

**United States House of Representatives  
Committee on Ways and Means  
Hearing on Economic Recovery, Job Creation and Investment in America  
Written Statement of  
Levi Pesata, President of the Jicarilla Apache Nation  
Dulce, New Mexico  
November 12, 2008**

**INTRODUCTION**

On behalf of the Jicarilla Apache Nation in New Mexico, I would like to thank you for convening this hearing to gather testimony on economic recovery and more specifically about how targeted funding for infrastructure projects across the country can drive job creation. The Jicarilla Apache Nation ("Nation") is a federally recognized Indian Tribe, and our Reservation, which consists of approximately 1 million acres, is located in Northern New Mexico. We have over 4,000 members and 85 percent of the population lives on our Reservation in the town of Dulce, which serves as our tribal headquarters. We understand Congress' desire to quickly provide state and local governments with an infusion of funds for infrastructure projects, and we respectfully request that you work to ensure that Native American Tribal governments are also considered as potential recipients of funding through the proposed second economic stimulus. Like state and local governments, Tribal governments provide essential governmental services to our citizens and neighbors and are similarly in dire need of basic infrastructure development.

For our part, during the last nine years we have been working to address the failing public drinking water and wastewater systems, which were constructed, owned, operated and managed by the federal government, on our Reservation. We worked with Congress to authorize a project to repair and replace the dilapidated and failing federal infrastructure and since that time we have committed significant additional funds and resources to the project.

We worked tirelessly to implement the statutory directive placed on the Secretary of the Interior to comply with the law and construct our project. Unfortunately, although Congress authorized our water system infrastructure project and President Bush signed it into law in December of 2002 (P.L. 107-331), the Bush Administration has repeatedly failed to include any funding for our project in the Administration's annual budget to Congress. We also understand our project is the only one that acknowledges and mandates corrective action for the federal government's liability in establishing and creating a deficient and unsafe public drinking water system serving an Indian reservation population.

Through the leadership and commitment of our New Mexico Congressional delegation we have received almost \$2 million appropriations funding for the effort, however a much larger infusion of funds is needed. The current situation requires action now as it has forced the Nation to put other construction projects on hold due to lack of infrastructure. In addition to fully meeting our statutory project share (approx. \$15 million), we have invested millions of more additional dollars into repairing and replacing the system, but we have reached our debt capacity. The Nation is prepared to immediately utilize funding to continue our work on the water system so

that we can ensure a safe and reliable water supply for our people. In addition, we expect that funding for this infrastructure project will provide between 30-50 jobs immediately in our community which is significant in the extreme rural and depressed region where we reside. The long-term effect of investing in this project will provide greater employment opportunities to the approximately 2,300 tribal members ready for work, as more construction and development opportunities will move forward once the water infrastructure is in-place.

### **BACKGROUND**

The dilapidated condition of the current public water system and waste water infrastructure on the Jicarilla Apache Reservation stems from generations of neglect by the Bureau of Indian Affairs ("BIA"), an agency of the U.S. Department of the Interior, which, as creator, owner and operator of the system, did not properly design, plan for, manage, repair and upgrade portions of the system over the last 90 years. The system diverts water from the Navajo River – a pristine water source, and its initial structures served the original BIA facilities on the Reservation in the early part of the 1900's. As the community of Dulce became the center of activity, members began moving there from other areas of the Reservation. In response to the growth, the BIA expanded the water line to allow members to access the water from common areas. As the area grew with housing and other facilities, water lines were extended, on an ad hoc basis, with no planning or recording. By the 1990's the community's system had every type of water piping, including clay, asbestos lined, other metals, as even some wood piping has been unearthed.

In October 1998, the system completely collapsed at the river and left the Nation without water for a week. The home of one of our elders burned down, with no water to put out the fire. The National Guard brought in bottled water and portable restrooms. The Nation funded emergency efforts to restore water delivery and received no funding from the BIA. In 2006, the wastewater system failed and caused a backup in the Jicarilla Apache Public Library forcing it to close for a long period of time. Other buildings and homes were similarly condemned due to these dire conditions.

The Federal Government's neglect and failure to manage and maintain its public water system serving our people has caused many dire health threats and circumstances and economic hardship including: degraded water quality in the lines, obsolete and non-compliant sewage lagoon ponds which were operating without properly permits because the ponds did not meet the federal standards, pollution from unlined sewage ponds spilling into the community and into a nearby arroyo which fed back into the Navajo River towards downstream users and stymied economic and housing development opportunities. The most disturbing circumstance, however, is that a large number of tribal members are experiencing serious intestinal and other internal diseases and more community members have been diagnosed and are dying from stomach and other forms of cancer, many documented cases of those living on and served by the main and oldest stem of the water system .

