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

PUEBLO OF JEMEZ, a federally recognized Indian tribe, Plaintiff, v. **UNITED STATES OF AMERICA**, Defendant, and **NEW MEXICO GAS COMPANY**, Defendant-in Intervention.	Case No. 1:12-cv-800 (JB)(JHR)

PLAINTIFF PUEBLO OF JEMEZ'S
REPLY IN SUPPORT OF
MOTION IN LIMINE TO EXCLUDE CERTAIN EVIDENCE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES

STATUTES

RULES

OTHER AUTHORITY

INTRODUCTION

As Jemez Pueblo consistently has argued, and Defendant does not dispute, the primary issues in this action are: 1) whether Jemez established aboriginal Indian title by exclusive use and occupancy prior to 1860; 2) whether the Pueblo has exercised its Indian title subsequently and to the present thereby demonstrating it has not abandoned its title; and 3) whether the Pueblo's title has been extinguished by Congress.[1] The required analysis is sequential. If Jemez Pueblo fails to prove it established Indian title, this case is over. Defendant's Response conflates the critical element to establish Indian title (issue 1) – exclusive use and occupancy – with the elements required to maintain or extinguish that title (issues 2 and 3), thereby fatally confusing the analysis required for the latter two. Defendant ignores that a different showing is required to confirm continuing Indian title than to establish Indian title. But they are separate issues with separate elements. This Motion focuses only on the second and third issues: whether Jemez Pueblo's Indian title has been lost by abandonment or Congressional extinguishment. Evidence of activity after 1848 that is not relevant to either of these issues should not be admissible at trial.

ARGUMENT

I. Evidence of Land Use by Other Than Jemez Pueblo After 1848 is Irrelevant.[2]

A. Jemez Pueblo Will Show That It Established Indian Title by Exclusive Use and Occupancy Long Before United States Accession in 1848.[3]

---

[1] Defendant does not address the first issue in the first paragraph of its argument. Items 2) and 3) here correspond to items 1) and 2) in the first paragraph of Defendant's argument. ECF 249 at 7.

[2] The Response does not address the arguments in the order presented in the Motion in Limine. The Response makes separate arguments on the merits and regarding the mandate rule in the Tenth Circuit. This Reply adopts the organization of the Pueblo's Motion in Limine both to identify those issues ignored or conceded by the Response, and for ease of analysis. To demonstrate that each of the issues argued in the Response is addressed, Jemez Pueblo identifies in footnotes those Response sections addressed in each section of this Reply.

[3] Replying to Response Argument Section B, ECF No. 249 at pages 9-11

As noted in the Jemez Pueblo's Motion in Limine:

> **At trial** the Jemez Pueblo will present evidence showing that it established aboriginal Indian title [before 1860] through exclusive use and occupation of the areas of the Valles Caldera claimed in this litigation and that it has maintained that title to the present day. If the Court agrees that the Jemez Pueblo has made this showing, then the only remaining issue before the Court will be whether the Pueblo's aboriginal Indian title was ever extinguished by an act of Congress. If the Court feels the showing has not been made, then extinguishment is not an issue. Either way, evidence of use by others after 1848 will be irrelevant.

ECF No. 236 at 9 (emphasis added). Defendant's claim that "Plaintiff's motion wrongly assumes that aboriginal title has been proven" is wrong. ECF No. 249 at 9. But more importantly, for purposes of this Motion in Limine, the extent to which Indian title has been or will be proved does not matter. That is an issue to be addressed "at trial," or in pending motions for summary judgment.

B. The Law of Indian Title.[4]

Defendants Response to Jemez's Motion in Limine is notable for what it fails to address, and what it concedes. It concedes that Indian title may only be extinguished "by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise." Response, ECF No. 249 at 7. *Pueblo of Jemez v. United States*, 790 F.3d 1143, 1160 (10th Cir. 2015), *citing United States v. Santa Fe Pacific R.R. Co.*, 314 U.S. 343, 347 (1941). But Defendant then moves on without any claim that the evidence of use after 1860 goes to any of these extinguishment modes. Indeed, Defendant only claims that uses were "circumscribed," and speaks in terms of "interference" and "limitations."

Most remarkably, Defendant claims that "heavy reliance on Santa Fe is misplaced." Response, ECF No. 249 at 15-16. But Plaintiff is in good company in its reliance on *Santa Fe*.

