IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES, for Itself and as Trustee for the Zuni Indian Tribe, Navajo Nation and Ramah Band of Navajos, O4 OCT 20 PH 3:39

CLEHINALBUQUERDIE

and

CAUSE NO. 01-CV-00072

STATE OF NEW MEXICO, ex rel. STATE ENGINEER,

Plaintiffs,

vs.

ZUNI INDIAN TRIBE NAVAJO NATION,

Plaintiffs-in-Intervention,

 $\mathbf{v}\mathbf{s}$

STATE OF NEW MEXICO COMMISSIONER OF PUBLIC LANDS,

and

A & R PRODUCTIONS.

and

AT&T, et. al.,

Defendants.

ANSWER OF DEFENDANT LIVINGSTON FAMILY PARTNERSHIP TO AMENDED COMPLAINT FOR ADJUDICATION OF WATER RIGHTS

COMES NOW the Defendant, LIVINGSTON FAMILY PARTNERSHIP, a New

Mexico Limited Partnership, by and through its counsel of record, Dubois, Cooksey & Bischoff,

P.A. (William J. Cooksey), and for its Answer to the Plaintiffs' Amended Complaint for

351

Adjudication of Water Rights states as follows:

I. NATURE OF THE ACTION

1. The Livingston Family Partnership admits that Paragraph 1 of the Amended Complaint is a statement of the nature of this action, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 and therefore denies the same.

II. JURISDICTION AND VENUE

2. In response to Paragraph 2 of the Amended Complaint, the Livingston Family Partnership states that exclusive jurisdiction and venue are not vested in this Court, but admits that non-exclusive jurisdiction is conferred in this Court under 28 U.S.C. §1345, 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 denies the remaining allegations contained in Paragraph 2.

III. PARTIES

- 3. In response to Paragraph 3 of the Amended Complaint, the Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies the same.
- 4. The Livingston Family Partnership admits the allegations contained in Paragraphs 4 and 5 of the Amended Complaint.
- 5. In response to Paragraph 6, the Livingston Family Partnership admits that at least some of the named Defendants may claim rights or interests in the use of the surface and 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 system and Zuni River Basin, and admits that all those who claim a right or an interest in the use of the waters of the Zuni River stream in New Mexico are necessary and indispensable parties in this general stream system adjudication, but is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 6 and therefore denies the same.

IV. FACTS

- 6. In response to Paragraph 7 of the Amended Complaint, the Livingston Family
 Partnership admits 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
 System and basin and state what they state, but is without knowledge or information sufficient to
 form a belief as to the truth of the remaining allegations of Paragraph 7 and therefore denies the
 same.
- 7. The Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and therefore denies the same.

V. CLAIM I.

- 8. In response to Paragraph 22 of the Amended Complaint, the Livingston Family Partnership admits that the lawsuit seeks what it seeks, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and therefore denies the same.
- 9. In response to Paragraphs 22 and 23, the Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and therefore denies the same.

- Partnership admits that it could or would claim the right to divert, impound, pump or use surface or groundwaters of the Zuni River Stream system in New Mexico, depending on the defined boundaries of this stream system, but is without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 24 and therefore denies the same.
- 11. The Livingston Family Partnership denies the allegations contained in Paragraph 25.
- 12. The Livingston Family Partnership denies the allegations of each and every Paragraph and allegation of the Amended Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

13. The Livingston Family Partnership is the owner in fee simple of the following described real property:

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising a portion of the South one-half of Section 19, Township 12 North, Range 18 West, N.M.P.M., as more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico Registered Professional Engineer and Land Surveyor No. 1086, bears \$88°39'W, 3196.97 feet distant;

THENCE, from the beginning point, 88°39'E, 817.73 feet to the Northeast corner;

THENCE, S1 34'48"E, 2598.89 feet to the Southeast corner;

THENCE, S87°55'25"W, 817.75 feet to the Southwest corner;

THENCE, N1°34'48"W. 2609.26 feet to the place of beginning, containing 48.884 acres more or less.

