

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

UNITED STATES OF AMERICA,)
and)
STATE OF NEW MEXICO, *ex rel.* STATE)
ENGINEER,)
))
Plaintiffs,)
))
and)
))
ZUNI INDIAN TRIBE, NAVAJO NATION,)
))
Plaintiffs in Intervention,)
))
v.)
))
A&R PRODUCTIONS, et al.)
))
Defendants.)
_____)

No. 01cv00072 BB-ACE
ZUNI RIVER BASIN
ADJUDICATION

MOTION TO DISMISS PARTIES DEFENDANT

The Plaintiffs United States of America (“United States”) and State of New Mexico *ex rel.* State Engineer (“State”) hereby move the Court to dismiss CHARLES BRAUN, TRUSTEE and DIANE BRAUN, TRUSTEE (correctly known as DIANE WATERS, TRUSTEE) as parties defendant from this action. As grounds for this motion, the United States asserts as follows:

1. Charles Braun, Trustee and Diane Braun, Trustee were joined as defendants in this matter by the Court’s April 5, 2006 *Order Granting Motion to Join Additional Parties Defendant*. (Doc. No. 616)
2. Pursuant to the Special Master’s March 7, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River*

Stream System (Doc. No. 516), and based on ownership data obtained from McKinley County records, the United States served Charles Braun, Trustee and Diane Braun, Trustee with a proposed consent order for Subfile ZRB-3-0016 and other required service items, including requests for waiver of service of summons.

3. Charles Braun, Trustee waived service of a summons. (Doc. No. 737, filed June 26, 2007.) However, the United States received no waiver document for Diane Braun, Trustee, or any other response from the defendants to the service packet. On August 10, 2007, the United States served a summons addressed to Diane Braun, Trustee, pursuant to Fed.R.Civ.P. 4(e)(1) and Rule 1-004(E)(3) NMRA.

4. Based on the deed provided as Exhibit "A" to the *Answer to Amended Complaint* filed by Diane Waters, Trustee of the Charles R. Braun and Diane B. Waters Revocable Trust, on August 29, 2007 (Doc No. 1234), and on updated ownership information from McKinley County, Plaintiffs have concluded that (1) the original joinder of Diane Waters, Trustee under the name of "Diane Braun, Trustee" was an error due to an ambiguity in the McKinley County data, and (2) Charles R. Braun and Diane B. Waters, Trustees of the Charles R. Braun and Diane B. Waters Revocable Trust no longer own the property involved in Subfile ZRB-3-0016.

5. The United States has separately moved to join, among others, the new owners of the Subfile ZRB-3-0016 property, Charles E. Bell Jr. and Valerie S. Bell. (Doc. No. 1266, filed September 10, 2007.)

6. The Hydrographic Survey of the Zuni River Stream System has not identified Charles R. Braun or Diane B. Waters, Trustees of the Charles R. Braun and Diane B.

Waters Revocable Trust, to be potential claimants of any other water rights within the scope of this adjudication than those involved in Subfile ZRB-3-0016. In particular, the property described in Exhibit "B" to the August 29, 2007 *Answer to Amended Complaint* does not lie within the Zuni River stream system.

7. Counsel for the United States has provided a draft of this motion to Robert F. Rosebrough, counsel for Diane Waters, who has approved the motion.

WHEREFORE, the Plaintiffs respectfully move the Court to enter its order dismissing CHARLES BRAUN, TRUSTEE and DIANE BRAUN, TRUSTEE (correctly known as DIANE WATERS, TRUSTEE) as parties defendant from this action.

DATED: September 12, 2007

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294
(303) 844-1359

COUNSEL FOR THE UNITED STATES

 (approved via telephone 9/12/2007)
EDWARD BAGLEY
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504
(505) 827-6150

COUNSEL FOR THE STATE OF NEW MEXICO
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 12, 2007, I filed the foregoing *Motion To Dismiss Parties 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:

Lisa Baeza

stripp@wildblue.net

Luis Mario Baeza

stripp@wildblue.net

Edward C Bagley

lula.valdez@state.nm.us, edward.bagley@state.nm.us, connie.flint@state.nm.us, arianne.singer@state.nm.us, marjorie.dryden@state.nm.us, fred.kipnes@state.nm.us, vina.gallegos@state.nm.us

Bidtah Becker

bidtahnbecker@navajo.org, bidtahb@yahoo.com

Bruce Boynton , III

boynton@7cities.net

Diane Braun-Waters

bob@jrlawyers.com

Bradley S. Bridgewater

gary.durr@usdoj.gov, jennifer.vaughn2@usdoj.gov, bradley.s.bridgewater@usdoj.gov, yvonne.marsh@usdoj.gov, LJohnson@nrce.com

Christina J Bruff

cjb@lrpa-usa.com

Claude R Burgin

lcburgin@wans.net

Lu Anne L Burgin

lcburgin@wans.net

Kenneth J. Cassutt

kencass@chflaw.com

Clawson Farm & Ranch LLC

rgclaw@yahoo.com

William J. Cooksey

wcooksey@dcbf.net

Jeffrey A. Dahl

dahljeffrey@comcast.net, rliddms@aol.com

Carlett Daniels

danckd@yahoo.com

Kelsey Daniels

danckd@yahoo.com

Pamela Davis

stripp@wildblue.net

Sandra S Drullinger

pdsd@cell1net.net

Charles T. DuMars

ctd@lrpa-usa.com

Vickie L. Gabin

vlgabin@earthlink.net, vlgabin@nm.net

David W Gehlert

david.gehlert@usdoj.gov, jennifer.vaughn2@usdoj.gov, judy.tetreault@usdoj.gov,
lori.montano@usdoj.gov

James E. Haas

jeh@lchlaw.com

Raymond Hamilton

raymond.hamilton@usdoj.gov, Rosemarie.Garcia@usdoj.gov

Stephen G. Hughes

shughes@slo.state.nm.us

Robert A. Johnson

rjohnson@jn-law.com, cmuggaberg@jn-law.com, sbowersock@jn-law.com

Susan C Kery

sck@ssslawfirm.com, djs@ssslawfirm.com

Jane Marx

janemarx@earthlink.net, skarpp@janovcooneylaw.com

Stephen R. Nelson

snelson@jn-law.com, cmuggaberg@jn-law.com, sbowersock@jn-law.com

Stanley M. Pollack

spollack@navajo.org

JoAnn V. Davis Residual Trust

stripp@wildblue.net

Robert F. Rosebrough

bob@jrlawyers.com

Tanya L. Scott

tls@lrpa-usa.com

Peter B. Shoenfeld

petershoenfeld@qwest.net

William G. Stripp

stripp@wildblue.net

Paul Davis Survivor's Trust dated July 28, 2003

stripp@wildblue.net

John W. Utton

jwu@ssslawfirm.com, djs@ssslawfirm.com

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participant via first class mail, postage prepaid:

CHARLES BRAUN, TRUSTEE

P.O. BOX 420

VANDERWAGEN, NM 87326

_____/s_____
Bradley S. Bridgewater