[4] Replying to Response Argument Section B, ECF No. 249 at pages 9-11.

"As indicated in *Santa Fe*, the fundamental propositions it restated were firmly rooted in earlier cases." *Oneida Indian Nation of N. Y. State v. Cnty. of Oneida*, 414 U.S. 661, 669, (1974).

> "[T]he Court has held that congressional intent to extinguish Indian title must be 'plain and unambiguous,' *United States v. Santa Fe Pacific R. Co.*, 314 U.S., at 346, 62 S.Ct., at 251, and will not be 'lightly implied,' *id.*, at 354, 62 S.Ct., at 255. Relying on the strong policy of the United States 'from the beginning to respect the Indian right of occupancy,' *id.*, at 345, [citations omitted] the Court concluded that it '[c]ertainly' would require 'plain and unambiguous action to deprive the [Indians] of the benefits of that policy,' 314 U.S., at 346, 62 S.Ct., at 251. See F. Cohen."

Oneida Cty., N.Y. v. Oneida Indian Nation of N.Y. State, 470 U.S. 226, 247-48, (1985).

Defendant asserts a non-existent distinction between this case and *Santa Fe*, arguing that there is "no parallel in the relevant portion of the *Santa Fe* decision." In the first full paragraph of its Response at 16 (ECF No. 249), Defendant turns the *Santa Fe* decision inside out by implying that white trespass on Walapai aboriginal lands extinguished title. As Shakespeare would have it, Defendant is hoisted on its own petard. Defendant seems unaware that, as stated in the first sentence of *Santa Fe*, the United States filed the case **to enjoin white interference** with Walapai aboriginal use and occupancy. *Oneida Cnty.*, 470 U.S. at 356-58. This is precisely the situation Defendant argues effected extinguishment in this case when it claims (incorrectly):

> At a later time, by contrast, the Walapai asked for and were given a reservation; white settlers had moved into the Walapai ancestral lands, grazing cattle and appropriating Walapai waters. Under these circumstances, the Court held, aboriginal title to the non-reservation land had been surrendered. *Id*. at 356-58.

Response ECF 249 at 16. But *Santa Fe* decided that issue **against** Defendant's position. As the *Santa Fe* Court makes clear over the course of the very pages cited by Defendant in support of this canard, non-Indians indeed interfered with Walapai use of their aboriginal lands, but that fact was not the basis of the Court's conclusion that title was extinguished. It was the Walapai's request for, and acceptance of, a reservation that effected extinguishment. *Id.*

The Court characterizes the Walapais' request for and acceptance of the 1881 Reservation not as an involuntary extinguishment of their Indian title by white interference, as the Defendant would have it, but rather as a "release" and "relinquishment" of their Indian title as a quid pro quo for the creation of a reservation. *Id.* at 358. Absent this "quid pro quo," the Walapais' Indian title would have remained unextinguished **despite** white interference.

Finally, Defendant's characterization of the analysis of Indian Claims Commission ("ICC") cases in Plaintiff's Motion as "tr[ying] to sweep under the rug an important line of caselaw" [ECF No. 249 at 16] ignores the limitations on these Article I tribunals discussed in the Motion. Defendant's arguments, once again, "ignore the nature of aboriginal title and the last 200 years of Supreme Court jurisprudence." *Pueblo of Jemez*, 790 F.3d at 1162.

C. The Law of Indian Title Extinguishment.[5]

Defendant is incorrect: Jemez Pueblo's position is not that Indian title cannot be "surrendered" – but it can only be "surrendered" by abandonment, or "release" and "relinquishment", as in *Santa Fe*.[6] That has not occurred here.

As stated in Plaintiff's Motion, and ignored in the Response, the Indian Trade and Intercourse Act requires express Congressional authorization to extinguish or convey Pueblo Indian Title:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

25 U.S.C. §177.[7] The statute's meaning is clear. In the absence of express Congressional

[5] Replying to Response Section B, ECF No. 249 at 9-11.

[6] Argued in Response ECF No. 249 at 9.

