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

STATE OF NEW MEXICO, *ex rel.*

State Engineer,

Plaintiff,

v.

ROMAN ARAGON, et al,

Defendants.

Case No. 69cv-07941-MV/LFG

Rio Chama Stream System

Section 1 (mainstream)

**BRIEF IN RESPONSE TO STATE OF NEW MEXICO RESPONSE
(DOC.10940) and Acequias Nortenas**

At the present time, August 9, 2013, because of the recent and continual rains, I believe it is not necessary at the present time for a Senior Priority call. We will reserve our right for the future. Before resigning this spring of 2013, which most parciantes did not want me to do, I had been Commissioner serving the members of this Acequia for the last 13 years. Most of the Parciantes including myself, are waiting to cut our hay and are not irrigating large fields, only gardens, most of the water in the Acequia is going back into the Stream System. As a commissioner, we had previously filed an intent of Senior priority call in 2002 (**Exhibit 1**) and thanks to God, like the present, the rains came then also. I told Judge Garcia in his court on February 11, that when I need water, I didn't come to the court or the state, I get on my knees

and beseeched my maker to send it from heaven. Isa.22:9,10,11; Matt.5:45; I will support and back what the Parciantes so desire. **(Exh.2-1)** I will address the State Response and seek the Court's clarification on certain issues for the future Senior Priority Water call, if needed.

First of all, this is not a ditch, those can be found on the side of roads. This is an Acequia. Acequia comes from the Arabic word, "as-seqiya", meaning carrier of water. But more important, it is a self governing body, not governed by the elected Commissioners, who are voted in to office to represent the member's water rights and not their own or someone else's interest. That is why Pueblos did not have Acequias before the Spanish came, **(Exhibit 2-1)** they didn't have government, only ditches or arroyos that only have water when it rains.

There were 10 employees of the State that came to the Rio Chama Acequia Association meeting. Only the National Guard was missing. Ask them your Honor, "Did one of the spokesmen of the ISC state that there was only enough natural flow in the Chama River for the 3 Senior Acequias?" And the Watermaster confirmed that when asked that same question at the Chamita meeting? That was in my Motion and not answered by the State. If 28 Acequias are using water (and 18 in the Northern Chama) is there impending harm to the 3 Senior Acequias at the tail, before it goes into the Rio del Norte, of the river, if there is only enough natural flow for the 3 Senior Acequias?

Page 3, Doc.10940, "The reductions that have been made have been entirely voluntary". Why did the State call a meeting with the Acequia de Chamita Commissioners to try to get them to shut down one day and/or cut their flows in half? DO THE COMMISSIONERS HAVE THE POWER AND AUTHORITY TO MAKE THAT DECISION WITHOUT CALLING AN OPEN MEETING OF THE PARCIANTES? Did the State insist that the

Commissioners go to their members, hold an open public meeting and approve the reductions by member's resolution? Did the RCA Acequia commissioners make those decisions for their Parciantes at the Medanales RCAA Meeting, without consent of the members? And additionally, did other State Engineer staff in the summer of 2012 call the Chamita Mayordomo and ask why Chamita was not shutting down on Thursday as directed by the RCAA? And staff was told that he, (Mayordomo) does not work for the State or the RCAA. At which time he was told that a chain and lock would be put on the gate. The staff was told the chain would be cut and to call Commissioner David Ortiz. The staff called, instant replay and Commissioner David Ortiz told him, "lets not have this conversation over the phone. Send me a letter, put it in writing. The letter never came. Who is he working for, the State or the RCAA? It was reported to the other 2 Commissioners by both Officials. Does it sound voluntary or is it strong arm tactics and intimidation?

Note 2, exhibit 1 and par.3 on page 3. This is pretty disingenuous. Tell us what the real average is until July 25 when the Priority call was attempted to be made? And why was only the gage reading, 14 cfs, sent to the court for the hour of 07:59 on 7/31? Why didn't they send what I am sending (**EXH.A**), so the Judge and all the jurors can see the whole day? How dare Chamita ask for more water when they are running 14 cfs. And if Chamita and the Pueblo are not using water for whatever reason, where does it go? Is it being wasted? NO, it goes back into the Stream System to be used by Santa Fe or stored at Cochiti for the 6 lower Pueblos or for the thirsty little fish downstream, right?

Who knows more about harm and impending harm and running acequias than the Parciantes using the water? Does only enough natural flow for the 3 Senior Acequia's sound like impending harm, Your Honor? I will invite the lawyer to the next Chamita Acequia Meeting

and your Honor also. Plan on staying a while to hear the complaints the Mayordomo and the Commissioners hear. And let's not forget the Pueblo of Okhay Owingeh. They called the Mayordomo that they did not have water on the 8, 9 10 of July (**Exhibit B**). The Mayordomo said there was not enough water in the river. I went to see. Both gates on the diversion are leaking severely. I called the Pueblo, Larry Phillips to ask if they would supply 2 labors, they did. One happened to be the Pueblo Mayordomo. Eloy Garcia provided old carpet, I bought sand bags, provided myself and another labor and next morning 4 of us, supervised by the Mayordomo plugged the leaking gates. Was there harm or impending harm? Ask the Pueblo & Parciantes. Does someone think they can run the Acequia better from the Office of the ISC?

