

# SANTA CLARA

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# INDIAN PUEBLO

ESPANOLA, NEW MEXICO  
87532

OFFICE OF GOVERNOR

September 8, 2006

Richard E. Greene (6RA)  
Regional Administrator  
United States Environmental Protection Agency  
1445 Ross Ave.  
Dallas, TX 75202-2733



Re: **Santa Clara Pueblo's Comments on the Proposed Sole Source Aquifer Designation for the Espanola Basin Aquifer System**

Dear Administrator Greene:

Santa Clara Pueblo hereby provides the following comments regarding the pending request before the Environmental Protection Agency ("EPA") made by Citizens for Environmental Safeguards ("CES") to designate the Espanola Basin Aquifer System as a Sole Source Aquifer under section 1424(e) of the Safe Drinking Water Act of 1974, Pub. L. 93-523 ("SDWA"). The area requested by CES for such designation covers some 3,000 square miles and includes the lands and waters of Santa Clara Pueblo.

In 2000, CES sought to designate only the La Cienega Valley area aquifer as a Sole Source Aquifer in accordance with the SDWA. The EPA evaluated the petition and in 2002 commented that, although the proposed boundaries did not "strictly distinguish a part of the aquifer which is hydrogeologically separated on the basis of limits of flow," the more limited La Cienega Valley area aquifer was a viable separate management unit for ground water. See EPA Region 6, *Sole Source Aquifer Petition Support Document: La Cienega Valley Area Aquifer* (May 20, 2002) at 11. The EPA rejected the petition, however, because CES failed to prove that 50% of the drinking water for the proposed area was supplied by the aquifer. *Id.* at 17.

Even though EPA agreed that the smaller La Cienega Valley area aquifer could be separately designated as a Sole Source Aquifer, in an attempt to meet the 50% criterion rejected in their first petition, CES has expanded the area of coverage for which they seek a Sole Source Aquifer

designation to include a much larger area, including Santa Clara Pueblo. This contradicts CES's earlier petition in which CES appears to have avowed that it was inappropriate to include the Pueblos north of Santa Fe. *Id.* at 9. The Pueblo agrees that, as a matter of Tribal sovereignty, it is inappropriate to include Santa Clara Pueblo in such a designation.

The imposition upon Santa Clara Pueblo is especially evident by the inclusion in the CES petition of Santa Clara Creek canyon, which, for all intents and purposes when discussing any potential future groundwater development, is solely owned by Santa Clara Pueblo. By including Santa Clara Creek canyon in the Sole Source Aquifer boundaries, is the assumption that the Pueblo would, somehow, agree to undertake a large-scale project that would actually contaminate one of the Pueblo's own sources of drinking water so as to, somehow, then contaminate the groundwater in La Cienega?

Let this be perfectly clear: Santa Clara Pueblo has no desire to undertake any project that would contaminate our own drinking water. The people of Santa Clara have been here since time immemorial, long before the United States even existed, and will remain on our homeland in perpetuity. The EPA is already aware, or should be aware, of our commitment to environmental stewardship through our relationship with the agency in our own administration of the Pueblo of Santa Clara's Water Quality Code (enacted Feb. 13, 1995, updated Nov. 5, 2002; approved April 7, 2006 pending completion of EPA Endangered Species Act consultations with the U.S. Fish & Wildlife Service). Santa Clara's surface water quality standards are in some instances more stringent than the standards administered by the State of New Mexico for non-Indian communities.

While the Pueblo certainly is concerned about controlling and preventing groundwater contamination which could affect our homeland and appreciate that CES shares that concern, it appears that including Santa Clara within the boundaries of the petitioned area for Sole Source Aquifer designation would disproportionately add another layer of federal regulation onto the Pueblo. Not only is this offensive and burdensome to the Pueblo, it also contradicts President Bush's policy that all federal agencies, including the EPA, respect to the greatest extent possible the rights of self-government and self-determination due all Tribal governments. Indeed, EPA's own policies state that:

[I]n keeping with the principle of Indian self-government, the [EPA] will view Tribal Governments as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace.

*EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 8, 1984; reaffirmed Sept. 17, 2004) at § 2.

By definition, Sole Source Aquifer designation under the SDWA only allows the EPA to review projects for groundwater contamination which receive federal financial assistance. Alas, notwithstanding our continued efforts to expand our economic self-sufficiency, as a practical matter, in part because of the trust responsibility owed to Santa Clara by the federal government, this federal funding nexus occurs more often for the Pueblo than it does for our non-Indian

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SEP 11

neighbors. Federal grants are rarely needed for individuals to install a septic system, which through misuse or improper construction is a primary source of groundwater contamination in the region.