[7] The Response does not even cite to, let alone attempt to address, the requirements of the Indian Non-Intercourse Act. See ECF No. 249 at 4 (only statute cited in the Response is 25 U.S.C. § 70a

extinguishment, Jemez's Indian title remains intact. *Santa Fe,* 314 U.S. at 347; *see also, United States v. Candelaria*, 271 U.S. 432, 442 (1926). There is no exemption from the Act's proscription that allows individual and Government interference to extinguish title. Instead of addressing the Non-Intercourse Act and law interpreting that Act, Defendant cites a single Article I case for the proposition that Indian title is not "frozen" as of the date the United States took control of these lands under the Treaty of Guadalupe Hidalgo (9 Stat. 922, 1848). ECF No. 249 at 9, citing *Sac & Fox Tribe of Indians of Okla. v. United States*, 179 Ct.Cl. 8, 998 (1967). Of course, Jemez Pueblo is not arguing that its Indian title is "frozen." But, apart from Congress' power to extinguish it, Indian title is the best title in the Anglo-American property law system. Once established, it cannot be lost through unauthorized administrative seizure, adverse possession, sale, or tax forfeiture. It is good as against all but the sovereign. *Oneida Indian Nation of N. Y. State v. Oneida Cnty.*, 414 U.S. at 667. It can only be extinguished by a plain and unambiguous Congressional act. *Santa Fe*, 314 U.S. at346.[8]

D. Indian Claims Commission Case Law is Inapplicable to this Article III Court's Extinguishment of Title Analysis in this Action.[9]

Plaintiff dedicated half of its Motion to addressing why this Constitutionally-empowered Article III Court cannot be bound by decisions of Congressionally-established Article I courts

– the now omitted Indian Claims Commission Act (79 Cong. Ch. 959, 60 Stat. 1049, 1050 (August 13, 1946)).

[8] Defendant's claim that "Plaintiff contends its title was taken in 2000" (citing the complaint) is surprising, and wrong. ECF. No. 249 at 11. The Complaint could not be more clear: "**The property interest in these lands now held by the United States remains subject to the aboriginal Indian title of the Pueblo of Jemez"** [ECF No. 1 at 2]; "95. The **aboriginal Indian title and right of possession,** use and occupancy of the lands of the Valles Caldera National Preserve **remain in Jemez Pueblo**." ECF No. 1 at 14. The Plaintiff's has NEVER alleged its aboriginal title has been "taken." This is not a takings lawsuit. This is an action to quiet Jemez Pueblo's continuing aboriginal Indian title to the lands at issue.

[9] Replying to Response Argument Section E, ECF No. 249 at pages 15-20.

and commissions. Defendant restates Plaintiff's argument as whether the "ICC and Court of Claims are beneath the dignity of an Article III court" and professes surprise that Jemez Pueblo would make the "extraordinary" assertion that the ICC "lacked jurisdiction to adjudicate the status of title or the ownership of land." ECF No. 249 at 17 and 17 n.5. Defendant's mischaracterization notwithstanding, that is indeed the law. *United States v. Dann,* 706 F.2d 919, 928 (9th Cir. 1983), *rev'd on other grounds*, 470 U.S. 39 (1985).

First, Article I courts are inferior tribunals with strictly limited jurisdiction. *See generally* Pfander, J., *Article I Tribunals, Article III Courts, and the Judicial Power of the United States*, 118 Harv. L. Rev. 643 (Dec. 2004). Decisions of Article I courts, although subject to review by the United States Supreme Court,[10] are not, and cannot be treated as, controlling precedent on extinguishment of a property right. Although their rulings on what it takes to *create* Indian title provide useful guidance, Article I court rulings on extinguishment, particularly in cases where the parties stipulated to a date of extinguishment, are of no import in this pending litigation. *Dann*, 706 F.2d at 928.

Second, as Defendant's own citation confirms, the ICC was limited in jurisdiction. It only had the authority to "hear and determine …. claims arising from the *taking by the United States, whether as the result of a treaty or cession or otherwise*, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant." Response at 17 n.4, *quoting* Section 2 of the Indian Claims Commission Act (emphasis added). In other words, the ICC and Court of Claims could accept a stipulation of taking, but if the assertion of a taking were contested they were without power to proceed.[11]

---

[10] *Ortiz v. United States,* 138 S. Ct. 2165 (2018).

