

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **RAYELLEN RESOURCES INC.,**
3 **DESTINY CAPITAL, INC., LYNNE E.**
4 **ELKINS, PAULA D. ELKINS, JOY BURNS,**
5 **CEBOLLETA LAND GRANT,**
6 **FERNANDEZ COMPANY, LTD., JUDITH**
7 **WILLIAMS PHIFER, individually and as**
8 **Personal Representative of THE ESTATE**
9 **OF JAMES H. WILLIAMS, ORIN CURTIS**
10 **CLEVE WILLIAMS, RIO GRANDE RESOURCES**
11 **CORPORATION, STRATHMORE RESOURCES**
12 **(U.S.) LTD., LARAMIDE RESOURCES (U.S.A.)**
13 **LTD., and ROCA HONDA RESOURCES, LLC,**

COURT OF APPEALS OF NEW MEXICO
FILED

MAR 08 2012

Wendy Jones

14 **and**

15 **THE HONORABLE PATRICK H. LYONS,**
16 **COMMISSIONER OF PUBLIC LANDS FOR**
17 **THE STATE OF NEW MEXICO,**

18 **Plaintiffs/Appellees,**

19 **v.**

No. 31,064

Lea County

D-0506-CV-09-812 S

22 **NEW MEXICO CULTURAL PROPERTIES**
23 **REVIEW COMMITTEE, and ALAN "MAC"**
24 **WATSON, individually and as Chairman of**
25 **the New Mexico Cultural Properties Review**
26 **Committee,**

27 **Defendants/Appellants,**

28 **and**

1 **PUEBLO OF ACOMA and PUEBLO OF**
2 **LAGUNA, federally recognized Indian**
3 **Tribes,**

4 **Intervenors-Defendants/Appellants.**

5 JONATHAN B. SUTIN
6 Presiding Judge
7 MICHAEL E. VIGIL
8 Judge
9 LINDA M. VANZI
10 Judge
11 /

12 **CERTIFICATION TO SUPREME COURT**

13 1. This matter came before this Court on the Court's motion.

14 2. This case is before us on appeal. No matter how it may be decided by
15 this Court, the case most certainly will reach the Supreme Court.

16 3. The case presents substantial and complex issues in an appeal and a
17 cross-appeal primarily involving Native American Tribes and the State Cultural
18 Properties Review Committee (CPRC) on one side and mining-related interests on the
19 other side. The appeal seeks to reverse a judgment of the district court. The cross-
20 appeal seeks to reverse determinations of the CPRC. The appeal and cross-appeal
21 involve some eighteen parties and fifteen briefs. The issues between and among the
22 parties ripple into the interests and concerns of other groups, as expressed in the nine
23 Amici Curiae briefs filed on behalf of some twenty-one entities and individuals. The

1 entities include the New Mexico Land Grant Council and entities advocating on
2 behalf of land grants, the New Mexico Cattle Growers Association, New Mexico
3 Farm & Livestock Bureau, the New Mexico Mining Association, the New Mexico Oil
4 and Gas Association, the All Indian Pueblo Council, and Native American and
5 cultural, anthropological, and environmental entities. Among the individuals
6 involved in the Amici briefs are two state senators and two state representatives. The
7 record in this case contains 8,955 pages and consumes five boxes.

8 4. There exists little question that delay is to no one's benefit and that the
9 issues need early resolution. Expedient resolution of the issues is very important not
10 only in regard to engagement in mineral exploration and development in the Mt.
11 Taylor region, but also in regard to any other mineral or to oil and gas exploration and
12 development elsewhere in New Mexico where traditional cultural property issues
13 exist. Traditional cultural property designation overbreadth is also an important issue
14 for livestock, farm, and ranch operations. Expedient resolution of the issues will
15 assist all interested parties, entities, and individuals in planning and decision making
16 in days to come. Delay for convenience is to be avoided. Consideration of the issues
17 in the Court of Appeals and in the Supreme Court will result in undue delay.
18 Consideration of the issues in the two Courts will unnecessarily delay a necessary
19 final appellate determination.

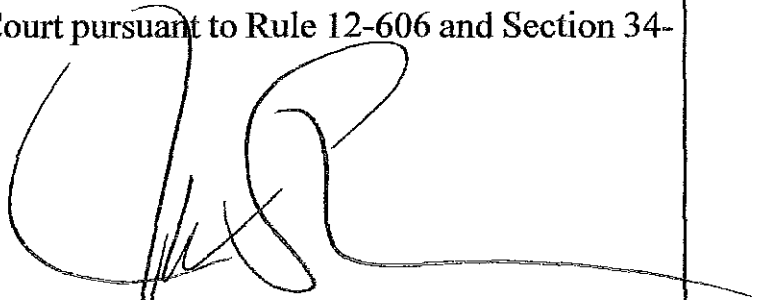
1 5. The issues in this case are of current statewide economic, cultural,
2 archeological, environmental, and ethnic importance. They involve substantial public
3 interest and significant considerations of public policy that are particularly within the
4 province of and that should be decided by our Supreme Court. *See* NMSA 1978, §
5 34-5-14(C)(2) (1972). It is obvious that interpretation of the various statutes at issue
6 will be required and will have significant public impact and significant impact on
7 private entities and industries, on Native American Tribes, and on cultural and
8 environmental interests. Additionally, there could be impact on whatever federal
9 programs may exist or may be developed in the future for development of uranium
10 extraction and oil and gas production in relation to the national interest, or on
11 whatever New Mexico interests may call for such development for employment
12 revenue purposes.

13 6. The case will consume an inordinate amount of judicial time and
14 resources in the Court of Appeals and in the Supreme Court, requiring the attention
15 of three Court of Appeals Judges and their chambers, five Supreme Court Justices and
16 their chambers, and the Clerks of each Court. Oral arguments will occur in both
17 Courts. The parties will have to duplicate their efforts and resources. Certification
18 to the Supreme Court eliminates that duplication and, further, eliminates the need for
19 the losing party or parties to prepare a petition for a writ or petitions for writs of

1 certiorari to the Supreme Court. To have the Court of Appeals review and decide the
2 issues for the purpose of assisting the Supreme Court when the Supreme Court
3 addresses the issues on certiorari, while generally a fair use of the time by the Court
4 of Appeals, in this case will be counterproductive given the extreme amount of time
5 and resources the Court of Appeals Judges and their chambers will be required to
6 devote to the case.

7 7. In sum, this Court strongly believes that this case is one contemplated
8 for certification under Rule 12-606 NMRA and Section 34-5-14(C)(2).

9 THE COURT, THEREFORE, ORDERS that this matter, including all case
10 materials, is certified to the Supreme Court pursuant to Rule 12-606 and Section 34-
11 5-14 (C)(2).



12
13 **JONATHAN B. SUTIN, Judge**



14
15 **MICHAEL E. VIGIL, Judge**



16
17 **LINDA M. VANZI, Judge**