

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

AUG - 4 2003

*R. Hartman*  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

UNITED STATES, for Itself and as Trustee for  
the Zuni Indian Tribe, Navajo Nation and Ramah  
Band of Navajos

and

STATE OF NEW MEXICO, *ex rel.* STATE  
ENGINEER,

Plaintiffs,

and

ZUNI INDIAN TRIBE,  
NAVAJO NATION,

Plaintiffs-in-Intervention

v.

STATE OF NEW MEXICO COMMISSIONER  
of PUBLIC LANDS

and

A & R PRODUCTIONS

and

Civil Action No.  
01cv0 0072 BB/WWD-ACE

AMENDED COMPLAINT

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*[Handwritten mark]*

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Defendants.

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Comes now the United States, in its own right and at the request of the Secretary of the Interior, alleges as follows:

I. Nature of the Action

1. This is an action seeking a comprehensive general stream system adjudication pursuant to federal law and NMSA 1978, §§72-4-13 to 72-4-20, of all claims to the right to the use of the waters of the Zuni River stream system in New Mexico as well as a declaration from this Court setting forth the priority and extent of all parties right to the use of the waters of the Zuni River stream system.

II. Jurisdiction and Venue

2. Jurisdiction is conferred by 28 U.S.C. § 1345. Relief may be awarded pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has venue of this action because the waters are located within the venue of the District Court of New Mexico under 28 U.S.C. §§ 111 and 1391(b)(2).

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### III Parties

3. Plaintiff, United States, as trustee for and on behalf of the Zuni Indian Tribe, the Navajo Nation, the Ramah Band of Navajo, and various individual Indians having interests in trust patents within the Zuni River basin, claims ownership pursuant to federal law of the right to the use of the surface water and groundwaters of the Zuni River stream system in New Mexico.

Plaintiff, the United States, in its own right, also claims ownership of the right to the use of the surface water and groundwaters within the Zuni River stream system in New Mexico in its sovereign and proprietary capacity in such amounts as to satisfy the purpose(s) of the Cibola National Forest, the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area, and the reservation of tracts of public land containing springs and water holes, and in such amounts as have been appropriated by the United States under the laws of the State of New Mexico.

4. The State of New Mexico, through its State Engineer as regulator of the water users in accordance with state law has been realigned as Plaintiff pursuant to Court Order, dated, July 15, 2002, (Docket No. 147).

5. The Zuni Indian Tribe and the Navajo Indian Nation have been granted permission to intervene in this matter as Plaintiff-Intervenors pursuant to Court Order of July 10, 2002, (Docket No. 144).

6. Defendants are all those within the Zuni River basin who may claim rights or interests in the use of the surface and/or groundwaters of the Zuni River stream system in New Mexico including the right to divert, impound, pump, and otherwise use those waters. All those

who claim a right or an interest in the use of the waters of the Zuni River stream system in New Mexico are necessary and indispensable parties to this general stream system adjudication.

#### IV. Facts

7. The boundary of this adjudication is the surface water drainage of the Zuni River stream system. The surface boundary of this adjudication is not intended to overlap with the surface boundaries of any other adjudication and conflicts arising between claimants in this and other adjudications are beyond the scope of this lawsuit. Order of this Court, dated July 15, 2002, (Docket No. 147). The basin is drained principally by the Zuni River, the Rio Nutria, the Rio Pescado, Jaralosa Canyon and their tributaries in McKinley and Cibola counties, New Mexico. Groundwater diversions which lie within the surface boundaries are included in this adjudication. The groundwater considered in this adjudication is limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. Orders of the Court, dated July 15, 2002, (Docket No. 147) and May 21, 2003, (Docket No. 200).

A legal description of every full and partial township within the surface water drainage of the Zuni River stream system as well as a map depicting the specific geographic boundaries of the surface water drainage are displayed on a website ([www.zunibasin.com](http://www.zunibasin.com)) developed specifically for this lawsuit. Copies of that map and legal description are also lodged in the Zollinger Library at the University of New Mexico, Gallup Branch, Gallup, New Mexico.

8. The Zuni Indian Tribe is a federally recognized tribe owning and occupying lands within the Zuni River basin in New Mexico since time immemorial. The Zuni Indian Tribe received from the Spanish Crown in 1689 a grant of land in what was later to become the State of

New Mexico. By the Treaty of Guadalupe Hidalgo of 1848, (9 Stat. 922), the United States acquired jurisdiction over the grant lands.

The Zuni Indian Tribe resides within a reservation established by Executive Order of March 16, 1877, and on lands added to the original reservation by executive orders and acts of Congress. (The executive orders and acts of Congress which enlarged the 1877 reservation include the Executive Order of May 1, 1883 (1 Kappler 800), the Executive Order of February 17, 1912 (III Kappler 670), the Executive Order of 1917, (40 Stat. 1723), purchases pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984), the Act of June 20, 1935 (49 Stat. 393), the Act of August 13, 1949 (63 Stat. 604-05), and the Act of March 16, 1962, (76 Stat. 33)).