[11] "For reasons already stated, the district court erred in giving conclusive effect to the claims award. Even if the claims award had been entitled to conclusive effect, however, it could not

Contrary to Defendants argument, it is neither extraordinary nor incorrect that the ICC "lacked jurisdiction to adjudicate the status of title or the ownership of land." ECF No. 249 at 17 n.5. These Article I bodies could not "adjudicate the status of title" if that status were contested. They could only award money in those instances where the parties, or at least the lawyers for the parties, explicitly or implicitly stipulated the status of title as already "taken" by the United States as of an agreed date; or, if a taking were stipulated but the date were disputed, they could set a date because "[a]n extinguishment date we must have." *Gila River Pima-Maricopa Indian Cmty. v. United States*, 494 F.2d 1386, 1394 (Ct. Cl. 1974) (Nichols, J., concurring). ICC case law is not controlling on this Article III Court's extinguishment of title analysis in this case.

II. General Evidence Beyond that Relevant to Extinguishment of Title Should be Excluded.[12]

As explained by Jemez Pueblo in its Motion, and again simply ignored in the Response (which does not cite to nor address the requirements of the applicable rules of evidence), Fed. R. Evid. 702 allows testimony by an expert witness only if that testimony "will help the trier of fact to understand the evidence or to determine a fact in issue." Federal Rules of Evidence Rule 702(a). *See Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579, 591 (1993). The Trial Judge's first task is "ensuring that an expert's testimony both rests on a reliable foundation and is

---

result in the extinguishment of aboriginal title on the date the award became final. **It was not within the jurisdiction of the Indian Claims Commission to extinguish Indian title on its own authority, nor did the Commission purport to exercise such jurisdiction.** The ICC only had the power to award compensation for claims arising on or before August 13, 1946, whether those claims arose from the taking of aboriginal title or other action of the United States. 25 U.S.C. § 70a." *Dann,* 706 F.2d at 928 (emphasis added). It follows that if the ICC lacked jurisdiction to extinguish Indian title, it lacked jurisdiction to adjudicate Indian title in a contested action. The title had to have been actually extinguished consistent with the rules set forth in *Santa Fe* for the ICC to have jurisdiction to determine the liability of the United States and the appropriate monetary award for the taking; or, alternatively, the taking had to be expressly or tacitly stipulated to by the Indian Tribal party through its lawyers.

[12] Replying to Response Section D, ECF No. 249 at 13-15.

relevant to the task at hand." *Id*. at 597. The second task "is related to the first. Under the relevance prong of the *Daubert* analysis, the court must ensure that the proposed expert testimony logically advances material aspects of the case … The evidence must have a valid connection to the disputed facts in the case." *Vondrak v. City of Las Cruces*, No. CIV 05-0172 JB/LAM, 2009 WL 3241555, *9 (D.N.M. 2009). "If the expert's proffered testimony fails on the first prong, the court does not reach the second prong." *Id*. Fed. R. Evid. 702 requires "a valid … connection to the pertinent inquiry as a precondition to admissibility." *Kumho Tire Co., Ltd. V. Carmichael*, 526 U.S. 137, 149 (1999) (citation omitted).

Rather than address the rules and applicable law, Defendant presents a merits argument, and attaches to its Response the entire expert report prepared by Dr. Terence Kehoe. Defendant then dedicates an entire section of argument in its Response to its claim that Jemez Pueblo's use of the lands at issue "was severely restricted during the land's 140 years of private ownership." This argument by Defendant crystalizes the need for the Court to grant the relief sought by Jemez Pueblo in this Motion.

"Severely restricted" is not the applicable standard for Congressional extinguishment or Pueblo abandonment of Indian title. Defendant makes no claim that Congress extinguished Jemez Pueblo's title.[13] Its only argument is abandonment. And Dr. Kehoe largely admitted at deposition that Jemez Pueblo's use of the lands at issue was continuous, and never abandoned.[14]

[13] It has conceded this issue in other litigation. *United States on behalf of Pueblos of Jemez, Santa Ana, and Zia v. Abousleman*, No. CV 83-1041 MV/WPL, 2016 WL 9776586 (D.N.M. Oct. 4, 2016), report and recommendation adopted, No. 83CV01041 MV/WPL, 2017 WL 4364145 (D.N.M. Sept. 30, 2017): Doc. No. 4362 at 7.

[14] *See,* Kehoe Dep. 128:3-129:14; 181:8-183:14; 189:17-20; 223: 12-25; 226:17-227:5; 229:19-230:5.

