something of much greater value to the Rio San Jose Stream System. It allows for full participation in water management decisions by all parties that must rely on this very scarce water supply. This is a water future that Acoma and its neighbors desperately need and support whole-heartedly.

⁴¹ The trespass damages and replacement costs were determined by Industrial Economics Incorporated, *Economic Damages to the Pueblo of Acoma Resulting from U.S. Actions and Failure to Prosecute Water Rights*, November 2020, The report has been shared with Congressional Staff and the United States. The replacement costs were updated as of April 25, 2022 based upon settlement agreement terms.