

No. 20-2145

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PUEBLO OF JEMEZ,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee; and

NEW MEXICO GAS COMPANY,
Intervenor Defendant-Appellee

**On Appeal from The United States District Court
for the District of New Mexico
1:12-CV-00800-JB-JRF
The Honorable James O. Browning**

**NOTICE AS TO INTERVENOR DEFENDANT-
APPELLEE NEW MEXICO GAS COMPANY'S RESPONSE BRIEF**

Intervenor Defendant-Appellee New Mexico Gas Company ("NMGC"), by and through its attorneys of record, Miller Stratvert, P.A. (Kirk R. Allen and Elizabeth M. Reitzel), hereby respectfully notifies the Court that, pursuant to the U.S. 10th Circuit Court of Appeals Rule 9.3, NMGC is not filing a response brief as neither Plaintiff-Appellant Pueblo of Jemez ("Jemez Pueblo") nor Defendant-Appellee United States of America ("U.S.") dispute NMGC's ownership of property interests located within the Valles Caldera. NMGC's property ownership interests

were affirmed by the Honorable James O. Browning’s Sealed Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order, filed on August 31, 2019. App. Vol. 3 at 349-350 (ECF. No. 398 at p. 13-14, ¶¶ 34-41, “Sealed Final Order: Memorandum Opinion and Order”); *see also* ECF. No. 384 at p. 5-6, ¶¶ 21-28 (“Plaintiff’s, Defendant’s, and Defendant-in-Intervention New Mexico Gas Company’s Joint Proposed Findings of Fact and Conclusions of Law”), filed April 15, 2019, *Pueblo of Jemez v. U.S. and N.M. Gas Co.*, No. 1:12-cv-00800-JB-JFR, attached hereto as Exhibit 1¹.

Specifically, NMGC’s property ownership interests recognized by the District Court are a high-pressure natural gas pipeline, the appurtenances to that pipeline, the easement in which the pipeline and appurtenances are located, and rights of ingress and egress to access the easement, pipeline and the appurtenances (collectively referred to as the “Pipeline System”). App. Vol. 3 at 349-350 (ECF. No. 398 at p. 13-14, ¶¶ 34-41); *see also* ECF No. 439 at pp. 6-7, ¶ 5 (“Joint Status Report”), filed January 10, 2020, *Pueblo of Jemez*, No. 1:12-cv-00800-JB-JFR, attached hereto as Exhibit 2 (*stating* that the Pueblo of Jemez’s motion for reconsideration was not challenging the District Court’s findings of fact as to NMGC’s ownership of the Pipeline System as set out in the District Court’s Sealed Final Order:

¹ The documents attached hereto as Exhibits 1 and 2 are not included in the Appellant’s Appendices, Volumes 1 through 10, and for that reason are attached to this notice.

Memorandum Opinion and Order, and further stating that the U.S. opposed any amendments to the [District C]ourt's findings "that would deprive NMGC of its ownership interest in the pipeline and associated easement").

In addition, the Pueblo of Jemez does not dispute NMGC's ownership of the Pipeline System in either Appellant's Docketing Statement, filed on October 29, 2020, or Appellant's Brief, filed on February 10, 2021. Therefore, NMGC's ownership of the Pipeline System has been established by the District Court and is not an issue for consideration before this Court.

Respectfully Submitted,

MILLER STRATVERT P.A

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CORPORATE DISCLOSURE STATEMENT

New Mexico Gas Company, Inc. does business as New Mexico Gas Company (“NMGC”). NMGC’s shares are owned by New Mexico Gas Intermediary, Inc., and its shares are owned by TECO Energy, Inc. (“TECO”). TECO’s shares are owned by Emera US Holdings, Inc., and its shares are owned by Emera, Inc.

MILLER STRATVERT P.A.

/s/ Kirk R. Allen
Kirk R. Allen
Counsel for Appellees/Defendants

March 10, 2021

CERTIFICATE OF COMPLIANCE

1. This notice complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 27(d)(2)(A) because it contains 428 words.

2. This notice complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14 point Times New Roman.

MILLER STRATVERT P.A.

