

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**UNITED STATES,**

**Plaintiff,**

**vs.**

**NO. CV 01-72 BB/WDS (ACE)**

**STATE OF NEW MEXICO ENGINEER, et al.,  
Defendants.**

**ANSWER TO AMENDED COMPLAINT**

**NOW ENTERING COURT** is William G. Stripp, Attorney at Law, on behalf of Paul Davis; Paul Davis and JoAnn V. Davis Revocable Trust dated May 10, 1991; The Davis Ltd. Partnership; Pamela Kay Davis; Sage Grae Merrill; Kristi Davis; Anita Davis Schafer; Robert Schafer; Barbara Mallery; Lucy Kluckhohn Jones; Priscilla Schulte; and Paul Petranto, who answer as follows:

1. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph 1 of the Amended Complaint, because defendants are unsure what plaintiffs are really seeking by bringing this action, and do not believe that the “Zuni River stream system” has been adequately identified.

2. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph 2 of the Amended Complaint, because it appears that plaintiffs are attempting to merge a federal declaratory judgment action under 28 U.S.C. § 2201 with a State of New Mexico stream adjudication under NMSA, 1978, §§ 72-4-13 through 72-4-20, but plaintiffs have not followed the procedure established in the state statutes and it is unclear that a federal declaratory judgment action is appropriate.

3. Defendants admit that Plaintiff United States is claiming certain water rights, but are without sufficient knowledge to admit or deny what water rights plaintiff United States is claiming, and deny that plaintiff United States, acting in its own right or as trustee for plaintiff-intervener, has priority over any of the water rights that defendants own. Except as specifically admitted, defendants deny the allegations in paragraph 3 of the Amended Complaint.

4. Defendants admit the allegations in paragraph 4 of the Amended Complaint.

5. Defendants admit the allegations in paragraph 5 of the Amended Complaint.

6. Defendants admit that they claim an ownership interest in and rights to the surface water and groundwater on their respective properties or properties they have an interest in, including, but not limited to the right to divert, impound, pump, and otherwise use those waters. Defendants do not believe that the “Zuni River basin” or “Zuni River stream system” has been adequately identified. Defendants also do not believe that an adequate scientific basis has been shown that listed properties are hydrographically connected such that other named defendants are necessary and indispensable parties to a determination of the answering defendants’ water rights. Defendants are without sufficient knowledge to admit or deny any remaining allegations in paragraph 6 of the Amended Complaint

7. Defendants admit that there are previous Court Orders in this matter, and affirmatively state that the Court Orders speak for themselves. Defendants are without sufficient knowledge to admit or deny any remaining allegations in paragraph 7 of the Amended Complaint.

8. Defendants are without sufficient knowledge to admit or deny the allegations in paragraphs 8 through 21 of the Amended Complaint.

9. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph 22 of the Amended Complaint, because defendants are unsure what plaintiffs are really seeking by bringing this action, and plaintiffs' request for the "application of the appropriate laws" of the United States and the State of New Mexico is ambiguous and unspecific.

10. Defendants admit that plaintiff and plaintiff-intervener are claiming certain water rights, but deny that they have priority over any of the water rights that defendants own. Except as specifically admitted, defendants deny the allegations in paragraph 23 of the Amended Complaint.

11. Defendants admit that they claim an ownership interest in and rights to the surface water and groundwater on their respective properties or properties they have an interest in, including, but not limited to the right to divert, impound, pump, and otherwise use those waters. Defendants do not believe that the "Zuni River stream system" has been adequately identified. Defendants are without sufficient knowledge to admit or deny any remaining allegations in paragraph 24 of the Amended Complaint.

12. Defendants deny the allegations in paragraph 25 of the Amended Complaint.

**WHEREFORE,** Defendants request that plaintiffs and plaintiff-intervener take nothing by way of their Amended Complaint, that this matter be dismissed, that Defendants be awarded their costs, and that the Court provide such other and further relief as the Court may deem just.

### **AFFIRMATIVE DEFENSES**

1. As a first affirmative defense, defendants assert that this matter should be dismissed Under Rule 12(b)(7), because plaintiffs have failed to join indispensable parties under Rule 19.

2. As a second affirmative defense, defendants assert that plaintiffs' complaint is barred by estoppel.

3. As a third affirmative defense, defendants assert that plaintiffs' complaint is barred by laches.

4. As a fourth affirmative defense, defendants assert that plaintiffs' complaint is barred by waiver.

5. As a fifth affirmative defense, defendants assert that plaintiffs' complaint is barred by res judicata.

6. As a sixth affirmative defense, defendants assert that plaintiffs' complaint is barred by the Fifth Amendment to the United States Constitution in that it seeks to take private property for public use, without just compensation.

7. As a seventh affirmative defense, defendants assert that plaintiffs' complaint is barred by the Fourteenth Amendment to the United States Constitution in that the State of New Mexico, realigned as Plaintiff, is seeking to deprive defendants of their property, without due process of law; and to deny defendants the equal protection of the laws.

8. As an eighth affirmative defense, defendants assert that plaintiffs' complaint is barred by their failure to mitigate damages.

9. As a ninth affirmative defense, defendants assert that plaintiffs' complaint is barred by accord and satisfaction through previous settlement of plaintiffs' water rights claims.

10. As a tenth affirmative defense, defendants assert that plaintiffs' complaint is barred by the doctrine of prescription or adverse possession of any water rights plaintiffs are claiming.

11. As an eleventh affirmative defense, defendants assert that plaintiffs' complaint is barred by payment for any water rights plaintiffs are claiming.

12. As a twelfth affirmative defense, defendants assert that plaintiffs' complaint is barred by their non-use of any water rights that they are now claiming.

13. As a thirteenth affirmative defense, defendants assert that plaintiffs' complaint is barred by their abandonment of any water rights that they are now claiming.

Date: September 30, 2003

Respectfully submitted,

----signed electronically-----

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**WILLIAM G. STRIPP  
ATTORNEY AT LAW  
P.O. BOX 159  
RAMAH, NEW MEXICO 87321  
Telephone: (505) 783-4138  
Facsimile: (505) 783-4139**

**Certificate of Mailing**

This certifies that on 9/30/03 this pleading was mailed to counsel of record and parties pro se as listed on the Court's electronic docket by placing the pleading in envelopes with postage prepaid and placing the envelopes with the US Post office in Ramah, NM for delivery.

----signed electronically-----

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William G. Stripp  
Attorney at Law