



**Northern New Mexicans Protecting
Land, Water, and Rights, inc
(NNMProtects)**

**A Presentation to our State Legislature Water and
Natural Resources Committee
Regarding Agenda Item**

“Aamodt Settlement and Road Easement Issue”

**Prepared by
Dave Neal, El Rancho Resident
NNMProtects Vice President
August 2, 2017**

I am not representing the NNMProtects membership in this presentation but I have some knowledge and awareness of the many reasons why the membership opposes Aamodt and the County trespass issue.



I Have Two Very Simple Requests

- **The NM State Legislature does not appropriate any NM State funds to the Indian Water Rights Settlement fund until free and clear access is re-established to all private/fee simple properties within the exterior boundaries of the pueblo land grants “in perpetuity”.**
- **Do not appropriate any State funds to the Indian Water Rights Settlement fund until the BIA Letter issued December 6, 2013 by Raymond Fry, Superintendent, Northern Pueblo Agency (Española), BIA is rescinded and that may not be enough.**

This trespass problem was created by our Federal government and continues to be a Federal problem created by the Department of Interior by allowing and supporting the continued effect of the BIA letter that contains the following statement made on behalf of the Pueblo of San Ildefonso.

“This Notice provides the County information concerning the instances of trespass and notifies the County that it must show cause why the County should not be immediately assessed trespass damages and why the County should not be evicted from the subject Pueblo lands.”

Evicted????

So simply rescinding or retracting the letter is not sufficient for the title insurance companies to begin re-issuing lenders title insurance. The fact that the BIA allowed for the issuance of this letter sets a precedent that future BIA officials may issue similar letters. Hence, there needs to be a policy issued by the DOI acknowledging that public access to these fee simple properties will never be challenged again. If this not done, title insurance companies will still continue to consider lack of public access a risk.

So I am asking my State Legislature to support my county government namely County of Santa Fe that that in August 2015 adopted a resolution that simply states Santa Fe County “...will not appropriate funds for the construction costs of the Regional Water System unless and until the legal status of County Roads running through the Settling Pueblos has

been resolved.” and “The Board [of Commissioners] may not appropriate funds for the construction costs of the Regional Water System if the cost of resolving the legal status of County Roads running through the Settling Pueblos is too great.”



My Reasons for The Requests

- **The 1924 and 1931 Pueblo Lands Board (PLB) Acts provided public access to private properties**
- **Why two PLB Acts - the follow on act added some more properties that were not included in the first PLB report**
- **In some instances properties/parcel were not transferred to private ownership as adverse possession had occurred and the title to the property remained with the pueblo**
- **A lot of detail in determining/appraising the value of the property**

Each PLB report included a subsequent Federal court ruling to quiet the Indian title to the property and issue a patent.



My Reasons for The Requests

- **The December 2013 BIA letter is a clear violation of a Federal Court ruling. A Contempt of Court action is expected.**
- **Furthermore, there has been a “taking of private property” executed by our Federal government via the BIA December 2013 letter that diminished the value of many private properties without any compensation. There are at least four documented “takings” in El Rancho alone.**

Date: April 12, 2017

NOTICE OF ACTION TAKEN

Loan # 300070847

Applicant(s):
DAVID A NEAL, CRISTELLA L TRUJILLO-NEAL
43 COUNTY ROAD 848
SANTA FE, NM 87505
Dear DAVID A NEAL and CRISTELLA L TRUJILLO-NEAL,

Lender:
USAA Federal Savings Bank
10760 McDermott Freeway
San Antonio, TX 78260-0544

Thank you for your Application for a First Mortgage. Based upon your Application we must inform you that:
[] We are unable to make a decision on your Application because it is missing the following information:

Please furnish this information to us on or before _____ at the address listed above or we will be unable to give further consideration to your credit request.

[] We are unable to offer you credit on the terms that you requested, but can offer you credit on the following terms:

If this offer is acceptable to you, please notify us on or before _____ at the address listed above.

[] If checked, our principal reasons for denying your original request are indicated below.
[X] We are regrettably unable to approve your credit request. Our principal reasons for this decision are indicated below:

Where applicable, the following are our principal reasons for taking adverse action:

- List of reasons for adverse action including: Insufficient number of credit references provided, Unacceptable type of credit references provided, Unable to verify credit references, Insufficient income for amount of credit requested, Excessive obligations in relation to income, Unable to verify income, Temporary or irregular employment, Unable to verify employment, Credit application incomplete, Length of employment, Length of residence, Temporary residence, Unable to verify residence, No credit file, Other, Specify.

If you have any questions regarding this notice, you should contact:

Creditor's Name: USAA Federal Savings Bank
Creditor's Address: 10760 McDermott Freeway, San Antonio, TX 78260
Creditor's Telephone Number: 800-551-6781

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE:

[] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency stated no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency. If you request it no later than 60 days after you receive this notice, in addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[] Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.

You can pay for an additional appraisal for your own use at your own cost.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

Bureau of Consumer Financial Protection
1700 G Street NW
Washington DC 20562



Image 14444002 of Loan # 300070847

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My Reasons for The Requests (cont.)

