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

ATLANTIC RICHFIELD COMPANY, Plaintiff, v. UNITED STATES OF AMERICA, THE PUEBLO OF LAGUNA, an Indian tribe, and LAGUNA CONSTRUCTION COMPANY, INC., Defendants.	Case No. 1:15-cv-00056-JAP-KK

ATLANTIC RICHFIELD COMPANY'S
RESPONSE IN OPPOSITION TO LAGUNA CONSTRUCTION COMPANY'S
MOTION TO DISMISS

Plaintiff Atlantic Richfield Company hereby submits its response in opposition to Defendant Laguna Construction Company's ("LCC") Motion to Dismiss.

INTRODUCTION

In this action, Atlantic Richfield seeks to hold LCC liable for its contractual and environmental responsibilities. In its Motion to Dismiss, LCC argues that it cannot be held to answer for those obligations in this Court because, as an arm of the Pueblo of Laguna ("Pueblo"), LCC has tribal immunity. But the Pueblo waived that immunity when it took on the contractual obligation—in exchange for Atlantic Richfield's payment of over $43 million—to clean up the Jackpile-Paguate Uranium Mine ("Jackpile Site"). Indeed, in the Agreement to Terminate Leases ("Settlement Agreement" or "Agreement"), the Pueblo "expressly waive[d] its

sovereign immunity" for all claims brought by Atlantic Richfield under the Agreement. The terms of the Agreement extend this waiver to any tribal entity, such as LCC, that the Pueblo might form to fulfill its obligations under the Agreement. Because the basis for Atlantic Richfield's claims against LCC is the Settlement Agreement itself and the environmental cleanup work LCC performed at the Jackpile Site under the terms of that Agreement, the Pueblo has waived LCC's sovereign immunity.

Moreover, all, or nearly all, of the conduct relevant to LCC's CERCLA liability occurred while it was still a New Mexico corporation. State-law corporations have no sovereign immunity and, as a matter of New Mexico law, LCC may still be sued as a New Mexico corporation even though the state-law corporation no longer exists. Further, LCC independently waived immunity for the liabilities of its New Mexico corporate predecessor when it merged with that state-incorporated entity. LCC therefore has no sovereign immunity from Atlantic Richfield's claims, and the Court has subject matter jurisdiction over LCC.

LCC also seeks to avoid CERCLA liability for its actions at the Jackpile Site by claiming that it is not the type of entity that can be sued under CERCLA. Although CERCLA expressly includes "corporations" in its list of potentially liable parties, LCC contends that it is not an "ordinary corporation." There is no authority for this novel argument (as LCC admits), and the plain language of CERCLA imposes liability on LCC.

Because LCC is subject to both the Court's jurisdiction and to CERCLA liability, the Court should deny LCC's Motion in its entirety.

FACTS

In 1986, the Pueblo, the United States, and Atlantic Richfield ended their decades-long cooperative efforts to mine uranium at the Jackpile Site by executing the Agreement to Terminate Leases. The Pueblo waived its sovereign immunity in the Agreement:

> In order to provide Anaconda an effective means of securing judicial or other relief in the event of a breach by The Pueblo of its obligations under this Agreement, The Pueblo hereby expressly waives its sovereign immunity as to any claims or actions brought by Anaconda under this Agreement.[1]

(Settlement Agreement, attached as Ex. A to Compl. [Doc. No. 1-2], at 4 ¶ 5(a).)

To further safeguard Atlantic Richfield's ability to enforce the Agreement, the Pueblo also "agree[d] that any entity established to carry out reclamation at the Mine which is controlled by or related to The Pueblo will assume all of the responsibilities and liabilities of The Pueblo under this Agreement." (*Id.* at 4-5, ¶ 6(b).) The Pueblo subsequently formed LCC, and LCC performed the reclamation work at the Jackpile Site under the Agreement on behalf of the Pueblo. (LCC Mot. at 3; Compl. ¶¶ 31, 74, 99-104, 111.)