An undivided one-third (1/3) interest in:

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising of a portion of the South one-half of Section 19, Township 12 North, Range 18 West, N.M.P.M., as more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico, Registered Professional Engineer and Land Surveyor No. 1086, bears N.47°12′27″ W, 2409.80 feet distant;

THENCE, from the beginning point, S61°45′E, 370.0 feet to the Northeast corner;

THENCE, \$28°15'W, 883.50 feet to the Southeast corner;

THENCE, S87°55'25"W, 428.66 feet to the Southwest corner;

THENCE, N28°15'E, 1100.00 feet to the place of beginning, containing 8.425 acres more or less.

(collectively hereinafter the "Real Property").

- 14. The Real Property is located in McKinley County, New Mexico, and is not within the boundaries of any Indian Reservation or Indian Allotment.
- 15. The Livingston Family Partnership claims all water rights, ground water, surface or other water rights of any kind which the Real Property provides and running with the Real Property.
- Owner of Underground Water Rights concerning the Real Property owned by it with the New Mexico Office of the State Engineer's office. Copies of these Declarations are attached hereto as Exhibits "A" and "B"
- 17. The Livingston Family Partnership does not waive or otherwise surrender any of its water rights provided by or running with the Real Property.

WHEREFORE, the Livingston Family Partnership prays for an affirmation of its water rights in and to the Real Property; that this Court protect and provide the Livingston Family Partnership with its water rights as provided by law; and for such other and further relief as the Court deems just and proper.

DUBOIS, COOKSEY & BISCHOFF, P.A.

William J. Cooksey 2040 Fourth Street, N.W.

Albuquerque, New Mexico 87102

Telephone: (505) 243-6721

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the following individuals on this 2014 day of October, 2004.

William J. Cookse

Bradley S. Bridgewater U.S. Department of Justice 999 18th Street, Suite 945 North Denver, Colorado 80202

New Mexico State Engineer Edward C. Bagley P.O. Box 25102 Santa Fe, New Mexico 87504-5102

Jane Marx, Esq. Attorney for Plaintiff-in-Intervention Zuni Indian Tribe 2825 Candelaria Road, N.W. Albuquerque, New México 87107

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NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

	Name: December of the Survey Std Partnership Work Phone: 243-6721
	Contact: 741 Contact (Hope Phone: 345-2740)
	Address: 11/6 Transmille Chick Hally 563 3018
	City: State: William State: William 57301
	2. LOCATION OF WELL (A, B, C, or D required, E or F if know)
KG DOES CLAIM.	A. SE 1/4 SW 1/4 SE 1/4 Section: 19 Township: 12N Range: 18W N.M.F.M. in Which County.
STATEMENT. OF DECLARANT'S CLAIM AND FILING DOI NOT CONSTITUTE APPROVAL OR REJECTION OF CLAIM	B. X = feet, Y = feet, N.M. Coordinate System System Grant.
	U.S.G.S. Quad Map
CLAIM AND R REJECTIO	c. Latitude:dms Longitude:dmS
ZEAE	D. East (m), North (m), North (m), UTM Zone 13, NAD (27 oc 83)
T'S(E. Tract No. , Map No. of the Hydrographic States
S CLARANT APPROVAL	F. Lot No Block No of Unit/Tract of the County.
ECLA EAPP	G. Other:
EMENT.OF DE CONSTITUTE	H. On land owned by (required): Beauty star Janue, Stat Partners high
S T	3. DESCRIPTION OF WELL
COL	Date drilled: 1977 Driller: Taul Hullell
STAT	Depth: 446 feet. Outside diameter of casing inches;
	Original capacity 5 gal. per min.; Present capacity 5 gal. per min.;
	Pumping lift: feet; Static water level: feet(above) (below) land
	surface; Make of pump:; Type of pump:
	Make, type, horsepower, euc., of power plant:
	Fractional or percentage interest claimed in well: 100 1/0
	File Number: 6-0/875 Tro Number: 26693
	File Number: C7-0/8/5 Trn Number: C7-0/8/5 page 1 of 3
	EXHIBIT



