

  
Joey D. Moya

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**NO. S-1-SC-38195**

ADOBE WHITEWATER CLUB OF NEW MEXICO,  
a non-profit corporation;  
NEW MEXICO WILDLIFE FEDERATION,  
a non-profit corporation;  
and NEW MEXICO CHAPTER OF  
BACKCOUNTRY HUNTERS & ANGLERS,  
a non-profit organization,

Petitioners,

v.

STATE GAME COMMISSION,

Respondent.

and

CHAMA TROUTSTALKERS, LLC;  
RIO DULCE RANCH;  
Z&T CATTLE COMPANY, LLC;  
RANCHO DEL OSO PARDO, INC.;  
RIVER BEND RANCH;  
CHAMA III, LLC; FENN FARM;  
THREE RIVERS CATTLE LTD., CO.;  
FLYING H. RANCH INC.;  
SPUR LAKE CATTLE CO.;  
BALLARD RANCH;  
DWAYNE AND CRESSIE BROWN;  
COTHAM RANCH;  
WAPITI RIVER RANCH;  
MULCOCK RANCH;  
WILBANKS CATTLE CO.;  
130 RANCH; WCT RANCH;  
THE NEW MEXICO FARM AND LIVESTOCK BUREAU;  
CHAMA PEAK LAND ALLIANCE;  
NEW MEXICO CATTLE GROWERS' ASSOCIATION;

NEW MEXICO COUNCIL OF OUTFITTERS AND GUIDES;  
AND UPPER PECOS WATERSHED ASSOCIATION

Intervenors-Respondents.

**SENATOR TOM UDALL AND SENATOR MARTIN HEINRICH'S  
RESPONSE TO INTERVENORS-RESPONDENTS' MOTION TO STRIKE**

Intervenors-Respondents' Motion to Strike tries to bring amici into what appears to be a dispute over the format of a document in the record that Intervenors-Respondents concede accurately reflects advice Assistant Attorney General John Grubestic provided to the Game Commission. Mot. at 1 (“While the content of the document is the same across all versions, ...”). Mindful of their limited role, amici submit this response only to address why – disputes over the format of the document reflecting Mr. Grubestic’s advice notwithstanding – the motion does not call into question any aspect of the amicus brief.<sup>1</sup> That is true for three reasons.

First, the limited reference in the amicus brief to Mr. Grubestic’s legal analysis does not depend on the format in which it was transmitted to the Game Commission. Intervenors-Respondents do not dispute that Assistant Attorney

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<sup>1</sup> This response is necessary because Intervenors-Respondents ask the Court to ignore a portion of the amicus brief that cites this one document in the record. *See* Mot. at 1-3, 10 (asking the Court to disregard “all argument made by Petitioners *and Amici*” regarding the memorandum (emphasis added)); *cf. New Ener. Econ., Inc. v. Vanzi*, 2012-NMSC-005, ¶ 45 (concluding that amici “may not make or respond to *procedural* motions” (emphasis added)).

General John Grubescic advised the Game Commission of everything set out in the memorandum. Instead, they concede that the contents of the memorandum attached as Exhibit A to the motion *are the same* as the contents of the memorandum attached as Appendix V to the Petition. *See* Mot. at 3 n.2. There is no reason for the Court to disregard that document.

Second, Interveners-Respondents are wrong in speculating that the “imprimatur of reliability” conferred by Attorney General Letterhead “likely . . . induced” amici to believe that the memorandum was advice of the Attorney General. *See* Mot. at 3. Amici instead considered the memorandum for what it is—advice from the Office of the Attorney General to a state commission that office is responsible for advising. *See id.* at 2-3 n.1. Like a formal Attorney General opinion, amici know the Court will give legal analysis from an Assistant Attorney General “only such weight as deemed appropriate.” *See State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 47 n.3, 149 N.M. 330 (citing *1st Thrift & Loan Ass’n v. State ex rel. Robinson*, 1956-NMSC-099, ¶ 28, 62 N.M. 61). The Court should consider the memorandum not because it is on Attorney General letterhead, but because the analysis it sets forth is correct.

Finally, Intervenors-Respondents overstate the very limited role this memorandum played in the amicus brief. Amici mention Appendix V once, in passing, in a footnote. *See* Sen. Tom Udall & Martin Heinrich’s Mem. Br. as

Amici Curiae at 15 n.6 (May 5, 2020). Even that reference does not so much rely on the memorandum as agree with it. *See id.* (“As the current Attorney General recently advised the Game Commission, the constitutional defect in Section 17-4-6(C) can be avoided by reading the statute to conform to [*State ex rel. State Game Comm’n v.] Red River Valley*[, 1945-NMSC-034, 51 N.M. 207] (i.e., while a person has a right to access a stream or watercourse, she or he may not trespass over adjoining private lands to reach the water or trespass from the stream or watercourse onto adjoining private land).”). Amici’s agreement with the advice the Game Commission received does not depend on the format in which that advice was received, and amici stand by the compelling argument that the Court should interpret NMSA 1978, § 17-4-6(C) to conform to the holding of *Red River Valley* in order to avoid reading a constitutional defect into the statute.

Amici Curiae Senators Tom Udall and Martin Heinrich therefore respectfully request that the Court deny Intervenors-Respondents’ Motion to Strike as to any aspect of the amicus brief.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was submitted for e-filing and service through the District Court's "Odyssey File & Serve" filing system this 15th day of October, 2020, which caused counsel of record to be served by electronic means or as otherwise stated, as more fully reflected on the Notification of Service.

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: /s/ Mark T. Baker

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