

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

UNITED STATES OF AMERICA, and)	
STATE OF NEW MEXICO, ex rel. STATE)	No. CV 01-00072-MV-JHR
ENGINEER,)	
)	ZUNI RIVER BASIN
Plaintiffs,)	ADJUDICATION
)	
and)	
)	Subfile No. ZRB-1-0148
ZUNI INDIAN TRIBE, NAVAJO NATION,)	
)	
Plaintiffs in Intervention,)	
)	
v.)	
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants.)	
_____)	

PLAINTIFFS’ RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY (DOC. 3521)

This Court’s Local Rules require the prompt filing of a “Notice of Supplemental Authority” *only* “after the party’s brief has been filed, or after oral argument but before decision.” D.N.M.LR-Civ. 7.8(a), (b). In her *Notice of Supplemental Authority*, Defendant Norma M. Meech declares that the New Mexico Court of Appeals’ recent opinion in *State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist.*, No. A-1-CA-37258, 2021 WL 4272676 (Sept. 17, 2021) (“Opinion”), “will govern the Court’s consideration of Meech’s *Mendenhall* claims.” Doc. 3521, at 1. Because this Court has granted Meech’s request for leave to file a surreply to the United States’ and State of New Mexico’s Reply in Support of Motion for Summary Judgment (Doc. 3504), *see* Docs. 3517 and 3522, whether the Opinion is

“controlling authority,” as Meech suggests, or “pertinent and significant” authority, *see* D.N.M.LR-Civ. 7.8(a) and (b), Meech’s Notice does not comply with D.N.M.LR-Civ. 7.8, and accordingly should be disregarded. Meech will have ample opportunity in her surreply to present her arguments regarding the Opinion’s relevance to the facts of the instant case.

On that point, the State of New Mexico and the United States agree the New Mexico Court of Appeals’ thorough discussion of the doctrine of relation is relevant to issues raised in the United States’ and State of New Mexico’s Motion for Summary Judgment (Doc. 3491) and Reply in Support of Motion for Summary Judgment (Doc. 3504). *See* Doc. 3491, at 10-13; Doc. 3504, at 2-10. Indeed, the Opinion reinforces two key aspects of the relation doctrine: first, that the doctrine does not exist separately from, and is subservient to, the requirements of prior appropriation, *see* Opinion at 26, 40; and second, consistent with prior appropriation, that to diligently apply water to beneficial use, for purposes of relation, means doing so within a reasonable time, *see id.* at 27 (“the bedrock requirement”), 31 (“the core of relation”). In sum, the Opinion confirms what the State and the United States have contended in this matter from the beginning regarding the temporal dimension of the relation doctrine’s reasonable-diligence element.

DATED: October 1, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 1, 2021, I filed the foregoing *Plaintiffs' Response to Notice of Supplemental Authority (Doc. 3521)* 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.



Samuel D. Gollis