

**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. 01cv00072-MV/LFG
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs in Intervention)	
)	
v.)	Subfile No. ZRB-2-0014
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants)	
)	

**FIRST AMENDED ANSWER TO AMENDED COMPLAINT
BY EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK**

Edward J. Bawolek and Suzan J. Bawolek (hereinafter the “Bawoleks”), defendants *pro se* in Subfile ZRB-2-0014 of the above-captioned matter, hereby amend their Subfile Answer (Doc. [623]) and also file their Counterclaim for Declaratory Judgment to the Amended Complaint (Doc. [222]), and admit, deny, and allege as follows:

ANSWER

I. Nature of the Action

1. The Bawoleks admit that ¶ 1 of the Amended Complaint is a statement of the nature of this action, but are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 1 and therefore deny the same.

II. Jurisdiction and Venue

2. In response to ¶ 2 of the Amended Complaint, Bawoleks state that exclusive jurisdiction and venue are not vested in this Court, but admit that non-exclusive jurisdiction is conferred in this Court under 28 U.S.C. § 1345, and that this Court has non-exclusive venue under 28 U.S.C. §§ 111 and 1391(b)(2) and that relief may be granted pursuant to 28 U.S.C. §§ 2201 and 2202 but deny the remainder of averments in ¶ 2.

III. Parties

3. The Bawoleks are without knowledge or sufficient information to determine the truth of the averments in ¶ 3 of the Amended Complaint and therefore deny the same.
4. The Bawoleks admit the averments in ¶ 4 of the Amended Complaint.
5. The Bawoleks admit the averments in ¶ 5 of the Amended Complaint.
6. In response to ¶ 6 of the Amended Complaint, the Bawoleks admit that at least some of the named Defendants 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, or otherwise use those waters, depending on the definition and boundaries of the Zuni River stream system and Zuni River Basin, and admit that all those who claim a right or interest in the use of the waters of the Zuni River stream system in New Mexico are necessary and indispensable parties in this general stream system adjudication. The Bawoleks are without knowledge or information sufficient

to form a belief as to the truth of the remainder of averments in ¶ 6 and therefore deny the same.

IV. Facts

7. In response to ¶ 7 of the Amended Complaint, the Bawoleks admit that the Court's Orders of July 15, 2002 and May 21, 2003 define the geographic boundaries of this adjudication and the adjudication boundaries of the Zuni River Stream System and basin and state what they state but are without knowledge or information sufficient to form a belief as to the truth of the remainder of averments in ¶ 7 and therefore deny the same.
8. With regard to the averments in ¶ 8 of the Amended Complaint, the Bawoleks admit that the Zuni Indian Tribe is a federally recognized tribe. The Bawoleks deny that the Zuni Indian Tribe as owned and occupied lands within the Zuni River basin in New Mexico since time immemorial, and state that the term "time immemorial" is ambiguous and can be defined in many ways. The Bawoleks state that each order and statute describe in ¶ 8 speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 8 and therefore deny the same.
9. With regard to the averments in ¶ 9 of the Amended Complaint, the Bawoleks deny that the Zuni Indian Tribe and its members have used waters of the Zuni River stream system in New Mexico from time immemorial. The Bawoleks state that each law of the United States, each law of Spain, and each law of Mexico speaks for itself, as does the decision in State of New Mexico v Aamodt, 537 F.2d 1102 (10th Cir. 1976). It is important to distinguish

aboriginal case law from reserved rights law. The two are not the same. Water reserved at the time of a reservation of land from the public domain takes a priority date as of the time of the reservation *See Cappaert v. United States*, 426 U.S. 128 (1976); *United States v. New Mexico*, 438 U.S. 696 (1978). The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 9 of the Amended Complaint and therefore deny the same.

10. With regard to the averments in ¶ 10 of the Amended Complaint, the Bawoleks state that each treaty, statute, executive order, federal law, or federal case decision which is referred to, speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 10 of the Amended Complaint and therefore deny the same..

