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

REPLY MEMORANDUM IN FURTHER SUPPORT OF DEFENDANT LAGUNA CONSTRUCTION COMPANY'S MOTION (DOCS. # 33, 34) TO DISMISS THE COMPLAINT (DOC. #1) AGAINST IT

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PRELIMINARY STATEMENT

ARCO's response to LCC's assertion of sovereign immunity from this suit is built largely on a non-sequitur. Specifically, ARCO argues that the Pueblo of Laguna, as LCC's sole shareholder, waived LCC's sovereign immunity from suit by agreeing that whatever tribal company the Pueblo would form in the future would assume certain responsibilities and liabilities under a Settlement Agreement between the Pueblo and ARCO's predecessor.[1] In other words, it equates the assumption of liability with a waiver of sovereign immunity, contending that because the Pueblo agreed that the future company would assume certain responsibilities

[1] LCC adopts ARCO's shorthand reference to the Agreement to Terminate Leases as the "Settlement Agreement."

and liabilities, the Pueblo by that action waived the future company's sovereign immunity from suit.

ARCO's position cannot succeed. First, even if the corporation's tribal shareholder *could* in some circumstances waive the corporation's sovereign immunity, a proposition with which LCC does not agree, it did not do so here. No matter how generous some courts have become in permitting "implied" waivers of sovereign immunity, nothing in the Settlement Agreement here rises to a level permitted by any court. If the Pueblo wished to waive LCC's sovereign immunity for this or any pending or future liability or claim, it could and should have done so by amending the corporate Charter or by directing that LCC do so in the Plan of Merger. It did not.

Nor did LCC waive its immunity in the Plan of Merger. The assumption of an extinguished merger partner's liabilities does not, where the surviving merger partner possesses sovereign immunity, constitute a waiver of that immunity.

ARCO's other waiver arguments must also fail. Sovereign immunity is a matter of federal law and cannot be diminished by state law. ARCO's attempt to ignore LCC's sovereign immunity as a federal tribal corporation by reference to New Mexico's corporate survival statute misreads that statute and runs afoul of the Supremacy Clause of the United States Constitution.

Finally, ARCO devotes little attention to LCC's arguments against CERCLA liability. For the most part, LCC relies on its previous arguments and incorporates by reference the arguments of its co-defendant and Shareholder, the Pueblo of Laguna.

ARGUMENT

I. LCC's Sovereign Immunity Has Not Been Waived

ARCO nowhere disputes that, standing alone, LCC as a Section 17 federal corporation, chartered under the Indian Reorganization Act, possesses sovereign immunity from suit. Rather, ARCO would pierce that immunity based on three premises. First, ARCO contends that the Pueblo of Laguna, as LCC's sole shareholder, waived LCC's sovereign immunity in a Settlement Agreement with ARCO's predecessor eight years before LCC's federal charter was issued. Second, ARCO contends that LCC waived its own sovereign immunity in the Articles and Plan of Merger. Finally, ARCO contends that under New Mexico law, LCC as the surviving entity of a merger is liable for any and all liabilities of the state corporation that was merged into it twenty years ago. None of these arguments survives scrutiny.

A. The Pueblo Shareholder Did Not Waive LCC's Sovereign Immunity in the Settlement Agreement.

ARCO repeats, like a mantra, that the purpose of the Settlement Agreement was to "provid[e] Anaconda an effective means of securing judicial or other relief." (ARCO Br. at 6, 7, 10 & 11). ARCO notes, correctly, that the Pueblo waived its sovereign immunity in the Settlement Agreement.[2] It goes on to argue, however, that there is "specific language in the contract applying the waiver to LCC."[3] Specifically, plaintiff contends that "[t]he Settlement Agreement extended the Pueblo's waiver to any future-formed tribal company by stating that

[2] Although the Pueblo clearly did waive its immunity in the Settlement Agreement, LCC agrees with the Pueblo that the waiver was expressly limited in terms of both duration and monetary scope.

[3] Atlantic Richfield's Response in Opposition to Laguna Construction Company's Motion to Dismiss (Doc. # 48) at 6 (hereinafter "ARCO Br. at ___").

