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

UNITED STATE OF AMERICA)
and)
STATE OF NEW MEXICO, *ex rel*)
State Engineer,)
)
Plaintiff,)
)
and)
ZUNI INDIAN TRIBE, NAVAJO NATION)
Plaintiffs-in-Intervention)
)
-v-)
)
A & R PRODUCTIONS, *et al.*,)
)
Defendants.)

01cv00072-BDB-ACE

**ZUNI RIVER BASIN
ADJUDICATION**

INTERNAL RESOURCES
SECTION

09 SEP 17 P 3 15

ENVIRONMENTAL NATIONAL
RECORDS DIVISION

**DECLARATION OF STATE OF NEW MEXICO
TRUST RESERVED WATER RIGHTS**

Patrick H. Lyons, Commissioner of Public Lands for the State of New Mexico by and through his undersigned counsel and as his Declaration of State of New Mexico Trust Reserved Water Rights states and alleges as follows.

1. Congress reserved certain lands for the Territory of New Mexico and the State of New Mexico more particularly described below and on attached Exhibits A and B hereto (“Trust Lands”) and in doing so reserved surface and ground water rights for the Trust Lands (“Reserved Water Rights”) sufficient in quantity to fulfill the purposes of the said federal reservations including future requirements of the Trust and Trust Lands and to satisfy common law requirements concerning the Trust. Pursuant to the Enabling Act for the State of New Mexico, Act of June 20, 1910, 36 Stat. 557 Chapter 310 (1910),

Congress created a trust ("Trust") to manage the Trust Lands, natural products therefrom and the Trust's Reserved Water Rights. The Trust is managed by the New Mexico Commissioner of Public Lands as the executive officer of the New Mexico State Land Office.

2. The Trust's Reserved Water Rights are not subject to abandonment, forfeiture or loss for non-use under federal law. This Declaration neither waives any rights that the Trust has under New Mexico prior appropriation law nor is it made in lieu of them.

3. Congress reserved the Trust Lands in part for the purpose of establishing and supporting common schools in New Mexico, for the purpose of erecting public buildings at the capital of New Mexico for legislative, executive, and judicial purposes and for the payment of certain bonds, for the establishment and support of a university in New Mexico and an agricultural and mechanical college, for the establishment of permanent water reservoirs for irrigating purposes, for the improvement of the Rio Grande in New Mexico, and for increasing the surface flow of the water in the Rio Grande, for the establishment and maintenance of an asylum for the insane, a school of mines, an asylum for the deaf and dumb, a reform school, normal schools, an institution for the blind, a miner's hospital for disabled miners, a military institute, for the enlargement and maintenance of the New Mexico penitentiary, for the building known as the Palace in the city of Santa Fe, for purposes of internal improvements made to new states by the Eighth Section of the Act of September fourth, eighteen hundred and forty-one, for assessments on Trust Lands in properly organized drainage districts. The Trust is charged with long term maximization of revenue from said Trust Lands for the benefit

of the Trust's said beneficiaries by means including, but not limited to, the leasing of the Trust Lands for natural products therefrom, including, without limitation, agricultural crops, hay crops, orchards, livestock and grazing purposes, irrigated and subirrigated pastures, timber production, minerals including, without limitation, oil and gas, carbon dioxide, helium, liquid petroleum gas, coal bed methane gas, coal, uranium, industrial minerals, metallic minerals, geothermal resources, rights of ways, licenses, easements, permits and sales.

4. The primary purpose of the federal reservations of the Trust Lands is to provide for the long term maximization of revenue from the Trust Lands, natural products therefrom and appurtenances for the Trust beneficiaries.

5. The federally created Trust is the sole owner of an undivided one hundred percent (100%) interest in and to said Reserved Water Rights pursuant to certain reservations made by Congress, including without limitation, the General Land Ordinances of 1785 and 1787, the Organic Act Establishing the Territory of New Mexico, Act of September 9, 1850, 9 Stat. 446 (1850), Act of July 22, 1854, 10 Stat. 308 (1854), the Ferguson Act, Act of June 21, 1898, 36 Stat. 484, Chapter 489 (1898) and the Enabling Act for the State of New Mexico, Act of June 20, 1910, 36 Stat. 557, Chapter 310 (1910). Said reservations by Congress of the Trust's Reserved Water Rights were affirmed by Congress in the Enabling Act for the State of New Mexico, Act of June 20, 1910, 36 Stat. 557, Chapter 310 (1910), Art. XIII and XVI of the New Mexico Constitution, the statutory law of New Mexico, and the common law as declared in federal and New Mexico judicial decisions.

6. The priority date of the Trust's Reserved Water Rights is the earliest date that the Congressional reservation of or for the Trust Lands was made by Congress. Those Trust Lands that were reserved (1) pursuant to said Organic Act (for the purpose of being applied to schools in New Mexico) have a priority date that is no later than September 9, 1850, (2) pursuant to said Ferguson Act (sections numbered sixteen and thirty-six in each township in New Mexico and other lands) have a priority date that is no later than June 21, 1898, and (3) pursuant to said Enabling Act have a priority date that is no later than June 20, 1910, provided however that those certain "in lieu" grants of land set forth in Sec. 7 of the Enabling Act have earlier priority dates as set forth therein.

7. The beneficial use to which the said Reserved Water Rights have been or may be applied include, without limitation, subirrigation of meadows, streams, pastures and crop lands, irrigation of row crops and hay crops, livestock water, agricultural uses, domestic uses, municipal uses, commercial and industrial uses, construction and operation of oil and gas, coal bed methane, carbon dioxide and helium wells, construction and operation of mines, maintenance of wetlands, recreational uses, timber production, fire control, maintenance of fish and wildlife on Trust Lands, recreational uses by Trust lessees, licensees and permittees, maintenance of instream flows for the foregoing beneficial uses and maintenance of existing and prospective underground water reservoirs and surface reservoirs.

8. The location of the source of the surface and/or underground waters for the Trust's Reserved Water Rights are those perennial and/or intermittent streams, rivers, floodwaters, arroyos, springs, seeps, wells, reservoirs (surface and/or underground) on, in and under the Trust Lands depicted on Exhibits A and B hereto.

9. The primary purpose of the federally created Trust would be frustrated and the Trust and/or the Trust's beneficiaries would be irreparably harmed without the Trust's Reserved Water Rights.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2004 a true copy of the Declaration Of State Of New Mexico Trust Reserved Water Rights was served via first class mail to counsel of record listed in the service list attached.

Respectfully submitted



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