

**STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA**

**THE SOCORRO ELECTRIC
COOPERATIVE, INC.**

Plaintiff,

No. D1314-CV-2010-849

v.

CHARLENE WEST, et al.,

Defendants.

AND

**CHARLES WAGNER, Individually,
And as Representative of the Class of
“unnamed Defendants, being owner/members
of the Socorro Electric Cooperative, Inc.”**

Cross Claim Plaintiff,

v.

**SOCORRO ELECTRIC COOPERATIVE, INC.,
PAUL BUSTAMANTE, individually and in his
Capacities as President and Trustee of SEC;
DAVE WADE, individually and in his
Capacities as Vice-President and Trustee of SEC;
LUIS AGUILAR, individually and in his
Capacities as Secretary and Trustee of SEC;
MILTON ULIBARRI, individually and in his
Capacities as Treasurer and Trustee of SEC;
LEROY ANAYA, individually and in his
Capacity as a Trustee of SEC; JACK BRUTON,
individually and in his Capacity as a Trustee of SEC;
LEO CORDOVA, individually and in his Capacity
as a Trustee of SEC; PRESCILLA MAULDIN,
individually and in her Capacity as a Trustee of SEC;
MANUEL MARQUEZ, individually and in his
Capacity as a Former Trustee of SEC; DONALD
WOLBERG, individually and in his
Capacity as a Trustee of SEC; JUAN GONZALES,
individually and in his Capacity as a Former Trustee
of SEC; HAROLD BACA, individually and in his**

Capacity as a Former Trustee of SEC; HERMAN ROMERO, individually and in his Capacity as a Former Trustee of SEC; and LEOPOLDO PINEDA, JR., individually and in his Capacity as General Manager of SEC,

Cross Claim Defendants

PLAINTIFF’S HEARING BRIEF ON APPLICABILITY OF REQUESTED RELIEF

Per the request of this Court, reflected in its Order Regarding Scheduling, Plaintiff Socorro Electric Cooperative, Inc. (“SEC”), by and through its attorneys of record presents this Hearing Brief on Applicability of Requested Relief. Specifically, the Court has requested that the Plaintiff provide briefing which addresses the applicability of the requested declaratory and injunctive against numerous unspecified, and generally unnamed Defendants. The Court appears to be concerned that since only a limited number of individual Defendants remain involved in the matter, any declaratory judgment which might be issued would be of limited effect.

ISSUES OF LAW: DECLARATORY JUDGMENT ACT:

As a preliminary matter, the Declaratory Judgment Act (NMSA 1978, §44-6-1, *et seq*), provides New Mexico courts with discretionary power “to declare rights, status, and other legal relations whether or not further relief is or could be claimed. §44-6-1. See also, *Allstate Ins. Co. v. Firemen’s Ins. Co.*, 76 N.M. 430, 434, 415 P.2d 553, 555 (1966) (discussing discretionary nature of declaratory judgments). Additionally, the Declaratory Judgment Act “was intended to be liberally construed and administered as a remedial measure.” *San Juan County Water Commission v. Taxpayers and Water Users of San Juan County*, 116 N.M. 106, 109, 860 P.2d 748, 751 (1993). Applying these general principles to the facts of the current dispute, it is clear

that the Court may properly establish the rights of Plaintiff Socorro Electric Cooperative within the current suit. Such a determination of rights would be directly binding on the named Defendants which remain in the case, and the determination would serve as a legal impediment to any other party or individual which might, in the future, attempt to challenge the Plaintiff's ability to hold and conduct its meetings.

In its Complaint (filed June 29, 2010), Plaintiff asks the Court to issue declaratory judgments clarifying a number of legal rights and abilities as between the Plaintiff Socorro Electric Cooperative and its membership. Examining the core issues addressed in the current Complaint, it is clear that Plaintiff is asking that the Court hold that:

- A) Socorro Electric Cooperative may properly disregard any SEC bylaws which conflict with state law;
- B) Socorro Electric Cooperative is a private entity that is not subject to the New Mexico Open Meetings Act or the Inspection of Public Records Act;
- C) Any bylaws which purport to require Plaintiff to abide by the New Mexico Open Meetings Act are null and void as a matter of law;
- D) Any bylaws which purport to require Plaintiff to abide by the New Mexico Inspection of Public Records Act are null and void as a matter of law;

These issues demonstrate an actual controversy, which is ripe for consideration by the Court.

