IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. State Engineer, Plaintiff, v. JOHN ABBOTT, *et al.*, Defendants.	68cv7488 BB-ACE 70cv8650 BB-ACE Consolidated Rio Santa Cruz and Rio Truchas Stream Systems Pueblo Claims Subproceeding II

OHKAY OWINGEH's RESPONSE IN OPPOSITION TO TRUCHAS ACEQUIAS' MOTION TO DISMISS PUEBLO OF SAN JUAN's ABORIGINAL TITLE CLAIMS

I. Introduction

On May 3, 2010, the Truchas Acequias[1] filed a Motion to Dismiss Ohkay Owingeh's "claims of aboriginal title and aboriginal water right associated with certain lands located outside the exterior boundaries of the San Juan Pueblo Grant within the Rio de Truchas and Rio Santa Cruz stream systems." The Truchas Acequias assert that this court does not have subject matter jurisdiction over the Pueblo's claims, because "the claims should have been brought before the Indian Claims Commission pursuant to the Indian Claims Commission Act of 1946 ('ICCA')." Motion (Doc. #2750), p. 1. They also assert that "[t]he United States has not waived sovereign immunity for the purposes of the Pueblo's land title claims," *id.*, p. 4. However, the United States has not joined in the Acequias' Motion.

[1] "Truchas Acequias" refers to Acequia Madre de Truchas, Acequia del Llano, Acequia de la Posession, Acequia del Llano de Abeyta, and Acequia de Los Llanitos.

Contrary to the Truchas Acequias' assertion there is nothing in the ICCA which bars the Pueblo's claims. This Court possesses subject matter jurisdiction to adjudicate the Pueblo's water right claims, and the United States has consented to this suit. Moreover, the Truchas Acequias' Motion is fatally flawed because it is dependent upon a number of averments that are outside the scope of the pleadings, which go to the merits of the Pueblo's claims, and for which the Truchas Acequias offer little or no evidence in support. Accordingly, the Motion to Dismiss should be denied.

II. Standards for Consideration of a Motion to Dismiss for Lack of Jurisdiction When Facts Outside of the Pleadings are Alleged.

Rule 12(b)(1) motions challenging subject matter jurisdiction generally fall into one of two categories, facial attacks and factual attacks. Holt v. United States, 46 F.3d 1000, 1002-03 (10th Cir. 1995). The instant motion falls in the latter category because it requires the court to make findings of fact not found in the allegations of the Pueblo's Subproceeding Complaint. However, only three exhibits are offered in support of the contention that the Pueblo's aboriginal claims should have been brought before the Indian Claims Commission: two maps and a single page from the report of one of the Pueblo's experts. In the absence of evidence to support factual propositions lying outside of the pleadings, this Court must accept the allegations in the Complaint as true. Ricks v. Nickels, 295 F.3d 1124, 1127 (10th Cir. 2002).

III. The Pueblo's Aboriginal Claims in this Subproceeding

In its Subproceeding Complaint the Pueblo alleged, "From time immemorial the Pueblo of San Juan has diverted and captured water for agricultural, domestic, cultural,

hunting, gathering, and other sustainable uses on lands within their aboriginal territory." Doc. #2467, ¶ 13. The Pueblo further alleged, "The ancestors of the people of the Pueblo of San Juan used and occupied, and the people of the Pueblo of San Juan continue to use and occupy, extensive areas within the geographical scope of this general stream adjudication. Such pre-Columbian and historical use includes 12 Tewa villages with hundreds of rooms, numerous irrigated plots, hunting and gathering grounds, and scores of cultural sites in an integrated permacultural system. The people of the Pueblo of San Juan utilize these water resources to this day." *Id.,* ¶ 15. The Complaint states further that, "The above-described uses of water within the Pueblo of San Juan's aboriginal territory provide the basis for the existence of significant aboriginal water rights that are necessary to sustain the culture of the Pueblo of San Juan." ¶ 16. "These aboriginal water rights of the Pueblo of San Juan have never been extinguished by the United States or any other prior sovereign." ¶ 17. Much of that aboriginal territory lies outside of the exterior boundaries of the San Juan Pueblo Grant. The Complaint's Prayer "demands entry of judgment decreeing that

> "7. The Pueblo of San Juan has aboriginal water rights from time immemorial based on aboriginal use and occupancy (both past and present) of territory outside of the exterior boundaries of the San Juan Pueblo Grant, and throughout most of the geographical scope of this general stream adjudication, and those rights have never been extinguished by the United States or any other prior sovereign."