/s/ Kirk R. Allen
Kirk R. Allen
Counsel for Appellees/Defendants

March 10, 2021

CERTIFICATE OF DIGITAL SUBMISSIONS

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made;
- (2) if hard copies are requested, the submitted copies to the clerk are exact copies of the ECF submission;
- (3) the digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, AVG Business 20.6.3135 on 3/9/2021, which is updated weekly and, according to the program, is free of viruses.

MILLER STRATVERT P.A.

/s/ Kirk R. Allen
Kirk R. Allen
Counsel for Appellees/Defendants

March 10, 2021

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2021 I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system and that all participants in this case were served through that system.

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March 10, 2021



**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’S, DEFENDANT’S, AND
 DEFENDANT-IN-INTERVENTION NEW MEXICO GAS COMPANY’S
 JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. JOINT PROPOSED FINDINGS OF FACT

1. The real property that is the subject of Plaintiff’s Complaint is hereinafter referred to as the “Valles Caldera National Preserve.”

2. The Valles Caldera is a volcanic crater in the center of the Jemez Mountains, New Mexico. Tr. 75:1-5 (Fogleman); PX 187-006. The Valles Caldera is termed as a young caldera and is generally considered to be a dormant volcano.

3. About 1.2 million years ago a series of volcanos erupted spreading ash and pyroclastic flow, which drained out the top part of the magma chamber. Because of the lack of

magma in the upper chamber, the magma chamber collapsed leaving an empty crater, now known as the Valles Caldera. Tr. 75:1-13 (Fogleman); PX 187-006; ECF No. 317 at 2.

4. After the magma chamber collapsed, a lake covered the floor of the caldera. Tr. 75-76:21-5 (Fogleman); PX 187-007.

5. When the resurgent dome that became Redondo Peak began to form inside the caldera, the bottom of the caldera pushed up. Tr. 75-76:21-5 (Fogleman); Tr. 85:13-22 (Fogleman); PX 187-006.

6. The southwest region of the caldera rim eroded and the lake drained out of that region. Tr. 76:20-25 (Fogleman). This geological event helped to form the Jemez River Valley. Tr. 76-77:20-11 (Fogleman); PX 187-009.

7. The southwest region of the caldera rim is the lowest elevation of the base of the caldera. Tr. 76-77:20-11 (Fogleman); Tr. 85:5-12.

8. The headwaters of the Jemez River are in the Valles Caldera. Tr. 1813:5-7 (Ferguson). All waters from the East Fork Jemez River, Jaramillo Creek, La Jara Creek, Redondo Creek, Rito de los Indios, San Antonio Creek, and Sulphur Creek flow into the Jemez River. PX 187-009.

9. Springs, streams, and rivers are an expression of groundwater elevation. A spring or river is where groundwater is exposed to the land surface and those areas are particularly marshy areas. Tr. 84:12-24 (Fogleman).

10. The rim of the caldera is approximately 12 to 13 miles in diameter. Tr. 76:12-15 (Fogleman); PX 187-006.

11. The elevation of the caldera ranges from 7,000 feet in the southwest region to 11,254 feet at Redondo Peak. Tr. 77:12-19 (Fogleman); PX 187-006.

12. The Valles Caldera includes 4 of Merriam's life-zones: the Subalpine Zone at 9,500 to 11,500 feet which has cooler temperatures and allows for Spruce trees and Fir forests and a wildlife of bighorn sheep and unique small animal species that tend to live at higher elevations (though not necessarily within the Valles Caldera); the Coniferous Forest Zone at 8,500 to 9,500 feet is the predominant zone in the caldera and consists of hydrologic features and a wildlife of beavers, raccoons, black bear, and elk; the Mountain Transition Zone at 7,000 to 8,500 feet, which allows for predominately Ponderosa pine and Douglas Fir and a wildlife of mule deer and horned owl; and the Grassland/Woodlands Zone at 4,500 to 7,000 feet, which allows for tall grasslands and a wildlife of turkey, jackrabbits, foxes, and mountain lions. PX 187-007-008; Tr. 79-82:12-4 (Fogleman).

13. Most of the Valles Caldera is inside the caldera rim, including four high-mountain valleys and at least ten volcanic domes, which are located within the exterior boundaries of the Valles Caldera National Preserve established pursuant to the Valles Caldera Preservation Act, P.L. 106-248, 114 Stat. 598, codified at 16 U.S.C. §§ 698v – 698v-10.

