

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

PUEBLO OF POJOAQUE, a federally recognized
Indian Tribe: JOSEPH M. TALACHY, Governor
of the Pueblo of Pojoaque,

Plaintiffs,

vs.

STATE OF NEW MEXICO, SUSANA
MARTINEZ, JEREMIAH RITCHIE, JEFFERY S.
LANDERS, SALVATORE MANIACI,
PAULETTE BECKER, ROBERT M. DOUGHTY
III, CARL E. LONDENE and JOHN DOES I –V,

Defendants.

NO.: 1:15-cv-00625 JOB-GBW

**RESPONSE TO STATE DEFENDANTS' MOTION TO MODIFY
OCTOBER 7, 2015 PRELIMINARY INJUNCTION AND TO DISMISS
DEFENDANTS STATE OF NEW MEXICO BASED ON THE STATE'S ELEVENTH
AMENDMENT SOVEREIGN IMMUNITY.**

Plaintiffs, Pueblo of Pojoaque, a federally-recognized Indian tribe and Joseph M. Talachy, Governor of the Pueblo (collectively referred to as “Pueblo” or “Plaintiffs”) submit their response to the Defendants’ State of New Mexico, Susana Martinez, Jeremiah Ritchie, Jeffrey S. Landers, Salvatore Maniaci, Paulette Becker, Robert M. Doughty III, and Carl E. Londene (collectively referred to as “Defendants”) Motion to Modify October 7, 2015 Preliminary Injunction and to Dismiss Defendants State of New Mexico based on the State’s Eleventh Amendment Sovereign Immunity.

COMMENT ON CONTEXT AND PROCEDURAL POSTURE

The Defendants have filed six motions, all of which are set to be heard on March 2, 2015:

- Doc. 64 Defendants’ Motion to Stay or Suspend the Court’s October 7, 2015 Preliminary Injunction.
- Doc. 65 Defendants’ Motion to Reconsider and Either Vacate or Modify the Court’s October 7, 2015 Preliminary Injunction and for Other Relief Pursuant to Fed.R.Civ.P. 62.1.
- Doc. 69 Motion to Modify October 7, 2015 Preliminary Injunction and to Dismiss Defendants State of New Mexico based on the State’s Eleventh Amendment Sovereign Immunity.
- Doc. 71 Motion to Dismiss Counts III and IV of Plaintiffs’ Complaint.
- Doc. 72 Motion to Dismiss Count II of Plaintiffs’ Complaint.
- Doc. 73 Motion to Dismiss Count V of Plaintiffs’ Complaint.

Because there is a significant amount of overlap on the facts and the analysis, rather than repeat arguments (other than this summary), the Pueblo incorporates all responses into all other responses as if fully set forth therein and attempts to focus each response on the issues unique to that motion. In a nutshell, the Pueblo vigorously opposes the Motions to Dismiss Counts II and

III of Plaintiffs' Complaint and the three motions to modify the Preliminary Injunction. The Pueblo does agree, subject to approval of language, to the dismissal of Counts I and V by reason of the State's assertion of Eleventh Amendment immunity. The Motion to Dismiss Count IV is moot.

The Pueblo anticipates that it will file within the next few days a Motion to Stay all proceedings before the District Court pending the appeals before the Tenth Circuit, including the State Defendants' appeal from this Court's October 7, 2015 Order. The decisions of the Tenth Circuit in the pending appeals will likely provide substantial clarity and binding guidance regarding the issues pending in this matter.

ARGUMENT

Defendants' Motion to Modify October 7, 2015 Preliminary Injunction and to Dismiss Defendants State of New Mexico based on the State's Eleventh Amendment Sovereign Immunity. affirmatively asserts the State's Eleventh Amendment immunity from suit. The Assertion of immunity demonstrates the State's unwillingness to allow Count I, sounding in IGRA and alleging failure to conclude negotiations in good faith to proceed on the merits. Accordingly, the Pueblo concurs with the Defendants that under these circumstances, this Court lacks jurisdiction to hear Count I.

The Pueblo encourages the Court to dismiss Count I without prejudice, however, as the Defendants have the capacity to waive, or choose to not assert Eleventh Amendment immunity, in which event the claim may proceed on the merits.

Defendants' Motion also acknowledges that the modification of the Preliminary Injunction to remove the State as a named party will continue in effect against the remaining

Individual Defendants (Doc. 69 at 3), accordingly, the Pueblo does not object to the dismissal of Count II only as against the State. As with Count I, The Pueblo encourages the Court to dismiss Count II without prejudice, however, as the Defendants have the capacity to waive, or choose to not assert Eleventh Amendment immunity, in which event the claim may proceed on the merits.

As to the Defendants motion regarding Counts III – V, the Pueblo refers the Court to its Response in Opposition to the Motion to Dismiss Counts III and IV, and its Response to the Motion to Dismiss Count V, respectively, as if fully incorporated herein by this reference.

CONCLUSION

For the reasons set forth herein, and set forth in the Pueblo's responses to pending motions, incorporated herein, barring any change in Defendants position regarding its decision to withhold consent to the Court's jurisdiction to deliberate Count V, the Pueblo has no objection to the dismissal of Count I and Count II, but only as against the State of New Mexico as a named party.

RESPECTFULLY SUBMITTED on January 25, 2016,

BY:
CARRIE A. FRIAS
PUEBLO OF POJOAQUE
Pueblo of Pojoaque Legal Department
New Mexico State Bar No. 28067*
58 Cities of Gold Road, Suite 5
Santa Fe, NM 87506
Telephone: (505) 455-2271
Email: cfrias@pojoaque.org

/s/ Scott Crowell
Scott Crowell
CROWELL LAW OFFICES
TRIBAL ADVOCACY GROUP
Arizona State Bar No. 009654**
1487 W. State Route 89a, Ste. 8

Sedona, AZ 86336

Telephone: (425) 802-5369

Fax: (509) 290-6953

Email: scottcrowell@hotmail.com

Attorneys for Plaintiffs Pueblo of Pojoaque
and Joseph M. Talachy

*Local Counsel

** Non-admitted attorney associating with
local counsel

CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that on January 25, 2016, I caused the foregoing to be served upon counsel of record through the Court's electronic service system.

/s/Scott Crowell
Scott Crowell, AZ Bar No. 009654**