The Pueblo initially incorporated LCC as a New Mexico corporation ("LCC New Mexico"). (LCC Mot. at 3.) In 1994, the Pueblo incorporated a new version of LCC under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477 ("LCC Federal"). (*Id.*) The Pueblo then merged LCC New Mexico into LCC Federal. (LCC Mot. at 3-4; Articles of Merger and Plan of Merger, Ex. D to LCC's Mot. [Doc. No. 34-5].). The merger became effective in 1995, after all, or substantially all, of the reclamation work that LCC and the Laguna would

[1] The Settlement Agreement here refers to "Anaconda." Atlantic Richfield is Anaconda's successor (Compl. ¶ 23), and the Settlement Agreement expressly provides that its terms "shall enure to the benefit of, and bind all successors and assigns of the parties [t]hereto." (Settlement Agreement at 5, ¶ 13.)

perform had already occurred. (Plan of Merger at 5, Art. VI ("Approval and Effective Time of the Merger"); LCC Mot. at 3-4; Compl. ¶ 117 (describing how the Laguna and LCC claimed to have "'completed' the Jackpile Site cleanup" in 1995).) After the merger was completed, LCC New Mexico ceased to exist. (Plan of Merger at 2, Art. II(a)(2) ("The separate existence of the New Mexico Corporation shall cease.").)

The terms of the LCC merger provided that:

> [A]ll rights of creditors and all liens upon any property of either Constituent Corporation shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(*Id.*, Art. II(a)(3).)

LEGAL STANDARDS

Different standards apply to the two parts of LCC's Motion. The CERCLA portion of the Motion falls under Rule 12(b)(6), and thus may be granted only if Atlantic Richfield's Complaint does not "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *S.E.C. v. Shields*, 744 F.3d 633, 640 (10th Cir. 2014). A Rule 12(b)(1) motion, by contrast, does not trigger a plausibility analysis. *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1168 (10th Cir. 2012) ("[J]urisdiction is not defeated by the possibility that averments might fail to state a cause of action on which petitioners [can] actually recover."). The portion of LCC's Motion concerning sovereign immunity falls under Rule 12(b)(1). *See Bales v. Chickasaw Nation Indus.*, 606 F. Supp. 2d 1299, 1301 (D.N.M. 2009). Thus, to resolve that portion of LCC's Motion, the Court may determine jurisdictional facts, has "wide discretion to allow affidavits, other documents, and a limited evidentiary hearing," and may refer to

evidence outside the pleadings without converting the Motion into one for summary judgment. *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1182 (10th Cir. 2010).

ARGUMENT

I. LCC WAIVED ITS IMMUNITY FROM ATLANTIC RICHFIELD'S CLAIMS.

A. The Pueblo Waived LCC's Immunity In The Settlement Agreement.

A tribe may "relinquish its immunity" so long as its waiver of immunity is "clear." *C&L Enters., Inc. v. Citizen Band & Potawatomi Indian Tribe of Okla.* ("*Potawatomi*"), 532 U.S. 411, 418 (2001). In *Potawatomi*, the Supreme Court held that a tribe had waived its immunity through a contract requiring that any disputes arising from the agreement be settled in arbitration pursuant to American Arbitration Association rules and by indicating that Oklahoma law would govern the contract's interpretation. *Id*. at 415. The applicable American Arbitration Association rules provided for the enforcement of arbitral awards "in any federal or state court having jurisdiction thereof," and Oklahoma law conferred jurisdiction to enforce such awards in any court in the state. *Id.* at 415-16. Thus, the Court held that the tribe had waived its immunity because it had agreed to "adhere to certain dispute resolution procedures," including a "regime" where disputes would be resolved through arbitration and ultimately enforced by a judgment from an Oklahoma court. *Id.* at 420.