### **STATUTORY PROJECT AUTHORIZATION**

A combination of the water outage, delayed housing and economic develop opportunities and the dire health related circumstances led the Nation's leaders to Washington D.C. to request

assistance repairing the federal government's broken system. Our first step was to approach the owner and operator of the system, the BIA headquarters in the U.S. Department of the Interior in Washington. They told us they had no funds to address the problem. The Nation sought help from other federal agencies, who were sympathetic but generally unable to assist because the BIA owned and operated the system at the time. They also informed that the enormity of the problems with the system required a significant investment of resources that they would not be able to accommodate.

Working with our Congressional delegation from New Mexico and others sympathetic to our case, we developed and pursued a legislative route to authorize a project specifically to repair the system. In 2000, Congress passed a law which directed the Department of the Interior, through the Bureau of Reclamation ("BOR"), to conduct a feasibility study on upgrading the system. *See Public Law 106-243*. The Nation worked directly with BOR on conducting the study which was completed in September of 2002.

The study concluded that \$45 million would be needed to replace the existing water delivery and wastewater infrastructure. The report acknowledged the Nation's efforts in contributing \$15 million to improve portions of the system including: replacement of the diversion structures and pipeline at the river and up to the water treatment plant; building a new water treatment plant and expanding its capacity; repairing and replacing old water towers; and replacement of infrastructure on the expansion Mundo Ranch property.

Following the completed report, our New Mexico Congressional delegation introduced legislation to direct the Secretary of the Interior to repair and replace the infrastructure based on the recommendations in the feasibility report; the legislation also authorized the Department to expend funding to undertake this project.

On December 13, 2002, President Bush signed into law the Jicarilla Apache Reservation Rural Water System Act, **Public Law 107-331, Title VIII**, which directs the Secretary of the Interior to proceed with a project to replace the defunct infrastructure, as outlined and recommended in the feasibility report, and which authorizes the appropriation of funds (\$45 million) for our project. There are no sunset provisions in the law and its construction mandate is specifically not subject to the availability of appropriations.

### **INADEQUATE FEDERAL FUNDING & FAILURE TO IMPLEMENT THE LAW**

Since Congress authorized our project and mandated the Secretary of the Interior to commence construction of the project nearly six years ago, the Nation has worked tirelessly to secure funding for the development of our project through the Bureau of Reclamation's account in the Energy and Water Development Appropriations bill and through the annual budget process. In spite of our diligence, neither Congress nor the Administration provided any funding for our project in the Fiscal Years ("FY") 2003, 2004 and 2005 appropriations cycles. Finally, in FY 2006, Congress provided \$250,000 for our project in the Energy and Water Development Appropriations bill. In total, since Congress authorized our project which was signed into law nearly six years ago, the Nation has received less than \$2 million for our project. Currently,

Congress has included \$3 million in the House FY 2009 Energy and Water appropriations bill and \$1 million in the Senate FY 2009 Energy and Water appropriations bill, though it remains unclear the fate of the remaining un-enacted appropriations bills. While we are very grateful for these funds in a tough fiscal environment, there is an overwhelming need for Congress to provide a greater infusion of funds for this project.

The Administration has failed to include funding for our fully authorized project in their annual budget request to Congress. We have regularly met with the Office of Management and Budget, the Assistant Secretary for Water and Science and the BOR Commissioner urging them to implement the law and take action to help us address this serious public health crisis. Sadly, our pleas have fallen on the deaf ears of the Bush Administration.

### **"READY-TO-GO" PROJECT & IMPACT OF INADEQUATE INVESTMENT**

The Nation is ready to move forward on repairing and replacing existing water lines in the town of Dulce and also completing water and sewer line extensions to new housing projects. The Nation's rural water infrastructure project meets the criteria set forth by the House Transportation and Infrastructure Committee's memorandum ("Memorandum") outlining "ready-to-go" projects.

More specifically, the Nation's project mirrors an example of a project located in the state of New York, the "Village of Cuba, New York" wastewater treatment system. The Memorandum states that the Village of Cuba project "is served by a sanitary sewer collection system constructed in the 1920's that utilizes mainly vitrified clay tile piping." Similarly, the Nation's water system was also constructed in the early 1900's and currently consists of clay and wood pipes. As a result, the Nation suffers constant line breaks from the clay pipes, which have no flexibility and are more prone to root intrusions and structural cracks.

The Memorandum further states that "most wastewater treatment utilities have small capital-related projects on the shelf that could be carried [out] very quickly," thereby citing the cost of the Village of Cuba as \$2.1 million. The Nation's economic stimulus needs for our rural water infrastructure project falls between the cost range provided by the Memorandum (wastewater projects ranging from \$2.1 million to \$103 million).

