IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, and STATE OF NEW MEXICO, ex rel. STATE ENGINEER, Plaintiffs, and ZUNI INDIAN TRIBE, NAVAJO NATION, Plaintiffs in Intervention, v. A & R PRODUCTIONS, et al., Defendants.	)	No. 01-cv-0072 MV/WPL ZUNI RIVER BASIN ADJUDICATION **Subfile No.** ZRB-2-0038

ORDER DENYING MOTION TO STRIKE

Pro se Subfile Defendants Craig and Regina Fredrickson ("the Fredricksons") filed a motion to strike the State of New Mexico's and the United States's (collectively "Plaintiffs") joint reply (Doc. 3327) to the motion to exclude expert testimony (Doc. 3316), which was included in the joint reply to dispositive motions. (Doc. 3328.)

Plaintiffs filed their motion to exclude expert testimony on September 14, 2016. (Doc. 3316.) The Fredricksons filed a response on September 28, 2016. (Doc. 3320.) The Plaintiffs' challenged reply brief was filed on October 14, 2016. (Doc. 3327.) The Fredricksons contend that the reply was due on October 12, 2016, and should therefore be stricken as untimely. (Doc. 3328.)

Plaintiffs argue that the reply complied with the Scheduling Order (Doc. 3301) in this case, and that even if the Scheduling Order does not control briefing on the motion to exclude expert testimony, the reply complied with timing requirements of D.N.M.LR-Civ. 7.4(a) and Federal Rule of Civil Procedure 6(d) because it was filed within seventeen days of the response. (Doc. 3330.)

Local Rule 7.4(a) provides that a movant has fourteen days to serve its reply after a response has been filed, and Federal Rule of Civil Procedure 6(d), as in effect prior to December 1, 2016, allowed an additional three days to reply when a response was served via electronic means. The Plaintiffs had seventeen days from September 28, 2016, to file their reply. October 14, 2016, was less than seventeen days after the date of the response.

Because the reply to the motion to exclude expert testimony was timely filed, the Fredricksons' motion to strike is denied.

IT IS SO ORDERED.

William P. Lynch
United States Magistrate Judge

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any pro se
party as they are shown on the Court's docket.