File	Number:	G1-01875

NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

4. QUANTITY				
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biversion Amount. <u>5977.50</u> acr	s-redt par a	:1110.11		
5. PURPOSE OF USE	:			
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Domestic: Livestock: Trr.	igation: "	Municipal:	Industri	al;
Commercial: Other (specify):				
Specific use:		<u></u> .		
6. PLACE OF USE				
47.884 acres of land describ	oed as foliov	√ S:		
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Subdivision of Section (District or		(Tract No.)	Range	Acres
Hydrographic Survey)	(1101)	(12000 1101)		
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7. WATER WAS FIRST APPLIED TO BENEFIC	TAL USE ON:	1977		(date)
and since that time has been used	l fully and d	continuously fo	or all or a	
described purposes except as foll	Lows: <i>N</i> /_	A		
				
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CORRECTION * QUITCLAIM DEED

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Aug 27 1 21 PH 193 QUITCL	RECTION *
AUG ZI ZI II ZI QUITCL	AIM DEED
MARY ANN LIVINGSTON, a widow, dea	ling with her sole and separate
Property	
to LIVINGSTON FAMILY LIMITED PARTN Partnership	ERSHIP, a New Mexico Limited
whose address is 1116 Martinelli	
Gallup, New Mexico 8	7301
the following described real estate in	McKinley County, New Mexico
Mexico, area comprising a port	ne Whitewater, McKinley County, New ion of the South one-half of Section West, New Mexico Principal Meridian, follows:
point from which the Wes as re-established by	ner of the herein described tract, a t Quarter corner of said Section 19, Clarence C. Goddard, New Mexico Engineer and Land Surveyor No. 1086, feet distant;
Thence from the beginning po Northeast corner;	int, N88°39'E, 817.73 feet to the
Thence S1°34′48″E, 2598.89 fee	t to the Southeast corner;
Thence S87 55 25 W, 817.75 fee	t to the Southwest corner;
Thence N1º34/48"W, 2609.26 containing 48.884 acres	fect to the place of beginning, more or less.
SUBJECT TO a County Road ease::	ent along the South side.
SUBJECT TO any reservations, record.	estrictions, conditions and easements
of record June 10, 1991, at	ertain Deed dated May 11, 1991, filed Book 3 of Comp., Page 2872, which ited the conveyance to an undivided
TOY.	22 rd day of August 19 93
WITNESS hand and seal this	day of, 19 111.
(S	cal)(Sed)
Mary ANN LIVINGSTON (S	eal) (Seal)
	FOR NATURAL PERSONS
STATE OF NEW MEXICO	FOR NATURAL PERSONS
COUNTY OF BERNALILLO The foregoing instrument was lacknowledged before me this. MARY ANN LIVINGSTON	Jon day of August 19.93
by MARY ANN LIVINGSTON (Name or Names of Person or Persons Ackn	
My commission expires: (Seal)	Notary Fublic
· · · · · · · · · · · · · · · · · · ·	ACKNOWLEDGMENT FOR CORPORATION
STA	TE OF NEW MEXICO
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	e foregoing instrument was acknowledged before me this
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NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

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Name: Juling the terrilighted taitamphip work Phone: 243-6721
Address: 10/11/6 Martinelle Brent Drie Wallup 803-3098
: , le
City: Fallup, State NM zip: 3780/
2. LOCATION OF WELL (A, B, C, or D required, E or F if know)
A. SE 1/4 SW 1/4 SW 1/4 Section: 19 Township: 2N Range: 18W N.M.P.M.
B. X = feet, Y = feet, N.M. Coordinate Jysumm
U.S.G.S. Quad Map
C. Latitude:dms Longitude:dms
D. East (m), North (m), UTM Zone 13, NAD (278): 35
E. Tract No, Map No of the Hydrographic to Survey
F. Lot No. , Block No. of Unit/Tract Cot their Subdivision recorded in County;
G. Other:
H. On land owned by (required): H. Hiller Mesich Miller (1/3 urdung) & the
3. DESCRIPTION OF WELL (Bundwided interest) Edward & Meser L late
Date drilled: 1933 Driller: Son attached hetterfrom John Mise.
Dopth: 100 feet. Outside diameter of casing 6 inches:
Original capacity gal. per min.; Present capacity 20_ qui. per min.;
Pumping lift: feet; Static water level: feet(above)(below) land
surface; Make of pump:; Type of pump:
Make, type, horsepower, etc., of power plant:
Fractional or percentage interest claimed in well: 3390
File Number: 6-01576 Ten Number:287001
Form: wr-03 page 1 of 3

