

App. No. _____

In The

Supreme Court of the United States

Chama Troutstalkers, LLC; Z&T Cattle Company, LLC,

Petitioners,

v.

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,

Respondents.

PETITIONERS' APPLICATION TO EXTEND THE TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable Neil M. Gorsuch, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Petitioners respectfully request that the time to file a petition for a writ of certiorari be extended 60 days from August 29, 2022, to and including October 28, 2022.

This extension is warranted given the unusual posture of this case. On March 2, 2022, the New Mexico Supreme Court granted a petition for mandamus filed by three nonprofit entities (collectively, “respondents”) and held that certain regulations of the New Mexico State Game Commission violated the New Mexico Constitution. Ex. A, at 2–3. The order contains no reasoning and states that “an opinion explaining the Court’s reasoning will follow.” *Id.* at 3. When the court had failed to issue an opinion by the deadline for seeking rehearing, petitioners filed a petition for rehearing and explained that the court’s order violated the Takings Clause of the Fifth Amendment to the U.S. Constitution (as incorporated against the States by the Fourteenth Amendment) and the Supremacy Clause. On May 31, 2022, the New Mexico Supreme Court denied rehearing, again without issuing an opinion explaining its reasoning. Ex. B.

To date the New Mexico Supreme Court has not issued an opinion explaining the basis for its mandamus order. Assuming that the future publication of an opinion that does not alter the judgment would not reset the time for filing a petition for a writ of certiorari in this Court, *see* S. Ct. R. 13.1, the petition is currently due on August 29, 2022. This application is being filed at least 10 days

before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction under 28 U.S.C. § 1257(a).

Given that the decision under review is still awaiting an explanatory opinion, petitioners respectfully seek a 60-day extension to file the petition. Petitioners have conferred with counsel for respondents, who do not oppose this extension. Petitioners have also conferred with the other parties to the proceedings below, who are deemed respondents in this Court by virtue of Rule 12.6. The parties other than petitioners who intervened below (and who are represented by petitioners' counsel) do not oppose this extension. The New Mexico State Game Commission, however, opposes the extension.¹

BACKGROUND

This case presents the question of whether, under the Fifth and Fourteenth Amendments, a State may authorize members of the public to trespass on privately held land that that lies under, or adjacent to, non-navigable rivers and streams.

1. This Court's precedents addressing property rights in the lands beneath rivers and streams has long distinguished between navigable and non-navigable waters. "Upon statehood, [a] State gains title within its borders to the beds of waters then navigable." *PPL Montana, LLC v. Montana*, 565 U.S. 576, 591 (2012). That follows from the "equal-footing doctrine," which recognizes that newly

¹ When asked by petitioners' counsel whether the Commission opposed the extension, the Commission's counsel wrote by email: "So you are requesting our assistance in taking your case to the Fascist Five? No." Ex. C. After a follow-up inquiry, counsel for the Commission further stated: "In my humble opinion, you cannot show a 'federal question' and you are wasting time and money, at least if the SCOTUS majority hasn't entirely abandoned bedrock legal principles, which is clearly an open question." *Ibid*.

admitted States enjoy the same attributes of sovereignty as the first thirteen States, which at the time of the Founding held title to the lands beneath navigable waters. *Id.* at 590–591. But a different rule applies to non-navigable waters: “The United States retains any title vested in it before statehood to any land beneath waters not * * * navigable” at the time of statehood, “to be transferred or licensed if and as it chooses,” including to private parties. *Id.* at 591.

A separate set of state-law principles governs the use of the water itself. Under the “public-trust doctrine,” “the States retain residual power to determine the scope of the public trust over waters within their borders.” *PPL Montana*, 565 U.S. at 604. Accordingly, each State’s own law establishes the scope of “public access to the waters above those beds for purposes of navigation, fishing, and other recreational uses,” *id.* at 603, while “federal law determines riverbed title under the equal-footing doctrine,” *id.* at 604.

