

**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,)	Subfile No. ZRB-4-0313
)	
v.)	
)	
A & R PRODUCTIONS, et al.)	
)	
Defendants.)	
)	

**UNITED STATES' ANSWER TO COUNTERCLAIM FOR DECLARATORY
JUDGMENT**

The Plaintiff United States of America (“United States”) hereby answers the Counterclaim for Declaratory Judgment (“Counterclaim”) asserted in the *First Amended Answer and Counterclaim for Declaratory Judgment* (“Amended Answer”) filed October 3, 2011 by Defendants Steven H. Pettit and Karen C. Pettit, Co-Trustees of the Steven and Karen Pettit Trust, dated July 19, 2005 [No. 2715] as follows:

1. Paragraph 1 of the Counterclaim states Defendants’ characterization of their legal theory or legal conclusions. The United States admits that there exists an actual controversy between Defendants and the United States. To the extent any further response is necessary, the allegations of the paragraph are denied.

2. The United States admits the first sentence of Paragraph 2 of the Counterclaim. The United States lacks knowledge or information sufficient to form a belief about the truth of the second sentence in said Paragraph 2.

3. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Counterclaim.

4. The United States admits that the trust of which Defendants are the trustees owns at least one acre of land. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 4 of the Counterclaim.

5. The United States asserts that Defendants applied for a permit to use underground waters in accordance with NMSA 1978, § 72-12-1, that said application was approved by the New Mexico State Engineer, that the New Mexico Office of the State Engineer (“OSE”) maintains records pertinent to said permit application in Water Right File Number G-01982, and that Exhibit A to Defendants’ Amended Answer is a copy of said permit application. The United States further asserts that the point of diversion (well) identified with Water Right File Number G-01982 has been assigned the Map Label 3C-5-W003 by the Hydrographic Survey and is included within Subfile No. ZRB-4-0313. Except to the extent they are consistent with the foregoing assertions, the United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5 of the Counterclaim, or Paragraph 5 of the Counterclaim states Defendants’ legal conclusions, which are denied.

6. Admitted, subject to noting that an OSE Water Right File Number may involve more than one permit. The United States has no information that Water Right File Number G-01982, specifically, does in fact involve more than one permit.

7. The United States asserts that Steve Pettit filed with the OSE a Declaration of Owner of Underground Water Right which is included in OSE Water Right File Number G-01999, and that a copy of said Declaration is attached to the Defendants' Amended Answer as Exhibit B. The United States further asserts that the point of diversion (well) identified with Water Right File Number G-01999 has been assigned the Map Label 3C-5-W004 by the Hydrographic Survey and is included within Subfile No. ZRB-4-0313. Except to the extent consistent with the foregoing assertions, the United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7 of the Counterclaim.

8. Paragraph 8 of the Counterclaim states Defendants' legal conclusions. To the extent a response is necessary, the contentions of Paragraph 8 are denied.

9. The United States asserts that Defendants have drilled Well 3C-5-W003 and have put some water from that well to beneficial use. Except to the extent consistent with the foregoing assertions, the United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9 of the Counterclaim.

10. The United States asserts that Defendants have put some water from Well 3C-5-W004 to beneficial use. Except to the extent consistent with the

foregoing assertion, the United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10 of the Counterclaim.

11. Paragraph 11 of the Counterclaim states a legal conclusion which is denied.

12. The United States asserts that Defendants' rights to use water from Well 3C-5-W004 and Well 3C-5-W003 are limited to the quantity of historical beneficial use that Defendants are able to prove by a preponderance of evidence admitted before this Court and further asserts that Defendants, and Defendants' successors, representatives, heirs and assigns, should be enjoined from any diversion or use of the public waters of the Zuni River Stream System, except in strict accordance with their rights as determined by the Court in Subfile No. ZRB-4-0313 and other orders of the Court in this cause. Except to the extent consistent with the foregoing assertions, the allegations of Paragraph 12 of the Counterclaim are denied.

13. Paragraph 13 of the Counterclaim states a legal conclusion which is denied.

14. Paragraph 14 of the Counterclaim appears to be a vaguely worded legal conclusion, and is denied.

15. Paragraph 15 of the Counterclaim states a legal conclusion which is denied.

16. Paragraph 16 of the Counterclaim states a legal conclusion which is denied.

17. Except to the extent consistent with the assertions in the foregoing Paragraph 12 of this Answer, all allegations in the Defendants' prayer for relief are denied.

Respectfully submitted,

/s/ Bradley S. Bridgewater
BRADLEY S. BRIDGEWATER
ANDREW "GUSS" GUARINO
U.S. Department of Justice
South Terrace, Suite 370
999 18th Street
Denver, CO 80202
(303) 844-1359

COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 30, 2012, I filed the foregoing *United States' Answer to Counterclaim for Declaratory Judgment* electronically through the CM/ECF system, which caused parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

_____/s/_____
BRADLEY S. BRIDGEWATER