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

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| STATE OF NEW MEXICO, *ex rel*. STATE ENGINEER,<br><br>Plaintiff,<br><br>v.<br><br>R. LEE AAMODT, *et al.,*<br><br>Defendants.<br><br>and<br><br>UNITED STATES OF AMERICA<br>PUEBLO DE NAMBE,<br>PUEBLO DE POJOAQUE<br>PUEBLO DE SAN ILDEFONSO,<br>and PUEBLO DE TESUQUE,<br><br>Plaintiffs-in-Intervention | ) | CASE NO. 6:66-cv-6639 WJ/WPL |

**PLAINTIFFS-IN-INTERVENTION THE UNITED STATES, PUEBLO DE NAMBÉ, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, AND PUEBLO DE TESUQUE'S RESPONSE IN OPPOSITION TO MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(E) [DOC. 10567]**

The United States and the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque (collectively, the "Pueblos") oppose the Motion to Alter or Amend Judgment Pursuant to Rule 59(e) filed by the Dunn Group [Doc. 10567] ("Motion"). The Motion seeks reversal of the Court's Memorandum Opinion and Order Approving Settlement Agreement [Doc. 10543] ("Order") based on a flawed reading of New Mexico law which the Court already appropriately rejected, and should be denied.

## I. The Motion does not set forth grounds to alter or amend the Order under Rule 59(e).

The purpose of a motion to alter or amend a judgment under Rule 59(e) "is to correct manifest errors of law or to present newly discovered evidence." *Webber v. Mefford*, 43 F.3d 1340, 1345 (10th Cir. 1994) (internal quotation marks and citations omitted). "Grounds for granting a Rule 59(e) motion include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Monge v. RG Petro-Mach. (Grp.) Co.*, 701 F.3d 598, 611 (10th Cir. 2012) (internal quotation marks and citations omitted). A Rule 59(e) motion is an "inappropriate vehicle[] to reargue an issue previously addressed by the court when the motion merely advances new arguments . . . ." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). "It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id.*

The Motion does not identify under which ground it has moved, but as it does not cite to new evidence or law, it is presumed that the Motion seeks a ruling to "correct clear error." The Motion's sole argument is that New Mexico law requires the New Mexico Legislature to approve an Indian water rights settlement in order for such settlement to be valid. Motion at 2 (citing N.M. Stat. Ann. 1978 § 72-1-12). The Dunn Parties made this same argument in their Response in Opposition to Motion to Approve Settlement Agreement and Entry of Proposed Partial Final Judgment and Decree at 8-9, 23-24 [Doc. 9972]. After consideration of briefing on the subject by the United States' and Pueblos' Memorandum Reply Brief in Support of Approval of the Settlement Agreement at 20-21 [Doc. 10011], the State of New Mexico, Santa Fe County and City of Santa Fe's Joint Memorandum in Support of Settlement at 39-41 [Doc. 9913], and Joint Reply to Response to Memorandum in Support of Settlement Agreement at 6-7 [Doc. 10012],

the Court properly rejected the argument that approval of the New Mexico Legislature was required for the Settlement Agreement to be valid. Opinion at 6-7 (citing Mem. Op. and Order at 7-8, *New Mexico v. Abeyta*, No. 69-cv-7896 (D.N.M.) [Doc. 5958] (July 30, 2015)). The Motion seeks merely to "revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of Paraclete*, 204 F.3d at 1012. It should be denied for failure to raise an argument warranting the alteration of a judgment under Rule 59(e).

## II. The only statute not previously cited to the Court does not alter the Court's ruling on the question of whether New Mexico's authorization of the Settlement Agreement was valid.

The Motion admits that it relies primarily on the authorities already presented to—and rejected by—the Court. Motion at 2, 3. The only statute the Motion relies upon that was not included in the Dunn Parties' Objections [Doc. 9972] is N.M. Stat. Ann. § 72-1-12, a statute in existence at the time the Dunn Parties briefed their Objections and at the time the Court entered its Order. As explained above, no reason exists to re-argue what the Dunn Parties have argued, or could have argued, before. Nonetheless, the Pueblos address only the additional authority raised in the Motion. Even this additional statute does not support the Dunn Parties' argument.