'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.'" (ARCO Br. at 6). ARCO comments that "it is difficult to imagine a clearer waiver than the one in this case." (ARCO Br. at 5). ARCO lacks imagination. Simply put, an agreement to "assume all responsibilities and liabilities" – whether its own or someone else's – is not the same thing as a waiver of sovereign immunity. This logical disconnect lies at the root of ARCO's entire argument.

ARCO relies heavily on *C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001),[4] and argues that the cases are very much alike. They are not. LCC does not, as ARCO posits, "essentially … contend[] there can be no waiver unless the agreement actually contains the words "LCC waives its sovereign immunity." (ARCO Br. at 6). LCC agrees that *Potawatomi* has foreclosed any such argument. However, ARCO's enormous reliance on *Potawatomi* is entirely misplaced. Since *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), there has been no retreat from the requirement that a waiver of tribal sovereign immunity "cannot be implied but must be unequivocally expressed." *Id.* at 58. *See, e.g., Northern Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1281 (10th Cir. 2012); *E.F.W. v. St. Stephen's Indian High School*, 264 F.3d 1297, 1304 (10th Cir. 2001). No matter how judicial recognition of "implied" waivers may have evolved since *Santa Clara*, an assumption of liability does not remotely address the entirely different subject of sovereign immunity from suit on such liability. Were they one and the same thing, the Pueblo itself would not have had to agree to an

[4] Because the Supreme Court has decided so many cases involving the Citizen Band of Potawatomi, this case is commonly referred to as "*C&L*." LCC adopts ARCO's reference to the case as "*Potawatomi*" for consistency.

express waiver of its own immunity in the Settlement Agreement. Rather, its mere agreement to assume ARCO's liabilities and obligations would have been sufficient. *See, e.g., Kroll v. Board of Trustees of the University of Illinois*, 934 F.2d 904, 909 (7th Cir.), *cert. denied* 502 U.S. 941 (1991) (holding that legislation mandating that immune entity "be responsible and liable for all of the liabilities and obligations of each of the corporations so merged" was not a waiver of the surviving entity's pre-existing sovereign immunity).

ARCO contends that LCC "does not dispute that the Pueblo can waive sovereign immunity on its behalf," arguing that "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." (ARCO Br. at 6). This statement is wrong from start to finish. First, LCC emphatically does dispute that the Pueblo can and did waive LCC's sovereign immunity in the Settlement Agreement. LCC did not even exist at the time the Settlement Agreement was executed. More to the point, LCC's immunity is "derivative" of the Pueblo's immunity only to the extent that, as a tribally owned federal corporation, LCC shares its tribal shareholder's sovereign immunity. In a hypothetical contract with a third party to which both the Pueblo and LCC were party, each of the tribal entities could waive its own immunity to the extent it deemed prudent. Neither could in such an agreement waive the other's immunity.

ARCO cites two cases for the proposition that the Pueblo may waive LCC's sovereign immunity on LCC's behalf. Neither case supports that proposition as advanced here. In both cases, the court was dealing with a "sue and be sued" clause in the tribal corporation's corporate charter. In *Native American Distributing v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288 (10th

Cir. 2008), the Court stated that the tribal shareholder did waive the tribal corporation's immunity but it did so in the corporate charter.[5] *Bales v. Chickasaw Nation Industries*, 606 F.Supp.2d 1299 (D.N.M. 2009), too, discussed tribal shareholder waiver of its IRA §17 corporation's sovereign immunity only in the context of the presence of a "sue and be sued" clause in the corporate charter. *See, e.g. id.* at 1304 (noting that "§477 corporations enjoy sovereign immunity absent an unequivocal waiver of that immunity *in the corporate Charter*") (emphasis added); 1306 (quoting with apparent approval "'Section [477] corporations retain their tribal status – and, accordingly, sovereign immunity in the absence of a 'sue and be sued waiver ….'"; 1307 & n.6 (same).[6]

