

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW MEXICO, *ex rel.*,
STATE ENGINEER, A & R Productions,
et al.,

Defendants.

01-CV-00072-BDB

Robert J. ...
CLERK OF DISTRICT COURT

ZUNI RIVER BASIN

MOTION OF THE NAVAJO NATION TO INTERVENE

The Navajo Nation, by and through its counsel the Navajo Nation Department of Justice, moves the Court for an order granting it leave to intervene in this action, pursuant to Fed.R.Civ.P. 24(a) (intervention as of right), or in the alternative, pursuant to Fed.R.Civ.P. 24(b) (permissive intervention). As grounds, the Navajo Nation states as follows:

1. The Navajo Nation is a federally-recognized Indian tribe whose New Mexico lands are partially situated within the Zuni River basin. Such lands include (1) lands beneficially owned by the Navajo Nation and held in trust by the United States; (2) lands owned by the Navajo Nation in fee simple; (3) lands congressionally conveyed to the Ramah Band of Navajo Indians by the Act of 1979, 94 Stat. 1060; and (4) allotted lands held in trust by the United States government for the benefit of individual members of the Navajo Nation.

2. The surface and underground water rights associated with these various Navajo lands will be adjudicated in this proceeding. Thus the Navajo Nation has a direct, substantial, and immediate interest in this proceeding. The Navajo Nation's ability to protect its interests will be significantly impaired or impeded if this action is litigated absent the Navajo Nation's participation as a party.

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3. Although the United States of America has filed claims on behalf of the Navajo Nation and states that it represents the interests of both Navajo Nation, the Zuni tribe and individual Indian allottees in this proceeding, the Navajo Nation wishes to intervene in its own right in this matter to assert positions of its various constituents which may not be identical to those positions and claims asserted on its behalf by the United States.

4. The United States also represents the interests of various federal agencies claiming water rights for the Cibola National Forest, the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area, and other federally-owned lands within the Zuni River basin in New Mexico.

5. As a result of the multiplicity of interests under the United States representation and the complicated nature of the various Navajo Nation interests, the Navajo Nation believes its interests may not be adequately represented unless it is allowed to intervene as a party in its own right to fairly and fully assert its interests. The Navajo Nation should be allowed to intervene as a matter of right under Fed.R.Civ.P. 24(a).

6. The Navajo Nation also owns state-based water rights associated with its fee lands in the Zuni River basin, including those water rights identified by File Nos. 1916 and 1916A. The Navajo Nation, as any owner of a state-based water right within the basin, is entitled to intervene as a matter of right under Fed.R.Civ.P. 24(a) to defend such rights.

7. Additionally, the Navajo Nation asserts claims for surface and ground water rights within the Zuni River watershed attached to tribal trust lands, tribal fee lands, lands congressionally set-aside for the Ramah Band of Navajo Indians and individual allotments held by the United States government in trust for Navajo Nation members. The assertion of these claims raises factual and legal issues that are common to the claims of the other parties: the nature and extent of the water rights for each of the parties in the Zuni River basin adjudication. Therefore, the Navajo Nation satisfies the requirements for permissive intervention under the provisions of Fed.R.Civ.P. 24(b).

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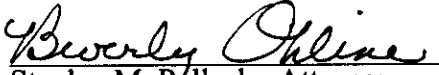
8. This motion is timely filed because the adjudication was filed on January 19, 2001, by the United States and has been stayed for some time. Preliminary matters, including scheduling, are still being determined. The Navajo Nation's intervention will not delay these proceedings or otherwise prejudice any party.

9. Counsel for the Navajo Nation attempted to contact all other counsel and pro se parties of record in this case. Counsel for the Navajo Nation is authorized to state that although most parties reached have no opposition to the granting of this Motion, Counsel for the New Mexico State Engineer, Counsel for the Salt River Project and Counsel for Tri-State Generating Station wished to reserve their position until receiving the documents and consulting with their clients. Counsel for the Navajo Nation was unable to reach pro se parties David Candelaria, Ann Hambleton Beardsley, Ted Brodrick, Sandra S. Drullinger and Kimberly J. Gugliotta, and was unable to reach Counsel for the New Mexico Department of Highways and Transportation, the U.S. Departments of the Interior, Agriculture and Justice, the U.S. Attorney's Office and following counsel of record: Bruce Boynton, III, Mark H. Shaw, Jeffrey A. Dahl, Albert O. Lebeck, Jr., David R. Lebeck, Dorothy C. Sanchez and Robert W. Ionta.