14. When the Treaty of Guadalupe Hidalgo ended the Mexican War in 1848, the United States formally acquired New Mexico, which was subsequently organized under a territorial government. Dr. Anschuetz and Thomas Merlan, *More Than a Scenic Mountain Landscape: Valles Caldera Nat'l Preserve Land Use History* (2007); DX-KX-37.

15. In Section 6 of the Act of June 21, 1860 [12 Stat. 71], Congress authorized the heirs of Luis Maria de Baca to select up to five square tracts of vacant land within the New Mexico Territory totaling up to 496,447 acres. Dr. Kehoe Report PX-193-12; P.L. 36-197, 12 Stat. 71; Tr. 3516:17-18.

16. The General Land Office approved the first survey of Baca Location 1 on September 30, 1876. Surveyor General's Office, Santa Fe, New Mexico, Field Notes of the Survey of Baca Location No. 1 (Sept. 30, 1876), DX-Q-8.

17. In January 1899, the District Court of the County of Bernalillo, Territory of New Mexico, ordered that Baca Location No. 1 be sold at public auction to the highest bidder. On March 18, 1899, the court approved the sale of these lands to Frank Clancy, who on that same day sold Baca Location No. 1 to the Valles Land Company, which was owned by Mariano Otero and his son. Dr. Kehoe Report, PX-193-15; Order Approving Report and Confirming Sale, *Whitney v. Otero* (Mar. 18, 1899), DX-Y; Bargain & Sale Deed, F. Clancy to Valles Land Co. (Mar. 18, 1899), DX-X-3.

18. On October 16, 1909, the Valles Land Company deeded Baca Location No. 1 to the Redondo Development Company, which completed its purchase of the property for \$247,512 through a series of installment payments that were completed in 1913. Warranty Deed, Valles Land Co. to Redondo Development Co. (Oct. 16, 1909), DX-AH-1; Deed of Trust, Redondo Development Co. to W. Strickler, Trustee for the Valles Land Co. (Oct. 16, 1909), DX-AH-2; and Deed of Release, W. Strickler, Trustee, to Redondo Development Co. (Jan. 27, 1913), DX-AH-3. See also Dr. Kehoe Test. at 3991:19–3993:3.

19. On December 14, 1918, the Redondo Development Company and Frank and George Bond entered into a memorandum of agreement for the sale of Baca Location No. 1, the purchase price of \$400,000 to be paid through a series of installment payments. The sales agreement excluded the tract's forest resources, reserving to Redondo Development and its successors for a period of 99 years the right to remove and sell all timber. Mem. of Agreement

between Redondo Development Co. and Frank and G. Bond for the Sale of Baca Location No. 1 (Dec. 14, 1918), DX-DJ-5-10; Dr. Kehoe Test. at 3993:4–3995:16.

20. The Bonds assumed possession of Baca Location 1 on January 1, 1919. On April 8, 1926, the president of the Redondo Development Company signed an indenture conveying Baca Location No. 1, timber and one-half of all minerals excepted. Indenture between Redondo Development Co. and George and Frank Bond (Apr. 8, 1926), DX-BC.

21. A high-pressure natural gas pipeline (together with its appurtenances and supporting facilities, the “Pipeline”) is located on the Valles Caldera.

22. The United States’ action in Case No. 1:99-cv-00774 in this Court condemned a perpetual and assignable easement title to Tract No. 2013-E within the Valles Caldera National Preserve, which became effective July 12, 1999. As described more fully in the filings in Case No. 1:99-cv-00774, the aforementioned Tract No. 2013-E is a right-of-way that is thirty (30) feet wide and contains 49.77 acres, more or less (the “Easement”).¹

23. The United States Department of Energy sold the Pipeline and the Easement (collectively the Pipeline and the Easement are referred to as the “Pipeline System”), subject to the exceptions contained in the Quitclaim Deed defined below, to PNM Gas Services, a Division of Public Service Company of New Mexico (“PNM”), as evidenced by that certain Quitclaim Deed and Transfer Agreement that became effective August 1, 1999, a copy of which was recorded in the records of Sandoval County, New Mexico on August 13, 1999 in Volume 402, Pages 54676 to 54763 (the “Quitclaim Deed”).

