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**TESTIMONY OF GOVERNOR WALTER DASHENO,
on behalf of THE PUEBLO OF SANTA CLARA,**

**presented to the
UNITED STATES SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES**

**Hearings on S. 3452,
THE VALLES CALDERA NATIONAL PRESERVE MANAGEMENT ACT**

July 1, 2010

Senator Bingaman, Senator Murkowski, members of the Committee, thank you for allowing me to appear before you to present these comments on S. 3452, the Valles Caldera National Preserve Management Act. I am Walter Dasheno, and I am the Governor of the Pueblo of Santa Clara, a federally recognized Indian Pueblo situated about 25 miles north of Santa Fe, New Mexico. I want to thank Senator Bingaman and Senator Tom Udall of New Mexico for having introduced S. 3452, and I appreciate the opportunity to be able to present the views of the Santa Clara Pueblo on this bill, as it addresses matters that are of the most profound importance to Santa Clara. Santa Clara Pueblo's lands actually include a portion of the former Baca Ranch, and our lands directly abut the Valles Caldera National Preserve. More importantly, the Pueblo's members have extensively used, occupied and managed large areas of the Pajarito Plateau and

the Valles Caldera for many centuries, since long before the white man came to this hemisphere, and we have deep and abiding ties to this land. It continues to be a source of materials for traditional uses and a place of worship for us, and even though we have lost the right we once had, to freely roam over the land and treat it as our own, we continue to feel a deep sense of stewardship for the land, and want to be sure that our experience and our ongoing cultural connections with the land are given due consideration in any decisions affecting the future of this extraordinary place.

Introduction: Santa Clara Supports S. 3452. I want to say at the onset that we generally support the bill, and we very much appreciate that Senators Bingaman and Udall have undertaken this initiative. As I will explain further, we are especially pleased to see that the bill includes language attempting to accommodate the very important traditional and cultural concerns of Santa Clara and the other Pueblo Indian tribes located near the Caldera, but we also have a number of concerns as to specific provisions of the bill that we do want to bring to the Committee's attention.

Santa Clara's Long Relationship With the Valles Caldera. As many of you may be aware, when Congress first passed the Valles Caldera Preservation Act, in the year 2000, pursuant to which the United States acquired most of the Baca Ranch, Santa Clara was extremely fortunate that Congress made provision in that Act for Santa Clara to reacquire the portion of the Baca Ranch that included the upper reaches of Santa Clara Canyon, an area that we have always referred to as *Popii Khanu*. This land is part of Santa Clara's heartland, and has been used and

occupied by the Pueblo since time immemorial. Our rights in that land, along with the rest of Santa Clara Canyon, were fully recognized by the Spanish territorial government in the 18th century, but after the United States acquired the New Mexico territory in 1848, American authorities essentially ignored our rights, and the original patent to the Baca Ranch was issued in clear disregard of those rights. Regaining full control over *Popii Khanu* in the year 2000 was a major accomplishment for Santa Clara.

Consequently, from its inception, we have been a close neighbor of the Preserve, and we have worked closely with the Valles Caldera Trust, which was created by the 2000 Act to oversee and manage the Preserve, and with the Forest Service, which currently has ultimate jurisdiction over the Preserve, to improve the Preserve's environment. As I will explain, moreover, we are directly affected in a variety of ways by actions concerning the management and operation of the Preserve, and it is therefore a matter of real concern to us that we are able to continue to maintain a close relationship with the Preserve's new managers, once this bill is enacted into law.

Recognition of Pueblo Cultural Concerns in Section 3(i). Our connection to the Valles Caldera Preserve is not limited to the area of *Popii Khanu*, nor is it merely a matter of natural resource management, although that is an important aspect of our concern, as I will explain. More importantly, Santa Clara, like several other Pueblos located near the Preserve, maintains a vital connection with numerous trails, sites, shrines and areas located throughout the Caldera, for the practice of our traditional religion through ceremonies, gathering of medicinal and ceremonial plants and other materials, traditional hunting rituals and in many other ways. These

sites are not artifacts of ancient civilizations, but rather are places of present-day worship, that have ongoing significance to and involvement in our religious practices, which remain a powerful binding force within our community. Indeed, the Valles Caldera contains a large number of sites that have traditional and religious significance not only to Santa Clara, but to other nearby Pueblos.