The Truchas Acequias assert that "the Pueblo's claim is actually a land title claim against the current owners, the largest of whom is the United States." Motion, p. 3. That is incorrect. Ohkay Owingeh is asserting aboriginal rights which are usufructuary in

nature, and which include the right to use water resources. No one's land title is being challenged. The Pueblo is seeking a decree of its water rights.[2]

Pueblo aboriginal water right claims have been the subject of New Mexico general stream adjudications for decades. *See* New Mexico v. Aamodt, 537 F.2d 1102, 1106 (10th Cir. 1976) ("The United States and the Indians say that … the Indians have an aboriginal right derived from the laws of Spain and Mexico …."). In New Mexico v. Aamodt, 618 F.Supp. 993 (D.N.M. 1985), (hereinafter *Aamodt II*) Judge Mechem found:

> The property rights of the Pueblos, whether characterized as a right to use, as occupancy and possession, as equitable title, or as restricted grants of ownership, continued to be recognized under Mexico. The Pueblos continued to be entitled to lands used and occupied outside their four-square-league boundaries.

618 F.Supp. at 996. *See also* New Mexico v. Kerr-McGee Corp., 120 N.M. 118, 127, 898 P.2 1256, 1265 (N.M.App. 1995).

The nature of aboriginal title is that it may coexist with the fee title of the Crown or a grantee. In County of Oneida v. Oneida Indian Tribe, 414 U.S. 661, 667 (1974), the Supreme Court Opinion (Rehnquist, J.) stated:

> It very early became accepted doctrine in this Court that although fee title to the lands occupied by the Indians when the colonists arrived became vested in the sovereign—first the discovering European sovereign, then the original states and the United States—a right of occupancy in the Indian tribes was nevertheless recognized. That right, sometimes called Indian title and good against all but the sovereign, could be terminated only by sovereign act.

Cited in Aamodt II, 618 F.Supp at 1006; *see also* Beecher v. Weatherby, 95 U.S. 517, 525 (1877) ("The grantee … would take only the naked fee …."). Indian title and sovereign title "are separate but non-exclusive forms of ownership that can be held in the same

[2] A discussion of the McCarran Amendment, 43 U.S.C. § 666, which constitutes the United States' consent to suit in this general stream adjudication, is presented in Part V, *infra.*

lands at the same time." Turtle Mountain Band of Chippewa Indians v. United States, 490 F.2d 935, 941 (Ct.Cl. 1974). Importantly, the Pueblo's Complaint does not challenge anyone's fee title, including that of the United States in the former Sebastian Martín Grant lands; and the Pueblo also alleges that its aboriginal rights have never been extinguished by any sovereign.

Aboriginal title is not an anachronistic legal construct with no relevance in the present day. The Supreme Court observed in 1985 that "[n]umerous decisions of this Court … recognized at least implicitly that Indians have a federal commonlaw right to sue to enforce their aboriginal land rights." County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 235. In that case the tribes sued third parties, seeking trespass damages for the loss of their aboriginal lands. Significantly, the tribes had earlier filed a claim in the Indian Claims Commission seeking damages based on the United States' alleged failure to protect their aboriginal rights, but later withdrew those claims. 470 U.S. at 250, n. 25. More recently, this Court entertained aboriginal Pueblo claims in litigation (not a general stream adjudication) against a mining company. In Picuris Pueblo v. Oglebay Norton Co., 228 F.R.D. 665 (D.N.M. 2005), Judge Brack held that the United States was not an indispensable party to a Pueblo claim against a federal patentee engaging in mining in a National Forest:

> In this action, Picuris claims aboriginal title to the land; it does not rely on any action of the United States to support its claim to the land. Picuris does not challenge the validity of the patent issued by the United States; it claims that the patent was issued subject to its rights.