11. With regard to the averments in ¶ 11 of the Amended Complaint, the Bawoleks admit that the Navajo Nation (a/k/a Navajo Tribe of Indians) is a federally recognized tribe. The Bawoleks deny that the Navajo Nation and its members have used waters of the Zuni River stream system in New Mexico from time immemorial. It is important to distinguish aboriginal case law from reserved rights law. The two are not the same. Water reserved at the time of a reservation of land from the public domain takes a priority date as of the time of the reservation *See Cappaert v. United States*, 426 U.S. 128 (1976); *United States v. New Mexico*, 438 U.S. 696 (1978). The Bawoleks state that each statute and executive order referred to in ¶ 11 speaks for itself. The Bawoleks

are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 11 of the Amended Complaint and therefore deny the same.

12. With regard to the averments in ¶ 12 of the Amended Complaint, the Bawoleks state that each law of the United States which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 12 of the Amended Complaint and therefore deny the same.
13. With regard to the averments in ¶ 13 of the Amended Complaint, the Bawoleks state that each statute and executive order which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 13 and therefore deny the same.
14. With regard to the averments in ¶ 14 of the Amended Complaint, the Bawoleks state that federal law speaks for itself, as do the federal decisions which are referred to. The Bawoleks deny that members of the Ramah Band of Navajos have lived on and occupied land in the Zuni River basin in New Mexico from time immemorial. The Bawoleks deny that members of the Ramah Band of Navajos have used waters of the Zuni River stream system in New Mexico from time immemorial.). It is important to distinguish aboriginal case law from reserved rights law. The two are not the same. Water reserved at the time of a reservation of land from the public domain takes a priority date as of the time of the reservation *See Cappaert v. United States*,

426 U.S. 128 (1976); United States v. New Mexico, 438 U.S. 696 (1978). The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 14 of the Amended Complaint and therefore deny the same.

15. With regard to the averments in ¶ 15 of the Amended Complaint, the Bawoleks state that each treaty, statute, executive order, federal law, and federal decision which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 15 of the Amended Complaint and therefore deny the same.

16. With regard to the averments in ¶ 16 of the Amended Complaint, the Bawoleks state that the Presidential Proclamation which is referred to speaks for itself, as do the federal decisions. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 16 of the Amended Complaint and therefore deny the same.

17. With regard to the averments in ¶ 17 of the Amended Complaint, the Bawoleks state that the Presidential Proclamation which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 17 of the Amended Complaint and therefore deny the same.

18. With regard to the averments in ¶ 18 of the Amended Complaint, the Bawoleks admit that a portion of the El Malpais National Monument is located within the Zuni River basin in New Mexico. The Bawoleks state that

each federal law which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 18 of the Amended Complaint and therefore deny the same.

19. With regard to the averments in ¶ 18 of the Amended Complaint, the Bawoleks admit that a portion of the El Malpais National Conservation Area ("NCA") is located within the Zuni River basin in New Mexico. The Bawoleks state that each federal law which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 19 of the Amended Complaint and therefore deny the same.
20. With regard to the averments in ¶ 20 of the Amended Complaint, the Bawoleks state that the Executive Order which is referred to speaks for itself. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 20 of the Amended Complaint and therefore deny the same.
21. With regard to the averments in ¶ 21 of the Amended Complaint, the Bawoleks admit that the Bureau of Land Management administers certain tracts of federally owned public land and that ponds, tanks, and other water-control structures and devices have been constructed or installed on said tracts for wildlife-watering purposes. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 21 of the Amended Complaint and therefore deny the same.

