

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

| | | |
|---|---|------------------------------|
| STATE OF NEW MEXICO, <i>ex rel.</i> STATE |) | |
| ENGINEER, |) | |
| |) | |
| Plaintiff, |) | CASE NO. 6:66-cv-6639 WJ/WPL |
| |) | |
| v. |) | |
| |) | |
| R. LEE AAMODT, <i>et al.</i> , |) | |
| |) | |
| Defendants, |) | |
| |) | |
| and |) | |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| PUEBLO DE NAMBÉ, |) | |
| PUEBLO DE POJOAQUE, |) | |
| PUEBLO DE SAN ILDEFONSO, |) | |
| and PUEBLO DE TESUQUE, |) | |
| |) | |
| Plaintiffs-in-Intervention. |) | |
| _____ |) | |

**UNITED STATES' AND PUEBLOS' REPLY TO THE STATE'S RESPONSE TO
MOTION FOR CLARIFICATION**

The United States and the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque (collectively “United States and Pueblos”) file this reply to the *States’ Response to the Rio De Tesuque Association, Inc.’s Motion for Clarification* (Jan. 17, 2017) (Doc. 11270) (“State Response”). The State Response also addressed portions of the *United States’ and Pueblos’ Response to Motion for Clarification* (Jan. 6, 2017) (Doc. 11218). The United States and Pueblos state that the parties have agreed to work with Michael Nelson, who formerly served as settlement judge, in an effort to resolve the issues that have arisen in the drafting of the rules

required by the *Settlement Agreement* (Apr. 19, 2012) (“Settlement Agreement”). It would be preferable for the settlement parties to resolve the issues that have arisen without direct intervention by the Court. However, such a resolution may not be possible without the assistance of a settlement judge. The United States and Pueblos further state:

1. After “closely supervis[ing]” the status and progress of the discussions, *New Mexico v. Aamodt*, 582 F. Supp. 2d 1313, 1319 (D.N.M. 2007), the Court approved the Settlement Agreement. *Memorandum Opinion and Order Approving Settlement Agreement* at 23-24 (Mar. 21, 2016) (Doc. 10543) (“Order”).
2. While to date, the State Engineer, the Rio de Tesuque Association, Inc. (“Association”), the United States, and the Pueblos have not agreed on all issues related to drafting of the rules, a host of equally difficult issues were resolved in developing the Settlement Agreement and the documents necessary for its implementation. Indeed, the rules are substantially drafted and the settlement parties have agreed to the majority of those rules. The United States and Pueblos continue to believe that it would be preferable for the parties to resolve any remaining rules-related issues with the assistance of Mr. Nelson rather than having the Court address the issues raised by the *Motion for Clarification on the Binding Effect of the Settlement Agreement on Rules and Regulations to be Promulgated by the State Engineer and Memorandum in Support Thereof* (Dec. 23, 2016) (Doc. 11208) (“Clarification Motion”).
3. The United States and Pueblos have secured funding to assist in retaining Mr. Nelson as a settlement judge for a reasonable period of time and are committed to working with the other settlement parties to address the remaining issues. The undersigned counsel is

authorized to state that counsel for the State and the Association concur in the approach of seeking the assistance of Mr. Nelson.

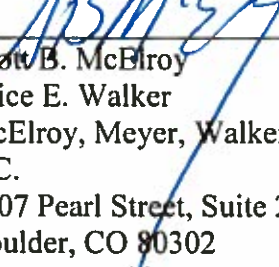
Respectfully submitted on this 2nd day of February, 2017.

Majel Russell
Elk River Law Office
145 Grand Avenue, Suite 5
Billings, MT 59101
Phone: 406-259-8611
Fax: 406-259-3251
mrussell@elkriverlaw.com
Attorney for the Pueblo of Tesuque

Maria O'Brien
Sarah M. Stevenson
Modrall Sperling
P.O. Box 2168
Albuquerque, NM 87103
Phone: 505-848-1803
Fax: 505-848-9710
mobrien@modrall.com
sstevenson@modrall.com
Attorneys for the Pueblo of Pojoaque

Peter C. Chestnut
Ann Berkley Rodgers
Chestnut Law Offices
P.O. Box 27190
Albuquerque, NM 87125
Phone: 505-842-5864
Fax: 505-843-9249
pcc@chestnutlaw.com
abr@chestnutlaw.com
Attorneys for the Pueblo de San Ildefonso