Now let's address the State's Exhibit 3 from the Watermaster. It requires Court clarification: (Doc.10940-3)

a. Is the Mayordomo an Official of the Acequia? (**Exhibit 2-2**)

b. If 4 separate individuals, excluding the Watermaster, in the Water Rights Division said "there was no Priority Form on the 25 and 26 of July, was it "created" between July 26th and August 1? Surely the 1972 Watermasters R & R did not state the open meetings act of 1978? And if there was no form, shouldn't the signatures of the majority of the Parciantes suffice? Who is an official of the ditch? One Mayordomo? One Commissioner?

c. Do the Watermaster's Rules and Regulations say that the 3 Commissioners must call for Priority and all 3 sign it? And does it say that a resolution must approve the priority call in compliance with the requirement of New Mexico Open Meetings Act? Did not the Judge Order, expedite the matter because of the irrigation season? Is it quicker to seek signatures from the majority of the members including the Mayordomo and 2 Commissioners then to prepare and call for a special meeting with addressing, mailing to out of State and 10 days advanced notice? And if one of the Commissioners is non-responsive and won't

sign, is it not acceptable then? The Commissioners serve at the pleasure of the members and cannot make arbitrary decisions that affect majority of members.

d. Does the States Hydrographic map that was taped to the wall in Medanales showing 472.85 irrigated acres, exclude the Parciantes of Okhay Owingeh?

e. Will the Court allow changes to the Rules and Regulations without input from the affected water rights holders? Will lawyers run acequias from their offices?

f. Who determines if the Acequia Parciantes have enough water?

g. Do the Movants need to provide sworn affidavits from the Parciantes including Okhay Owingeh, for a seniority water call? We don't care if the State does or does not shut off Juniors, just don't come around asking us to cut back a flow that is already reduced. And we need to go on record of **WHY WE ARE UNABLE TO USE OUR ALLOTMENT OF 18CFS which we intend to correct and use in the future.**

For those of you jurists who jumped on the States band wagon and begin waving their banner of disingenuous exhibits, cheering for the Judge to give them the prize, pay attention:

The 3 Senior Acequia's must deal with the sand that comes down from the Ojo Caliente watershed, especially with floods. Chamita must constantly be desanding. In 1999, the Army Corp of Engineers was supposed to "help" us with that problem. (Ask Craig Roepke, Ray Acosta and Estavan Lopez at ISC, we are still dealing with it) They designed a 4 foot plastic pipe system (1300' with 3" of drop) and the first spring it filled with sand from an Ojo Caliente runoff. Two additional sand sluices were built that constantly have to be flushed of sand. Now the Sand goes through the pipe and is deposited in the first 500 yards of Acequia which we have to backhoe out in the spring before turning water in. That is why we have to shut down, to allow it to dry for maintenance. For the sand not to continue all the way down the 4 mile Acequia, the Mayordoma must constantly de-sand at 5 sluices back to the river. We have asked the Corp to send more constant releases instead of 100cfs which allows the bank to dry and then 300-1000 cfs which brings all the dry sand down.

Additionally the Mayordomo daily goes to clean trash out of the Acequia mouth; brush, trees animals, tires, etc. Go look.

Additionally since the fires on the mountain, all the oil from the burnt trees comes down Rio del Oso. No one can irrigate with that.

Additionally, when the red clay comes from Abiqui, even if we run it through the Acequia, we do not irrigate with it.

We are not looking for sympathy, just don't tell us how to run our Acequia and when and how much water we need to satisfy 83 parciantes, including Okhay Owingeh, and 720+ irrigated acres, with all the problems we deal with. Our Mayordomo has gone far and above his line of duty to keep the water flowing in the Acequia. Watermaster Buck Wells understood the excellent job Eloy Garcia does. He said if everyone ran their acequia's like Eloy he would not have any problems. In fact Mr. Wells gave Mr. Garcia a letter making him his assistant. We spent a lot of time in his office. Buck is retired, but not dead, ask him.

I made the statement about the 18cfs and the last 50 to 60 years because when we shot the elevation of the first installed gauge (exh.1-1) it was 21 inches higher than the invert at the river diversion, piling up sand, and there was no way 18cfs would flow past. Was the gauge installed around 1972? I never saw the cfs for the last 50 or 60 years, has anyone? Produce them if you have them. Buck Wells allowed us to remove the old gauge in 2001.

Yes all 700+ acres are irrigated. Acequia de Chamita irrigates until November at a minimum

Can the senior ditch ask for others to be curtailed if it is being asked to curtail?
(Exhibit D)

I can guarantee, if it comes through this Acequia it is not being wasted. If it is not used, it goes back into the stream and it is a long way to the Gulf of Mexico. There are a lot of thirsty little fish downstream. **(Exhibit C)**

I am the Acequia. Every member is the ACEQUIA.

David Ortiz, Parciante Spokesman for the Parciantes of the Acequia de Chamita
Eloy Garcia, Parciante, Mayordomo, Elected Official by the Parciantes of the
Acequia de Chamita

David Ortiz 8/9/13 Eloy Garcia 8-9-2013