

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA, for Itself
and as Trustee for the Zuni Indian Tribe,
Navajo Nation and Ramah Band of Navajos**

and

**STATE OF NEW MEXICO, *ex rel.* STATE
ENGINEER,**

Plaintiffs,

and

**ZUNI INDIAN TRIBE,
NAVAJO NATION,**

Plaintiffs-in-Intervention

v.

**STATE OF NEW MEXICO COMMISSIONER
of PUBLIC LANDS**

and

A & R PRODUCTIONS, *et al.*,

Defendants.

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01CV00072 BDB/WWD(ACE)

**ZUNI RIVER STREAM
SYSTEM ADJUDICATION**

**UNOPPOSED CONDITIONAL DISCLAIMER OF INTEREST AND
MOTION TO DISMISS BY RIO ALGOM MINING LLC**

Subject to and conditioned upon the entry in this action of an order of dismissal substantially in the form attached hereto as Exhibit "A," defendant Rio Algom Mining LLC (successor by merger, name change, and change in form of organization to Quivira Mining Company), because it does not use or presently claim a right to the use of surface or groundwater within the geographic boundaries of the Zuni River Basin as described below, hereby disclaims

any and all interest in the use of surface and groundwater within the geographic boundaries of the Zuni River Basin, as that Basin is described in the Court's May 21, 2003 Order On Special Master's Report re Geographic Scope of Adjudication, as follows:

The adjudication boundaries lie within the surface water drainage basin as depicted on the map dated December 2002 attached to the January 6, 2003 United States' Identification of Zuni River Stream System Boundary (No. 156) and as described in the January 14, 2003 Supplemental Identification of Zuni River Stream System Boundary (No. 158). Special Master's Report at pp. 10-11. The groundwater diversions which lie within the surface boundaries shall be included in the adjudication. The groundwater considered shall be limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. The surface boundaries shall not overlap those of any other adjudication.

This Unopposed Conditional Disclaimer and Motion to Dismiss ("Unopposed Conditional Disclaimer") is not intended to and does not prejudice the right of Rio Algom Mining LLC and/or any successor-in-interest (collectively, "Rio Algom") hereafter: to acquire existing surface and/or groundwater rights within the geographic boundaries of the Zuni River Basin, to apply to the State Engineer for a permit to change place and/or purpose of use and/or point(s) of diversion of such rights, to apply to the State Engineer for a permit for a new appropriation of surface and/or groundwater in the Zuni River Basin, or to apply to the State Engineer for similar permits, nor does it preclude the State Engineer from granting Rio Algom such permits and/or rights to beneficially use surface and/or groundwater in the Zuni River Basin. It is understood that the priority date of any permit for a new appropriation hereafter granted to Rio Algom to beneficially use surface and/or groundwater in the Zuni River Basin under the laws of the State of New Mexico cannot be earlier than the date of the Order entered pursuant to this Unopposed Conditional Disclaimer.

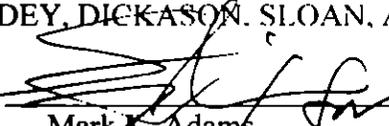
This Unopposed Conditional Disclaimer is substantially identical to the Conditional Disclaimer and Motion to Dismiss filed in this action by Tri-State Generation and Transmission

Association, Inc. ("Tri-State") on November 25, 2003. In support of this Unopposed Conditional Disclaimer, we adopt by reference the Memorandum in Support of Conditional Disclaimer of Interest and Motion to Dismiss by Tri-State Generation and Transmission Association, Inc. filed in this action on November 25, 2003 (Docket No. 280), as modified by the Notice of Erratum filed in this action on December 8, 2003 (Docket No. 285). The Order of Dismissal sought hereby is substantially identical to the Order of Dismissal of Tri-State entered by the Court in this action on January 6, 2004.

Because this Unopposed Conditional Disclaimer is relevant to the determination of the rights of Rio Algom, an individual defendant, as between it and the plaintiffs, pursuant to the Administrative Order Establishing Motion Practice and Procedure entered in this action on March 27, 2003, concurrence was sought only from, and this Unopposed Conditional Disclaimer has been served only upon counsel to the parties as listed in the Certificate of Service accompanying this Unopposed Conditional Disclaimer. Such service was by mail on January 27, 2004. None of such counsel has objected to this Unopposed Conditional Disclaimer or to the Order of Dismissal sought hereby.