ARCO argues that the absence of strict compliance with the waiver provisions of LCC's Charter is irrelevant, because those provisions apply only to LCC's own waiver, not to the Pueblo's waiver of LCC's immunity "as LCC's alter ego, sole shareholder, and the very source of LCC's immunity in the first place." (ARCO Br. at 10). The only way in which a tribe as sole shareholder can waive a Section 17 corporation's immunity is by exercising that authority in the corporation's organic documents. A tribe could, for example, state in the Charter that the corporation has no immunity, or that the immunity may be waived only with the concurrence of

[5] The Court also noted that the parties there did not dispute the effect of the "sue and be sued" clause, but expressed its own doubt as to whether that clause, without more, constituted a waiver. 546 F.3d at 1293 & n.2.

[6] As argued in LCC's initial Memorandum (DOC # 34, at 8-9) (hereinafter "LCC Mem."), a "sue and be sued" clause, when coupled with an explicit direction as to how sovereign immunity may be waived, does not constitute a waiver unless the additional requirements for waiver are met. Here, LCC's shareholder explicitly asserted LCC's sovereign immunity in Article XVI of the corporate Charter and described in detail the only manner in which that immunity could be waived. (Doc. # 34-3, at B-12) (hereinafter "B-___").

the Shareholder. Or, as discussed in *Native American Distrib.* and *Bales*, the Charter could contain a bare "sue and be sued" clause without more. Here, as discussed in LCC's Initial Memorandum, the Pueblo affirmatively asserted LCC's sovereign immunity in the federal corporate Charter and described in detail the only way LCC could waive that immunity. (LCC Mem. at 7-8, B-15). Given that affirmative recognition of immunity and the specific method of waiver, the only way the Pueblo could unilaterally waive LCC's immunity, in general or specific, would be by amending the Charter. It has not done so.

In short, the Pueblo did not waive LCC's sovereign immunity in the Settlement Agreement because the Pueblo agreed only that the to-be-organized entity would assume certain liabilities and obligations of the Pueblo under the Settlement Agreement. Even under the generous rule of *Potawatomi*, the assumption of obligations and liability is not equivalent to a waiver of sovereign immunity. The Pueblo directly addressed and affirmed LCC's immunity in the corporation's organizational documents. The shareholder retained no power, other than through amendment of the Charter, to deprive its creation of its rightful powers and immunities.

B. LCC Did Not Waive its Own Immunity in its Plan of Merger or Otherwise.

ARCO points to provisions in the Plan of Merger that it believes "leave no doubt LCC intended to waive any immunity LCC federal might assert." (ARCO Br. at 8). Specifically, ARCO quotes from Article II(a)(3) of the Plan as follows:

> [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.*

ARCO Br. at 4 (emphases added).[7] *See also Id.* at 8. The italicized portion of that quote qualifies everything that comes before, and its import is clear: while the two companies' liabilities attached to the Surviving Corporation, those liabilities could be enforced against the surviving corporation *only to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.* ARCO ignores the determinative significance of the words "to the same extent." Liabilities incurred or contracted by the surviving Section 17 corporation may not be enforced against it without a waiver of the corporation's sovereign immunity as required by Article XVI of its Charter. There was no waiver. Those liabilities cannot be enforced against LCC.

It is imperative to bear in mind that LCC is a federal corporation organized under the Indian Reorganization Act, 25 U.S.C. §§ 461 *et seq.*, the purpose of which was to overcome centuries of tribal economic and social deprivation. F. Cohen, *Handbook of Federal Indian Law*§ D2c (1982 ed.).[8] The importance of and deference intended to be paid to LCC's federal nature and immunities is explicitly stated elsewhere in the Plan of Merger:

> (c) This Plan and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New Mexico, as described in the New Mexico Business Corporations Act, *except that the Surviving Corporation shall have all the rights, privileges, immunities and powers of a corporation organized under 25 U.S.C. § 477 as specified in the Charter of the Federal Corporation.*

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[7] The full text of Article II is found at Doc. # 34-5, at D-9.

