



**Prepared Statement by**  
**Governor Peter Garcia, Jr.**  
**Ohkay Owingeh**  
**Before**  
**The New Mexico Indian Affairs Committee**  
**November 28, 2017**  
**at Ohkay Owingeh**

Good Morning (in Tewa). I am Peter Garcia, Jr., Governor of Ohkay Owingeh. I want to welcome the Co-chairs and members of the committee to the Pueblo and thank you for the opportunity to address you this morning.

Ohkay Owingeh sits at the confluence of the Rio Grande and Rio Chama, both of which meet at the center of our Pueblo. The two sources of water are the life-blood of Ohkay Owingeh and are the heart of our cultural history and community. We have long been hunters and farmers, worked the land, and continue to do since time immemorial.

Ohkay Owingeh lies at the heart of the Espanola Valley with in Rio Arriba County and borders the City of Espanola and the communities of Alcalde, Hernandez, Chamita, Guique, and more. It is because of our location that the Pueblo has always worked hard to foster positive relationships with its neighbors and to provide services and support to all people that live within its boundaries. Not only are the residents of the Espanola Valley our neighbors, they are our friends, relatives, and trusted employees.

The Pueblo operates its own Head Start program, day school, Boys and Girls Club, senior program, police and fire departments, utility, and other government programs that are open to ALL residents of the Espanola Valley, regardless of whether they are Tribal members.

Additionally, the Pueblo also provides water and wastewater to all residents of the community, as well as to surrounding communities. Ohkay Owingeh values the partnership forged between area governments and pueblos on the Northern New Mexico Waste Authority. Ohkay Owingeh is an active participant with the authority providing land, transfer stations, and office space to the authority.

In addition to Ohkay Owingeh's government services, the Pueblo also owns and operates Tsay Corporation. Between government and non-government employees, Ohkay Owingeh is responsible for employing 1,022 people, of which over 80% are non-tribal members. Tsay Corporation employs people in the gaming, retail, hospitality, construction, and government contracting sectors with employees in Rio Rancho, Espanola, Los Alamos, and other states as well as on the Pueblo itself.

In addition, the Pueblo has contracts with 195 in-state vendors spending approximately 12 million annually.

In sum, Ohkay Owingeh does more than pays its "fair share" in terms of the local community for services, contributions to the local and state economy. We take pride in helping our neighbors and working to build strong business relationships in the community.

It is against this backdrop that the Ohkay Owingeh Tribal Council and I have concerns over discussions by some in the Legislature that tribes don't contribute to the state, and seek to change or eliminate tribal-state agreements on taxes and the limited investment tribes receive from the state.

### Taxes

Unlike other states where tribes and state governments have been embroiled in litigation and disputes over taxes, New Mexico and tribes have reached agreements that eliminate dual taxation on tribal lands. These agreements have allowed Ohkay Owingeh to reinvest tax revenue into the community for needed infrastructure and government services. Ohkay Owingeh has financed the construction of its tribal government center with tax pledges through the New Mexico Finance Authority. The Pueblos uses other tax revenue for law enforcement, health care, education, and other vital government services.

We often hear state government say that business entities need "certainty" in tax policy. We are told that business can't be offered incentives one year, and then have them taken away the next. The same needs to be said for tribal communities and business interests, particularly given the number of jobs and economic activity we create throughout the state. Tribal governments and jobs are the bedrock of state of local economies and should be treated accordingly.

### Emergency Services

Likewise, we have concerns locally over disputes about 911 emergency services. Emergency 911 service is vital to the entire area. These services are paid for through wire and wireless phone charges imposed on ALL users –tribal and non-tribal alike. Local area governments, the legislature, and Public Regulation Commission need to continue to ensure that all residents continue to be served by this important service.

## Education

Funding for bilingual education and Indian education programs must remain a priority for the legislature. The loss of these funds and programs will severely impact native students' ability to learn and keep a pace with non-native students as well as diminish efforts by tribes to preserve cultural literacy and preserve our language.