VI Claim I

22. Paragraph 22 of the Amended Complaint states a legal conclusion, the accuracy of which will be determined by the district judge, and which does not require a reply by the Bawoleks. To the extent a reply is required, the Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the averments and therefore deny the same.
23. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶ 23 of the Amended Complaint and therefore deny the same.
24. With regard to the averments in ¶ 24 of the Amended Complaint, the Bawoleks admit they claim the right to divert, impound, pump, and use surface wafer and groundwater on their land. A summary of the Bawoleks' claimed rights appears in Exhibit A. The Bawoleks further claim ownership rights with respect to water features associated with Agricultural Lease GR1434 (hereinafter the "lease") which commenced on October 1, 2011 and will expire at midnight September 30, 2016. Said lease encompasses Section 2, Township 5 North, Range 17 West N.M.P.M, Cibola County New Mexico (hereinafter the "leased land"). Further, the leased land includes water use features described in the ZUNI RIVER BASIN ADJUDICATION HYDROGRAPHIC SURVEY REPORT FOR SUB AREAS 9 & 10 as Well 10C-4-W15 and Pond 10C-4-SP33. The Bawoleks are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in ¶ 24 of the Amended Complaint and therefore deny the same.

25. The Bawoleks deny the averments in ¶ 25 of the Amended Complaint, and note that current Plaintiff STATE OF NEW MEXICO, ex rel. STATE ENGINEER, in Doc. [102] (while still Defendant in this Action) represented to the Court that the Zuni River Basin adjudication was of low priority for adjudication due to "its remoteness, lack of a large population center, and lack of significant irrigation."

ANSWER TO SUBFILE ZRB-2-0014 OFFER

26. In response to the specific Offer made by the Plaintiffs in Subfile ZRB-2-0014, the Bawoleks state that the Offer was declined for the following reasons:
- a. The Offer does not properly reflect the Bawoleks' historical and ongoing beneficial use of water features on the property. The discrepancy between Plaintiffs' Offer and Bawoleks' actual use is summarized in Exhibit A. Supporting documentation justifying the Bawoleks' claimed rights is provided in Exhibit B (Endnotes to Exhibit A).
 - b. The Plaintiffs' Offer is inadequately drafted and lacks sufficient clarity to define Bawoleks' rights and address their concerns. Specifically, the Offer could be construed as precluding any future development of water rights by the Bawoleks. Language proposed by the Bawoleks to address these concerns in view of the Court's decisions in this Action was rejected by Plaintiffs.
 - c. The Offer fails to address the Bawoleks' claim to water rights associated with Agricultural Lease GR1434, referenced supra.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses, the Bawoleks assert and state as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Amended Complaint fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Water Rights of the Bawoleks)

The Bawoleks' claim to water rights on their deeded property is summarized in Exhibit A, with detailed explanation and justification appearing in Exhibit B, both of which are referenced supra and herein incorporated in their entirety by reference.

The New Mexico Constitution provides that beneficial use is "the measure, the basis and the limit" of all water rights in New Mexico. N.M. Const. art. XVI, §3.

In every instance enumerated in Exhibit A, the Bawoleks are claiming rights to water that has actually been pumped or impounded and placed into the beneficial use stated. In some instances, metering data exceeding a duration of one year are provided as justification for the associated claim.

In an incongruous statement in the FAQ on the Zunibasin.com website, the Plaintiffs assert in the answer to 19 Q: "No water rights will be taken from you as a result of this lawsuit. You already either have a water right or you don't: if you have a water right, it will be recognized."

Further, in representations to the Court, the Plaintiffs have stated:

- i. In [Doc. 374], the United States (responding to an Order to show Cause) assured the Court “The Plaintiffs’ proposal to make domestic well settlement offers incorporating a 0.7 acre foot per year cap will not prejudice any defendant. For those rare individuals who can show that their historic beneficial use for domestic purposes has exceeded 0.7 acre feet per year, the United States and the State will consider any evidence of such use and will attempt to negotiate a consent order that recognizes the actual historic beneficial use.”
- ii. In [Doc. 376], the Zuni Intervener states “...controversy does not obviate the obligation to proceed on a subfile by subfile basis to determine the actual water rights of each claimant.”
- iii. In [Doc. 380], the State of New Mexico, *ex rel.* State Engineer testified: “Additionally, a substantial number of domestic well rights in the Zuni River stream system were developed from pre-basin wells, and any rational (sic) regarding quantification relating to the statute would of course be inappropriate to those.” The response further opines “Further, the 0.7 acre-feet quantification is the United States’ and the State’s initial offer. ... This is not equivalent to limiting the amount that can be put to beneficial use...Any claimant has the right to come back with actual evidence of greater beneficial use if more than 0.7 acre-feet per annum is being used.”
- iv. In [Doc. 406], the State of New Mexico, *ex rel.* State Engineer again reassures the Court of its scrupulous intentions on pg. 9: “Claimants are free to prove greater amounts of beneficial use, up to the permitted maximum amount.

