

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

CABRESTO LAKE IRRIGATION COMMUNITY
DITCH ASSOCIATION and
ACEQUIA MADRE DEL CERRO DE GUADALUPE,

Plaintiffs,

v.

No. 1:26-cv-02592 DHU/JFR

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE; CHRISTOPHER A. MCLEAN,
in his official capacity as Assistant Administrator
for Electric Programs RUS;

Defendants.

**NOTICE OF PLAINTIFFS' THIRD SUPPLEMENT TO THE RECORD
FOR THE MOTION FOR PRELIMINARY INJUNCTION (Doc. 7):
2009 DEED OF CONSERVATION EASEMENT**

Plaintiffs supplement the record for the Motion for Preliminary Injunction (Doc. 7) with the attached Deed of Conservation Easement filed with the Taos County Clerk on May 21, 2009.

Exhibit 1.

1. The Deed created a Conservation Easement ("CE") in perpetuity on the land currently being used for the construction of the Questa Hydrogen Project and Solar Array. *Ex. 1, page 1 and map on page 19.*
2. The purpose of the CE is that the majority of the Property will be returned to and retained in a natural condition. *Ex. 1, page 3, ¶1.*
3. The "Property" consists of the maps labeled as Exhibit B to the Conservation Easement. *Exhibit 1, pages 1, 18, and 19.*
4. The Prohibited Uses under the CE include the following:
 - a. Placement of construction of utility rights-of-way *Ex. 1, ¶5(a);*

- b. Utility generation or transmission facilities *Ex. 1 ¶5(a)*;
 - c. Any use or activity that causes or is likely to cause soil degradation or erosion *Ex. 1 ¶5(c)*;
 - d. Cutting, removing, or otherwise destroying trees, grasses, or other vegetation except in compliance with an Approved Reclamation Plan *Ex. 1 ¶5(d)*;
 - e. The withdrawal of any groundwater from beneath the Property except for the purposes of groundwater remediation or water quality monitoring, or pursuant to an Approved Reclamation Plan *Ex. 1 ¶5(e)*; and
 - f. The exercise of development rights on the Property *Ex. 1 ¶5(j)*.
- 5. The CE applies to the land under lease from Chevron to Kit Carson Electric Cooperative (“KCEC”). *See, Doc. 7-1, Lease Agreement dated May 8, 2026.*
 - 6. The Lease is subject to all easements and other agreements. *Doc. 7-1 §2.3 at page 4.*
 - 7. Any party accepting a conveyance or acquiring any other interest, including a leasehold interest, in the lands included in the Conservation Easement agrees to be bound by the terms of the Easement. *Exhibit 1 ¶16 (Subsequent Transfers).*
 - 8. The Environmental Assessment in this case did not mention the 2009 Deed of Conservation Easement and it was not considered by USDA RUS prior to issuing the FONSI.
 - 9. Consideration of the 2009 Conservation Easement should be part of any additional environmental review the Court may order to be conducted.

/s/ Guy Dicharry
Attorney for Plaintiffs
PO Box 2578
Los Lunas, NM 87031
dicharrylaw@gmail.com
(505) 269-3757

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of October 2026, I filed the foregoing using CM/ECF which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Receiving Lawyers

ANDREW A. SMITH (NM Bar No. 8341) Senior Trial Attorney Environment and Natural Resources Division United States Department of Justice c/o United States Attorney's Office 201 Third Street, N.W., Suite 900 Albuquerque, New Mexico 87102 Phone: (202) 598-3803 andrew.smith@usdoj.gov Counsel for Federal Defendants	JOHN P. TUSTIN (TX Bar No. 24056458) Senior Trial Attorney Energy & Natural Resources Division United States Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 (202) 598-3543 john.tustin@usdoj.gov Counsel for Federal Defendants
--	---

/s/ _____
 Guy Dicharry, Attorney for Plaintiffs