Potawatomi is the definitive opinion on whether contractual language is sufficiently clear to waive tribal immunity. Here, the Pueblo's waivers of immunity for itself and LCC are far more "clear" than the waiver in *Potawatomi*. It is difficult to imagine a clearer waiver than the one in this case. The Settlement Agreement addresses waiver of immunity specifically, saying

that "[t]he Pueblo hereby expressly waives its sovereign immunity," and further provides that claims against the Pueblo may be brought in any federal court of competent jurisdiction. (Settlement Agreement at 4, ¶ 5(a).) And the Pueblo did so for the express purpose of "provid[ing] Anaconda an effective means of securing judicial or other relief." (*Id.*)

LCC does not dispute that the Pueblo can waive sovereign immunity on its behalf. Nor could it. *See, e.g., Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1293 (10th Cir. 2008) (recognizing that tribe can waive immunity for actions of tribal corporation); *Bales*, 606 F. Supp. 2d at 1307 (similar). Indeed, LCC argues at length that it "possesses its tribal shareholder's sovereign immunity" and is a mere "arm[] of the tribe." (LCC Mot. at 17.) In other words, LCC's immunity is derivative of the Pueblo's sovereign immunity, and LCC cannot possess any greater immunity than does the tribe itself. Because the Pueblo waived its sovereign immunity on the face of the Agreement, LCC has no immunity to assert.

This would be so even if there were no specific language in the contract applying the waiver to LCC. But there is such language. The Settlement Agreement extended the Pueblo's waiver to any future-formed tribal company by stating that "any entity established to carry out the reclamation at the Mine which is controlled by or related to The Pueblo will assume all of the responsibilities and liabilities of The Pueblo under this Agreement." (Settlement Agreement at 4-5, ¶ 6(b).) Again, the purpose of the Pueblo's waiver of sovereign immunity was "to provide Anaconda an effective means of securing judicial or other relief in the event of a breach" of the Agreement. (*Id.* at 4, ¶ 5(a).) The waiver would not have accomplished that purpose if the Pueblo were simply allowed to form a new entity, clothe it with tribal immunity, and direct that entity to carry out the Pueblo's obligations under the Agreement. Like the waiver in

Potawatomi, the Settlement Agreement's waiver of LCC's immunity was clear in contemplating that LCC would "assume all of the responsibilities and liabilities" of the Settlement Agreement for the express purpose of providing Atlantic Richfield "an effective means of securing judicial relief."

Atlantic Richfield's claims against LCC fall squarely within the scope of this waiver. The Pueblo "assume[d] full and complete responsibility and liability under all applicable laws … for the cleanup, reclamation or other environmental remedial action at the Mine" in the Settlement Agreement. (*Id.* at 2, ¶ 3(a).) Because LCC "assume[d] all of the responsibilities and liabilities of The Pueblo under th[e] Agreement," LCC likewise assumed that liability. As Atlantic Richfield explains in detail in its Response to the Pueblo's Motion to Dismiss, this contractual assumption of liability includes Atlantic Richfield's CERCLA liability for the Jackpile Site. (*See* Atlantic Richfield's Resp. in Opp'n to the Pueblo's Mot. to Dismiss, Sec. II.B and III.A.1.) Moreover, LCC's conduct at the site—from its formation until it declared the cleanup "complete" in 1995— is the subject of Atlantic Richfield's CERCLA claims. That work was supposed to be in fulfillment of the Pueblo's (and LCC's) obligations under the Agreement. Thus, Atlantic Richfield can assert CERCLA claims against LCC based on the liability it assumed, and the reclamation work it performed, under the Agreement.

Just as in *Potawatomi*, "the Tribe[] commit[ted] to adhere to the contract's dispute resolution regime." *Id.* at 422. And, just as in *Potawatomi*, "[t]hat regime has a real world objective; it is not designed for regulation of a game lacking practical consequences." *Id.* Thus, just as in *Potawatomi*, the Pueblo should be held to its agreement on dispute resolution—it

waived sovereign immunity for itself and LCC for claims brought by Atlantic Richfield under the Settlement Agreement.