## Health Care and Medicaid

We continue to be concerned about overall funding and access to health care for Native Americans. The promise of health care by the federal government has fallen woefully short. To supplement this funding and lack of care, Pueblos and individual Native Americans have had to turn more and more to Medicaid to provide adequate access to care for our members. We hope that you will continue to ensure that Native Americans retain their ability to access care through Medicaid.

We also share the concerns that have been raised by numerous groups over the impact of co-payments for Medicaid service. This will further act as an impediment to access to care for many Native Americans that already face hurdles to care such as travel, limited providers, and general resistance to modern care.

## Rights-of-Way

As a sovereign nation, the Pueblo has the right to impose fees or restrictions for rights-of-way on its land. First and foremost, the Pueblo will not impede access to a private land owner. The Pueblo believes that these disputes should be addressed between the Pueblo, County, City, and State and not impact individuals.

In terms of rights-of-way across Pueblo lands that impact not only members or residents of the Pueblo, but service other areas, the Pueblo has followed agreements that mirror those entered into with other municipalities to ensure that those served outside of the area, share the costs with local residents. Again, these fees are used to pay for services for all those who live within the Pueblo's boundaries.

## Water

The Pueblo is working with local governments and acequias to provide water certainty to the entire Northern valley. Again, the Pueblo's policy is to work with our neighbors both during times of plenty and, during times of scarcity, to ensure we can all continue to prosper.

While we continue to work with interested parties and the federal assessment team, the Pueblo is concerned about recent attempts at the Legislature to add "riders" to capital outlay

funds for Indian water rights settlements. These settlements are agreements between the federal government, state of New Mexico, and tribes, that need to be honored. The agreements should not be subjected to additional condition outside the federal law and judicial process.

### Conclusion

Ohkay Owingeh has a long history of working collaboratively with the state of New Mexico on a wide range of issues. We look forward to a continued strong and collaborative relationship that continues to build on trust and agreements that benefit the state and the Pueblo. I am happy to stand for any questions.

Water rights in Chama, Rio Grande, looking  
for expeditious settlement

1. Introduction.

Members of the Committee, my name is Charles J. Dorame. I am a former Governor of the Pueblo of Tesuque in New Mexico, and Chairman of the Northern Pueblos Tributary Water Rights Association (NPTWRA or Association). The NPTWRA is made up of the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque. The four Pueblos are parties in the water adjudication captioned *State of New Mexico v. Aamodt, et al.*, filed in the federal district court in New Mexico in 1966. The Aamodt case was filed to determine the nature and extent of Pueblo Indian Water Rights.

The Aamodt Litigation Settlement Act (ALSA) became law as part of the Claims Resolution Act of 2010, Title VI, Public Law 111-291. The ALSA approved the Settlement Agreement and Cost Sharing and System Integration Agreement negotiated by the government parties and representatives of individual water rights holders in the Pojoaque River Basin, a tributary of the Rio Grande north of Santa Fe New Mexico. On behalf of the four Pueblos, we appreciate the support provided by the United States in helping our Indian Water Rights Settlement reach its present status. This statement is submitted to share perspective on the settlement of the leading case with the only published opinions on Pueblo Indian Water Rights.

Our water settlement will provide water and infrastructure to need the needs of our future generations.

2. Promoting Negotiation.

2.1. Litigation Background. The State of New Mexico filed the Aamodt water adjudication in 1966 in federal court. The United States waived sovereign immunity for itself and the four Pueblos and had those five parties realigned as plaintiffs-in-intervention. After the federal district court in 1973 made an initial determination of Pueblo water rights, the United States appealed and the Pueblos intervened. The Tenth Circuit Court of Appeals ruled in 1976 that the Pueblos were entitled to independent representation, and that Pueblo Indian Water Rights were not measured based on state law. *State of New Mexico v. Aamodt*, 537 F.2nd 1102 (10<sup>th</sup> Cir. 1976) (“Aamodt”). In 1985, the federal district court ruled that Pueblo Indian Water Rights on Pueblo grant lands arose from our aboriginal sovereignty and concluded that the aboriginal root for these water rights remained unextinguished, except to the extent affected by the 1924 Pueblo Lands Act, 43 Stat. 636. *Aamodt II*, 618 F.Supp. 993 (D.N.M. 1985). In 1987, the Court issued Findings of Fact on the Historically Irrigated Acreage (HIA) within each Pueblo’s grant boundary which are still owned by the Pueblo. In 1994, the New Mexico Court of Appeals ruled that Pueblo Indian Grant Lands are not entitled to water rights measured according to the “Winters doctrine”, relying on the Aamodt rulings. *State v. Kerr McGee*, 120 N.M. 118 (N.M. Ct.App. 1995).

