

Statement of Roland E. Johnson
Governor, Pueblo of Laguna
Laguna, New Mexico
Before the United States Senate Committee on Indian Affairs
July 30, 2003

Mr. Chairman, Mr. Vice-Chairman, and members of the Committee, my name is Roland E. Johnson, Governor of the Pueblo of Laguna. I am here today to express our tribal government's support for Senate Bill 578, which amends the Homeland Security Act of 2002, to ensure that the Department of Homeland Security consults, involves, coordinates with, and includes tribal governments in carrying out the mission of the Department, that tribal governments participate fully in the protection of the homeland of the United States which includes tribal homelands, and that these purposes are carried out in a direct relationship with tribal governments and as distinguished from counties, cities and other localities, and not as a subdivision of any state.

I am also here to speak to you about the importance of the Pueblo of Laguna's participation in securing the people, resources and infrastructures in our reservation homeland and to discuss three things that the Pueblo believes is important and necessary to our participation in the defense of the larger homeland. First, to be capable partners in ensuring comprehensive national domestic security, the Pueblo of Laguna must be well prepared to handle emergency situations. Second, it must be recognized as a legitimate governmental authority responsible for reservation health, safety and welfare. And, third, it must have the resources to ensure that all people in the Laguna Pueblo homeland receive timely and expert protection and assistance.

Laguna Pueblo is an Isolated Community at the Crossroads of Vulnerability

Laguna Pueblo is not like New York City or Washington, D.C. It is not located along the borders with Canada or Mexico. Facilities at Laguna do not include an international airport or a nuclear power plant. Nevertheless, Laguna Pueblo is at the crossroads of vulnerability because it is located along the major east-west Interstate 40 corridor, where a major accident could potentially cripple the rest of the Nation.

The Pueblo of Laguna is located in west-central New Mexico and has a sparsely populated area along a basin of mesas and plateaus. The 560,000 acres of reservation lands are situated in four counties: Cibola, Valencia, Bernalillo and Sandoval. The Pueblo's six villages are located approximately forty-five miles west of Albuquerque, New Mexico and 25 miles east of Grants, New Mexico. The tribe has a membership of nearly 8,000 enrolled members, making it one of the largest Pueblos in New Mexico. Two major interstate transportation routes cross the reservation boundaries: Interstate Highway 40 and the Burlington Northern and Santa Fe Railroad lines, which travel approximately forty miles through the reservation. In addition, both El Paso Natural Gas Company and Transwestern Pipeline Company have high-pressure interstate gas lines buried below ground traversing the reservation. All of these transportation routes and pipelines are near the homes of reservation residents and converge within a one-mile radius of each other at a point where Laguna Industries, Inc., a large manufacturing facility, is located. This tribal corporation employs many tribal members and others and generates over \$30 million dollars worth of business annually. The primary customer for this facility is the U.S. Department of Defense. City and county emergency response providers are miles away from this area. Therefore, the entities who must be prepared to quickly respond to emergencies in this area are the Laguna police and fire departments,

Laguna's medical and ambulance services team, Laguna's hazardous materials response team and many other tribal government employees.

I want also to point out that Laguna shares its vulnerabilities with its neighbors throughout the State of New Mexico, including many defense and energy-related federal facilities in the state such as the Waste Isolation Pilot Program (WIPP), Sandia National Laboratories, Kirtland Air Force Base, the White Sands Missile Range, and the Los Alamos National Laboratory. While other communities are closer to these facilities than Laguna, the destruction and incapacitation of any of these physical assets would present extensive harm to all the people of New Mexico and their surrounding infrastructure.

Preparedness

In May of this year, 13 cars of a 49-car freight train derailed at Laguna Pueblo and forced an evacuation of a sizable area on Laguna Pueblo land. The wreck of the westbound Burlington Northern and Santa Fe Railway Company train was at first reported to be carrying toluene (tol-yoo-en), a clear liquid used in making paint and paint thinners as well as other products. Although no one was seriously injured in the accident, some 500 people had to be evacuated from the center of New Laguna, a village where the train derailed and where approximately 80 family homes, schools and tribal government offices are situated. Thereafter, the train tracks were closed in both directions for 24 hours. East bound trains were backed up and a west bound Amtrak train had to be stopped in Albuquerque. The train's 216 passengers had to be provided with overnight shelter and alternate transportation. Both of Laguna's fire trucks responded with full crews. So did all four of its police department cruisers, with almost all of the department's law enforcement personnel. Laguna's two ambulances were deployed and medical care workers from the local

hospital responded, as well as Laguna's hazardous materials response team. Emergency equipment and personnel from adjacent, non-Indian communities also responded.