B. LCC Waived Immunity For The Conduct Of LCC New Mexico In LCC's Plan Of Merger.

Although not necessary in light of the waiver in the Settlement Agreement, LCC also waived any immunity it might have enjoyed from Atlantic Richfield's claims in its Plan of Merger. The Plan says that "all rights of creditors … of either Constituent Corporation shall be preserved unimpaired" by the merger.[2] (Plan of Merger at D-6, Art. II(a)(3).) Obviously, allowing LCC Federal to assert sovereign immunity to defeat the debts and obligations of LCC New Mexico would be a significant "impairment." The Plan of Merger further provides that "all debts, liabilities and duties of [LCC New Mexico] shall … attach to [LCC Federal] and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (*Id.*) To illuminate the intended effect of that provision, for suits that were then pending, the Plan goes on to say that such suits "shall be prosecuted as if the merger had not taken place." (*Id.* at D-6 to D-7.) These provisions leave no doubt that LCC intended to waive any immunity LCC Federal might assert as to the liabilities it was assuming from LCC New Mexico.

C. LCC's Counter-Arguments Are Unpersuasive.

LCC submits several reasons why, it says, this Court should ignore the waivers of LCC's immunity. LCC begins by asserting that the waiver in the Settlement Agreement should not be

[2] The prevailing definition of "creditor" at the time the Plan of Merger was executed included Atlantic Richfield. *See Black's Law Dictionary* 368 (6th ed. 1990) (defining "creditor" as including "[o]ne who has the right to require the fulfillment of an obligation or contract"); *see also id.* ("The word is susceptible of latitudinous construction. In its broad sense the word means one who has any legal liability upon a contract, express or implied….").

interpreted as a waiver because "[n]owhere … is there any reference to, much less waiver of, any sovereign immunity the Corporation might have." (LCC Mot. at 6.) Essentially, LCC contends there can be no waiver unless the agreement actually contains the words "LCC waives its sovereign immunity." This argument easily fails, however, because the Supreme Court expressly rejected it in *Potawatomi*. 532 U.S. at 420-21 (rejecting argument that waiver must use the words "sovereign immunity" to be deemed explicit). Regardless, as explained above, the Pueblo waived its sovereign immunity in the clearest terms—it agreed to "waive[] its sovereign immunity"—and that waiver applies to LCC, both as an "arm" of the tribe and through the express terms of the Settlement Agreement. In holding that the *Potawatomi* tribe had waived its immunity through a combination of arbitration and choice-of-law provisions, the Court engaged in a much finer parsing of the language and intent of that contract than is required here. In short, if the contract in *Potawatomi* was sufficient to waive immunity, the Settlement Agreement must be, too.

LCC further argues there was no reason for the Pueblo to waive LCC's immunity because LCC was initially incorporated as a New Mexico corporation.[3] (LCC Mot. at 6.) But LCC was not incorporated until after the Settlement Agreement was signed. (*Id*. at 3.) Atlantic Richfield had no way of knowing what kind of tribal entity the Pueblo might form to perform under the Agreement. The Pueblo could have incorporated LCC under federal law (or formed some other tribal entity to fulfill its obligations under the Settlement Agreement) such that the entity could assert sovereign immunity. To effectuate the Pueblo's own waiver of immunity and its promise

[3] LCC "assumes … for the purpose of this argument" that LCC New Mexico would not enjoy sovereign immunity. (LCC Mot. at 6.) That point need not be assumed, however, because the Tenth Circuit has unequivocally ruled that state-law corporations have no sovereign immunity. *Somerlott v. Cherokee Nation Distribs., Inc.*, 686 F.3d 1144, 1150 (10th Cir. 2012).

that Atlantic Richfield would have "an effective means of securing judicial or other relief," the Settlement Agreement had to include a waiver of immunity for any entity the Pueblo might create to carry out its obligations. (Settlement Agreement at 4, ¶ 5(a).)