¹ This and the remaining joint proposed findings and conclusions are based upon stipulations filed by the parties and adopted by the Court. See ECF Nos. 104, 104-1.

24. PNM transferred the Pipeline to New Mexico Gas Company (“NMGC”) in connection with the sale of PNM’s gas operations to NMGC effective January 2009.

25. PNM transferred the Easement to NMGC pursuant to the Assignment and Assumption of Easements dated January 30, 2009, a copy of which was recorded in the records of Sandoval County, New Mexico on February 5, 2009 in Book 412, Pages 2907 to 2919.

26. NMGC is presently the owner of the Pipeline System, as shown and restricted by the October 18, 1999 Final Judgment entered in Case No. 1:99-cv-00774, the Quitclaim Deed, and the January 30, 2009 Assignment and Assumption of Easements.

27. The Easement presently owned by NMGC totals 49.77 acres in size and is described more particularly on pages 18 to 20 (or recorded pages 54693 to 54695) of the Quitclaim Deed, which pages are appended hereto for reference as Exhibit 1.

28. In this action, Plaintiff does not seek to quiet title to the Pipeline System or NMGC’s lawful right of ingress and egress across the Valles Caldera National Preserve.

II. JOINT PROPOSED CONCLUSIONS OF LAW

1. To the extent the Court confirms Plaintiff’s claimed ownership interest or other interest in the Valles Caldera National Preserve in connection with this matter, all of Plaintiff’s interests in the Valles Caldera National Preserve will be subject to NMGC’s ownership of the Pipeline System and NMGC’s lawful right of ingress and egress across the Valles Caldera National Preserve.

2. To the extent the Court confirms the United States’ claimed ownership interest or other interest in the Valles Caldera National Preserve in connection with this matter, all of the United States’ interests in the Valles Caldera National Preserve will remain subject to NMGC’s

ownership of the Pipeline System and NMGC's right of ingress and egress across the Valles
Caldera National Preserve.

Respectfully submitted this 15th day of April, 2019.

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

PUEBLO OF JEMEZ, a federally)
 recognized Indian tribe,)
)
 Plaintiff,)
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 v.)
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UNITED STATES OF AMERICA,)
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 Defendant,)
)
 and)
)
NEW MEXICO GAS COMPANY,)
)
 Defendant-in Intervention.)
 _____)

Case No. 1:12-cv-800 (JB)(JFR)

JOINT STATUS REPORT

As directed by the Court at the December 12, 2019 hearing, the parties submit this joint status report related to issues raised at the hearing on Pueblo of Jemez’s Motion for Reconsideration for the Court’s consideration.

1. With regards to the effect of the Tenth Circuit Court of Appeals’ recent decision in *Nelson v. City of Albuquerque*, 921 F.3d 925 (10th Cir. 2019), the Parties will each submit a supplemental brief of not more than seven pages of text on or before January 17, 2019.
2. None of the parties wishes to reopen the trial to offer additional evidence.
3. The parties agree that if the Court wishes to continue the hearing on Plaintiff’s Opposed Motion to Reconsider and Alter Final Decision, ECF No. 409 (the “Motion”), the continued hearing should be conducted telephonically.

A. Pueblo of Jemez's Position

The Pueblo of Jemez asserts that additional time is necessary and appropriate as it had no opportunity to rebut the legal arguments nor opportunity rebut all factual arguments raised by the United States at the hearing. Pueblo of Jemez requests an additional sixty minutes to present its rebuttal argument. Pueblo of Jemez is unavailable on the following dates: January 13-15 and January 22-23.

B. The United States' Position

The United States does not believe any additional argument is necessary or appropriate, as Plaintiff: (1) has already greatly exceeded the hour Plaintiff requested to argue its motion for reconsideration, Dec. 12, 2019 Tr. at 116:21-117:11; (2) fully concluded all rebuttal on factual issues, *id.* at 98:15-20; (3) originally requested an additional five minutes solely to rebut Mr. Dykema's legal argument after making the strategic decision to largely neglect legal analysis during its opening argument, *id.*; and (4) highlights the never-ending and repetitive nature of its litigation efforts by seeking a third bite at arguments it made or could have made both at the May 7, 2019 closing argument and the December 12, 2019 reconsideration argument. In the event the Court concludes otherwise, the United States requests equal time to that afforded the Pueblo of Jemez. If the Court deems additional argument appropriate, the United States proposes that the parties be placed on a clock, as they were at trial, to ensure that oral argument concludes in an equitable manner. The United States will make itself available to suit the Court's convenience.