[8] *See* Article III of LCC's Charter, which states: "The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under 25 U.S.C. § 477, as amended, and shall have the powers, privileges and immunities granted by that statute embodied in this Charter." (B-2).

Art. VI(c) (D-9) (emphasis added). In the context of Indian tribes and Section 17 corporations, the word "immunities" means something specific. It means sovereign immunity from suit. This retention of immunity in the Plan of Merger is much clearer than any purported waiver ARCO seeks to identify.

The provisions quoted above demonstrate the opposite of an intended waiver of sovereign immunity in the Plan of Merger. To the contrary, they reflect a conscious intention to retain the immunities of a federal Section 17 corporation. LCC did not waive its immunity in its Plan of Merger.

ARCO does not deny that LCC's Charter requires certain steps to be taken to waive the corporation's sovereign immunity and that those steps were not taken. Rather, it circles back to its contentions that LCC's immunity was waived by the Pueblo in the Settlement Agreement and/or by LCC in its merger documents. Those arguments having been demonstrated incorrect, ARCO must concede that in the absence of a Board of Directors resolution addressing the specific parameters of a waiver, LCC has at no time waived its immunity in connection with the Jackpile reclamation project. *See Memphis Biofuels v. Chickasaw Nation Industries*, 585 F.3d 917, 921-22 (6th Cir. 2009).

Finally, it bears repeating that there is nothing novel about the proposition that a surviving corporation that possesses sovereign immunity does not lose that immunity just because its extinguished merger partner did not have immunity. As the Eighth Circuit noted in *Amerind*, "A sovereign entity does not automatically waive its sovereign immunity through the mere act of succeeding a corporation that is either not entitled to sovereign immunity or that has waived such immunity." 633 F.3d at 686 n.7. *See also Kroll v. Board of Trustees of Univ. of*

Ill., 934 F.2d 904, 909 (7th Cir.), *cert. denied*, 502 U.S. 941 (1991) (holding that immune state Board did not lose its immunity when it was the surviving entity of a statutory merger with a non-immune entity); *cf. Maysonet-Robles v. Cabrero*, 323 F.3d 43, 50 (1st Cir. 2003) (holding that immune entity inserted as successor to non-immune entity in existing litigation was entitled to assert its immunity).

C. The New Mexico Corporate Survival Statute Does Not Permit Suit Against the Immune Section 17 Corporation as the Surviving Corporation of the Merger.

ARCO places great weight on N.M.S.A. 1978, § 53-16-24, the New Mexico statute providing that a dissolved corporation's liabilities survive and may be enforced against the surviving corporation. (ARCO Br. at 11-13).[9] Indeed, ARCO claims that it has sued both LCC corporations, both the merged-out state corporation and the surviving federal corporation that possesses sovereign immunity. (ARCO Br. at 12 & 13 n.5, citing ¶ 31 of the Complaint).

As an initial matter, that is a legal impossibility. The Articles and Plan of Merger clearly state that the merged corporation is a *single,* surviving entity. Plan of Merger, Art. II(a)(1) ("The Constituent Corporations shall be a single corporation, which shall be the Federal Corporation....") (D-9). Even under New Mexico law, the old corporation is extinguished and merged into the *single* surviving corporation. N.M.S.A. 1978, § 53-14-6(B) ("the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving

[9] ARCO's New Mexico statutory argument indiscriminately cites statutes applicable to corporate mergers and dissolution and the dissolution of LLC's. For purposes of the survival of LCC's sovereign immunity as a matter of federal law, under the jurisdiction of its incorporation, ARCO's reliance on statutes addressing different subject matters (merger, dissolution, corporations, LLC's) is irrelevant.

or new corporation, shall cease ...."). In the merger context, ARCO cannot avoid LCC's sovereign immunity by purporting to sue both the extinguished and surviving corporations.