We are therefore very pleased with the language contained in Section 3(i) of the bill, which requires the Secretary of the Interior to ensure the protection of traditional cultural and religious sites in the Preserve and to provide access to such sites by tribal members for traditional cultural and customary uses, and provides for temporary closure of parts of the Preserve to protect the privacy of those traditional cultural and customary uses. The absence of any such language in the original Valles Caldera Protection Act was a glaring omission, and we welcome this belated recognition of the Caldera's traditional and cultural significance to the Pueblos. We look forward to working closely with Interior officials as they develop the management plan for the Caldera, pursuant to Section 3(b)(4) of the bill, to assure that these vitally important provisions of the law are fully and thoughtfully implemented in that plan, and that the plan fully carries out their intent, while maintaining appropriate respect for the necessary confidentiality of our traditional practices.

Educational Program Pursuant to Section 3(d) Should Incorporate Pueblo Cultural Issues. But we believe that the bill needs to go further in acknowledging the traditional and cultural importance of the Caldera to the Pueblo tribes that surround it. For example, Section

3(d) of the bill, referring to the science and education program that is anticipated to be carried out at the Preserve, makes only scant reference to the “cultural resources of the Preserve.” In fact, the relationship of the Caldera to the Native American cultures that surround it is as complex, profound and significant as is the geologic history that created the Caldera. While, of course, we, like other Pueblos, will always insist on maintaining the confidentiality and privacy of our traditional religious practices, much has already been published about Native American cultural affinity to the Caldera, and we believe that the legislation should make clear that this aspect of the Preserve—its existence as a vital place of worship for many Pueblo religious practitioners-- should be given prominent emphasis in any educational program designed by the Park Service for visitors to the Preserve. Indeed, since increased public visitation to the Preserve is an apparent goal of the bill, it becomes all the more important that visitors to this magnificent natural landmark be fully informed of its cultural and religious significance to the Pueblos located around it, not only to give them a more profound appreciation of the Preserve, but also to help assure that they will approach the land with an appropriate sensitivity to and respect for our traditional practices and the locations where we engage in them.

Santa Clara Opposes Caldera Rim Trail Concept in Section 3(k). For directly related reasons, we must say that we are seriously opposed to the proposal set forth in Section 3(k) of the bill, which contemplates studies leading to the establishment of a Caldera Rim Trail. While this provision appropriately attempts to accommodate Santa Clara’s concerns for the privacy of its traditional activities within its reservation lands, as I have stated above, the fact is that Santa Clara, like other Pueblos, has vitally important traditional sites located *throughout* the Preserve,

sites whose protection the Secretary is required to ensure under Section 3(i). We believe that the concept of a hiking trail around the rim of the Caldera is fundamentally incompatible with the Secretary's obligation to protect and assure our access to those sites. Such a trail would unavoidably pose a direct conflict with traditional sites and practices, and we would urge that that provision be deleted from the bill. If, despite our request, the Committee decides to retain this provision, we would urge that it include a requirement that in conducting these studies, the Secretaries will specifically consult with the various Pueblos with respect to their concerns about traditional and cultural shrines and other sites, and that they will pay special attention to the requirements of Section 3(I), including ensuring that any trail that results from these studies is routed in a manner so as to eliminate the risk of intrusion on any area identified in those consultations as having traditional cultural and religious importance to a Pueblo.

Ban on Development of Peaks is Important, With Exceptions. We believe that the bill appropriately places off-limits to development and motorized access the volcanic domes and other peaks within the Preserve, in Section 3(h), but we do note that in a few instances, Santa Clara must utilize roads that cross into Preserve lands on Cerro Toledo and other peaks on our boundary that are above 9,250 feet in order to obtain access to portions of *Popii Khanu* that are otherwise inaccessible. We believe that the exceptions set forth in Section 3(h)(3) assure that we will be able to continue to have that access, but we want to note that that is an important consideration to Santa Clara and we want to be sure that those exceptions will remain in the bill. Similarly, we wish to call attention to the importance of Section 3(g), which withdraws the Preserve lands from entry under any public land laws, mining laws and mineral leasing laws,

especially including geothermal leasing. It is critical that this land be permanently protected from any further efforts by private individuals and companies to exploit its natural resources for commercial gain.