228 F.R.D. at 667. The water right claim being pursued by Ohkay Owingeh in this subproceeding is no different. It too is based on the premise that the fee title is held by

the Crown (*i.e.*, by the United States) or by a grantee of the Crown, and that such title remains subject to aboriginal use and occupancy rights of the Pueblo. As discussed below, this is not a claim cognizable under the Indian Claims Commission Act.

IV. The Indian Claims Commission Act

Although their Motion to Dismiss is couched as a contention that this Court lacks subject matter jurisdiction over the Pueblo's aboriginal claims, the Truchas Acequias' principal contention is that the Pueblo's aboriginal claims are barred by the 5-year statute of limitations for certain claims against the United States in the Indian Claims Commission Act of 1946, 60 Stat. 1049, *formerly codified at* 25 U.S.C. §§ 70, *et seq.* (1978). The ICCA created the Indian Claims Commission (ICC) to hear a wide variety of tribal claims against the United States. The Commission was authorized to award money damages to tribal claimants who could prove such claims. No other relief was authorized. Section 12 of the ICCA is the statute of limitations which the Truchas Acequias contend bars Ohkay Owingeh's claims. Section 12 states:

> The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court of administrative agency for consideration, nor will such claim thereafter be entertained by the Congress.

25 U.S.C. § 70k (1978). According to movants, "[t]he Commission was authorized to determine and finally decide all land title claims, including all aboriginal title claims." Motion, at p. 6. That statement is incorrect, and nothing in the discussion which follows that statement supports it. Indeed, the discussion of Indian claims jurisprudence in the motion is substantively, and even chronologically, wrong.

In New Mexico *ex rel.* Martinez v. Kerr-McGee Corp., 120 N.M. 118, 898 P.2d 1256 (1995), a general stream adjudication like this one, the Court of Appeals explained: "The ICC's jurisdiction was limited to monetary compensation for loss; it could not vindicate or establish Indian title by declaratory or injunctive relief." 120 N.M. at 120. In that case the State of New Mexico argued that the Pueblos of Acoma and Laguna could not pursue their aboriginal water right claims because they had already litigated those claims in the ICC, and that they were therefore barred by the doctrine of claims preclusion. The Court of Appeals disagreed, holding (*id.,* at 122):

> Congress created the ICC as a tribunal of limited jurisdiction, restricted by statute to monetary claims against the United States for the loss of lands and other property. See 25 U.S.C.S. § 70a. In their claims before the ICC, the Pueblos could not have quieted title to lands or asserted ownership of water rights against the government. Similarly, the Pueblos could not have brought any claims against the State of New Mexico nor against the very private parties who oppose them in this litigation. The Pueblos brought the only claim possible, seeking monetary compensation from the United States for loss of title. Therefore, the Pueblos' current effort to establish water rights against the competing claims of non-Indians was not, and could not have been, brought before the ICC. The Pueblos should not be barred from asserting this claim now, for the first time, when it could not have been brought previously before the ICC.

But the Truchas Acequias ignore such guidance, and concoct their own version of the role of the ICC. The judicial decision which they appear to be relying on for the proposition that the ICC could adjudicate "land title issues" is Otoe & Missouria Tribe of Indians v. United States, 131 F.Supp. 265 (Ct.Cl. 1955), cited at the top of page 7 of the Motion. Among the many issues considered by the Court of Claims in its lengthy opinion was the contention of the United States that the ICC was not given the authority to award damages to tribes for their loss of aboriginal lands held through use and occupancy. The government's brief pointed out that earlier that same year (1955) the

U.S. Supreme Court had held in Tee-Hit-Ton Indians v. United States, 348 U.S. 272, that aboriginal use and occupancy rights are not property within the meaning of the Fifth Amendment Just Compensation Clause. Consequently, no claim against the United States could arise under the Constitution for a taking of aboriginal land rights. This was a significant precedent for the ICC, which had been in business for nine years at that point, entertaining a wide variety of claims, including claims by tribes who contended that the United States had confiscated or otherwise denied them use of their ancestral lands. So the Court of Claims had to decide whether many such claims should be dismissed.