LCC next argues that its immunity can be waived only by strict compliance with the extensive procedures its corporate charter sets out for waivers of immunity. But the immunity waiver provisions in LCC's corporate charter describe only how LCC may waive its own immunity. (LCC Mot. at 7-8 (quoting a provision saying that "[t]he Corporation is hereby authorized to waive …" and another provision saying that "[a]ny waiver by the Corporation …" must comply with certain requirements).) LCC's corporate charter does not limit—indeed, could not limit—the Pueblo's inherent authority to waive LCC's immunity as LCC's alter ego, sole shareholder, and the very source of LCC's immunity in the first place. Moreover, LCC Federal's corporate charter does not address pre-existing liabilities of LCC New Mexico—the Plan of Merger does. Thus, both waivers in this case are unaffected by the waiver provisions in LCC's corporate charter.

LCC's final tack depends on its assertion that the Eighth Circuit's decision in *Amerind Risk Management Corp. v. Malaterre*, 633 F.3d 680 (8th Cir. 2011), is "on all fours" with this case. (LCC Mot. at 10.) In *Amerind*, the question was "whether Amerind [an immune tribal corporation] waived its sovereign immunity when it expressly assumed … 'obligations and liabilities,'" from a potentially non-immune predecessor entity. 633 F.3d at 686-87. That is not the question here. Atlantic Richfield is not arguing that LCC waived immunity simply because it assumed the liabilities of a non-immune entity. Rather, Atlantic Richfield argues that the Pueblo expressly waived sovereign immunity for itself and any future tribal entities so that Atlantic

Richfield would have "an effective means of securing judicial or other relief" under the Settlement Agreement. Additionally, Atlantic Richfield argues that clear language in LCC's Plan of Merger provides that the liabilities of LCC New Mexico are "preserved unimpaired" and "may be enforced against" LCC Federal despite its immunity. Enforcing those liabilities is precisely what Atlantic Richfield seeks to do in this case, and both the Settlement Agreement and LCC's Plan of Merger allow that.

II. LCC MAY BE SUED AS A NON-IMMUNE NEW MEXICO CORPORATION.

Even if the Court were to conclude that LCC has not waived its sovereign immunity, LCC New Mexico has no sovereign immunity and, although it no longer exists as a corporation in the ordinary sense, it remains amenable to suit under New Mexico law.

At common law, upon dissolution, a corporation ceased to exist for all purposes. *United States v. U.S. Vanadium Corp.*, 230 F.2d 646, 648 (10th Cir. 1956); *Smith v. Halliburton Co.*, 1994-NMCA-055, ¶ 12, 118 N.M. 179, 879 P.2d 1198. The common-law rule, however, has been modified by most states through the enactment of corporate survival statutes, which allow for suits against defunct corporations in certain circumstances. *See U.S. Vanadium Corp.*, 230 F.2d at 648; *Smith*, 1994-NMCA-055, ¶ 12. In determining whether a corporation has ceased to exist for all purposes, or whether it may still be sued, the Court must "look to the state law and its construction by the state courts." *U.S. Vanadium Corp.*, 230 F.2d at 648; Fed. R. Civ. P. 17(b) ("[T]he capacity of a corporation to sue or be sued shall be determined by the law under which it was organized."). Because LCC New Mexico was organized under New Mexico law, New Mexico's corporate survival statute applies here. *See U.S. Vanadium Corp.*, 230 F.2d at 648 (applying state dissolution statutes to claims against merged out corporations); *accord*

Marsh v. Rosenbloom, 499 F.3d 165, 179 (2d Cir. 2007) (applying state corporate capacity statute to CERCLA claims, collecting additional authority).