As a substantive matter, the state corporate survival statutes are of no help to ARCO because LCC is a *federal* corporation governed by *federal* law. The Articles of Merger and Plan of Merger plainly state that the surviving corporation is a *federal* entity and is governed by *federal* law. Thus, Section *Third* of the Articles of Merger states that "[t]he name of the surviving corporation is Laguna Construction Company, Inc., *and it is to be governed by the laws of the United States*." (D-1) (emphasis added). Similarly, Article I of the Plan of Merger states in part that "... the New Mexico Corporation shall be merged with and into the Federal Corporation, which is hereby designated as the 'Surviving Corporation,' which shall not be a new corporation, which shall *continue its corporate existence as a corporation governed by the laws of the United States* ...." (D-6) (emphasis added). Finally, as noted above, the Plan states that the "Surviving Corporation shall have all the rights, privileges, *immunities* and powers of a corporation organized under 25 U.S.C. § 477 as specified in the Charter of the Federal Corporation." (D-9).

LCC's federal corporate Charter also makes it clear that the company is to be governed by federal law. Article IV(B) of the Charter states that "[t]he Corporation shall have the same tax status and immunities *under Federal law* as the Pueblo of Laguna." (Doc. # 34-3, at B-2) (emphasis added). Similarly, Article XVI(A) provides that "the Corporation is an instrumentality of the Pueblo of Laguna and is entitled to all of the privileges and immunities of

the Pueblo, except as provided in this Article XVI." (B-12).[10] Finally, with specific respect to the merger, the Charter, anticipating the merger, states that "[t]his Corporation shall follow the procedures established by this Article *or as may otherwise be established by Federal law*." (Art. XVII, B-13) (emphasis added).

Thus, while the mechanics of merging the New Mexico corporation into the federal corporation were governed by the New Mexico corporation statutes, the *result* of that merger is governed by federal law. Tribal sovereign immunity is a matter of federal law and is not subject to diminution by the states. *Kiowa Tribe v. Mftg. Techs., Inc.*, 523 US 751, 756 (1998); *Crowe & Dunlevy v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011); *Bales*, 606 F.Supp.2d at 1305. That federal law – tribal sovereign immunity and the immunity of Section 17 corporations – pre-empts any attempt to pierce LCC's sovereign immunity from suit for the merged New Mexico corporation's liabilities.

New Mexico's corporate statutes support this view. The supremacy of federal law is reflected in N.M.S.A. 1978, § 53-14-7(B), which provides in relevant part: "If the surviving or new corporation is to be governed by the laws of any state other than this state, *the effect of such merger* or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations *except insofar as the laws of such other state provide otherwise*." (Emphasis added) While not another "state," the jurisdiction under whose laws LCC was incorporated provides for the sovereign immunity of LCC. Tribal sovereign immunity cannot be diminished by the state corporation law.

[10] The "except as provided in this Article XVI" language refers to the prescribed method of waiving that immunity.

The Business Corporations Act "applies to commerce with foreign nations and among the several states only insofar as permitted under the provisions of the constitution of the United States." N.M.S.A. 1978, § 53-18-11. The Supremacy Clause, U.S. Const., Art. VI, cl. 2, precludes the application of state laws that "interfere with, or are contrary to," federal law. *Gibbons* v. *Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C.J.). Sovereign immunity is a matter of federal law. The Supremacy Clause requires that the immunity possessed by a Section 17 corporation by virtue of its tribal nature trumps any provision of state corporate law that would deprive the corporation of its federally recognized and protected sovereign immunity

D. The *Amerind* Decision Provides On-Point and Well-Reasoned Authority Supporting LCC's Sovereign Immunity from this Suit.

In its initial Memorandum, LCC discussed in detail the facts and holding of *Amerind Risk Management Corp. v. Malaterre*, 633 F.3d 680 (8th Cir. 2011), *cert. denied*, 132 S.Ct. 1094 (2012) and will not repeat that discussion here. (LCC Mem. at 10-11). ARCO gives the case the back of its hand, contending that *Amerind* is inapplicable because, ARCO argues, the Pueblo, not LCC, waived LCC's immunity in the Settlement Agreement. As demonstrated above (*supra* at 3-7), the Pueblo did not and could not waive LCC's sovereign immunity in the Settlement Agreement. While it agreed that the to-be-formed corporation would assume certain responsibilities and liabilities once it was formed, that assumption was not a waiver of LCC's sovereign immunity.