Furthermore, Village of Cuba example details that the median household income is well below the New York State median household income, therefore, further justifying Congressional investment in the project. Indian Country comprises some of the most depressed and remote areas of the country. The Nation's location in the rural and remote Rio Arriba County limits economic development tied to the major metropolitan areas of the state of New Mexico and affects the Nation's overall economy. Specifically, according to the 2000 Census, the Nation's unemployment rate was 14.2 percent and the per capita income was \$10,136. However, in comparison to the State of New Mexico 2000 Census data, the unemployment rate was 5 percent (the U.S. average was 4 percent) and the per capita income in 2000 was \$17,261.

In addition, the BIA 2005 Labor Force Report ("Report"), the most recent report available, details that the Nation's unemployment rate is 52 percent. According to the Bureau of Labor and Statistics, the State of New Mexico's unemployment rate for 2005 was 5.2 percent. Notably, the

Nation's unemployment rate is 10 times higher than the state's average. Also, of the Nation's tribal members, approximately 2,310 individuals are available for work and approximately only 1,112 individuals are employed. This data illustrates the overwhelming need for employment opportunities for the Nation's tribal members and reflects the critical need for Congressional investment in the Nation's rural water infrastructure system.

### NATION'S HOUSING AND ECONOMIC DEVELOPMENT NEEDS

Similar to the current crisis state and local governments are experiencing with stalled infrastructure and development projects, the Nation also has authorized economic development opportunities for its community and tribal members and is currently foregoing further progress until the proper infrastructure and investment are established. For example, the Jicarilla Apache Utility Authority ("JAUA") is developing the Mundo Ranch property to accommodate multiple facilities including institutional, single family housing, and small commercial properties. To date, the Nation has authorized the expenditure of \$7.5 million in funds towards the development of the Mundo Ranch.

The first phase of the single family housing plan includes \$3.5 million expended by the Nation through JAUA to construct utilities, roads, and site preparations for 46 housing units. To date, 35 units have been completed and are currently rented at \$300 per month, under a 15-year-rent-to-own program. However, the Nation still has a current waiting list of over 400 families for housing. To provide additional housing resources for its tribal members, the Nation has acquired post-Katrina Federal Emergency Management Agency ("FEMA") mobile homes that have been allotted to tribes. As the Nation continues to receive the mobile home units, it is vital for the Nation to set-up and establish the proper infrastructure to serve the newly-acquired mobile homes for families to immediately inhabit them.

The Nation is an oil and gas producing tribe. Therefore, safe and reliable roadways must be constructed and maintained to access the oil and gas resources on the Reservation. The Nation contracts their roads program from the BIA under P.L. 93-638 and employs tribal members for the roadway work. The Nation maintains about 700 miles of BIA and tribal roadways. However, there are still dirt streets in our residential areas in Dulce and across the Reservation, and the Nation plans to extend the bike and pedestrian path to a new housing development and new elementary school. It is difficult for the Nation to proceed with these initiatives when the water infrastructure is incomplete and non-existent in certain areas on the Reservation.

The Nation's rural water infrastructure system is a vital link in providing adequate services to our tribal members and communities. Without a completely updated and properly-repaired system, the Nation is unable to move forward on pending projects. Therefore, the Nation cannot provide employment opportunities in roadwork for our tribal members; maintain, expand, and upgrade our roadways for community and economic development use; and further construct and make available housing units to our tribal members. It is our responsibility as a tribal government to provide the necessary services for our tribal members, and the Nation has continuously and consistently made the investment in our community to the extent possible. However, the Nation is in-need of assistance in this current crisis from Congress, just as state and local governments are requesting.

## CONCLUSION

Since the legislation's enactment in December 2002, the Nation has been forced to borrow millions of additional dollars on the project because of the urgency and crisis facing our people. But, we have reached our debt capacity. While progress has been made on the project, the Nation has been forced to put a number of important projects on hold due to the lack of infrastructure and funding shortfalls. For example, there is a tremendous need for new housing on the Reservation. In fact, we currently have over 400 people on a waiting list for homes. We cannot build these new homes until the infrastructure is available to support them.

It is time for the federal government to invest in Indian Country and meet its statutory and moral obligations owed to the Nation. The United States has a trust responsibility to the Nation, our citizens and our trust resources. Notably, ours is the only project Congress has authorized which is fully encompassed in an Indian reservation and which has 100 percent Indian project beneficiaries. We hope that you will work to ensure that Native American Tribal governments are included as governmental recipients of funds, along with state and local governments, for infrastructure work in the second economic stimulus.

Again, thank you for holding this very important hearing and for the opportunity to express our views and concerns as you move forward with the economic stimulus legislation.