

**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 PARTIES

Pursuant to Rule 25(c), Fed. R. Civ. P., Plaintiffs United States of America and the State of New Mexico ex rel. State Engineer hereby move the Court to enter an order (1) substituting SHELDON SELTZER and ROSIE P. JONES, TRUSTEE OF THE ROSIE P. JONES TRUST AGREEMENT DATED MARCH 16, 2015 for Defendants ANNIE MAY SELTZER, ROSIE PEARL CARROLL JONES, CARL DUNCAN, and GARY DUNCAN and (2) dismissing ANNIE MAY SELTZER, ROSIE PEARL CARROLL JONES, CARL DUNCAN, and GARY DUNCAN 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 27, 2006 *Order Granting Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Request for Consultation and Submit Subfile Answers* (Doc. No. 837), the United States served Defendants with a proposed consent order for Subfile No. ZRB-3-0086 and with other required service items. Defendants at the time jointly owned the real property associated with the subfile. Annie May Carroll Seltzer accepted service by returning to the United States a signed *Waiver of Service of Summons* dated September 16, 2008; Rosie Pearl Carroll Jones accepted service on September 29, 2008; Carl Duncan accepted service on September 24, 2008; and Gary Duncan accepted service on October 5, 2008.

2. Defendants subsequently returned a timely *Request for Consultation*, and on June 24, 2015, a telephone consultation was held with counsel for the Plaintiffs, Rosie Pearl Carroll Jones and Sheldon Seltzer, husband of the late Annie May Carroll Seltzer. During the consultations, Plaintiffs were informed that Defendants were in the process of partitioning the subject real property.

3. The partition action is now complete. (Exhibit A, Quitclaim Deeds and Plat).

4. By Quitclaim Deed dated July 25, 2016, and recorded in the Office of the Cibola County Clerk on August 11, 2016, Sheldon Seltzer, personal representative of the Estate of Annie May Carroll Seltzer, conveyed the property identified as Tract 2 (Exhibit B) to himself in his individual capacity. A well identified by the hydrographic survey ID number 7A-8-W03 is located on this tract of the partitioned property.

5. By Quitclaim Deed dated September 6, 2016, and recorded in the Office of the Cibola County Clerk on September 25, 2016, Rosie Pearl Carroll Jones conveyed her interest in the partitioned property identified as Tract 1 to Rosie P. Jones, Trustee of the Rosie P. Jones Trust Agreement Dated March 16, 2015 (Exhibit B). Two stock ponds identified by the hydrographic survey ID numbers 7A-8-SP16 and 7A-8-SP17 are located on this tract of the partitioned property.

6. By Quitclaim Deed recorded in the Office of the Cibola County Clerk on May 31, 2016, Gary Duncan, Sheldon Seltzer, and Rosie Pearl Carroll Jones conveyed their interest in the partitioned property identified as Tract 3 (Exhibit A at 11) to Carl Duncan. The hydrographic survey identified no water features on this tract of the partitioned property.

7. By Quitclaim Deed recorded in the Office of the Cibola County Clerk on May 31, 2016, Rosie Pearl Carroll Jones, Carl Duncan, Sheldon Seltzer, and conveyed their interest in the partitioned property identified as Tract 4 (Exhibit A at 16) to Gary Duncan. The hydrographic survey identified no water features on this tract of the partitioned property.

8. The Hydrographic Survey of the Zuni River Stream System has not identified Defendants ANNIE MAY SELTZER, ROSIE PEARL CARROLL JONES, CARL DUNCAN, and GARY DUNCAN to be potential claimants of any water rights in the Zuni River basin other than those involved in Subfile No. ZRB-3-0086.

9. Pursuant to Rule 25(a)(3) and (c), Fed. R. Civ. P., this Motion is being served upon Sheldon Seltzer, Carl Duncan, Gary Duncan and Rosie P. Jones, Trustee in the manner provided in Fed. R. Civ. P. 4(e)(1) and Rule 1-004(E)(3) NMRA for service of a summons.

WHEREFORE, the Plaintiffs respectfully move the Court to enter an order (1) substituting SHELDON SELTZER and ROSIE P. JONES, TRUSTEE OF THE ROSIE P. JONES TRUST AGREEMENT DATED MARCH 16, 2015 for Defendants ANNIE MAY SELTZER, ROSIE PEARL CARROLL JONES, CARL DUNCAN, and GARY DUNCAN and (2) dismissing ANNIE MAY SELTZER, ROSIE PEARL CARROLL JONES, CARL DUNCAN, and GARY DUNCAN as parties defendant from this action.

DATED: October 6, 2016.

Respectfully submitted,

/s/ Samuel D. Gollis
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COUNSEL FOR THE STATE OF NEW MEXICO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 6, 2016, I filed the foregoing *Motion for Substitution of Parties* 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 by first class mail at the address below.

Rosie Pearl Carroll Jones,
Carl Duncan & Gary Duncan
26200 Redlands Blvd, #9
Redland, CA 92373

The Estate of Annie M. Seltzer
c/o Sheldon Seltzer
110 W. Dewey
Buchanan, MI 49107

/s/ Samuel D. Gollis
Samuel D. Gollis