New Mexico was admitted as a State on January 6, 1912. Under the equal-footing doctrine, title to the land under any navigable waters in New Mexico (if any existed) was thereby transferred from the United States to New Mexico. *PPL Montana*, 565 U.S. at 591. But the United States retained title to the soil under non-navigable waters, as well as the banks adjacent to non-navigable waters, to the extent that the federal government had not previously transferred such title to private parties. *See id.* After statehood, the United States continued to transfer title to land through which non-navigable waters flowed to private parties through U.S. land patents.

A provision of the New Mexico Constitution sets out New Mexico’s version of the public-trust doctrine. It provides that “[t]he unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state.” N.M. Const. art. XVI, § 2. In 1945, the New Mexico Supreme Court construed this public-waters provision to give the public the right to engage in fishing and other recreational activities in public waters, including non-navigable rivers and streams. *State ex rel. State Game Commission v. Red River Valley Co.*, 182 P.2d 421, 428, 434 (N.M. 1945). But the court cautioned that the provision does not permit “trespass * * * upon privately owned land.” *Id.* at 429. Rather, “[a]ccess to [] public water * * * must be [] reached without such trespass.” *Id.*

In 2015, the New Mexico legislature enacted a statute to address landowners’ concerns that members of the public were encroaching on the banks and beds of rivers and streams that flowed through private property. New Mexico Stat. Ann. § 17-4-6(C) (“Trespass Statute”). The Trespass Statute expressly prohibits trespassing on private property during the use of non-navigable waters, including by wading onto privately held beds and walking on privately owned banks. The statute provides:

No person engaged in hunting, fishing, trapping, camping, hiking, sightseeing, the operation of watercraft or any other recreational use shall walk or wade onto private property through non-navigable public water or access public water via private property unless the private property owner or lessee or person in control of private lands has expressly consented in writing.

Id.

In 2018, the New Mexico Game Commission promulgated a regulation implementing the Trespass Statute. N.M. Admin. Code § 19.31.22.1 *et seq.* (2019) (“Trespass Rule”). The Trespass Rule established a “process for a landowner to be issued a certificate and signage * * * that recognizes that within the landowner’s private property is a segment of a non-navigable public water, whose riverbed or streambed or lakebed is closed to access without written permission from the landowner.” *Id.* § 19.31.22.6.

The Trespass Rule allowed a landowner to apply for a certificate that a segment of a river or stream is “certified non-navigable public water.” N.M. Admin. Code § 19.31.22.13(A) (2019); *see id.* § 19.31.22.8(A). To obtain the certificate, the landowner was required both to prove title to the property and to establish that the waters were “non-navigable at the time of statehood.” *Id.* §§ 19.31.22.8(B)(2) and (4). Once issued, the “certificate formally recognize[d] that the segment and certain waters found on the private property are non-navigable public waters and therefore trespass on private property though non-navigable public water or via accessing public water via private property is not lawful” without written permission from the landowner. *Id.* § 19.31.22.13(B). The certificate allowed a landowner to obtain government-issued signs to post on the property reciting the prohibitions set forth in the Trespass Statute. *Id.* § 19.31.22.13(C)–(F).

2. Respondents are nonprofit organizations that purport to represent New Mexicans who engage in recreation in state waters. Resp. N.M.S.C. Reply Br. 11–

12. They filed a petition for a writ of mandamus in the New Mexico Supreme Court challenging the Trespass Rule under the New Mexico Constitution (a direct-review power that the New Mexico Supreme Court enjoys in certain circumstances, *see* N.M. Const. art. VI, § 3). Respondents argued that the Trespass Rule violated the public-waters provision of the New Mexico Constitution. *Id.* art. XVI, § 2. According to respondents, by creating a mechanism to establish that the land beneath and adjacent to a river is privately owned and to provide notice of that ownership to the public, the Trespass Rule “nullified” the public’s right to use non-navigable waters, because it is “practically impossible” to engage in certain recreational activities “without touching the streambed and banks.” Resp. N.M.S.C. Opening Br. 1–2. In respondents’ view, the New Mexico Constitution’s public-waters provision guarantees the legal right of the public to encroach on beds and banks up to the high-water mark “notwithstanding private streambed ownership.” *Id.* at 2.

