

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

UNITED STATES OF AMERICA and)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
ENGINEER,)	
Plaintiffs,)	
)	
and)	
)	No. 01cv00072 BB/WDS
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs in Intervention)	
)	
)	ZUNI RIVER BASIN
v.)	ADJUDICATION
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants.)	
_____)	

MOTION TO ALLOW SERVICE BY PUBLICATION

The Plaintiff United States of America (“United States”) hereby moves the Court to enter an order (1) allowing service of process by publication for the party defendants listed herein and for all unknown defendants, and (2) approving the form of notice of lawsuit and summons submitted herewith as Exhibit A. In support of this motion, the United States asserts:

1. The United States seeks to serve by publication pursuant to Fed. R. Civ. P. 4(e)(1) and Rule 1-004(K) of the Rules of Civil Procedure for the District Courts of the State of New Mexico, (1) defendants who cannot be located or for whom attempts to serve process have been unsuccessful, (2) the estates of defendants who are deceased and the heirs or successors are unknown, and (3) pursuant to §72-4-17 NMSA 1978, all unknown defendants.

2. With respect to the individuals or estates identified herein, the United States sent requests for waivers of service of summons to each defendant at addresses contained within applicable county tax records by certified mail. In those instances where delivery was successful, the defendants identified herein have not returned an executed waiver.

3. If the tax records indicated an address within the State of New Mexico, service of process by certified mail (restricted delivery) pursuant to Rule 1-004(E)(3) Rules of Civil Procedure for the District Courts of the State of New Mexico was attempted and the mailing was either refused or unclaimed by the defendant, or returned by the United States Postal Service as undeliverable. For those defendants residing outside the State of New Mexico or where service could not be accomplished by certified mail for New Mexico residents, the United States retained process servers who have made at least three service attempts or have been unable to locate the defendants. The United States, after significant research and inquiry, has been unable to determine the whereabouts of those defendants who could not be located by the process server.

4. The following defendants cannot be located, or attempts to serve process have been unsuccessful.

<u>Defendant</u>	<u>Subfile Number</u>
Maureen Kearns and Robert Kammerer Trust	ZRB-1-0049
David Zimmerman	ZRB-1-0065
Sirintorn Zimmerman	ZRB-1-0065
David Bradford	ZRB-1-0131
Evelyn Bradford	ZRB-1-0131

Howard Price	ZRB-3-0075
Darla G. Nicoll	ZRB-3-0092
Thomas Mooney	ZRB-3-0115
Beverly J. Munoz	ZRB-3-0117
R.W. Ader	ZRB-4-0024
Kenneth Montague	ZRB-4-0406
Tonia Montague	ZRB-4-0406
Rudy Garcia, Trustee of the Diana Mae Garcia Special Needs Trust	ZRB-4-0431
Leo Eriacho	ZRB-6-0001
Loretta Eriacho	ZRB-6-0002

5. The United States is unaware of any heir or personal representative to accept or receive service on behalf of the estate of the deceased defendants listed below.

<u>Defendant</u>	<u>Subfile Number</u>
Unknown Heirs of Eugenio Landavazo	ZRB-2-0060
Unknown Heirs of Doris Chick	ZRB-3-0031
Steven Berube, Trustee	ZRB-4-0042
Unknown Heirs of Ralph Bond	ZRB-5-0011

6. With respect to unknown defendants, NMSA 1978, Section 72-4-17 provides that “service of process on, and notice of such suit, against such parties may be made as in other cases by publication.”

7. A proposed form of notice of lawsuit and summons to be published is submitted herewith as Exhibit A.

8. Counsel for Co-Plaintiff State of New Mexico ex rel State Engineer have reviewed drafts of the present motion, Exhibit A hereto, and a proposed form of order granting this motion, and have approved.

WHEREFORE the United States respectfully moves the Court to enter an order (1) allowing service of process by publication for the party defendants listed herein and for all unknown defendants, and (2) approving the form of notice of lawsuit and summons submitted herewith as Exhibit A.

Dated: May 11, 2009.

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout St., 8th Floor
Denver, CO 80294
(303) 844-1359

COUNSEL FOR THE UNITED STATES