Evidence of greater use can be deduced from various, readily observable facts and circumstances. Accordingly, ... *claimants will not need to rely on metering of past water use* or the testimony of hydrologists to prove uses greater than 0.7 acre-feet per annum.” (emphasis added).

THIRD AFFIRMATIVE DEFENSE

(Balance of Equities Weighs in Favor of the Bawoleks)

If beneficial use is "the measure, the basis and the limit" of all water rights in New Mexico, the Bawoleks have clearly established their rights beyond any reasonable standard applicable in this Action. While recognizing the broad authority of the State Engineer in considering what constitutes beneficial use in the State of New Mexico, the Bawoleks allege that equity at law must contemplate, or at least approximate, a reasonable and uniform standard of evaluation when considering water rights.

The Bawoleks have not claimed any rights not supported by objective data. In fact, the Plaintiffs are holding the Bawoleks to a higher standard than they apply to themselves and to a clearly higher standard than has been applied to other Defendants:

- i. In [Doc. 633], the Plaintiffs petitioned the Court for an extension of time to allow Defendant Meech, represented by Bruce Boynton, time to gather approximately six month's metering data to substantiate Meech's claims to water rights. The Bawoleks have accumulated data over a period exceeding an entire year, but the Plaintiffs have rejected these data. The Bawoleks question what special relationship exists to make the Meech/Boynton data acceptable, while the Bawoleks' data are not?

- ii. In [Doc. 1125], enumerating the Zuni water claims, the Plaintiffs at Paragraph 16 (pg. 8) assert: "...metering data or other evidence concerning the quantities of past or present diversions from specific wells or springs on Zuni Tribal lands is seldom available. In addition, evidence of specific per-well or per-spring diversions for rights reserved by the United States, but not yet exercised, is inherently impossible to obtain." So, while the Bawoleks are held to an impeccable standard of proof, the Plaintiffs are apparently entitled to a generous measure of doubt.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

The Bawoleks also note that the Plaintiffs will not recognize the Bawoleks' beneficial use for wildlife, yet the State Engineer implicitly and explicitly recognizes this use by others. By way of example and explanation, attention is directed to the New Mexico Administrative Code, as summarized in Rules and Regulations Governing the Appropriation and Use of the Surface Waters of New Mexico, Adopted January 31, 2005, defining beneficial use in 19.26.2.7 (D) as "The direct use or storage and use of water by man for a beneficial purpose including, *but not limited to*, agricultural, municipal, commercial, industrial, domestic, livestock, fish and *wildlife*, and recreational uses. Beneficial use shall be the basis, the measure, and the limit of a water right." (emphasis added)

Further, beneficial use of water for wildlife is recognized by other New Mexico state agencies, and implicitly recognized by the State Engineer. In particular, in June 2013, the New Mexico Department of Agriculture (NMDA) provided financial assistance

to landowners who provided water delivery to wildlife, subject to the provision that "the *primary purpose* of water delivery is for use by wildlife within land user's operating unit." (emphasis added) If the State Engineer does not recognize the use of water for wildlife, then it was and is incumbent upon the Engineer to restrict said usage by others, otherwise the principle of estoppel applies and the Bawoleks' usage must be recognized as well.

Finally, the beneficial use of water for wildlife is explicitly recognized and enumerated by the Plaintiffs in the original Complaint (Doc.[1]) of this Action, and is listed in ¶21 of the Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Plaintiffs are not entitled to relief because they have resorted to procedural and coercive tactics when their Offer was rejected by the Bawoleks on the basis of its merit.

