

**Hearing before the House Committee on Natural Resources
Subcommittee on Water, Wildlife, and Fisheries**

**H.R. 1304
Rio San José and Rio Jemez Water Settlements Act of 2023**

**Statement of Tanya Trujillo,
New Mexico Deputy State Engineer**

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Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of House of Representatives Bill 1304, the *Rio San José and Rio Jemez Water Settlements Act of 2023*.

H.R. 1304 is comprised of the *Pueblos of Acoma and Laguna Water Rights Settlement Act* (Title I) and the *Pueblos of Jemez and Zia Water Rights Settlement Act* (Title II). House Bill 1304 was introduced on March 1, 2023, by sponsor Representative Teresa Leger Fernandez with co-sponsors Representative Melanie Stansbury and Representative Gabe Vasquez. This bill seeks to authorize, ratify and confirm two water rights settlements involving four Pueblos in the State of New Mexico. The companion Senate Bill 595 was introduced and heard in the Senate Indian Affairs Committee in March of 2023 and reported favorably without amendment. All parties involved continue to advocate for enactment of the legislation and implementation of the agreement.

New Mexico is a semi-arid to arid state. Like other western states, New Mexico is experiencing extended periods of drought and declining surface water supply due to climate change. These conditions threaten many of the deeply rooted cultural traditions that make New Mexico unique. This legislation offers a historic opportunity to authorize funding to secure and develop water sufficient to support the permanent homeland for the Pueblos of Acoma and Laguna in the Rio San José Stream System and the Pueblos of Jemez and Zia in the Jemez River Basin. At the same time, this legislation protects the scarce water supplies and existing water uses in both stream systems.

The legislation will resolve the water rights claims of these Pueblos by authorizing, ratifying and confirming two comprehensive settlement agreements among the State, the Pueblos, surrounding municipalities, and historic acequias and community ditches. These settlements represent the culmination of decades of litigation and subsequent negotiations among the signatories, Navajo Nation, and the United States as trustee, and would not have been possible without their support and active participation in the negotiations.

Title I: Pueblos of Acoma and Laguna Water Rights Settlement Act of 2023

Title I of H.R. 1304 seeks to confirm the settlement agreement among the State, the Pueblos of Acoma and Laguna, Navajo Nation, the United States as trustee, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San Jose and its nine area acequias and community ditches. House of Representative Bill 8945, the *Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024*, is also being heard today and is an addendum to this settlement agreement among these same parties.

The settlement resolves the water rights claims of the Pueblos of Acoma and Laguna within the Rio San José Stream System and provides funding for much needed water supply

infrastructure. These claims arise from the adjudication suit filed by the State in 1983 (*New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. D-1333-CV-1983-00190 and D-1333-CV-1983-00220 (consolidated) (N.M. 13 Jud. Dist. Ct)). The settlement represents the end of forty years of litigation and negotiation, and offers the desired opportunity to resolve long-standing concerns over the use of scarce water supplies in the Rio San José Stream System.

The Rio San José Stream System is located in western New Mexico and is one of the most water-scarce stream systems in the State. For centuries, the Pueblos of Acoma and Laguna irrigated thousands of acres along the Rio San José and its tributaries. This supply has been dramatically reduced as a result of upstream uses of surface water and groundwater by non-Tribal water users over the past century. One of these uses, uranium mining, has led to widespread contamination of groundwater in the area.

Most Acequias and other traditional non-Tribal water uses in this region date back to the 1800s and rely on diminished surface water supply. Acequias have suffered from the same drop in surface supplies as the Pueblos. Current Acequia irrigation is only a fraction of what it was historically due to lack of water supply.

Today, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, various Acequias and farmers, certain Navajo Nation Chapters, and industrial users continue to rely on water from the Rio San José Stream System, including surface water from the Rio San José, and groundwater from the Bluewater and Rio Grande Basins. Climate change has compounded the lack of water, and, like other western states, New Mexico is experiencing extended periods of drought, furthering the strain on surface water supply.

Authorizing the settlement will avoid the uncertainty and expense of protracted litigation regarding the Pueblos' senior water rights claims. If the rights of the Pueblos were litigated to

their conclusion, the only way to increase the flows of the Rio San José for the benefit of the Pueblos would be to shut off all other users in the Steam System. Instead of seeking to curtail other water users, the settlement contemplates the need to find alternative sources of supply for the Pueblos and ensure water security for everyone.

Recognizing the need for cooperation among the water users in the Stream System and the limited water resources available, the settlement agreement is structured to allow the Pueblos to develop alternative sources of water based on availability, hydrologic assessment, and community need. Additionally, the Pueblos have agreed to give up their right to make a priority call on junior non-Pueblo water rights existing prior to the settlement enforcement date, which provides security to all water rights holders in the region. The settlement also provides for the establishment of district-specific management tools to monitor and protect water resources and existing valid water uses in the entire Rio San José Stream System, putting this region at the front of efforts to create resiliency in water use not only in the present, but also into the future.

The proposed settlement will also provide for federal funding for the development of alternative water sources for the Pueblos and state funding for much needed infrastructure improvements for non-Tribal settling parties. The settlement ensures that non-Tribal water users will be able to continue using their water rights as they have done in the past and does not contain any new restrictions on other existing water users. Importantly, authorizing this fund-based settlement provides the Pueblos flexibility to determine the scope and design of future projects and infrastructure.