Andrew "Guss" Guarino
U.S. Department of Justice
Environmental and Natural Resources
Division
999 18th Street
Denver, CO 80202
Phone: 303-844-1343
Fax: 303-844-1350
Guss.Guarino@usdoj.gov
*Attorney for the United States of
America*

By: 

Scott B. McElroy
Alice E. Walker
McElroy, Meyer, Walker & Condon,
P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
Phone: 303-442-2021
Fax: 303-444-3490
smcelroy@mmwclaw.com
awalker@mmwclaw.com
Attorneys for the Pueblo of Nambé

CERTIFICATE OF SERVICE

I hereby certify that, on February ^{2nd}, 2017, the **UNITED STATES' AND PUEBLOS' REPLY TO THE STATE'S RESPONSE TO MOTION FOR CLARIFICATION** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on February ^{2nd}, 2017, copies of the foregoing **UNITED STATES' AND PUEBLOS' REPLY TO THE STATE'S RESPONSE TO MOTION FOR CLARIFICATION** were mailed, by first-class U.S. mail, to the following non-CM/ECF participants:

Kay Lee Family
Partnership
6214 Preston Road
Dallas, TX 75205

Anthony J Baca SR.
4-B Paseo De La Joya
Santa Fe, NM 87506

Barak Wolff
28 Harriets Road
Santa Fe, NM 87506

Barbara A. Roybal
11 J.R. Drive
Santa Fe, NM 87506

Barbara And Leroy Garcia
18057-B US 84-285
Santa Fe, NM 87506

Christian Gossein
45 Bouquet Lane
Santa Fe, NM 87506

Cecilia G Popp
28 Harriets Road
Santa Fe, NM 87506-0022

Constance Dorn
PO Box 32415
Santa Fe, NM 87594

Cynthia A. Miscikowski
396 Fordyce Rd.
Los Angeles, CA 90049

Deborah Dant
PO Box 301
Tesuque, NM 87574

Diane Senutovitch
P.O. Box 303
Santa Fe, NM 87504

Donald Yardman
#16 Calle De Vecinos
Santa Fe, NM 87506

Edward H. Ortiz
3 Rancho Enrique
Nambe, NM 87506

Eileen Carter
44 Summer Road
Santa Fe, NM 87506

Elaine Yardman
#16 Calle De Vecinos
Santa Fe, NM 87506

Elmer Lee & Mary G.B.
Waite
55 Banana Lane
Santa Fe, NM 87506

Jennifer L. Reglien
106 County Road 84C
Santa Fe, NM 87506

Joe Gutierrez
334 Kimberly Lane
Los Alamos, NM 87544

John M Sena
9709 Rio Grande NW
Albuquerque, NM 87114

John P. Bradley
3 Las Joyas Lane
Santa Fe, NM 87506

John And Mona Valencia
441 County Road 84
Santa Fe, NM 87506

Jose And Margarita
Trujillo
28A Grazing Elk Drive
Santa Fe, NM 87506

Kenny Kalfin
94 N. Shining Sun Rd.
Santa Fe, NM 87506

Leslie Beaty
P.O. Box 177
Tesuque, NM 87574

Manuel R. Lopez
P.O. Box 763
Tesuque, NM 87574

Patricia Mary
P.O. Box 962
Los Alamos, NM 87544

Richard Reinders
106 N Shining Sun
Santa Fe, NM 87506

Margaret Klaer
P.O. Box 177
Tesuque, NM 87574

Petronila M. Lopez
P.O. Box 763
Tesuque, NM 87574

Robert C Habbersett
103 Vista Redonda
Santa Fe, NM 87506

Marshall E Hunt
11441 Allerton Park Drive
Unit 219
Las Vegas, NV 89135

Phillip E. Duran
17 Feather Road
Santa Fe, NM 87506

Sally Cleaver
PO Box 124
Tesuque, NM 87574

Michael A Talbott
231A Tano Road
Santa Fe, NM 87506

Reymundo J Lopez
12 Bouquet Lane
Santa Fe, NM 87506

Steven Dean Godfrey
83 Estates Dr.
Santa Fe, NM 87506

/s/Bonnie Ray
Bonnie Ray