On the one hand, section 72-1-12 concerns the creation and administration of the Indian Water Rights Settlement Fund. As described in the State of New Mexico, Santa Fe County and City of Santa Fe's Joint Memorandum in Support of Settlement at 41 [Doc. 9913], the New Mexico Legislature has made multiple appropriations to the Indian Water Rights Settlement Fund to implement the Settlement Agreement. On the other hand, approval of Indian water rights settlements is discussed in a separate statute: N.M. Stat. Ann. § 72-1-11. *See Impact Energy Res., LLC v. Salazar*, 693 F.3d 1239, 1254 n.1 (10th Cir. 2012) ("Statutes that are *in pari materia*—dealing with the same subject matter—should be construed consistently with each other."); *State*

*ex rel. Quintana v. Schnedar*, 855 P.2d 562, 564-65 (N.M. 1993) ("[T]wo statutes covering the same subject matter should be harmonized and construed together when possible . . . ."). Subsection A of Section 72-1-11 provides:

> Upon congressional authorization of funding of the federal government's portion of the costs of an Indian water rights settlement, the state engineer shall notify the legislature of the amount of the state's portion of the costs necessary to implement the settlement. Upon joint resolution of the legislature, the interstate stream commission may expend money in the Indian water rights settlement fund to implement the terms of the approved settlement.

Section 72-1-11(A) establishes that the Legislature's role in an Indian water rights settlement in New Mexico is to authorize expenditure of funds in the Indian Water Rights Settlement Fund, to the extent state funding is necessary, not to negotiate or approve the settlement agreement itself. Reading Sections 72-1-11 and 72-1-12 together, as they both address the Indian Water Rights Settlement Fund, the Legislature need not approve a settlement agreement, but must act to fund a settlement requiring state funding.

The Legislature has acted consistently with this authorized, limited, and important role. During the 2015 First Special Session of the New Mexico Legislature, the Capital Outlay Package, S.B. 1, § 19, apportioned $8,200,000 to the Indian Water Rights Settlement Fund, stating

> [n]otwithstanding the requirement for a joint resolution of the legislature in Subsection A of Section 72-1-11 NMSA 1978, if corresponding commitments have been made for the federal portion of the settlements in the Navajo Nation, Taos and Aamodt cases, the money may be expended by the interstate stream commission in fiscal year 2015 and subsequent fiscal years to implement the state's portion of the settlements, and any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

The Motion's argument that Section 72-1-12 provides the Legislature with some sort of exclusive "jurisdictional power to approve Indian water rights settlements," Motion at 2, is

contrary to the plain language of the statute and the Legislature's consistent exercise of its limited authority with respect to Indian water rights settlements.[1]

As the Court has ruled, the attorney general has authority to settle any suit in which the State is a party. Order at 6 (citing N.M. Stat. Ann. § 36-1-22). It is the inherent right of a party to litigation to enter into a settlement agreement. *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1173 (10th Cir. 2007). Furthermore, under New Mexico law, "only the courts are given the power and authority to adjudicate water rights." *New Mexico ex rel. Reynolds v. Lewis*, 508 P.2d 577, 581 (N.M. 1973); *see* N.M. Stat. Ann. § 72-4-17 (providing courts with exclusive jurisdiction over stream adjudications). Here, the settlement at issue is a settlement of the Indian water rights claims in the context of a decades-long litigation initiated by the attorney general of New Mexico. Thus, converse to the argument presented in the Motion, plain New Mexico law as well as basic principles associated with the separation of power between the legislative and executive branches of government would be violated if the New Mexico Legislature attempted to assert controlling authority over this litigation or its settlement.

The Motion also rehashes the argument that *New Mexico ex rel. Clark v. Johnson*, 904 P.2d 11 (N.M. 1995), is somehow relevant to the Court's consideration of the Settlement Agreement. Motion 3. *Johnson* involved gaming compacts entered into between the governor on behalf of the State and a number of Pueblos, and the New Mexico Supreme Court concluded that the governor violated separation of powers principles by unilaterally changing the law. 904 P.2d at 26. The Settlement Agreement, however, does not change New Mexico law, as the Attorney

[1] The New Mexico Legislature also has passed memorials expressing support of the settlement of the Pueblos' water rights. *See, e.g.*, A Memorial Requesting the Governor of New Mexico and the United States Congress to Provide Adequate Funding for Proposed Native American Water Rights Settlements, House Mem. 3 (2006); A Memorial Requesting Continued Funding for Native American Water Rights Settlements, House Mem. 66 (2009); A Memorial Requesting Continued Funding for Native American Water Rights Settlements, Senate Mem. 64 (2009).

General has long been authorized to adjudicate, and settle, Indian water rights claims. *See* N.M. Stat. Ann. § 72-4-17. The State of New Mexico entered into the Settlement Agreement consistent with New Mexico law.

**III. Conclusion.**

For the reasons set forth herein, the Motion should be denied.

Respectfully submitted this 5th of May, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 5, 2016, the **PLAINTIFFS-IN-INTERVENTION THE UNITED STATES, PUEBLO DE NAMBÉ, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, AND PUEBLO DE TESUQUE'S RESPONSE IN OPPOSITION TO MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(E) [DOC. 10567]** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on May 5, 2016, copies of the foregoing were mailed by first-class United States mail to the following non-CM/ECF Participants:

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