While the Pueblo supports the broader goals underlying CES' petition to designate the entire Espanola Basin Aquifer System as a Sole Source Aquifer to be regulated under the SDWA and is concerned as well about controlling serious threats to the quality of the area groundwater, it is inappropriate and disrespectful of Santa Clara Pueblo's inherent sovereign authority to include Santa Clara Pueblo in that designation. The Pueblo believes this is a matter that should be discussed more fully, both at the technical staff level and at the government-to-government level, between EPA and Santa Clara Pueblo and resolved to our mutual satisfaction prior to EPA making a designation decision.

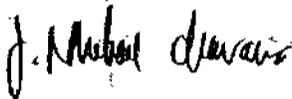
The public comment period should be extended if it is deemed necessary to ensure that true government-to-government consultation occurs.

At a minimum, clarifying roles and responsibilities for this particular situation through a memorandum of understanding between the agency and the Pueblo would help in ensuring EPA honors its Indian policy commitments.

In addition, and prior to meeting with the Pueblo, we ask EPA to review closely Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 6, 2000) and to be prepared to address with the Pueblo two options presented in that executive order: (1) granting a waiver for Santa Clara; or (2) ensuring no compliance costs are disproportionately imposed upon Santa Clara, if the Pueblo is included in such a designation.

Please consider this letter to be a request for a waiver of Santa Clara lands in accordance with Executive Order 13175 from CES's proposed Sole Source Aquifer designation. The Pueblo will need to know as soon as possible if our other requests for consultation discussed herein will be honored. Thank you.

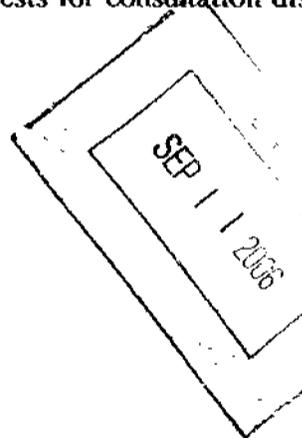
Sincerely,



**J. Michael Chavarria**  
Governor

xc:

Larry D. Wright, Chief, Source Water Protection Branch, EPA-Region 6 (6WQ-S)  
Members of the Santa Clara Tribal Council  
Joseph M. Chavarria  
Dino Chavarria  
Jessica Aberly





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

001 23 2006

The Honorable J. Michael Chavarria  
Governor  
Santa Clara Indian Pueblo  
Española, NM 87532

Dear Governor Chavarria:

Thank you for your letter of September 8, 2006, regarding the proposed Espanola Basin sole source aquifer designation. Throughout our review of the petition to designate the Espanola Basin Aquifer System as a sole source aquifer, we have sought input from all tribal entities in the proposed designation area. We continue to welcome your views and would be happy to discuss any concerns with you or your staff. For background purposes, this letter provides our initial response to the concerns raised in your letter.

Our potential designation of a sole source aquifer protection area that includes Santa Clara Pueblo does not indicate any concern that the Pueblo would knowingly contaminate the Espanola Basin Aquifer System. Rather, such a designation would further protect an especially important ground water resource from harm inadvertently caused by federally assisted projects. Not all federal agencies possess sufficient hydrologic expertise to evaluate potential ground water impacts from projects they financially assist. Therefore, EPA's review of federally assisted projects in sole source aquifer areas provides additional protection of ground water resources.

Achieving the potential public health benefits that accrue from EPA review does not add another layer of federal regulation to federal assistance programs. EPA's review of proposals for federal financial assistance in sole source aquifer areas occurs as part of interagency review under the National Environmental Policy Act of 1969. Unless a project poses a risk of contamination to a sole source aquifer, there would be no independent delay in the award of federal financial assistance.

Referencing Executive Order 13175, you request a waiver from regulatory requirements that would be imposed by the proposed designation, or assurance that no compliance costs will be imposed on the Pueblo. If adopted, the proposed designation would impose no regulatory requirements or direct compliance costs on the Pueblo.

The only potential cost the Pueblo might incur would relate to its local cost share for a federally assisted project. If the overall cost of such a project increases due to project changes

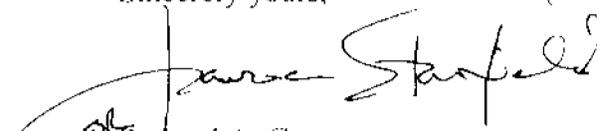
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made to avoid contamination of the Espanola Basin Aquifer System, a corresponding increase in the local share would occur. The sole purpose of any related cost increase would be to protect the health of the Pueblo's residents and others relying on the aquifer for drinking water.

If you would like to discuss this matter personally, we could talk about it at the EPA Tribal Summit on October 24, 2006. Mark Allen in our Tribal Affairs Office is also available to discuss it with your staff at any time. Mark's phone number is (214) 665-2719.

Sincerely yours,



for Richard A. Greene  
Regional Administrator