

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

UNITED STATES OF AMERICA	)	
and	)	
ZUNI INDIAN TRIBE,	)	<b>07cv00681-BB</b>
	)	<b>Subproceeding 1</b>
Plaintiffs,	)	<b>Zuni Indian Claims</b>
	)	
-v-	)	<b>01cv00072-BB</b>
	)	
STATE OF NEW MEXICO, <i>ex rel.</i>	)	ZUNI RIVER BASIN
STATE ENGINEER, et al.,	)	ADJUDICATION
	)	
Defendants.	)	
_____	)	

**ZUNI INDIAN TRIBE’S  
SUPPLEMENTAL SUBPROCEEDING COMPLAINT**

The Zuni Indian Tribe, by and through its counsel of record, Jane Marx, Attorney at Law, P.C., in accordance with the Special Master’s April 5, 2004 *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* (No. 01CV00072 BB, Dkt. 323), hereby submits its *Supplemental Subproceeding Complaint* and alleges as follows:

1. The Zuni Indian Tribe adopts and incorporates by reference the entirety of the allegations contained in the *United States’ Subproceeding Complaint and Statement of Claims for Water Rights on Behalf of, and for the benefit of, the Zuni Indian Tribe and Zuni Allottees* (“*Subproceeding Complaint*”) (Dkt. 1; also Dkt. 1125 in No. 01CV00072 BB), filed May 11, 2007. For purposes of this *Supplemental Subproceeding Complaint*, the Tribe also incorporates the Definitions and Explanation of References set forth in the *United States’ Subproceeding Complaint*.

2. In addition to all of the claims asserted by the United States on behalf of the Zuni Indian Tribe in the *Subproceeding Complaint*, the Tribe alleges it has the following additional water rights and entitlements pursuant to federal law with a time immemorial or aboriginal priority:

**Supplemental Claims Relating to Impoundments and Natural Ponds**

**Impoundments**

3. In addition to the claims that the United States has made on the Tribe's behalf at paragraph 14 of the *Subproceeding Complaint* (including Table 1), the Tribe has used, or is presently using, water from additional impoundments located on Zuni lands within the Zuni River Basin, as set forth herein:

<b>X (ft)</b>	<b>Y (ft)</b>	<b>Water Source</b>	<b>Point of Diversion</b>	<b>Water Use</b>
2,499,551	1,552,309	Surface Runoff	Not Applicable	Livestock
2,480,882	1,499,127	Surface Runoff	Not Applicable	Livestock
2,481,286	1,498,637	Surface Runoff	Not Applicable	Livestock

The Tribe claims the right under federal law to maintain each impoundment at its described location, to fill each impoundment to its full capacity whenever the source of supply is available, and to use the water for its intended purposes. The Tribe also claims the right to enlarge or deepen any existing impoundments and to create any new impoundments that may be necessary to meet the livestock-watering, sewage treatment, irrigation, and other needs of a permanent Zuni homeland.

### **Natural Ponds**

4. In addition to the claims that the United States has made on the Tribe's behalf at paragraph 14 of the *Subproceeding Complaint*, the Tribe has used, or is presently using, water from the naturally-occurring ponds located on Zuni lands within the Zuni River Basin, as set forth in the attached Table A. The Tribe claims a right under federal law to fill and maintain these natural ponds to their full capacity free from interference whenever the source of supply is available, and to use the water from these ponds as may be necessary to meet livestock-watering, irrigation, recreation, cultural, and other needs of a permanent Zuni homeland.

### **Supplemental Claims Relating to Wells and Springs**

5. Supplemental to the claims that the United States has made on the Tribe's behalf at paragraphs 16 to 22 of the *Subproceeding Complaint*, the Tribe claims the right under federal law to divert from wells and springs on Zuni lands within the Zuni River Basin an additional quantity of water in the amount of 1,916 acre feet per year to meet its present and future homeland water needs, comprised as follows:

a. For Domestic, Municipal, and Public Water Supply purposes, in addition to the amount of 3,565 acre feet per year claimed by the United States at paragraph 18 of its *Subproceeding Complaint*, 513 acre feet per year;

b. For Commercial purposes, in addition to the amount of 1,483 acre feet per year claimed by the United States at paragraph 18 of its *Subproceeding Complaint*, 579 acre feet per year; and

c. For Industrial purposes, in addition to the amount of 167 acre feet per year claimed by the United States at paragraph 18 of its *Subproceeding Complaint*, 824 acre feet per year.

6. The Zuni Tribe specifically incorporates herein the allegations of the United States at paragraphs 16 and 20 of the *Subproceeding Complaint* that the Tribe has a right under federal law to create and divert water from any new wells within its lands as may be necessary to meet the needs of a permanent Zuni homeland, subject to the total quantity of rights asserted in the United States' *Subproceeding Complaint* and the Tribe's *Supplemental Subproceeding Complaint*.