2.2. Starting Negotiations. After a series of trials before a Special Master in the 1990s, where the federal district judge rejected the special master reports on Pueblo “replacement rights” grounded in section 19 of the 1924 Act, and Winters doctrine rights for the Nambé Pueblo reservation, the parties in the Aamodt case represented by active counsel requested court-ordered mediation. That Order halted further litigation on the case. The court appointed a settlement judge. The court-ordered mediation, and the presence of a settlement judge were essential ingredients in moving the negotiation process forward in the Aamodt case. The United States through the Department of Justice, and the State of New Mexico shared the costs for the settlement judge. The settlement moved ahead based on prior court rulings, and the expectation of additional water for use in the Basin, and a regional water system to deliver it to Pueblo and other county residents, thereby protecting existing water uses.

The Settlement Agreement was signed in 2006 by each of the four Pueblos, the County of Santa, City of Santa, and the State of New Mexico. The United States said it would not sign the Settlement Agreement unless directed by Congress.

The federal role in promoting negotiated settlement of the Aamodt case was essential. It provided funds for technical studies, and other support which contributed to the negotiation of the 53 page Settlement Agreement. The Department of Justice lawyer in the settlement negotiations had responsibility for drafting terms of the Settlement Agreement as they were negotiated. The federal water rights negotiating team also contributed significantly. Both staff and funding through the Bureau of Indian Affairs Southwest Regional Water Office provided technical and other support. The Bureau of Reclamation authored a Settlement Study published in 2004, with over 20 appendices containing additional technical reports that contributed to that Study of options for a Regional Water System.

2.3. Legislation. We worked for years with our New Mexico Congressional Delegation to develop legislation that would approve the negotiated Settlement Agreement. The draft legislation was revised through the years to address concerns raised from congressional staff. Then, in 2009, the Administration took a more active role and negotiated additional changes in the proposed legislation in order to advance its goals of uniformity in certain key sections across several Indian Water Rights Settlements. Those changes were included in the final version of the Aamodt Litigation Settlement Act, which, together with three other Indian Water Rights Settlements, were part of the Claims Resolution Act of 2010, Public Law 111-291.

Thus the Aamodt settlement took 10 years to accomplish formal federal approval of our Indian Water Rights Settlement. The court-ordered mediation, the court rulings on Indian Water Rights priority and amount, were critical components to the success of the settlement. Funding and staff support through the Department of Justice and the Department of Interior for the settlement process, as well as independent representation for each of the four Pueblos, were also essential elements of this settlement. Financial commitments by the State of New Mexico and Santa Fe County contributed importantly to securing Administration support for passage of our Settlement by Congress.

3. Implementation of Water Settlement of the Aamodt Litigation Water Settlement. The Aamodt Litigation Settlement Act approved the Settlement Agreement and Cost Sharing and System Integration Agreement, provided they are conformed to change as required by that Act, that Act provided \$81.8 million of mandatory appropriations to move the settlement forward. \$56.4 million were made available to the Bureau of Reclamation to begin design, engineering, and environmental work for the Regional Water System which is an essential element of the settlement. This is a majority of federal funds authorized and required to design and build the Regional Water System needed to implement our settlement. The remainder of the mandatory appropriations were to pay for sources of water supply to be delivered through the Regional Water System, to provide for future needs of the four Pueblos. Another component of the Aamodt Pueblos' Settlement Fund is for improving Pueblo water infrastructure.