Plaintiffs have rejected the Bawoleks' metering data, holding the Bawoleks to a higher standard than required of other parties in this action:

- i. Plaintiffs represented to this Court that metering data would not be required to prove beneficial use in excess of the offered amounts [Docs. 374, 380, 406].
- ii. Plaintiffs filed a motion requesting the extension of the response time for one party in this Action to enable the gathering of metering data [Doc. 633]. The requested extension period was approximately

six months. The Bawoleks have provided metering data in excess of a full year.

Plaintiffs set a consultation meeting with the Bawolek Trust in Santa Fe, New Mexico March 8, 2012. (For the benefit of the Court and by way of explanation, it should be noted at that time, that the Bawoleks were the real parties at interest behind the Bawolek Trust. The Bawoleks have since been substituted in this Action for the Bawolek Trust, after the Bawolek Trust transferred its real property to the Bawoleks as natural persons.) Because the Bawolek Trust was required by Court Order to have legal representation, the Bawoleks attended this consultation with their attorney, with a significant expenditure of time away from work, and with significant legal expense. Upon arriving at the meeting location in Santa Fe, the Bawoleks were surprised to find that the meeting was only attended in person by counsel for the State Engineer (Mr. Edward Bagley). Counsel for the United States (Mr. Andrew Guarino) and their contractor (Mr. Kitt Nielson of NRCE) attended by telephone. This substantially negated the Bawoleks' ability to present and discuss the supporting materials they had brought, in particular: photos, topographic maps, and historical aerial surveys. To their greater dismay, the Bawoleks encountered Mr. Bradley Bridgewater (Counsel for the United States) in the New Mexico State Capital later that same day. Clearly, Counsel for the United States could have attended the meeting in person if desired. Following this meeting, the Plaintiffs provided the Bawoleks with a revised Consent Decree Offer which was substantially unchanged from all previous offers.

The apparent intention of the Plaintiffs' actions was to simply "wear down" the Bawoleks and to cause them to expend significant sums of money in their own defense. It

was for this reason that the Bawoleks in response removed their land from Trust and became Defendants *pro se*. A consequence of this removal from Trust is that the Bawoleks have compromised their estate planning, to the detriment of their heirs, in order to secure justice. The equitable relations between litigants have been unmistakably compromised by the Plaintiffs' actions.

A further example relates to how the Plaintiffs have acted in defiance of the Court's orders in this Action. Early in the proceedings, the Court required artificial entities to have legal representation: *See* [Doc. 151], Subproceeding 07cv000681 at 3.1:

"All parties in this Subproceeding will be expected to be familiar and comply with the Federal Rules of Civil Procedure, the Local Civil Rules of the United States District Court for the District of New Mexico, and all orders entered by this Court."

and at 3.2:

"The Special Master finds that the following parties appear to be artificial entities that, pursuant to 28 U.S.C. ' 1654, D.N.M.LR-Civ. 83.7, and N.M.S.A. 1978 ' 36-2-27, may not file pleadings or other documents, or make further appearance, in this Court *pro se*:

EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK TRUST

SFFL, LLC

BILLIE NAVARRE REVOCABLE TRUST

RAMAH WATER & SANITATION DIST.

TAMPICO SPRINGS 3000 LLC

Accordingly, IT IS HEREBY ORDERED that, before filing any motions, pleadings, or other documents in this Subproceeding, and no later than the Answer date specified in Paragraph 3.4, these entities shall retain counsel who shall file entries of appearance on the entities behalf."

Despite the Court's intention that the FRCP be followed in this and related Matters, the Plaintiffs accepted and filed numerous Consent Decrees for LLCs, trusts, and other artificial entities which were signed by various parties absent legal representation. Some examples may be found in [Docs. 605, 1634, 1639, 1741, 1764, 1865, 2904].

By negotiating with other artificial entities lacking representation the Plaintiffs have prejudiced the Bawoleks for their compliance with the FRCP and the Court's Orders in this Action. It appears that the Rules may be ignored whenever doing so brings advantage to the Plaintiff's case.