### **Supplemental Claims for Irrigation by Means of Permanent Works**

#### **Past and Present Surface Water Diversions**

7. In addition to the claims that the United States has made on the Tribe's behalf at paragraph 23 of the *Subproceeding Complaint* (including Table 5), the Zuni Tribe claims it has in the past irrigated, or is at present irrigating, by means of ditch or other permanent works, the following tracts of land:

<b>X (ft)</b>	<b>Y (ft)</b>	<b>Area (acres)</b>	<b>Means of Diversion</b>	<b>Water Source</b>	<b>Water Source ID</b>
2,500,462	1,553,610	17	Nutria North Canal	Nutria Diversion Reservoir	2C-2-RS01

The acreage identified herein must be reconciled with the contiguous tract 2C-3C-IRR003 and the overlapping tract 2C-3C-RIR002 as set forth in Tables 5 and 7, respectively, of the United States' *Subproceeding Complaint*. The Tribe incorporates by reference the remaining allegations in paragraph 23 of the United States' *Subproceeding Complaint*.

**Practicably Irrigable Acreage**

8. In addition to the claims that the United States has made on the Tribe's behalf, in the amount of 3,900 acre feet per year, at paragraph 24 of the *Subproceeding Complaint*, and pursuant to the same federal law and standards cited by the United States therein, the Zuni Indian Tribe claims the right to irrigate 723 acres of irrigable Zuni lands not previously irrigated. Those lands and project are depicted on the attached Zuni PIA Map 1, Map 2A, and Map 2B. Based on the methodology recommended by the Zuni Indian Tribe's retained consultants, which is consistent with the methodology used by the United States for its claims on behalf of the Tribe, the Zuni Tribe claims the right to divert 2,856 acre feet per year, and to deplete 2,090 acre feet per year.

**Supplemental Claims for Maintenance of Surface Flows for Cultural, Religious, Recreational, and Wildlife Habitat Use**

9. In addition to the claims that the United States has made on the Tribe's behalf at paragraphs 9 and 10 of the *Subproceeding Complaint*, the Zuni Indian Tribe claims, for the purpose of protecting ancient and continuing cultural and religious practices, recreational use, and wildlife habitat and riparian species preservation, the right to maintain non-transferable, non-diversionary water flows in ponds, springs, streams, and tributaries to the extent of the federal recognition of the water rights on Zuni lands.

Dated: July 27, 2007

Electronically Filed,

\_\_\_\_\_/s/\_\_\_\_\_  
Jane Marx  
Jane Marx, Attorney at Law, P.C.  
2825 Candelaria NW  
Albuquerque, New Mexico 87107  
(505) 344-1176

ATTORNEY FOR ZUNI INDIAN TRIBE

### **CERTIFICATE OF SERVICE**

I hereby certify that, on July 27, 2007, I filed the foregoing *Zuni Indian Tribe's Supplemental Subproceeding Complaint* electronically through the CM/ECF system in Case Number 01cv00072-BB and Case Number 07cv00681-BB, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

**Edward C Bagley**

lula.valdez@state.nm.us, edward.bagley@state.nm.us, connie.flint@state.nm.us, arianne.singer@state.nm.us, marjorie.dryden@state.nm.us, fred.kipnes@state.nm.us, [vina.gallegos@state.nm.us](mailto:vina.gallegos@state.nm.us)

**Bidtah Becker**

[bidtahnbecker@navajo.org](mailto:bidtahnbecker@navajo.org)

**Bradley S. Bridgewater**

hjaafar@nrce.com, gary.durr@usdoj.gov, jennifer.vaughn2@usdoj.gov, bradley.s.bridgewater@usdoj.gov, yvonne.marsh@usdoj.gov, LJohnson@nrce.com

**Christina J Bruff**

cjb@lrpa-usa.com

**Kenneth J. Cassutt**

kencass@chflaw.com

**William J. Cooksey**

wcooksey@dcbf.net

**Jeffrey A. Dahl**

dahljeffrey@comcast.net, rlddms@aol.com

**Sandra S Drullinger**

pdsd@cell1net.net

**Charles T. DuMars**

ctd@lrpa-usa.com

**Vickie L. Gabin**

vlgabin@earthlink.net, kbruner@hubwest.com

**David W Gehlert**

david.gehlert@usdoj.gov, jennifer.vaughn2@usdoj.gov,

judy.tetreault@usdoj.gov, lori.montano@usdoj.gov

**James E. Haas**

lchlaw@lchlaw.com

**Raymond Hamilton**

raymond.hamilton@usdoj.gov, USANM.ECFCivil@usdoj.gov,  
Rosemarie.Garcia@usdoj.gov

**Stephen G. Hughes**

shughes@slo.state.nm.us

**Robert A. Johnson**

rjohnson@jn-law.com, cmuggaberg@jn-law.com, sbowersock@jn-law.com

**Susan C Kery**

sck@ssslawfirm.com, djs@ssslawfirm.com

**Jane Marx**

janemarx@earthlink.net, skarpp@janovcooneylaw.com

**Stephen R. Nelson**

snelson@jn-law.com, cmuggaberg@jn-law.com, sbowersock@jn-law.com

**Stanley M. Pollack**

spollack@navajo.org

**Tanya L. Scott**

tls@lrpa-usa.com

**Peter B. Shoenfeld**

petershoenfeld@qwest.net

**William G. Stripp**

stripp@wildblue.net

**John W. Utton**

jwu@ssslawfirm.com, djs@ssslawfirm.com

Notice of this filing will be provided to other parties as directed by the Special Master.

\_\_\_\_\_/s/\_\_\_\_\_  
Jane Marx  
Attorney for the Zuni Indian Tribe