EXHIBIT

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File Number:	G-4876
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NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

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NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

ACKNOWLEDGEMENT FOR NATURAL PERSONS (I) We) Aug affirm that the (Please Print) foregoing statements are true to the best of my knowledge and belief. Declarant Signature Declarant Signature NOTARY This instrument was acknowledged before me this 20 day of 2000 co. 1.
(Please Print) foregoing statements are true to the best of my knowledge and belief. Declarant Signature NOTARY This instrument was acknowledged before me this 25th day of 25th
(Please Print) foregoing statements are true to the best of my knowledge and belief. Declarant Signature NOTARY This instrument was acknowledged before me this 25th day of 1000 feet. A.D., 203, By Diwn Cuksay Name of Applicant
Declarant Signature NOTARY This instrument was acknowledged before me this 25th day of 2000 feet. A.D., 2003, By Diwn Cultsey Name of Applicant
This instrument was acknowledged before me this 291 day of Cricks. A.D., 203, By Diwn Curksey Name of Applicant
This instrument was acknowledged before me this 291 day of Cricks. A.D., 203, By Diwn Curksey Name of Applicant
This instrument was acknowledged before me this 200 day of 2000 from . A.D., 2003, By Down Carksey Name of Applicant
A.D., 203, By Down Carksey Name of Applicant
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My commission expires 05/05/2004 Motary Public
OFFICIAL SEAL
Charles E. Palmer
NOTARY PUBLIC STATE OF MEN MINICO
My Commission Expires: US/0.47764
ACCEPTANCE OF STATE ENGINEER
This Declaration form is hereby accepted for filing in accordance
with NMSA-1978 (1985), as amended. The acceptance by the State Engineer Office does not constitute validation
of the right claimed.
. !
File Number: 287001

			#11 Number	: <u>G-0/8</u>	.76
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6. PLACE OF U		a	· ¦		
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7. WATER WAS	THE TAPPLIED TO B	ENEFICIAL USE ON:	<i>_/93</i> 3		(date) Una
described	purposes except a	follows:			
5. ADDITIONAL	STATEMENTS OR EX	PLANATIONS:			
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CORRECTION * QUITCLAIM DEED

MARY ANN LIVINGSTON, a widow, dealing with her sole and scparate
property for consideration paid, quitclaim S
LIVINGSTON FAMILY LIMITED PARTNERSHIP, a New Mexico Limited
Partnership 1116 Martinelli
whose address is 1116 Martinelli Gallup, New Mexico 87301
the following described real estate in McKinley
An undivided one-third (1/3) interest in:
A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising a portion of the South one-half of Section 19, Township 12 North, Range 18 West, New Mexico Principal Meridian, more particularly described as follows:
BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Moxico Registered Professional Engineer and Land Surveyor No. 1086, bears N47°12'27"W, 2409.90 feet distant;
Thence from the beginning point, S61°45'E, 370.0 feet to the Northeast corner;
Thence S28°15'W, 883.50 feet to the Southeast corner;
Thence S87°55'25"W, 428.66 feet to the Southwest corner;
Thence N28°15'E, 1100.0 feet to the place of beginning, containing 8.425 acres more or less.
SUBJECT TO a County Road easement along the South side.
SUBJECT TO any reservations, restrictions, conditions and easements of record.
* This Deed is to correct that certain Deed dated May 11, 1991, filed of record June 10, 1991, at Book 3 of Comp., Page 2871, which original Deed should have limited the conveyance to an undivided cne-third $(\frac{1}{3})$ interest.
WITNESS my hand and seal this 23 day of August 19 93
(Seal)(Seal)
(Seal)
Laury (Seal) (Seal)
MARY AND LIVINGSTON ACKNOWLEDGMENT FOR NATURAL PERSONS
STATE OF NEW MEXICO
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this day of August: 1993, MARY ANN LIVINGSTON
(Name or Names of Person or Persons Acknowledging) My commission expires:
(Seal) Notary Public
ACKNOWLEDGMENT FOR CORPORATION
STATE OF NEW MEXICO
FOR RECORDER'S USE ONLY (1-) SI. ONLY 55.
SIAIE OF MEN MEN COUNTY OF
COURTY OF MCKIPICY)
On Filed for restal in the Clean's office by