New Mexico's corporate survival statute allows a dissolved corporation to be sued in its corporate name indefinitely. N.M.S.A. 1978, § 53-16-24 (1967) ("The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution …."); *Smith*, 1994-NMCA-055, ¶ 12 ("Ten jurisdictions place no express time limit on survival of remedies…. New Mexico is within this group."). Thus, LCC New Mexico remains subject to suit, even though it was merged out of existence.[4]

LCC contends that LCC Federal is "the one ARCO has sued here," and that corporation "did and does possess sovereign immunity." (LCC Mot. at 6-7.) But Atlantic Richfield also sued LCC New Mexico. (Compl. ¶ 31 ("As named in this Complaint, Laguna Construction includes both the New Mexico corporation that was dissolved and/or merged out of existence and the surviving federally-chartered corporation.").) The Tenth Circuit has held that corporations organized under state law—even if tribally owned—may not claim sovereign immunity. *Somerlott*, 686 F.3d at 1150 ("[A] separate legal entity organized under the laws of another sovereign, Oklahoma, cannot share in the Nation's immunity from suit …."). Thus,

[4] Although the statute refers to dissolved corporations, it applies equally to corporations that are merged out of existence. *See U.S. Vanadium Corp.*, 230 F.2d at 648 ("Upon merger with their parent, the three subsidiaries were dissolved under the laws of the state of their incorporation."); *cf.* N.M.S.A. 1978, § 53-19-62.2(E) (1995) ("Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.").

LCC may be sued as a former New Mexico corporation, even if the Court were to conclude that LCC has not waived its sovereign immunity as a federal corporation.[5]

III. LCC IS SUBJECT TO CERCLA LIABILITY.

Any "person" is potentially liable under CERCLA. 42 U.S.C. § 9607(a)(1)-(4). CERCLA defines "person" as any "individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body." *Id.* § 9601(21). As LCC freely admits, it is a corporation. There should be no dispute, then, that Atlantic Richfield can sue LCC under CERCLA. And, even if that were not the case, LCC comes within CERCLA's definition of "person" for the same reasons as does the Pueblo, including that LCC expressly assumed CERCLA liability under the terms of the Settlement Agreement. The Court therefore should reject LCC's attempt to avoid its CERCLA liability.

A. CERCLA Imposes Liability On Corporations And LCC Is A Corporation.

CERCLA defines a potentially liable "person" to include "corporation[s]." LCC does not offer any different reading of the statute and it is not susceptible of any other reading. LCC further admits that it is a corporation. (LCC Mot. at 2 ("LCC is a tribal corporation ….").) That admission should end the matter. Corporations are liable under CERCLA; LCC is a corporation; and, therefore, LCC may be liable under CERCLA.

[5] Atlantic Richfield anticipates that LCC will rely on cases like *Amerind* to argue that an immune entity may retain its immunity even when it assumes the liabilities of a non-immune entity. *See* 633 F.3d at 686 n.7. Such an argument might prevail (absent LCC's waiver) if Atlantic Richfield had sued only LCC Federal, the surviving corporation. But Atlantic Richfield also sued LCC New Mexico, and New Mexico law allows such a suit.

Nonetheless, LCC asks this Court to exempt LCC from CERCLA because LCC is "not [an] ordinary corporation[]" (LCC Mot. at 14), because LCC is "characterized by [its] federal character and [its] governmental purpose" (*id.* at 16), because LCC "far more resembles in purpose and operation the Pueblo of Laguna than it does General Motors" (*id.* at 17), and because "a reading [of CERCLA] consistent with Section 17's purposes argues strongly against" allowing LCC to incur CERCLA liability, (*id.* at 14). But "[c]ourts are not at liberty to create exceptions to the application of a statute when Congress expressly directs its application. Absent constitutional defects, courts will give effect to a statute as Congress has written it." *United States v. 1002.35 Acres of Land*, 942 F.2d 733, 736 (10th Cir. 1991). The Court need not analyze LCC's purpose or compare LCC to General Motors. The Court simply is "not at liberty" to grant LCC the exemption it seeks.