Santa Clara's Critical Concerns Regarding Forestry Management. In addition to having very substantial ongoing traditional and cultural concerns as to the Preserve, Santa Clara also has a very strong and important interest in the management of the Preserve's forest resources, especially those located in the northeast quadrant of the Preserve, near Santa Clara lands. Santa Clara has put together a large, highly skilled and very active forestry department, that maintains an ongoing, proactive program of management of Santa Clara's forest lands--totaling nearly 45,000 acres--in order to preserve their health and their long-term productivity. We believe that our forestry management practices, which have been developed over the last ten years, are second to none in New Mexico, in terms of their effectiveness in reducing disease, promoting healthy diversity and minimizing the danger of catastrophic fire. We would be more than happy to show members of the Committee and their staffs and representatives of the National Forest Service and the National Park Service the results of our efforts. But we are painfully aware of the potential threat posed to our lands by the fact that federal land managers have not been able to apply the same level or intensity of management to the heavily forested federal lands adjacent to Santa Clara's reservation. Twice in the last twelve years, Santa Clara's forest lands have been devastated by catastrophic fires that began on adjacent federal lands, once in 1998 by the Oso Complex Fire, which burned about 3150 acres of our land on the north side of Santa Clara Canyon, and more importantly in 2000, by the Cerro

Grande Fire, which began as a controlled burn at Bandelier National Monument, but quickly spread through portions of the City of Los Alamos and burned 40,000 acres of highly overgrown Santa Fe National Forest lands before wiping out more than 7000 acres of Santa Clara forest. Since the Cerro Grande disaster, while doing our best to restore the burned areas, including the planting of approximately 1.7 million new seedlings, we have redoubled our efforts to see that our unburned forest lands are maintained in such a way that any fire that reaches them will be more manageable and less likely to result in the total destruction of the forest, through controlled burns, thinning projects, understory removal and other advanced forestry techniques.

I mention this to explain why we have a very acute interest in the management and condition of the forest lands in the northeast quadrant of the Preserve, adjacent to *Popii Khanu*. We already have a good track record with the Forest Service in working on projects on Preserve forest lands. We have been involved in several fire control and suppression and habitat restoration projects within the Preserve in the last several years, and we thus have substantial familiarity with the area already. We believe that in general, the condition of much of that area is just as problematic as were the conditions in the areas of the Santa Fe National Forest that stoked the ferocity of the Cerro Grande Fire. For example, areas of the Preserve near Santa Clara's lands are heavily overstocked, with up to 4000 tree stems per acre (most less than five inches in diameter), rather than the 150-200 per acre that reflects a healthy forest. In addition, we see evidence on the Preserve of spruce budworm disease and other unhealthy conditions. These conditions directly threaten Santa Clara's adjacent lands, especially *Popii Khanu* and the rest of Santa Clara Canyon, one of the most pristine and ecologically intact watersheds in New Mexico,

as well as the health of vast areas of the Preserve that would be affected by tree kills or catastrophic fires in the upland areas. We would very much like to do what we can to help reduce those threats on the Preserve lands.

We have very recently been reminded that these threats are by no means hypothetical. Just three weeks ago, lightning started a fire along the South Fork of Polvadera Creek, just to the northwest of *Popii Khanu*, that became known as the South Fork Fire. That fire quickly spread to thousands of acres just north of the Preserve boundary and *Popii Khanu*, and a Santa Fe National Forest spokesperson acknowledged that there was “tons of fuel” in the area for the fire to feed on. That fire spread to nearly 17,000 acres before being largely contained. Our crews have been assisting in fighting the fire, and thankfully, it did not pose a serious threat to any Santa Clara lands. But the danger plainly is there.

Santa Clara’s Repeated Efforts to Assist in Managing Preserve Forests. When we first acquired *Popii Khanu*, in 2000, we and the Forest Service exchanged mutual Conservation and Access Easements, covering approximately 370 acres of Santa Clara land and nearly 1200 acres of Preserve land along our common border. The easements generally limit public access, prohibit construction of most types of improvements, restrict tree removal and ground-disturbing activity, and in other ways preserve the natural environment on both sides of the border. They also contain various provisions intended to protect Pueblo traditional practices in both easement areas. The Pueblo proposed including in the easements more detailed language regarding forest management practices in the easement areas, but the Forest Service was unwilling to agree to that

language. Regardless, the easements contain important provisions regarding use of the easement areas, and we do believe that S. 3452 should contain language making clear that nothing in the bill would supersede or otherwise limit any provision of the Conservation and Access Easement granted by the United States to Santa Clara with respect to the easement area on the Preserve side of the boundary.