The Pueblos are grateful to have the mandatory appropriations for almost half of the federal share required to implement the Aamodt Litigation Settlement Act. We have been working closely with the federal implementation team and the Bureau of Reclamation to conform the Settlement Agreement and the Cost Sharing and System Integration Agreement to the Aamodt Litigation Settlement Act. That process is essentially complete. We still need to craft language for a Partial Final Decree on Pueblo Indian Water Rights, and an Interim Administrative Order so that the court process for approval of the Settlement Agreement and entering of a Partial Final Judgment on Pueblo Indian Water Rights resume, and move to completion. The ALSA requires not only approval of those documents by the court, but also entry of a final decree of all rights in the case by June 30, 2017. The law allows that date to be moved by consent of the government parties, if necessary.

3.1. Need for Additional Funds to Complete Settlement; \$37.5 million needed through BIA by 2017; Additional \$50 million through Reclamation needed by 2021. The Aamodt Litigation Settlement Act provides that if the Regional Water System required by the Act and the Settlement Agreement have not been completed by June 30, 2021, one or more Pueblos may ask the Secretary of Interior to consult and then make a finding on whether that Regional Water System has been substantially completed. This Act provides a window of three years between June 30, 2021, and June 30, 2024, for one or more Pueblos to ask the court to vacate the Final Decree, and resume litigation, if the Regional Water System is not substantially complete. We want to avoid that situation, if at all possible.

Therefore, the Pueblos are concerned that the five year federal timeline for environmental compliance and federal appropriations of at least \$37.5 million need to be completed by 2017, and the remaining \$50 million for the federal share of construction for the Regional Water System need to be appropriated so that construction can be complete by June 30, 2021.

The four Pueblos continue to work cooperatively with the federal implementation team and others to help that happen. We look forward to working with our congressional delegation, and appropriate committees and Congress, as well as current and future administrations to assure

that the significant federal support that has brought our Indian Water Rights Settlement to this point will be joined by appropriations in the future sufficient to implement our Settlement Agreement and the Aamodt Litigation Settlement Act.

3.2. Trust Responsibility. We are concerned that federal staffing and support for Indian Water Rights Settlements generally, and the Aamodt Litigation Settlement in particular are adequately funded in the future at a level to maintain the federal trust responsibility to protect Pueblo Indian water resources. Our contacts with people both in the Department of Justice and the Department of Interior, particularly the Bureau of Indian Affairs, indicate that budget limitations currently in place have resulted in challenges for staff in those agencies to provide the time and resources to implement not only the Aamodt Litigation Settlement, but others as well. We are also concerned that several sources of funding within the BIA that have provided a financial support for settlements in the past are shrinking. We see this as a trend in the wrong direction.

Successful implementation of the Aamodt Litigation Settlement Act requires federal financial support for robust tribal involvement. That includes support for Pueblo governmental representatives, as well as technical and legal experts to give the greatest chance for success for implementing our Indian Water Rights Settlement. Having a decree that recognizes enough senior first priority rights, combined with additional water through the Regional Water System means that each of our four Pueblos will have water to meet our present and future needs. Constructing the infrastructure in a way that works for each Pueblo, and our Santa Fe County parties, so that so that our water rights may be available for use as our Pueblos grow into the future is an essential part of our settlement.

We urge Congress to make the necessary resources available so that the Aamodt Litigation Settlement can be fully implemented. That means providing an additional \$37.5 million through the BIA before 2017, and an additional \$50 million through the Bureau of Reclamation for the rest of the federal share to construct the Regional Water System and make it substantially complete prior to 2021.

On behalf of the Pueblos of Tesuque, San Ildefonso, Pojoaque, and Nambé which together make up the Northern Pueblos Tributary Water Rights Association, we appreciate the opportunity to submit this statement to the Senate Indian Affairs Committee regarding negotiation and implementation of water settlements in Indian country. Our water rights settlement on the Pojoaque River Basin Tributary of the Rio Grande in New Mexico is vital to the survived, future growth and development of our Pueblos.

We look forward to working with all branches of the federal government, as well as State and County governments, to accomplish the requirements for our Indian Water Rights Settlement in the Pojoaque River Basin in New Mexico. We trust Congress will take the necessary steps to provide the federal resources needed to fully implement our settlement.