B. LCC Is A CERCLA "Person" For The Same Reasons As The Pueblo.

Even if LCC were not a corporation for CERCLA purposes, LCC still would be liable under CERCLA. Primarily, the Pueblo assumed Atlantic Richfield's CERCLA liability for the Jackpile Site. (Settlement Agreement at 2, ¶ 3(a).) And, as discussed above, LCC "assume[d] all of the responsibilities and liabilities of The Pueblo under this Agreement." (*Id.* at 4-5, ¶ 6(b).) LCC's contractual assumption of CERCLA liability qualifies LCC as a CERCLA "person." *United States v. NCR Corp.*, 840 F. Supp. 2d 1093, 1097 (E.D. Wis. 2011) ("CERCLA case law is clear that parties may assume liability through agreement …."). Moreover, and as discussed in Atlantic Richfield's response to the Pueblo's Motion to Dismiss, Indian tribes may be subject to CERCLA liability. (*See* Atlantic Richfield's Resp. in Opp'n to the Pueblo's Mot. to Dismiss, Sec. III.A.2.) Atlantic Richfield incorporates by this reference the arguments it makes in

response to the Pueblo's Motion. For the same reasons the Pueblo is liable under CERCLA, so too, LCC would be liable even if the Court finds that LCC should not be deemed a corporation under CERCLA.[6]

CONCLUSION

Based on the foregoing reasons and authorities, the Court should deny LCC's Motion to Dismiss in its entirety, and grant Atlantic Richfield such other and further relief as the Court deems just and proper.

Respectfully submitted this 11th day of August, 2015.

[6] LCC argues in a footnote that "the Fourth Claim for Relief should be dismissed because there has not been a necessary preceding settlement as defined by CERCLA, and the Fifth Claim for Relief must be dismissed because the underlying relief sought by ARCO is unavailable." (LCC Mot. at 13 n.10.) These arguments fail for the reasons explained in Atlantic Richfield's Response in Opposition to United States' Motion to Dismiss (*see* Sec. II.B.1 and III), which Atlantic Richfield incorporates by this reference.

DAVIS GRAHAM & STUBBS LLP

s/ Jonathan W. Rauchway
Jonathan W. Rauchway
Andrea Wang
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379
Email: jrauchway@dgslaw.com
andrea.wang@dgslaw.com

HOLLAND & HART LLP
Mark F. Sheridan
John C. Anderson
110 North Guadalupe, Suite 1
Santa Fe, NM 87501
Telephone: (505) 988-4421
Facsimile: (505) 983-6043
Email: msheridan@hollandhart.com
jcanderson@hollandhart.com

Attorneys for Plaintiff Atlantic Richfield Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2015, the foregoing **ATLANTIC RICHFIELD COMPANY'S RESPONSE IN OPPOSITION TO LAGUNA CONSTRUCTION COMPANY'S MOTION TO DISMISS** was served via the Court's ECF system upon:

Thomas J. Peckham
Deidre A. Lujan
Nordhaus Law Firm
7411 Jefferson Street NE
Albuquerque, NM 87109-4488
tpeckham@nordhauslaw.com
dlujan@nordhauslaw.com

Donald H. Grove
1401 K Street NW., Ste. 801
Washington, DC 20005
dgrove@nordhauslaw.com

Gwenellen P. Janov
Janov Law Offices, P.C.
901 Rio Grande Blvd., NW, Suite F-144
Albuquerque, NM 87104
gjanov@janovlaw.com

Stephanie J. Talbert
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
stephanie.talbert@usdoj.gov

Karen Grohman
United States Attorney's Office
P.O. Box 607
Albuquerque, NM 8703
Karen.grohman@usdoj.gov

Simi Bhat
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
simi.bhat@usdoj.gov

s/ Amanda Melillo