The State Game Commission—composed now of different commissioners than those who had approved the Trespass Rule—did not defend the rule. Instead, it submitted a short brief stating that it “generally adopt[ed] the arguments and reasoning of [respondents].” Commission N.M.S.C. Br. 5.

Petitioners—two landowners that had obtained certificates under the Trespass Rule in 2018—intervened along with other parties to defend the Trespass Rule. Petitioners argued that the Trespass Rule did not recognize any new property rights, but “simply allow[ed] landowners to obtain non-navigable waters

certificates * * * and signage that will help them enforce their *existing* private property rights.” Pet. N.M.S.C. Br. 3. Although respondents purported to challenge only the Trespass Rule, petitioners argued, the interpretation of the New Mexico Constitution’s public-waters provision that respondents advanced would “strip thousands of New Mexico land owners of valuable property rights to the land below and adjacent to non-navigable streams and rivers of this state.” Pet. N.M.S.C. Br. 1. As particularly relevant here, they argued that recognizing a right of members of the public to trespass on private property while engaging in recreation on public waters would violate the Takings Clause of the U.S. Constitution by depriving the private landowners of the core property right to exclude others. *Id.* at 26–30; *see Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005) (observing that the right to exclude is “perhaps the most fundamental of all property interests”).

On March 2, 2022, the New Mexico Supreme Court granted respondents’ petition for mandamus. Ex. A. The court’s order declared that “the New Mexico State Game Commission’s [Trespass Rule] violate[s] [the public-waters provision] of the New Mexico Constitution and [is] inconsistent with a constitutional reading of [the Trespass Statute].” *Id.* at 2–3. It further stated that “the certificates that the New Mexico State Game Commission has issued to private landowners pursuant to [the Trespass Rule] are hereby declared VOID.” *Id.* at 3. The order “direct[ed] the Commission to withdraw the regulations,” *id.*, which the Commission did the same day, *see* Landowner Certification of Non-Navigable Water, 33 N.M. Reg. 485 (Mar.

2, 2022). The order stated that “an opinion explaining the Court’s reasoning will follow.” Ex. A, at 3.

3. Under the rules of the New Mexico Supreme Court, a party has 15 days after the “filing of the appellate court’s disposition, or any subsequent modification of its disposition,” to file a petition for rehearing. N.M. R. App. P. 12-404(A). Petitioners believed that the period for seeking rehearing would not begin to run until the Court issued its opinion, but the court’s unexplained order, which required immediate compliance, left some doubt about that proposition. For that reason, petitioners filed a motion on March 11, 2022, that “request[ed] that the Court enter an order clarifying that the deadline for filing a motion for rehearing in this case is fifteen days from the Court’s entry of the opinion referenced in the Court’s March 2, 2022 Order.” Pet. N.M.S.C. Motion for Order Clarifying Deadline to Move for Rehearing 3 (Mar. 11, 2022).

By March 17—fifteen days after the unexplained mandamus order was issued—the New Mexico Supreme Court had not responded to petitioners’ motion for clarification of the deadline. Accordingly, out of an abundance of caution and to avoid forfeiting their right to seek rehearing, petitioners filed a motion for rehearing on that date, despite the fact that the New Mexico Supreme Court had not yet issued an opinion explaining its reasoning.²

² Respondents took the position that the petition for rehearing was “premature” because the New Mexico Supreme Court had not yet issued its opinion. Resp. N.M.S.C. Response to Mot. for Rehearing 2–3 (Apr. 25, 2022).

The brief in support of the motion explained that it appeared, especially in light of the court’s questions during oral argument, that the New Mexico Supreme Court had “based its Order and Writ of Mandamus on the view that the New Mexico Constitution or some other provision of New Mexico law imposes a public easement allowing walking and wading on lands below or adjacent to non-navigable waters (or that the Court should recognize such an easement for some other reason)”—a legal holding that goes far beyond merely vacating the certificate process established by Trespass Rule. Pet. N.M.S.C. Br. in Support of Mot. for Rehearing 4. Petitioners argued that “construing the New Mexico Constitution or other state law to impose a public easement on privately owned lands under or adjacent to non-navigable waters would violate the U.S. Constitution,” *i.e.*, the Takings Clause and the Supremacy Clause. *Id.* at 1.