Fortunately, a month before the derailment, the Laguna Pueblo had engaged in a hazardous materials spill exercise based on a mock train derailment. This exercise helped to provide a better organized response to the real derailment because the Pueblo understood its deficiencies, but the lessons learned in both situations are quite revealing. First, when nearly all of our responses providers and systems were deployed at New Laguna during the real derailment, our five other communities were left without protection for other emergencies for a lengthy period of time. We learned that we needed to establish clear command systems so that workers at the scene had decision-making leadership. We found that we had insufficient facilities for use as a central command post. The space that was available for this purpose lacked adequate phone lines and other means of communicating with those involved at the site and with the reservation community so that we could inform them about possible dangers and to provide instructions to secure their safety. Since our communication equipment was deficient, private cell phones had to be used to coordinate the response activities. My point here is that approximately 85 trains go through the Laguna Pueblo each day and the potential for disasters is ever present, because they do carry hazardous materials periodically. We need adequate resources to address those disasters when they do occur.

We hope that through the consultation, involvement, coordination and inclusion of Indian tribes, S.578 will facilitate providing information and financial assistance that should be made directly available to tribal governments in matters concerning the nature of terrorism; how to assess the vulnerabilities of key resources and critical infrastructure; how to be better prepared to respond to terrorist attacks, major disasters and other emergencies; how to coordinate and collaborate well with the federal state and local

governments in our state; and to receive financial and other assistance to ensure the tribes are engaging in adequate planning, have adequate training and equipment, and have an improved ability to coordinate and distribute warnings and other public information.

The Pueblo of Laguna Needs to be Acknowledged as the Primary Authority on the Reservation for Directing Homeland Defense, Response and Assistance

The second purpose of S. 578 is to recognize tribal governments as "participants" in securing the United States homeland to prevent, detect, address and respond to domestic terrorism. Terrorism consists of activities dangerous to human life that violate criminal laws, are intended to intimidate or coerce a civilian population or their governments, or are intended to affect the conduct of a government by mass destruction, assassination, or kidnapping.¹ Defending the national and tribal homeland also includes protecting the interdependent network of critical physical and information infrastructures that all governments, businesses, and communities have come to rely on including the telecommunications, energy, financial services, water and transportation sectors. Tribal government participation in protecting tribal homelands may therefore involve terrorism prevention, detection, response, and post-attack community stabilization activities. Tribal law enforcement could be involved to the extent of conducting investigations, inspections, patrols, surveillance, searches, and arrests. Tribal medical, emergency, and social services agencies may need to become involved in rescues, evacuations, medical treatment, fire suppression, crisis response, and emergency relief. Tribal councils or other tribal governing entities must make sure that the governmental authorities are established to guide all of this activity and that the activities are conducted in a manner that

¹Public Law 107-56 (October 26, 2001) 115 Stat 376, Section 802(a)(1)(4). The U.S. Patriot Act.

is cognizant of human rights and dignity. Tribal governments also are the entities with the authority to enter into intergovernmental agreements, best practices and other mechanisms to share and coordinate with the state and local governments. In that way, tribes can work with states and local governments together, to complete the web of federal, tribal, state and local government defense, protection and response infrastructure necessary for all citizens, where ever they are, to receive the care and services that are needed. Tribal involvement in the protection of the homelands will entail being able to receive direct funding from the federal government.

