

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

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO
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CLERK-AUSTIN

UNITED STATES OF AMERICA, for Itself
and as Trustee for the Zuni Indian Tribe, Navajo
Nation and Ramah Band of Navajos
and
STATE OF NEW MEXICO, ex rel. STATE
ENGINEER,

Plaintiffs,

and

ZUNI INDIAN TRIBE,
NAVAJO NATION,

Plaintiffs in Intervention,

v.

STATE OF NEW MEXICO COMMISSIONER
OF PUBLIC LANDS,
and
A & R PRODUCTIONS, et. al.,

Defendants.

No. 01cv00072-BB-ACE

ZUNI RIVER BASIN
ADJUDICATION

Subfile No: ZRB-3-0175

SUBFILE ANSWER

COME(S) NOW DAVID SWINDLE TRUSTEE & LINDA SWINDLE
TRUSTEE and answer(s) the complaint as follows:

| <u>Subfile No:</u> | <u>Object</u> | <u>Claim No Right</u> |
|--------------------|---|--------------------------|
| ZRB-3-0175 | <input type="checkbox"/> <i>David Swindle</i> | <input type="checkbox"/> |

(Instructions: **Initial** in one of the two boxes to indicate whether you object to the description of water right(s) contained in the proposed Consent Order offered by the United States and the State, or whether you make no claim as to the water right(s) described in the proposed Consent Order. Provide the appropriate explanation below, and indicate what you have done to resolve your disagreement with the United States and the State, in the spaces provided below.)

A.

I (We) object to the description of the water right(s) described by the proposed Consent Order for Subfile Number ZRB-3-0175 because:
(explain) Defendants object to Plaintiff's consent offer for NMSA 1978, 72-12-1 well for any amount of water less than 3 acre feet per year based on the existence of a property or vested right for 3 acre feet per year as provided by statute and the rules and regulations of the State Engineers and/or a property or vested right in a permit allowing a diversion of up to 3 acre feet per year. The defendant has used or intends to use up to 3 acre feet per year. The defendant has used or intends to use
(Attach additional pages if necessary) (see attached sheet, "A")

B.

I (We) made a good faith effort to resolve my (our) disagreement with the Consent Order proposed by the United States and the State by:
(describe) On February 21, 2007 at 11:30 a.m., David Swindle began a phone conversation with Bradley S. Bridgewater of the U.S. Dept. of Justice, Edward Bagley of the Office of the State Engineer, et. al ("the group") regarding a consultation over the disputed water rights. In the conversation, the group stubbornly refused to acknowledge that I had any water rights whatsoever, based on their premise that I had no history of water use
(Attach additional pages if necessary) on the property. (see attached sheet, "B")

I (We) claim no right for the water right(s) described by the proposed Consent Order for Subfile Number ZRB-3-0175 because:
(explain) _____

(Attach additional pages if necessary)

I (We) understand that by making this claim and filing this document I (we) am (are) not waiving my (our) rights to later raise, in an Amended Answer, any jurisdictional or affirmative defenses I (we) may have.

Continuation of "A" Page 2

A.

up to 3 acre feet per year for the irrigation of not more than one acre of non commercial trees, lawn or garden in household or other domestic uses and/or for livestock purposes.

Continuation of "B" Page 2

B.

This was in contradiction to a Jan. 27, 2005 document issued by the State Engineer's Office granting me a right to drill a well on Lot 28. At the time of our purchase of this land and obtaining the well permit, we were aware of no restrictions on well usage beyond the 3 acre feet restriction, as stated by individuals in the State Engineer's office.

David Duville
Jude J. Shroder

(Instructions: Each named defendant, or the defendant's attorney, must sign and date this Answer. If multiple defendants are named and you have separate addresses or telephone numbers, please attach an additional page providing address information for each defendant. If you are signing on behalf of a named defendant, you must indicate the source of your legal authority to do so and provide both your address and the address of the named defendant.)

Signature(s) – DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE:

David Swindle, Trustee
Linda J. Swindle, Trustee

7021 Pioneer Place NW
(Address: Print Clearly)
Albuquerque, NM 87120
505-844-2347/505-899-9068
(Phone Number: Print Clearly)

IMPORTANT: Within 20 days of March 8, 2007, you must EITHER accept the last Consent Order offered by the United States and the State for Subfile ZRB-3-0175 OR file an answer in this Subfile with United States District Court for the District of New Mexico. Any right you may have to use waters of the stream system may be adjudicated by default judgment in conformity with the Consent Order proposed by the United States and the State if you fail to accept the proposed Consent Order or file an answer within 20 days of March 8, 2007. The court's address is 333 Lomas NW, Suite 270, Albuquerque, NM 87102. A copy of the answer filed with the district court must also be sent to counsel for the United States and counsel for the State at the following addresses:

BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

EDWARD BAGLEY
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504