- **The pueblo governments have already been compensated for the loss of title to some lands within their land grants via Federal court rulings enacting the PLB recommendations. These same court rulings also provided public access to these private properties.**

Page 60 of United States of America , as Guardians of the Indians of the Pueblo of San Ildefonso in the State of New Mexico (Plaintiff) v. Filomena Apodaca et al. (Defendants). December 5, 1930, No. 2031 in Equity states

“And that every right, title or interest claimed and asserted by said United States of America , the Pueblo of' San Ildefonso or the Indians thereof , in or to said tracts or any part, thereof is null and void, and that they, their agents , representatives, successors and assigns are permanently enjoined from trespassing upon any of the tracts in this paragraph 2 described, or interfering with the full possession, use and control thereof by said defendants respectively.”

A similar court ruling on May 25, 1929 Guardians of the Indians of the Pueblo of Nambe in the State of New Mexico (Plaintiff) v. David Herrera et al. (Defendants), No. 1720 in Equity included a provision quieting the title of the Pueblo except as to certain privately owned tracts belonging to plaintiffs' predecessors in title and said decree included the further provision: “* * * Provided, however, that said defendants [private land owners] shall be permanently entitled to the use of the roads upon said Grant, existing at the date of this decree, which give access to the accepted.

At least two pueblos have expressed to our elected officials they are looking for a recurring revenue source and this may be one. For example, a veteran of the Vietnam war has repeatedly received letters from one of the pueblos requesting at a rate of ~\$520.00 a month for access his home.

Ironically, the Federal government has already compensated the pueblos for lands that were lost to private ownership via the PLB Act of 1924 and 1933 and now it seems the pueblos want more compensation. The United States Court of Federal Claims in the Pueblo of San Ildefonso [Plaintiff] v. The United States [Defendant], No. 354, June 5, 1996, ruled "... the 1924 Act authorized the Board to compensate for trespasses suffered before plaintiff lost its land and water rights to the trespassing settlers. While Plaintiff [Pueblo of San Ildefonso] received \$61,499.33 in compensation plus additional amounts, it is not clear from the record whether the Board factored in trespass damages as a part of that compensation.

Assuming, *804 arguendo, that the Board failed to do so, plaintiff [Pueblo of San Ildefonso] should have raised this issue before waiving further compensation pursuant to the 1933 Act. Because plaintiff [Pueblo of San Ildefonso] abandoned further claims under the 1924 Act, plaintiff's motion for summary judgment is denied and defendant's [The United States] cross-motion for summary judgment is granted."

Because the pueblos have already been compensated for the lost of their lands twice, it seems very inappropriate to expect the taxpayers of New Mexico to compensate the pueblos yet again.





A Regional Water System

There many reasons for and against the Aamodt Settlement regional water system so please do not appropriate any NM funds until these trespass issues are solved and the technical and economical feasibility of a county owned or operated regional water system has been fully analyzed and presented to the County taxpayers of District One and Two.

Early on in the Aamodt Settlement negotiations, a "gag order" was issued by United States Magistrate Judge Leslie C. Smith that prevent any community member from discussing any details of the Settlement outside of the court room until after the Settlement had been prepared. More recently our County Commissioners were "encouraged" by our Federal government to have "closed meeting" ... an possible violation to the New Mexico Open Meetings Act ... in an attempt to negotiate a solution to the public access issue and purposely excluding the people ... including State Representative Carl Trujillo ... who will most directly be effected with the solution.

In reviewing the proposed design for the regional water system, it is quite clear that utility easements will need to be executed with private land owners in order to install many of the distribution lines. Given the animosity that current exists within our community regarding the lack of transparency by our State government during the negotiation phase of the Aamodt Settlement, it is very likely that the County of Santa Fe will need to execute many imminent domain takings in order to obtain the necessary utility easements for the regional water system.

As the old saying goes "You can lead a horse to water, but can not make it drink." i.e., the number of county customers that will most likely connect to this system will be minimally and not sufficient to finance the sustained operation of the county's portion of this system without encumbering other SF County residents with financing the operation of the regional water system.

There are about 3000 non-pueblo wells in Aamodt NPT basin with an average adjudication rate of about 0.6 AFY which yields a sum total use of about 1,800 AFY for non-pueblo wells. The USGS Water Resources Report (94-4072) concluded "Approximately 14,700 acre-feet of water per year, or about 13 percent of the average annual precipitation over the mountains, is calculated to leave the mountain block and enter the basin as subsurface recharge from the drainage basins of the Rio Nambé, Rio en Medio, Tesuque Creek, Little Tesuque Creek, and Santa Fe River. So there appears to be sufficient recharge of the subsurface waters to sustain future demands for non-pueblo members which begs the questions why is a county's portion of a regional water system needed?

800 people will not have the capability to connect to regional water system + 800 objectors indicate that about 1,600 well owners will most likely not connect to a regional water system. This leaves about 900 well owners that might consider connecting to a regional water system.

With 90% of the potential customers residing in Santa Fe County Commissioner District One, this is clearly not a county wide regional water system so it is quite possible the all County taxpayers will need to finance the operation of the County's portion. If one was to assume an use of .5 acre foot of water for a year, their average bill may be as high as \$280.00 a month.

Finally, the Aamodt Settlement decree allocated 80% people about 20% of the water rights.



A Simple Question To Answer

Why appropriate State funds to a county regional water system that will provide water to properties that can not be developed or sold?