

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
and
STATE OF NEW MEXICO, ex rel.
STATE ENGINEER,
Plaintiffs,

and

NO. CV 01-72 BB/WDS

ZUNI INDIAN TRIBE and
NAVAJO NATION,
Plaintiffs-in-Intervention,

vs.

ZUNI RIVER BASIN
ADJUDICATION

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

Subfile No.: ZRB-4-0118

SUBFILE ANSWER

NOW ENTERING COURT is William G. Stripp, Attorney at Law, on behalf of the JoAnn V. Davis Residual Trust dated July 28, 2003, who answers the complaint as follows:

1. Defendant objects to the description of water rights contained in the proposed Consent Order offered by the United States and the State of New Mexico concerning Subfile Number **ZRB-4-0118**.

2. The objection to the description of the water rights described by the proposed Consent Order for Subfile Number **ZRB-4-0118** is made because the offers of 0.89

acre feet per annum for well number 3B-5-W006, 0.7 acre feet per annum for well number 3C-5-W007, 0.7 acre feet per annum for well number 3C-6-W004, 0.650 acre feet per annum for well number 3C-6-W005, and 0.65 acre feet per annum for well number 3C-6-W008, do not accurately reflect either historical beneficial use or future needs. Well 3B-5-W006, which has a priority date of 1/1/1950, has historically been used for an orchard, agricultural use including irrigating fields, livestock watering and domestic use. The offer of 0.89 acre feet is insufficient. Defendants would accept 5 acre feet. Well 3C-5-W007, which has a priority date of 1/21/1999, is the only well servicing a full section (640 acres). The offer of 0.7 acre feet is insufficient. Defendants would accept 4.0 acre feet. Well 3C-6-W004, which has a priority date of 8/15/2003, is the only well servicing a full section (640 acres). The offer of 0.7 acre feet is insufficient. Defendants would accept 3.0 acre feet. Well 3C-6-W005, which has a priority date of 8/28/59, is the only well servicing a full section (640 acres). The offer of 0.650 acre feet is insufficient. Defendants would accept 5.0 acre feet. Well 3C-6-W008, which has a priority date of 1/1/1960, is the only well servicing an entire section (640 acres). The offer of 0.65 acre feet is insufficient. Defendants would accept 5.0 acre feet.

3. Defendants made a good faith effort to resolve their disagreement with the Consent Order proposed by the United States and the State by meeting with representatives of the Plaintiffs. While Defendants believe that the current offer presented in the Consent Order is unacceptable, Defendants are willing to continue negotiations in an attempt to resolve the parties' differences.

4. Defendants understand that by making this claim and filing this document they are not waiving their right to later raise in an Amended Answer, any jurisdictional or affirmative defenses they may have.

5. Defense counsel is using a slightly modified version of the Subfile Answer form presented with the Notice That the Consultation Period Has Ended rather than a customized pleading, because it appears that is what the Court wants.

Date: October 8, 2010

Respectfully submitted,
---signed electronically-----
WILLIAM G. STRIPP
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Certificate of Service

I HEREBY CERTIFY that on October 8, 2010, I filed the foregoing electronically through the CM/ECF system, which caused counsel and parties pro se who have entered an appearance to be served by electronic means. ---signed electronically---