4. In response to the Court's inquiry about how to proceed after the hearing on Pueblo of Jemez's Motion, the parties differ.

A. The Pueblo of Jemez's Position

The Pueblo of Jemez has asked this Court to reconsider and alter its findings of fact and conclusions of law as to specific geographical areas. The Pueblo of Jemez understood that at the hearing, the Court requested the parties consider whether the parties should present different, more detailed or additional findings of fact and conclusions of law. In light of the lengthy trial and extensive evidence presented to the Court, the Pueblo of Jemez believes it is reasonable and within the Court's discretion to request the parties propose revised or additional findings of fact and conclusions of law concerning the issue raised in the motion to reconsider – specifically tribal uses in the discrete geographical areas identified in the Motion. With this understanding and deferring to the Court on how it would like to limit these proposed revisions, the Pueblo of Jemez proposes that both parties present proposed revisions to the Court's Sealed Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order ECF No. 398 (Memorandum Opinion) within thirty days after completion of the continued hearing on the Motion. The proposed revisions or additional findings would be presented to the Court through redlining, showing proposed modifications to existing findings and conclusions, additional proposed findings or conclusions and/or suggested deletions. The proposed modifications would be limited to proposed findings of facts concerning tribal uses in the geographical areas described in the motion to reconsider, and citing only to evidence admitted at trial, and conclusions of law limited to those same issues. The suggested modifications would not be an open forum for either party to suggest endless revisions, nor would either party be allowed to suggest other revisions beyond the scope of the issues raised in the motion to reconsider. Pueblo of Jemez believes that this would be the most effective way for the Court to understand the parties' position, is within the Court's discretion, and would best assist the Court if it decided to grant the motion for reconsideration. The Pueblo of Jemez does not believe this would disadvantage one party over

another, as both parties would have the opportunity to identify facts that the Court may not have considered for these specific geographic areas, and the United States would have the ability to cite to facts that support that other tribes used these specific areas.

In response to the United States' last minute suggestion to restrict the number of proposed findings of fact and impose page limitations, the Pueblo of Jemez would defer to the Court as to how to properly limit suggested modifications, but the Pueblo of Jemez asserts that the numbers proposed by the United States would be insufficient to address the issues raised in the motion for reconsideration. The Pueblo of Jemez estimates that it might propose forty new findings of facts and ten new conclusions of law, and that it would also be prudent for the parties to at least identify by reference findings and conclusions that would need to be deleted or revised for consistency. After submitting proposed changes, Pueblo of Jemez does not feel any further briefing is necessary. However if the United States' requests or the Court elects to have additional briefing, Pueblo of Jemez proposes the parties file responses to the opposing parties' proposed changes within twenty days after filing of the proposed revisions.

B. The United States' Position

The United States proposes that the Court decide the pending motion on the record as it stands, as augmented by the parties' supplemental briefs regarding the recent *Nelson* opinion and such additional oral argument as the Court may find useful. The record is closed and that Jemez has already had an extensive opportunity to present its position and should be limited to its motion for reconsideration, reply brief, and oral argument. "[R]edlining" the Court's 528-page opinion is inappropriate, an undue imposition on the Court's resources, and an invitation to endless litigation. Among other things, redlining the Court's opinion would provide Jemez with the ability to seek reconsideration on an unlimited number of issues, unbounded by the page

limits imposed on motions to alter or amend judgment or the motion that Jemez actually filed. Jemez's proposal also violates the process for motions for reconsideration by asking the Court to start anew and reanalyze an undefined, large number of facts. *Anderson Living Tr. v. WPX Energy Prod., LLC*, 308 F.R.D. 410, 435 (D.N.M. 2015) (depth of Court's review on reconsideration is restricted in interests of "conserving judicial resources; and [avoiding the] impositions that relitigation of the prior ruling will impose on the party opposing" reconsideration). Jemez's proposal that it be allowed to file a redline of the Court's order in addition to its motion for reconsideration and that the United States not be permitted to respond to such a voluminous pleading would be highly prejudicial to the United States. Further, Jemez's proposal violates both principles of fair play and Local Rule 7's provision for opposing motions. Jemez had a full opportunity to present its Motion for Reconsideration in the manner it deemed appropriate, and was afforded a lengthy reply and at least one oral argument. It was Jemez's obligation to meet its burden of proof within those filings and any additional opportunities to effectively re-do its own motion and re-draft the Court's trial opinion is entirely inappropriate.

