

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

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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*Rose M. March*  
CLERK ALBANY COUNTY

UNITED STATES

Plaintiff

v.

No. CIV01-0072 BB/WWD

STATE OF NEW MEXICO ENGINEER;  
CROSBY, APRIL E.; et al.

Defendant

**ANSWER TO UNITED STATES' COMPLAINT**

COMES NOW Defendant, April E. Crosby, by and through her counsel of record, Eastham Johnson Monnheimer & Jontz, P.C. (Stephen R. Nelson and Deborah S. Gille), and for her answer to the United States' Complaint ("Complaint") states that:

I. Nature of the Action

1. Defendant admits that paragraph 1 of the Complaint is a statement of the nature of this action.

II. Jurisdiction and Venue

2. Defendant incorporates by reference the admissions and denials set forth in paragraph 1 as if set forth in full herein.

3. Defendant admits the allegations of paragraph 2.

III. Description of the Issue

4. Defendant incorporates by reference the admissions and denials set forth in paragraphs 1 through 3 as if set forth in full herein.

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5. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 3.

#### IV. Parties

6. Defendant incorporates by reference the admissions and denials set forth in paragraphs 1 through 5 as if set forth in full herein.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 4.

8. Defendant admits that Defendant is a person or entity claiming right or intent in the use of the surface and groundwaters of the Zuni River basin in New Mexico, including the right to divert, impound, pump, and use water in the Zuni River basin. Defendant is without knowledge or information sufficient to form a belief as to the truth of the status of all other Defendants. Defendant denies all other allegations in paragraph 5.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 6.

#### V. Facts

10. Defendant incorporates by reference the admissions and denials set forth in paragraphs 1 through 9 as if set forth in full herein.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 7.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 8.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 9.

14. Defendant admits that the Zuni Indian Tribe is a federally recognized tribe. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations of paragraph 10.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 11.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 12.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 13.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 14.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 15.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 16.

21. Defendant admits that the Navajo Nation is a federally recognized tribe. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations of paragraph 17.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 18.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 19.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 20.

25. Defendant denies the allegations of paragraph 21.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 22.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 23.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 24.

29. Defendant admits that the United States may claim a federal reserved water right for a national forest but only to the narrow extent necessary to preserve timber or to secure favorable water flows in national forests. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 25.

30. Defendant admits that El Morro National Monument is within the Zuni River basin in New Mexico. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 26.

31. Defendant admits that a portion of the El Malpais National Monument is within the Zuni River basin in New Mexico. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 27.

32. Defendant admits that a portion of El Malpais National Conservation Area is located within the Zuni River basin in New Mexico. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 28.

33. Defendant admits that tracts of federally owned public land administered by the Bureau of Land Management are located within the Zuni River basin in New Mexico. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 29.

34. Defendant admits that ponds, tanks, wells and other water-control structures and devices have been constructed or installed on certain tracts of the federally owned public land administered by the Bureau of Land Management. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 30.

#### VI. Claim I

35. Defendant incorporates by reference the admissions and denials set forth in paragraphs 1 through 34 as if set forth in full herein.

36. Defendant admits the allegations of paragraph 31.

37. Defendant denies the allegations of paragraph 32.

38. Defendant denies the allegation of paragraph 33, except that Defendant does claim a right to divert, impound, pump or use the surface water and groundwaters of the Zuni River basin in New Mexico.

39. Defendant denies the allegations of paragraph 34.

40. Defendant denies that Plaintiff is entitled to the relief sought in its prayer.

41. Except as specifically admitted herein, all other allegations in the Complaint are denied.

#### AFFIRMATIVE DEFENSES

1. The doctrine of federal reserved water rights as set out in *Winters v. United States* does not apply to lands given to the tribes by Spain and Mexico.

2. Defendant's claim to use surface water and groundwaters are not adverse to Plaintiff's rights to use the surface water and groundwaters of the Zuni River basin in New Mexico.

3. Non-Indians have occupied the land which is now in ownership of Defendant. Plaintiff has accepted the right of Defendant's predecessors in interest to live on the land and to use the surface and groundwaters of the Zuni River basin in New Mexico.

4. Defendant's use of surface and groundwaters does not impair Plaintiff's right, on its own behalf, to use the surface water and groundwaters of the Zuni River basin in New Mexico to satisfy its needs.

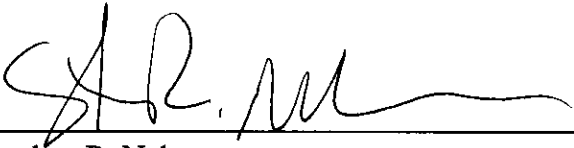
5. Defendant's use of surface and groundwaters does not impair Plaintiff's right, on behalf of the Zuni Indian Tribe, the Navajo nation, the Ramah Navajo Band, and various individual Indians, to use the surface water and groundwaters of the Zuni River basin in New Mexico to satisfy its needs.

6. Plaintiff's federally reserved water rights for Cibola National Forest are limited to the narrow extent necessary to fulfill the purpose of the national forests.

WHEREFORE, Defendant April Crosby requests that the Complaint be dismissed and that she be awarded her costs and such other relief as the Court deems just.

Respectfully submitted,

EASTHAM JOHNSON MONNHEIMER & JONTZ, P.C.

By  \_\_\_\_\_

Stephen R. Nelson

Deborah S. Gille

Attorneys for Defendant April E. Crosby

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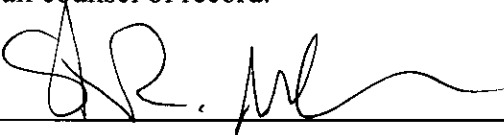
Albuquerque, New Mexico 87102

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(505) 247-2315

I hereby certify that a true copy of the foregoing  
pleading was mailed this 23<sup>rd</sup> day of April, 2001,  
to all counsel of record.

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