III. The Tenth Circuit Court of Appeals' Mandate Requires This Court to Follow and Apply Settled Article III Court Precedent.[15]

The predominate Response argument, to which Defendant dedicates two of five sections of its Response, is that by following centuries of controlling statutory and case law, this Court will be flouting the Court of Appeals Opinion reversing and remanding to the district court for trial. That claim by Defendant is wrong for a number of reasons.

First, the Tenth Circuit did not order this Court to do anything but follow the requirements of the law. So, for example, as quoted in the Response, the Court stated:

> To show "actual" and "continuous use," …, the Jemez Pueblo must show, as it alleges in its Complaint, that the Jemez people have continued for hundreds of years to use the Valles Caldera for traditional purposes, including hunting, grazing of livestock, gathering of medicine and of food for subsistence, and the like. As the cases make clear, if there was actually substantial interference by others with these traditional uses before 1946, the Jemez Pueblo will not be able **to establish** aboriginal title. In that circumstance, moreover, the Pueblo would be barred by the ICCA statute of limitations for failing to bring a claim before the ICC.

Pueblo of Jemez, 790 F.3d at 1166 (emphasis added). Here the Court says, consistent with controlling law and Plaintiff's view of the case, that to establish Indian title as of any date, the Pueblo must prove exclusive use and occupancy. Of course, if the Pueblo established Indian title at any time prior to 1946, and that title was then Congressionally extinguished, the ICC statute of limitations would apply. But that did not happen.

Second, when the Appeals Court stated with reference to the *San Ildefonso* case that "three Indian pueblos [San Ildefonso, Santo Domingo and Santa Clara] filed claims with the ICC to recover compensation from the United States for authorizing the gradual taking of their aboriginal use and occupancy of lands in Northern New Mexico," (*Pueblo of* Jemez, 790 F.3d at 1166) the Court was unaware those petitions actually asserted the Pueblos' Indian title was intact

[15] Replying to Response Sections A and C, ECF No. 249 at 7-9, and at11-13.

and sought damages for trespass and breach of trust for the United States failure to protect the Pueblos' use and occupancy.[16] Subsequent claims attorneys filed stipulations changing the damages claims to claims for takings, which had never occurred.[17] The theory of "gradual taking" by non-Indian interference was invented by the new claims attorneys to provide a basis for a compensable taking, albeit utterly inconsistent with controlling Supreme Court law. The holdings in these cases as to extinguishment of title by Congressionally unauthorized administrative actions or trespass by non-Indians are irrelevant because each of those cases involved a stipulation by the Indian parties without adjudication that title was extinguished. That is not true in this action.

Third, to the extent the Court of Appeals implied a requirement of perpetual exclusivity based on Article I ICC and Court of Claims decisions, that language is, at most, dicta. This is true of the Court's discussion of the holdings in the *Zia cases,*[18] *United States v. Pueblo of San Ildefonso*, 206 Ct. Cl. 649, 513 F.2d 1383 (Ct. Cl. 1975), *Pueblo of Taos v. United States,* 15 Ind. Cl. Comm. 666 (1965) and *Pueblo of Nambe v. United States,* 16 Ind. Cl. Comm. 393 (1965).

Fourth, as discussed extensively in Plaintiff's Motion, the holdings in the ICC cases as to extinguishment of title by Congressionally unauthorized administrative actions or trespass by non-Indians are irrelevant because the extinguishment of Indian title by "gradual taking" is

[16] Exhibit 5 to Motion in Limine (ECF No. 236-5).

[17] Exhibit 3 to Motion in Limine (ECF No. 236-3).

[18] *Pueblo of Zia v. United States,* 474 F.2d 639, 641 (Ct. Cl.1973) (*Zia IV); see also Pueblo of Zia v. United States (Zia I),* 11 Ind. Cl. Comm. 131 (1962); *Pueblo of Zia v. United States,* 165 Ct. Cl. 501 (1964) (*Zia II*); *Pueblo of Zia v. United States,* 19 Ind. Cl. Comm. 56 (1968) (*Zia III*).

inconsistent with controlling Article III Supreme Court law. The Appeals Court Opinion cannot be read to instruct this Court to take evidence in support of a postulated "gradual taking" given that "gradual taking" is not the applicable law.

