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

o. CV 01-00072 MV/JHR
UNI RIVER BASIN ADJUDICATION
ubfile No. ZRB-1-0148

TIMETED OF A TEC OF A MEDICA --- 1

NOTICE OF SUPPLEMENTAL AUTHORITY

Norma Meech, by and through her counsel of record, Law & Resource Planning Associates, P.C., pursuant to D.N.M.LR-CIV 7.8, hereby notifies the Court of supplemental authority decided by the New Mexico Court of Appeals ("NMCOA") in an opinion filed September 17, 2021. See State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District (Harris Gray, William Frost, and New Mexico Copper Corporation), New Mexico Court of Appeals No. A-1-CA-37258 (September 17, 2021) ("Opinion"). This new opinion contains a significant discussion of the relation doctrine, also referenced in New Mexico as the Mendenhall doctrine, 1 that is relevant to the issues pending before the Court. This is the first significant opinion from a state appellate court addressing the relation doctrine in forty years. Because New Mexico state law applies in this case, this new opinion will govern the Court's consideration of Meech's Mendenhall claims.

¹ State ex rel. Reynolds v. Mendenhall, 1961-NMSC-083, 68 N.M. 467.

This supplemental authority is relevant to Plaintiffs' arguments in their Motion for

Summary Judgment [ECF 3491], and more specifically in their Reply in Support of Motion for

Summary Judgment [ECF 3504], as follows:

Point I(B): A reasonable time to place water to beneficial use is less than 20 years.

Rather than rotely applying a pre-determined time to develop a water right in all cases, the

NMCOA held that "each case would have to stand and be decided on its facts," using a totality of

the circumstances approach. (Opinion—27, 33, 42).

Point I(D): It is for the State Legislature to add a mining exception to Mendenhall's

application.

The NMCOA specifically applied the *Mendenhall* criteria to mining claims because it "has

been adapted flexibly to meet new circumstances as cases presenting new issues arose," including

industry and municipalities. (Opinion—27). The Court had no difficulty in applying the doctrine

to the "unique character of extractive industries." (Opinion-42).

The new case law bolsters Meech's prior arguments that her water right should reflect a

continuing ability to place water to beneficial use in the mining industry after due consideration of

is attributes.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,

A Professional Corporation

Tanxa L. Scott

One Sun Plaza

100 Sun Avenue NE, Suite 650

Albuquerque, NM 87109

(505) 346-0998 / FAX: (505) 346-0997

Attorney for Norma Meech

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 24, 2021, I filed the foregoing pleading electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Filing to be served by electronic means.

Janya & Scott
Tanya J. Scott