

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,)	No. 01cv0072 BB/LG
)	
and)	
ZUNI INDIAN TRIBE and NAVAJO NATION,)	ZUNI RIVER BASIN
Plaintiffs-in-Intervention)	ADJUDICATION
)	
)	
v.)	Subfile No. ZRB-4-0313
)	
A & R PRODUCTIONS, et al.,)	

STATE OF NEW MEXICO’S ANSWER TO COUNTERCLAIM FOR DECLARATORY JUDGMENT OF STEVE AND KAREN PETTIT, CO-TRUSTEES OF THE STEVE AND KAREN PETTIT TRUST

The State of New Mexico *ex rel.* State Engineer (“State”) answers Steve and Karen Pettit, Co-Trustees of the Steve and Karen Pettit Trust’s October 3, 2011 *Counterclaim for Declaratory Judgment* (No. 2715), (“*Counterclaim*”) as follows:

1. The allegations of paragraph 1 of the *Counterclaim* state legal conclusions, make no factual allegations, and the State therefore denies same.

2. The State admits that Steve and Karen Pettit are co trustees of a Trust that owns real property located in the Zuni basin and is included within the boundaries of the Zuni Adjudication. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 2 of the *Counterclaim*, and therefore denies same.

3. The State is without knowledge or information sufficient to form a belief as to the

truth of the allegations set forth in paragraph 3 of the *Counterclaim*, and therefore denies same.

4. The State admits the Trust owns at least one acre of land. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 4 of the *Counterclaim*, and therefore denies same.

5. The State admits Steve Pettit applied for and obtained a well permit from the New Mexico State Engineer, and that the associated permit number is G 1982. The State asserts that the terms of the permit speak for themselves. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the *Counterclaim*, and therefore denies same.

6. The State admits the allegations of paragraph 6 of the *Counterclaim*.

7. The State admits that Steve Pettit filed a declaration of owner of underground water right with the New Mexico State Engineer, which the State Engineer designated as Declaration No. 1999. The State asserts that the terms of the declaration speak for themselves. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 7 of the *Counterclaim*, and therefore denies same.

8. The allegations of paragraph 8 of the *Counterclaim* state legal conclusions, make no factual allegations, and the State therefore denies same.

9. The State admits a well was drilled under permit number G-1982, and water from that well has been placed to beneficial use. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 9 of the *Counterclaim*, and therefore denies same.

10. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the *Counterclaim*, and therefore denies same.

11. The allegations of paragraph 11 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

12. The State admits it intends to pursue the adjudication of Counterclaimants' water rights pursuant to New Mexico law, that Counterclaimants' rights to use water are limited to their actual historical beneficial use, and that Counterclaimants 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. The State denies the remaining allegations of paragraph 12 of the *Counterclaim*.

13. The allegations of paragraph 13 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

14. The allegations of paragraph 14 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

15. The allegations of paragraph 15 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

16. The allegations of paragraph 16 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

First Affirmative Defense

Counterclaimants fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs have a plain, speedy and adequate remedy at law.

Third Affirmative Defense

Any rights Counterclaimants may have to divert and use the waters of the Zuni River Basin are limited by the requirement of prior actual beneficial use.

Fourth Affirmative Defense

Any rights Counterclaimants may have to divert and use the waters of the Zuni River Basin are limited by the terms of their permit and New Mexico law.

WHEREFORE, the State of New Mexico, having answered, respectfully requests that the Court dismiss the Counterclaim, or in the alternative require Counterclaimants prove all elements of its claims to rights to divert and use water.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 31, 2012, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.