

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

UNITED STATES OF AMERICA, and
STATE OF NEW MEXICO, ex rel. STATE
ENGINEER,

Plaintiffs,

and

No. CIV 01-72 MV/LFG

ZUNI INDIAN TRIBE, NAVAJO NATION,

ZUNI RIVER BASIN
ADJUDICATION

Plaintiffs in Intervention,

v.

A & R PRODUCTIONS, et al.,

Defendants.

ORDER DENYING MOTION TO INTERVENE

THIS MATTER is before the Court on the opposed Motion to Intervene by Edward J. Bawolek and Suzan J. Bawolek (“Bawoleks”), filed June 28, 2012. [Doc. 2795.] On July 13, 2012, the United States and the State of New Mexico each filed responses. [Docs. 2797, 2798.] On July 22, 2012, the Bawoleks filed a reply. [Doc. 2799.]


The Bawoleks ask the Court for leave to intervene as Defendants in Subfile Proceeding ZRB-1-0075 Consolidated, under Fed.R.Civ.P. 24(a)(2), or, in the alternative, under Fed.R.Civ.P. 24(b)(1). [Doc. 2799, at 1.] After careful consideration of the pleadings, attachments, and pertinent law, the Court determines that the motion for intervention should be denied.

The Court finds that the Bawoleks are already parties to this civil action. In an Order, dated June 27, 2012, the Court granted the Bawoleks’ Revocable Trust’s Motion to Substitute Party and

Counsel [Doc. 2794], and the Bawoleks were substituted as parties defendant in this action in accordance with Fed.R.Civ.P. 25(c), replacing the Edward Bawolek & Suzan Bawolek Trust (“Bawolek Trust”). The Bawolek Trust, in turn, was joined as a party defendant by the Court’s January 26, 2006 Order Granting Motion to Join Additional Parties Defendant [Doc. 470], and the Bawoleks, acting as trustees of the Bawolek Trust, waived service of a summons on February 25, 2006. [Doc. 568.] Because the Bawoleks are already parties to this civil action and subject to the personal jurisdiction of this Court, there is no basis to intervene.

In addition, this case is in the “subfile phase.” Even assuming the Bawoleks’ assertions requesting intervention are all true and that the resolution of Subfile ZRB-1-0075 Consolidated will not satisfy all concerns that the Bawoleks may have, the Bawoleks will have an opportunity to raise their concerns in the “*inter se*” phase before a final decree is entered in this action.

IT IS THEREFORE ORDERED that the Bawoleks’ motion for intervention [Doc. 2795] is DENIED.



Martha Vazquez
United States District Judge

Approved by:



Lorenzo F. Garcia
United States Magistrate Judge