9. The Zuni Indian Tribes' occupancy and ownership of lands within the Zuni Indian Reservation has at all times been recognized by the Spanish Crown, the Republic of Mexico, the United States, and the State of New Mexico. From time immemorial, the Zuni Indian Tribe and its members have used waters of the Zuni River stream system in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. The laws of the United States as well as the laws of Spain and Mexico protect the Zuni Indian Tribe's right and the right of its members and the right of Indian allottees to the use of waters in the Zuni River stream system in New Mexico to satisfy the needs described herein. State of New Mexico v. Aamodt, 618 F.Supp. 993 (D.N.M. 1985), 537 F.2d 1102 (10<sup>th</sup> Cir. 1976).

10. Various members of the Zuni Indian Tribe and their Indian successors-in-interest own and reside on lands outside of the Zuni Indian Reservation but within the Zuni River basin in New Mexico. These lands were reserved by treaties, statutes, executive orders and land

withdrawals and are held in trust by the United States. These individual Indian allottees have lived on and occupied their lands in the Zuni River basin in New Mexico and have used waters of the Zuni River stream system in New Mexico for domestic, irrigation, livestock and other purposes for which the land was reserved. Their occupancy and ownership of lands has been at all times recognized by the United States and the State of New Mexico. Federal law protects each Indian allottee's rights to the use of waters within the Zuni River stream system in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

11. The Navajo Nation (a/k/a Navajo Tribe of Indians) is a federally recognized tribe occupying lands within the Zuni River basin since time immemorial. By Treaty of 1868, 15 Stat. 667, the Navajo Reservation was created for the benefit of Navajo Tribe of Indians and its members. None of the original treaty reservation is located in the Zuni River basin in New Mexico; however, the Navajo reservation was expanded by statutes, executive orders and public land withdrawals to include lands within the Zuni River basin in New Mexico. These lands in the Zuni basin in New Mexico include portions of Navajo Grazing District 16 located in T. 11 & 12 N., R. 18 through 21 W.; T. 13 & 14 N.; R. 17 through 21 W., and Ramah Chapter located in T. 6 N., R. 14 W.; T. 7 N., R. 14 through 16 W., New Mexico Principal Meridian. From time immemorial, the Navajo Nation and its members have used waters of the Zuni River stream system in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes.

12. The laws of the United States grant to the Navajo Nation and its members the



right to the use of waters in the Zuni River stream system in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908).

13. Ramah Navajo is a Band of the Navajo Nation and a community. Members of the Ramah Band of Navajos reside on lands in the Zuni Basin in New Mexico that are lands held in trust by the United States for the benefit of the Navajo Nation, lands held in trust by the United States for the benefit of the Ramah Band of Navajos, and lands held in trust for individual Indians. These lands, described in paragraph 11, were reserved by statutes, executive orders and public land withdrawals and are held in trust by the United States.

14. From time immemorial, members of the Ramah Band of Navajos have lived on and occupied lands in the Zuni River basin in New Mexico and have used waters of the Zuni River stream system in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. Their occupancy and ownership of lands has been at all times recognized by the United States and the State of New Mexico. Federal law protects the right of the Ramah Band of Navajo and its members to the use of waters within the Zuni River stream system in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

15. Various individual Navajo allottees or their successors-in-interest own and reside on lands in the Zuni River basin in New Mexico within a portion of Navajo Grazing District 16 and the Ramah Chapter as described in paragraph 11. These lands were reserved by treaties, statutes, executive orders and land withdrawals and are held in trust by the United States.

These individual Indian allottees have lived on and occupied their lands in the Zuni River basin in New Mexico and have used waters of the Zuni River stream system in New Mexico for domestic, irrigation, livestock and other purposes for which the land was reserved. Their occupancy and ownership of lands has been at all times recognized by the United States and the State of New Mexico. Federal law protects each Indian allottee's rights to the use of waters within the Zuni River stream system in New Mexico to satisfy the needs described herein.

Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

16. Cibola National Forest is located within the Zuni River basin in New Mexico. The Cibola National Forest was established by Presidential Proclamation of March 2, 1909, (35 Stat. 2242). The United States claims a federal reserved right in amounts necessary to fulfill the primary purpose(s) of the national forest and appropriative water rights based on state law. United States v. New Mexico, 438 U.S. 696 (1978) and Arizona v. California, 373 U.S. 546 (1963).

17. The El Morro National Monument is within the Zuni River basin in New Mexico. The El Morro National Monument was established by Presidential Proclamation No. 695, on December 8, 1906, (34 Stat. 3264), amended by Act of June 18, 1918, (40 Stat. 1673), and Act of June 14, 1950, (64 Stat. 211). The United States claims a federal reserved right in the amounts necessary to carry out the purposes for which the national monument was designated. The United States also claims appropriative water rights based on state law.