The Court of Claims, however, decided not to dismiss those claims, holding that clause (5) of Section 2 of the ICCA,[3] which referred to "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity," provided a basis for Indian tribes to pursue claims for compensation for the loss of aboriginal title, notwithstanding the Supreme Court's ruling in Tee-Hit-Ton. Nothing in Otoe & Missouria Tribe can therefore be read as standing for the proposition that the ICCA would entertain or adjudicate a land title claim.[4]

---

[3] The Court of Claims ruling in Otoe & Missouria Tribe also discussed the survival of tribal claims under other clauses in Section 2 of the ICCA, but those provisions have no applicability to Indian Pueblos, such as clause (3), which recognizes tribal claims seeking to revise treaties with the United States. The Indian Pueblos had no treaties with the United States.

[4] Movants may be confused by the fact that many tribes did seek to adjudicate the scope of their ancestral lands in the ICC by claiming large areas, and then averring that the United States had confiscated them, or had failed to protect those ancestral lands. The New Mexico Court of Appeals decision, cited above, stated: "A major portion of the litigation before the ICC consisted of tribal claims for the loss of aboriginal territory." 120 N.M. at 120. For example, the Pueblo of Santo Domingo filed such a claim, but years later sought unsuccessfully to extricate itself from the ICCA proceeding by seeking a stipulation that recognized the Pueblo's continuing use and occupancy rights in the area. 16 Cl.Ct. at 539. Ohkay Owingeh is not contending that any act of federal officials had the effect of extinguishing the Pueblo's aboriginal rights to the Rio de Truchas Basin. As discussed *infra,* the Acequias have presented no evidence of any such action prior to August 1946.

The principal decision on which the Truchas Acequias rely for the proposition that the Pueblo's water rights claims are time-barred by the ICCA is Navajo Tribe v. New Mexico, 809 F.2d 1455 (10th Cir. 1985). That case involved a tribal land title claim based on a 1907 Executive Order setting aside a temporary reservation for the Navajo Nation in northwestern New Mexico. Most of that reservation was restored to the public domain by subsequent Executive Orders in 1908 and 1911. The basis for the claim was that the restoration orders violated the terms of the authorizing statute. The Court held that such a claim against the United States, having "clearly accrued before 1946", was barred by the 5-year statute of limitations in the ICCA, notwithstanding that the claim had not been pursued in the ICC. 809 F.2d at 1471.

The Truchas Acequias claim that Ohkay Owingeh's water right claims are similarly barred by that statute of limitations. They contend that "the Pueblo's claims against the United States government accrued well before August 1946." Motion, pp. 7-8. The Acequias offer three exhibits in support of this contention, two maps and a single page from the report of one of the Pueblo's experts, Prof. Richard I. Ford, "Traditional Agriculture and Herding in Ohkay Owingeh" (July 2007), which was disclosed to the other parties. Exhibit C, Doc. #2750-3. That page, which states that Simon Cata, a Pueblo elder, was "the boundary rider for the Pueblo" grazing cattle in the Truchas drainage in the 1930s and 1940s, contains the following language:

> The administrative history of cattle grazing in the Rio Truchas is rather complex. The Sebastian Martín Grant was patented to Martín's heirs in 1893. The U.S. bought the 45,297-acre grant from a private owner in 1934, and in 1936, it gave joint-use grazing rights on it to San Juan Pueblo.

