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December 19, 2008

Special Master Vickie L. Gabin
United States District Court
P.O. Box 2384
Santa Fe, NM 87504-2384

Re: State of New Mexico ex rel. State Engineer v. Aragon et al.
No. 69cv07941-BB
Final determination of priority dates in Section 1, Chama Mainstream

Dear Special Master Gabin:

I'd like to schedule a meeting to discuss the determination of the priority date of the Winfield Morten Ditch in the Chama mainstream section of the stream system (Section 1). As you are well aware, the State initiated a process to make a final determination of water right priorities in Section 1 in the mid-1980s. The Court also appointed a historian or expert under Rule 706 of the Federal Rules of Evidence to make recommendations to the Court in this regard. *See New Mexico's Motion for Pretrial Order on the Adjudication of Water Right Priorities* filed December 19, 1985 (Doc. No. 3260); *Pretrial Order* filed March 24, 1986 (Doc. No. 3291); *Order Appointing Expert Witness for the Adjudication of Water Right Priorities* filed November 20, 1986 (Doc. No. 3298); *Amended Order on the Adjudication of Water Right Priorities* filed July 8, 1994 (Doc. No. 3496). As a result of this process, and pursuant to multiple procedural orders, most of the individual defendants and nearly all of the community ditches in Section 1 were served with Notices and Orders to Show Cause relating to priorities. *See Order re Form of Notice and Form of Order to Show Cause re Priority Dates for Individual Irrigation Subfiles* filed October 3, 1994 (Doc. No. 3521); *Order Amending July 8, 1994 Order re Adjudication of Water Right Priorities* filed October 21, 1994 (Doc. No. 3956); *Second Order Amending July 8, 1994 Order re Adjudication of Water Right Priorities* filed December 5, 1994 (Doc. No. 3971).

In many cases, the results of the 1994 historical study for the Chama mainstream section by Dr. John Baxter indicated that the priority dates of ditches and individual subfile orders were significantly earlier than those previously adjudicated, and new or corrected priority dates were proposed in the Court's Notice and Order to Show Cause. This work was largely completed by about 1997, with the exception of certain private ditches and other problem ditches which for one reason or another were not properly included in the process (the proposed priority dates of three

community ditches, which were disputed by those ditches, were the subject of evidentiary hearings before the Special Master in 1996). Recently, the State has been working to complete the work on priorities for ditches that were left out of the process so that the Court will be in a position to enter a final order on the priorities for all ditches and irrigation subfiles in the Chama mainstream section. In a number of cases, the State has approved stipulations for a revised or corrected priority date, or reached an agreement with the affected party and filed a stipulation with the Court that no amendment to the previous determination and adjudication of the priority date is required. See e.g., *Stipulation on Priority Date* filed March 5, 2008 (Doc. No. 9124).

The Winfield Morten Ditch is one of the ditches that earlier was left out of the process. As far as I am aware, no landowners under this ditch were served with a Notice and Order to Show Cause in connection with water right priorities, and no Notice and Order to Show Cause was ever issued by the Court in connection with this ditch.

The land under the Winfield Morten Ditch (90.3 acres) was the subject of an Order and Decree filed with the state district court in these adjudication proceedings on June 28, 1965 (Doc. No. 509). The Court's Order and Decree included a priority date of 1947 for this private ditch, pursuant to a permit and license issued by the New Mexico State Engineer (OSE No. 2590). However, in his 1994 historical report to the Court, Dr. John Baxter concluded that the ditch was much older, perhaps originating during the Valdez settlement in 1739. *John O. Baxter Irrigation in the Chama Valley* July 15, 1994, p. 95.

The State believes that the original priority date for the Winfield Morten Ditch (1947) should not be revised. I would like to meet with you, and with any other interested individuals and counsel, to discuss how best to proceed to resolve the question of the priority date of this particular ditch.

The original owner of all of the lands under the Winfield Morten Ditch at the time of the Court's Order and Decree in 1965 was Rancho de Abiquiu, Inc. (Subfile No. 491). Since that time, the land under this subfile has been substantially subdivided. To the best of our knowledge, the following persons now own lands that were mapped under this subfile.

Stanley P. Bader Arlene M. Bader P.O. Box 738 Abiquiu, NM 87510	Portion of Tr. 3.27
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Susanne E. Vertel 1500 Wilderness Gate Rd. Santa Fe, NM 87505	Portion of Tr. 3.27
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Jack L. Kerr Janis C. Kerr 1327 Declovina	Portion of Tr. 3.27
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Portion of Tr. 3.27 & 4.11

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Dan Medina
Mickie Medina
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Chimayo, NM 87522

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Scott Paul Markman
Toshiyuki Kawahara
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Abiquiu, NM 87510

Portion of Tr. 4.11

Jean A. Archer
P.O. Box 197
Abiquiu, NM 87510

Portion of Tr. 4.11

I have checked with Mr. Waltz, who is interested in the resolution of this matter, and he and I would be available to meet with you on the afternoon of January 20, 2009, or on January 21st through January 23rd. I can arrange a meeting room at the Office of the State Engineer if needed. Please let me know if you would like me to make these arrangements.

Thank you for your assistance.

Sincerely,

Ed NEWVILLE

Ed Neville

Special Assistant Attorney General

cc: Fred J. Waltz, Esq.
John W. Utton, Esq.
Mary E. Humphrey, Esq.
Arianne Singer, Esq.