

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 NUNC PRO TUNC

The United States of America (“United States”) hereby respectfully requests the Court to join as an additional party defendant the entity 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. The United States further moves the Court to make such joinder retroactively effective as of November 22, 2005. In support of this motion, the United States asserts:

1. The entity 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:

Subfile No.	Defendant
ZRB-1-0017 ¹	LARRY W. AND SALLY L. CARVER TRUST P.O. BOX 2970 MILAN, NM 87021

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. Larry Carver and Sally L. Carver were joined as parties defendant in this action by the United States' original Complaint. (Doc. No. 1) "Larry and Sally Carver" were subsequently listed as parties represented on the June 24, 2003 Entry of Appearance filed by attorneys of the firm Law & Resources Planning Associates (Doc. No. 211), and on the September 30, 2003 Answer filed by that firm (Doc. No. 248).

4. The July 14, 2004 *Zuni River Basin Hydrographic Survey Report for Sub-Areas 4 and 8*, filed of record on July 16, 2004 (Doc. No. 340), identified the Larry W. and Sally L. Carver Trust as the owner of the surveyed water uses included in Subfile ZRB-1-0017.

However, due to confusion concerning the earlier joinder and representation of Larry Carver and Sally L. Carver as individual defendants, the United States erroneously failed to include the

¹ The United States provides Subfile Numbers in motions to join only for tracking purposes, and not to limit in any way the scope of the joinder sought.

Larry W. and Sally L. Carver Trust on the November 4, 2005 Motion to Join Additional Parties Defendant (Doc. No. 397), which was based on the Hydrographic Survey. The Court granted that motion on November 22, 2005 (Doc. No. 403).

5. Pursuant to the Special Master's September 8, 2005 *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System* (Doc. No. 387), the United States served the Larry W. and Sally L. Carver Trust with a service packet including a proposed Consent Order, Request for Consultation form, and Waiver of Service of Summons form, all in the name of the Trust. Larry W. Carver signed and returned the Waiver of Service of Summons on behalf of the Trust (filed December 5, 2005, Doc. No. 414), and Larry W. Carver and Sally L. Carver returned a timely Request for Consultation for Subfile ZRB-1-0017 on behalf of the Trust. The Carvers, the United States, and the State of New Mexico ex rel. State Engineer consulted concerning Subfile ZRB-1-0017 on February 8, 2006, but failed to reach an agreement. Subsequently, on February 24, 2006, Larry W. Carver and Sally L. Carver filed a Subfile Answer in the name of the Trust (Doc. No. 494). Thus, all directly affected parties have acted as though the Larry W. and Sally Carver Trust were properly joined as a party to this case.

6. Fed.R.Civ.P. 21 provides, in pertinent part, that "the court may at any time, on just terms, add or drop a party." Nunc pro tunc joinder of the Larry W. and Sally L. Carver Trust, effective as of November 22, 2005 -- the date the Court joined other defendants identified in Sub-Areas 4 and 8, will not prejudice any party, will preclude the need for the affected parties to file duplicative documents with the Court, and will cause the Court's records

to more completely reflect the actual relationship of the parties and the status of Subfile ZRB-1-0017.

7. 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: December 11, 2007

Electronically Filed

/s/Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
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COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that, on December 11, 2007, I filed the foregoing *Motion To Join Additional Party Defendant Nunc Pro Tunc* electronically through the CM/ECF system, which caused the following CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that I served the foregoing motion on the following non-CM/ECF Participant by the means indicated:

Via U.S. mail, postage prepaid:

LARRY W. AND SALLY L. CARVER TRUST
P.O. BOX 2970
MILAN, NM 87021

_____/s/_____
Bradley S. Bridgewater