From this language the Acequias assert: "The Sebastian Martín Land Grant was confirmed as a private land grant by the Court of Private Land Claims in 1893, and any claims against the United States ripened." Motion, p. 8. However, that cannot be true because Congress prohibited the Court of Private Land Claims from extinguishing Indian title claims. Section 13 of the Act of March 3, 1891, which created that Court states: "No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place." 26 Stat. 860.[5]

The Truchas Acequias then contend, "The claims had certainly accrued by 1934 when the United States acquired the Sebastian Martín Grant lands." Motion, p. 8. But that cannot be true either because the United States acquired those lands *for the benefit of* the Pueblo of San Juan. *See* Exhibit 1, an October 27, 1937, Memorandum to Secretary of the Interior from the Interdepartmental Rio Grande Committee "Recommendations for Transfer of Jurisdiction Allocations of Use-Rights and Administration of Resettlement, Administration's Indian Land-Purchase Projects in New Mexico" (attached). On page 3 of that memorandum one of the recommendations states:

> 2. That the jurisdiction of the Caja del Rio, of La Majada, Ramon Vigil, South half of Lobato, the Sebastian Martín, and of the San José Grant remain with the Secretary of Agriculture pending action by the proposed Upper Rio Grande Board on the final agreement of jurisdiction and use, **with the clear recognition of the fact that these grants were bought for Indian use;** that the Indian pueblos located near these grants are undersupplied both with irrigated and with grazing resources ….

[5] The Acequias' citation to United States *ex rel.* Chunie v. Ringrose, 788 F.2d 638 (9th Cir. 1986), misses the mark. That case involved an aboriginal claim by Indians in California. The Court of Appeals ruled that the claim was barred because the Indians' ancestors had failed to file a timely claim for the lands pursuant to an 1851 Act of Congress which pertained only to lands in California. 788 F.2d at 644-45.

(Emphasis added.) In short, the Sebastian Martín Grant land was purchased by the United States in 1934 for the use of the Pueblo of San Juan, now Ohkay Owingeh. Thus, the Pueblo certainly had no claim against the United States based on that 1934 purchase, as the purpose of the acquisition of the fee title by the United States was to protect the Pueblo's uses of that area.[6] The Truchas Acequias have presented no evidence to support the proposition that the Pueblo should have pursued the aboriginal claims being made in this general stream adjudication in the Indian Claims Commission, which was charged with entertaining claims against the United States which were "existing" on August 13, 1946. Indeed, Ohkay Owingeh is not asserting *any* claim against the United States in this subproceeding; it is simply seeking a decree of its water rights. As discussed in the next Section, the United States consented to be sued in this general stream adjudication by virtue of the enactment of the McCarran Amendment, 43 U.S.C. § 666.

V. The McCarran Amendment—The United States has consented to the pursuit of the Pueblo's aboriginal water right claims in this adjudication.

The Truchas Acequias also contend: "The United States has not waived sovereign immunity for purposes of the Pueblo's land title claims." Motion, p. 4. As shown above, the Ohkay Owingeh is not asserting any "land title claims", but is asserting usufructuary aboriginal water rights. Nonetheless, it is useful to demonstrate that the

[6] The Truchas Acequias' Motion states on page 8: "Once [the Sebastian Martín Grant lands were] acquired, the United States began regulating uses and occupancy on the land, excluding both traditional Hispanic and Indian uses and users, except under the specific conditions imposed by the federal management agencies." The evidence proffered by movants does not support that statement, and the Pueblo disagrees with it.

United States has indeed consented to suit, enabling Ohkay Owingeh to pursue these claims.

Prior to 1950 the adjudication of stream systems in the western United States was generally limited to the consideration of water rights claimed by anyone other than the federal government, unless the U.S. itself filed the claim. Indian tribal water right claims were also outside the scope of most adjudications. That is because there had been no waiver of U.S. or tribal sovereign immunity from suit. That changed with the enactment of the McCarran Amendment, 43 U.S.C. § 666, which states in pertinent part:

> (a) Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. ….

Nowhere in this statutory language is there mention of Indian water rights, and it was the position of the United States *twice* before the U.S. Supreme Court that this statute was not a federal consent to adjudication of Indian water rights. On both occasions the Supreme Court disagreed. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983).