Respectfully submitted,

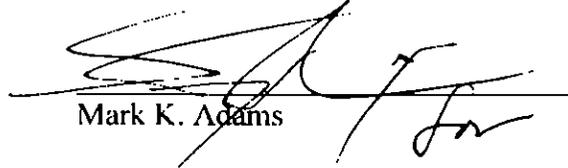
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2003, I mailed a copy of the foregoing Unopposed Conditional Disclaimer of Interest and Motion to Dismiss by Rio Algom Mining L.L.C and form of Order of Dismissal to all persons on the attached mailing list.


Mark K. Adams

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**IN THE UNITED STATES DISTRICT COURT
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**UNITED STATES OF AMERICA, for Itself)
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**STATE OF NEW MEXICO, *ex rel.* STATE)
ENGINEER,)**

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**ZUNI INDIAN TRIBE,)
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**STATE OF NEW MEXICO COMMISSIONER)
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Defendants.)

01CV00072 BDB/WWD(ACE)

**ZUNI RIVER STREAM
SYSTEM ADJUDICATION**

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Conditional Disclaimer of Interest and Motion to Dismiss by defendant Rio Algom Mining LLC (successor by merger, name change, and change of form of organization to Quivira Mining Company), which, effective upon the entry of this Order, disclaimed any and all interest in the use of surface and groundwater within the geographic boundaries of the Zuni River Basin, as that Basin is described in the Court's May 21,

Exhibit A

2003 Order On Special Master's Report re Geographic Scope of Adjudication, as follows:

The adjudication boundaries lie within the surface water drainage basin as depicted on the map dated December 2002 attached to the January 6, 2003 United States' Identification of Zuni River Stream System Boundary (No. 156) and as described in the January 14, 2003 Supplemental Identification of Zuni River Stream System Boundary (No. 158). Special Master's Report at pp. 10-11. The groundwater diversions which lie within the surface boundaries shall be included in the adjudication. The groundwater considered shall be limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. The surface boundaries shall not overlap those of any other adjudication,

and the Court having been sufficiently advised in the premises:

IT IS THEREFORE ORDERED:

That because Rio Algom Mining LLC, effective upon the entry of this Order, disclaimed any and all interest in the use of surface and groundwater within the geographic boundaries of the Zuni River Basin, as that Basin is described in the Court's May 21, 2003 Order On Special Master's Report re Geographic Scope of Adjudication, as follows:

The adjudication boundaries lie within the surface water drainage basin as depicted on the map dated December 2002 attached to the January 6, 2003 United States' Identification of Zuni River Stream System Boundary (No. 156) and as described in the January 14, 2003 Supplemental Identification of Zuni River Stream System Boundary (No. 158). Special Master's Report at pp. 10-11. The groundwater diversions which lie within the surface boundaries shall be included in the adjudication. The groundwater considered shall be limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. The surface boundaries shall not overlap those of any other adjudication,

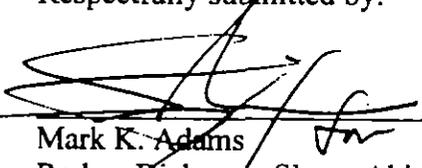
and Rio Algom Mining LLC does not use or presently claim a right to use surface or groundwater within such area, Rio Algom Mining LLC should be, and hereby is, dismissed from this action.

This Conditional Disclaimer does not prejudice the rights of Rio Algom Mining LLC and/or any successor-in-interest (collectively, "Rio Algom") hereafter: to acquire existing surface and/or groundwater rights within the geographic boundaries of the Zuni River Basin, to

apply to the State Engineer for a permit to change place and/or purpose of use and/or point(s) of diversion of such rights, to apply to the State Engineer for a permit for a new appropriation of surface and/or groundwater water in the Zuni River Basin, or to apply to the State Engineer for similar permits. nor does it preclude the State Engineer from granting Rio Algom such permits and/or rights to beneficially use surface and/or groundwater in the Zuni River Basin. The priority date of any permit for a new appropriation hereafter granted to Rio Algom to beneficially use the surface and/or groundwater in the Zuni River Basin under the laws of the State of New Mexico cannot be earlier than the date of this Order.

BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

Respectfully submitted by:



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