For the Pueblos, the legislation provides Federal funding for alternative water supplies, water infrastructure, water rights management and administration, watershed protection, support

of agriculture, water-related community welfare and economic development in the amount of \$850 million.

The Settlement provides that the State will seek appropriations to support projects for the signatory acequias and municipalities. The Acequias, the City of Grants and the Village of Milan would receive \$36 million from the State to protect against future impairment and improve water and wastewater infrastructure, which will contribute to the efficiency and conservation in the overall stream system. This approach also prioritizes Pueblo sovereignty and self-determination by ensuring that the Pueblos are able to make decisions based on the current and future interests of their communities, while also considering water use in the neighboring non-Pueblo communities.

Title II: The Pueblos of Jemez and Zia Water Rights Settlement Act of 2023

Title II confirms the settlement agreement among the State, the Pueblos of Jemez and Zia, the United States as trustee, the City of Rio Rancho, the Jemez River Basin Water Users Coalition, of which the San Ysidro Community Ditch Association is one of the eleven-member acequias of the Coalition. The parties have reached an agreement after nearly forty years of litigation and intensive settlement negotiations. It is no small matter that the local parties reached this settlement, and together we urge your support for the Act which would authorize, ratify and confirm the historic settlement agreement.

The Jemez River Stream System is located in north central New Mexico, and the Jemez River is a tributary to the Rio Grande. The water users in this basin include the villages of San Ysidro and Jemez Springs, unincorporated areas surrounding them consisting of well-established acequias, and the Pueblos of Zia, Jemez and Santa Ana. The Pueblos and non-Pueblo acequias rely on the river for traditional irrigation practices that have existed since long before New

Mexico statehood. Members of these communities have lived and worked side by side for many generations and during this time, water supply has dwindled while the demand has only increased.

The settlement agreement ratified by H.R.1304 will resolve the water rights claims of the Pueblos of Jemez and Zia, and provide funding for much needed water supply infrastructure to the Pueblos and non-Pueblo water users in the Jemez River Basin. These claims arise from the trespass suit filed by the United States on behalf of the Pueblos in 1983 and are proceeding in the United States District Court, District of New Mexico as a general stream adjudication of the water rights of all users in the Jemez River Basin (*United States of America, et al. v. Abousleman, et al.*, Civil No. 83-cv-01041 (KR)). The water rights of all non-Pueblo claimants have been adjudicated, and the Pueblos have the only claims remaining in the Basin.

Despite years of ongoing litigation, the people of the Jemez River Basin continued to live and work together. An example of their cooperative approach to managing scarce water resources is that in 1996, the U.S., the Pueblos of Jemez and Zia and several non-Pueblo ditch associations entered into an agreement whereby during times of low flow of the Jemez River, a rotation schedule would be initiated in order to meet the irrigation requirements of the Pueblos and the associations and the religious and ceremonial requirements of the Pueblos. These same communities who have lived and worked side by side and jointly manage a reduced water supply are now here asking for your support for the Settlement Act.

The settlement prevents conflict over surface water by providing federal funding to the Pueblos and state funding to the San Ysidro Community Ditch to use groundwater to augment their surface water supplies. In order to preserve the cooperative administration of water among the water users in the stream system, the Pueblos have agreed to give up their right to request

enforcement of their senior priority against other signatories and water users that are a party to the 1996 Shortage Sharing Agreement.

The settlement further provides for alternative administration between the two Pueblos and non-Pueblo water users to supplement surface water supply during periods of low flow and a groundwater augmentation project that will benefit all water users, including ten upstream acequias which will no longer be subject to curtailment from Pueblo priority calls. By providing a critical buffer against climate change's effects on surface supplies, the augmentation of surface water 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.

As a fund-based settlement, federal funding in the amount of \$490 million is contemplated for water and wastewater infrastructure improvements, watershed protection, water-related projects for community welfare and economic development, and costs relating to implementation of the settlement. The State has committed to seeking funding for the San Ysidro Community Ditch Association's capital and operating expenses relating to the augmentation project in the amount of \$3.4 million, and approximately \$16 million for Jemez River Basin Water Users Coalition acequia ditch improvements. The State will also seek appropriations for a mitigation fund for \$500,000 to protect against future impacts to domestic and livestock wells and provide funding for necessary administrative needs in the Jemez River Basin. Finally, the Settlement also provides for the establishment of a water master district with the goal of protecting water resources in the Jemez River Basin for future generations while allowing all parties to fully exercise their water rights.

The Settlement Act is key to resolving long-standing water issues in the Jemez River Basin, as it addresses the quantification of the Pueblos' water rights, protects water users in the Basin from impairment of their water rights, and will help ensure a sustainable water supply into the future.

Conclusion

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 1304. If approved, this legislation will create a mechanism for cooperation and coordination among the Pueblos and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to Pueblo water security and provide significant economic benefits and employment opportunities to Pueblo members and surrounding communities in both stream systems. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from elsewhere in the State. Importantly, authorizing this fund-based settlement provides the Pueblos flexibility to determine the scope and design of future projects and infrastructure.

New Mexico's water issues are dire, and they will only get worse with climate change. The State of New Mexico enthusiastically supports this legislation and believes H.R. 1304 is crucial to addressing critical water needs in some of the most water-stressed communities in the state. Relief for these communities cannot come soon enough.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.