

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

UNITED STATES OF AMERICA,	)	
and	)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE	)	
ENGINEER,	)	
	)	
Plaintiffs,	)	
	)	No. 01cv00072 BB
and	)	
	)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,	)	ADJUDICATION
	)	
Plaintiffs in Intervention,	)	
	)	
v.	)	
	)	
A&R PRODUCTIONS, et al.	)	
	)	
Defendants.	)	
_____	)	

**MOTION TO JOIN ADDITIONAL PARTY DEFENDANT**

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The United States of America (“United States”) hereby respectfully requests the Court to join as an additional party defendant the trust named below and order the party to answer the United States’ Complaint in this action as required in any civil action in the United States District Court or suffer default judgment against the party. In support of this motion, the United States asserts:

1. The trust listed below is diverting and using or may claim a right to divert and use surface or underground waters within the Zuni River stream system in New Mexico:

<b>Subfile No.</b>	<b>Defendant</b>
ZRB-4-0266	PAUL D. MERRILL & PATRICIA V. MERRILL REV. TRUST P.O. BOX 58 RAMAH, NM 87321

The water uses, or claims to the right to use water, of this entity are subject to the laws of the State of New Mexico and the United States. This Court has exclusive jurisdiction to adjudicate all claims to the right to divert, store, or use public waters of the Zuni River stream system in New Mexico.

2. The entity listed above may be diverting and using water associated with the subfile number listed, or may otherwise be using or diverting surface or underground waters within the Zuni River stream system.

3. Paul D. Merrill and Patricia V. Merrill, the apparent trustees of the Paul D. Merrill and Patricia V. Merrill Revocable Trust (“Revocable Trust”), were named as defendants by the United States original complaint in this action and waived service of summons on March 7, 2001. However, before completion of the Hydrographic Survey Report for Subareas 1, 2, and 3 (Excluding Ramah) (“HSR”), the Merrills conveyed their property in the basin to the Revocable Trust, and the HSR correctly identified the Revocable Trust as the defendant for Subfile ZRB-4-0266. Due to a mistake by the United States in processing the ownership data obtained by the HSR, which resulted in the Merrills’ previous joinder and waiver of service as individuals being erroneously attributed to the Revocable Trust, the Revocable Trust has not previously been joined as a party defendant in this action.

4. The United States has already received a Consent Order for Subfile ZRB-4-0266, signed by a trustee for the Revocable Trust, and anticipates being able to submit that

document for Court approval as soon as the Revocable Trust is joined as a party defendant and a suitable waiver or return of service is filed.

5. For the benefit of other parties, and by way of explanation, the United States asserts that motions to add additional defendants, dismiss defendants, correct defendants' names, and take other corrective action, are parts of an on-going process made necessary by the hydrographic survey, defendants' responses, and other kinds of new information received during the course of this adjudication. The United States advances such motions primarily for the purpose of ensuring that the Court's records indicate as accurately as possible the persons or entities that are parties to this case.

DATED: January 25, 2007

Electronically Filed

/s/Bradley S. Bridgewater

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COUNSEL FOR THE UNITED STATES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on January 25, 2007, I filed the foregoing *Motion To Join Additional Party Defendant* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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