Determinations assigning jurisdiction between federal, state and tribal forums can be very complex and confusing. A clarification is needed when the defense and protection of people, places, infrastructure, systems and other property are at stake. Section 13 of S. 578 provides this clarification in the homeland security context by establishing that the applicable law is federal or tribal when tribal homelands are involved. By applying concurrently federal and tribal law, section 13 clarifies, in the context of homeland security, the confusing aspects of federal common law by making use of existing applicable law, which is already for the most part, federal and tribal law. In considering the limited purposes of the section 13 jurisdictional statement, it must be remembered that the essence of S. 578 and the Homeland Security Act is to:

- prevent and respond to terrorism;
- secure people, property and resources;
- secure borders, territorial waters, ports, terminals, waterways, and all transportation systems;

- ensure comprehensive preparedness for terrorist attacks, major disasters and other emergencies; and
- ensure coordination among the federal, tribal, state, and local governments. These same purposes in the context of tribal homelands do not deprive people of basic constitutional protections as is alleged by anti-tribal sovereignty groups.

Resources

The resources available through the Department of Homeland Security Department programs such as FEMA programs and Office of Domestic Preparedness programs will help tremendously to further the Pueblo of Laguna's protection and preparedness efforts, but we also know that there is a limit to federal funds. States, counties and cities have a tax base which provides the revenue-raising capacities that can supplement the cost of providing police, fire, medical, emergency and other services. However, Indian tribes are now being prevented from doing the same thing. For example, the Pueblo of Laguna has had a possessory interest tax in place for many years that helped us address the cost of providing essential governmental services. I mentioned earlier that our Pueblo responded to a railroad derailment with our full ability and resources. However, the same railroad that we assisted is now asserting that recent Supreme Court decisions, such as *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001), would allow them to not pay our tax. The railroad company asserts that *Strate* and *Atkinson* stand for the proposition that railroad rights-of-way are no longer taxable Indian trust lands and that the tribe has no important government interest that justifies a tax. We assert that this is unconscionable and wrong. It is ironic that Congress and federal agencies have long encouraged and advanced concepts of tribal governmental and economic self-determination but the judicial branch is

crippling the exercise of this self-determination by judicial fiat. It is also ironic, that every other government in this country is allowed to engage in the basic governmental function of raising revenues through taxation within their physical boundaries to provide the kind of services that we have been talking about, and yet, Indian tribes are being denied the same opportunity.

The Pueblo of Laguna would like this Committee to consider protecting the ability of Indian tribes to exercise full jurisdiction over all lands within their reservations as an additional means of assisting tribes in building their capacity to provide community services to protect the health, safety and welfare of reservation residents and visitors, and to ensure the protection of critical transportation and infrastructure systems and assets. The provision in S. 578 that treats tribal governments in a manner similar to states for the purposes of regulation and taxation to provide for the health, safety and welfare of reservation residents, visitors, businesses and other community assets, is a huge step in that direction. A provision that defines Indian country to include all fee lands and rights-of-way, no matter who owns them, within the exterior boundaries of Indian reservations would be another step in that direction. To address this matter, the Pueblo of Laguna suggests the following language be inserted into S. 578:

The term "Indian country," as used herein, means (a) all land, including all fee lands, within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including all rights-of-way running through the reservation, notwithstanding their ownership, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

This provision would greatly enhance the ability of the Pueblo of Laguna and other Indian tribes to tax all businesses that come to or through our reservations, as those businesses do benefit from the services that are provided by our governments.

Conclusion

In closing, Mr. Chairman and members of the Committee, thank you for listening to the issues and concerns of the Pueblo of Laguna. I urge you, on behalf of the Pueblo of Laguna, to address the three key ingredients necessary for effective tribal homeland protection: preparedness assistance; acknowledgment of Indian tribes as the primary authorities for directing tribal homeland defense, response and assistance; and providing Indian tribes with the revenue-raising capacity to carry out health, safety and welfare functions. Our people are concerned and feel particularly vulnerable, because, in spite of the great measures that our government is taking to ensure that Americans are prepared to care for themselves in the midst of these most extraordinary times, those measures have not been automatically extended to meet the needs of tribal homelands and residents on a government-to-government basis.

ATTACHMENTS:

Statement of Policy and Process, Governor Bill Richardson, State of New Mexico 01/17/03 State of New Mexico Legislature, First Session 2003, House Memorial 6 and Senate Memorial 18, Recognizing Tribal Self Governance, 2003.