If the Court is inclined to permit filings in addition to the approximately 50 pages of reconsideration filings Jemez filed over the United States' partial objection, ECF No. 432, the United States strongly objects to any unbounded effort to rewrite the Court's opinion after briefing on reconsideration concluded. *See Payne v. Tri-State Careflight, LLC*, No. CIV 14-1044 JB/KBM, 2019 U.S. Dist. LEXIS 43374 at *70 (D.N.M. Mar. 16, 2019) (Movants for reconsideration "must . . . not rely on the Court to do any supplemental fact-finding"); *Lyons v. Jefferson Bank & Tr.*, 793 F. Supp. 989, 991 (D. Colo. 1992) (even where party moves for new findings of fact under Fed. R. Civ. P. 52, "[a] party who failed to prove his strongest case is not

entitled to a second opportunity by moving to amend a finding of fact or conclusion of law”) (quoting 9 Wright & Miller, *Federal Practice and Procedure*, § 2582 (1971)). While the United States objects to any additional filings or factual presentations, restricting the parties to a filing of no more than 10 proposed facts and no more than 7 total pages on the issues raised by the parties’ briefs on reconsideration and at oral argument would at least reduce the many problems raised by Jemez’s proposal to essentially redraft the Court’s trial decision. Plaintiff’s suggestion that it should be permitted to propose 40 new facts and 10 new conclusions of law, as well as proposing an unspecified number of facts that should be “deleted or revised for consistency” highlights the abuse of process inherent in allowing Jemez to replead and rebrief its case through multiple motions for reconsideration. Jemez’s proposal would conservatively amount to an additional brief of 25 pages, plus proposed deletions or revisions to between 50 and 200 pages of the Court’s proposed findings of fact and conclusions of law, plus responsive briefing. Jemez is seeking nothing less than to plunge the Court and the parties into the morass of endlessly rewriting the Court’s opinion, as at least one party would surely find fault with the Court’s resolution of this new round of briefing. Jemez has received an excess of process, including an extra week of trial, the ability to submit an unlimited number of proposed facts and conclusions of law following trial, a post-trial brief of an unlimited number of pages, and a motion for reconsideration that exceeds the page limits imposed by the local rules. This case must end with the 50 pages of reconsideration briefs that Plaintiff already filed.

5. Defendant-In-Intervention New Mexico Gas Company (“NMGC”) has requested the other parties clarify their position on NMGC’s Response to the Motion, ECF No. 410. Pueblo of Jemez states that Pueblo of Jemez’s Motion does not challenge the Court’s findings regarding NMGC as set out in the Memorandum Opinion, ECF No. 398, as Pueblo of Jemez

asserts that these findings are consistent with Pueblo of Jemez's position that the lands or interests in lands claimed by Pueblo of Jemez can be separated and decided differently from the entire claim area. As previously stipulated by the Pueblo of Jemez and as approved in the Court's Order, "To the extent the Court confirms Plaintiff's claimed ownership interest or other interest in the Property in connection with this matter, all of Plaintiff's interest in the Property will be subject to NMGC's ownership of the Pipeline System and NMGC's lawful right of ingress and egress across the Property." ECF No. 103-1. The Pueblo of Jemez has not sought reconsideration of these stipulations or the Court's order concerning the same, and any grant of property rights to the Pueblo of Jemez would be subject to NMGC's interest as previously stipulated. The United States opposes amendment of the Court's August 31, 2019 opinion in any manner that would deprive NMGC of its ownership interest in the pipeline and associated easement (some of which runs through one of the areas at issue in this motion, DX-JN-11). The United States continues to believe that the United States' two condemnations of the pipeline route caused the Quiet Title Act's statute of limitations to accrue and expire prior to Pueblo of Jemez filing this case. ECF No. 390 at 118.

6. The United States hereby attaches the slides it presented during oral argument on December 12, 2019.

Respectfully Submitted by,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2020, I caused to be 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:

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