

1 Robert F. Rosebrough, #2272
JORDAN & ROSEBROUGH, P.C.
2 101 West Aztec, Suite A
P.O. Box 840
3 Gallup, New Mexico 87305
(505) 722-9121
4 Fax: (505) 722-9490
Attorney for Defendant Diane B. Waters, Trustee
5

6 UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
7

8 UNITED STATES OF AMERICA and STATE)
OF NEW MEXICO, ex rel. STATE ENGINEER,)
9 and ZUNI INDIAN TRIBE, et al.,)
10 Plaintiffs,)

No. 01cv00072-BB

**ANSWER TO AMENDED
COMPLAINT**

11 vs.)

12 STATE OF NEW MEXICO COMMISSIONER)
OF PUBLIC LANDS and)
13 A & R PRODUCTIONS, et al.,)
14 Defendants.)

15
16 COMES NOW Defendant, DIANE WATERS, Trustee of the CHARLES R. BRAUN AND
17 DIANE B. WATERS REVOCABLE TRUST, by and through the undersigned counsel, by way of
18 answer to the Amended Complaint filed in this cause on August 4, 2003, states:

- 19 1. Admits the allegations contained in paragraphs 1 through 5 of the Amended Complaint.
20 2. Is without sufficient information to either admit or deny the allegations in paragraphs 6
21 through 22 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof
22

23 **AFFIRMATIVE DEFENSES**

24 1. DIANE B. WATERS, Trustee of the CHARLES R. BRAUN AND DIANE B. WATERS
25 REVOCABLE TRUST, received a Summons addressed to "DIANE BRAUN, Trustee" and an Amended
26 Complaint filed in this action on August 4, 2003. The use of the name "DIANE BRAUN" appears to be

1 a clerical or typographical error as there is no person known by DIANE WATERS with that name. The
2 inclusion of "DIANE BRAUN, Trustee" in this action appears to be triggered by estate planning that
3 was undertaken by CHARLES R. BRAUN and DIANE B. WATERS, husband and wife, who in 2004
4 formed the CHARLES R. BRAUN AND DIANE B. WATERS REVOCABLE TRUST and deeded their
5 real estate to themselves as Trustees of their Revocable Trust.
6

7 2. In 2004, CHARLES R. BRAUN and DIANE B. WATERS owned two parcels of property in
8 McKinley County. Parcel 1, which is located in the Candy Kitchen area, approximately 20 miles
9 southeast of Ramah, New Mexico, sold on December 20, 2006 to CHARLES E. BELL JR. and
10 VALERIE S. BELL. A copy of the Warranty Deed by which CHARLES R. BRAUN and DIANE B.
11 WATERS deeded the property to CHARLES E. BELL JR. and VALERIE S. BELL is attached as
12 Exhibit "A".
13

14 3. CHARLES R. BRAUN and DIANE B. WATERS also deeded their home near Vanderwagen,
15 New Mexico to their Trust in 2004 by the Warranty Deed which is attached as Exhibit "B". CHARLES
16 R. BRAUN and DIANE B. WATERS are not clear whether their home, which is described on Exhibit
17 "B", is included within the Zuni River Basin, which is the subject of this adjudication.
18

19 4. The Amended Complaint which was served on DIANE WATERS does not list her name or
20 her husband, CHARLES R. BRAUN's name, among any of the Defendants named and DIANE
21 WATERS should not be required to defend a Complaint which does not list her as a Defendant.
22

23 WHEREFORE, DIANE B. WATERS, Trustee of the CHARLES R. BRAUN AND
24 DIANE B. WATERS REVOCABLE TRUST respectfully requests the Court to be dismissed
25 from this action.
26

1 RESPECTFULLY SUBMITTED this 29 day of August, 2007.

2 JORDAN & ROSEBROUGH, P.C.

3 Electronically Filed 8/29/2007

4 ROBERT F. ROSEBROUGH

5 101 West Aztec, Suite A

6 P.O. Box 840

7 Gallup, NM 87301

8 (505) 722-9121

9 For Defendant Diane B. Waters

10 I certify that a COPY of the foregoing was
11 mailed this 29th day of August, 2007 to:

12 Bradley S. Bridgewater
13 United States Department of Justice
14 Environment and Natural Resources Division
15 1961 Stout Street – 8th Floor
16 Denver, CO 80294

17 /s/ Robert F. Rosebrough

18

19

20

21

22

23

24

25

26

WARRANTY DEED

(Joint Tenancy)

CHARLES R. BRAUN and DIANE E. WATERS, Trustees of the CHARLES R. BRAUN AND DIANE E. WATERS REVOCABLE TRUST, for consideration paid, grant to CHARLES E. BELL JR. and VALERIE S. BELL, husband and wife, whose address is HC 65, Box 3008, Concho, Arizona 85924, as joint tenants, the following described real estate in Cibola County, New Mexico:

Lots numbered Twenty-Five (25) and Twenty-Six (26) in Block numbered Two (2), GARFIELD, a subdivision in Cibola County, New Mexico, as the same is shown and designated on the plat thereof filed in the Office of the County Clerk of Valencia County, New Mexico on July 7, 1980.