Another opportunity for Santa Clara to become involved in management of the Preserve's forest lands arose in 2004, when Congress passed the Tribal Forest Protection Act, now codified at 25 U.S.C. § 3115a. That Act permits a tribe to request the Secretary of Agriculture to enter into an agreement with the tribe by which the tribe could engage in management activities on Forest Service lands adjacent to tribal lands, when those federal lands have direct ties to the tribal community, in situations where the condition of the Forest Service lands poses a fire, disease or other threat to the tribal forest lands and they are in need of restoration activities. We have submitted a request pursuant to this Act to the Santa Fe National Forest for such an agreement with respect to Santa Fe National Forest and Valles Caldera National Preserve lands adjacent to Santa Clara lands, and we had hoped to be able to finalize an appropriate agreement in the very near future. This would enable us to bring our forest management skills directly to bear on the adjacent federal lands, including forest lands within the Preserve, on a long-term basis, both to improve those lands and also to reduce the threat that they pose to Santa Clara's lands.

Tribal Forest Protection Act Should Continue to be Applicable to Preserve. But the Tribal Forest Protection Act does not apply to lands under the jurisdiction of the National Park

Service. We are extremely concerned, thus, that S. 3452 in its present form would jeopardize our ability to enter into a cooperative management agreement under the provisions of the Tribal Forest Protection Act to help improve the condition of Preserve forest lands, and thereby protect our lands from the threats posed by their current condition. We therefore would very much urge the Committee to include in the bill language that would make the provisions of 25 U.S.C. § 3115a directly applicable to the Preserve lands, or at least those lying within six miles of the boundary of Santa Clara's *Popii Khanu* land. We believe that with our demonstrated skills in proper forest management, we could do much to greatly improve the health of the forested lands on the Preserve. Indeed, we would very much appreciate the opportunity to enter into a broader co-management agreement with the Park Service that would allow us to work with the Service on forestry and other natural resource issues throughout the Preserve. Somewhat similar agreements have been authorized in New Mexico between the Pueblo of Sandia and the Forest Service for the west face of the Sandia Mountain, and between the Pueblo of Cochiti and BLM for management of the Kasha-Katuwe Tent Rocks National Monument. We are well aware of the extent of understaffing in the Park Service, as in many other federal agencies, and we genuinely believe that our resources, skills and experience could be of significant value to the Park Service in helping to protect the health and the long-term security of this important property.

Santa Clara Opposes Repeal of VCPA Provision re *Popii Khanu* Lands. Finally, we have a very specific concern as to Section 5 of the bill. Section 5 effectuates the repeal of the Valles Caldera Preservation Act, simultaneously with the termination of the Valles Caldera Trust that was established by that Act. The Preservation Act, at 16 U.S.C. § 698v-2(g), provided the

authority for Santa Clara to acquire *Popii Khanu*, and it also contains provisions establishing that those lands are held in trust by the United States for Santa Clara and are declared to be part of the Santa Clara reservation. We are concerned that the repeal of these provisions of the Preservation Act might give rise to an implication that the Pueblo's *Popii Khanu* lands are no longer part of its reservation or are no longer held in trust by the United States, and in other respects could jeopardize their current status. Additionally, § 698v-2(g)(3) states that if the minerals underlying *Popii Khanu* were ever acquired by the United States, they would not be developed without the Pueblo's consent. The United States has in fact now acquired the remaining mineral interest, along with the minerals underlying the Preserve, in a condemnation action that was just concluded last year. We definitely want the prohibition against development of those minerals without Pueblo consent to remain on the books. We therefore urge that Section 5 of S. 3452 contain language making clear that the provisions of 16 U.S.C. § 698v-2(g) are not repealed, but will continue in full force and effect notwithstanding the repeal of the remainder of the Act.

Conclusion. Again, we very much appreciate the opportunity to present the views of the Pueblo of Santa Clara, and we will be happy to continue working with the Committee and its staff in an effort to see that our views are reflected to the full extent appropriate in the final version of this Act. Further, we look forward to working closely with the National Park Service and others within the Department of the Interior in the development of the management plan for the Preserve, and we hope, for the long term, as partners in the management of the Valles Caldera National Preserve.