10. Navajo's proposed Complaint in Intervention is submitted herewith, and Navajo requests that should the Court grant this Motion to Intervene, the attached Complaint be filed by the Clerk of the Court as the Navajo Nation's Complaint in Intervention.

Respectfully submitted this 7th day of September, 2001.

NAVAJO NATION DEPARTMENT OF JUSTICE
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CERTIFICATE OF SERVICE

I certify that on the 7th day of September 2001, a true and correct copy of the foregoing MOTION OF THE NAVAJO NATION TO INTERVENE was served by United States Postal Service first class, postage pre-paid mail to those on the LIST OF PERSONS RECEIVING SERVICE (Zuni River Basin) which is attached and incorporated by reference.

By: Patsy Lyzzi
Legal Secretary

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4. By treaty of 1868, ratified on August 12, 1868, the Navajo Reservation was created for the benefit of the Navajo Tribe of Indians and its members in New Mexico and Arizona. None of the original treaty reservation is located in the Zuni River basin in New Mexico; however, the Navajo reservation was expanded by statutes, executive orders, public land withdrawals, tribal purchases and allotments to individual Navajo Nation members to include lands within the Zuni River basin in New Mexico.

5. These lands in the Zuni River basin in New Mexico include portions of Navajo Grazing District 16 located in T. 11 & 12 N., R. 18 through 21 W.; T. 13 & 14 N.; R. 17 through 21 W., and portions of Ramah Chapter located in T. 6 N., R. 14 W.; T. 7 N., R. 14 through 16 W., T. 8 N., R. 14 & 15 W.; T. 9 & 10, R. 14, 15 & 16 W., New Mexico Principal Meridian.

6. Members of the Ramah Band of Navajos reside within the Ramah Chapter, a political subdivision of the Navajo Nation. 2 Navajo Nation Code §§ 4001 *et seq.*

7. From time immemorial, members of the Navajo Nation have lived on, cultivated crops and occupied lands in the Zuni River basin in New Mexico and have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, commercial, recreation, and other homeland purposes.

8. The laws of the United States grant to the Navajo Nation and its members the right to the use of waters in the Zuni River basin in New Mexico to satisfy the needs described herein. *Winters v. United States*, 207 U.S. 564 (1908); *United States v. Powers*, 305 U.S. 527 (1938).

9. The Navajo Nation also owns lands in fee in the Zuni River basin including lands known as the "Nicoll Ranch." The Navajo Nation owns state-based water rights associated with Nicoll Ranch, including File Nos. 1916 and 1916A.

10. All rights to use the surface and underground waters within such lands within the Zuni River basin are subject to the general stream adjudication that is the subject of this action.

11. Each of the other parties and interests herein claims rights in or to the use of the waters of the Zuni River basin, which claims are adverse to the claims of the Navajo Nation and its member allottees.

WHEREFORE, Intervenor Navajo Nation prays for relief as follows:

A. That this Court require that each and every party, and all other claimants to the use of the surface and underground waters of the Zuni River basin, appear and set forth fully their claims to the use of the waters of the Zuni River basin.

B. That this Court determine the rights of each of the parties in and to the use of the surface and underground waters of the Zuni River basin, setting forth such rights with a date of priority for each right.

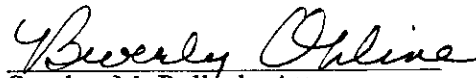
C. That this Court determine and decree that the Navajo Nation has the right to divert and use as much of the surface and underground waters of the Zuni River as necessary to satisfy its aboriginal, historic, present or future needs within the Zuni River basin, including such rights that may exist under state and federal laws.

D. That this Court enter its order enjoining all diversions and uses of the surface and underground waters from the Zuni River basin except in accordance with the rights and priorities as set forth in the Court's decree.

E. That the Court enter such further orders and decrees and grant such further and different relief as may be just and proper for a determination of the parties' rights to the use of the surface and underground waters of the Zuni River basin, or with respect to such other matters that the Court deems proper.

Respectfully submitted this 7th day of September 2001.

NAVAJO NATION DEPARTMENT OF JUSTICE
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September 2001, a true and correct copy of the foregoing NAVAJO NATION'S COMPLAINT IN INTERVENTION was served by United States Postal Service first class, postage pre-paid mail to those on the LIST OF PERSONS RECEIVING SERVICE (Zuni River Basin), which is incorporated here by reference.

By: Pat Lyons
Legal Secretary

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