

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

|                               |   |                        |
|-------------------------------|---|------------------------|
| STATE OF NEW MEXICO, ex rel., | ) | No. 69-CV-07941 MV/KK  |
| STATE ENGINEER, et al.        | ) |                        |
|                               | ) |                        |
| Plaintiffs,                   | ) | Rio Chama Adjudication |
|                               | ) | (Subproceeding 1)      |
|                               | ) |                        |
| v.                            | ) |                        |
|                               | ) |                        |
| ROMAN ARAGON, et al.          | ) |                        |
|                               | ) |                        |
| Defendants.                   | ) |                        |
| _____                         | ) |                        |

**CITY OF ESPANOLA STATUS REPORT**

Stein & Brockmann, P.A., files this Status Report on behalf of the City of Espanola (“City”), pursuant to the Court’s Order of June 11, 2019 [Doc. 2999]. The City did not concur in the Joint Status Report that the Pueblo of Ohkay Owingeh (“Pueblo”) [Doc. 11571] filed today because the City has outstanding questions and concerns regarding (1) whether certain claims the Pueblo is making can properly be resolved in this forum; (2) the legal bases of the Pueblo’s claims, including the Pueblo’s proposal on all amounts and sources of water, which remain un-identified, despite the City’s repeated attempts to obtain this information; and (3) the groundwater model the Pueblo seeks to utilize for settlement over the City’s continued objections to this model. The City shares similar concerns in the companion case *State of New Mexico, ex rel. State Engineer v. Abbott*, No. 68-CV-07488 (MV/JHR) and so it has also filed a Status Report in that case.

The City requested every Parties’ position on this Status Report, but only heard back from the El Rito Ditch Association; Gallina-Capulin Acequia Association; La Asociacion de las

Acequias del Rio Tusas; and Vallecitos y Ojo Caliente Acequias, who take no position on this Status Report.

1. Settlement Negotiations

Although the Parties have met, both in-person and telephonically, several times since the June 7, 2019, Status Report [Doc. 2998], the City has serious concerns regarding the settlement process and progress because the City (1) believes there exists questions about whether certain claims the Pueblo is making can be resolved in this forum and (2) critical information the City needs to understand whether settlement is legally and technically feasible has been requested, but the Pueblo will not provide answers to these questions.

It is correct that the Pueblo has provided a proposal by which to settle its claims, and some progress has been made between the City and the Pueblo on this settlement proposal. However, the Pueblo's proposal lacks any identification as to sources or amounts of water for a large and important portion of its claims. Such information is absolutely critical to the City understanding and determining whether settlement is even possible and the City has expressed as much to the Pueblo. The City, moreover, has not only requested this missing information, explaining why such information is needed, but had also asked additional questions related to the settlement proposal in general for which the Pueblo will not provide answers. Absent (1) identification of all amounts and sources of water and (2) answers to the City's questions critical to understand whether settlement is legally and technically feasible, the City is unsure whether settlement may continue to be a viable option.

The City agrees with the Pueblo's Status Report identifying that meetings between and among the Parties occurred on the following dates:

|              |  |
|--------------|--|
| December 21: | Telephonic meeting among Ohkay Owingeh, the Federal Assessment Team and counsel for Santa Clara Pueblo |
|--------------|--|

- January 9: Telephonic meeting between Ohkay Owingeh and Rio Chama Acequias Association
- March 11: Telephonic meeting between Ohkay Owingeh and certain members of the Federal Assessment Team
- March 26: Telephonic meeting among some of the Parties' technical consultants and some members of the Federal Assessment Team
- In-person meeting between Ohkay Owingeh and the Federal Assessment Team
- March 27: In-person meeting among Ohkay Owingeh, Federal Assessment Team and certain settlement Parties and their counsel
- April 8: Telephonic meeting among Ohkay Owingeh and certain members of the Federal Assessment Team and certain technical consultants
- April 10: In-person meeting between certain acequias and representatives of the State of New Mexico
- April 18: Combined in-person and telephonic meeting among certain acequias, Ohkay Owingeh, the State of New Mexico and the Federal Assessment Team
- April 24: Combined in-person and telephonic meeting among counsel for certain Parties
- April 25: Combined in-person and telephonic meeting among certain acequias, Ohkay Owingeh, the State of New Mexico and the Federal Assessment Team
- May 1: Telephonic meeting between Ohkay Owingeh and the Federal Assessment Team
- May 21: In-person meeting among Ohkay Owingeh and its counsel, members of the Federal Assessment Team, and counsel for certain acequias, Santa Clara Pueblo, and the State of New Mexico

2. Scheduling Dispositive Motions

At this time, the City does not believe the Court needs to schedule the filing and briefing of motions for summary judgment or other dispositive motions within the next six months, but the City will continue to actively review this need in the next six months.

3. Rescheduling the Trial

Presently, the City does not believe that the Court needs to schedule trial at this time, but the City will continue to actively review this need in the next six months.

4. Expectations on Timing of Settlement

While the Pueblo and the United States have alleged that they “compil[ed] and analyz[ed] data necessary to support the [Pueblo’s] settlement proposal” and such work is “largely completed,” as the Pueblo identifies in its Status Report, on the whole this data has not been shared with any of the Parties, despite multiple Parties’ multiple requests to share the information. *See* Pueblo’s Joint Status Report at pg. 4, ¶ 4. Additionally, the City has and continues to object to the groundwater model that the Pueblo has proposed as the settlement model. The City has discussed these objections with the Pueblo on several occasions. These conversations are on-going, but the City does not believe that the matter of which groundwater model should be used for settlement is resolved. The determination of whether settlement is even possible, along with the timing of any such settlement largely depends on (1) the Pueblo providing answers to questions necessary to understanding its settlement proposal and critical to the City being able to determine if settlement is legally and technically feasible, as enumerated above in Section 1; (2) specifically identifying all sources of water and amounts of water its claiming in settlement, also discussed above in Section 1; (3) coming to agreement on the settlement model; and (4) the Pueblo disclosing the data and technical information which serve as the basis of its claims.

5. Other Matters

The City agrees with the filing of a joint status report six months from now, on June 10, 2020, at which time it will report to the Court on its progress and on the question of whether it believes the Court should schedule dispositive motions or otherwise resume litigation.

Respectfully submitted,

/s/ Cristina A. Mulcahy

Jay F. Stein

[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)

Cristina A. Mulcahy

[camulcahy@newmexicowaterlaw.com](mailto:camulcahy@newmexicowaterlaw.com)

P.O. Box 2067

Santa Fe, NM 87504-2067

(505) 983-3880

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of December 2019, 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/ Cristina A. Mulcahy  
Cristina A. Mulcahy