Courts have long recognized that declarations of rights and other legal relations could have an impact on individuals who are not parties to the particular lawsuit. Yet, without requiring an individual to seek formal certification as a "class," New Mexico courts have allowed individuals to seek declaratory judgment which are "for the benefit" of others and are binding on those unrepresented "others." See, *Key v. George E. Breece Lumber Co.*, 45 N.M.

397, 397, 115 P.2d 622, 622 (1941). The Court in *Key* recognized that the issues of law to be presented were common and of general interest to a large number of individuals, and that it would be impractical to bring this large number of individuals into court. *Id.* Consequently, even though the particular plaintiff (a Union president and figurehead for all lumber workers in Otero County) had no immediate personal interest in the suit, the Court allowed the plaintiff to seek a declaratory judgment concerning the requirements and obligations established by a collective bargaining agreement. *Id.* The *Key* Court focused on the legal rights involved in the suit, namely, the provisions of the collective bargaining agreement, and once these issues were resolved neither the trial court nor the New Mexico Supreme Court was inclined to require that each potential plaintiff relitigate the issue.

More recent case law clarifies the issue even further. In *San Juan County Water Commission v. Taxpayers and Water Users of San Juan County*, 116 N.M. 106, 109, 860 P.2d 748, 751 (1993), the New Mexico Supreme Court considered, and rejected, arguments focusing on required joinder of potential defendants. In the *San Juan* matter, the county water commission asked the Court to clarify the commission's authority to enter into binding contracts. *Id.* at 109, 752. Much like Plaintiff Socorro Electric Cooperative did in the current matter, the San Juan County Water Commission brought suit against all individuals who were "taxpayers and water users of San Juan County." Also much as in the current suit, only two defendants appear to have responded to the water commission's complaint. *Id.* at 108, 750. One of these responding defendants asserted that there could be no effective declaratory judgment because there were a large number of potential defendants who could theoretically challenge the water commission's authority to contract. The defendant argued that these potential defendants, who would be affected by the Court's ultimate decision, were necessary parties who were required to be joined

to the suit. The Court flatly rejected this argument, stating that neither the rules of civil procedure nor the requirements of the Declaratory Judgment Act “require the joinder of every taxpayer or citizen in the area.” *Id.* at 109, 751. In light of this statement by the New Mexico Supreme Court, the comparison between “every taxpayer” and “every user of electricity” is appropriate.

Finally, the *San Juan Water Commission* decision recognized a fundamental principle of equity, bluntly stating that “no one else claimed an interest relating to the subject of the action.” *Id.* Again, the comparison to the current matter is clear. Of the approximately 13,000 members who were notified of the current litigation, only a handful actively claimed an interest in the dispute. These few individuals have been individually identified, and they are participating in the case. It is clear that any declaratory judgments issued by this Court will be binding on the named Defendants. Additionally, basic principles of equity and estoppel will prevent relitigation of the matters of law now before the Court.

CONCLUSION:

The review of statutory language and case law provided above clearly indicates that declaratory judgments can properly bind individuals who are not formally parties to a particular lawsuit. Here, Plaintiff Socorro Electric Cooperative asked the Court to declare and affirm certain legal rights and relationships. Because joinder of all potential defendants is not necessary, and because all potential defendants had notice of the litigation and elected not to assert any interest in the litigation, the Court may properly make its judgments knowing that these determinations of legal rights will be binding on all members of the Socorro Electric Cooperative.

Respectfully submitted,

KENNEDY & HAN, P.C.

"Electronically Filed"

/s/ Darin Foster, Attorney at Law

Paul J. Kennedy

Darin M. Foster

201 12th Street N.W.

Albuquerque, New Mexico 87102

Telephone: (505) 842-8662

Fax: (505) 842-0653

Counsel for Plaintiff

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the forgoing document was delivered by 1st Class U.S. mail, as well as by electronic notification, to the following individuals on January 20, 2011:

John R. Gerbracht
P.O. Box 769
Socorro, NM 87801
Telephone: (575) 835-2520
Pro Se Defendant

Thomas G. Fitch and Polly Ann Tausch
P.O. Box 1647
Socorro, NM 87801
Pro Se Defendant

Don Klein, Jr.
PO Box 1843
Socorro, NM 87801-1843
Pro Se Defendant

Lee Deschamps
Deschamps & Kortemeier Law Offices, P.C.
P.O. Drawer 389
Socorro, NM 87801
Attorney for Cross Claim Plaintiff

Roscoe A. Woods

P.O. Box 1415
Socorro, NM 87801
Attorney for Defendant Mountain Mail

 /s/ Darin M. Foster
Darin M. Foster