SUBJECT TO reservations contained in the Patent from the United States of America filed for record in the Office of the County Clerk of Valencia County, New Mexico.

SUBJECT TO easements as shown on plat filed July 7, 1980 in the Office of the County Clerk of Valencia County, New Mexico.

SUBJECT TO all other Easements, Conditions, Restrictions and Reservations of record or in existence.

with warranty covenants.

WITNESS our hands and seals this 20th day of December, 2006.

CHARLES R. BRAUN AND DIANE E. WATERS REVOCABLE TRUST

By: Charles R. Braun
CHARLES R. BRAUN, Trustee

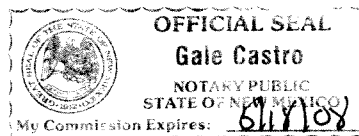
By: Diane E. Waters
DIANE E. WATERS, Trustee

STATE OF NEW MEXICO)
COUNTY OF McKinley) ss.

This instrument was acknowledged before me this 20th day of December, 2006, by CHARLES R. BRAUN and DIANE E. WATERS, Trustees of the CHARLES R. BRAUN AND DIANE E. WATERS REVOCABLE TRUST.

Gale Castro
Notary Public

My commission expires: 6/18/08



COPY

WARRANTY DEED

CHARLES R. BRAUN and DIANE E. WATERS, husband and wife, for consideration paid, grant to CHARLES R. BRAUN and DIANE E. WATERS, Trustees of the CHARLES R. BRAUN AND DIANE E. WATERS REVOCABLE TRUST, whose address is P.O. Box 420, Vanderwagen, New Mexico 87326, the following described real estate in McKinley County, New Mexico:

PARCEL 1:

A tract of land lying within the south one-half of Section 17, T12N, R18W, N.M.P.M., McKinley County, New Mexico, and more particularly described as follows:

Commencing for a tie at the southwest corner of said Section 17 and run N02°14'43"E along section line a distance of 1,001.62' to a point; Thence N88°48'37"E a distance of 1,461.05' to the southwest corner of the herein described tract of land and the Real Point of Beginning;

- Thence N02°14'43"E a distance of 1,323.28' to the northwest corner of the tract;
- Thence N88°52'E a distance of 535.0' to a point;
- Thence N02°14'43"E a distance of 80.0' to a point;
- Thence N88°52'E a distance of 195.0' to a point;
- Thence S02°14'43"W a distance of 230.0' to a point;
- Thence N88°52'E a distance of 90.0' to the northeast corner of the tract;
- Thence S04°36'40"E a distance of 543.3' to a point;
- Thence S11°12'52"W a distance of 643.04' to the southeast corner of the tract;
- Thence S88°48'37"W a distance of 784.59' to the Point of Beginning.

PARCEL 2:

A tract of land lying within the south one-half of Section 17, T12N, R18W, N.M.P.M., McKinley County, New Mexico, and more particularly described as follows:

Commencing for a tie at the east quarter corner of said Section 17 and run S88°52'W, a distance of 2,660.44' to the Point of Beginning;

- Thence along the same course a distance of 1105.01 feet;
- Thence S02°14'43"E a distance of 321.03 feet;
- Thence N88°52' a distance of 535 feet;
- Thence N02°14'43"E a distance of 80 feet;
- Thence N88°52'E a distance of 195 feet;
- Thence S02°14'43"W a distance of 290 feet;
- Thence N88°52'E a distance of 90 feet;
- Thence N62°43'45"E a distance of 311.28 feet;
- Thence S74°15'E a distance of 300 feet;
- Thence S51°30'E a distance of 340 feet;
- Thence S81°0'E a distance of 185 feet;
- Thence N0°38'25"W a distance of 184.39 feet;
- Thence N79°0'W a distance of 193.55 feet;
- Thence N58°00'W a distance of 600 feet;
- Thence N05°40'W a distance of 116.98 feet to the Point of Beginning.

PARCEL 3:

A tract of land lying within the south one-half of Section 17, T12N, R18W, N.M.P.M., McKinley County, New Mexico, and more particularly described as follows:

EXHIBIT "B"