On May 31, 2022, the New Mexico Supreme Court denied the petition for rehearing without explanation. Ex. B. To date, the New Mexico Supreme Court has not issued the promised opinion explaining the basis for its March 2 mandamus order.

REASONS FOR EXTENDING THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a 60-day extension of the time to file a petition for a writ of certiorari to October 28, 2022, because the New Mexico Supreme Court has not yet issued an opinion explaining the reasoning underlying its mandamus order.

1. There is a reasonable probability that this Court would grant a petition for a writ of certiorari in this case. The New Mexico Supreme Court appears to have held that under the public-waters provision of the New Mexico Constitution, any member of the public may trespass on privately owned beds and banks while engaging in recreation activities in a non-navigable river or stream. Title to that land was originally held by the United States. The federal government transferred title to some of that land, either before or after New Mexico's statehood, to private parties unencumbered by any easement or other right permitting the sort of broad public access that the New Mexico Supreme Court has now evidently recognized.

For that reason, the New Mexico Supreme Court's order raises serious constitutional questions under this Court's established precedents. Those precedents hold that (i) upon statehood, new States like New Mexico did not acquire title to the land under non-navigable waters, *PPL Montana*, 565 U.S. at 591; (ii) when the United States transferred land to private parties, no "public trust easement" could have been created unless it was specified in the patent proceedings, *Summa Corp. v. California ex rel. State Lands Comm'n*, 466 U.S. 198, 209 (1984); and (iii) the establishment of a public easement over private property

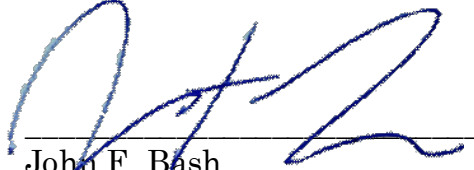
without just compensation violates the Takings Clause, *e.g.*, *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2073 (2021). Taken together, and in light of the fact that the land at issue was transferred from the United States unencumbered by any relevant easement or similar right, *see* Pet. N.M.S.C. Mot. For Rehearing 4 & n.3, those settled principles entitle petitioners to just compensation before New Mexico may authorize members of the public to trespass on their lands. Yet the New Mexico Supreme Court appeared to hold that a provision of the New Mexico Constitution requires just such a public easement.

2. An extension of the time to file a petition for a writ of certiorari is warranted in light of the unusual posture of this case, in which the lower court rendered a decision over five months ago but still has not issued a promised opinion explaining the reasoning underlying the decision. A petition for a writ of certiorari would naturally be enhanced if petitioners have the opportunity to address the reasoning of the New Mexico Supreme Court. Extending the deadline by 60 days makes it more likely that the court will issue a decision before the petition is due. Respondents, moreover, would not be prejudiced by any extension because the New Mexico Supreme Court's mandamus order went into effect immediately.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 60 days to and including October 28, 2022.

Respectfully submitted,



John F. Bash

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August 17, 2022

EXHIBIT A



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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

March 02, 2022

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;**

1 **THE NEW MEXICO FARM AND**
2 **LIVESTOCK BUREAU; CHAMA**
3 **PEAK LAND ALLIANCE;**
4 **NEW MEXICO CATTLE GROWERS'**
5 **ASSOCIATION; NEW MEXICO COUNCIL**
6 **OF OUTFITTERS AND GUIDES;**
7 **AND UPPER PECOS WATERSHED**
8 **ASSOCIATION,**

9
10 Intervenor-Respondents.