18. A portion of the El Malpais National Monument is located within the Zuni

River basin in New Mexico. The El Malpais National Monument was established by Title I of the Act of December 31, 1987, Pub. L. No. 100-225, 101 Stat. 1539, codified as amended at 16 U.S.C. §§ 460uu through 460uu -50 (2000), in order to preserve for the benefit and enjoyment of present and future generations that area in western New Mexico containing the nationally significant Grants Lava Flow, the Las Ventanas Chacoan Archeological Site, and other significant natural and cultural resources. Pursuant to the express reservation of water in the above-referenced legislation, the United States claims a federal reserved right for the benefit of all lands that are or shall become part of the national monument in the amounts necessary to carry out the purposes for which the national monument was designated. As stated in the legislation, the priority date of the federal reserved right is December 31, 1987. The United States also claims appropriative water rights based upon state law.

19. A portion of El Malpais National Conservation Area ("NCA") is located within the Zuni River basin in New Mexico. El Malpais National Conservation Area was established by Title III of the Act of December 31, 1987, Pub. L. No. 100-225, 101 Stat. 1539, codified as amended at 16 U.S.C. §§ 460uu through 460uu -50 (2000), in order to protect for the benefit and enjoyment of future generations that area in western New Mexico containing the La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flow. El Malpais National Conservation Area is administered by the Bureau of Land Management. Pursuant to the express reservation of water in the above-referenced legislation, the United States claims a federal reserved water right for the benefit of all lands that

are or shall become part of the NCA in the amounts necessary to carry out the purposes for which the NCA was designated. As stated in the legislation, the priority date of the federal reserved water right is December 31, 1987. The United States also claims appropriative water rights based on state law.

20. Numerous tracts of federally owned public land administered by the Bureau of Land Management are located within the Zuni River basin in New Mexico. Portions of those tracts of public land containing springs or water holes were withdrawn from settlement, location, sale, or entry and reserved for public use by the Executive Order of April 17, 1926, also known as Public Water Reserve No. 107. For each such spring and water hole, the United States claims a federal reserved water right in an amount necessary to fulfill the purposes of the above-referenced executive order.

21. For livestock- and wildlife-watering purposes and for other purposes, ponds, tanks, wells, and other water-control structures and devices have been constructed or installed on certain tracts of the federally owned public land administered by the Bureau of Land Management. For each such pond, tank, well, or other water-control structure or device, the United States claims an appropriative water right under New Mexico state law in an amount based on the amount of water beneficially used.

## VI Claim I

22. This lawsuit seeks the Court's application of the appropriate laws of the

United States as well as the appropriate laws of the State of New Mexico, including but not limited to NMSA 1978, §§72-4-13 to 72-4-20, for the adjudication of all rights to the use of surface water and/or groundwater within the Zuni River stream system.

23. Plaintiff and Plaintiff-Intervenors claim a right to divert, impound, pump or use surface water and groundwaters of the Zuni River stream system in New Mexico.

24. The named defendants and those to be later identified and named, claim the right to divert, impound, pump or use surface and groundwaters of the Zuni River stream system in New Mexico.

25. An adjudication of the rights of all claimants to divert, impound, pump or use surface water and groundwaters of the Zuni River stream system in New Mexico is necessary in order to make possible a lawful and orderly administration of the waters of the Zuni River stream system in New Mexico.

WHEREFORE, the United States prays that this Court:

(1) Require each and every party and those to be later identified and named claiming a right to the use of surface water and groundwater of the Zuni River stream system in New Mexico to set forth fully the basis of their claims to the use of that water;

(2) Determine the rights of each of the parties, including the United States in its own right and as trustee for the Zuni Indian Tribe, the Navajo Nation, the Ramah Navajo Band, and various individual Indians having interests in trust patents within the Zuni River basin in and to the use of surface waters as well as groundwater of the Zuni River stream system setting forth the existence and date of priority of each such right;

(3) Add such additional party-defendants from time to time as may appear

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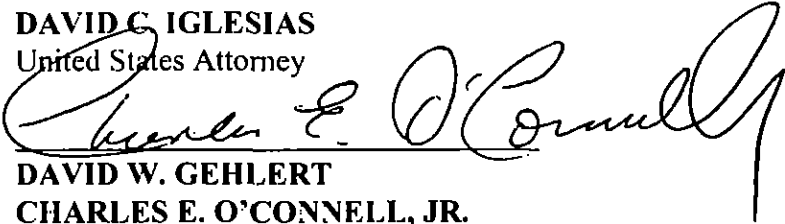
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necessary to determine and adjudicate all water rights in the Zuni River stream system in New Mexico;

- (4) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted this 1<sup>st</sup> day of August, 2003.

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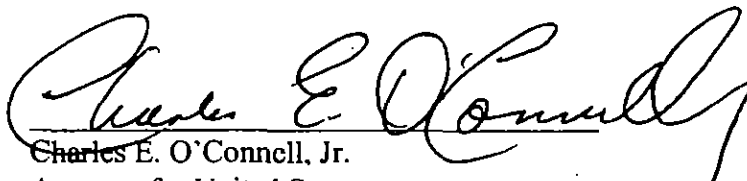
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