

**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,)
))
and)
))
ZUNI INDIAN TRIBE, NAVAJO NATION,)
))
Plaintiffs in Intervention,)
))
v.)
))
A & R PRODUCTIONS, et al.,)
))
Defendants.)
)

No. 01CV00072-MV/WPL

ZUNI RIVER BASIN
ADJUDICATION

MOTION FOR SUBSTITUTION OF PARTY

Pursuant to Rule 25(c), Fed. R. Civ. P., Plaintiffs United States of America and the State of New Mexico ex rel. State Engineer (“Plaintiffs”) hereby move the Court to enter an order (1) substituting JOHN TOLMAN and EARNESTINE TOLMAN for Defendants CARY GRINOLD and LYNNE A. GRINOLD, and (2) dismissing CARY GRINOLD and LYNNE A. GRINOLD as parties defendant from this action. As grounds in support of this Motion, Plaintiffs state as follows:

1. 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 Cary Grinold and Lynne A. Grinold with a proposed consent order for Subfile ZRB-4-0168 and with other required service items. Mr. and Mrs. Grinold accepted service by returning to the United States a signed *Waiver of Service of Summons* dated December 13, 2006.

2. Cary and Lynne A. Grinold subsequently returned a timely *Request for Consultation* and attended on February 20, 2008, a consultation with counsel for the Plaintiffs.

3. The Plaintiffs and Mr. and Mrs. Grinold were unable to reach agreement on the extent of the water rights associated with the Grinold's property in the Zuni River basin and, on September 20, 2007, the United States filed a *Notice That The Consultation Period Has Ended* (Doc. No. 1275).

4. Cary and Lynne A. Grinold timely filed on October 1, 2007, their *Subfile Answer* (Doc. No. 1283).

5. By warranty deed dated September 16, 2008, and recorded in the Office of the Cibola County Clerk on September 30, 2008, Cary and Lynne A. Grinold conveyed their interest in the property associated with Subfile ZRB-4-0168 to John and Earnestine Tolman.

6. The Hydrographic Survey of the Zuni River Stream System has not identified Cary Grinold or Lynne A. Grinold to be potential claimants of any water rights in the Zuni River basin other than those involved in Subfile ZRB-4-0168.

7. Pursuant to Rule 25(a)(3) and (c), Fed. R. Civ. P., this Motion is being served upon John and Earnestine Tolman in the manner provided in Rule 4(e)(1), Fed. R. Civ. P., and Rule 106, Texas R. Civ. P., for service of a summons by waiver.

WHEREFORE, the Plaintiffs respectfully move the Court to enter an order (1) substituting JOHN TOLMAN and EARNESTINE TOLMAN for Defendants CARY GRINOLD and LYNNE A. GRINOLD, and (2) dismissing CARY GRINOLD and LYNNE A. GRINOLD as parties defendant from this action.

DATED: December 3, 2015.

Respectfully submitted,

/s/ Samuel D. Gollis
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COUNSEL FOR THE UNITED STATES

AND

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COUNSEL FOR THE STATE OF NEW MEXICO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2015, 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. In addition, I served Defendants Cary and Lynne Grinold by first class mail at the address below.

Cary and Lynne Grinold
P.O. Box 828
Ramah, NM 87321

/s/ Samuel D. Gollis
Samuel D. Gollis