In Arizona a number of Indian tribes were also before the Supreme Court, arguing that tribal sovereign immunity was not waived, and that tribal water rights could thus not be the subject of these general stream adjudications. The Supreme Court agreed with the first proposition but not the second, and gave the tribes some useful advice:

> This argument, of course, suffers from the flaw that, although the McCarran Amendment did not waive the sovereign immunity of Indian as *parties* to state comprehensive water adjudications, it did (as we made quite clear in

> *Colorado River*) waive sovereign immunity with regard to the Indian *rights* at issue in those proceedings. Moreover, contrary to the submissions by certain of the parties, any judgment against the United States, as trustee for the Indian, would ordinarily be binding on the Indians. In addition, there is no indication in these cases that the state courts would deny the Indian parties leave to intervene to protect their interests. Thus, although the Indians have the right to refuse to intervene even if they believe that the United States is not adequately representing their interests, the practical value of that right in this context is dubious at best.

463 U.S. at 567, note 17 (emphasis in original.) It is important to know the context of that advice. One week before issuing its decision in Arizona, on the last Monday of the 1983 Term, the Supreme Court decided Nevada v. United States, 463 U.S. 110 (1983), rejecting the United States' attempt to claim water rights on behalf of the Pyramid Lake Paiute Tribe to protect its traditional fishing rights in Pyramid Lake. Much of the water of the Truckee River naturally destined to flow into the lake had been diverted to a federally-funded irrigation project, and the U.S. sought water to maintain the lake's fishery. The basis for rejecting that water right claim was *res judicata*, as the United States had pursued water right claims on behalf of the Tribe decades before as a plaintiff (not unlike this adjudication where the United States has been realigned as a plaintiff), but had failed to claim water rights to protect the fishery.

The Tribe's attorney contended that such an invocation of *res judicata* in this context would be a denial of procedural due process, because the Tribe itself had not had the opportunity to obtain legal counsel and make such claims before the earlier decree was entered back in 1941. But the Court simply offered this admonition:

> In these cases, the Tribe, through the Government as their representative, was given adequate notice and a full and fair opportunity to be heard. If in carrying out its role as representative, the Government violated its obligations to the Tribe, then the Tribe's remedy is against the Government, not third parties.

463 U.S. at 144, note 16. Consequently, under this Supreme Court precedent Ohkay Owingeh has no choice but to pursue the aboriginal water right claims it is making in the subproceeding. If it did not do so, it would be barred from pursuing such claims in the future.

These adjudications are, after all, supposed to be comprehensive; but they cannot be so if there are loopholes in the United States' consent to suit in the McCarran Amendment. In Colorado River the Supreme Court explained:

> The clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in a river system. This policy is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring control of property, for the concern in such instances is with avoiding the generation of additional litigation through permitting inconsistent dispositions of property. This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings. The consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals.

424 U.S. at 819, *quoted* in Arizona, 463 U.S. at 552. Pursuit of the Pueblo's aboriginal water right claims necessarily requires that its overall aboriginal use and occupancy rights be first determined. And it is important to acknowledge that the State of New Mexico, by statute, has provided assurances that all water right claims will be determined in a general stream adjudication like this one. N.M.S.A. § 72-4-17 states:

> In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. … **The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved** ….

(Emphasis added.) Thus, this Court has jurisdiction to entertain the Pueblo's aboriginal water right claims, and the United States has consented to suit. The Truchas Acequias' Motion to Dismiss should therefore be denied.

Dated: July 16, 2010

Respectfully submitted,

__/s/_____
Tim Vollmann
Attorney for Ohkay Owingeh
3301-R Coors Rd. N.W., #302
Albuquerque, NM 87120
Phone: 505-881-2627
Fax: 505-881-7003
tim_vollmann@hotmail.com

Lee Bergen
Earl Mettler
Bergen Law Offices, LLC
Attorneys for Ohkay Owingeh
4110 Wolcott Avenue NE, Suite A
Albuquerque, NM 87109
Phone: 505-798-0114
lbergen@nativeamericanlawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2010, I filed the foregoing Ohkay Owingeh's Response in Opposition to Truchas Acequias' Motion to Dismiss electronically through the CM/ECF system, which caused CM/ECF participants to be served electronically pursuant to Local Rule CV 5.6.

__**/s/**_____
Tim Vollmann