11 **ORDER**

12 WHEREAS, this matter came on for consideration by the Court upon
13 verified petition for writ of prohibitory mandamus, responses, reply, briefing by
14 the parties, briefing by amici curiae, and oral argument, and the Court having
15 considered the foregoing and being sufficiently advised, Chief Justice Michael E.
16 Vigil, Justice C. Shannon Bacon, Justice David K. Thomson, Justice Julie J.
17 Vargas, and Justice Briana H. Zamora concurring;

18 NOW, THEREFORE, IT IS ORDERED that this case involves a matter of
19 great public importance and petitioners have standing to bring this matter before
20 the Court as an original proceeding under Article VI, Section 3 of the New Mexico
21 Constitution and Rule 12-504 NMRA;

22 IT IS FURTHER ORDERED that the petition for writ of mandamus is
23 GRANTED;

24 IT IS FURTHER ORDERED that the New Mexico State Game
25 Commission's regulations set forth in 19.31.22 NMAC violate Article XVI,

EXHIBIT A

1 Section 2 of the New Mexico Constitution and are inconsistent with a
2 constitutional reading of NMSA 1978, Section 17-4-6(C) (2015);

3 IT IS FURTHER ORDERED that the certificates that the New Mexico State
4 Game Commission has issued to private landowners pursuant to 19.31.22 NMAC
5 are hereby declared VOID;

6 IT IS FURTHER ORDERED that a writ of mandamus shall issue,
7 prohibiting the New Mexico State Game Commission from further implementation
8 of the regulations set forth in 19.31.22 NMAC and directing the Commission to
9 withdraw the regulations; and

10 IT IS FURTHER ORDERED that an opinion explaining the Court's
11 reasoning will follow.

12 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 2nd day of March, 2022.


Jennifer L. Scott, Chief Clerk of the Supreme Court
of the State of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Jennifer L. Scott
Chief Clerk of the Supreme Court
of the State of New Mexico

EXHIBIT B

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

2 **May 31, 2022**

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

4 **ADOBE WHITEWATER CLUB**
5 **OF NEW MEXICO, a non-profit**
6 **corporation, NEW MEXICO WILDLIFE**
7 **FEDERATION, a non-profit corporation,**
8 **and NEW MEXICO CHAPTER OF**
9 **BACKCOUNTRY HUNTERS & ANGLERS,**
10 **a non-profit organization,**

11 Petitioners,

12 v.

13 **STATE GAME COMMISSION,**

14 Respondent,

15 and

16 **CHAMA TROUTSTALKERS, LLC;**
17 **RIO DULCE RANCH;**
18 **Z&T CATTLE COMPANY, LLC;**
19 **RANCHO DEL OSO PARDO, INC.;**
20 **RIVER BEND RANCH;**
21 **CHAMA III, LLC; FENN FARM;**
22 **THREE RIVERS CATTLE LTD., CO.;**
23 **FLYING H. RANCH INC.;**
24 **SPUR LAKE CATTLE CO.;**
25 **BALLARD RANCH;**
26 **DWAYNE AND CRESSIE BROWN;**
27 **COTHAM RANCH;**
28 **WAPITI RIVER RANCH;**
29 **MULCOCK RANCH;**
30 **WILBANKS CATTLE CO.;**
31 **130 RANCH; WCT RANCH;**

1 THE NEW MEXICO FARM AND LIVESTOCK BUREAU;
2 CHAMA PEAK LAND ALLIANCE;
3 NEW MEXICO CATTLE GROWERS' ASSOCIATION;
4 NEW MEXICO COUNCIL OF OUTFITTERS AND GUIDES;
5 AND UPPER PECOS WATERSHED ASSOCIATION

6 Intervenor-Respondents.

7 **ORDER**

8 WHEREAS, this matter came on for consideration by the Court upon
9 intervenors' motion for rehearing, petitioner's response thereto, and respondent's
10 response and motion to extend deadline for filing a response, and the Court having
11 considered the foregoing and being sufficiently advised, Chief Justice C. Shannon
12 Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J.
13 Vargas, and Justice Briana H. Zamora concurring;

14 NOW, THEREFORE, IT IS ORDERED that respondent's motion to extend
15 deadline for filing a response is GRANTED and the response is ACCEPTED; and

16 IT IS FURTHER ORDERED that the motion for rehearing is DENIED.

17 IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 31st day of May, 2022.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.

