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## INDIAN PUEBLO

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OFFICE OF GOVERNOR

August 10, 2018

Lucia F. Sanchez  
Water Planning Program Manager  
New Mexico Interstate Stream Commission  
407 Galisteo Street  
Santa Fe, NM 87504

### Re: **Santa Clara Pueblo's Comments on the Draft 2018 New Mexico State Water Plan**

Dear Ms. Sanchez,

Santa Clara Pueblo submits the following comments on the draft 2018 New Mexico State Water Plan ("Draft Plan").

#### I. General Comments

A. The State of New Mexico ("State") should not be seeking comments on the Draft Plan from the Pueblos and Tribes as if they were the same status as any other stakeholder. The State has a government-to-government relationship with the Pueblos and Tribes. Therefore, it would be appropriate to conduct government-to-government consultation on the Draft Plan before finalizing it.

B. One of the items that requires direct government-to-government consultation with the Pueblos and Tribes is a review of the various charts in the Policies Report of the Draft Plan showing what State, Federal, and Tribal resources are available to address various policy matters. It appears those charts do not include many Tribally-relevant statutes or programs. For example, in Figure 4, discussing resources and statutes addressing watershed management, there are a few federal statutes and programs that are relevant and specific to Tribes that are not included, such as the Tribal Forest Protection Act of 2004 and the Reserve Treaty Rights Land program of the Bureau of Indian Affairs. Another example is Figure 7 addressing water quality. There, it would be good to list all of the Tribes that have water quality standards.

C. Another item that should be addressed through direct government-to-government consultation is how to better weave in references and acknowledgement into the Draft Plan of the

vital role water plays in the culture and traditions of the Pueblos and Tribes and the importance of factoring that into planning decisions. We point out one such place where Tribal cultural needs could be included in the Draft Plan in our comments below but it should not be deemed an exclusive reference. The spiritual importance of water ties into everything we do even though outsiders may view what we are doing simply as irrigation or work to benefit the ecosystem. Adding more acknowledgement of the preservation of cultural values throughout the State water plan is in keeping with the directives of the State water planning statute, NMSA 1978 § 72-14-3.1, that the State water plan should be a strategic management tool to protect the diverse customs and culture within the State.

D. We were disappointed that the Draft Plan, unlike the 2003 State water plan, does not contain any separate section acknowledging how the State will work with the Pueblos and Tribes and emphasizing the importance of, and respect for, the government-to-government relationship. This is another topic that should be addressed in government-to-government consultation.

## II. Part I of the Draft Plan - Policies Report

A. The introduction section of the Policies Report should state upfront that, in accordance with the directives of NMSA 1978 § 72-14-3.1, nothing in the State water plan shall be construed to determine, abridge, or affect the water rights of Indian nations, Tribes, or Pueblos. The first mention appears to be on page 41 of the Policies Report and it needs to be stated upfront in the document too.

B. Page 12, discussion of data collection and monitoring: It is important to include an acknowledgement in this section that the State will need to work through sensitive issues about data collection with those Pueblos that do not yet have adjudicated water rights and that the State is mindful of those sensitivities. This needs to be incorporated into the goals and strategies and is another place where it is important to acknowledge that in accordance with NMSA 1978 § 72-14-3.1, these data processes cannot limit or otherwise adversely affect the water rights of the Pueblos.

## III. Part II of the Draft Plan - Technical Report

A. Page 3, overview discussion: There is mention in the first paragraph of interstate compacts and of the Federal government's obligations to assist where endangered species or "other federal interests" are involved. It would be helpful to add that those "federal interests" include fulfillment of the Federal government's trust responsibility to Tribes and that there are disclaimer clauses in some of the interstate compacts (for instance, the Rio Grande Compact) that clarify that nothing in the compact can affect the obligations of the Federal government to the Tribes or impair the rights of the Tribes. In addition, in the second paragraph of this overview, where there is discussion of various reasons why it is difficult to predict demand for water relative to supply, it may be useful to add that one such reason is the fact that not all water rights in the State are adjudicated yet.

B. Page 30, discussion of instream flow: In this paragraph discussing instream flow, there is acknowledgement of the importance of preserving water for ecosystem, habitat, and tourism purposes. There also needs to be acknowledgement here of the importance of preserving instream flows for cultural and traditional purposes of the Pueblos. (This is one example of our point in Section I.C above.)

C. Page 56, discussion of vulnerability of forests to catastrophic wildfire as a result of climate change: In the discussion of the Las Conchas Fire of 2011, it should be noted that over 16,000 acres burned at Santa Clara Pueblo and that the post-fire impacts led to the issuance of five Presidential disaster declarations at the Pueblo. Moreover, the increase in wildfires has resulted in destroying 80% of the Pueblo's forest lands since 1998 to the present.

IV. Part III of the Draft Plan - Legal Landmarks Report

A. Page 4, Section 4 discussing interstate compacts: A reference and explanation of Article XVI of the Rio Grande Compact needs to be added to this section. Article XVI clarifies that nothing in the compact can affect the obligations of the Federal government to the Tribes or impair the rights of the Tribes.

Santa Clara Pueblo appreciates the hard work that went into developing the Draft Plan. We hope these initial comments are helpful and look forward to government-to-government consultation on the items mentioned above prior to the State finalizing the Draft Plan.

Sincerely,



J. Michael Chavarria  
Governor

*cc via e-mail only:*

Santa Clara Pueblo Tribal Council Officers and Members  
Mel Tafoya, Santa Clara Pueblo Tribal Administrator  
Ben Chavarria, Director, Santa Clara Pueblo Office of Rights Protection and THPO  
Jessica Aberly, Esq.