It does not matter whether the party purporting to waive through assumption is the immune entity or its shareholder; the assumption of liability and a waiver of sovereign immunity are not the same. *Amerind* is precisely on point for the principle that an assumption of liability is a different animal from a waiver of sovereign immunity. As stated by the Eighth Circuit

majority, the Amerind Charter provision assuming its predecessor's obligations and liabilities "does not state that Amerind … consents to submit to a particular forum, or consents to be bound by its judgment." 633 F.3d at 687. Immunity is not waived by assuming liabilities, and *Amerind* is precisely on point. LCC respectfully submits that this Court should reach the same conclusion as did the majority of the Eighth Circuit and uphold LCC's sovereign immunity.

II. LCC is Not Subject to CERCLA Liability

A. LCC Is Not a "Person" for Purposes of CERCLA Liability.

In its initial Memorandum, LCC discussed the many reasons a Section 17 tribal corporation is not an "ordinary" corporation. (LCC Mem. at 14-17). As a matter of federal law, policy, and function, it partakes more of the tribal governmental nature of its shareholder than a for-profit driven commercial enterprise. For reasons argued initially by LCC and the Pueblo,[11] Indian tribes are not "persons" against which a CERCLA claim may be asserted. Accordingly, viewing Section 17 corporations more as a tribe than a corporation for this purpose, LCC should not be subject to CERCLA claims.

ARCO understandably responds with Euclidean logic: LCC is a corporation. CERCLA defines "person" to include corporations. CERCLA claims may be brought against "persons." Ergo, LCC is subject to ARCO's statutory claims. ARCO further makes the often sound argument that "courts are not at liberty to create exceptions to the application of a statute when Congress expressly directs its application." (ARCO Br. at 14, quoting *United States v. 1002.35 Acres of Land*, 942 F.2d 733, 736 (10th Cir. 1991)). The problem with this argument is that

[11] LCC Mem. at 17-19; Memorandum of Support of the Pueblo of Laguna's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and (12)(b)(6) at 17-18.

courts have been struggling for years to make sense of CERCLA and to attempt to make internally inconsistent provisions sufficiently compatible to serve the purpose of the legislation.[12] Given the tribal nature of Section 17 corporations and CERCLA's clear omission of tribal governments from the definition of "person," there is nothing radical in LCC's suggestion that federal law, policy, and the statute's treatment of tribes support excluding this particular kind of corporation from CERCLA liability.

B. Because the Pueblo is Not a "Person" Under CERCLA, LCC, as the Pueblo's Section 17 Corporation, is Not a "Person" Either.

LCC adopts and incorporates by reference the argument of its Shareholder, the Pueblo, as to why CERCLA claims cannot be brought against an Indian tribe (and, therefore, a tribe's Section 17 corporation).

CONCLUSION

For all of the foregoing reasons, Laguna Construction Company, Inc. submits that it possesses sovereign immunity from this suit and that it is not a "person" against which a

[12] *See, e.g., ASARCO, LLC v. Celanese Chemical Co.*, 792 F.3d 1203, 1210-11 (9th Cir. 2015) ("Clearly, neither a logician nor a grammarian will find comfort in the world of CERCLA") *quoting Carson Harbor Vill. v. Unocal Corp.*, 270 F.3d 863, 883 (9th *Cir. 2001), cert. denied, 535 U.S. 971 (2002)); California ex rel. Cal. Dep't of Toxic Substances Control v. Neville Chem. Co.*, 358 F.3d 661, 663 (9th Cir. 2004) ("CERCLA is a complex statute with a maze-like structure and baffling language")(internal quotation marks omitted), *quoting Carson*, 270 F.3d at 883.

CERCLA claim may be maintained. Accordingly, LCC respectfully asks that this Court dismiss ARCO's Complaint against it in its entirety.

Dated: October 28, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Memorandum of Laguna Construction Company, Inc. in Support of its Motion to Dismiss was served this 28th day of October, 2015, via the Court's ECF system upon:

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