

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/WDS |
| and                                       | ) |                      |
|   | ) | ZUNI RIVER BASIN     |
| ZUNI INDIAN TRIBE, NAVAJO NATION,         | ) | ADJUDICATION         |
|   | ) |                      |
| Plaintiffs in Intervention,               | ) |                      |
|   | ) |                      |
| v.  | ) |                      |
|   | ) |                      |
| A&R PRODUCTIONS, et al.                   | ) |                      |
|   | ) |                      |
| Defendants.                               | ) |                      |
| _____                                     | ) |                      |

**MOTION FOR SUBSTITUTION OF PARTY**

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The Plaintiffs United States of America (“United States”) and State of New Mexico *ex rel.* State Engineer (“State”) hereby move the Court pursuant to Fed. R. Civ. P. 25(c) to issue its order substituting the DOMINIC J. BIAVA AND NINA E. BIAVA REVOCABLE TRUST (“Biava Trust”) for defendants SCOTT BLOCH and CATHERINE BLOCH in these proceedings. As grounds for this motion, Plaintiffs state as follows:

1. SCOTT BLOCH and CATHERINE BLOCH were joined as defendants in this matter by the United States’ original *Complaint* (Doc. No. 1) and waived service of a summons on August 23, 2003 (Doc. No. 362).
2. Pursuant to the Special Master’s September 28, 2006 Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3

(Excluding Ramah) of the Zuni River Stream System (Doc. No. 838), the United States served Scott Bloch and Catherine Bloch with a proposed consent order for Subfile ZRB-4-0046 and with other required service items. These defendants failed to timely return either a Request for Consultation or a signed Consent Order as required by the Special Master's Procedural and Scheduling Order. Accordingly, on November 17, 2008, Plaintiffs filed a *Motion for Default Judgment* concerning Subfile ZRB-4-0046 (Doc. No. 1969). The Plaintiffs' motion was granted by the Court on December 5, 2008 (Doc. No. 1994).

3. Following submission of the Plaintiffs' *Motion for Default Judgment* concerning Subfile ZRB-4-0046, Counsel for the United States was contacted by an attorney acting on behalf of the successor in interest for the subfile property, the Biava Trust, who indicated that the Trustee of the Biava Trust desired to consent to the substantive terms of the consent order originally offered to Scott Bloch and Catherine Bloch. The Plaintiffs then provided a Consent Order in the name of the Biava Trust, and, on December 8, 2008, the United States received that Consent Order duly executed by the Trustee.

4. Plaintiffs assert that it will be in the best interests of all parties concerned for Subfile ZRB-4-0046 to be resolved by means of a Consent Order, and are contemporaneously moving the Court (see Doc. No. 1998) to vacate the *Order Granting Default Judgment* previously entered for Subfile ZRB-4-0046. If the present motion to substitute is granted, the United States will submit the Consent Order signed by the Trustee of the Biava Trust for the Court's approval.

5. The Hydrographic Survey of the Zuni River Stream System has not identified Scott Bloch or Catherine Bloch to be potential claimants of any other water rights than those involved in Subfile ZRB-4-0046.

6. Pursuant to Fed.R.Civ.P. 25(a) and (c), this motion is being served on the Trustee of the Biava Trust in the manner provided in Fed.R.Civ.P. 4(e)(1) and Rule 1-004(E)(3) NMRA for service of a summons.

WHEREFORE, the Plaintiffs respectfully move the Court to enter its order substituting the DOMINIC J. BIAVA AND NINA E. BIAVA REVOCABLE TRUST for defendants SCOTT BLOCH and CATHERINE BLOCH in these proceedings.

DATED: December 10, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

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BRADLEY S. BRIDGEWATER  
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COUNSEL FOR THE UNITED STATES

(approved 12/9/2008)  
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COUNSEL FOR THE STATE OF NEW MEXICO  
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 10, 2008, I filed the foregoing *Motion For Substitution Of Party* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants in the manner indicated:

**Via Certified Mail, Restricted Delivery:**

Dominic J. Biava, Trustee  
Dominic J. Biava and Nina E. Biava  
Revocable Trust  
1905 Mariyana  
Gallup, NM 87301

**Via U.S. Mail, Postage Pre-paid:**

Scott Bloch  
Catherine Bloch  
8408 Stockade Dr.  
Alexandria, VA 22308

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