Plaintiffs have used procedural maneuvers elsewhere in this Action, against other Defendants, to the Court's obvious dissatisfaction. In particular, attention is directed to [Doc. 2555], MEMORANDUM OPINION AND ORDER setting aside a Default Judgment against the Strickland Trust.

The Plaintiffs' actions clearly meet the test for Unclean Hands as it has been codified in case law insofar as those actions "must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants." (Fibreboard Prod. Corp. v. East Bay Union of Machinists, 227 Cal. App. 2d 675 at 728.) Further, the plaintiffs have "directly 'infected' the actual cause of action before the court," and Plaintiffs are

"not merely guilty of unrelated past conduct." (Pond v. Insurance Co. of N. Am., 151 Cal. App. 3d 280 at 290 (1984).)

SIXTH AFFIRMATIVE DEFENSE

(Laches)

The Plaintiffs are not entitled to relief because they failed to be timely in pursuing their Action against the Bawoleks. Attention is directed to the summary of Consent Order Offers presented in Exhibit A: The Plaintiffs made their initial Offer on or about 12/22/2005. Subsequent offers were made after negotiations, teleconferences, and submission of metering data by the Bawoleks on or about 5/2/2011, 4/2/2012, and 11/13/2013. Careful examination of Exhibit A shows that *all Offers subsequent to the initial Offer were virtually identical*. The only reason for the adjustments to the initial Offer was the Bawoleks' purchase in 2010 of property adjacent to deeded lands held by the Bawolek Trust.

The record shows that the Plaintiffs required the Bawoleks to expend significant time and money in defense of their rights, with no intention of good-faith negotiation or settlement. Given Plaintiffs unwillingness to negotiate, Plaintiffs should have filed a Notice that the Consultation Period Has Ended, and advanced the Subfile to litigation. By delaying they attempted to "wear down" the Bawoleks through actions costing the Bawoleks time, money, and frustration. At a minimum, the Plaintiffs should have suspended negotiations with the Bawoleks rather than waste the Bawoleks' resources.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

1. This Counterclaim is brought pursuant to 28 USC §2201. There is an actual controversy between the Bawoleks and the Plaintiffs, including the United States of America and the New

Mexico State Engineer, and the Bawoleks seek a declaration of the rights and/or legal relations between them and the Plaintiffs.

2. The Bawoleks own real property located in the Zuni River Basin, and said property (hereinafter the "Bawolek Property") is included within the boundaries of the Zuni River Basin Adjudication.
3. Since their purchase of the Bawolek Property, the Bawoleks have continually restored and developed the water resources of the Property and have beneficially used and diverted water as enumerated in Exhibits A and B, in continuance of historical beneficial use, as well as to their own purposes prior to their joinder in this Action.
4. Upon information and belief, the Plaintiffs, including the New Mexico State Engineer, intend to take action to limit the Bawoleks' continued beneficial use as enumerated in Exhibit A.
5. The Bawoleks have a property right in the continued beneficial use of water as codified in the New Mexico State Constitution in. art. XVI, §3.

WHEREFORE, the Bawoleks request that the Court:

- (1) Deny the United States the prayer for relief as stated in the Amended Complaint;
- (2) Dismiss the Amended Complaint;
- (3) Award the Bawoleks their attorney's fees and costs while real parties at interest in the Bawolek Trust
- (4) Enter Judgment declaring their rights to use waters as enumerated in Exhibit C, "Enumeration of the Bawoleks Water Rights".
- (5) Award the Bawoleks such other and further relief as the Court may deem just and proper.

Dated December 21, 2013.

Respectfully submitted,

By: /s/ Edward J. Bawolek and /s/ Suzan J. Bawolek
2200 West Sagebrush Court
Chandler, AZ 85224
(602) 376-1755
bawolek@cox.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 21, 2013, I filed the foregoing Petition for CM/ECF Access electronically through the CM/ECF system, which caused CM/ECF participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Edward J. Bawolek
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