NEIL BAL
Deputy Clerk of the Supreme Court
of the State of New Mexico

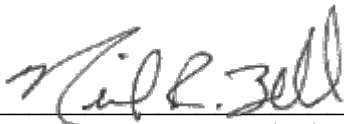
By 
Acting Deputy Clerk

EXHIBIT C

EXHIBIT C

From: Jeremy K . Harrison <jkh@modrall.com>
Sent: Tuesday, August 16, 2022 8:31 PM
To: John Bash
Subject: Fwd: Adobe Whitewater

[EXTERNAL EMAIL from jkh@modrall.com]

Begin forwarded message:

From: "Aaron J. Wolf" <awolf@cuddymccarthy.com>
Date: August 16, 2022 at 9:04:59 PM MDT
To: "Jeremy K . Harrison" <jkh@modrall.com>
Cc: jeg@gallegoslawfirm.net, scohen@colawnm.com, "Marco E. Gonzales" <MEG@modrall.com>
Subject: Re: Adobe Whitewater

Hi Jeremy,

No, I do not agree to an extension. I thought I was clear. In my humble opinion, you cannot show a "federal question" and you are wasting time and money, at least if the SCOTUS majority hasn't entirely abandoned bedrock legal principles, which is clearly an open question. However, if you dismiss the claims against the individual commissioners in the federal case, as I have repeatedly requested, then I will agree to an extension, for the sake of collegiality. Those federal claims are unnecessary to your clients's interests, bogus and hurtful, and discourage others from volunteering to serve as commissioners. So long as those claims remain, I will not accommodate you.

Respectfully,

Aaron

Sent from my iPhone

On Aug 16, 2022, at 7:52 PM, Jeremy K . Harrison <jkh@modrall.com> wrote:

Aaron,

To clarify is that "no" you do not oppose or "no" you will not agree to an extension?

- Jeremy

On Aug 16, 2022, at 2:28 PM, Aaron J. Wolf
<awolf@cuddymccarthy.com> wrote:

EXHIBIT C

Jeremy,

So you are requesting our assistance in taking your case to the Fascist Five? No.

Aaron

Aaron J. Wolf
Cuddy & McCarthy, LLP
1701 Old Pecos Trail
Santa Fe, New Mexico 87505
Tel: 505-988-4476
Fax: 1-888-977-3814
awolf@cuddymccarthy.com

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From: Jeremy K . Harrison [mailto:jkh@modrall.com]
Sent: Tuesday, August 16, 2022 2:15 PM
To: jeg@gallegoslawfirm.net; Aaron J. Wolf; scohen@colawnm.com
Cc: Marco E. Gonzales
Subject: RE: Adobe Whitewater

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To clarify, the deadline referenced below is calculated from the NM Supreme Court's denial of our petition for rehearing, not the March 2 order.

- Jeremy

From: Jeremy K . Harrison
Sent: Tuesday, August 16, 2022 1:57 PM
To: jeg@gallegoslawfirm.net; 'Aaron J. Wolf' <awolf@cuddymccarthy.com>; scohen@colawnm.com
Cc: Marco E. Gonzales <MEG@modrall.com>
Subject: Adobe Whitewater

EXHIBIT C

Counsel,

If the New Mexico Supreme Court's March 2, 2022 mandamus order (rather than the yet to be issued opinion) is the triggering event for our deadline to seek certiorari from the United States Supreme Court, our deadline to file a petition would be August 29. Because we do not yet have an opinion from the NM Supreme Court, we intend to seek a 60 day extension on the deadline to file a petition for certiorari. Can you please let me know by tomorrow morning whether you oppose this extension? We are filing this request for an extension without waiver of any argument that the forthcoming opinion, and not the order, is the appropriate date from which to calculate the certiorari deadline.

Sincerely,

Jeremy



Jeremy Harrison

Shareholder

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