Finally, and as the Defendant has conceded,[19] the Tenth Circuit Court of Appeals joins other circuits in ruling that even if a mandate is clear and unequivocal, failure to abide by that mandate is not jurisdictional:

> Neither law of the case nor the mandate rule is jurisdictional, however. "We recognize that law of the case is not a jurisdictional rule; rather, **it is a rule to be applied at the sound discretion of the court to effectuate the proper administration of justice**." *United States v. Carson,* 793 F.2d 1141, 1147 (10th Cir.1986). **Likewise, "the mandate rule,** which generally requires trial court conformity with the articulated appellate remand, **is a discretion-guiding rule."** *United States v. Moore,* 83 F.3d 1231, 1234 (10th Cir.1996).

United States v. Gama-Bastidas, 222 F.3d 779, 784-85 (10th Cir. 2000) (cited in Response at page 19). (Emphasis added.)

Courts describe this "mandate rule" or "mandate doctrine" as "nothing more than a specific application of the 'law of the case' doctrine." *Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985); *see also Kavorkian v. CSX Transp., Inc.*, 117 F.3d 953, 958 (6th Cir.1997); *City of Cleveland, Ohio v. Fed. Power Comm'n,* 561 F.2d 344, 348 (D.C.Cir.1977). As such, it "simply 'expresses' common judicial 'practice'; it does not 'limit' the courts' power." *Castro v. United States,* 540 U.S. 375, 376 (2003), *quoting Messenger v. Anderson,* 225 U.S. 436, 444, (1912). And as to the rule of mandate doctrine, it is limited specifically to issues that are BOTH "before the court" AND "disposed of by its decree" – issues "considered as finally settled." *In re Sanford Fork & Tool Co.,* 160 U.S. 247, 255-56 (1895).

[19] ECF No. 249 at 19 n.5.

Nowhere does the Court of Appeals mandate that the law established in *Santa Fe* is not controlling, nor that it should not be followed by this Court. Indeed, the opposite is true: the Court of Appeals favorably cited and quoted controlling Article III court law, throughout its decision, and chastised the Defendant for its failure to do the same:

> The government's arguments ignore the nature of aboriginal title and the last 200 years of Supreme Court jurisprudence.

Pueblo of Jemez, 790 F.3d at 1162. The rule of mandate doctrine is a discretion-guiding rule, applied at the sound discretion of the trial court to effectuate the proper administration of justice. *Gama-Bastidas*, 222 F.3d at 784-85. The proper administration of justice in this case is achieved by strict adherence to "the last 200 years of Supreme Court jurisprudence" regarding the specific facts required to show extinguishment of Indian title.

CONCLUSION

Jemez Pueblo respectfully asks the Court to grant its Motion in Limine and exclude all evidence of non-Jemez incursions into or use of the Valles Caldera after 1860. If the Pueblo fails to prove establishment of its Indian title prior to 1860, this case is over. If it is successful in proving Indian title, Defendant's evidence of incursions and interference with the exercise of its title after 1860 is irrelevant because trespass cannot extinguish Indian title. The Pueblo's Indian title to the Valles Caldera can be extinguished only by "plain and unambiguous" Congressional action, or abandonment. Jemez's evidence shows conclusively that it established Indian title by exclusive use and occupancy before 1860 and has continuously used and occupied the Caldera to the present day.

Dated: September 12, 2018

Respectfully Submitted,

/s/ *Thomas E. Luebben*
Thomas E. Luebben
P.O. Box 1134

Sandia Park, NM 87047
Telephone: (505) 269-3544
tluebbenlaw@msn.com

Randolph H. Barnhouse
Christina S. West
Barnhouse Keegan Solimon & West LLP
7424 4th Street NW
Los Ranchos de Albuquerque, NM 87107
Tel: (505) 842-6123
Fax: (505) 842-6124
dbarnhouse@indiancountrylaw.com
cwest@indiancountrylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 12, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Peter Dykema, Peter.dykema@usdoj.gov
Matthew Marinelli, Matthew.marinelli@usdoj.gov
Jacqueline Leonard, Jacqueline.Leonard@usdoj.gov
Attorneys for Defendant United States

Kirk R. Allen, kallen@mstlaw.com
Attorneys for Defendant-in-Intervention NMGC

/s/ *Thomas E. Luebben*
Thomas E. Luebben