

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

STATE OF NEW MEXICO ex rel.	)	
State Engineer,	)	
	)	
Plaintiff,	)	No. 69cv07941-MV/LFG
	)	
v.	)	Rio Chama Stream System
	)	
ROMAN ARAGON, et al.,	)	Pueblo Claims Subproceeding 1
	)	
Defendants.	)	
_____	)	

**OHKAY OWINGEH’S MOTION TO EXTEND TIME FOR RULE 26  
DISCLOSURE BY ONE EXPERT WITNESS**

Ohkay Owingeh (“Pueblo”) moves the Court for an order to extend the deadline established by the April 11, 2013, Scheduling Order (Doc. No. 10903) for one of the Pueblo’s experts. In support of this motion, Ohkay Owingeh asserts:

1. The Amended Scheduling Order of April 11, 2013, established the date of December 6, 2013, as the date for disclosure of Ohkay Owingeh’s Rule 26(a)(2) reports.
2. The Pueblo believes that one of its experts, Henry Walt, Ph.D., an ethnohistorian, will be unable to complete the work necessary for disclosure of his expert witness report by December 6.
  - a. Dr. Walt underwent major surgery on July 5, 2013. According to his physician, his recovery “has been difficult and . . . protracted.” (Letter from Stephen P. Weiss, M.D. P.A., September 17, 2013, attached). He was “rushed to the emergency room on 4 separate occasions” in August. *Id.*

- b. Dr. Walt was totally temporarily disabled for a period of two months, a fact confirmed by his treating physician.
  - c. Dr. Walt remains able to work only partial days. He cannot do field work at all, and hiking through the Rio Chama watershed is necessary to complete his analysis and reports.
  - d. Though the treating physician is unable to predict when Dr. Walt will be able to return to work full-time, Dr. Walt is nearly finished with his analysis, and believes he will complete it and his report by February 7, 2014.
3. Accordingly, a 60-day extension of the December 6, 2013 deadline established in the April 11, 2013 Scheduling Order, to and including February 7, 2014, is necessary for the Pueblo to disclose its ethnohistorian expert witness report as required by Rule 26(a)(2). Because only one of the Pueblo's expert witnesses is expected to require an extension of time, the Pueblo does not propose any alternation of the schedule established by the Court for other deadlines for other parties.
4. The undersigned, counsel for Ohkay Owingeh, communicated by email with counsel for those parties that filed pleadings in response to the Pueblo's claims in this subproceeding, explaining the reasons necessitating the filing of this request for extension. Attached to the email was a draft of this motion. As of the filing of this motion, counsel for all parties have responded by email stating that they do not object to the modest extensions to this schedule as requested here.

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For these reasons, Ohkay Owingeh respectfully moves the Court for an order authorizing the extension of one expert witness disclosure/filing deadline, as set forth in Paragraph 3 of this motion.

Respectfully submitted,

Dated: October 18, 2013

*/s/ Scott W. Williams*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18th day of October, 2013, I filed the foregoing electronically through the CM/ECF system, which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

*/s/ Scott W. Williams*

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Scott W. Williams

STEPHEN P. WEISS, M.D., P.A.  
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September 17, 2013

Re: Henry Walt; DOB 10/26/43

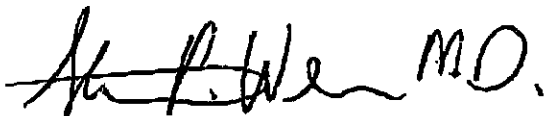
Dear Mr. Berkey,

I am Mr. Walt's Primary Care Physician and am writing to give you an update on his current health status and capacity for work. I have cared for Henry since January 2004 and know him well. On 7/5/13 he underwent major surgery for a paraesophageal hernia causing significant gastroesophageal reflux. His stomach was upside down and in his thoracic cavity.

His post-operative course has been difficult and his recovery protracted. In August, he was rushed to the emergency room on 4 separate occasions for palpitations, shortness of breath and throat constriction. He has a history of esophageal dysmotility which became exacerbated after surgery. He was started on Diltiazem 30 mg 3 x a day and calcium/magnesium which has resolved the palpitations. Ativan dosage has been increased to 0.5 mg every 8 hours and Aciphex 20 mg in the morning was restarted and this has greatly improved his esophageal symptoms.

I do feel Henry is improving, but he remains fatigued and his activity level is significantly diminished compared to last spring. He was completely disabled and unable to work for 2 months after the surgery and is currently unable to work more than 4 hours a day on average from home. He is unable to walk long distances or work in the field at this time. I plan to reevaluate him in 30 days' time. Please don't hesitate to contact me if you have any questions concerning Henry's health.

With kind regards,



Stephen P. Weiss, M.D., P.A.  
Clinical Assistant Professor  
Department of Family and Community Medicine  
University of New Mexico School of Medicine